

West's Delaware Code Annotated Currentness

Title 16. Health and Safety

▢ Part VII. Building and Plumbing

➔ Chapter 78. Asbestos

§ 7801. Statement of purpose

The Delaware General Assembly hereby declares that it is in the interest of the public to control, reduce and prevent the exposure of the public to asbestos. It is the intent of the General Assembly to ensure the health, safety and welfare of the public by regulating the practice of asbestos abatement, particularly in locations where the general public can reasonably be expected to have access for the purpose of ensuring that such abatement is performed in such a manner as to minimize exposure to asbestos fibers and contamination.

§ 7802. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any of these minerals that has been chemically treated and/or altered.

(2) "Asbestos abatement" shall mean any of the following activities except those which may be considered incidental during normal day-to-day operations and maintenance:

- a. Demolition or salvage of structures where asbestos is present;
- b. Removal or encapsulation of materials containing asbestos;
- c. Construction, alteration, repair, maintenance, demolition or renovation of structures, substrates or any portions thereof, that contain asbestos;
- d. Installation of products containing asbestos;
- e. Asbestos spill/emergency cleanup; and
- f. Transportation, disposal, storage or containment of asbestos, or products containing asbestos, on the site or location at which construction, alteration, repair, maintenance, demolition or renovation activities are performed.

(3) "Asbestos worker" shall mean any individual who performs asbestos abatement activities and/or work.

(4) "Contractor" shall mean any corporation, company, association, firm, partnership, society, joint-stock company, sole proprietorship or individual that contracts to perform asbestos abatement, including the removal or encapsulation of asbestos.

(5) "Friable asbestos material", "friable material" or "asbestos material" shall mean any material containing more than 1 percent asbestos by weight, that hand pressure can crumble, pulverize or reduce to powder when dry, or is already dry and pulverized.

§ 7803. Certification required; fees; reciprocity

(a) No contractor shall hold that contractor's self out to the public as being certified to engage in asbestos abatement, nor shall any contractor use or advertise any title or description intending to convey the impression that such contractor is certified to engage in asbestos abatement, unless such contractor has been certified in accordance with this chapter. No contractor or asbestos worker shall undertake any asbestos abatement work without having first been certified in accordance with this chapter.

(b) No person or contractor may assign, contract with, or permit any asbestos worker to perform asbestos abatement unless such asbestos worker is certified under this chapter.

(c) Any contractor or asbestos worker applying for certification under this chapter shall meet criteria prescribed by the Office of Management and Budget, which may include, but are not limited to the following:

(1) Contractors:

- a. Previous experience or training in asbestos abatement work;
- b. Type and size of equipment the contractor utilizes in asbestos abatement;
- c. Ability of the contractor to perform asbestos abatement work;

(2) Asbestos workers:

- a. Physical ability to perform asbestos abatement work without endangering the health and safety of themselves or others;
- b. Free of any respiratory and/or health disorders which would prevent the person from wearing protective respiratory equipment;

c. Completion of a training program in asbestos abatement procedures approved by the Office of Management and Budget and periodic completion of approved retraining programs.

(d) Any contractor or asbestos worker may apply to the Office of Management and Budget for certification to perform asbestos abatement by submitting an application in the form specified by the Office of Management and Budget and the payment of such fees as may be established by the Office of Management and Budget.

(e) The fees for certification required pursuant to this chapter shall be established by the Office of Management and Budget in its rules and regulations. The fees may be adjusted periodically but shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Office in operating the certification program.

(f) Asbestos workers certified by other states may request certification by reciprocity. The Office of Management and Budget will evaluate each request for reciprocity based upon evaluations of the quality of training received and quality of the other state's certification program.

§ 7804. Suspension; revocation; refusal to renew

If the Office of Management and Budget finds that a contractor or asbestos worker has violated any provision of this chapter or any rule, regulation or order promulgated or entered pursuant to this chapter, the Office of Management and Budget may immediately suspend, revoke and/or refuse to renew the certification of such contractor or asbestos worker. A hearing may be requested by the contractor or asbestos worker within 30 days after written notice has been sent to the contractor or asbestos worker by certified mail.

If, after a hearing under this section, the Director of the Office of Management and Budget finds just cause to suspend, revoke or refuse to renew, the contractor or asbestos worker shall be given written notice of the decision of the Director of the Office of Management and Budget and the reasons therefor. The decision of the Director of the Office of Management and Budget may be appealed to the Superior Court within 30 days after written notice has been sent by certified mail by the Office of Management and Budget.

