

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

BUREAU OF SAFETY AND REGULATION

OCCUPATIONAL HEALTH STANDARDS COMMISSION

ASBESTOS CONTRACTOR LICENSING

(By authority conferred on the department of public health by section 301 of Act No. 135 of the Public Acts of 1986, being S338.3301 of the Michigan Compiled Laws)

R 325.3551 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 135 of the Public Acts of 1986, being S338.3101 et seq. of the Michigan Compiled Laws, and known as the asbestos abatement contractors licensing act.

(b) "Citation" means a written communication issued by the department to an employer pursuant to section 307 of the act.

(c) "Director" means the director of the department of public health or his or her designee.

(d) "Employee" means a person permitted to work by an employer.

(e) "Employer" means an individual or organization, including the state or a political subdivision thereof, which employs 1 or more persons.

(f) "Establishment" means a single physical location where business is conducted or where services or operations are performed.

(g) "Inspection" means the examination or survey of an establishment to determine compliance with the act or rules promulgated, or orders issued, pursuant to the act.

History: 1988 AACCS.

R 325.3553 Licenses.

Rule 3. The department shall issue, deny, renew, and revoke licenses pursuant to sections 205, 207, 209, 211, 213, 215, 217, 219, and 305 of the act and in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws.

History: 1988 AACCS.

R 325.3555 Authority for inspection.

Rule 5. (1) A department representative, upon presenting appropriate credentials, may enter, at all reasonable times, any asbestos abatement project to inspect any such project and all pertinent conditions; to question privately any asbestos abatement contractor, employer, owner, operator, agent, construction contractor, construction

subcontractor, or employee; and to review records required by the act and these rules and other records which are directly related to the purpose of the inspection.

(2) Before inspecting areas containing information which is classified by an agency of the federal government in the interest of national security, department representatives shall obtain the appropriate security clearance.

History: 1988 AACCS.

R 325.3557 Objection to inspection.

Rule 7. (1) Upon a refusal to permit a department representative, in the exercise of his or her official duties, to enter any establishment to inspect, to review records, or to question any asbestos abatement contractor, employer, owner, operator, agent, construction contractor,

construction subcontractor, or employee, pursuant to R 325.3555, the department representative shall terminate the inspection or confine the inspection to the areas to which there is no objection.

(2) A department representative shall endeavor to determine the reason for refusal to enter and shall immediately report the refusal and the reason therefor to the director. The director shall take appropriate action and, if necessary, apply to the proper judicial officer for a warrant commanding the sheriff or a peace officer to aid the department in the conduct of an inspection.

History: 1988 AACCS.

R 325.3559 Entry not waiver.

Rule 9. Permission to enter, inspect, review records, or question a person shall not imply, or be conditioned upon, a waiver of any cause or action, citation, or penalty under the act. A department representative shall not grant a waiver.

History: 1988 AACCS.

R 325.3561 Conduct of inspection.

Rule 11. (1) Subject to the provisions of R 325.3555, an inspection shall take place at such times and in such places of employment as the department director or his or her designee may direct. At the beginning of an inspection, the department representative shall present his or her credentials to the asbestos abatement contractor, employer, owner, operator, agent, construction contractor, or construction subcontractor in charge of the establishment, explain the nature and purpose of the inspection, and generally indicate the scope of the inspection and the records specified in R 325.3555 which he or she wishes to review. A designation of records shall not preclude access to additional records as specified in R 325.3555.

(2) A department representative may take air, environmental, and material samples, take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any asbestos abatement

contractor, employer, owner, operator, agent, construction contractor, construction subcontractor, or employee.

(3) In taking photographs and samples, a department representative shall take reasonable precautions to insure that any actions with flash equipment or spark-producing or other equipment are not hazardous. The department representative shall comply with all employer safety and health rules and practices at the establishment being inspected and shall wear and use appropriate protective clothing and equipment.

