WEST VIRGINIA CODE CHAPTER 16 ARTICLE 32

WV Legislature

§16-32-1. Legislative findings.

The Legislature hereby finds and declares that asbestos is a dangerous toxic substance and harmful to the citizens of this state. Therefore to ensure the protection of the citizens of this state, persons who come into contact with asbestos through abatement, removal, enclosure or encapsulation, should be trained and licensed professionals who know how to deal with asbestos.

It is the intent of the Legislature that this article shall be in addition to all other statutes, rules, and regulations concerning asbestos.

WV Legislature

§16-32-2. Definitions.

(a) "Asbestos" means the asbestiform varieties of chrysolite (serpentine), crocidolite (riebeckite), amosite (cummintonite-grunerite), anthophyllite, tremolite and actinolite.

(b) "Asbestos analytical laboratory" means a facility or place which analyzes asbestos bulk samples or asbestos air samples.

(c) "Asbestos abatement project designer" means a person who specifies engineering controls, methods and work practices to be used during asbestos abatement projects.

(d) "Asbestos abatement supervisor" means a person responsible for direction of asbestos abatement projects.

(e) "Asbestos clearance air monitor" means a person who performs air monitoring to confirm clearance levels to establish that an area is safe for reoccupancy after an asbestos abatement project.

(f) "Asbestos-containing material" means any material or product which contains more than one percent asbestos by weight.

(g) "Asbestos contractor" means a person who enters into contract for an asbestos abatement project.

(h) "Asbestos inspector" means a person employed to inspect for the presence of asbestos-containing materials, evaluate the condition of such materials and collect samples for asbestos content confirmation.

(i) "Asbestos management planner" means a person employed to interpret survey results, make hazard assessment, evaluation and selection of control options or develop an operation and maintenance plan.

(j) "Asbestos abatement project" means an activity involving the repair, removal, enclosure or encapsulation of asbestos-containing material. "Asbestos abatement project" does not include removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in subsection (d), section eleven of this article.

(k) "Asbestos worker" means a person who works on an asbestos abatement project.

(l) "Bureau" means the Bureau for Public Health.

(m) "Commissioner" means Commissioner of the Bureau for Public Health or his or her designee.

(n) "Competent person" means one who is capable of identifying existing asbestos hazards in

WV Legislature

the workplace and selecting the appropriate control strategy for asbestos exposure and who has the authority to take prompt corrective measures to eliminate them.

(o) "Contained work area" means designated rooms, spaces or other areas where asbestos abatement activities are being performed, including decontamination structures. The contained work area shall be separated from the uncontaminated environment by polyethylene sheeting or other materials used in conjunction with the existing floors, ceilings and walls of the structure.

(p) "Encapsulate" means the application of any material onto any asbestos-containing material to bridge or penetrate the material to prevent fiber release.

(q) "Enclosure" means the permanent confinement of friable asbestos-containing materials with an airtight barrier in an area not used or designed as an air plenum.

(r) "Friable" means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure of which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

(s) "Good faith report" means a report of conduct defined in this article as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

(t) "Intact" means that the asbestos-containing material has not crumbled, been pulverized or otherwise deteriorated so that the asbestos is no longer likely to be bound with its matrix.

(u) "License" means a document authorizing a person to perform certain specific asbestos-related work activities.

(v) "Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any individual or entity.

(w) "Resilient floor covering" means floor tile, sheet vinyl and associated adhesives which contain more than one percent asbestos by weight.

(x) "Resilient floor covering worker" means a person who is employed to remove resilient floor covering in single-family dwellings.

(y) "Waste" means an employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.

(z) "Wrongdoing" means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

WV Legislature

§16-32-3. Powers and duties of the director of health.

The director of health shall administer and enforce this article. The director has the following powers and duties:

(a) To issue licenses and assess fees pursuant to this article and the rules promulgated thereunder.

(b) To promulgate rules necessary to carry out the requirements of this article in accordance with the provisions of chapter twenty-nine-a of this code, to include, but not be limited to, the required training, the prescription of fees and procedures for the issuance and renewal of licenses.

(c) To approve the training courses administered to licensure applicants.

WV Legislature

§16-32-4. Asbestos management planner's license required.

(a) It is unlawful for an individual who does not possess a valid asbestos management planner's license to design a building's or facility's asbestos management plan.

(b) To qualify for an asbestos management planner's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos management planners;

(2) Possess a valid asbestos inspector's license;

(3) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(4) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos management planner's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos management planners to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-5. Asbestos abatement project designer's license required.

(a) It is unlawful for any person who does not possess a valid asbestos abatement project designer's license to specify engineering controls, methods and work practices under an asbestos abatement project contract to another person.

(b) To qualify for an asbestos abatement project designer's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for abatement project designers;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos abatement project designer's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos abatement project designers to the division on the required form and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-6. Asbestos contractor's license required.

