



Recommendations Regarding Asbestos Regulation in Montana

The 2015 Legislature passed HB434 directing the Department of Environmental Quality (DEQ) to convene an Asbestos Advisory Group (AAG) to advise the agency on matters relating to asbestos regulation.

Pursuant to HB434, the AAG submits the following recommendations for DEQ's consideration. These recommendations characterize asbestos regulation in terms of funding, permitting, enforcement and compliance, and state and federal regulations. Recommendations are presented in a format that describes the reason for the recommendation, actions that may be taken to achieve the recommendation, and an implementation difficulty factor rating.

November 2, 2016

R1. DEQ should work with stakeholders to develop additional education and outreach information to explain state and federal asbestos regulations and to promote compliance assistance.

Reason for this recommendation:

To provide clarity to the regulated community by increasing compliance, public awareness, and worker safety.

This may be achieved by:

- Conduct direct informational mailings to stakeholder groups.
- Provide updated materials and information to training providers via website, other means.
- Insert materials with city/county landfill permit notices, asbestos registrations, and contractor registrations.
- Utilize extended staff to assist with information development and distribution.
- Apply for grants to fund awareness campaigns and design new materials.
- Update the existing DEQ FAQ-document covering EPA and state regulations.
- Create a regulatory manual that incorporates state and federal asbestos regulations.
- Increase DEQ's attendance at asbestos provider trainings and workshops.
- Work with DEQ's Solid Waste Program to provide landfill workers training on asbestos safety.
- Develop information regarding asbestos cement pipe bursting and distribute to stakeholders.

The difficulty factor is considered MEDIUM:

- Stakeholders necessary to disseminate information may not prioritize this effort.
- Competing agency priorities within DEQ.

Reference:

- HB434 Section 1. (2)(a) regulatory thresholds for permits and whether a tiered permitting system is appropriate.
- HB434 Section 1. (2)(g) the relationship between federal and state authority over various issues related to asbestos control and methods to clarify conflicts.

R2. DEQ should revise state regulatory definitions to allow for more administrative flexibility while not causing harm to health or the environment.

Reason for this recommendation:

To increase clarity and application of regulatory definitions. To decrease unnecessary inspections of low-risk facilities. To provide for more confidence and trust in asbestos professionals' judgement and knowledge, which would enable the program to focus more on compliance assistance and education/outreach and build better working relationships with the regulated community.

This may be achieved by:

- Revise state rule ARM 17.74.352 to incorporate the federal DOT definition of "Bridge" as being spans greater than 20 feet (CFR 650.305).
- Revise state rules ARM 17.74.352 (31) and ARM 17.74.354 to provide administrative flexibility for what constitutes "Thoroughly Inspect."
- Revise state rule ARM 17.74.354(3)(d)(iii) sampling and inspection requirements for "Miscellaneous Materials" to be consistent with thermal system insulation (TSI) requirements that excludes fiberglass / foam / rubber / or other non-ACM as determined by an accredited inspector.
- Create a state policy that presumes all vermiculite products to be an asbestos containing material consistent with federal policy.
- Create a state policy to recognize professional judgement of inspectors through an agreed upon process (e.g. Alternate Work Practice, Waiver, or Variance).

The difficulty factor is considered MEDIUM:

- Getting EPA to recognize Montana's definition interpretation - using other federal definitions as a surrogate.
- Competing agency priorities within DEQ.
- May require state rule (ARMs) and code (MCA) revisions to the definition of 'asbestos' at 75-2-502(2).

Reference:

- HB434 Section 1. (2)(b) the appropriate types of projects and the size of structures subject to permitting.
- HB434 Section 1. (2)(g) the relationship between federal and state authority over various issues related to asbestos control and methods to clarify conflicts.
- HB434 Section 1. (2)(h) options to streamline the permitting process while still protecting public health and safety.

R3. DEQ should encourage landfills, when applicable, to use a standard form or method for customers to describe their load as non-asbestos prior to disposal.

Reason for this recommendation:

This form would improve the characterization of the waste, increase awareness regarding proper disposal of asbestos, and provide increased safety for landfill workers and users when asbestos waste is disposed.

