

NOISE, ASBESTOS CONTROL,
METHAMPHETAMINE CLEANUP

Subchapter 3

Asbestos Control

17.74.301 APPLICABILITY AND PURPOSE (1) Except as otherwise specifically provided, this subchapter applies to all persons or entities engaged in an asbestos-related occupation, persons in charge of asbestos projects, persons engaged in facility demolition or renovation activities, and persons who offer course work for accreditation of persons engaged in asbestos-related occupations.

(2) The purpose of these rules is to regulate and establish criteria for certain asbestos practices and to require statewide standards for accreditation of persons in asbestos-related occupations, for approval of course work, and for a fee and permit system.

17.74.343 RECIPROCITY ~~(1) The department may accredit a person in an asbestos-related occupation who is accredited in another state. Upon receipt of an application for accreditation based upon accreditation requirements of the state where the applicant is accredited, the department shall evaluate the requirements for accreditation of the other state, and accredit the person if the requirements in the other state are at least as stringent as the accreditation requirements under this subchapter.~~

REASON: The department proposes repealing 17.74.343 as the accreditation requirements, for both in-state and out of state persons, are more appropriately and consistently, covered under 17.72.362.

Rules 17.74.344 through 17.74.349 reserved

17.74.350 INCORPORATION BY REFERENCE -- PUBLICATION DATES

(1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2019 2022, edition of the Code of Federal Regulations (CFR).

~~(2) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR may also be accessed electronically at: <https://www.gpo.gov>. Materials adopted and incorporated by reference in this subchapter are also available for public inspection and copying at DEQ, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.~~

REASON: The department proposes to amend (1) to adopt the most current version of the CFR, maintaining parity with federal regulations. This allows the department to comply with 75-2-503(1), MCA; meet federal stringency requirements; and maintain the state program's EPA delegation.

Subsection (2) was added in 2020 as part of MAR Notice No. 17-410 to inform the public where it can access regulations incorporated by reference in this subchapter. However, 17.74.351(2) already contains this information. Accordingly, subsection

(2) was unnecessarily added in 2020 and is proposed to be removed in this rulemaking.

17.74.351 INCORPORATION BY REFERENCE (1) ~~For the purposes of this subchapter~~ Except as provided otherwise in this subchapter, the department adopts and incorporates by reference:

(a) 40 CFR 61, subparts A and M, pertaining to national emission standards for hazardous air pollutants (NESHAPs) for asbestos, with the following exception:

(i) ~~40 CFR 61.145(a)(2) is not incorporated by reference.~~

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, ~~fourth~~ fifth edition, ~~August 1994~~ December 2017, which contains a description of the 7400 Analytical Method for detecting asbestos and other fibers by phase contrast microscopy (PCM) ~~and a description of the 7402 Analytical Method for detecting asbestos by transmission electron microscopy (TEM); and~~

(c) Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116 (1993).

(d) 40 CFR Appendix A to Subpart E of Part 763 – Interim Transmission Electron Microscopy Analytical Methods – Mandatory and Nonmandatory – and Mandatory Section to Determine Completion of Response Actions.

(e) The following section of 40 CFR 763 Asbestos Hazard Emergency Response Act (AHERA) Model Accreditation Plan (MAP) Appendix C to Subpart E:

- (i) section B.1, Workers;
- (ii) section B.2, Contractor Supervisor
- (iii) section B.3, Inspector;
- (iv) section B.4, Management Planner; and
- (v) section B.5, Project Designer.

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 512-1800. The CFR can also be accessed electronically at www.gpoaccess.gov/cfr/index.html.

REASON: The department proposes to amend (1) to utilize legal language granting flexibility to the incorporated reference documents when that flexibility is provided in rule. The department is proposing to strike (1)(a)(i) as this information is addressed in 17.74.353(1)(a) (permit requirements) and is not necessary here. The proposed amendments to (1)(b) would adopt the current version of the NIOSH Manual of Analytical Methods to maintain parity with federal regulations and to incorporate updates in the scientific process for analyzing asbestos fibers. The department also proposes to strike language in (1)(b) incorporating the 7402 TEM method, as the department is proposing to remove this method from 17.74.357 and will no longer need to be incorporated. The department has proposed adding the TEM method prescribed in 40 CFR 763, Subpart E, Appendix A to (1)(d). Adding this method increases quality assurance, fiber counting requirements, and strictly establishes set-up, sampling, and analysis methods.

17.74.352 DEFINITIONS For purposes of this subchapter, ~~the following definitions apply and unless otherwise provided, the following terms have the meanings given to them in this rule. The terms must be used in conjunction with the definitions in 75-2-502, MCA, and 40 CFR 61.141:~~

~~(1) "Amended water" means water to which surfactant (wetting agent) has been added to increase the ability of the liquid to penetrate ACM.~~

~~(1) "Alternate work practice" means proposed alternative control measures, methods for clearing asbestos projects, or work methods other than those specified in this subchapter that are at least as stringent as the methods required in this subchapter.~~

(2) "Annual base amount" means the amount of regulated asbestos-containing material, up to 25,000 square, 25,000 linear, or 25,000 cubic feet or any combination thereof, that an annual asbestos project permit holder may disturb or remove under an annual asbestos project permit during the year the annual permit is in effect.

(3) "Approved asbestos disposal facility" or "disposal facility" means a licensed Class II or Class IV landfill as described in ARM 17.50.504.

(4) "Asbestos-containing material (ACM)" means any material containing more than one percent asbestos.

(5) "Asbestos-containing waste" has the meaning given for "asbestos-containing waste materials" in 40 CFR 61.141.

(6) "Asbestos Contractor/Supervisor means an individual with the requisite training and credentials to supervise an asbestos project and the personnel conducting an asbestos project.

~~(6)(7)~~ "Asbestos inspector" means ~~any person who~~ an individual with the requisite training and credentials to inspect a facility for the presence of asbestos-containing material.

~~(7)(8)~~ "Asbestos management planner" means ~~any person who develops an individual with the requisite training and credentials to develop plans for the management of asbestos-containing material under the Asbestos Hazard Emergency Response Act.~~

~~(8) "Asbestos project" has the meaning given in 75-2-502(3), MCA. "Pipe," as the term is used in this definition and 75-2-502(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly covers the inner or outer surface of the pipe.~~

(9) "Asbestos project contractor" means any person who contracts to perform an asbestos project for another person.

~~(10) "Asbestos project contractor/supervisor" means any person who supervises asbestos projects and the personnel who conduct asbestos projects.~~

~~(11)(10)~~ "Asbestos project designer" means ~~a person who develops an individual with the requisite training and credentials to develop the plans, specifications, and/or designs for an asbestos project.~~

~~(12) "Asbestos project worker" means any person other than those listed in (6) and (8) through (10) who is engaged in an asbestos project, and who encapsulates, encloses, removes, repairs, renovates, places in new construction, or demolishes asbestos, or transports or disposes of asbestos-containing wastes.~~

~~(13) "Asbestos-related occupation" has the meaning given in 75-2-502(4), MCA.~~

~~(14)(11)~~ "Asbestos unit measurement (AUM)" means each unit of asbestos-containing material that may be disturbed or removed either in square, linear, or

cubic feet or any combination thereof. The unit of measure (square, linear, or cubic feet) will be selected, for AUM calculation purposes, based on the configuration of the material, pre-abatement, as described in the asbestos inspection report, or executed contract document.

(12) "Asbestos worker" means an individual with the requisite training and credentials to handle asbestos-containing materials during an asbestos project.

(15) "Background level" means:

—— (a) the concentration of asbestos in a comparable environmental setting at or near an asbestos project site; or

—— (b) the concentration of asbestos that provides a defensible reference point to evaluate whether or not a release at the asbestos project site has occurred.

(16)(13) "Building or other structure" as used in the definition of "asbestos project" in 75-2-502, MCA, has the meaning given for "facility" in 40 CFR 61.141.

(17)(14) "Cubic foot" means a unit of volume for three-dimensional materials, such as insulation, equal to one foot in length, width, and height. This measurement may only be used when the depth of the material exceeds three inches or cannot be otherwise calculated.

(18) "Demolition" has the meaning given in 40 CFR 61.141.

—— (19) "Department", as defined in 75-2-502(5), MCA, means the Department of Environmental Quality, provided for in 2-15-3501, MCA.

—— (20) "Emergency renovation operation" has the meaning given in 40 CFR 61.141.

(21) "Encapsulation" means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant). This definition does not include the repainting of a previously painted and undamaged ACM surface primarily to improve the appearance of the surface.

—— (22) "Enclosure" means an airtight, impermeable, permanent barrier around ACM to prevent the release of asbestos fibers into the air.

—— (23) "Engaged in an asbestos-related occupation" means:

—— (a) conducting an asbestos inspection pursuant to ARM 17.74.354;

—— (b) creating a project design pursuant to ARM 17.74.355; or

—— (c) engaged in any activity for which an asbestos project permit is required under this subchapter.

(24) "Facility" has the meaning given in 40 CFR 61.141.

(25)(15) "Friable" means able to be crumbled, pulverized, or reduced to powder by hand pressure when dry.

—— (26) "Glove bag" has the meaning given in 40 CFR 61.141.

(27)(16) "Homogenous materials" means materials that are uniform in color, texture, and age.

