

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.

17.74.350 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, 2022, edition of the Code of Federal Regulations (CFR).

17.74.351 INCORPORATION BY REFERENCE (1) 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.

(b) National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, fifth edition, 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) 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

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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](http://www.gpoaccess.gov/cfr/index.html).

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

(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.

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

(8) "Asbestos management planner" means 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.

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

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

(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

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credentials to handle asbestos-containing materials during an asbestos project.

(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.

(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.

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

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

(17) "Inspection" means an activity undertaken at a facility to determine the presence, 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.

(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.

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

(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.

(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.

(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.

(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:

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- (a) identifying all ACM that 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.

#### 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, subparts 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 alternate work practices must:
    - (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.

#### 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 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

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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.

(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:

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

(i) at least one bulk sample from each area of patched thermal 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;

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

(5) For inspections conducted under 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), American Industrial Hygiene Association (AIHA), or an equivalent testing program accepted in writing by the department prior to analysis;

(b) 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.

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

(a) all materials with the exception of glass, untreated wood, and metal are

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considered suspect ACM;

(b) a material is 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

(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.

(7) For inspections conducted under this rule, the asbestos inspector shall report the findings in a written inspection report to the 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;
- (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; and
- (l) a single page within the report containing items (a) through (e) and an indication of the presence of any regulated ACM, with a duplicate of that page included within the report.

(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 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) 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

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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. For emergency renovation operations, cleanup may commence upon submission of the report to the department.

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

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

#### 17.74.355 ASBESTOS PROJECT PERMITS AND DEMOLITION

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

(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.

(3) The owner or operator shall submit to the department;

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

(b) the applicable fee required under ARM 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.

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

(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;

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

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(e) a change 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.

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

(10) For an asbestos project limited to transportation and disposal, the issued permit must be available with the material being transported.

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

(a) physically present at all times at the work site when permitted work is being conducted on an asbestos project;

(b) accessible to all asbestos 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 pursuant to ARM 17.74.353.

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 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 sample collected within the work area, when analyzed by Phase Contrast Microscopy (PCM) using the NIOSH 7400 or NIOSH 7402 method; or

(b) less than or equal to 70 structures per square millimeter for each sample collected within the work area, when analyzed by Transmission Electron Microscopy (TEM) 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:

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(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, in all potentially occupied areas, utilizing one 20-inch box fan or its cubic feet per minute equivalent per 10,000 cubic feet of work area, to create maximum air disturbance. 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

(c) the asbestos project may not be 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);

(d) persons conducting a final visual inspection and final air clearance sampling and testing shall record and include in a final written report:

(i) the names of the asbestos 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 aggressed;

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

(vii) the laboratory analytical method used;

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

(ix) a statement of whether final visual inspection and final air clearance

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sampling has documented the completion of the asbestos project;

(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

(f) the results of the final visual inspection and final air clearance sampling and testing must be maintained by the owner or operator and by the person who performed the sampling and must be made available to the department 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 NIOSH 7402 for TEM 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. Each cassette must be subject to normal air circulation, avoiding room corners, walls, ceilings, obstructed locations, and sites near windows, doors, or vents.

(5) An asbestos project is considered 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).

(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.

(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.

(8) 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(1)(e).

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

(a) must be accredited by the department as an asbestos 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.

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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 owner or operator of the facility shall:

(a) no later than the following working day, notify the department by submitting 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 ARM 17.74.355 and additional fees under 17.74.406.

(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) are met.

(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.

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) continuously employs asbestos project workers or continuously contracts with outside asbestos project contractors to perform asbestos projects for the facility; and

(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 17.74.406;

(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;

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- (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 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 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.

**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 of asbestos projects must include, but are not limited to, the following:

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- (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 permitted;
- (c) the starting and completion dates of each permitted activity;
- (d) the name and address of each disposal facility where asbestos-containing waste was deposited; and
- (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.

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 17.74.407 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 the applicant:

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(a) has successfully completed a refresher course from a department-approved training provider; and

(b) holds an accreditation or certification from an authority delegated to implement an accreditation program at least as stringent as the Model Accreditation Plan or 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 complete application on a form provided by the department, with the fee required in ARM 17.74.407 and documentation showing compliance with (3).

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

**17.74.363 RENEWAL OF ACCREDITATION** (1) A person may not engage in an asbestos-related occupation after the expiration of accreditation until they have renewed their accreditation and received a copy of their 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 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 inspector, a person shall attend a half-day refresher course approved by the department or EPA.

(5) Asbestos 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.

**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

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Montana also may apply to the department for course approval.

(2) The department shall approve a training course if it meets the 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 an asbestos contractor/supervisor may teach the asbestos worker course without current accreditation as an asbestos worker.

(4) Except for the asbestos 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 written documentation specifying 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 17.74.408; 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;

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- (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.

(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.

(8) 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. Updates to course content made to reflect changes in state or federal regulations must be made as soon as practicable and do not require prior department approval; however, training course providers shall provide notice of such updates to the department within 45 days.

(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.

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

(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;
- (g) a statement that each person receiving a certificate has completed the training required for accreditation under this subchapter.
- (h) whether each participant's instruction was online or in-person.

