

# TITLE X

## PUBLIC HEALTH

### CHAPTER 141-E

### ASBESTOS MANAGEMENT AND CONTROL

#### Section 141-E:1

##### **141-E:1 Statement of Policy. –**

I. The general court finds that exposure to asbestos fibers over time has been linked by medical and scientific authorities to a significant increase in the incidence of diseases, such as asbestosis, bronchogenic carcinoma, mesothelioma, and other malignancies, and that such diseases place unnecessary and preventable burdens on society while depriving the victims of livelihood, well-being, and life.

II. The general court also finds that:

(a) Abatement of asbestos from workplaces, schools, public facilities, and dwellings, which is carried out to reduce the exposure of the public to this health threat, further jeopardizes public health when the abatement is done without adequate safeguards and by unqualified individuals; and

(b) Asbestos disposal sites pose a potential threat to human health if improperly managed.

III. Therefore, in order to protect the health of the public from this threat, it shall be the policy of the state to establish and enforce asbestos exposure standards and to control the exposure of the public to asbestos by regulation of asbestos abatement and asbestos disposal site activities. The intent of this chapter is not to overburden the unknowing homeowner, but rather to assure commercial and industrial compliance with asbestos disposal site regulation and asbestos abatement efforts.

IV. Relative to asbestos abatement activities, as defined by RSA 141-E:2, II, it shall be the responsibility of the department of environmental services, to carry out this policy in accordance with RSA 141-E:3 and RSA 141-E:6-11, and in such a manner as to avoid direct conflict with other state and federal requirements.

V. Relative to management of asbestos disposal sites, as defined by RSA 141-E:2, III, it shall be the responsibility of the department of environmental services to carry out this policy in accordance with RSA 141-E:3 and RSA 141-E:21-25, in lieu of RSA 149-M as previously carried out, and in such a manner as to avoid direct conflict with other state and federal requirements.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:2, eff. Sept. 12, 2005.

#### Section 141-E:2

##### **141-E:2 Definitions. –** In this chapter:

I. "Asbestos" means amosite, chrysotile, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite.

II. "Asbestos abatement" means any of the following activities:

(a) The wrecking or removal of any load-supporting structural member containing or covered by RACM, as defined in paragraph VII;

(b) The encapsulation, coating, binding, or resurfacing of structural members, walls, ceilings, or other building surfaces, or ducts, pipes, boilers, tanks, reactors, furnaces, or other vessels containing RACM for the purpose of minimizing the potential for fiber release;

(c) The construction of airtight enclosures by the use of impact resistant materials to isolate surfaces coated or containing RACM;

(d) The removal or stripping of RACM from structural members, walls, ceilings, or other building

surfaces, or ducts, pipes, boilers, tanks, reactors, furnaces, or other vessels; and

(e) The repair of RACM to minimize the likelihood of fiber release from damaged areas. Repair may include, but shall not be limited to, application of duct tape, rewettable glass cloth, canvas, cement, or other suitable materials to seal exposed areas where asbestos fibers may be released, or repair of damaged, previously encapsulated, RACM with non-asbestos substitutes; and re-encapsulation or repair of enclosures around RACM.

III. "'Asbestos disposal site" means land where asbestos waste exists, either in or on the ground, due to dumping activities which ceased by July 10, 1981. The term includes inactive disposal sites as defined by 40 CFR 61.141. The term does not include any disposal site which is subject to the permitting requirements of RSA 149-M.

III-a. "'Commissioner" means the commissioner of the department of environmental services.

IV. "'Contractor" means any partnership, firm, association, corporation, or sole proprietorship which engages in asbestos abatement activities and/or activities involving the disturbance of asbestos at asbestos disposal sites.

V. "'Department" means the department of environmental services.

VI. "'Friable asbestos material" means any material that contains more than one percent of asbestos by weight, area, or volume and that can be crumbled, pulverized, or reduced to powder when dry by hand pressure.