This may be achieved by:

- Create a brochure outlining recommendations to landfills regarding asbestos containing materials, landfill worker and user safety, and ways to decrease landfill liability if best management practices are implemented.
- DEQ Solid Waste Program should encourage all landfills to include a standardized asbestos form in their Operation and Maintenance Plans through the education and outreach process.
- Work with DEQ's Solid Waste Program to provide landfill workers training on asbestos safety.
- Work with DLI Safety and Health Bureau on providing working health and safety training emphasizing worker/user protection and minimizing exposure.
- Allow for other means to describe customer load such as a previous certified inspection report.
- Allow for pre-delivery form access and preparation to expedite processing at the landfill gate.

The difficulty factor is considered MEDIUM:

- Disseminating the information and gaining support from landfills, landfill employees and other stakeholders.

Reference:

- HB434 Section 1. (2) (i) any other issues related to asbestos regulation considered appropriate by the advisory group.

R4. DEQ should require, for agency use only, all accredited asbestos inspectors to register their inspections for renovations or demolitions (per NESHAP) by facility work site address, inspection date, inspector ID #, and whether asbestos was detected or not.

Reason for this recommendation:

This registration would provide information only to DEQ on the address of facilities that had an asbestos inspection. Registering the inspection would reduce the number of complaints filed with DEQ by allowing the agency to quickly provide information to the requestor. This would also allow construction companies to have inspection information before proceeding and would free up program resources.

This may be achieved by:

- Utilize technology to the greatest extent to reduce administrative and enforcement process.
- Use existing web portals / database and “shopping cart” feature for ease of use.

The difficulty factor is considered MEDIUM:

- Maintaining confidentiality of the inspector and owner by only listing the address and inspector ID#.
- Would require state rulemaking to require reporting.
- May require increased funding through fees.

Reference:

- HB434 Section 1. (2)(c) the appropriate timeframe for asbestos project notification and issuance of permits.
- HB434 Section 1. (2)(h) options to streamline the permitting process while still protecting public health and safety.

R5. DEQ should provide an online service to apply for annual permits.

Reason for this recommendation:

This would ease the process for those interested in applying for an annual permit. Currently, annual permits are the only permits that are not available online.

This may be achieved by:

- Allow for credit card payments without transaction fees.

The difficulty factor is considered MEDIUM:

- The state does not allow PDF's to be uploaded through its website for security reasons.
- There are only seven annual permits, so the cost to implement this may outweigh the benefit.

Reference:

- HB434 Section 1. (2)(h) options to streamline the permitting process while still protecting public health and safety.

R6. DEQ should work with stakeholders to encourage an asbestos inspection check-box system for any agency that issues building or related permit actions.

Reason for this recommendation:

Public awareness and compliance would increase if agencies issuing building or related permit actions provided information regarding the State's asbestos requirements to all applicants prior to issuing their permits.

This may be achieved by:

- Research how other states utilize check-box systems.
- Work with State Building Codes Bureau to incorporate asbestos inspections with its permit review.
- Consider the feasibility of revising state statute and rule for a required check-box system.
- Provide incentives for using a check-box system.
- Involve local government in developing the check-box system.

The difficulty factor is considered MEDIUM:

- Stakeholders necessary to disseminate information may not prioritize this effort.
- May be difficult to provide incentives to accomplish.
- May receive resistance from local government.
- May require an intra-governmental agreement.

Reference:

– HB434 Section 1. (2)(h) options to streamline the permitting process while still protecting public health and safety.

R7. DEQ should continue to provide a fee discount for individuals who simultaneously apply for multiple asbestos accreditations.

Reason for this recommendation:

The regulated community has requested that the simultaneous discount remain in place in administrative rule in order to help promote professional development for those involved in the field of asbestos.

This may be achieved by:

- Continue this fee discount through existing processes and current application conditions.
- Revise draft asbestos fee rule to ensure consistency with this recommendation.

The difficulty factor is considered MEDIUM:

- Prioritizing limited computer programming resources.
- Modifying existing website for maintenance purposes.
- Modifying the asbestos fee rule is within the control of the ACP.