(28)(17) "Inspection" means an activity undertaken in at a facility to determine the presence, or location, and quantities, or to assess the condition, of ACM or suspected ACM, whether by visual or physical examination, or by collecting samples of the material. This term includes reinspection of known or assumed ACM which has been previously identified. The term does not include the following:

(a) inspections performed by employees or agents of federal, state, or local government solely to determine compliance with applicable statutes or regulations; or

(b) visual inspections performed solely to determine completion of asbestos

projects.

~~(29)~~(18) "Layered homogenous materials" means materials in which the elements making up the composition are in the form of layers. This term may only be applied to flooring systems, wallboard systems, or roofing systems.

~~(30)~~(19) "Linear foot" means a unit of length equal to one foot and may only be used for pipe measurement.

~~_____~~(31) "Person" has the meaning given in 75-2-502(6), MCA.

~~_____~~(32) "Regulated asbestos-containing material (RACM)" has the meaning given in 40 CFR 61.141.

~~_____~~(33) "Renovation" has the meaning given in 40 CFR 61.141.

~~_____~~(34) "Repair" means returning damaged RACM to an undamaged condition or to an intact state so as to prevent fiber release.

(20) "Owner or operator" has the meaning given for "owner or operator of a renovation or demolition activity" in 40 CFR 61.141.

(21) "Pipe," as the term is used in this definition and 75-2-502(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly covers the inner or outer surface of the pipe.

(22) "Project design" means a site-specific written plan including specifications, project procedures, containment design/placement, and descriptions of engineering controls that detail the handling of asbestos-containing material during an asbestos project.

~~(35)~~(23) "Square foot" means a unit of area for two-dimensional materials, such as flooring, equal to the area of a square that is one foot in length and width.

~~(36)~~ "Structural member" has the meaning given in 40 CFR 61.141.

~~(37)~~(24) "Surfacing material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials applied to surfaces for acoustical, fireproofing, or other purposes.

~~(38)~~(25) "Thoroughly inspect" means to conduct a facility demolition-specific or renovation-specific asbestos inspection, pursuant to ARM 17.74.354, for the purposes of:

(a) identifying all ACM that potentially may be impacted by the subsequent renovation or demolition; and

(b) determining which requirements of this subchapter, and the Asbestos Control Act codified at Title 75, chapter 2, part 5, MCA, apply to the proposed demolition or renovation activity.

REASON: The department is proposing to refine much of the definitions rule, stressing that section 75-2-502, MCA, and 40 CFR part 61.141 definitions likewise apply to this subchapter.

The department proposes the removal of "asbestos project", "asbestos related occupation", "demolition", "department", "emergency renovation operation", "facility", "glove bag", "person", "regulated asbestos containing material", "renovation", and "structural member" as those terms are already defined within statute or regulations incorporated by reference.

The department proposes to remove the definitions of "amended water," "background level," "encapsulation," "enclosure," and "repair", as those terms are used only in rules that the department is proposing to repeal, making the definitions unnecessary.

The department is proposing to amend the definitions for asbestos-related occupations—asbestos contractor/supervisor, asbestos inspector, asbestos

management planner, and asbestos worker—in two ways. First, the department is proposing to remove the word “project” from the terms being defined (e.g., “asbestos project worker” will become “asbestos worker”). This change would align the terms with how the occupations are described in the Asbestos Control Act and federal regulations. Second, the department is proposing to amend the definitions of asbestos-related occupations to refer to the training and credentials required to be accredited in that occupation. This change aligns the terminology to reflect that found in the EPA’s Model Accreditation Plan.

The department is proposing to add “alternate work practice” in (1) to properly define the term and its scope as it is used repeatedly in rule.

In (3), the department is proposing to add “or disposal facility” to the definition as this term is used synonymously with the defined term.

The department proposes to amend the definition of “inspection” in (17) to clean up the definition and to include reference to quantities in the definition, as inspections under ARM 17.74.354 require determination of quantities of ACM present.

The department proposes to define “owner and operator” in (20), to clearly connect the term to the definition in 40.CFR 61.141, as the full term is not used in the ARM.

The department proposes to make “pipe” its own definition in (21) as it remains useful in the rule and is not otherwise defined in the statute.

The department proposes to add “project design” to (22) to define what information is required by ARM 17.74.355.

The department proposes to remove “potentially” in (25)(a) to reduce redundancy.

17.74.353 APPLICABILITY--ASBESTOS PROJECT REQUIREMENTS

(1) All asbestos projects must be conducted in accordance with the requirements of this subchapter and 40 CFR 61, subpart A and M, with the following exceptions:

(a) the minimum quantities of regulated asbestos-containing material (RACM) specified in 40 CFR 61.145(a)(1)(i) and (ii) and (4)(i) and (ii) do not apply;

(b) for purposes of 40 CFR 61.145(a)(1), (a)(2) and (a)(4), the minimum quantities of asbestos provided in 75-2-502(3), MCA, apply;

(c) in 40 CFR 61.145(b)(1), pertaining to notification requirements, "Provide the department with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, facsimile, email, the department online permitting system, or hand delivery is acceptable, and delivery of the notice is complete when the department receives the notice and the appropriate fee as identified in ARM 17.74.406" is substituted for "Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable";

(d) in 40 CFR 61.145(b)(3), pertaining to the written notice of intention to demolish or renovate, "Notice must be received by the department as follows:" is substituted for "Postmark or deliver the notice as follows:"; and

(e) alternate work practices may be used if approved in writing by the department in advance. Requests for ~~approval to employ~~ alternate work practices must ~~be submitted to the department on a form provided by the department~~

(i) be submitted by the owner or operator on a form provided by the department and include the fee specified in ARM 17.74.406;

(ii) explain why compliance with this subchapter and 40 CFR 61, subpart M is neither practical or feasible; and

(iii) demonstrate that the proposed alternate work practice provides results at least as stringent as the methods required in this subchapter.

(2) For purposes of this subchapter, inspections required by 40 CFR 61.145(a) must be conducted by a Montana-accredited asbestos inspector.

REASON: The department proposes to add subpart A in (1) to correct an inconsistency with 17.74.351 and clarify the NESHAP General Conditions found within subpart A of 40 CFR part 61 apply to asbestos projects. The department proposes language within 1(a) and (b) to reflect the precedence for statutory levels in Montana. The department proposes in (1)(c) to formalize the state online notification services by officially placing its use in rule. In (1)(e), the department is proposing to specify the requirements that must be met for an asbestos project contractor to use alternate work practices. These requirements are reasonably necessary to (a) ensure that alternate work practices are used only in situations where strict compliance with these rules would produce a hardship; and (b) establish that alternate work practices are at least as stringent as the requirements of this subchapter, in order to maintain compliance with the program delegation from EPA.

17.74.354 INSPECTION REQUIREMENTS FOR DEMOLITION AND RENOVATION ACTIVITIES

(1) Prior to any demolition or renovation of a facility, the owner or operator shall ensure the facility or part of the facility where demolition or renovation ~~actions~~ activity will occur is thoroughly inspected by a department-accredited asbestos inspector in accordance with this subchapter.

(2) The owner or operator shall ensure that a copy of the inspection report is kept on site during the asbestos project. The owner or operator shall ensure that the report is kept on site during subsequent renovations or demolition. The inspection report must be made available to the department upon request.

(3) A supplemental amendment or full reinspection is required prior to demolition or renovation activity under the following conditions:

(a) the initial inspection date is greater than three years prior to the initiation of an asbestos project;

(b) the scope of work at the inspected site has changed; or

(c) the inspection requirements under this subpart have changed since the inspection report date.

~~(3)~~(4) A department-accredited asbestos inspector conducting an inspection in accordance with this subchapter shall:

(a) visually inspect the areas that may be affected to identify the locations and estimated quantities of all suspect ACM;

(b) touch all suspect ACM to determine whether it is friable;

(c) collect bulk samples from each surfacing material that is not assumed to be ACM in a statistically random manner that is representative of the surfacing material. Samples must be collected as follows:

(i) at least three bulk samples must be collected from each surfacing material area that is 1,000 ft² or less;

(ii) at least five bulk samples must be collected from each surfacing material area that is greater than 1,000 ft², but less than or equal to 5,000 ft²; and

(iii) at least seven bulk samples must be collected from each surfacing material area that is greater than 5,000 ft²;

(d) collect samples from thermal system insulation as follows:

(i) at least one bulk sample from each area of patched thermal system insulation that is less than six linear or square feet and is not assumed to be ACM;

(ii) at least three random bulk samples from each type of thermal system insulation that is greater than six linear or square feet and is not assumed to be ACM;

~~(iii) no bulk samples where the accredited inspector has determined that the thermal system insulation is fiberglass, foam, glass, rubber, or other non-ACM;~~

~~—— (e) randomly collect at least three bulk samples from all mechanical system insulation and fittings, such as tees, elbows, and valves, that are not assumed to be ACM;~~

(f)(e) randomly collect at least three bulk samples from each type of miscellaneous material that is not assumed to be ACM; and

~~(g) collect at least three bulk samples from any type of non friable suspected ACM that is not assumed to be ACM.~~

(4)(5) For inspections conducted under ~~(3)~~ this rule, the inspector shall ensure that:

(a) bulk samples are analyzed by persons or laboratories with proficiency demonstrated by current successful participation in a nationally recognized testing program such as the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP), ~~the round robin for bulk samples administered by the American Industrial Hygiene Association (AIHA),~~ or an equivalent testing program accepted in writing by the department prior to analysis;

(b) ~~except for wallboard system samples,~~ bulk samples are not composited for analysis or during reporting, but are analyzed for asbestos content by polarized light microscopy (PLM) using the "Method for the Determination of Asbestos in Bulk Building Materials" (EPA/600/R-93/116) or another method acceptable to the department; and

(c) the sample analytical report includes:

(i) results of the analysis;

(ii) method of analysis;

(iii) name and address of each laboratory performing an analysis;

(iv) the laboratory's accreditation number;

(v) the date of analysis; and

(vi) the name and signature of the person performing the analysis.