(4) The conduct of inspections shall not cause unreasonable disruption of the operations of the employer's establishment.

(5) Following the completion of an inspection by the department representative, an opportunity for a conference shall be afforded the asbestos abatement contractor or his or her representative to informally advise the contractor or his or her representative of any apparent violations disclosed by the inspection. During the conference, the asbestos abatement contractor shall be afforded an opportunity to bring to the attention of the department representative any information regarding conditions in the workplace pertinent to any apparent violations.

History: 1988 AACCS.

R 325.3563 Trade secrets.

Rule 13. (1) Information reported to, or otherwise obtained by, a department representative in connection with an inspection or proceeding under the act which contains, or which might reveal, a trade secret shall be considered confidential. The information may be disclosed only to another department representative concerned with carrying out his or her responsibilities under the act or when relevant in any proceeding under the act. In any proceeding, the department shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(2) Information which contains, or which might reveal, a trade secret shall not be subject to public inspection and copying.

(3) At the commencement of an inspection, an asbestos abatement contractor or employer may identify areas in the establishment which contain, or which might reveal, a trade secret. If the department representative has no clear reason to question the identification, information obtained in those areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential--trade secret" and shall not be disclosed.

History: 1988 AACCS.

R 325.3565 Initiation of inspections.

Rule 15. The department may investigate practices of an asbestos abatement contractor based upon its own discretion, a recommendation by the board, or upon written complaint of an aggrieved party pursuant to section 305 of the act.

History: 1988 AACCS.

R 325.3567 Citations.

Rule 17. (1) If the department representative believes that an asbestos abatement contractor has violated a requirement of the act or any rule promulgated, or order issued, pursuant to the act, he or she shall issue a

citation in person or by registered mail to the asbestos abatement contractor. An appropriate citation shall be issued even though, after being informed of an alleged violation by the department representative, the asbestos abatement contractor immediately abates, or initiates steps

to abate, the alleged violation. A citation shall be issued with reasonable promptness after termination of the inspection. A citation shall not be issued under this rule after the expiration of 90 days from the completion of the physical inspection of the establishment.

(2) A citation shall be in writing and describe with particularity the nature of the alleged violation, including a reference to the provision of the act, standard, rule, regulation, or order alleged to have been violated. The citation shall also state the civil penalty, if any, and the right to appeal the citation pursuant to section 309 of the act.

(3) A citation shall contain, on its face, a statement that it is an allegation of a violation. The issuance of a citation shall not constitute a finding that a violation of the act has occurred, unless there is a failure to appeal to the department for an administrative hearing or, if appealed to the department, unless the citation is affirmed by the director.

History: 1988 AACCS.

R 325.3569 Civil penalties.

Rule 19. (1) Concurrent with the issuance of a citation, the department shall notify the asbestos abatement contractor of the proposed penalty as provided by section 307 of the act or that no penalty is being proposed. The notice of the proposed penalty shall include statements informing the asbestos abatement contractor that the proposed penalty shall become a final order of the department unless, within 20 days from the date of receipt of the notice, the asbestos abatement contractor notifies the department, in writing, that he or she intends to appeal the citation or the proposed penalty. Payment of the penalty shall be made to the department, payable to the state of Michigan, within 5 working days of the date the penalty becomes a final order.

(2) The department shall determine the amount of a proposed penalty, pursuant to section 307 of the act, giving due consideration to the appropriateness of the penalty with respect to the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, and degree of culpability, and such other matters as justice may require.

History: 1988 AACCS.

R 325.3571 Appeals.

Rule 21. (1) An alleged violator may petition the department for an administrative hearing pursuant to section 309 of the act and Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws. After the administrative hearing, the director may affirm, dismiss, or modify the citation.

(2) An alleged violator aggrieved by a decision of the department may petition the circuit court of the county in which the violation was alleged to have occurred for review. This petition shall be filed within 60 days of the director's final decision.

History: 1988 AACCS.