

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

23.25

ASBESTOS PROJECT NOTIFICATION

Date Issued: December 28, 2000

I. Background

The Department of Labor and Industries (L&I) has been charged with broad regulatory duties related to asbestos projects in addition to the *occupational* safety and health requirements of the Washington Industrial Safety and Health Act (WISHA), RCW 49.17. Under RCW 49.26 (Washington State Asbestos Act), L&I must require any person conducting an asbestos project to notify L&I before starting work (with alternate procedures for small and emergency projects). L&I has adopted these requirements as part of WAC 296-65-020.

Asbestos project notification allows L&I to track asbestos work in Washington State and appropriately focus enforcement efforts. Asbestos notifications are not licenses or certifications of individual projects, and department approval is not necessary for each individual project. Under separate requirements, certification is necessary on an annual basis for companies contracting for asbestos projects and for workers handling asbestos materials during projects.

II. Scope and Application

This policy provides guidance to WISHA enforcement and consultation staff whenever they must address issues concerning asbestos project notifications. It supersedes any previous guidance on the subject, whether formal or informal.

III. Interpretive Guidance

A. *How specific must notification information be to comply with WAC 296-65-020(1)?*

1. Location information in the notification must be specific enough to allow L&I to locate the project.

Where the address for the work site refers to a large facility, (for example, an industrial plant or campus), additional information such as building names or numbers may be necessary. With large structures, the project information must identify which facilities within the building are part of the work area.

2. The project dates must be consistent with the contract documents, but must also reflect the actual dates that the contractor anticipates being on site.

For example, if the contract requires that the work be conducted in June but the work will require only one week for completion, the notification must show the specific week that the contractor expects to actually conduct asbestos work.

B. Are employers required to notify L&I about small projects?

No. Small projects are exempt from notification requirements, although all other asbestos project requirements apply. A “small project” consists of removal of materials with less than 48 square feet of total surface area (including the surface area of any pipe insulation). If piping systems are involved there must be no more than 10 linear feet of pipe.

Although small projects are exempt, incremental phasing of projects to create multiple small projects and to avoid notification requirements is a violation of the notification requirement.

Where a multi-phase project will involve several small actions, a schedule must be provided for the work to be conducted. Amendment of the schedule must follow the requirements of WAC 296-65-020(1)(e).

If small, emergency projects precede a larger project and enable the facility owner and contractor to stabilize a work area until full removal can be conducted under proper notification, work on these small, emergency projects will not be considered a violation of the notification requirements.

C. Can an owner provide a single notification for a group of projects?

Where the owner of a facility or property anticipates multiple projects that will be conducted under similar work practices, he or she may arrange with the appropriate Regional Industrial Hygiene Supervisor to provide a single notification for the group of projects. Ongoing notification may not extend for a period greater than one year, but may be resubmitted.

Such grouped or ongoing notifications may be used for:

- large scale, on-going projects
- ongoing maintenance programs
- incrementally phased projects

If there is any significant change in work procedures or personnel, L&I must be notified in a matter that meets the general requirements for prenotification and amendment.

D. *What are the notification requirements for emergency projects?*

1. Prior Notification. No notification to the department is necessary prior to conducting a project addressing an unforeseeable emergency situation.

Conditions may arise unexpectedly that must be addressed immediately to prevent a greater hazard or significant operational impact. Asbestos work inherently involves significant hazard (asbestos is a human carcinogen with no known threshold limit). Projects conducted without careful planning can increase this hazard. However, other hazards or the potential for increased asbestos hazards may justify immediate action.

An example of increased asbestos hazard is where water damage is causing a spray-applied asbestos containing insulation material to delaminate. If a smaller removal project will allow halting the water damage, this project could reduce the need for immediate removal or cleanup of additional asbestos materials. After addressing the water damage the remainder of the material may be addressed in a fully planned manner, with appropriate advance notification to L&I.

A second emergency project example would be where a critical component in an industrial plant is damaged in an accident. If immediate removal of nearby asbestos containing materials is necessary to access the damage and effect repairs this may prevent an unscheduled plant shut down. This could save considerable expense and avoid any hazards from the sudden change in plant status.

Emergency projects as defined under the Washington State Asbestos Act are *not* necessarily the same as those defined by local air quality authorities. Typically these organizations define emergency more broadly, but require pre-approved permits for all projects, including emergencies. Situations that fall under the emergency project definition of these other organizations, but are not considered emergencies by L&I, include materials found during construction that were not part of the original survey or projects necessary to protect equipment that do not represent a significant health or safety hazard. In such cases, L&I expects the advance notification requirements of the standard to be met.

2. Other notification. When an emergency project is conducted the following notification requirements must be met:
 - Employees and other people in the vicinity of the project must be notified of the project as soon as possible. This may be prior to the project if there is any delay in startup. Anyone entering the vicinity of the project, for example at a shift change, should be notified immediately.
 - Employee representatives must also be notified (this would include collective bargaining representatives, safety committees or other representatives designated by the employees).
 - A notice must be clearly posted at the work site describing the nature of the project (see Attachment A).
 - L&I must be notified within three days after commencing work including all information normally required for prenotification.

