

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
COMMUNITY DEVELOPMENT DIVISION

Subject: ASBESTOS

Effective Date: September 1, 2015

PURPOSE

This Policy Bulletin establishes procedures to assure regulatory compliance, as well as the protection of human health and the environment, in relation to exposure to Asbestos Containing Materials (ACM) in a residential property that receives any amount of rehabilitation assistance under a program administered by the Michigan State Housing Development Authority (MSHDA) Community Development Division (CDD).

The requirements of this policy shall not apply to a specific project which already has CDD, Housing Resource Funds (HRF) committed to it prior to the adoption of this policy. However, such projects will be subject to existing regulatory requirements enforced by various federal and/or state agencies that were in effect at the time of project commitment. As such, each grantee shall be responsible for determining applicable state and federal asbestos regulations on those projects not subject to this policy and complying with those regulations.

BACKGROUND

The Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. The EPA established the National Emission Standards for Hazardous Air Pollutants (NESHAP) under the authority of Section 112 of the CAA, and asbestos was one of the first hazardous air pollutants regulated. The Asbestos NESHAP was promulgated on April 6, 1973, and it was revised in 1990.

Asbestos was widely used in buildings for fireproofing, thermal and acoustical insulation, condensation control, and decoration. It was sprayed on beams and ceilings, used to cover piping and boilers, and sprayed onto ducts. Asbestos was used extensively until the 1970s when EPA banned certain applications. Asbestos, however, is still used in building materials even today. Examples of product types where asbestos use is not banned includes: cement shingles, millboard, roofing felt, pipeline wrap, gaskets, roof coatings, vinyl floor tile, etc. Because asbestos is still in use today, it is not safe to assume a building contains no asbestos, regardless of when it was constructed.

The Asbestos NESHAP protects the public by minimizing the release of asbestos fibers during renovation and demolition activities. Accordingly, this regulation specifies work practices to be followed for demolitions and renovations of all structures, installations, and buildings. If privately owned residential dwellings or apartments are being demolished as part of an urban renewal project or as part of a public (CDBG, HOME, etc.) or commercial project, these would be covered under the NESHAP regulations. Residential dwellings containing four units or less, under private control or ownership, would not be subject to the NESHAP. In addition, the Asbestos NESHAP contains notification requirements for the owner of the building and/or the contractor. Both the owner and contractor(s) are liable for compliance with the Asbestos NESHAP requirements (40 CFR Part 61).

This Policy will cover the following topics as it applies to federal and state asbestos regulations:

1. Applicability of the Regulation
2. Federal and State Regulatory Agencies
3. Change Orders or Amendments
4. Covered Activities, Structures and Buildings
5. Exempt Activities, Structures and Buildings
6. Training and Certification Requirements
7. Administrative Requirements

1. APPLICABILITY OF THE REGULATION

The rules and policies discussed herein are applicable to the following:

- HRF funded CDBG or HOME grant awards to local units of government or Community Housing Development Organizations (CHDOs) or affordable housing developers subsequent to September 1, 2015
- Any projects or activities funded with CDBG Program Income, not otherwise exempt
- HRF funded HOME or CDBG assisted projects for which a project-specific written agreement is entered into with the property owner subsequent to 9/01/2015

Written Agreements

Written agreement means a document executed by both parties (local recipient and owner or buyer) designating a specific property for assistance, the amount of the assistance, the scope of work to be performed (if applicable), and the compliance requirements. Declaration of the project in the Consolidated Plan and/or set-up in IDIS without an executed agreement does not constitute evidence of commitment. Construction contracts, construction start dates, or acquisitions do not have to occur by this deadline.

2. FEDERAL AND STATE REGULATORY AGENCIES

Federal Regulatory Agency

EPA regulates asbestos procedures for renovation, modernization and other actions that require removal of Asbestos Containing Materials (ACM) or demolition including partial demolition actions under the Clean Air Act (CAA) and require notification and strict work practices for asbestos handling, removal, storage and transport under 40 CFR Part 61 Subpart M and 40 CFR Part 763.

The Occupational Safety and Health Administration (OSHA) regulates worker protection standards and exposures. For details regarding the OSHA regulations, refer to 29 CFR 1910.1001 (non-construction) and 1926.1101 (construction). The EPA also regulates worker protection of certain state and local government employees not covered by the OSHA or comparable state regulation (see 40 CFR Part 763, Subpart G).

State of Michigan Regulatory Agency

There are three state agencies in Michigan that regulate asbestos: the Michigan Department of Environmental Quality (DEQ), the Michigan Department of Licensing and Regulatory Affairs (LARA) and the Michigan State Police (MSP). The DEQ is concerned about the release of asbestos fibers to the outer air and proper waste disposal, while LARA focuses on worker protection during renovation and demolition activities, contractor licensing, and worker training. The MSP enforces transport of hazardous asbestos containing materials (ACM).

Within the umbrella of LARA, the Michigan Occupational Safety and Health Administration (MIOSHA) Asbestos Program was initiated in September of 1986. The primary function of the program is to assure people working with asbestos are properly trained and the individuals performing asbestos removal comply with rules governing the work activity. These rules are designed to protect not only the individual employee performing asbestos abatement work, but also the general public that occupy the area or building in which the work occurs.

