



NATIONAL CONFERENCE of STATE LEGISLATURES

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To:  
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Subject: State Asbestos Enforcement

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Asbestos is regulated under federal and state law.

### The Federal Framework

At the federal level, Congress amended the Toxics Substances Control Act (TSCA) to include the Asbestos Hazard Emergency Response Act of 1986 (AHERA) and the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA) (TSCA Title II). These two acts apply to asbestos in schools (AHERA), and commercial and public buildings (ASHARA). Asbestos in the outdoor air is regulated under the Clean Air Act by the U.S. Environmental Protection Agency through the National Emission Standards for Hazardous Air Pollutants (NESHAP). The Occupational Safety and Health Administration (OSHA) implemented protection standards for those working with asbestos.

The five major federal asbestos statutes and regulations used by states are: OSHA's Construction Standards (OSHA 29 C.F.R. 1928.58); the OSHA General Industry Standards (OSHA 29 C.F.R. 2910); the EPA's Worker Protection Rule (EPA 40 C.F.R. 763); the EPA's NESHAPs (EPA 40 C.F.R. 61); and EPA's AHERA and ASHARA rules (EPA 40 C.F.R. 763).

Each of these rules may be delegated to the states. States that oversee the OSHA program are known as OSHA-Plan states. The state must take on the entire OSHA program, including the asbestos elements, to receive OSHA delegation. OSHA does not apply to public employees, therefore in some states (Connecticut, New York and New Jersey) they apply the OSHA requirements to state employees, and let the federal OSHA handle the rest.

The following are OSHA Plan states:

<a href="#">Alaska</a>	<a href="#">Iowa</a>	<a href="#">New Mexico</a>	<a href="#">Utah</a>
<a href="#">Arizona</a>	<a href="#">Kentucky</a>	<a href="#">New York</a>	<a href="#">Vermont</a>
<a href="#">California</a>	<a href="#">Maryland</a>	<a href="#">North Carolina</a>	<a href="#">Virgin Islands</a>
<a href="#">Connecticut</a>	<a href="#">Michigan</a>	<a href="#">Oregon</a>	<a href="#">Virginia</a>
<a href="#">Hawaii</a>	<a href="#">Minnesota</a>	<a href="#">Puerto Rico</a>	<a href="#">Washington</a>
<a href="#">Illinois</a>	<a href="#">Nevada</a>	<a href="#">South Carolina</a>	<a href="#">Wyoming</a>
<a href="#">Indiana</a>	<a href="#">New Jersey</a>	<a href="#">Tennessee</a>	

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#### EPA's Worker Protection Rule

This rule is designed to fill the gap in the OSHA law to protect public employees. It applies only to the removal enclosure, or encapsulation of asbestos.

#### National Emission Standards for Hazardous Air Pollutants (NESHAPs)

Section 112 of the Clean Air Act directs EPA to prepare a list of hazardous air pollutants. Subpart (m) names asbestos as one of those pollutants and establishes regulations governing releases of asbestos into the outside air (v. inside air, which is covered by TSCA Title II). States can receive NESHAPs delegation in whole or in part.

Almost every state, with the exception of Alaska, Hawaii, Idaho, Iowa, New York, New Jersey and Vermont are delegated for NESHAPs.

#### TSCA Title II

Most states have the authority to administer and enforce the AHERA and ASHARA parts of TSCA. Only Wyoming and Arizona do not have authorization. AHERA requires states to establish a training and certification program for asbestos inspectors, workers and contractors, and requires an inspection of every school for asbestos hazards. An inspection is not required for public and commercial buildings under TSCA, but if one is done, it must be done by a trained and certified inspector. Any abatement of asbestos hazards must be done by trained and certified contractors and workers as well.

#### **State Enforcement Authority**

Below is a summary of some of the tools used by states to enforce state asbestos laws. This review is based on a select number of state asbestos statutes and regulations and is not meant to be exhaustive. Some states may have other enforcement provisions not listed below.