~~(5)~~ (6) For the purposes of an inspection conducted under ~~(3)~~ this rule:

(a) all materials with the exception of glass, wood, and metal are considered suspect material.

~~(a)(b)~~ a material is considered to be ACM if the analytical results of at least one sample collected from that material show that asbestos is present in an amount greater than one percent; and

~~(b)(c)~~ a material is considered not to be ACM only if the analytical results for all samples collected from the material show that asbestos is not present in an amount greater than one percent.

(6) (7) For inspections conducted under ~~(3)~~ this rule, the asbestos inspector shall report the findings in a written inspection report to the ~~owner of the building or the operator conducting the planned demolition or renovation activity~~ owner or operator. The asbestos inspection report must include:

(a) the site of the asbestos inspection;

(b) the scope and purpose of the inspection and how it corresponds to the extent of the planned renovation or demolition activity;

- (c) the date of the asbestos inspection and final report;
- (d) the signature of the accredited inspector conducting the asbestos inspection;
- (e) the inspector's accreditation number and expiration date;
- (f) an inventory of all assumed asbestos-containing and sampled materials;
- (g) all sample locations identified in sufficient detail to allow another individual to duplicate sampling;
- (h) where ACM is located by type;
- (i) the areas where friable material is assumed to be ACM, and areas where non-friable material is assumed to be ACM;
- (j) a copy of the sample analytical report, and the completed and signed chain of custody form specified in (4)(c), with the name and address of each laboratory performing an analysis, the date of analysis, and the name and signature of the person performing the analysis; and
- (k) information on whether it will be necessary to remove any ACM before any activity begins that would break up, dislodge, or similarly disturb the material.
- (l) items (a) through (e) and an indication of the presence of any regulated ACM shall be on the cover of the report and a duplicate of that page shall be on the following page.

~~(7)~~(8) If the inspection required in (1) was not conducted or was improperly conducted prior to commencement of renovation or demolition activities, an inspection must be conducted in accordance with ~~(3)~~ this rule as soon as possible upon discovery of the missing or improper inspection, and before any additional renovation or demolition activities occur, with the addition of the following:

(a) ~~industry-recognized procedures must be employed for sampling and analyzing settled dust to determine the extent of any asbestos contamination. The department will provide a list of acceptable procedures upon request;~~ dust samples must be collected to identify the presence and the extent of contamination at the time bulk samples are collected. If the results of bulk sample testing are positive for ACM, or if any suspect material known to have been at the site is unavailable for analysis, dust samples must be analyzed using current industry standards;

(b) air sampling may not be used by the department-accredited asbestos inspector as the sole means of evaluating whether asbestos is present; and

(c) the department-accredited asbestos inspector shall summarize sampling and analytical procedures and evaluation findings in a written report. A recommendation on whether a new or continued asbestos project is necessary based on the evaluation must be included in the written report. The report must be submitted to the department for review and approval before any further renovation or demolition work occurs. Pending department approval will not affect the ability of the owner or operator to initiate cleanup under the provisions of an emergency notification.

~~(8)~~(9) The department may conduct its own asbestos inspection if it deems an inspection conducted under ~~(7)~~ (8) is deficient.

~~(9)~~(10) An inspection conducted under ~~(7)~~ (8) does not excuse any failure to complete the inspection required in (1).

REASON: The department is proposing to amend ARM 17.74.354 to address inspection requirements for demolition and renovation activities. The department proposes to change “action” to “activities” in (1) to be consistent with language throughout the rule and use language familiar to the asbestos industry.

In (2) the department proposes a similar change to include “operator”,

consistent with changes within definitions and throughout rule.

The department proposes adding (3) to clarify the requirement that the inspection report used by contractors represents the facility's current conditions and the condition of the materials. This amendment is necessary to address older inspections that may be subject to multiple variables, such as changes in rule, changes in the integrity of the building materials, changes in the quantity of the building materials, and are no longer compliant or suitable for their intended purpose. Supplemental inspection reports prevent unknown exposure to asbestos and ensure that facilities are "thoroughly inspected" as required in 40 CFR 61.145.

The department is proposing to add "and estimated quantities" to (4)(a) because this is an essential piece of information in determining the applicability of subsequent rule requirements. The department is proposing to add clarifying language to (4)(d)(i) to define the size of a "patched thermal system insulation" area. The department is proposing to strike (4)(d)(iii), as these materials are not found in 17.74.354(6)(c) and require sampling. The department is proposing to strike (4)(e) and (4)(g) from 17.74.354 because they do not offer additional clarity to performance of a "thorough inspection" and are unnecessary. The department is proposing to strike language in (5)(a) as complying with quality assurance testing remains under the authority of the nationally recognized testing program.

The department is proposing to strike "except for wallboard system samples" from (5)(b), to remove any exception for composited analysis. The EPA register that provides additional clarification on this subject are all based on the federal trigger levels of 160 square feet, 260 linear feet or 35 cubic feet. The trigger levels in Montana are much lower, and many of the considerations that have been used to form the EPA determinations are not applicable in Montana.

In (6)(c), the department is proposing to add "with the exception of glass, wood, and metal" to refine that the materials considered suspect for asbestos are consistent with EPA.

The department proposes to amend (7) to be clearer and more concise with the intent of inspection preparation. The department is proposing to add "and the date of the final report" to (7)(c) to require that the date of onsite activities and report completion are separate, this verifies accreditation and verifies the date of materials being observed. The department proposes adding language to (7)(g) to require an adequate description of the sampling location if an inspection must be repeated or verified, duplication of sample results occasionally is attempted, and this provides the best opportunity to achieve similar results. The department proposes to amend (7)(j) to include the completed chain of custody and delete the specified information listed. In (7)(l), the department proposes requiring the cover page of the inspection report to contain certain information and for there to be included to copies of the cover page so that one copy may be torn off and provided to the disposal facility where asbestos-contaminated waste is being disposed. Though stakeholder discussions, the department believes that this process will allow for more efficient and accurate screening of asbestos-contaminated waste as disposal facilities.

The department is proposing to amend language in (8)(a) to specify that while doing the initial inspection, the accepted procedure will be dust sample collection at that time, analyzed if rule specifies. In (8)(c), the department is proposing to add language to clarify that while the department must review and approve a report under this subsection, action required to clean the site under an emergency notification may proceed.

NOTIFICATIONS (1) Pursuant to 40 CFR 61.145, a person may not conduct demolition activities without a demolition notification submitted to the department.

~~(4)(2)~~ Pursuant to 75-2-511, MCA, a person may not conduct an asbestos project without a permit issued by the department, or violate the conditions of the permit.

~~(2)(3)~~ ~~The asbestos project contractor or the owner or operator of the facility where an asbestos project is to be conducted~~ owner of operator shall submit to the department, on a form provided by the department, an application for a project permit that contains the following:

(a) a completed, signed Montana Asbestos Project Permit Application, Transport and Disposal application, ~~and or NESHAP Demolition/Renovation Notification~~ Montana Demolition Notification on a form provided by the department; and

(b) the ~~permit applicable~~ fee required under ARM 17.74.401-17.74.406.

(4) An application for an asbestos project permit and associated fees must be received by the department at least:

(a) five working days prior to the initiation of an asbestos project with quantities pursuant to 75-2-505(1) through (3), MCA, or

(b) ten working days prior to initiating an asbestos project with quantities pursuant to 40 CFR 61.145(a) or the initiation of demolition activities.

(5) False, inaccurate, or misleading information may cause the department to revoke an asbestos project permit or demolition notification.

~~(3)(6)~~ If an application submitted under this rule is deficient or incomplete, the department shall attempt to notify the applicant in writing of the information necessary to complete the application. If the department has not received the information within ~~ten~~ two days from the date of the written notice ~~deficiency letter~~, the application will be considered withdrawn.

~~(4)(7)~~ A revision of an asbestos project permit or demolition notice is required as soon as possible and must be submitted to the department with any necessary fees under 17.74.406 for the following:

(a) a change in the project's owner or operator;

(b) a change in the renovation contractor, transporter, or disposal facility;

(c) the amount of regulated asbestos-containing material being disturbed changes by at least 20 percent or more from the amount permitted; or

(d) any significant change in the scope of work of the asbestos project conducted at the facility during the project period.

(e) changes to the start or completion date for a permitted activity provided that the conditions of 40 CFR 61.145(b) are met for changes in start dates.

