



Asbestos Program Update

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Ohio Department of Health

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Featured Topic Discussion:

Negative Exposure Assessments

Ohio Department of Health (ODH) inspectors continue to find projects where Class I asbestos work is performed in regulated areas by employees who are using a negative-pressure air-purifying half mask respirator and the employer does not have a negative exposure assessment (NEA) for the work. This practice is a clear violation of the Occupational Safety and Health Administration (OSHA) Asbestos Construction Standard 29 CFR 1926.1101 which states the following:

1926.1101(h)(3)(iv) Employers must provide employees with:

1926.1101(h)(3)(iv)(A)

A tight-fitting powered air-purifying respirator or a full facepiece, supplied-air respirator operated in the pressure-demand mode and equipped with either HEPA egress cartridges or an auxiliary positive-pressure, self-contained breathing apparatus (SCBA) whenever the employees are in a regulated area performing Class I asbestos work for which a negative exposure assessment is not available and the exposure assessment indicates that the exposure level will be at or below 1 f/cc as an 8-hour time-weighted average (TWA).

1926.1101(h)(3)(iv)(B)

A full facepiece supplied-air respirator operated in the pressure-demand mode and equipped with an auxiliary positive-pressure SCBA whenever the employees are in a regulated area performing Class I asbestos work for which a negative exposure assessment is not available and the exposure assessment indicates that the exposure level will be above 1 f/cc as an 8-hour TWA.

During several project site inspections by ODH inspectors, it was found that the employer did not have any employee exposure monitoring results on site. According to 1926.1101(f)(2)(iii),

For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the permissible exposure limits (PELs), or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

Therefore, if an employer has employees performing Class I asbestos work with no exposure monitoring sampling results,



paragraph 1926.1101(h)(3)(iv)(B) as listed above applies and the employees should be using full facepiece supplied-air respirator operated in the pressure-demand mode and equipped with an auxiliary positive-pressure SCBA.

If an OSHA compliance safety & health officer (CSHO) performed an inspection of an active Class I asbestos removal job and discovered these conditions, the employer should expect citations and fines. In fact, OSHA released information from a Syracuse, N.Y., project inspection conducted in November 2006 that included violations of employee exposure monitoring requirements. A total of six "willful and serious" violations on the project included failure to conduct employee exposure monitoring and falsifying monitoring records. Initial penalties for these two employee exposure-monitoring violations totaled \$42,000. As of this date, the inspection case has not been closed by OSHA.

The Asbestos Construction Standard defines "Negative Initial Exposure Assessment" as "a demonstration by the employer, which complies with the criteria in paragraph (f)(2)(iii) of this section, that employee exposure during an operation is expected to be consistently below the PELs." Paragraph (f)(2)(iii) states that the Negative Exposure Assessment is "for any one specific asbestos job which will be performed by employees who have been trained in compliance with the standard, the employer may

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demonstrate that employee exposures will be below the PELs by data which conform to the following criteria:" The paragraph then lists three separate methods the employer can use to prove employee exposures will remain below the PELs through the duration of the project:

- 1) Objective data.
- 2) Data from prior, similar asbestos jobs.
- 3) Initial exposure monitoring of the current job.

We will examine each method in turn and discuss what must be done to meet the requirements of the standard.

1) 1926.1101(f)(2)(iii)(A) Objective Data

Objective data demonstrating that the product or material containing asbestos minerals or the activity involving such product or material cannot release airborne fibers in concentrations exceeding the TWA and excursion limit under those work conditions having the greatest potential for releasing asbestos;

The role of objective data is to be a substitute for measuring employee exposure to asbestos. The objective data must demonstrate that a specific activity coupled with a specific material simply cannot result in excessive asbestos concentrations under "the work conditions having the greatest potential for releasing asbestos." The objective data is information that clearly demonstrates employees cannot be exposed to asbestos at levels above the PELs. In effect, it is impossible for the job to result in excessive exposures. OSHA leaves the responsibility of making objective data determinations with the construction employers. In the 1994 Preamble, OSHA stated that objective data is limited to Class IV activities and some limited Class III activities such as limited intact gasket removal using wet methods and containment. In 1995, OSHA changed this position after the agreement with the Resilient Floor Covering Institute was reached. This agreement allows employers removing resilient floor coverings to use data collected by other employers as long as the provisions of the flooring agreement are strictly followed. OSHA does not permit the use of objective data for Class I removal under any conditions. In the Preamble to the 1994 rule, OSHA considers "every removal activity involving TSI and surfacing ACM is capable of releasing fibers above the PEL."