VII. "'Regulated asbestos-containing material" or "'RACM" means:

- (a) Friable asbestos-containing material;
- (b) Category I non-friable asbestos-containing material, as defined by 40 CFR 61.141, that has become friable;
- (c) Category I non-friable asbestos-containing material, as defined by 40 CFR 61.141, that will be or has been subjected to sanding, grinding, sawing, or abrading; or
- (d) Category II non-friable asbestos-containing material, as defined by 40 CFR 61.141, that will likely become or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

VIII. "'School asbestos abatement planning" means any of the following activities:

- (a) The inspection of school buildings for asbestos-containing materials;
- (b) The preparation of plans for asbestos abatement in schools, pursuant to P.L. 99-519; or
- (c) The design of asbestos abatement projects for school buildings.

IX. "'Structural member" means any beam, ceiling, floor, or wall.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:3, 4, eff. Sept. 12, 2005.

## Section 141-E:3

**141-E:3 Duties.** – The commissioner shall:

- I. License contractors.
- II. Test persons and provide certificates to those who are found competent to engage in either asbestos abatement activities, school asbestos abatement planning activities, or activities involving the disturbance of asbestos at asbestos disposal sites, or any combination thereof.
- III. Collect fees for the issuance of licenses and certificates.
- IV. Provide asbestos health risk information to workers who are at risk of exposure to asbestos material and to the general public on the health risks posed by asbestos.
- V. Conduct such medical and scientific studies of workers presently or previously exposed to asbestos material as necessary to fully understand, define, and describe the actual health consequences of such exposure in their workplaces. The commissioner shall strive to determine before undertaking such studies that similar research has not already been performed or is not currently under review by other agencies.
- VI. Identify and order the abatement of RACM found in public buildings and facilities, schools, or rental dwellings which exceeds the exposure standards established by this chapter.

VII. Establish safe worker practices to protect the health of asbestos abatement workers where not preempted by the Occupational Safety and Health Act.

VIII. Establish practices and standards necessary to control the release of asbestos fibers during asbestos abatement activities.

IX. Establish practices and standards necessary to control the release of asbestos fibers to the ambient air during processing, transport, and disposal activities.

X. Develop and implement an inspection and enforcement program specific to asbestos abatement activities.

XI. Establish a notification program for all asbestos abatement activities.

XII. Collect fees for asbestos abatement notification.

XIII. Establish, in consultation with the department pursuant to RSA 125-H:3:

(a) Measures for remediating asbestos disposal sites to prevent human exposure to asbestos at or from such sites; and

(b) Best management practices for monitoring and maintaining covered asbestos disposal sites, for the purpose of assisting property owners and local health officers to minimize the risk of human exposure to asbestos at or from such sites.

XIV. Administer a program for owners to remediate asbestos disposal sites in accordance with the measures established under subparagraph XIII(a). The program shall include, but not be limited to, provisions for:

(a) Initiating and completing site investigations;

(b) Developing and implementing remedial action plans;

(c) Developing and implementing activity and property use restrictions as appropriate; and

(d) Documenting and certifying completion of the approved remedial action plan.

XV. In cooperation with local health officials, monitor the condition of asbestos disposal sites to assure conditions are protective of human health and comply with the requirements of this chapter.

XVI. Investigate reports by local health officials of newly discovered asbestos disposal sites.

XVII. Maintain a registry of asbestos disposal sites, including, but not limited to:

(a) Owner name and mailing address;

(b) Information and maps locating the disposal area;

(c) Type, depth, and areal extent of cover materials;

(d) Site inspection data; and

(e) Status of site remediation.

XVIII. In cooperation with local health officials, respond to urgent conditions involving the disturbance of asbestos at asbestos disposal sites.

XIX. In cooperation with local health officials, establish measures for assuring compliance with activity and property use restrictions relevant to asbestos disposal sites.

XX. Consult with local health officials within the affected communities for the purpose of determining appropriate and effective means for implementing the best management practices established pursuant to RSA 141-E:3, XIII(b), and provide technical assistance related thereto, including adoption of local ordinances pursuant to RSA 147:1.