(8) Expired asbestos project permits or expired demolition notifications are void. Any work beyond the expiration date will require a new asbestos project permit or demolition notification pursuant to the requirements of this subchapter.

~~If the dates during which an asbestos project a permitted activity is are to be conducted change, the asbestos project contractor/supervisor, or the owner or operator shall notify the department of the change at least 24 hours prior to:~~

~~—— (a) implementation of the new scheduled date; or~~

~~—— (b) the original scheduled date, whichever comes first.~~

~~—— (5) Within 72 hours after any initial verbal notice to the department of a~~

~~change in the dates during which an asbestos project is to be performed, the permittee shall submit to the department a signed, original written notice of the newly scheduled dates, using an application form provided by the department. If the new dates are substantially different from those specified in the permit, the department may require the permittee to apply for an amendment to the permit.~~

~~_____ (6) The department shall issue asbestos project permits for asbestos projects having a cost of \$3,000 or less within seven calendar days following the receipt of a properly completed permit application and the appropriate fee.~~

~~(7)(9) A copy of the asbestos project permit application, issued permit, project design, and sketch must be posted and maintained on site in a conspicuous location during the asbestos project and made available for examination by department employees or representatives upon request.~~

~~(8)(10) For an asbestos project limited to transportation and disposal, the posting of the project sketch required in (7) does not apply. issued permit must be available with the material being transported.~~

REASON: The department is proposing several amendments to ARM 17.74.355 to refine the department's requirements pertaining to permits issued by the agency. The department is proposing to add "DEMOLITION" to the title of the section to identify that demolition notifications are subject to many of the same requirements as traditional asbestos project permits. Likewise, the department is proposing to add specific language in (1) regarding the submission of demolition notifications to the department as is required under 40 CFR 61.145. The department has proposed streamlined language in (3), consistent with the proposed amendments to definitions and fee rules updated in 2020. In addition, the department proposes to specifically identify the availability of a Montana Transport and Disposal permit as a type of asbestos project permit. Transport and disposal of asbestos containing waste material requires permitting under 75-2-502, MCA, even in cases where asbestos removal does not require a permit

The department is proposing (4) to clearly identify in one location the different advance notice requirements that are otherwise found in statute or incorporated federal regulations.

The department is proposing (5) to specify the circumstances under which incorrect information provided by an applicant may cause the department to revoke an asbestos project permit.

The department proposes to reduce redundancy in (6) by removing the word "deficient". The department is also proposing to change "ten days" to "two working days" for the timeframe for an applicant to provide requested missing information. This prevents a backup of permits awaiting administrative review and decreases review time.

In (7), the department is proposing to identify the circumstances requiring a revision to an asbestos project permit, reducing confusion on the situations that require additional department activity.

In (8), the department proposes to specifically stress that project activity must cease upon permit expiration and to describe the process to be followed if additional activity requiring a permit is desired.

The department is proposing to delete current (6), as this information is in 75-2-503, MCA, and does not need to be repeated in rule.

The department proposed to amend the text of both (9) and (10) to

streamline the on-site paperwork requirements for contractors.

DRAFT

17.74.356 ASBESTOS PROJECT CONTROL MEASURES (1) An asbestos project contractor/supervisor shall be:

- (a) physically present at all times at the work site when ~~regulated~~ permitted work is being conducted on an asbestos project;
- (b) accessible to all asbestos project workers; and
- (c) responsible for ensuring that the asbestos project complies with the asbestos project permit and the project design.

(2) Alternate control measures that are equivalent to those required under this subchapter may be used if written approval is obtained from the department in advance ~~under~~ pursuant to 17.74.353

REASON: In (1) the department proposes to remove "project" to align with changes in definitions and provide consistency throughout the rule. (1)(a) is proposed for revision by the department to remove language associated with regulations outside department scope, and replace with language regarding activity at sites permitted by the department. In (2), the department proposes to add a reference to 17.74.353, which contains the requirements for obtaining department approval of alternate work practices.

17.74.357 STANDARDS AND METHODS FOR CLEARING ASBESTOS PROJECTS AND REQUIREMENTS FOR PERSONS CLEARING ASBESTOS PROJECTS

(1) At the conclusion of any asbestos project conducted in a facility, the owner of the facility or the owner's designee or operator shall ensure that final visual inspection and air clearance sampling are conducted in all asbestos project work areas prior to expiration of the asbestos project permit.

(2) The concentration of asbestos fibers in air clearance samples collected pursuant to (1) must be:

(a) less than or equal to 0.01 fibers per cubic centimeter of air for each of five ~~samples~~ sample collected within the work area, if when analyzed by PCM. ~~The PCM analysis must be conducted~~ Phase Contrast Microscopy (PCM) using the NIOSH 7400 or NIOSH 7402 method; or

(b) less than or equal to the average concentration of 70 structures per square millimeter for each five samples sample collected within the work area, if when analyzed by ~~transmission electron microscopy~~ Transmission Electron Microscopy (TEM). ~~The TEM analysis must be conducted using EPA's interim TEM analytical methods provided in 40 CFR 763, subpart E, appendix A.~~

(3) Final visual inspection and clearance sampling and analysis must be conducted as follows:

(a) a person performing a final visual inspection and final air clearance sampling shall:

(i) observe the entire asbestos project area to verify that the asbestos project contractor has removed all visible asbestos-containing waste, dust, and debris from the work area;

(ii) require any necessary recleaning by the asbestos project contractor and conduct subsequent visual inspections that verify that the asbestos project contractor has removed all ACM identified in the asbestos project permit and related asbestos-containing waste, dust, and debris from the work area; and

(iii) complete a signed, written affidavit verifying that the asbestos project contractor has removed all ACM identified in the asbestos project permit and related

asbestos-containing waste, dust, and debris;

(b) a person collecting final air clearance samples shall:

(i) ensure final clearance air sampling and testing are not performed until after the final visual inspection has been completed in accordance with this rule;

(ii) once the work area has passed the final visual inspection, sweep an air stream from a high-speed blower or equivalent air-blowing device across all surfaces in the work area for a time adequate to disturb air in all areas of the work area prior to beginning final air clearance sampling;

(iii) ensure the air is continually agitated, utilizing one 20-inch box fan or its cubic feet per minute equivalent per 10,000 cubic feet of work area, creating maximum air disturbance in all potentially occupied areas, i.e., continually running fans, during the collection of final air clearance samples. Agitating the air in the work area prior to final air clearance sampling is not required for unoccupied areas such as crawl spaces; and

(iv) immediately after agitating the air in the work area, begin collecting at least five final clearance air samples in the work area, including at least one cassette in each room. ;

~~(c) for an asbestos project with more than a single isolated work area within a large space contained by four walls and a ceiling, the owner or operator of a renovation or demolition activity shall ensure the isolated work areas are sampled by taking at least one air sample within each isolated work area. If more than five isolated work areas are used in a space contained by four walls and a ceiling, at least five aggressive air samples must be collected. The first four air samples must be gathered from those isolated work areas where the greatest potential for asbestos exposure exists; the fifth sample must be taken in the last isolated work area in which the asbestos project occurred;~~

~~(d) for asbestos projects employing glovebags, the owner or operator of the renovation or demolition activity shall have at least one aggressive air sample collected in the immediate area of each glovebag, with at least five air samples collected for each space contained by four walls and a ceiling. If more than five glovebags are used in a space contained by four walls and a ceiling, at least five air samples are required for that space. The five samples must be gathered from areas where the greatest potential for asbestos exposure exists;~~

~~(e)~~(c) the asbestos project may not be cleared approved for general re-occupancy until after the final visual inspection and after the results of all required air clearance samples demonstrate that asbestos concentrations do not exceed the applicable concentration specified in (2);

~~(f)~~(d) persons conducting a final visual inspection and final air clearance sampling and testing shall record:

(i) the names of the asbestos project contractor/supervisor supervising the permitted activity, and the person or persons conducting final visual inspection and final air clearance sampling;

(ii) the name and address of the facility site and location of the asbestos project;

(iii) the number of the asbestos project permit issued by the department;

(iv) the date of final visual inspection and final air clearance sampling;

(v) whether the work area was agressed;

(vi) the number of samples collected, identified in sufficient detail to allow another individual to perform duplicate sampling;

(vii) the laboratory analytical method used ~~type of samples (i.e., PCM or TEM);~~

(viii) the pump flow rate (pre, post, and average), the run time, the total volume of air, the calculations for PCM or for TEM, and the laboratory analytical report;

(viii ix) a statement of whether final visual inspection and final air clearance sampling has documented the completion of the asbestos project;

~~(g)~~(e) the final visual inspection and air clearance sampling report must include the signatures of the project contractor/supervisor and final air clearance sampling person attesting to the completion of the asbestos project; and

(h) the results of the final visual inspection and final air clearance sampling and testing must be maintained by the ~~asbestos project contractor~~ owner or operator and by the person who performed the sampling and must be made available to the department ~~within five working days of a request for the results~~ upon request.