§ 7805. Powers and duties of the Office of Management and Budget

The Office of Management and Budget shall have the following powers and duties and shall give due consideration to Federal Environmental Protection Agency (EPA) document 560/5-85-024 June 1985 or later revision, "Guidance for Controlling Asbestos Containing Materials in Buildings" in conducting these duties:

- (1) Approve the standards and specifications for all asbestos abatement funded with state moneys from any source;
- (2) Adopt rules and regulations governing the training requirements and certification of contractors and asbestos workers for all asbestos abatement within the State;
- (3) Approve the selection of contractors and asbestos workers performing asbestos abatement for state-funded projects based upon qualifications, experience and ability to perform asbestos abatement;
- (4) Require all state agencies to obtain prior approval for all asbestos abatement funded with state moneys from any source;
- (5) Function as a central location for the receipt and dissemination of relevant asbestos information and reports;
- (6) Act as liaison with any federal and/or state agencies that have other programs which may now or hereafter provide funds or assistance in any manner for the detection and elimination of friable asbestos;
- (7) During state-funded asbestos abatement projects, conduct an onsite inspection of all procedures of asbestos abatement;
- (8) Have the authority to suspend, revoke and/or refuse to renew the certification of any contractor or asbestos worker for a violation of this chapter or any rules, regulations or orders promulgated or entered pursuant to this chapter;
- (9) Promulgate such rules and regulations as are necessary to implement this chapter, including but not limited to:
 - a. Performance standards, practices and specifications for asbestos abatement;
 - b. Determination of the minimum scope of work of asbestos abatement to which this chapter shall apply;
 - c. Requirements for submission of a notice of intent to construct, alter, repair, maintain, demolish or renovate or to perform asbestos abatement in any structure, substrate or any portion thereof which may contain asbestos;
- (10) Establish a statewide emergency abatement policy to address any asbestos abatement which was not planned but results from a sudden, unexpected event or emergency.

§ 7806. Powers and duties of the Department of Natural Resources and Environmental Control

The Department of Natural Resources and Environmental Control shall have the following powers and duties and shall:

- (1) Act as the enforcement arm of the Office of Management and Budget with respect to any violations of this chapter and be responsible for oversight and enforcement of this chapter for all asbestos abatement within the State;
- (2) Maintain records and reports as required by the rules and regulations of the Department of Natural Resources and Environmental Control and any appropriate federal rules and regulations as they may relate to asbestos abatement;
- (3) Have the authority to conduct on-site inspections of asbestos abatement in both the private and public sectors;
- (4) Promulgate rules and regulations as are necessary to implement the enforcement aspects of this chapter;
- (5) Provide the Office of Management and Budget with the appropriate evidence and documentation of violations of this chapter, or any rules, regulations or orders promulgated or entered pursuant to this chapter which would initiate the Office of Management and Budget decertification process.

§ 7807. Violations, penalties and injunctions

(a) For purposes of this section, the term "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control. The Secretary shall enforce this chapter.

(b) Any contractor, asbestos worker or person who violates any of the provisions of this chapter, or any rules, regulations or orders promulgated or entered pursuant to this chapter shall be punishable in the following manner, and each day of a continued violation shall be considered as a separate violation:

(1) A fine of not less than \$100 and not more than \$1,500 for each day of such violation, if such contractor, asbestos worker or person is certified for asbestos abatement under this chapter. If the contractor, asbestos worker or person is not certified for asbestos abatement under this chapter, the fine shall be not less than \$500, and not more than \$1,500 for each day of such violation. The Justices of the Peace Court shall have original jurisdiction under this subsection.

(2) In addition, for contractors, a civil penalty of not less than \$5,000 for each day of such violation, if such contractor is not certified for asbestos abatement under this statute. The Superior Court shall have jurisdiction over such violations. If the violation is continuing, or is threatening to begin or

to reoccur, the Secretary may also seek a temporary restraining order or any other injunctive relief in the Court of Chancery.

(c) Any contractor who intentionally, knowingly or recklessly violates any provision of this chapter, or any rule, regulation or order promulgated or entered pursuant to this chapter shall, upon conviction, be punishable by a fine of not less than \$2,500 nor more than \$25,000 for each day of such violation and/or imprisonment for not more than 6 months.

(d) Any contractor who is found to have violated this chapter, or any rule, regulation or order promulgated or entered pursuant to this chapter shall be liable for all expenses incurred by the Department of Natural Resources and Environmental Control:

- (1) In abating the violation;
- (2) Controlling a pollution incident related to the violation; and
- (3) Clean-up and restoration of the environment.

Such expenses shall include, but not be limited to, the costs of investigation, legal assistance, public hearings, materials, equipment, personnel, contractual assistance and appropriate salary and overtime pay for all persons, including state employees, involved in the effort notwithstanding merit system laws, regulations or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the contractor. In the event the contractor desires to challenge the detailed billing submitted by the Secretary, the contractor shall request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to the billing of expenses submitted by the Secretary. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based upon the record, and enter an order which shall contain reasons supporting the decision, and shall send all parties a copy of the order by certified mail. Any party may appeal the order of the Secretary to the Superior Court within 30 days after the order of the Secretary has been sent to that party by certified mail. In the event a liable person fails or refuses to pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in the Superior Court.

(e) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this Chapter.

Current through 77 Laws 2009, chs. 1-209. Revisions to 2009 Acts made

by the Delaware Code Revisors were unavailable at time of publication.
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