17.74.365 TRAINING COURSE REQUIREMENTS (1) A training course for accreditation as an asbestos worker must meet the requirements of 40 CFR 763,

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subpart E, Appendix C, section B.1, Workers.

(2) A training course for accreditation as an asbestos 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 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 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.

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

(a) for asbestos 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 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 the Asbestos Control Act and Montana-specific rules in this subchapter.

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 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 17.74.408. 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

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(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.

#### 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;
- (j) an accreditation expiration date of one year after the date upon which the person successfully completed the course and examination;
- (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;

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- (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.

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 worker or asbestos contractor/supervisor or escorted and supervised by a person who is accredited as an asbestos worker or asbestos contractor/supervisor.

(2) Prior to transporting or disposing of asbestos-containing waste from an asbestos project, a person shall possess 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 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 workers or asbestos 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.

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**17.74.406 PERMIT AND OTHER PROJECT FEES** (1) The applicable fee, provided in (2) Table 1 and (3) Table 2, shall be submitted to the department with submittal of an asbestos project permit application, an annual asbestos project permit application, or a demolition notice.

(2) Table 1 - Permit Fees:

Permit Fee	Amount of Permit Fee
Asbestos project permit	Fees are calculated by AUMs using Table 2
Annual asbestos project permit, authorizes the removal or disturbance of up to 25,000 AUMs during the annual project permit period	\$4,000
Annual asbestos project permit revision authorizes cumulative removal or disturbance that exceeds 25,000 AUMs	\$700 plus AUM fees in Table 2 for regulated asbestos-containing material that exceeds 25,000 AUMs
Demolition notice	\$100
Demolition revisions	\$100
Project permit revision	\$100 plus the additional AUM fees (If there is a change in the AUM range, a person would pay the difference between the two ranges in Table 2)
Emergency renovation notification (ARM <u>17.74.352</u> )	\$300 plus AUM fees in Table 2
Submission of alternate work practice request (ARM <u>17.74.353</u> )	\$100
Voluntary registration for a non-regulated asbestos abatement project (as in (4))	\$100 plus AUM fees in Table 2 if the project becomes regulated and exceeds 100 AUMs
Ordered demolition	\$300
Transportation and disposal permit	\$100

(3) Table 2 - AUM Fees:

AUM Range	AUM Fee Amount
up to 100	\$100
101 to 300	\$150
301 to 500	\$200
501 to 750	\$300
751 to 1,500	\$600
1,501 to 3,000	\$1,000
3,001 to 5,000	\$2,000

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5,001 to 10,000	\$3,000
10,001 to 25,000	\$4,000
25,001 to 50,000	\$6,000
50,001 to 100,000	\$8,000
100,001 or more	\$16,000

(4) Abatement contractors may voluntarily register a non-regulated asbestos project on a department-approved form upon payment of the \$100 voluntary registration fee in Table 1 at (2). If non-regulated materials are rendered regulated because of a voluntarily registered project, the abatement contractor shall notify the department and submit the appropriate fee for any disturbed regulated asbestos-containing material in accordance with Table 2 in (3).

(5) The total fee may not exceed \$16,000 per asbestos project permit or annual asbestos project permit.

(6) For fee assessment, layered homogenous materials may be treated as one layer if a department-accredited asbestos inspector determines and documents the layered homogenous character of the material during an inspection conducted in accordance with ARM 17.74.354.

#### 17.74.407 ACCREDITATION AND ACCREDIATION RENEWAL FEES

1) A person seeking accreditation or renewal of accreditation in an asbestos-related occupation shall pay a fee to the department. The fees for accreditation or renewal of accreditation are:

- (a) asbestos project worker \$200
- (b) asbestos project contractor/supervisor \$200
- (c) asbestos inspector \$200
- (d) asbestos management planner \$200
- (e) asbestos project designer \$200
- (f) out-of-state reciprocity \$250

(2) For accreditation based on completion of an initial training course that has been approved by another state having accreditation requirements at least as stringent as Montana's, a person shall pay the out-of-state reciprocity accreditation fee in (1)(f).

(3) A person seeking accreditation or renewal of accreditation in more than one asbestos-related occupation, on the same renewal application, shall pay a fee of \$385. This discount is not available for accreditation based on out-of-state reciprocity.

17.74.408 COURSE APPROVAL AND RENEWAL FEES (1) After July 1, 2020, a person shall pay to the department \$2,000 per course for approval of an initial training course for accreditation in an asbestos-related occupation, pursuant to ARM 17.74.362, or for approval of a refresher course for renewal of accreditation in an asbestos-related occupation, pursuant to ARM 17.74.363.

(2) A person shall pay a renewal fee of \$300 per course to the department when

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the person has received department approval of an initial training course for accreditation in an asbestos-related occupation on or before July 1, 2020 that the person intends to continue to provide after July 1, 2020. The initial course renewal fee is due two years from the training course approval date.

(3) A person shall pay a refresher course renewal fee of \$200 per course to the department when the person has received department approval of a refresher course for accreditation in an asbestos-related occupation on or before July 1, 2020 that the person intends to continue to provide after July 1, 2020. The refresher course renewal fee is due two years from the refresher course approval date.

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.