Reference:

– HB434 Section 1. (2)(f) appropriate funding options.

R8. DEQ should adopt a voluntary low-cost registration process for abatement contractors when they perform non-permitted asbestos projects, allowing them to proceed without delay if a non-regulated project becomes regulated.

Reason for this recommendation:

Provides an 'insurance policy' so work is not delayed if asbestos is discovered or non-friable asbestos becomes friable. Currently, the contractor has to wait the NESHAP mandated 10 working days before work could resume. This will also apply to small projects as defined in statute.

This may be achieved by:

- Create a voluntary, low-cost on-line notification system for abatement contractors because it would satisfy NESHAP 10-day notification requirement and small projects as defined in statute.
- Promote this voluntary notification system in DEQ's education and outreach campaign.

The difficulty factor is considered MEDIUM:

- Competing agency priorities within DEQ to develop a notification system.
- Modifying state rules requires agency resource priority.
- Modify the draft fee rule to include this voluntary notification system.

Reference:

- HB434 Section 1. (2)(b) the appropriate types of projects and the size of structures subject to permitting.
- HB434 Section 1. (2)(d) whether a registration program is appropriate for small scale projects.

R9. DEQ should increase compliance by allocating more staff time toward identifying non-compliance and taking the appropriate enforcement actions.

Reason for this recommendation:

The regulated community has asked DEQ to include the inspection of non-permitted and suspect facilities in addition to permitted facilities.

This may be achieved by:

- Hire temporary staff or student interns to focus on non-compliant operators.
- Re-prioritize asbestos program activities – allocation internal resources accordingly.
- Revise internal enforcement process to get more offenders to the penalty phase.
- Establish an escalating fine schedule for formal enforcement actions.
- Establish an ACP process for escalating compliance protocols using significance criteria.
- Continue to build positive relationships with compliant customers.
- Explore staff cross-training opportunities.
- Explore additional FTE for ACP.
- Continue to explore means to increase compliance.

The difficulty factor is considered MEDIUM:

- Competing with internal agencies priorities.
- Developing / revising enforcement process for asbestos with limited enforcement staff time.
- Consistency in agency enforcement process – may be legal challenges.
- Fees collected mandates that ACP inspect only regulated facilities. However, ENFD may also inspect non-regulated, suspect facilities.

Reference:

– HB434 Section 1. 2)(e) the scope of the department's enforcement and cleanup authority.

Table 1.0 Recommendations by HB434 Directives

HB434 Section 1. (2)	# of Times Referenced	Recommendation #	Level of Effort	Focus Area Group
(a) regulatory thresholds for permits and whether a tiered permitting system is appropriate;	1	R1	Medium	R1 - State and Federal Regulations
(b) the appropriate types of projects and the size of structures subject to permitting;	2	R2 R8	Medium Medium	R2 - State and Federal Regulations R8 - Permitting (Funding)
(c) the appropriate timeframe for asbestos project notification and issuance of permits;	2	R4 R8	Medium Medium	R4 -Enforcement & Cleanup R8 -Permitting
(d) whether a registration program is appropriate for small scale projects;	2	R4 R8	Medium Medium	R4 – Enforcement & Cleanup R8 - Permitting
(e) the scope of the department's enforcement and cleanup authority;	1	R9	Medium	R9 - Enforcement & Cleanup
(f) appropriate funding options;	1	R7	Medium	R7 - Funding
(g) the relationship between federal and state authority over various issues related to asbestos control and methods to clarify conflicts;	2	R1 R2	Medium Medium	R1 - State and Federal Regulations R2 - State and Federal Regulations
(h) options to streamline the permitting process while still protecting public health and safety;	4	R2 R4 R5 R6	Medium Medium Medium Medium	R2 - State and Federal Regulations R4 - Enforcement & Cleanup R5 - Permitting R6 - Permitting
(i) any other issues related to asbestos regulation considered appropriate by the advisory group.	3	R3 R6 R7	Medium Medium Medium	R3 - State and Federal Regulations R6 - Permitting R7 - Funding

Potential Levels of Effort for DEQ and Other Entities