(a) It is unlawful for any person who does not possess a valid asbestos contractor's license to contract with another person for an asbestos abatement project.

(b) To qualify for an asbestos contractor's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos supervisors;

(2) Demonstrate to the satisfaction of the director that the applicant and the applicant's employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos contractor's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency asbestos training course for supervisors to the division on the required form and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

(d) Licensed asbestos contractors shall carry out the following duties:

(1) Ensure that each of the contractor's employees or agents who will come into contact with asbestos or who will be responsible for an asbestos abatement project is licensed as required by this article;

(2) Ensure that each asbestos project is supervised by a licensed asbestos abatement supervisor;

(3) Keep a record of each asbestos abatement project and make the record available to the state departments of health and human resources and commerce, labor and environmental resources upon request. Records required by this section shall be kept for at least thirty years. The records shall include:

(A) The name, address and license number of the individual who supervised the asbestos abatement project and each employee or agent who worked on the project;

(B) The location and design of the project and the amount of asbestos-containing material that was removed;

WV Legislature

(C) The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards;

(D) The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts; and

(E) Ensure that each contained work area of an asbestos abatement project meets minimum clearance standards established by the director before allowing reoccupancy.

(e) The following situations and relationships involving asbestos abatement contractors are prohibited:

(1) A financial or proprietary interest of the contractor in a laboratory utilized by the contractor to perform asbestos sample analysis related to asbestos abatement projects performed or contracted for by the contractor;

(2) An employer-employee relationship between the contractor and an asbestos clearance air monitor for an asbestos abatement project performed or contracted for by the contractor; and

(3) A financial or proprietary interest of the contractor in the firm which performs asbestos clearance air monitoring for an asbestos abatement project performed or contracted for by the contractor.

(f) Persons who contract to remove resilient floor covering materials in single-family dwellings are not required to be licensed as asbestos contractors: Provided, That the individuals engaged in removal shall meet the requirements of this article and any rules promulgated hereunder relating to resilient floor covering removal.

WV Legislature

§16-32-7. Asbestos abatement supervisor's license required.

(a) It is unlawful for an individual who does not possess a valid asbestos abatement supervisor's license to direct an asbestos abatement project.

(b) To qualify for an asbestos abatement supervisor's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos abatement supervisors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos abatement supervisor's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos abatement supervisors to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-8. Asbestos inspector's license required.

(a) It is unlawful for an individual who does not possess a valid asbestos inspector's license to work as an asbestos inspector on an asbestos abatement project.

(b) To qualify for an asbestos inspector's license, an applicant shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos inspectors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos inspector's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos inspectors to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-9. Asbestos worker's license required.

(a) It is unlawful for an individual who does not possess a valid asbestos worker's license to work as an asbestos worker on an asbestos abatement project.

(b) To qualify for an asbestos worker's license an individual shall:

(1) Satisfactorily complete a United States environmental protection agency approved training course for asbestos workers;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and is capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering any part of an asbestos abatement project; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos worker's license shall submit an application and a certificate that shows satisfactory completion of the United States environmental protection agency training course for asbestos workers to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-9a. Asbestos analytical laboratory license required.

(a) After January 1, 1994, it shall be unlawful for any laboratory that does not possess a valid asbestos analytical laboratory license to analyze asbestos bulk samples or asbestos air monitoring samples.

(b) To qualify for an asbestos analytical laboratory license, an applicant shall:

(1) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering analysis of asbestos bulk samples or air monitoring samples; and

(2) Meet the requirements otherwise set forth by the director.

(c) Applicants for an asbestos analytical laboratory license shall submit an application to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-9b. Asbestos clearance air monitor license required.

(a) After January 1, 1994, it shall be unlawful for any individual who does not possess a valid asbestos clearance air monitor license to sample asbestos abatement project areas for clearance.

(b) To qualify for an asbestos clearance air monitor license, an applicant shall:

(1) Satisfactorily complete a course approved by the director for asbestos clearance air monitors;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering final air clearances for asbestos abatement projects; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants shall submit an application and a certificate that shows satisfactory completion of a course approved by the director for asbestos air clearance monitors to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedure or if the applicant fails to satisfy the application criteria. Written notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-9c. Resilient floor covering worker license required.

(a) After January 1, 1994, it shall be unlawful for an individual who does not possess a valid resilient floor covering worker's license to be employed as a resilient floor covering worker.

(b) To qualify for a resilient floor covering worker's license an individual shall:

(1) Satisfactorily complete a training course approved by the director for resilient floor covering workers;

(2) Demonstrate to the satisfaction of the director that the applicant is familiar with and is capable of complying fully with all applicable requirements, procedures and standards of the United States occupational safety and health administration and the state departments of health and human resources and commerce, labor and environmental resources covering resilient floor covering removal; and

(3) Meet the requirements otherwise set forth by the director.