(4) For asbestos projects with final air clearance sampling, the person conducting final air clearance sampling shall:

(a) collect air samples, representative of the entire work area, in accordance with the NIOSH 7400 method for PCM samples or 40 CFR Appendix A to Subpart E of Part 763 for TEM samples. ~~five samples of air, with each sampling at least 1,199 liters of air, by using an air sampling pump capable of drawing a volume that is equal to or greater than 1,199 liters of air through each of the five millimeter filters, at a rate equal to or greater than one liter and less than ten liters per minute for TEM samples and equal to or greater than one liter and less than 16 liters per minute for PCM samples;~~

(b) ensure that the flow rate for each air sampling pump is calibrated at the beginning and end of the sampling period; and

(c) ensure air sampling cassettes are placed four to six feet above the floor at a 45 degree angle down. ~~The cassettes must be uniformly distributed throughout the work area. At least one cassette must be located in each room. If the asbestos project was conducted in more than five rooms, a representative sample of rooms must be selected.~~ Each cassette must be subject to normal air circulation, avoiding room corners, walls, ceilings, obstructed locations, and sites near windows, doors, or vents.

(5) ~~If the background level of asbestos, as identified by the thorough inspection required in ARM 17.74.354(1), is determined to exceed the maximum allowable concentration in (2), the department may issue a written waiver from (3)(e) upon receipt of a written request in advance of the asbestos project.~~

~~(6)~~(5) An asbestos project is considered ~~complete~~ approved for general re-occupancy when the final visual inspection documents no residual visible ACM, dust, or debris is present, and the results of clearance air sampling meet the requirements of (2).

~~(7) Air samples required by this rule may be analyzed only by laboratories accredited by the American Industrial Hygiene Association (AIHA) or laboratories that participate in the AIHA proficiency analytical testing (PAT) program and that have received a "proficient" rating for asbestos PCM samples, or another laboratory accepted in writing by the department. For sampling and sample analysis, a quality assurance program must be implemented as described in the NIOSH 7400 method or another quality assurance program accepted in writing by the department. PAT results must be submitted to the department upon request.~~

~~(8) PCM analyses required by this rule may be conducted only by a person certified in the NIOSH 582 or 582E sample collection and analytical method and who participates in a round robin quality assurance/quality control program for PCM analysts or another certification or quality assurance/quality control program~~

accepted in writing by the department in advance.

~~—(6)~~ PCM samples required under this rule shall be analyzed by a laboratory certified in the NIOSH 582 or 582e and that maintains a “proficient” rating in the American Industrial Hygiene Association (AIHA) proficiency analytical testing (PAT) program. PAT results must be submitted to the department upon request. The department must approve alternate proficiency programs prior to the analysis of PCM samples.

~~(9)(7)~~ TEM sample analyses required by this rule must be conducted by a laboratory accredited by the National Voluntary Laboratory Accreditation Program or a laboratory accredited by an equivalent accreditation program that is accepted in advance by the department in writing.

~~(10)(8) Proposed alternate standards and methods for clearing asbestos projects that provide results at least as accurate as the standards and methods set forth in (1) through (9 7) may be used if approved in advance by the department in writing. Requests for approval to employ alternate must be submitted in advance, to on a form provided by the department. Alternate work practices for clearing asbestos projects may be used if approved in writing by the department in advance. Requests to employ alternate work practices must be submitted to the department in accordance with ARM 17.74.353(e).~~

~~(11)(9)~~ A person performing a final visual inspection and final air clearance sampling:

(a) must be accredited by the department as an ~~asbestos project worker or asbestos project contractor/supervisor~~; and

(b) may not be contractually associated with the asbestos project contractor, and there may not be any common ownership or employment relationship between the person or entity carrying out the asbestos project and the person or entity conducting the final clearance or sampling and analysis operations.

REASON: The department is proposing to amend ARM 17.74.357 to provide clarity and consistency in air clearance methods and requirements before the conclusion of the permitted activity.

In (1), the department proposes to specify that the final air clearance and visual inspections must occur before the permit expiration. In practice, the department has found that some permit holders have been conducting final clearances after expiration of the permit.

The department proposes striking language from (2)(a), which specifies the number of air samples as this is covered within (3)(b). The program proposes eliminating language in (2)(a) that referenced the NIOSH 7402 method and specifically utilizing the analytical method listed in (2)(b). This method increases quality assurance, fiber counting requirements, and strictly establishes set-up, sampling, and analysis methods providing greater accuracy. The department proposes to amend (2)(b) by striking “or equal to the average concentration of” to prevent the averaging of multiple samples. Other changes in (2) are made to improve grammar and readability.

The department proposes changes to (3)(a) to provide information on the qualification required to perform this activity, a change also found as a proposal to (9)(a). The proposed amendments to (3)(b)(iii) are necessary to ensure there is adequate air disturbance for clearance monitoring. Subsections (3)(b)(4) and (3)(d)(5) both require “agitation of air”, and the proposed change to (3)(b)(iii) clarifies

what the department considers adequate “agitation.”

The department is proposing to strike the current (3)(c) and (3)(d), as the department has found these provisions to cause confusion within the regulated industry. The department believes the language within (3)(b)(iv) provides both the required specificity regarding the sampling to be required and allows for professional judgment by the sampler.

In the new (3)(c), the department proposes to replace “cleared” with “approved for general re-occupancy” to improve readability and the use of plain language in the rules.

The department again proposes in (3)(d)(i) to strike “project” from “asbestos project contractor/supervisor” to remain consistent with the definition and to add language clarifying the project permit contractor/supervisors name must be recorded.

The department proposes to amend (3)(d)(vi) to assist the department during its paperwork or site reviews or when conflicting results between inspectors exist. The identification of more accurate sample location information will bolster the ability of affected parties to gain consistent results however does not imply that the initial sample can be duplicated through this method.

The department proposes to amend (3)(d)(vii) to specify the analytical method used rather than the type of cassette to be used, providing more scientific data to the department during reviews of permit paperwork.

The department proposes to insert (3)(d)(viii) to include the pump calculations for the clearances. This is critical to verify when reviewing project information and documents actions taken in (4)(b).

The department proposes minor language and punctuation alterations in (3)(d)(ix) to increase readability, comprehension, and consistency with similar language throughout the rule.

The department is proposing to amend (3)(h) to align recordkeeping and production with the changes to the recordkeeping rule in 17.74.360.

The department proposes to amend (4)(a) to delete the specific sampling requirements from the rule text, as those requirements are already contained within the cited method. The department also proposes language regarding samples being representative of the work area, augmenting the proposal within (3)(b)(v).

The department proposes to strike language in (4)(c) to reduce the redundancy of the specifications and eliminate repetitive language.

The department is proposing to remove the old (5), which allowed the department to waive the requirements in the old (3)(e) if the owner or operator established that background asbestos levels exceeded the requirements of this rule. However, the department recognizes that background asbestos levels can be mitigated within a contained asbestos work area by filtration of the air within the work area. The department believes that the use of filtration to reduce high background asbestos levels in a work area better protects human health and the environment. Therefore, the department is proposing to remove the language that allowed for the issuance of waivers from the requirements in the old (3)(e).

The program proposes to amend the new (5) to be more precise in the rule text. Compliance with the final visual inspection and air clearance requirements in this rule do not necessarily mean an asbestos project has been completed, as there may be additional actions an owner or operation must take to complete an asbestos project after final visual inspection and clearance is done.

The department proposes to replace the requirements in the old (7) and (8) into a succinct, consolidated new (6). The proposed new (6) will streamline the

requirements for PCM sampling analyses and is aimed at addressing confusion by some stakeholders regarding the requirements in the old (7) and (8).

The department proposes to amend terms within (8) and (9) to meet the definition and usage throughout rule and include language reminding applicant to submit fees as is required in 17.74.406.

17.74.358 EMERGENCY RENOVATION OPERATION ASBESTOS PROJECT PERMITS AND ORDERED DEMOLITION NOTIFICATIONS

(1) For an emergency renovation operation, as defined in 40 CFR 61.141, the ~~asbestos project contractor or owner~~ or operator of the facility shall;

~~_____ (a) immediately, no later than the following working day, notify the department by telephone or in person and by submit submitting to the department, on a form provided by the department, a completed application for an asbestos project permit pursuant to ARM 17.74.355 within five working days after the initial notice. a completed emergency notification form and the fee specified in 17.74.406 ensuring the submittal contains all the information required to establish that the conditions for an emergency renovation operation, as defined in 40 CFR 61.141, are met; and~~

~~_____ (b) within five working days of submitting the notification in (a), submit to the department a full asbestos project permit application pursuant to 17.74.355 and additional fees under 17.74.406~~

~~_____ (2) An application for an emergency renovation operation permit must include a description of the emergency renovation operation and must demonstrate that an emergency, as defined in 40 CFR 61.141, existed that prevented the asbestos project contractor or owner of the facility from applying for a permit prior to initiation of the project.~~

~~_____ (2) For ordered demolitions pursuant to 40 CFR 61.145(a)(3), the owner or operator shall submit a completed ordered demolition notification form and the fee specified in 17.74.406, ensuring the submittal contains all the information required to explain why the conditions under 40 CFR 61.145(a)(3) may apply.~~

~~_____ (3) Emergency renovation operations under (1) and ordered demolitions under (2) may commence immediately after the notification and fee for those activities are submitted to the department.~~

REASON: The department is proposing to amend the 17.74.358 title to accurately describe the content as including “ordered” demolitions.