XXI. Establish recommended training, licensure, and certification requirements for contractors and persons engaging in activities involving the disturbance of asbestos at asbestos disposal sites, for implementation by the commissioner, pursuant to RSA 141-E:4, XV.

XXII. Have authority to apply for and accept federal funds or other assistance for the purpose of remediating and otherwise managing asbestos disposal sites.

XXIII. Give due consideration to EPA document 560/5-85-024 June 1985 or later revision, ""Guidance for Controlling Asbestos Containing Materials in Buildings.""

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:5, eff. Sept. 12, 2005.

## Section 141-E:4

**141-E:4 Rulemaking.** – The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The definition of major and minor asbestos abatement projects.

II. The necessary training, licensure, and certification requirements applicable to major and minor asbestos abatement projects. Such training, licensure, and certification requirements shall be at least as stringent as those of the federal Environmental Protection Agency's model plan set forth in 40 CFR 763, Subpart E, Appendix C.

III. Safe worker practices under RSA 141-E:3, VII.

IV. Closure of places contaminated with RACM under RSA 141-E:7. The use of the word ""contaminated"" when related to airborne asbestos shall be consistent with asbestos exposure standards under RSA 141-E: 6.

V. Notice and appeal procedures under RSA 141-E:7.

VI. Procedures for the inspection of buildings, including visual assessment criteria for surfacing materials and pipe and boiler insulation, and air monitoring standards consistent with RSA 141-E:7 and the issuance of orders to take corrective actions to mitigate exposure to RACM under RSA 141-E:8.

VII. The licensure of contractors, employers or other individuals undertaking asbestos abatement under RSA 141-E:10. Such licensure requirements shall be at least as stringent as those of the federal Environmental Protection Agency's model plan set forth in 40 CFR 763, Subpart E, Appendix C.

VIII. The certification and training of employees or other individuals engaged in asbestos abatement and school asbestos abatement planning under RSA 141-E:11. Such certification and training requirements shall be at least as stringent as those of the federal Environmental Protection Agency's model plan set forth in 40 CFR 763, Subpart E, Appendix C.

IX. The schedule and collection of fees under RSA 141-E:12, I.

X. The issuance of notices of violation and orders of abatement under RSA 141-E:14.

XI. The fee structure to defray the cost of compliance monitoring under RSA 141-E:7, I and II; 141-E:8, I and II; 141-E:10; 141-E:11; and 141-E:13.

XII. Procedures for exemption and waiver from the requirements of RSA 141-E:10 and RSA 141-E:11.

XIII. A schedule of administrative fines which may be imposed under RSA 141-E:16 for violation of this chapter or the rules adopted pursuant to it.

XIV. Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 141-E:16.

XV. The necessary training, licensure, and certification requirements applicable to contractors and persons engaged in activities involving the disturbance of asbestos at asbestos disposal sites, such requirements to be determined based on the recommendations provided by the commissioner pursuant to RSA 141-E:3, XXI.

XVI. Establishing work practices and engineering control standards for asbestos abatement activities, including the following:

(a) Establishing standards and practices for minimizing the release of asbestos fibers during building maintenance, construction, renovation, demolition, or other similar activities.

(b) Developing an inspection program of buildings, facilities, and property for the purpose of determining compliance with the rules adopted under this paragraph.

(c) Adopting, in whole or in relevant part, the federal national emission standards for hazardous air pollutants (40 CFR sec. 61, m).

(d) Establishing the schedule and collection of fees under RSA 141-E:12, II.

(e) Establishing a fee structure to defray the cost of compliance monitoring under RSA 141-E:9 and RSA 141-E:13.

XVII. Establishing work practices, engineering control standards, and emission standards necessary to control the release of asbestos to the ambient air during processing, transport, and disposal activities.

XVIII. Administering a program for the management of asbestos disposal sites, pursuant to RSA 141-E:3, XIII-XXII and 40 CFR 61.151, as formerly administered under RSA 149-M.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:6, eff. Sept. 12, 2005.

