Enrolled

Committee Substitute

for

Senate Bill 545

BY SENATOR BOSO, original sponsor

[Passed March 10, 2016; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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[Passed March 10, 2016; in effect 90 days from passage]
AN ACT to amend and reenact §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, all relating to asbestos abatement on oil and gas pipelines; defining terms; requiring requests for waivers and other matters be made to the Commissioner of the Bureau for Public Health; exempting the removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds from asbestos abatement requirements; and providing specific requirements for that exemption to apply.

Be it enacted by the Legislature of West Virginia:

That §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 32. ASBESTOS ABATEMENT.


(a) "Asbestos" means the asbestiform varieties of chrysolite (serpentine), crocidolite (riebeckite), amosite (cummingtonite-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 of the Department of Health and Human Resources.

(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 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.
§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.

(e) Persons who remove resilient floor covering materials in single-family dwellings are exempt from notification requirements.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark R. Jaynes
Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Mark D. Brewer
Clerk of the Senate

Stephan D. Harrell
Clerk of the House of Delegates

Millet P. Pea
President of the Senate

Craig J.ickett
Speaker of the House of Delegates

The within is approved this the 29th Day of March, 2016.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 28 2015

Time 3:05 PM