2) 1926.1101(f)(2)(iii)(B) Data From Prior Asbestos Jobs

Where the employer has monitored prior asbestos jobs for the PEL and the excursion limit within 12 months of the current or projected job, the monitoring and analysis were performed in compliance with the asbestos standard in effect; and the data were obtained during work operations conducted under workplace conditions "closely resembling" the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the operations were conducted by employees whose

training and experience are no more extensive than that of employees performing the current job, and these data show that under the conditions prevailing and which will prevail in the current workplace there is a high degree of certainty that employee exposures will not exceed the TWA and excursion limit;

OSHA now requires the evaluation of data from earlier asbestos jobs to estimate exposure on new jobs. But the data reviewed are more than air monitoring results. All the factors used in successfully controlling asbestos exposures must be a part of the assessment. These factors include six areas that are specifically listed in the standard:

- 1) process of removal
- 2) type of material removed
- 3) control methods used
- 4) work practices
- 5) environmental conditions
- 6) employee training

According to OSHA, each of these items influence the degree of employee exposure. The data used must be from past jobs completed within the past 12 months where each one of the six factors "closely resembles" those of the existing or planned job. For example, data from a past job where the crew was comprised of experienced workers cannot be used as an NEA on an upcoming job where the majority of the crew recently completed the four-day worker training and has little or no experience. Logic would dictate that the more experienced workers would demonstrate work practices that would result in lower employee exposures. The competent person on the current job must evaluate the available data and exercise his judgment to use past data for his project.

3) 1926.1101(f)(2)(iii)(C) Initial Exposure Monitoring Of Current Job

The results of initial exposure monitoring of the current job made from breathing zone air samples that are representative of the 8-hour TWA and 30-minute short-term exposures of each employee covering operations which are most likely during the performance of the entire asbestos job to result in exposures over the PELs.

The competent person may be forced to use this method in a situation where no NEA exists such as an inexperienced crew that has not performed work with a particular type of material. The competent person must exercise judgment in performing this type of assessment. If the initial exposure for this project reflects work area preparation or other activities involved in project setup, it may not adequately predict exposures during the removal phase of the job. At this point, the competent person should examine both the limited data from the present job along with complete data from past comparable jobs before concluding he will not exceed the PELs on the current job.

What does all this mean to an asbestos hazard abatement specialist (AHAS) who is supervising a Class I asbestos hazard abatement job in Ohio?

- 1) Use of negative pressure air-purifying half mask respirator requires an NEA or up-to-date employee exposure monitoring results for the current job.
- 2) Use of objective data is not acceptable.
- 3) If the AHAS is using data from past jobs as the NEA, he must be able to prove that the current job "closely resembles" the past jobs used to obtain the data for each of the six factors listed in 1926.1101(f)(2)(iii)(B).
- 4) If the AHAS must use results of initial exposure monitoring from the current job for the NEA, the AHAS must ensure subsequent exposure sampling results do not exceed the initial exposure monitoring results during all phases of the current job.
- 5) If exposure monitoring results increase, the respiratory protection must increase as well as detailed in 1910.134, Table 1.

The ODH inspector will review the employee exposure monitoring results to ensure that proper respiratory protection is in use. The OSHA standard does not require that the NEA be on site but in the OSHA document CPL 2-2.63 (Revised)- Inspection Procedures for Occupational Exposure to Asbestos Final Rule 29 CFR Parts 1910.1001, 1926.1101, and 1915.1001, Paragraph I, Item No. 1 states:

1. The CSHO (Compliance Safety and Health Officer or "OSHA inspector") shall request that the employer provide copies of its initial exposure assessment and any monitoring data that may be available for review prior to the walk-around. This provides the CSHO the basic information necessary to make the appropriate choice of PPE.

Also, in the OSHA Standard Interpretations dated Dec. 12, 1994, Negative exposure assessment for 1926.1101, in a response to questions regarding a negative exposure assessment, the final sentence states, "Documentation should address the above 6 areas for negative exposure assessment, and should be available at each new worksite."