## Section 141-E:5

**141-E:5 Asbestos Abatement Advisory Committee Established.** – There is hereby established an asbestos abatement advisory committee for the purpose of coordinating the activities of state agencies responsible for the health, safety, and protection of the public and the environment which are or may be affected by the presence of asbestos. The commissioner or designee shall serve as chairperson of the committee. At a minimum the asbestos abatement advisory committee shall consist of:

- I. The governor or the governor's designee;
- II. The attorney general or the attorney general's designee;
- III. The commissioners, directors, or their designees, of:
  - (a) The department of education;
  - (b) The department of labor;
  - (c) The department of environmental services;
  - (d) The department of health and human services; and
  - (e) The department of transportation.
- IV. An asbestos abatement contractor or school asbestos abatement planner appointed by the governor;
- V. A business or industrial representative appointed by the Business and Industry Association of New Hampshire; and
- VI. A representative appointed by the Associated General Contractors of New Hampshire.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:7-9, eff. Sept. 12, 2005.

## Section 141-E:6

### **141-E:6 Indoor Asbestos Exposure Standards.** –

I. The indoor non-occupational exposure standard shall be 0.01 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods, calculated as an 8-hour time weighted average.

II. The indoor occupational exposure standard shall be as provided for by the federal Occupational Safety and Health Administration in 29 CFR 1910, and the federal Environmental Protection Agency in 40 CFR 763, except that, where such standards exceed 0.1 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods, then the occupational standards shall be 0.1 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods.

**Source.** 2000, 275:1, eff. July 1, 2000.

## Section 141-E:7

### **141-E:7 Limitation of Exposure; Closure of Contaminated Areas.** –

I. Except as provided for under RSA 141-E:6, II, no person, whether natural or not natural, owning, controlling, or managing any workplace, public building, facility, school, or rental dwelling containing asbestos levels exceeding 0.01 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods shall permit unnecessary exposure of any person to such conditions which are a violation of a provision of this chapter, or of a rule adopted or order issued pursuant to the authority of this chapter.

II. The department may, in the absence of other effective measures, close access to any building or facility or any portion thereof to other than those engaged in asbestos abatement and school asbestos abatement planning activities in which there have been found asbestos levels exceeding 0.01 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods.

III. Closure of access shall not occur until written notice has been provided to the owner or manager of the building or facility. The owner or manager shall be given the opportunity to appeal such action in accordance with RSA 541-A.

**Source.** 2000, 275:1, eff. July 1, 2000.

## Section 141-E:8

### **141-E:8 Inspection of Building; Orders. –**

I. Whenever the commissioner has reason to suspect the presence of RACM in any public building, facility, school, or rental dwelling, the commissioner may cause inspections to be carried out. If RACM is found in damaged or deteriorated condition or if conditions exist which could result in significant human exposure or if asbestos levels exceeding 0.01 fibers longer than 5 microns per cubic centimeter of air as determined by OSHA/NIOSH phase contrast optical microscopy methods are found, the commissioner may order corrective action to abate the risk to the health of the public. The order may, at the discretion of the commissioner, include notice of closure of access under RSA 141-E:7.

II. In the event that asbestos levels exceed the standards set in RSA 141-E:6, I or II, there may be a second test of samples collected over an 8-hour period or as otherwise approved by the department, analyzed by scanning or transmission electron microscopy analysis before any order of abatement is issued. The results of the scanning or transmission electron microscopy analysis, which shall be recorded in terms of the number of asbestos fibers longer than 5 micrometers per cubic centimeter of air in accordance with OSHA standard definitions for asbestos monitoring, shall prevail in the determination of whether the standard is exceeded. Such tests shall be paid for by the owner of the building or facility being analyzed.

III. The commissioner may, upon request of the owner, inspect private dwellings for the presence of RACM. If RACM is found, the commissioner shall make recommendations to the owner for its abatement. The commissioner shall charge a fee for such inspections under RSA 141-E:12.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:10, 11, eff. Sept. 12, 2005.

