

**TO: Asbestos Control Program Interested Persons**

**FROM: Asbestos Control Program  
DEQ Waste & Underground Tank Management Bureau**

**DATE: April 11, 2014**

**RE: Advanced Notice of Proposed Rule Making for 2014 Asbestos Rule Revisions**

The Asbestos Control Program (ACP) is considering technical corrections and fee changes to its rules. This summary of potential changes is being shared with all stakeholders to provide them with early notice and to solicit input and comment on the potential changes prior to the official rulemaking effort. ACP believes this process will result in a better set of rules. The Montana Administrative Procedure Act establishes the process all agencies must follow when changes to administrative rules are proposed. The timeline for development of the ACP official final rule making is anticipated to take place this summer.

ACP will consider all stakeholder comments over the next few months and develop a draft rule for review by DEQ legal staff for a notice in the Montana Administrative Register (MAR) this fall. A public hearing will be scheduled 30 days after the initial notice is published in the MAR and there is a specific, formal written public comment period that closes five business days after the hearing. MAPA allows agencies six months from the date of the hearing to adopt a final notice, but it is ACP's hope that this early outreach effort will result in a consensus rule package that shortens the time between introduction and adoption.

In order to assure your early comments are considered in the development of official notice, please provide any comments or suggestions to ACP by **May 30, 2014**. Electronic comments can be sent to: [deqacponline@mt.gov](mailto:deqacponline@mt.gov). You may also submit comments through the mail addressed to: DEQ ACP, P.O. Box 200901, Helena, MT, 59620-0901.

This early notice does not replace the official process and all stakeholders are encouraged to comment and provide suggestions during the formal hearing and comment period. As background for the advance notice, ACP has administered significant adjustments in its program operation since its rule change in October of 2011. On-going discussions with and questions from the regulated community over the past three years identified areas where the rules need to be changed to ensure the equitable, consistent, and workable implementation of the program.

The ACP is considering changes to five broad areas of its rules, including, but not limited to: fees, inspection and sampling, accreditation, clearance, and administrative or typographical corrections. Potential changes to each topic are generally discussed below, followed by suggested questions for stakeholders to consider for offering comment and discussion.

### Summary of Potential Changes to Fees

In order to ensure adequate funding for the program and to remove the potential for ambiguity, the ACP needs to revise its fee structure. At this time, the program is considering two approaches. The first option would be to retain the present assessment of the 10% of the contract charge, but eliminate the non-associated cost provision. The second option being considered is a new volume-based approach based upon square or linear feet of asbestos-containing material removed.

#### Questions to Consider for Comment

- (1) Do you have any suggestions as to how the ACP could modify its fee rules to ensure adequate funding and remove the possibility of ambiguity?
- (2) What fee structures have you seen in other states or jurisdictions that could work in Montana?
- (3) What approach would be most equitable while still generating enough revenue to operate the program?

### Summary of Potential Changes to Inspection and Sampling Requirements

The ACP has received several questions and comments about its inspection and sampling requirements, usually about the appropriateness of the required sample number given the size of the area of interest, or the applicability of the requirement to non-building type structures. The universe of non-building-type facilities is quite large and extremely diverse, i.e., bridges, water towers, etc. The ACP is considering the addition of an alternate inspection provision, provided the inspection and sampling methods submitted by the inspector are equivalent to those already required and approved in advance by the program.

#### Questions to Consider for Comment

- (1) Do you have any suggestions as to how the ACP could modify its inspection and sampling requirements to allow representative alternative procedures and results, especially to non-building-type facilities?
- (2) How can the ACP better harmonize the NESHAP and AHERA inspection and sampling approaches to adequately and efficiently characterize suspected asbestos-containing material?
- (3) Do you have an asbestos-containing material sampling and analysis plan and results that you could share with the ACP?

### Summary of Potential Changes to Accreditation

The ACP has noted several deficiencies in its accreditation rules. For example, the program is considering clarifying how an instructor may renew approval, providing for course approval expiration, training course record keeping, and establishing criteria and procedures for withdrawal of course approval.

#### Questions to Consider for Comment

- (1) Do you have any suggestions as to how ACP could clarify its accreditation rules, particularly with respect to instructor renewal and course record keeping?
- (2) How do you think ACP can best comply with the Model Accreditation Plan's requirement to establish criteria and procedures for withdrawal of course approval?
- (3) What do you think is a reasonable period for a course to be valid before it expires?

### Summary of Potential Changes to Clearance Requirements

The ACP has noted there are instances when several projects are conducted within the same containment or work area, and that the requirement for a clearance at the conclusion of each step is not practical. The program is considering an amendment to the clearance requirement to defer the clearance of the project as a whole to the final step or action.

#### A Question to Consider for Comment

- (1) Do you have any suggestions as to how ACP could clarify its clearance rules?

### Summary of Potential Administrative and Typographic Changes

The ACP has also noted several administrative changes it would like to address in the up-coming rule effort. For the most part, the changes would not be substantive, but typographic or clerical in nature. The substantive change would be to reduce the record keeping requirement from 30 years to three years. The 30-year retention period is an OSHA requirement that was missed during the 2011 Gade-related rule making effort. An example of a non-substantive change to be proposed would be the addition of the outline number of "Unit I" in the citation of Appendix C of the MAP in the course requirements because the complete cross-reference was inadvertently omitted from the rule.

#### Questions to Consider for Comment

- (1) Do you have any suggestions for administrative or typographic changes to be made in the upcoming rulemaking?

Thank you for your attention to this advance notice. The ACP believes stakeholder participation is critical in all rule making and appreciates the time and effort you invest in providing early advice and comment on the anticipated changes noted above.