Therefore, ODH highly recommends that licensed asbestos hazard abatement contractors have the NEA available for review by regulatory inspectors.

APPLICATION QUESTIONS AND ANSWERS

This list of questions appeared in an earlier newsletter but is repeated here because the Asbestos Program continues to receive these questions:

- Q: Does my application for certification have to be typed?
- A: No. The application states the information may be either typed or legibly printed in ink.
- Q: Why was my Ohio Department of Health (ODH) card sent to my employer's address instead of my home address?
- A: ODH worker cards are sent to the worker's home address unless stated otherwise on the application. Every other certification card (i.e. abatement specialist) is sent to the employer's address unless stated otherwise on the application.
- Q: Can I obtain an ODH worker card with contractor/supervisor training?
- A: Yes. But you must maintain the annual contractor/supervisor refresher training even though you carry a worker card.
- Q: My abatement specialist and evaluation specialist certifications are due to be renewed around the same time. Can I submit one application with both categories checked?
- A: No. A separate application must be submitted for each desired category.
- Q: I just realized my certification expires tomorrow, can I fax a copy of the application to ODH for approval today?
- A: No. ODH must have the original signed application for certification approval (along with the appropriate fee and training certificates).
- Q: I was convicted of a DUI last year. Does that mean I have to answer "yes" to question No. 12?
- A: No. Question No. 12 specifically asks if an individual has been convicted of a felony under state or federal law designated to protect the environment. Nothing else should be listed.
- Q: If I bring my application and fee to the ODH office, can I leave the same day with my certification card?
- A: No. It takes approximately two to three weeks for an application to make its way through the approval process. ODH does not have same-day service.

Industry Update...

Ohio Department of Health (ODH) requires two color photos as part of the application for certification along with copies of training certificates and the corresponding fees. Although the Application for Certification specifies a 1-inch-x-1-inch photo, other sizes are acceptable as long as it is a current, original, focused color photo. Copies of drivers license or employer photo IDs are not acceptable and will result in delays in processing the application.



ODH will also accept digital photos submitted electronically. The photo must be a current, original, focused color head-and-shoulder photo. The photo should be saved in the JPEG format using the applicant's last name and last four digits of the Social Security number as a file name. Prepare a note to Asbestos Program staff with the photo file as an attachment and send it to asbestos@odh.ohio.gov.

Several training providers are submitting digital photos of students to ODH. Any training provider wishing to begin this service to their students should contact Jeff Gerdes or Rick Huddle to discuss the necessary details. Program contact information is listed on the last page of this newsletter.

ODH has received both film and electronic photos that were either too dark or out of focus. Training providers must review photos prior to sending them to ODH to ensure quality. Applicants must also ensure that submitted photos are of good quality. Submission of poor-quality photos will delay the certification process.

ODH recently issued Notice of Warning letters to two training providers for failure to verify that a

student enrolled in a refresher course possessed a valid accreditation before granting admission to the refresher course per O.A.C. 3701-34-07(B)(3). Verification is to be done by the training provider examining each student's previous training certificate.

The Mine Safety and Health Administration (MSHA) last week tightened its limits on mine worker asbestos exposure, putting the mining standards in line with the standards covering other industries nationwide.

MSHA lowered the permissible exposure limit (PEL) to 0.1 fibers/cm³.

Acting Assistant Labor Secretary Richard Stickler said the final rule would "help improve health protection for miners who work in an environment where asbestos is present.

"Furthermore, it will help lower the risk of material impairment of health or functional capacity over a miner's working lifetime," Stickler added.



Exposure to asbestos is linked to lung cancer, mesothelioma and other cancers, as well as asbestosis and other noncancerous respiratory diseases.

MSHA's PEL previously set miner asbestos exposure levels to 20 times more asbestos than other workers covered by the Labor Department's Occupational Safety and Health Administration's (OSHA) rules.

The MSHA and the OSHA rules now both limit exposure to 0.1 fibers/cm³.

The Asbestos Program recently received numerous requests from applicants for a "temporary" or "provisional" certification that will allow the applicant to work while the Asbestos Program reviews the

application for certification. No such certification exists within the ODH asbestos rules nor has such a certification ever existed and no member of the Asbestos Program has ever issued such a certification. The only valid certification for asbestos work in Ohio is the certification issued by the ODH Asbestos Program at the completion of the application process.

