

West's Hawai'i Revised Statutes Annotated Currentness

Division 1. Government

Title 19. Health

→ Chapter 342P. Asbestos and Lead

Part I. Definitions and General Provisions

§ 342P-1. Definitions

As used in this chapter, unless the context otherwise requires:

"Abatement" means any measure or set of measures designed to permanently eliminate asbestos or lead-based paint hazards, including but not limited to removal, enclosure, encapsulation, or disposal.

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

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted or issued pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health or a duly authorized agent, officer, or inspector.

"Emission" means the act of releasing or discharging asbestos into the ambient air from any source.

"Facility" means any institutional, commercial, public, private, or industrial structure, installation or building.

"Party" means each person or agency named as a party or properly entitled to be a party in any court or agency proceeding.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Renovation" means altering in any way one or more facilities or structural components of a facility.

"Repair" means the restoration of asbestos-containing material that has been dam-

aged to seal exposed areas where asbestos fibers may be released, including the repair of enclosures around asbestos-containing materials. The term, as it relates to the repair of previously encapsulated asbestos-containing materials, includes filling damaged areas with asbestos substitute and re-encapsulating.

"Variance" means the act of deviating from the requirements of rules adopted under this chapter or a license granted by the director to deviate from these rules.

[§ 342P-2]. Administration

The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

§ 342P-3. Duties, rules, powers, appointment of hearings officers

(a) In addition to any other power or duty prescribed by law and in this chapter, the director shall provide for the review of asbestos and lead abatement plans and the inspection of abatement projects within the State.

(b) The director may make, amend, and repeal state rules controlling and prohibiting asbestos pollution and lead-based paint hazards and regulating asbestos and lead abatement. All rules shall be adopted pursuant to chapter 91. Any person heard at a public hearing to adopt these rules shall be given written notice of the action taken by the department with respect to the same.

(c) The director, without regard to chapter 76, may appoint hearings officers to conduct public participation activities, including public hearings and public informational meetings.

§ 342P-4. Inspection of premises

The director, in accordance with any law, may enter and inspect any building or place to investigate an actual or suspected source, use, or presence of asbestos or lead to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, any permit or other approval granted by the department pursuant to this chapter, or any order issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith. Nothing in this section shall be construed to permit a warrantless search of a single family residence, unless the owner or occupier of the dwelling has consented to such a warrantless search.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or em-

ployee's employment in the prevention, control, or abatement of asbestos or lead, shall be disclosed by the official or employee except as it relates directly to asbestos or lead and then only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

§ 342P-5. Enforcement; education

(a) If the director determines that any person has violated or is in violation of this chapter, any rule adopted pursuant to this chapter, any accepted schedule, any order issued under this section, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation, may contain educational information necessary in performing abatement activities, and may contain an order specifying a reasonable time during which the person shall be required to take any measures that may be necessary to correct the violation, and to give periodic progress reports;
- (2) May require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of; and
- (3) May impose penalties as provided in [section 342P-21](#) by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, any accepted schedule, any order issued under this section, or any condition of a permit or variance issued pursuant to this chapter, after having been served notice of the violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring the person to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures will be taken to bring the person into compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within sixty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;

(3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until the director accepts the written schedule; or

(4) May impose penalties as provided in [section 342P-21](#) by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing the nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless, not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case in accordance with chapter 91. If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed, modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved or the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any administrative penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty, which shall be a government realization.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

[§ 342P-5.5]. Variances

(a) Every application for a variance shall be made on a form furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and any other information that the department may require by rule.

(b) Each application for a variance shall be reviewed by the department. Additional information may be requested by the department for review.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the deviation from established asbestos or lead-based paint hazards standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the deviation from asbestos or lead standards occurring or proposed to occur by the granting of the variance is in the public interest;
- (2) The authorized variance occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which a variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal of a variance shall be granted within the requirements of this section, and for time periods consistent with the reasons given within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the asbestos or lead involved, it shall be only until the necessary means for prevention, control, or abatement becomes practicable. The variance shall be granted subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection

shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the asbestos or lead hazards involved;

(2) The director may issue a variance for a period not exceeding six months; and

(3) Every variance granted under this section shall include conditions requiring the grantee to perform air or dust sampling and report the results of the sampling to the department.