## Section 141-E:9

**141-E:9 Control of Asbestos Emissions. –** No person, whether natural or not natural, owning, controlling or managing any workplace, public building, facility, school, or rental dwelling involved in asbestos abatement shall permit such abatement of asbestos in a dry state or in violation of any rules adopted by the commissioner under this chapter unless specifically exempted by rule.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:12, eff. Sept. 12, 2005.

## Section 141-E:10

### **141-E:10 Licensure. –**

I. Any contractor, employer, or individual which engages in asbestos abatement activities or activities involving the disturbance of asbestos at asbestos disposal sites shall first obtain a license from the department, except for:

- (a) Individuals exempt pursuant to paragraph II below;
- (b) Individuals exempt by rules adopted by the commissioner in accordance with RSA 141-E:4, XII;
- (c) Owners of single family owner occupied properties who personally perform asbestos abatement within the confines of their private properties; and
- (d) Individuals who obtain a waiver from the licensing requirements of this section.

II. Individuals certified pursuant to RSA 141-E:11 shall not be required to obtain a license for the performance of asbestos abatement or disturbance of asbestos at asbestos disposal sites when carried out under the authority of a contractor or employer holding a valid license issued by the department pursuant to this section.

III. A license to engage in asbestos abatement, disturbance of asbestos at any asbestos disposal site, or both, shall be issued in writing by the department and shall be valid for a period of 12 months from the date of

issuance, shall be dated when issued, shall contain an expiration date, and shall be signed by the commissioner or designee. The license shall also include the name and address of the applicant.

IV. The license or a certified copy thereof shall be available at the worksite for inspection by representatives of the department or an authorized representative of the local government.

V. The department may grant a license to an applicant if the applicant is licensed by another state whose standards for licensure are substantially equivalent to the provisions of this section and the rules adopted by the department.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:13, 14, eff. Sept. 12, 2005.

## **Section 141-E:11**

### **141-E:11 Certification of Employees; Reciprocity. –**

I. Employees and other individuals who engage in asbestos abatement, school asbestos abatement planning, or disturbance of asbestos at any asbestos disposal site shall first obtain a certificate of training from the department, except for:

(a) Individuals exempt pursuant to rules adopted by the commissioner in accordance with RSA 141-E:4, XII;

(b) Owners of single family owner occupied properties who personally perform asbestos abatement within the confines of their private properties; and

(c) Individuals who obtain a waiver from the certification requirements of this section.

II. The certificate shall be in writing, be valid for a period of 12 months from the date of issuance, be dated when issued, contain an expiration date, and be signed by the commissioner or designee. It shall also include the name and address of the employee to whom it is issued.

III. The certificate or a certified copy thereof shall be readily available at the worksite for inspection by the representatives of the department or an authorized representative of the local government.

IV. The department may grant certification if the employee is certified by another state whose certification is substantially equivalent to the provisions of this section and the rules adopted by the commissioner.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:15, 16, eff. Sept. 12, 2005.

## **Section 141-E:12**

### **141-E:12 Fees. –**

I. The commissioner shall, by rule, set a schedule of fees for the granting of licenses under RSA 141-E:10, the granting of certificates under RSA 141-E:11, and the inspection of private dwellings under RSA 141-E:8, III. All fees shall be deposited in a nonlapsing account, shall be used solely for the administration of the department's responsibilities under this chapter, and are hereby continually appropriated for said purposes.

II. The commissioner shall, by rule, set a schedule of fees for the notification of asbestos abatement projects. All such fees and the fines levied under RSA 141-E:16 shall be deposited in a nonlapsing account, shall be used solely for the administration of the department's responsibilities under this chapter, and are hereby continually appropriated for said purposes.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:17, eff. Sept. 12, 2005.