If the individual submits a renewal application before the certification expires, he/she can continue to work without interruption past the certification expiration date while the Asbestos Program processes the renewal application. If the individual allows the certification to expire before submitting a renewal application, he/she cannot work until the Asbestos Program has approved the renewal application.

All applications must pass through the Revenue Processing Unit taking seven to 10 days before the applications are released to the Asbestos Program. Applications are processed in the order in which they are received. The application process normally takes two to three weeks and there is no method to expedite an application. Applicants must understand that there is **no same-day service**. An applicant may come to ODH to drop off an Application for Certification but no card will be issued at that time. All certification cards are sent through the mail.

The status of any application can be checked via a search function on the ODH Asbestos Program Webpage at: <http://www.odh.ohio.gov> Once approved, the certification number and expiration date can be viewed and printed from this page. The certified individual can work for up to two weeks from the date the renewal application was approved using this printed information while waiting on the certification card to arrive through the mail.

Enforcement Alley



The Asbestos Program has been active in enforcement of the asbestos rules. Administrative action has been taken against contractors and certified individuals found in violation of asbestos rules. The following administrative actions were taken by the Asbestos Program since the last edition of the newsletter.

The Asbestos Program entered into formal settlement agreements with the licensed asbestos hazard abatement contractors for violations of Revised Code (R.C.) 3710 and Ohio Administrative Code (O.A.C.) 3701-34 on the dates shown:

02/29/2008: Environmental Affairs Management, Inc. (EAM) of Akron, Ohio, created two public health emergencies (asbestos-containing dust or debris outside the contained work area, abatement activities without engineering controls and unauthorized dry removal). EAM agreed to pay a \$2,500 fine and have all asbestos hazard abatement specialists and the company president attend a four-hour remedial training course.

10/24/2007: Precision Environmental Co. (Precision) of Independence, Ohio, created one public health emergency (asbestos-containing dust or debris outside the contained work area, abatement activities without containment, abatement activities without engineering controls and unauthorized dry removal). Precision agreed to pay a \$3,600 fine and have all asbestos hazard abatement specialists and the company president attend a four-hour remedial training course.

09/06/2007: Keen & Cross Environmental Services, Inc. (K&C) of Cincinnati, Ohio, created one public health emergency (breached containment and asbestos-containing dust or debris outside the contained work area). K&C agreed to pay a \$1,800 fine.

02/15/2007: LVI Environmental Services, Inc. (LVI) of Cincinnati, Ohio, created one public health emergency (asbestos-containing dust or debris outside the contained work area). LVI agreed to pay \$1,200 fine and have all asbestos hazard abatement specialists and the company president attend remedial training.

01/30/2007: P1 Company, Inc. (P1) of Cincinnati, Ohio, created multiple public health emergencies (asbestos-containing dust or debris outside the contained work area) and failed to notify the director of Health at least 10 business days before beginning an asbestos hazard abatement project. P1 agreed to pay a \$2,000 fine, have all asbestos hazard abatement specialists and the company president attend remedial training, and submit asbestos hazard abatement notifications and written project descriptions for the next 10 friable and non-friable projects (regardless of size).

12/04/2006: A & D Contracting, Inc. (A&D) of Cleveland, Ohio, created one public health emergency (asbestos-containing dust or debris outside the contained work area). A&D agreed to

pay a \$1,200 fine and have all asbestos hazard abatement specialists attend remedial training.

08/15/2006: Midwest Environmental Control, Inc. (MEC) of Toledo, Ohio, created multiple public health emergencies (asbestos-containing dust or debris outside the contained work area, abatement activities without engineering controls, and abatement activities without containment). MEC agreed to pay a \$3,000 fine and have all asbestos hazard abatement specialists attend remedial training.

08/03/2006: North American Environmental Services, LLC (NAES) of Columbus, Ohio, created one public health emergency (breached containment). NAES agreed to pay a \$1,200 fine and have all asbestos hazard abatement specialists attend remedial training.

