

ASBESTOS STATE RULES OPT-OUT PROCESS FACT SHEET

History

Salt Lake City Corporation – Housing and Neighborhood Development and Representative Larry B. Wiley indicate that the state asbestos regulations are dated and needlessly restrictive, are time consuming and expensive to comply with, and some suspect asbestos containing materials that are required to be assessed during an asbestos inspection rarely, if ever, contained asbestos.

Emergency Restoration and Insurance Companies indicate that the process to comply with existing state administrative rules is time consuming and could cause a delay in the remediation of water/sewage damage claims which would allow mold to grow. The process is expensive and the additional cost is not worth the protection provided for asbestos (water damage claims affecting drywall in private residences not subject to the NESHAP are particularly problematic).

Process

The ATLAS Section met several times to discuss the issues outlined above and to discuss different possible resolutions.

Option #1 discussed the possibility of keeping the existing administrative rules unchanged and providing additional compliance assistance to help the companies and individuals get certified as asbestos supervisors, workers, and/or inspectors. During the ATLAS Section resolution option evaluation process, it was determined by a majority of the section members that option #1 would probably not work because there is significant resistance by both the Emergency Restoration Companies and Salt Lake City to be certified as asbestos abatement companies and asbestos abatement inspectors, supervisors, and workers.

Option #2 discussed the possibility of changing our existing state administrative rules by changing the de minimus amounts of asbestos subject to our administrative rules from the small scale, short duration amounts of asbestos, 3 square or linear feet, to the Federal NESHAP de minimus amounts of 160 square feet, 260 linear feet, or 35 cubic feet of asbestos containing materials. Option #2 was determined by staff to be problematic because we have been regulating asbestos abatement and renovation projects for approximately 20 years and changing the regulatory amounts of asbestos at this point in time would adversely affect our existing asbestos program and certified contractors. Staff determined that we could have used the NESHAP amounts of asbestos as de minimus levels when the administrative rules were originally written, but those levels were not chosen, and the small scale, short duration levels were chosen and should be maintained.

Option #3 discussed the possibility of changing our existing state administrative rules by eliminating all structures not subject to the Federal AHERA and Federal NESHAP regulations (i.e. private residences of four units or less). Option #3 was dismissed because staff did not feel that eliminating the less than NESHAP sized projects and structures only subject to state administrative rules followed the legislative intent outlined in the Utah Air Conservation Act.

Option #4 is an “Opt-Out” Policy that provides information about the risks of asbestos to a home owner and then allows them to make an informed decision on how they want the disturbance of suspect asbestos containing materials in their home to be performed during renovation activities. Option #4 “Opt-Out” Policy was chosen by ATLAS Section staff as the option that was least problematic and the option that deserved further evaluation to resolve the regulatory problems brought to the attention of the Division of Air Quality (DAQ). It should be noted that the Opt-Out Policy is only for structures that are not subject to the Federal AHERA and Federal NESHAP programs and this option would only be for structures subject to Utah State Administrative Rules.

Proposed Resolution

Other key aspects of the Opt-Out Policy are:

1. The only structures subject to the Opt-Out Policy are single-family, owner-occupied, detached, private-residential structures only subject to Utah State Asbestos Administrative Rules. Institutional or commercial residences and Multi-family housing of more than 4 units are not eligible for the proposed Opt-Out Policy.
2. The Opt-Out Policy could be applied to renovation activities performed on either the inside or the outside of the structure. Any suspect asbestos containing waste generated as part of the renovation activities would need to be disposed of as asbestos containing waste material in accordance with Utah Administrative Rules in an appropriate landfill cell that accepts asbestos containing waste material.
3. The Opt-Out Policy will be implemented on a per project basis and the project needs to be described in detail to the DAQ during the Opt-Out Policy application process.
4. Companies performing renovation work activities would need to be “registered” with the DAQ similar to the existing asbestos company certification process, including the payment of a proposed \$200 per year fee.
5. Individuals performing renovation work activities would need to be “registered” with the DAQ similar to the existing asbestos individual certification process performed by the ATLAS Section, including the payment of a proposed \$100 per year fee. Individuals becoming registered as “Emergency Restoration/Renovation Contractors” with the DAQ will need to attend and successfully complete a DAQ approved training course on a periodic basis that will educate workers on how to perform work activities in an asbestos safe manner. This training will also help these workers comply with Utah Occupational Safety and Health/OSHA education/training requirements.
6. Project operators with projects subject to the Opt-Out Policy would need to submit notification to the ATLAS Section on an approved notification form that would contain an extensive statement that must be read by the home owner about the dangers of asbestos, would include information about the location of the project, information about

the home owner and how to contact the home owner, a certification statement signed by both the home owner and the Emergency Restoration/Renovation Company, including the DAQ issued Emergency Restoration/Renovation Company registration number, that the structure is eligible for the Opt-Out Policy and all individuals working on the project are registered with the DAQ. A proposed notification fee of \$25 would be required with each submitted notification.

The ATLAS Section believes that this Opt-Out Policy would substantially resolve the issues outlined above without jeopardizing all of the protective elements found in the State Asbestos Rules. We believe the Representative Wiley's issues are substantially the same as Salt Lake City Corporation – Housing and Neighborhood Development's issues and this Opt-Out Policy would create a mechanism for homeowners to have the flexibility to either, comply with our existing State Asbestos Rule regulatory requirements, or they could opt-out of the regulatory requirements and use a contractor that has been trained to minimize the exposure of asbestos to workers and the occupants of the home. We believe that the Emergency Restoration/Insurance Companies issues would also be substantially resolved because the homeowner could decide to comply with our existing State Asbestos Rule regulatory requirements, and then the homeowner would also need to live with the possibility of mold growth in their home; or, if the homeowner decides to take advantage of the Opt-Out Policy, then the Emergency Restoration Companies could proceed in a timely manner and the homeowner would still be using a contractor that has been trained to minimize the exposure of workers and the occupants of the home to asbestos.