

DOSH DIRECTIVE

Division of Occupational Safety and Health
Department of Labor and Industries
Keeping Washington safe and working

23.70

Review and Decertification of Asbestos Abatement Contractors, Supervisors, and Workers

Date: December 16, 2013

I. Purpose

This DOSH Directive describes the review process and provides guidance to DOSH staff with respect to decertification (denial, suspension, or revocation) of asbestos abatement contractors, supervisors, and workers, as provided in WAC 296-65-050, Denial, Suspension, and Revocation of Certificates.

II. Scope and Application

This Directive applies to all DOSH staff, and replaces all previous instructions or guidance on this issue, whether formal or informal.

This Directive cancels WIIM 99-1-b, Decertification of Asbestos Abatement Contractors and Supervisors, issued January 19, 1999.

III. References

- Chapter 49.26 RCW, Health and Safety - Asbestos
- Chapter 49.17 RCW, WISHA Act
- Chapter 296-65 WAC, Asbestos
- Chapter 296-62 WAC, Part I-1, Asbestos, Tremolite, Anthophyllite, and Actinolite
- Chapter 296-155 WAC, Safety Standards for Construction Work
- Chapter 296-842 WAC, Respirators
- Chapter 296-802 WAC, Employee Medical and Exposure Records
- OSHA 29 CFR 1910.1001, Asbestos
- OSHA 29 CFR 1926.1101, Safety and Health Regulations for Construction (Asbestos)
- OSHA 29 CFR 1915.1001, Shipyard Industry (Asbestos)

NOTE: Given the broad statutory and regulatory language that pertains to asbestos, other state, federal and local regulations may apply.

IV. **Background**

DOSH certified asbestos abatement contractors are permitted to perform asbestos projects. In their application, contractors state they have read, understand, and agree to comply with all federal, state and local asbestos regulations, and they understand violation of these regulations could constitute grounds for suspension or revocation of their certification.

Asbestos workers and supervisors are trained and certified to perform asbestos projects. Training specifically includes requirements listed in Chapter 296-65 WAC, WAC 296-62-077, and other federal, state, and local standards and regulations.

The Department of Labor and Industries (L&I), under Chapter 49.26 RCW, and WAC 296-65-050(1), may deny, suspend, or revoke an asbestos certificate when the holder is judged to be incompetent to carry out the work for which the certificate was issued or where the certificate was obtained through error or fraud. WAC 296-65-050 provides the basis for such denial, suspension or revocation. Denial, revocation or suspension of a holder's asbestos certificate will be based upon failure to comply with Chapter 296-65 WAC; WAC 296-62-077; and other applicable Safety and Health standards or regulations.

V. **Enforcement Policies**

During all asbestos-related inspections, compliance staff must document the following in WIN:

- The abatement contractor's name and certificate number.
- The asbestos supervisor's name and certificate number for personnel acting as the competent person on the project.
- The name and certificate number of all other certified asbestos workers and supervisors that participated on the project covered in the inspection.

Prior to issuing asbestos-related citations, DOSH compliance staff is expected to follow normal procedures and review the certificate holder's inspection history for previous violations. Based on the current inspection, and the certificate holder's inspection history, the Industrial Hygiene Regional Supervisor or Compliance Manager will notify the DOSH Asbestos Certification Program in writing, regarding any:

- Certification holder suspected of incompetence, or
- Certificates that may have been issued under fraudulent circumstances or in error.

The *Circumstances for Review* listed in Section VI, below, are a guide to DOSH staff on when a referral to the DOSH Asbestos Certification Program is appropriate. The DOSH Asbestos Certification Program will also accept referrals from other local, regional, state, or federal enforcement agencies involved in regulation of asbestos.

VI. **Circumstances for Review**

1. Any one occurrence of a willful violation of Chapter 296-65 WAC or WAC 296-62-077.
2. Any one occurrence of a criminal conviction for violations of federal, state, or local asbestos regulations.