06/12/2006: AHC, Inc. (AHC) of Columbus, Ohio, created one public health emergency (unauthorized dry removal and breached containment). AHC agreed to pay a \$1,200 fine and have all asbestos hazard abatement specialists and the company president attend remedial training.

04/10/2006: Zeigler Environmental Services, Inc. (ZES) of Middletown, Ohio, created one public health emergency (unauthorized dry removal, abatement activities without engineering controls, and breached containment). ZES agreed to pay a \$3,000 fine and have all asbestos hazard abatement specialists attend remedial training.

02/14/2006: In a effort to resolve proposed action against their Ohio Department of Health contractor license for alleged violations of R.C. 3710 and O.A.C. 3701-34, Total Environmental Services, LLC (TES) of Toledo, Ohio, agreed to pay a \$7,000 fine, include written project descriptions with the next 25 asbestos hazard abatement notifications submitted to ODH, and have all asbestos hazard abatement specialists attend remedial training.

11/01/2005: Master Mechanical Insulation, Inc. (MMI) of Huntington, W.Va., created one public health emergency (breached containment and debris outside the contained work area). MMI agreed to pay a \$1,200 fine and have several employees attend remedial training.

The Asbestos Program issued notices of warning based on violations of O.A.C. 3701-34 to the following licensed asbestos hazard abatement contractors, businesses and individuals listed on the dates shown:

03/12/2008: Altin Qemalli performed an asbestos hazard abatement activity without an asbestos hazard abatement contractor license or asbestos hazard abatement specialist certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

01/28/2008: M-COR, Inc., performed an asbestos hazard abatement activity without an asbestos hazard abatement contractor license. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

01/28/2008: Gem City Environmental Recycling, Inc., failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the RC or Chapter 3701-34 of the O.A.C.

01/28/2008: Alpha-Omega Chemical Company failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the RC or Chapter 3701-34 of the O.A.C.

08/21/2007: SUNPRO, INC., allowed four persons onsite performing asbestos hazard abatement activities without ODH certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

08/27/2007: Gillum Excavating & Demolition performed an asbestos hazard abatement activity without an asbestos hazard abatement contractor license. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

04/10/2007: North American Environmental Services, LLC failed to notify the director of Health of any change in an asbestos hazard abatement project notification that would render the information in the notification no longer accurate.

10/24/2006: Lakeshore Engineering Services, Inc., failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the RC or Chapter 3701-34 of the O.A.C.

06/08/2006: Alloyd Asbestos Abatement Company failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the R.C. or Chapter 3701-34 of the O.A.C.

06/06/2006: Advanced Specialty Contractors, LLC failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the R.C. or Chapter 3701-34 of the O.A.C.

02/28/2006: Integrity Environmental Abatement Service, Inc., failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend, or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the R.C. or Chapter 3701-34 of the O.A.C.

02/07/2006: Raze International, Inc., failed to notify the director of Health at least 10 business days prior to beginning an asbestos hazard abatement project. The Notice of Warning indicated that the director may deny, suspend or revoke any license or renewal thereof, if the licensee is violating or threatening to violate any provisions of Chapter 3710 of the R.C. or Chapter 3701-34 of the O.A.C.

The Asbestos Program participated in the following actions with the certified asbestos hazard abatement specialists for violations of R.C. 3710 and O.A.C. 3701-34 on the dates shown:

09/14/2007: ODH issued a 30-day suspension to certified asbestos hazard abatement specialist Ebenezer Scott for providing an ODH inspector with a fraudulent physician's written opinion while on an asbestos project site. Scott's suspension ended on Oct. 22, 2007.

05/13/2007-Settlement Agreement: ODH reached an agreement with Francisco Rojas. Rojas was the asbestos hazard abatement specialist on-site supervising an asbestos hazard abatement project where a public health emergency was created. Mr. Rojas agreed to pay a \$1,200 fine.

05/18/2006: ODH sent a Notice of Warning to Shane Holstein. Holstein was the asbestos hazard abatement specialist on-site supervising an asbestos hazard abatement project where a public health emergency was created. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

The Asbestos Program issued notices of warning based on violation of O.A.C. 3701-34 to the following certified asbestos hazard evaluation specialists listed on the dates shown:

10/15/2007: Robert Stevens performed bulk and air sampling with an expired asbestos hazard evaluation specialist certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

09/18/2007: Shelley Cottrill performed the duties of an asbestos hazard evaluation specialist with an expired certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

11/15/2006: James Jarrett did not perform an adequate final inspection prior to clearance air-sampling on an asbestos hazard abatement project. The Notice of Warning indicated that the director of Health may initiate civil and criminal action pursuant to section 3710.14 and 3710.99 of the O.R.C., against persons violating the asbestos law or rules.

