

State of Oregon

Department of Environmental Quality

Memorandum

Date: October 1, 2007

To: Environmental Quality Commission

From: Stephanie Hallock, Director

Subject: Agenda Item E, Rule Adoption: Asbestos Abatement Notification Filing Fee Increase
October 17, 2007 EQC Meeting

Why this is Important

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Department Recommendation

The Department recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon Administrative Rule 340-248-0260(1)(a) as presented in Attachment A with an effective date of December 1, 2007.

Background and Need for Rulemaking

The Department of Environmental Quality's (DEQ) asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. The asbestos abatement notification fees are no longer sufficient to cover program costs for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. The shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos material.

Effect of Rule

By amending the fee structure, the Department's asbestos program will be able to

keep the existing staff and add one additional position to provide technical assistance and public education.

Commission Authority

The Commission has authority to take this action under ORS 468A.750(1)(d). These rules implement ORS 468A.707.

Stakeholder Involvement

In the summer and fall of 2006 asbestos staff contacted a representative sample of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of the 2007 legislative budget process, the Department submitted detailed information about asbestos program funding and the proposed fee increase.

Of the asbestos abatement contractors contacted by department staff, there was nearly unanimous support for raising the fees to maintain the existing staff level and enhance the program by 1.0 FTE

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007 and included a public hearing in Portland on August 16, 2007. No public comment was received. The Department did respond to questions from a number of abatement contractors who requested information outside of the formal public comment process.

Key Issues

The key issue was: Would the increase in fees result in asbestos removal without a licensed contractor and therefore lead to a greater likelihood of improper removal and potential human exposure to asbestos?

The Department, based upon its conversations with asbestos abatement contractors, determined that the likelihood of that happening was extremely low. The proposed increase is scaled to the size of the asbestos abatement project. The fee for residential projects of any size would increase by \$65. The fee for small commercial and industrial projects would also increase by \$65. The fee for the largest commercial and industrial projects would increase by \$1,000. The fees the Department collects would continue to be a small portion of the total project costs.

The Department also believes that, with additional program resources dedicated to technical assistance and public education, there will be fewer individuals who would knowingly put their health at significant risk by improperly removing asbestos.

Next Steps

Once adopted, these rules will be filed with the Secretary of State with an effective date of December 1, 2007. A delayed effective date was chosen by the Department to allow for adequate notice to the licensed asbestos abatement companies doing business in Oregon.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses

- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

**Available Upon
Request**

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section: _____

Division: _____

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