#### Investigate Possible Violations

Most states agencies responsible for administering asbestos-related laws have the explicit statutory authority to review, inspect or investigate possible violations of statutes or regulations. Some states, such as Connecticut, authorize agency officials to administer oaths, issue subpoenas and compel testimony and the release of documents in the course of the investigation. Conn. Gen. Stat. § 19a-14(a)(10). In Hawaii, the director of the department of health may require an alleged violator to appear before the director for a hearing. Haw. Rev. Stat. § 342P-5(a)(2).

#### Action Against Licenses or Certifications

Because most states license asbestos workers and approve accredited asbestos training programs, states are also authorized to take action against license holders or accredited programs. South Carolina's asbestos projects regulations state:

"The Department may reprimand any licensee or revoke or suspend any license based upon violation of any requirement stated herein. Reasons for reprimand, suspension, or revocation may include, but are not limited to, falsification or known omission of any written submittal required as part of this regulation, submission of fraudulent information or documentation,

omission or improper use of work practices, improper disposal of ACM, or spread of asbestos emissions beyond the containment area." S.C. Reg 61-86.1, Sec. XXI.

Iowa's asbestos law contains similar language:

The division may deny, suspend, or revoke a permit or license, in accordance with chapter 17A, if the permittee or licensee does any of the following...1. Fraudulently or deceptively obtains or attempts to obtain a permit or license; 2. Fails at any time to meet the qualifications for a permit or license or to comply with a rule adopted by the commissioner under this chapter; 3. Fails to meet any applicable federal or state standard for removal or encapsulation of asbestos; 4. Employs or permits an unlicensed or untrained person to work on an asbestos project." Iowa Code Ann. § 88B.8.

### Criminal Penalties

Criminal penalties that can be imposed under state asbestos laws vary by state. A person who has previously received a civil fine for willful violation of the asbestos laws in Iowa would be guilty of a simple misdemeanor for a second willful violation and be subject to a fine of no more than \$25,000. A subsequent violation would be grounds for an aggravated misdemeanor charge and be subject to an additional fine of no more than \$25,000 or two years in prison or both. Iowa Code Ann. § 88B.12.

Hawaii's statute reads:

"Any person who knowingly violates this chapter or any condition in a permit or variance issued under this chapter, shall be fined not less than \$5,000 nor more than \$50,000 per day for each violation or imprisoned for not more than three years, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, the person shall be fined not more than \$100,000 per day for each violation or imprisoned for not more than six years, or both."

Any individual who willfully violates Kansas' asbestos laws is guilty of a class C misdemeanor for a first offense and a class B misdemeanor for a second offense. Kan. Stat. Ann. §65-5313.

### Civil Penalties

The maximum civil fine that can be imposed on violators varies from state to state. Kansas and Iowa limit fines for first offenses to \$5,000 per violation for those who violate the law. Kan. Stat. Ann. §65-5314 and Iowa Code Ann. § 88B.12. Hawaii caps its civil penalty at \$10,000 for each separate offense, with each day of each violation constituting a separate offense. Haw. Rev. Stat. § 342P-20. The state's fines for negligent violations are set between \$2,500 and \$25,000 for first violations, and no more than \$50,000 for subsequent violations. Haw. Rev. Stat. § 342P-22.

### Injunctive Relief

Agencies are also empowered in many states to issue cease and desist orders on projects that violate asbestos laws. They also may require violators to submit a schedule that outlines when measures will be taken and the time within which the measures will be taken to bring the person into compliance. Haw. Rev. Stat. § 342P-5(b)(1) and (3). If the schedule is subsequently violated, states would have the power to impose penalties.

**State Enforcement Administration**

State enforcement authority is usually granted through a cooperative agreement with the EPA. Some states report enforcement independent of EPA. Agencies participating in the Federal enforcement cooperative agreement program receive funds to support and enhance toxic substance compliance monitoring, inspection, compliance assistance and enforcement activities. Typical program activities, which are generally common to all cooperative agreements, include coordinated inspections and observations at facilities which manufacture, process, use or dispose of chemical substances such as asbestos, and initiation of appropriate enforcement action or referral to EPA for appropriate enforcement action when violations are detected.