Unless information clearly refutes a claim by the building owner or contractor claim that the project was an emergency, notification will be reviewed based on the emergency project notification requirements (WAC 296-65-020(5)). The level of hazard and effectiveness of the response action should be considered when evaluating compliance with these requirements. If a failure to comply with the provisions of this requirement led to or reasonably could have led to an increased asbestos exposure to employees or others in the vicinity of the work, then any violation should be considered serious.

E. What about emergency projects that can be anticipated?

Asbestos projects must be reasonably unforeseeable to be considered emergencies under the standard. Projects necessitated by poor maintenance, by waiting until parts fail to conduct regular replacement, or other circumstances leading to equipment or system failures that could be reasonably controlled, scheduled, or avoided by the facility owner are *not* emergency projects.

Building and facility owners must make a good faith inspection of their facilities prior to any construction, renovation, remodeling, maintenance, repair, or demolition project that has a reasonable possibility of disturbing or releasing airborne asbestos. This requirement appears both in WAC 296-62-07721(1)(c)(ii) related to general industry activities and in WAC 296-62-07721(2)(b)(ii) related to construction activities. This responsibility includes anticipating maintenance needs and providing for appropriate handling of asbestos materials that may interfere with non-routine activities that can be reasonably expected to occur. Many options are available to building owners for handling these situations, including the following:

- Remove asbestos-containing materials to provide clear work areas for subsequent maintenance work;
- Arrange for alternate equipment, systems or operating procedures to allow time for arranging asbestos removal when necessary;
- Develop procedures for handling removal on a case-by-case basis and provide notification to the department under the ongoing maintenance provisions;
- Conduct limited removal of asbestos-containing materials so that the area is cleared for the maintenance work, but the size of the asbestos project falls below the notification threshold and other asbestos materials are left in a stable condition;
- Develop maintenance procedures that will not impact asbestos-containing materials in place.

F. What does L&I consider to be timely notification?

In general, the regional office must receive a complete and accurate project notification ten days prior to start of work, as required by WAC 296-65-020(2).

Construction and maintenance activities are inherently difficult to define and predict. This should be taken into consideration when evaluating the accuracy of project notifications. However, where a contractor or facility owner has developed an apparent pattern of inaccurate or misleading notifications the Regional Industrial Hygiene Supervisor may consider this during targeting of asbestos abatement work.

The ten-day notification period is given in WISHA regulations to provide L&I staff sufficient time to respond to any notice provided and to ensure that appropriate time is taken in planning for asbestos projects. Where the contractor or facility owner works with the regional staff to ensure that they are aware of the upcoming project and show that appropriate plans have been made for the project, the need to wait to start the project is minimized. As the majority of projects that require notification also require many other arrangements to be made, it is extraordinary that a project goes from original thought to commencement in less than ten days and so it is expected that this should not be a routine occurrence. L&I will consider lack of timely notification to be a *de minimis* violation when each of the following conditions is met:

- A complete and accurate project notification is received *prior to start of work*.
- The Regional Industrial Hygiene Supervisor has been contacted directly regarding the project. A voice mail or email message may be acceptable, but the compliance staff must be given sufficient opportunity to respond prior to the start of work.
- Specific documentation is provided showing that the project falls in one of the following categories:
 - The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;
 - Asbestos-containing materials were encountered that were not identified during the asbestos survey; or
 - The project must proceed to avoid imposing an unreasonable burden.

The local air pollution control authorities typically allow projects of this sort as "emergencies" and have language similar to the categories listed above as part of their emergency definition. Where the project has been issued an emergency permit by the local air pollution authority, this may serve as evidence that the project falls within one of the categories.

L&I does not consider these projects “emergencies” and the emergency notification box on the notification form should not be checked. L&I staff may not always be available to review these notifications prior to commencement of the project, particularly on weekends and holidays. However, contractors and facility owners should be encouraged to work with regional staff as much as possible to coordinate notification of these projects and ensure that the notification is received prior to commencing work and that conditions of the project will meet L&I standards.

Approved: _____

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For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648 or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.wa.gov/lni/wisha>).

EMERGENCY ASBESTOS ABATEMENT PROJECT

This document may be used as a template for handling the posting requirements for emergency asbestos projects. Emergency projects are those that address significant, unforeseeable hazards where it is not possible to meet the standard notification and communication requirements of the Department of Labor and Industries asbestos regulations. This form, or equivalent, must be prominently posted in the vicinity of the asbestos project. L&I must be notified of the project within three days of commencement.

Project Description: (include type and quantity of asbestos material effected and the work procedures in use—containment, glovebagging, encapsulation, encasement, etc.)

Nature of the Emergency: (include description of hazards and reason for unforeseen nature of the project)

Certified Asbestos Supervisor(s): (Competent Person)

Facility Owner or Representative:

Phone:

People Affected by Project: (employees or others in the vicinity of the project; these people must be informed of the project as soon as possible)

Employee Representatives: (Collective bargaining unit, safety committee or other designated representative for the employees affected by the project.)