(e) Any variance granted pursuant to this section may be renewed for periods not exceeding six months on terms and conditions which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance. No renewal shall be granted without an application. Any renewal application shall be made at least sixty days prior to the expiration of the variance. The director shall act on an application for renewal within sixty days of the receipt of the application.

(f) The director may allow a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance shall be construed to prevent or limit the application of any emergency provision or procedure provided by law.

(h) Any application for a variance may be subject to public participation. The contents of the public notice for a variance application shall include at least:

(1) The name, address, and phone number of the agency issuing the public notice;

(2) The name and address of the applicant;

(3) A brief description of the applicant's activities or operations which result in asbestos or lead hazards, or other activity described in the variance application;

(4) A short description of the location of each asbestos or lead-based paint hazard indicating whether the hazard is new or existing;

(5) A brief description of the public participation procedures, including the comment period, which shall be for a period of not less than thirty days following the date of the public notice, and other means by which interested persons may comment on the variance application and the department's proposed action; and

(6) The address and phone number of the state agency at which interested persons may obtain further information and may inspect a copy of the variance application and supporting and related documents.

§ 342P-6. Emergency powers; procedures

(a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by an emission of asbestos or the presence of lead hazards that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the emission or lead hazards to immediately reduce or stop the emission or creating the lead hazard, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power that the governor or any other officer may have to declare an emergency or to act on the basis of such a declaration, if the power is conferred by statute or constitutional provision or inheres in the office.

[§ 342P-7]. Noise, radiation, and indoor air quality special fund; established

(a) There is established within the department of health a noise, radiation, and indoor air quality special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, certificates, notifications, variances, investigations, and review, pursuant to [sections 342F-14, 342P-28, 466J-4, and 466J-5](#).

(b) Moneys in the fund shall be expended by the department to:

- (1) Partially fund the operating costs of the program mandated activities and functions;
- (2) Fund statewide education, demonstration, and outreach programs;
- (3) Provide training opportunities to ensure the maintenance of professional competence among staff and administrators; and
- (4) Plan for future growth and expansion to meet emerging needs.

[§ 342P-8. Asbestos and lead abatement special fund]

(a) There is established within the department of health an asbestos and lead abatement special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, certificates, notifications, variances, investigations, and reviews.

(b) Moneys in the asbestos and lead abatement special fund shall be expended by the department to:

- (1) Partially fund the operating costs of the asbestos and lead abatement program's mandated activities and functions;
- (2) Fund statewide education, demonstration, and outreach programs;
- (3) Provide for the accreditation of training programs;
- (4) Provide training opportunities to ensure the maintenance of professional competence among staff and administrators; and
- (5) Plan for future growth and expansion to meet emerging needs.

Part II. Penalties

§ 342P-20. Civil penalties

(a) Any person who violates this chapter, any rule adopted by the department under this chapter, or any condition in a permit or variance issued under this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized officer or employee of the department of any building or place that the officer or employee is authorized to enter and inspect, shall be fined not more than \$5,000. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ 342P-21. Administrative penalties

(a) In addition to any other administrative or judicial remedy provided by this chapter or rules adopted under this chapter, the director may impose by order the penalties specified in [section 342P-20](#).

(b) Factors to be considered in imposing an administrative penalty shall include:

- (1) The nature and history of the violation and any prior violations;
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) It shall be presumed that the violator's economic and financial conditions allow payment of the penalty; the burden of proof to the contrary shall be on the violator.

(d) In any judicial proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

§ 342P-22. Negligent violations

Any person who negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit or variance issued under this chapter, shall be fined not less than \$2,500 nor more than \$25,000 per day for each violation or imprisoned for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, punishment shall be a fine of not more than \$50,000 per day for each violation or imprisonment of not more than two years, or both.

§ 342P-23. Criminal penalties

Any person who knowingly violates this chapter or any condition in a permit or variance issued under this chapter, shall be fined not less than \$5,000 nor more than \$50,000 per day for each violation or imprisoned for not more than three years, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, the person shall be fined not more than \$100,000 per day for each violation or imprisoned for not more than six years, or both.