The department proposal in (1)(a) serves to maintain consistency with the definitions and the terms usage throughout the rule. The department proposes to replace “immediately” with “No later than the following working day” to have a clearer period defined where “immediately” was subjective. The department proposes to break former (1) into two individual notification/permitting stages (a) and (b) for emergency renovation operations. While existing rule requires immediate notification followed by the submittal of an asbestos project permit application, the department believes that breaking the requirements into discrete subsections will reduce the likelihood that (b) will be overlooked by applicants. The department is proposing to add a section addressing ordered demolitions in (2). Ordered demolitions are addressed in the incorporated NESHAP; the requirements proposed in (2) address what must be

submitted to the department with 40 CFR 61.145(a)(3) applies. The department is proposing to add language in (3) to clarify that activities surrounding an emergency renovation or ordered demolition may begin immediately and do not need to await the issuance of a department permit.

17.74.359 ANNUAL ASBESTOS PROJECT PERMITS (1) An annual asbestos project permit authorizes a facility to conduct asbestos projects within the confines of the facility's controlled area during the year for which the permit is in force. After July 1, 2020, the annual asbestos project permit period is January 1 through December 31.

(2) The owner or operator of a facility may apply to the department for an annual asbestos project permit if the facility:

- (a)(i) continuously employs asbestos project workers; or
- (b)(ii) continuously contracts with outside asbestos project contractors to perform asbestos projects for the facility; and
- (c)(b) maintains an asbestos health and safety program that incorporates standard operating procedures for employees involved in asbestos projects.

(3) An owner or operator conducting asbestos projects under an annual asbestos project permit shall comply with all requirements pertaining to asbestos project notification.

(4) The owner or operator of a facility applying for an annual asbestos project permit shall submit to the department:

- (a) the fee required under ARM ~~17.74.404~~ 17.74.406;
- (b) a copy of the facility's written health and safety program on asbestos; and
- (c) a completed application on a form provided by the department, including:
 - (i) a description of the structure and the asbestos work to be performed;
 - (ii) the name(s) and address(es) of any outside contractor or contractors who will be performing asbestos projects at the facility under the permit;
 - (iii) a signed statement that all work performed under the permit will be performed in accordance with this subchapter;
 - (iv) a signed statement that all work will be performed by persons accredited by the department; and
 - (v) a signed statement that:
 - (A) asbestos-containing waste will be transported to and disposed of at an approved asbestos disposal facility;
 - (B) identifies the transporter of the asbestos-containing waste; and
 - (C) identifies the disposal facility by name and location.

(5) An annual asbestos project permit expires on December 31 of the year in which the permit is issued, unless the facility owner applies for a new annual permit by November 15 of the year the current annual permit was issued, and the department approves the application.

(6) An application for an annual asbestos project permit must:

- (a) indicate the amount of regulated asbestos-containing material proposed to be disturbed or removed during the permit period;
- (b) require the permittee to report any amount of regulated asbestos-containing material disturbed or removed during the annual asbestos project period that exceeds the amount in (a);
- (c) require the permittee to revise the annual asbestos project permit in accordance with (7); and

(d) incorporate by reference any required information that has been previously submitted.

(7) A revision to an annual asbestos project permit is required as soon as possible or within 10 calendar days of the following:

- (a) a change in ~~project contractor or owner~~ or operator;
- (b) a change in renovation contractor, transporter, or disposal facility;
- (c) an alternate work practice request is submitted for department approval in accordance with ARM 17.74.353(1)(e);
- (d) the amount of regulated asbestos-containing material being disturbed ~~exceeds~~ changes the amount in (6)(a) by 20 percent or more; or
- (e) any significant change in scope or magnitude of asbestos projects conducted at the facility during the project period.

REASON: The department proposes to amend (2)(b) by adding “asbestos project” to specify the need to use Montana-accredited contractors who provide consistency in accreditation and requirements for an asbestos project. In (4)(a), the department proposes to update an incorrect reference to our fee rules. In (7)(b), the department proposes to add “addition” to accompany “change” since contractors often add contractors, transporters, and disposal facilities. In (7)(d), the department proposes to strike “exceeds” and replace it with “changes” to maintain consistency with NESHA.

17.74.360 RECORDKEEPING (1) Records of asbestos projects that are being, or have been, conducted must be retained by the owner or operator for at least 30 years and made available to the department upon request.

~~(2) Records must be retained by the and made available to the department by:~~

- ~~(a) the asbestos project contractor/supervisor for the project; or~~
- ~~_____ (b) the owner of the facility in which the project is being or has been conducted if the owner is accredited by the department and is conducting the project without a contractor/supervisor.~~

~~(3)~~ (2) Records of asbestos projects must include, but are not limited to, the following:

- (a) the name, address, and accreditation identification number of the person who supervised each asbestos project, and of each person who worked on the project;
- (b) the location and description of each project and the amount of ACM that was ~~enclosed, removed, repaired, encapsulated, or placed in new construction~~ permitted;
- (c) the starting and completion dates of each ~~instance of enclosure, removal, repair, encapsulation, or placement in new construction~~ permitted activity;
- (d) the name and address of each disposal facility where asbestos-containing waste was deposited ~~for disposal~~;
- (e) a completed waste shipment record from each disposal facility indicating the amount of asbestos-containing waste deposited at the site and the date of the deposit.; and
- ~~_____ (f) the waste shipment records indicating the amount of asbestos-containing waste transported to each disposal facility and the name and location of each facility.~~

REASON: The department is proposing to amend 17.74.360 to strike unnecessary or repetitive language and to define requirements more clearly for recordkeeping. The department proposes to insert "Owner or operator" in (2), which provides consistency with the definitions, continuity of use throughout the document, and eliminates the need for 2(a) and (b). In (3)(b) and (3)(c), the department proposes to strike "enclosed, removed, repaired, encapsulated, or placed in new construction" and replace it with "permitted", consistent with the definition found in MCA 75-2-502. In (3)(d), the department proposed to insert "disposal" which provides consistency with the definitions and continuity of use throughout the document. In (3)(e), the department proposed to insert "completed" to identify that the waste shipment record must be complete with all required information and signatures, this precludes the need for (3)(f) and the department proposes its removal.

17.74.361 DEPARTMENT INSPECTIONS (1) The owner of the facility where an asbestos project is being or was conducted, or a person conducting or in charge of an asbestos project shall:

- (a) afford the department, at all reasonable times, the opportunity to inspect the project site;
- (b) upon request, make records maintained pursuant to this subchapter available to the department for inspection and copying; and
- (c) maintain proof of accreditation and photo identification of all persons involved in the asbestos project. These documents must be available at the project site for the duration of the project and must be made available to the department upon request.

17.74.362 ACCREDITATION REQUIREMENTS FOR ASBESTOS-RELATED OCCUPATIONS (1) Pursuant to 75-2-511, MCA, a person may not:

- (a) engage in an asbestos-related occupation unless accredited in that occupation by the department; or
 - (b) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department.
- (2) A person seeking initial Montana accreditation in an asbestos-related occupation shall:
- (a) successfully complete either a training course approved by the department pursuant to this subchapter, or a course approved by the U.S. Environmental Protection Agency and shall pass an examination approved by the department; and
 - (b) submit to the department a completed application form provided by the department, with the fee required in ARM 17.74.402 17.74.407 and a copy of a certificate of satisfactory completion from the course approved for that occupation.
- (3) The department may accredit a person in an asbestos-related occupation who is currently accredited or certified in another state, provided:
- (a) the applicant has successfully completed a refresher course from a department-approved training provider;
 - (b) the applicant holds an accreditation or certification from an authority delegated to implement an accreditation program at least as stringent as the Model Accreditation Plan; and

(c) the applicant can provide the department with the initial and all subsequent refresher certificates, demonstrating there has not been a lapse in certification over one calendar year from any certificate expiration.

(4) A person seeking accreditation under (3) shall submit to the department:

(a) A complete application on a form provided by the department, and the appropriate fee under 17.74.407;

(b) Documentation showing compliance with (3).

(5) The department may deny, suspend, or revoke accreditation of a person pursuant to 75-2-515, MCA.

REASON: The department proposes to amend 17.74.362 to support the proposed repeal of reciprocity under 17.74.343. The department proposes to add "Montana" in (2) to make clear the authority the department has for issuing accreditations. The department proposes in (3)(a) to include a new requirement for out of state applicants to receive formal training, from a department-approved training provider. This requirement provides the best opportunity for compliance with the Montana Asbestos Control Act by individuals likely unfamiliar with the specifics of Montana rule. The department proposal in (3) would formalize the existing department business process for verifying training certificates for out of state applicants and provide consistency with the MAP regarding lapses in training.

17.74.363 RENEWAL OF ACCREDITATION (1) A person may not engage in an asbestos-related occupation after the expiration of accreditation until accreditation is renewed and applicants have received a copy of their State of Montana asbestos accreditation from the department.

(2) Accreditation for each asbestos-related occupation may be renewed annually on or before the expiration date of accreditation by submitting to the department a completed application form provided by the department, a certificate of satisfactory completion of a department approved refresher course, and the appropriate fee.

(3) An applicant for renewal of accreditation in an asbestos-related occupation, except asbestos ~~project~~-inspector and management planner, shall attend a one-day refresher course approved by the department or EPA for that specific occupation.