3. A recurrence of serious, repeat serious, or failure to abate (FTA) violations.
4. A recurrence of violations of any state, federal, or local asbestos related laws and regulations.
5. A contractor that has been identified as a severe violator under the Labor & Industries Division of Occupational Safety & Health's (DOSH), Severe Violator Enforcement Program (SVEP).
6. Permitting the duplication or use of one's own certificate by another.
7. Performing work for which certification has not been received. Certification for any new applicant under department investigation will not be granted until the inspection is final.
8. Obtaining certification from a training provider that does not have approval to offer training for the particular discipline from either the EPA, or from a state that has a certification plan at least as stringent as the EPA Asbestos Model Accreditation Plan (MAP).
9. Obtaining certification through fraudulent representation of training or examination documents.
10. Obtaining training documentation through fraudulent means.
11. Gaining admission to and completing refresher training through fraudulent representation of initial or previous refresher training.
12. Obtaining accreditation through fraudulent representation of accreditation requirements such as education, training, professional registration, or experience.
13. Failing to provide timely and accurate asbestos abatement project notifications.
14. The certificate holder does not follow accepted asbestos work practices.
15. A contractor is a business with no employees and fails to follow all accepted asbestos work practices and procedures that protect the public and other workers from asbestos. Such work practices and procedures include, but are not limited to, air monitoring, regulated areas, enclosures (isolation techniques), engineering controls, hygiene facilities and practices, waste handling, housekeeping, signs and demarcation, improper or incomplete encapsulation, inadequate wet methods, HEPA vacuums, intact removal, dry sweeping, improper compressed air use, falsifying records.
16. A person or company has been an asbestos training provider or instructor who has been found incompetent, suspended or revoked in any jurisdiction.
17. A person that has, at any time, been a manager, owner, governing entity, or major stockholder of another company whose certification has been denied, suspended or revoked by any jurisdiction.
18. A person or business that has assisted any person to obtain certification through fraudulent representation or means.
19. A person or business has falsified or assisted in falsifying any records such as, but not limited to, asbestos project notification, air monitoring, respirator fit test, and medical evaluations.

Additional considerations for review:

1. Does the applicant meet any of the criteria as described under *Circumstances for Review*?
2. Do the number and type of violations appear to show a likely disregard for the safety and health of the workers or the public's exposure to asbestos?
3. Do the number and type of violations appear to show that the certificate holder is incompetent to carry out the work?
4. Are there any extenuating circumstances beyond the control of the holder of the certificate or applicant for certification/renewal?
5. Is the holder of the certificate or applicant for certification/renewal currently on probationary status?
6. How much time has passed between the instances of violations?
7. Was the certificate holder performing work requiring certification at a job site without being in physical possession of valid certification?

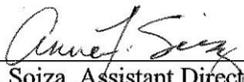
VII. Certification Reviews

- A.** The DOSH Asbestos Certification Program will conduct an informal review of all asbestos contractor applications (new or renewal) and when a referral is received. Informal reviews will also be conducted for asbestos supervisors and workers at the discretion of the DOSH Asbestos Certification Program and when referrals are received.
 1. The informal review will consist of a records review and review of additional information provided by the referent.
 2. If the informal review does not indicate a basis for denial, suspension, or revocation of the certificate(s), no action will be taken. The DOSH Asbestos Certification Program will contact referents with the results in these cases.
- B.** When the DOSH Asbestos Certification Program determines there is likely a basis for denial, suspension, or revocation of a certificate, a formal review will be conducted. Appropriate action will be proposed and rationale for the action will be documented.
- C.** A notice of the proposed action will be sent to the certificate holder or applicant with a description of the rationale for the decision and inform them of their right to request a conference as described in Chapter 49.26 RCW, and WAC 296-65-050(4). The notice will be sent by registered mail to the last known address of the applicant or certificate holder.
- D.** If the certificate holder or applicant requests a conference, this will be arranged following the DOSH procedures for an informal conference under reassumption. The conference may be conducted by DOSH Asbestos Certification Program staff or DOSH Appeals staff.
- E.** Following any conference, the DOSH Asbestos Certification Program will review the information provided by the applicant or certificate holder.

- F. The DOSH Asbestos Certification Program will make a recommendation to the DOSH Assistant Director, who will make a final determination. The final decision will include one of the following actions:
 - 1. Take no action on the certificate.
 - 2. Deny, suspend, or revoke the certificate for a period of not less than 6 months.
 - 3. Schedule a formal review of the certificate at the time of the next renewal.

- G. A notice for final order will inform the certificate holder or applicant of further appeal rights contained in WAC 296-65-050(5) and that the denial, suspension, or revocation will remain in effect during the appeal time.

Approved: _____


Anne F. Soiza, Assistant Director
Division of Occupational Safety and Health
Department of Labor and Industries

For more information about this or other DOSH directives, contact the Division of Occupational Safety and Health at P.O. Box 44610, Olympia, WA 98504-4610, or call 360-902-5436.
To review policy information on the DOSH website, go to: <http://www.lni.wa.gov/Safety>.