The Asbestos Program is responsible for enforcement of the Asbestos Abatement Contractors Licensing Act (Act 135, P.A. 1986, as amended), the Asbestos Workers Accreditation Act (Act 440, P.A. 1988, as amended), and for meeting the state of Michigan's mandated responsibilities under the EPA's Asbestos Hazard Emergency Response Act (AHERA). The program also enforces asbestos issues related to MIOSHA Act 154, P.A. 1974, as amended.

The Asbestos Program performs the following functions:

- Approves asbestos-related training courses
- Accredits professionals in the asbestos industry
- Licenses asbestos abatement contractors
- Processes asbestos abatement project notifications
- Investigates asbestos-related compliance issues
- Reviews AHERA-mandated management plans

3. CHANGE ORDERS or AMENDMENTS

Change orders or amendments subsequent to 9/01/2015 on any “existing” projects originally executed prior to 9/01/2015 may go forward without triggering the applicability of the new asbestos policy, provided such changes are minor in nature and do not alter the type of activity or the units.

4. COVERED ACTIVITIES, STRUCTURES AND BUILDINGS

- Any Demolition or De-Construction Activity (full or partial)
- Acquisition Development Resale (ADR) with rehabilitation activities
- Mixed-use buildings with rehabilitation activities
- Publically owned garage or out-buildings with rehabilitation activities
- Publically or CHDO owned single family housing
- Publically or CHDO owned attached single family, stacked row, townhomes, midrise or high-rise; for sale housing
- Rental housing of any type

5. EXEMPT ACTIVITIES, STRUCTURES AND BUILDINGS

- Down Payment Assistance
- Pre-Development Loans
- Private (owner occupied) primary residences
- Home Purchase Resale (HPR) with rehabilitation activities primary residences

Owner- occupied primary residences may contain material components which have historically been proven to have hazardous ACM's and are subject to testing and/or assumption they contain asbestos, (if disturbed during rehabilitation activities), these material components shall be subject to testing, abatement protocol for worker and occupant safety. The following is a list of various examples “but not limited to” some residential building components historically proven to have ACM's;

- boiler wrapped pipes
- transite siding
- 9” x 9” floor tiles
- vermiculate insulation-attics and walls
- various plaster material at walls and ceilings
- Various mastics, glues, caulks, glazing etc...

6. TRAINING AND CERTIFICATION REQUIREMENTS

Inspectors

Asbestos identification and survey services must be provided by a licensed Asbestos Inspector, who holds a current certification in the state of Michigan to conduct asbestos identification and survey activities.

Copies of the official report describing the presence, location, and quantity of ACMs provided by the licensed Asbestos Inspector shall be supplied to the HRF grantee, the property owner, and any incoming contractors or skilled trades who will provide services to the project.

Contractors

Asbestos abatement will be conducted only by companies who are licensed Asbestos Abatement Contractors, who hold a current certification in the State of Michigan to conduct asbestos removal activities, in accordance with Michigan Asbestos Abatement Contractors Licensing Act. [Michigan Public Act 135].

Asbestos Abatement Contractors shall ensure that removal activities are performed only by individuals who are licensed Asbestos Workers or licensed Asbestos Supervisors, who hold current certification in the state of Michigan to perform asbestos removal activities. HRF Grantees shall request a list of all licensed individuals currently employed by those contractors in order to confirm compliance with this requirement.

All required notifications for removal projects, and corresponding fees associated with those notifications, shall be the sole responsibility of the Asbestos Abatement Contractor, in accordance with the EPA's NESHAP [40 CFR 61.145] and the Michigan Asbestos Abatement Contractors Licensing Act [Michigan Public Act 135].

The contractor performing the asbestos abatement services shall be financially responsible for payment for any and all failed clearance testing related to their regulated work areas. In addition, the HRF grantee may not be charged additional costs beyond the original bid amount for any additional cleaning or other labor necessary to prepare for additional clearances beyond the first one.

7. ADMINISTRATIVE REQUIREMENTS

HRF Grantee shall require asbestos identification and survey services on all projects subject to this Policy, prior to the start of any rehabilitation activity, or presume that all construction surfaces are asbestos-containing and therefore subject to all applicable state and federal asbestos regulations. Non-abatement rehabilitation activities cannot be started in affected work areas until such a time written confirmation of a successful clearance has been provided by an independent third party. Please NOTE: Clearance (air monitoring) is not required if removal or rehabilitation activities did not disturb total surface areas below 10 linear feet or 15 square feet of friable ACM's.

HRF Grantees shall have the following information in their project files:

- State of Michigan, Licensing for Inspectors, Abatement Contractors and Workers
- Credentials of an independent third party, performing air monitoring clearance, if applicable
- Asbestos Identification and Surveys
- Project Notifications for asbestos removal activities
- Post Abatement Clearances
- Air Monitoring Results, if applicable
- Waste Shipment and/or Disposal Records
- Records and reports, retained for not less than 3 years following the conclusion of rehabilitation activities

If you have questions, contact your CD Specialist at 517-373-1974.