## **Section 141-E:13**

### **141-E:13 Compliance Monitoring. –**

I. For the purposes of assuring compliance with RSA 141-E:7, I and II; 141-E:8, I and II; 141-E:9; 141-E:10; and 141-E:11, or with any rule adopted by the commissioner, an authorized representative of the department may, upon presentation of appropriate credentials and at any reasonable time:

- (a) Enter any asbestos abatement worksite and any asbestos disposal site;
- (b) Inspect and obtain samples from the workplace and the environment for the purposes of ensuring compliance with this chapter;
- (c) Procure and examine licenses issued under RSA 141-E:10 and certificates issued under RSA 141-E:11; or
- (d) Request, inspect, and record information, or test results relating to asbestos abatement activity, school asbestos abatement planning activity, or asbestos disposal site activity.

II. If the property owner refuses to consent to the inspection, the commissioner may obtain an administrative inspection warrant under RSA 595-B.

III. Any information, other than asbestos contamination or exposure data, relating to secret processes or methods of manufacture or production obtained in the course of such inspection shall not be disclosed by any representative of the department without permission of the person whose worksite is inspected.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:18, 19, eff. Sept. 12, 2005.

## **Section 141-E:14**

### **141-E:14 Enforcement. –**

I. Whenever the commissioner has reason to believe that the provisions of RSA 141-E:7, I or II; 141-E:8, I or II; 141-E:9; 141-E:10; or 141-E:11, or any rule adopted by the commissioner under this chapter has been violated, he or she shall issue a notice of violation and an order of abatement. The commissioner may request the attorney general to bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of RSA 141-E:7, I or II; 141-E:8, I or II; 141-E:9; 141-E:10; or 141-E:11, or any rule adopted by him or her under this chapter, or any order issued by him or her pursuant to this chapter.

II. The notices of violation issued pursuant to paragraph I of this section shall set forth the facts constituting the violation. The orders of abatement shall require elimination of the violation and shall set forth the time frame within which abatement shall be completed.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:20, eff. Sept. 12, 2005.

## **Section 141-E:15**

### **141-E:15 Criminal Penalty; Fine. –**

I. A person shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person, if he or she knowingly and willfully:

- (a) Violates any provisions of RSA 141-E or any rule adopted under it;
- (b) Violates any term or condition of a license, certificate, or order issued under RSA 141-E; or
- (c) Makes or certifies a material false statement relative to any document or information required under RSA 141-E.

II. Notwithstanding RSA 651:2, any person found guilty pursuant to paragraph I above may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$25,000. Each day of violation shall constitute a separate offense.

**Source.** 2000, 275:1, eff. July 1, 2000.

## **Section 141-E:16**

### **141-E:16 Administrative Fines. –**

I. (a) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of RSA 141-E:3 or

any rule adopted by the commissioner under this chapter; or upon any person who makes or certifies a material false statement relative to any document or information which is required to be submitted to the department pursuant to this chapter or any rule adopted pursuant to this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this paragraph shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the commissioner in the fund established by RSA 141-E:12, II.

(b) Notice and hearing prior to the imposition of an administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the commissioner pursuant to RSA 541-A:16.

(c) The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b).

(d) The commissioner may assess an additional fine for repeat violations.

II. Whenever a person licensed pursuant to RSA 141-E:10 or certified pursuant to RSA 141-E:11 fails to pay an administrative fine as required by this section, the commissioner, after notice and hearing pursuant to rules adopted under RSA 541-A, may deny, suspend, or revoke the license or certificate or may issue an appropriate order.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:21, eff. Sept. 12, 2005.

### **Section 141-E:17**

**141-E:17 Civil Forfeiture.** – Any person who violates any provision of RSA 141-E or any rule adopted under it, or any term or condition of a license, certificate, or order issued under RSA 141-E, shall be subject to a civil forfeiture of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief.

**Source.** 2000, 275:1, eff. July 1, 2000.

### **Section 141-E:18**

**141-E:18 Severability.** – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

**Source.** 2000, 275:1, eff. July 1, 2000.

### **Section 141-E:19**

**141-E:19 Discharge of or Discrimination Against Employees.** – Pursuant to RSA 275-E, no employer shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee, prospective employee, or employee representative because that person has filed any complaint or has instituted or caused to be instituted any proceeding related to the provisions of this chapter.