(c) Applicants for a resilient floor covering worker's license shall submit an application and a certificate that shows satisfactory completion of a training course approved by the director for resilient floor covering workers to the division and shall pay the applicable fee to the division. The director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

WV Legislature

§16-32-10. Special revenue account.

Fees and fines collected under this article and any rules promulgated hereunder shall be deposited in a special revenue account in the State Treasury to be used by the director for purposes related to the implementation of this article.

WV Legislature

§16-32-11. Notification; waivers; exemptions.

(a) Each owner or other person responsible for the operation of a building or facility where an asbestos abatement project is to occur shall notify the commissioner at least ten working days prior to commencement of each asbestos abatement project and shall comply with other applicable state and federal legal and regulatory notification requirements for asbestos abatement projects.

(b) In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirement of ten working days prior notification, but in all cases notification shall be made to the bureau after the emergency within the specified time required by the commissioner.

(c) Asbestos abatement projects involving less than one hundred sixty square feet or two hundred sixty linear feet of asbestos containing material are exempt from the prior notification requirement, unless the project takes place in a school for any of grades kindergarten through twelve. A summary of the projects shall be submitted to the bureau within a specified time as required by the commissioner.

(d) Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds is not subject to the requirements of this article if:

(1) The pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds is not friable prior to disturbance along the length of the pipeline being removed, repaired or maintained;

(2) The area disturbed in preparing the pipeline for cutting does not exceed two hundred sixty linear feet of removed friable asbestos;

(3) Before work begins and as needed during the job, a competent person conducts an inspection of the worksite and determines that the material is intact and will likely remain intact;

(4) All employees performing work covered by this subsection are trained in accordance with OSHA standards, 29 CFR 1926.1101(g)(11)(ii), and all other workers shall remain at a safe distance from the site;

(5) The material is not sanded, abraded or ground. Manual methods which do not render the material nonintact must be used;

(6)All removal or disturbance of pipeline asphaltic wrap is performed using wet methods; and

(7) All pipeline and asbestos-containing material removed from the pipeline is disposed of in a lawful manner.

WV Legislature

(e) Persons who remove resilient floor covering materials in single-family dwellings are exempt from notification requirements.

WV Legislature

§16-32-12. Approval of asbestos abatement courses.

A person or organization may apply for department and United States environmental protection agency approval of a course on the health and safety aspects of asbestos abatement, removal, enclosure and encapsulation by submitting a full description of the curriculum and a written application on forms prescribed by the department.

WV Legislature

§16-32-13. Reciprocity.

The director may set standards for accepting licenses issued by other states. The director may grant licenses to individuals from other states if that other state has as stringent licensing requirements as West Virginia.

WV Legislature

§16-32-14. Prohibiting employer discrimination; notice to employees.

(a) No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste; or because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

(b) An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations set forth in the provisions of this section.

WV Legislature

§16-32-15. Reprimands; suspension or revocation of license; violations; orders; hearings.

(a) The director may reprimand, suspend or revoke the license of an asbestos analytical laboratory, clearance air monitor, contractor, inspector, management planner or worker, or of an asbestos abatement project designer or supervisor, or of a resilient floor covering worker, if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or knowingly aids another in such fraud or deception;

(2) Fails at any time to meet the qualifications for a license or to comply with the requirements of this article or any applicable rules or regulations adopted by the director;

(3) Fails to meet applicable federal or state standards for asbestos abatement projects; or

(4) Employs or permits an individual not licensed as required by this article to work on an asbestos abatement project.

(b) The director may investigate all suspected violations of this article or any rules promulgated hereunder. Upon the finding of a violation in connection with any asbestos abatement project, the director shall issue a cease and desist order directing that all work on the project be halted forthwith. Posting of the cease and desist order on the project site shall constitute notice of its contents to the property owner and all persons working on the asbestos abatement project. Where practicable, however, the director shall deliver a copy of such order by certified mail, return receipt requested, to the property owner and to the contractor.

(c) Hearings regarding violations of this article and any rules promulgated hereunder shall be conducted in accordance with the administrative procedures act of chapter twenty-nine-a of this code.

WV Legislature

§16-32-16. Penalties.

The director may impose a civil penalty of not less than $250 and not more than $5,000 for each separate violation of this article or any rules promulgated hereunder.

Notwithstanding any other provision of this code, any person who violates any provision of this article or any rule or regulation related hereto shall be guilty of a misdemeanor.

In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be presumed to be willful and shall be assessed a civil penalty by the director of not less than $10,000 nor more than $25,000 for an initial violation and not less than $25,000 nor more than $50,000 for each subsequent violation.

WV Legislature