(4) For renewal of accreditation as an asbestos ~~project~~ inspector, a person shall attend a half-day refresher course approved by the department or EPA.

(5) Asbestos ~~project~~ management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on asbestos project management planning approved by the department or EPA.

(6) If a person does not apply for renewal of accreditation within one year following the expiration of accreditation, the person must obtain accreditation under ARM 17.74.362 to engage in an asbestos-related occupation.

(7) An applicant for renewal of accreditation as instructor shall attend a refresher course:

(a) taught by another instructor; or

(b) taught by the instructor with three or more eligible students.

REASON: The department proposes to add a line in (1) to indicate that an

accredited individual can perform in an asbestos related occupation only after they receive state authorization, usually in the form of an accreditation card. In (3), (4), and (5), the department proposes to strike "project" from terms redefined within the definition proposals to be consistent with those changes. In (7)(b), the term "eligible" is proposed to be inserted to reflect that the instructor may not consider "eligible" any individuals who have lapsed in certification, or not previously held an initial course when calculating "three" students.

17.74.364 TRAINING PROVIDER REQUIREMENTS (1) Pursuant to 75-2-511, MCA, a person may not offer a training course in Montana for accreditation of persons to engage in an asbestos-related occupation in Montana unless the department has approved the course. A person offering a training course outside Montana also may apply to the department for course approval.

(2) The department shall approve a training course if it meets the requirements ~~listed in ARM 17.74.365~~ under this rule and ARM 17.74.365.

(3) For department approval of a training course, instructors' qualifications must include:

(a) significant academic and/or field experience in asbestos control; and
(b) a cumulative total of three years accreditation in Montana to include current accreditation in Montana for the asbestos-related occupation related to the course to be taught.

——(i) An instructor who is accredited as a contractor/supervisor may teach the asbestos ~~project~~ worker course without current accreditation as an asbestos ~~project~~ worker.

(4) Except for the asbestos ~~project~~ worker course and the refresher courses, at least two approved instructors shall conduct all training courses.

(5) All training course materials and examinations must be submitted to the department for the department's approval. Upon department approval, the training course is approved for a two-year period, beginning January 1 of the year following approval. The department may not accept applications for training course approval before October 1 of the year preceding the two-year training course approval period. A person may apply for approval as a training course provider beginning January 1 of the year following training course approval by submitting the following to the department by November 15 of the preceding year:

(a) a completed written application on a form provided by the department;
(b) a curriculum that includes the course topics specified in this subchapter;
(c) a copy of the course examination and all course materials (written and visual);
(d) a copy of the certification of satisfactory completion to be used for certification at the end of the course;
(e) a list of the proposed instructors who will teach the course along with ~~their resume or other documentation supporting the instructors' qualifications, which must include significant academic and/or field experience in the asbestos control disciplines to be instructed;~~ written documentation of how each instructor meets the qualifications under (3).

(f) a description of hands-on training to be provided in the course;
(g) a course schedule indicating the time allotted for each topic;
(h) the appropriate fee for approval of the course, specified in ARM 17.74.403; and

(i) documentation of EPA course approval if the course has been approved

by EPA.

(6) Training course providers may, at the time of application, request to present refresher courses through an online format at no additional fee. Online refresher courses are subject to the following requirements:

- (a) the course must be presented on a free-to-use virtual platform that utilizes both visual and audio communication, with the instructor present in both visual and audio formats throughout the course;
- (b) the training course provider may excuse students from keeping their cameras or microphones on throughout the class, but periodic check-ins are required to verify course participation;
- (c) notification by the course provider required under (7) shall indicate the course will be conducted virtually; and
- (d) the training provider shall, no later than 24 hours prior to the class, provide the department with online access information to enter the virtual classroom.

~~(6)~~(7) At least ten working days before a course commences, the person providing the training course shall notify the department of the date, time, and location of the course.

~~(7)~~(8) (a) A training course provider shall notify the department at least 45 days in advance of implementing any changes in the content of approved training courses, examinations, or instructors during the two-year course approval period in (5). The department shall approve, deny, or request additional information regarding any proposed change in training course, examination contents, or change in instructor(s) within 45 working days of receiving the notification.

(b) Updates to course content made to reflect changes in state or federal regulations must be made as soon as practicable and do not require department approval, updates made under (b) must be followed by a notification to the department under the timeline in (a).

~~(8)~~(9) Guest speakers at a training course, such as physicians, attorneys, or other asbestos experts, do not need to be accredited in the discipline being taught. However, their presentation must be supervised by the course instructor and the course instructor remains responsible for ensuring that all required information is taught.

~~(9)~~(10) Department personnel may evaluate any training course offered for accreditation in an asbestos-related occupation without paying tuition or the cost of materials.

~~(10)~~(11) Within two working days of completing a course, the training course provider shall submit a course roster to the department. The course roster must identify:

- (a) the name and address of the training provider who provided the course;
- (b) the name of the asbestos-related occupation course completed;
- (c) the date(s) of the class;
- (d) the printed name and signature of at least one course instructor;
- (e) each course participant's signature and printed name;
- (f) each course participant's course certificate number; and
- (g) a statement that each person receiving a certificate has completed the training required for accreditation under this subchapter.

(h) indication on the roster whether each participant's instruction was online or in-person

~~(11) Training provider course approval expires at the end of the two-year approval period established in (5), unless the training provider applies for renewal by November 15 of the year the approval period expires.~~

~~(12) A training provider seeking to renew course approval shall provide the department with the information listed in (5) and pay the appropriate fee as provided in ARM 17.74.408.~~

REASON: The department proposes to amend (2) to clarify that a training course must comply with both this rule and 17.74.365 to be approved by the department. The department proposes to add "Montana" to (3)(b) to make clear that instructors must be accredited in the state of Montana. This change ensures that instructors are familiar with Montana-specific asbestos rules. The department proposes to codify the internal business process assessing accreditation longevity to "academic and/or field experience in asbestos control" by insertion of language in (3)(c). The department proposes the removal of redundant language in (5)(e), instead referencing the qualifications in (3). After receiving stakeholder input regarding virtual training and the necessity to adjust to a virtual environment during the global pandemic, the department proposes (6)(a) through (d) set parameters around virtual courses while addressing the needs of students, trainers, the department, and outside entities. The department proposes the addition of (8)(b) to allow training providers professional discretion to immediately revise training content when federal and state regulations or rules are amended. The department proposes to include (11)(h) to require training delivery method on certificates. The department and other regulatory agencies believe tracking this information will provide added value to future changes. The department disposes deletion of (11) and (12) as the requirements are repetitive and already required under (5).

17.74.365 TRAINING COURSE REQUIREMENTS (1) A training course for accreditation as an asbestos project-worker must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.1, Workers.

(2) A training course for accreditation as an asbestos project contractor/supervisor must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.2, Contractor/Supervisor.

(3) A training course for accreditation as an asbestos project-inspector must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.3, Inspector.

(4) A training course for accreditation as an asbestos project-management planner must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.4, Management Planner.

(5) A training course for accreditation as an asbestos project designer must meet the requirements of 40 CFR 763, subpart E, Appendix C, section B.5, Project Designer.

(6) For purposes of this rule, the phrase "public and commercial building" has the meaning given in the definition of "facility" at ARM 17.74.352.

REASON: The department is proposing to amend ARM 17.74.365 to update language to be consistent with the definitions and the asbestos-related occupation titles as used throughout rule.

17.74.366 TRAINING COURSE EXAMINATIONS (1) The following requirements apply to asbestos-related occupation accreditation training course examinations:

(a) for asbestos ~~project~~ worker, asbestos inspector, and asbestos ~~project~~ management planner training courses, the examination must include 50 multiple choice questions with a passing score of at least 70%; and

(b) for asbestos ~~project~~-contractor/supervisor and asbestos project designer courses, the examination must include 100 multiple choice questions with a passing score of at least 70%.

(2) All examinations must be closed book and consist of a minimum of 10 percent questions based on Montana Code Annotated Title 75 Chapter 2 part 5 and Montana-specific rules in this subchapter.

REASON: The department proposes to strike “project” from “asbestos project worker”, “asbestos project management planner”, and “asbestos project contractor/supervisor” to be consistent with the definitions and the asbestos-related occupation titles as used throughout the rule. The proposed amendment to ARM 17.74.366 is necessary to evaluate comprehension of Montana rules adopted under the Asbestos Control Act by those students attending an initial course.

17.74.367 REFRESHER COURSES (1) A person may not offer a refresher course for renewal of accreditation under ARM 17.74.363 unless the department has approved the course.

(2) Refresher courses must relate to a ~~particular~~ specific asbestos-related occupation and must include review of changes in federal and state of Montana specific regulations, developments in state-of-the-art procedures, and key aspects of the initial training course.

(3) For department approval of a refresher course, a person shall submit to the department, on a form provided by the department, a completed application and the fee specified in ARM 17.74.403 ~~408~~. The application must include:

(a) a description of the subject matter to be taught in the refresher course;

(b) the materials to be used;

(c) a description and example of the numbered certificates to be issued to students who successfully complete the course;

(d) the names of the instructors who will teach the course; and

(e) a description of the instructors' qualifications, which must include academic and/or field experience in asbestos control.

(4) At least ten working days before a refresher course commences, the person providing the training course shall notify the department of the date, time, and location of the course, including whether the course is to take place virtually.