§ 342P-24. Knowing endangerment

(a) Any person who knowingly violates this chapter or any condition in a permit or variance issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, upon conviction, shall be fined not more than \$250,000 or imprisoned for not more than fifteen years, or both.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$1,000,000.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

(1) The person shall be responsible only for actual awareness or actual belief that the person possessed; and

(2) Knowledge possessed by a person other than the defendant but not by the defendant, may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It shall be an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(1) An occupation, a business, or a profession; or

(2) Medical treatment or medical or scientific experimentation conducted by professionally-approved methods and the other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) As used in this section:

"Organization" means a legal entity, other than a government, established or organized for any purpose. The term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

[§ 342P-25]. False statements

(a) Any person who knowingly makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a misdemeanor.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$20,000.

§ 342P-26. Injunctive and other relief

The director may institute a civil action for injunctive and other relief in any court of competent jurisdiction to prevent the violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance, to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court may grant relief in accordance with the Hawaii rules of civil procedure.

[§ 342P-27]. Appeal

If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

§ 342P-28. Fees

The director may establish reasonable fees for the issuance of notifications, certificates, licenses, permits, and variances to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits and variances not including court costs or other costs associated with any formal enforcement action. The fees shall be deposited to the credit of the asbestos and lead abatement special fund or noise, radiation, and indoor air quality special fund.

§ 342P-29. Public records; confidential information; penalties

Asbestos or lead abatement applications and reports on emissions or lead violations submitted to the department shall be made available for inspection by the public during established office hours unless the reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department, acquiring confidential information from the inspection authorized by [section 342P-4](#), who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or any rule or standard adopted pursuant to this chapter, shall be fined not more than \$1,000.

[§ 342P-30]. Other action not barred

No existing civil or criminal remedy for any wrongful action that is in violation of any statute or any rule of the department or ordinance of any county, shall be

excluded or impaired by this chapter.

§ 342P-31. Enforcement by state and county authorities

All state and county health authorities and police officers shall enforce this chapter and the rules, orders, permits, and variances of the department.

[§ 342P-32]. Other powers of department not affected

The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

§ 342P-33. Effect of laws, ordinances, and rules

(a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to asbestos or lead abatement that are not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to asbestos or lead abatement shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

[§ 342P-34]. Priority in courts

All actions brought pursuant to this chapter, the rules adopted under this chapter, or the conditions of a permit issued under this chapter, at the discretion of the court, shall receive priority in the courts of the State.

Part III. Asbestos Emission and Lead Hazard Control

§ 342P-40. Prohibition

No person, including any public body, shall engage in any activity that causes a violation of this chapter.

§ 342P-41. Powers and duties; specific

The director may:

- (1) Establish emission and lead hazard exposure standards for the State as a whole or for any part thereof, including an indoor nonoccupational exposure standard;
- (2) Establish a model accreditation program as recommended by the United States

Environmental Protection Agency for training for provider certification and accreditation requirements;

(3) Establish work practice standards and notification requirements for the demolition and renovation of facilities containing asbestos and for lead-based abatement activities in dwellings and child-occupied facilities; and

(4) Establish procedures for issuance of reasonable fees for notifications, certifications, and licenses.

§ 342P-42. Recordkeeping and monitoring requirements

The director may require the owner or operator of any asbestos or lead abatement activity to:

- (1) Establish and maintain such records;
- (2) Make such reports;
- (3) Install, use, and maintain such monitoring equipment or methods;
- (4) Monitor hazards;
- (5) Sample such emissions; and
- (6) Provide such other information;

as the department may require.

§ 342P-43. Complaints; hearings; appointment of masters

The director may:

- (1) Receive or initiate complaints on asbestos pollution or lead hazard violations, hold hearings in connection with asbestos pollution or lead hazards violations, and institute legal proceedings in the name of the State for the prevention, control, or abatement of asbestos pollution or lead hazards; and
- (2) Appoint a master or masters to conduct investigations and hearings.

§ 342P-44. Research, education, and training programs

The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards, or means to monitor or abate sources of asbestos pollution or lead hazards;

- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State, or private sources, for the study and control of asbestos pollution or lead hazards; and
- (3) Conduct and supervise statewide educational and training programs on asbestos pollution or lead hazards prevention, control, and abatement, including the preparation and distribution of information relating to asbestos pollution or lead hazards.

Current with amendments effective as of June 1, 2009, through Act 83,
pending classification and text revision by the revisor of statutes.
See °

23G-15.

For re-

search tips relating to newly added undesignated enactments, see scope.

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