10/31/2006: Brian Lovette performed bulk sampling without being certified as an asbestos hazard evaluation specialist. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

06/05/2006: Procopio Solorzano performed clearance air-sampling without being certified as an asbestos hazard evaluation specialist or asbestos hazard abatement air-monitoring technician. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

05/18/2006: Shane Holstein performed an asbestos survey with an expired asbestos hazard evaluation specialist certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

The Asbestos Program issued notices of 30 day suspension based on violation of O.A.C. 3701-34 to the following certified asbestos hazard abatement workers listed on the dates shown:

05/23/2007: Samuel Jackson provided an ODH inspector with a fraudulent physician's written opinion while on an asbestos project site. Jackson's suspension ended on June 22, 2007.

05/07/2007: Jose Gadea provided a licensed asbestos hazard abatement contractor with a fraudulent physician's written opinion. Gadea's suspension ended on June 6, 2007.

The Asbestos Program issued notices of warning based on violation of O.A.C. 3701-34 to the following certified asbestos hazard abatement workers listed on the dates shown:

08/21/2007: Curtis Keith performed asbestos hazard abatement activities on an asbestos hazard abatement project without ODH certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

08/21/2007: Adam Kohl performed asbestos hazard abatement activities on an asbestos hazard abatement project without ODH certification. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking civil or criminal action pursuant to O.A.C. 3701-34 and R.C. 3710.

01/29/2007: Rudis Rivas provided a fraudulent physician's written opinion during an asbestos hazard abatement project inspection by an ODH representative. The Notice of Warning indicated that future violations of the O.A.C. may result in the director of Health taking action against his certification. The Notice of Warning also indicated that the director may initiate civil and criminal action pursuant to section 3710.14 and 3710.99 of the O.R.C., against persons violating the asbestos law or rules.

The Asbestos Program issued a warning of prohibition on Unlicensed Asbestos Removal Activity to the following:

10/10/2006 – ODH sent a Notice of Warning to the Mt. Victory Fire Department based on violation of R.C. 3710 for engaging in an asbestos hazard abatement activity without ODH licensure or certification. The Notice of Warning indicated that future violations may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

ODH is aware of several Occupational Safety and Health Administration (OSHA) informal settlements with non-ODH licensed contractors where violations of OSHA asbestos regulations (29 CFR 1926.1101) were identified during an OSHA inspection. The following OSHA inspections are indicated as closed on the OSHA Web site Establishment Search. An Informal Settlement has been reached between OSHA and the named establishment:

Bauer Roofing & Siding, Inc. - OSHA cited two serious violations based on an inspection at a site in Oakwood, Ohio. The initial penalties totaled \$3,000 and the current penalties are listed as totaling \$1,750.

Drake Construction Company - OSHA cited 11 serious violations based on an inspection at a site in Columbus, Ohio. The initial penalties totaled \$30,000 and the current pPenalties are listed as totaling \$8,400.

Cool Solutions, Ltd. - OSHA cited 10 serious violations and one willful violation based on an inspection at a site in Oakwood, Ohio. The initial penalties totaled \$36,000 and the current penalties are listed as totaling \$6,000.

C & A Roofing and Remodeling, LLC - OSHA cited one serious violation based on an inspection at a site in Xenia, Ohio. The initial penalties totaled \$1,500 and the current penalties are listed as totaling \$500.



The following OSHA inspections have not been indicated as closed on the OSHA Establishment Search. Please be aware that the information shown may change, e.g. violations may be added or deleted:

Gutter Jim (Informal Settlement Pending) - OSHA cited 10 serious violations based on two inspections at a site in New Carlisle, Ohio. Based on both inspections, the initial penalties totaled \$12,750 and the current penalties are listed as totaling \$3,500.