**Source.** 2000, 275:1, eff. July 1, 2000.

### **Section 141-E:20**

**141-E:20 Federal Preemption.** – Nothing in this chapter shall be construed to allow the department to enforce such occupational safety and health standards which have been preempted by the Occupational Safety and Health Act of 1970, 29 U.S.C. sec. 651 et seq.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:22, eff. Sept. 12, 2005.

### **Section 141-E:21**

#### **141-E:21 Release Prohibited; Asbestos Waste Sites. –**

I. No person shall cause or allow asbestos fibers to be released to the environment from an asbestos disposal site.

II. A site owner who has complied with the disclosure requirements in RSA 141-E:23 shall not be subject to penalties under this chapter due to a release caused by any person to whom disclosure was provided in accordance with RSA 141-E:23, III, provided that the owner takes steps to prevent further release of asbestos fibers.

III. A site owner who causes a release because the existence of asbestos on the property was unknown prior to causing the release, shall not be subject to penalties under this chapter, provided that the owner reports the situation to the department upon discovery and takes steps to prevent further release of asbestos fibers.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:23, eff. Sept. 12, 2005.

### **Section 141-E:22**

**141-E:22 Management of Asbestos Disposal Sites. –** The owner of an asbestos disposal site shall maintain and manage the site in accordance with this chapter and rules adopted by the commissioner under RSA 141-E:4.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:24, eff. Sept. 12, 2005.

### **Section 141-E:23**

#### **141-E:23 Disclosure. –**

I. Prior to the execution of any contract for the purchase and sale of any interest in real property which includes an asbestos disposal site, the seller shall disclose the following information to the buyer:

(a) The nature and extent of the asbestos waste disposed of on the property, to the extent known at the time of transfer;

(b) The existence of any outstanding obligations pertaining to compliance with the requirements of this chapter;

(c) The existence of any activity and property use restrictions;

(d) The existence and location of all known records pertaining to asbestos disposal conditions at the site.

II. Within 10 days following title transfer of an asbestos disposal site, the former property owner shall notify the commissioner of such transfer in writing.

III. The following information shall be disclosed by the owner to any person who uses, occupies, or will likely disturb asbestos at an asbestos disposal site, such as a tenant or contractor:

(a) The presence of asbestos waste, including the location and depth of cover, to the extent known; and

(b) The need to comply with the requirements of this chapter, including activity and property use restrictions as applicable.

IV. Pursuant to 40 CFR 61.151(e), any owner of an asbestos disposal site shall record in the property chain of title at the registry of deeds for the county in which the property is located, notice of the following:

(a) That the property has been used for the disposal of asbestos waste;

(b) That the survey plot and record of the location and quantity of asbestos waste disposed of within the disposal site required in 40 CFR 61.154(f) have been filed with the commissioner; and

(c) That the site is subject to 40 CFR part 61, subpart M.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:25, 26, eff. Sept. 12, 2005.

### **Section 141-E:24**

**141-E:24 Right of Entry.** – The commissioner or authorized representative shall be authorized to enter, at reasonable times and in performance of his or her duties, upon any private or public property, to inspect asbestos disposal site conditions and investigate reports by local health officials of newly discovered asbestos disposal sites. If the property owner refuses to consent to the inspection, the commissioner may obtain an administrative inspection warrant pursuant to RSA 595-B.

**Source.** 2000, 275:1, eff. July 1, 2000. 2005, 249:27, eff. Sept. 12, 2005.

### **Section 141-E:25**

**141-E:25 Third Party Liability.** – There shall be no implied cause of action for third party damages against any person under this chapter to the extent that the person's liability under this chapter is based solely on the person's ownership of an asbestos disposal site.

**Source.** 2000, 275:1, eff. July 1, 2000.