REASON: The program proposes to amend (2) to reinforce the requirement of state-specific regulations in refresher courses. The department must ensure that any contractor that is accredited by the program has been instructed in and has a working knowledge of the necessary state regulations to conduct work safely in Montana. The department proposes to amend (3) to correct the fee reference to 17.74.408. The department proposes to add specific requirements in (4) for refresher course training notifications to the department, and to establish the means of instruction delivery. The department and other regulatory agencies

believe tracking this information will provide added value to future changes.

17.74.368 TRAINING COURSE AND REFRESHER COURSE

CERTIFICATE AND RECORDKEEPING REQUIREMENTS (1) A person providing a training course for accreditation in an asbestos-related occupation shall provide a certificate to all persons who successfully complete the course and the examination. The certificate must be numbered and include:

- (a) the asbestos-related occupation course completed;
- (b) the course participant's name and address;
- (c) the date of the examination;
- (d) the signature of at least one course instructor;
- (e) the inclusive dates of the course;
- (f) the name, address, and telephone number of the training provider who issued the certificate;
- (g) the name and address of the agency that approved the course;
- (h) a statement that the person receiving the certificate has completed the training required for accreditation under this subchapter;
- (i) a statement that the trainee, by name, has successfully passed the examination for the course; ~~and~~
- (j) an accreditation expiration date of one year after the date upon which the person successfully completed the course and examination; and
- (k) a notation indicating whether the course material was presented online or in-person.

(2) A person providing a training course for accreditation or a refresher course for renewal of accreditation in an asbestos-related occupation shall retain:

- (a) copies of all training course materials used, including student manuals, instructor notebooks, and handouts;
- (b) copies of all documents relating to that training course or refresher course issued to that person by the department;
- (c) records that identify the instructors;
- (d) records of the examinations, including:
 - (i) the date of the examination;
 - (ii) the name of the training course;
 - (iii) the name of the person who proctored the examination;
 - (iv) the name of each person taking the examination;
 - (v) each trainee's examination score; and
 - (vi) a copy of the examination; and
- (e) records of all persons who have been awarded certificates, including:
 - (i) their names and certificate numbers;
 - (ii) their certified asbestos-related occupations;
 - (iii) the dates of their training;
 - (iv) the expiration dates of accreditation; and
 - (v) the training location.

(3) A training course provider shall maintain all records required under this rule for at least three years.

(4) A training course provider shall provide EPA and the department with reasonable access to all training records upon request.

REASON: The department proposes adding a requirement for course training

certificates to identify the means of instruction delivery. Acceptance of virtual instruction remains at the discretion of each state and the identification of these courses is being introduced into more state rule text.

17.74.369 TRANSPORTATION AND DISPOSAL OF ASBESTOS-CONTAINING WASTE (1) A person may not transport asbestos-containing waste generated at a facility unless accredited by the department as an asbestos ~~project~~ worker or asbestos ~~project~~ contractor/supervisor or escorted and supervised by a person who is accredited as an asbestos-~~project~~ worker or asbestos ~~project~~ contractor/supervisor.

(2) Prior to transporting or disposing of asbestos-containing waste from an asbestos project, a person shall ~~obtain~~ possess an valid asbestos project permit from the department or apply for and obtain a Montana Transport and Disposal Permit pursuant to 17.74.355.

(3) A person who transports or escorts a vehicle that contains asbestos-containing waste from an asbestos project shall:

(a) maintain proof of accreditation and the asbestos project permit and make it available, upon request, to the department during asbestos-containing waste handling activities;

(b) prior to waste pick up:

(i) obtain assurance from the asbestos ~~project~~ contractor/supervisor that the asbestos-containing waste is adequately wet;

(ii) confirm the asbestos-containing waste is properly packaged in leak-tight containers, or wrappings, except as provided in 40 CFR 61.150(a)(3);

(iii) confirm the contained or wrapped asbestos-containing waste is labeled with the name of the waste generator and the location at which the waste was generated;

(iv) ensure that any vehicle used to transport asbestos-containing waste during the loading and unloading of the waste is marked with signs conforming to the requirements of 40 CFR Part 61, subpart M;

(v) ensure that the waste shipment record form contains all information required by 40 CFR Part 61, subpart M, and record the asbestos project permit number on the form;

(vi) either deposit asbestos-containing waste at a licensed Class II or Class IV landfill facility as soon as practical, or, if asbestos-containing waste is not disposed of as soon as practical, store any asbestos-containing waste in a secure holding facility or location accessible only to asbestos ~~project~~-workers or asbestos ~~project~~ contractor/supervisors accredited by the department; and

(vii) retain responsibility for asbestos-containing waste until the waste is accepted by a licensed Class II or Class IV landfill; and

(c) retain the waste shipment record for at least two years.

REASON: The department proposes to strike “project” from asbestos related occupation terms redefined within the definition proposals to be consistent with those changes in both (1) and (3). The department proposes to amend (2) to clarify an individual must possess a valid permit as the previous language was subjective regarding tense. Within its proposed change to (2), the department wishes to include the Montana Transport and Disposal permit language to clarify permitting option under 17.74.355 for those without a Montana asbestos project permit for removal.

17.74.409 REFUNDS (1) The department shall not refund any fee except as provided in this rule. The department shall review all applicable information in evaluating refund requests.

(2) The department may refund fees unnecessarily paid by an applicant receiving an incorrect permit or accreditation due to an error by the department.

(3) The director, or the director's designee, may authorize a refund of fees due to extenuating circumstances causing the permit or accreditation holder to be unable to use the accreditation or permit because of:

(a) declaration of war or police action;

(b) catastrophic or major natural disaster or man-made event that requires assistance from a state or federal emergency management agency; or

(c) other circumstances for good cause shown.

(4) The department may request documentation from a permit or accreditation holder seeking a refund under this rule.

(5) For refunds granted under (3), the department shall retain an administrative fee of 15 percent.

REASON: The department proposes to amend 17.74.409(3) to allow for the issuance of refunds in other circumstances where good cause exists. In practice, the department has found the existing rule overly restrictive, limiting the department's ability to issue refunds where good cause otherwise exists. The proposed revision would allow the department to issue refunds in such circumstances while placing the burden on the person requesting the refund to establish a sufficient basis for the department to issue the refund. The department also proposes (5) the retention of an administrative fee of 15% of the fee to be refunded to assist the department in covering administrative costs incurred by reviewing and processing refunds. The department will not retain an administrative fee for refunds issued due to an error by the department.

~~17.74.370 ENCLOSURE OF ASBESTOS CONTAINING MATERIAL (1) A person may not conduct asbestos enclosure procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.~~

~~—— (2) When conducting asbestos enclosure procedures for an asbestos project, a person shall:~~

~~—— (a) apply amended water to the ACM to reduce airborne asbestos concentrations;~~

~~—— (b) remove or repair loose or hanging ACM;~~

~~—— (c) ensure that the enclosure material is impact resistant and installed in a manner that provides an airtight barrier;~~

~~—— (d) ensure that the enclosed ACM is conspicuously marked or labeled to warn persons of its presence; and~~

~~—— (e) meet the requirements of ARM 17.74.357.~~

REASON: The department proposes to repeal ARM 17.74.370 because enclosure projects are included in the definition of asbestos projects in MCA, 75-2-502(3). This section is redundant and can be removed.

~~17.74.371 ENCAPSULATION OF ASBESTOS-CONTAINING MATERIAL~~

~~(1) A person may not conduct asbestos encapsulation procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.~~

~~(2) A person conducting asbestos encapsulation procedures for an asbestos project shall:~~

~~(a) apply amended water to the ACM to reduce airborne asbestos concentrations;~~

~~(b) remove or repair loose or hanging ACM;~~

~~(c) field test encapsulants prior to their use by applying each encapsulant to a small area to determine how well the encapsulant works with the ACM to be encapsulated; and~~

~~(d) meet the requirements of ARM 17.74.357.~~

~~(3) Bridging and penetrating encapsulants must be applied to ACM according to the encapsulant manufacturer's specifications.~~

~~(4) Encapsulants must be applied in a manner that does not dislodge or disturb the ACM.~~

REASON: The department proposes to repeal ARM 17.74.371 because encapsulation projects are included in the definition of asbestos projects in MCA, 75-2-502(3). This section is redundant and can be removed.

~~17.74.372 REPAIR OF ASBESTOS-CONTAINING MATERIAL (1) A person may not conduct asbestos repair procedures for an asbestos project unless accredited by the department as an asbestos project worker or asbestos project contractor/supervisor.~~

~~(2) A person conducting asbestos repair procedures for an asbestos project shall:~~

~~(a) apply amended water to the ACM to reduce airborne asbestos concentrations;~~

~~(b) remove or repair loose or hanging ACM;~~

~~(c) ensure that the repaired ACM is sufficiently repaired to prevent the release of asbestos;~~

~~(d) ensure that the repaired ACM is conspicuously marked or labeled to warn persons of its presence; and~~

~~(e) meet the requirements of ARM 17.74.357.~~

REASON: The department proposes to repeal ARM 17.74.372 because encapsulation projects are included in the definition of asbestos projects in MCA, 75-2-502(3). This section is redundant and can be removed.