R. B. Roofing (Administrative Law Judge Decision) - OSHA cited 20 serious violations and one other violation based on an inspection at a site in Williston, Ohio. The initial penalties totaled \$28,500 and the current penalties are listed as totaling \$4,000.

Jose Arias Flores (Penalties Pending) - OSHA cited seven serious violations based on an inspection at a site in Xenia, Ohio. The initial penalties totaled \$10,500 and the current penalties are listed as totaling \$10,500.

Luis Jose Flores (Penalties Pending) - OSHA cited 10 serious violations based on an inspection at a site in Oakwood, Ohio. The initial penalties totaled \$13,500 and the current penalties are listed as totaling \$13,500.

Richardo V. Sepulveda (Penalties Pending) - OSHA cited 15 serious violations based on an inspection at a site in Toledo, Ohio. The initial penalties totaled \$5,625 and the current penalties are listed as totaling \$5,625.

Enforcement Summary

Abatement Contractors
 13 Settlement Agreements
 15 Notices of Warning

Workers
 2 30-day Suspensions
 5 Notices of Warning

Abatement Specialists
 2 Settlement Agreements
 1 Notice of Warning
 1 30-day Suspension

WARNING OF PROHIBITION ON UNLICENSED ASBESTOS REMOVAL ACTIVITY – 10/10/2006
 The ODH sent a Notice of Warning to a local fire department based on violation of R.C. 3710 for engaging in an asbestos hazard abatement activity without ODH licensure or certification. The Notice of Warning indicated that future violations may result in the director of Health taking civil or criminal action pursuant to R.C. 3710.14 and 3710.99.

Evaluation Specialists
 6 Notices of Warning

What's Going on with...

Libby, Montana?

Specialty construction chemical and materials manufacturer W.R. Grace has agreed to pay the federal government \$250 million for its investigation and cleanup of asbestos contamination at the company's vermiculite mines and surrounding areas in Libby, Mont., U.S. EPA and the Justice Department reported recently.

The settlement is the largest in the history of the Superfund program. It settles a bankruptcy claim brought by the government to recover money spent on cleaning up asbestos contamination in Libby's homes, schools and businesses. Hundreds of residents of the town are ill with or have died from asbestos-related diseases.

EPA will put the money in a special account that will be used to pay for future cleanup work in Libby.

EPA began removing asbestos-contaminated soils and other materials from the Libby area in May 2000. A year later the federal government filed suit against Grace and its subsidiary, Kootenai Development, under the Superfund law, asking for reimbursement for its investigation and cleanup costs.

A federal district court in Montana ordered Grace to pay EPA

more than \$54 million in 2003 for cleanup costs incurred by the agency. The settlement resolves the 2003 judgment, the Justice Department said. W.R. Grace has not yet paid the \$54 million because the company has filed for bankruptcy. The settlement requires Grace to pay the \$250 million within 30 days of bankruptcy court approval.

The government alleges W.R. Grace first became aware of the dangers asbestos posed to its vermiculite mine workers in 1976 (*Greenwire*, Dec. 7, 2007). The company operated the mine and processing facilities in and near Libby from 1963 to 1990, and workers were exposed to vermiculite ore containing asbestos. - (from USEPA Region 8 news releases, 03/12/08)

The documentary film "Libby, Montana" is available on DVD. Along with the documentary, the DVD also includes deleted scenes and an educational short film jointly produced in the mid-1960s by the U.S. Bureau of Mines and the asbestos industry. The DVD is available through High Plains Films at the following address:

High Plains Films
P. O. Box 8796
Missoula, MT 59807
(406) 728-0753
<http://www.highplainsfilms.org>

SENATOR MURRAY'S ASBESTOS BAN LEGISLATION?

On March 1, 2006, Sen. Patty Murray (D-Wash.) re-launched her six-year effort to ban asbestos by introducing new legislation and holding a committee hearing on it. Murray's bill, The Ban Asbestos in America Act of 2007, would "ban asbestos, invest in research and treatment, and launch a public awareness campaign to protect American workers and families" according to her news release. Additional information can be found on Murray's Web site at: <http://murray.senate.gov/> House of Representatives leadership has stated the Senate bill did not go far enough and is now debating House Resolution 3339 from Rep. Betty McCollum (D-Minn.) which would provide an outright ban on asbestos.



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