

FILE

Franklin Asbestos Handling Regulations

Office of the Attorney General
State of Franklin
Environmental Protection Division

Candace G. Meyer, Attorney General

To: Applicant
From: Colin Dillard, Deputy Attorney General
Re: Regulations Implementing the Asbestos Handling Act
Date: July 27, 2000

Six months ago, the Franklin Legislature enacted the Asbestos Handling Act (AHA), which, among other things, requires the Franklin Department of Environmental Protection (DEP) to implement health and safety programs to train and certify workers who handle asbestos. DEP has asked us to review the proposed regulations it has drafted.

I anticipate the AHA statutory and regulatory scheme will be challenged on the ground that it is preempted by the federal Occupational Safety and Health Act (OSH Act) and the implementing federal regulations. Franklin has not adopted a State Plan under the OSH Act and has no intention of doing so.

Please prepare a memorandum for me that:

- 1) States the best case for why, in light of the absence of a State Plan, the statutory and regulatory scheme is not preempted in its entirety; and
- 2) Discusses whether each provision of Section 8 of the draft regulations can survive a preemption challenge.

Franklin Environmental Protection Code

Title 6 - Asbestos Control

Chapter 15. Asbestos Handling Act

Section 1. Findings and Purpose. The legislature of the State of Franklin finds that the predominant cause of asbestos becoming airborne is the performance of building renovation and demolition without adequate adherence to appropriate procedures for safeguarding the general public by persons who have not received adequate training in the handling of materials containing asbestos. The purposes of this subtitle are: 1) to safeguard the public health by requiring that renovation or demolition projects that disturb asbestos be conducted in accordance with procedures established pursuant to the provisions of this law; and 2) to ensure that workers who handle materials containing asbestos receive appropriate training designed to protect the public health.

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Section 3. Unlawful Activities.

(a) It shall be unlawful for any person to perform a renovation or demolition project involving asbestos unless that person has received approval from the Franklin Department of Environmental Protection of a written plan specifying all steps that will be taken to protect the public, including monitoring air quality in the area surrounding the renovation or demolition site and restricting access to the site by anyone other than certified workers.

(b) It shall be unlawful to employ any person to handle asbestos material in the course of performing work for compensation on an asbestos project unless such person is a holder of a current, valid asbestos handling certificate.

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Section 5. Fees and Assessments. The Franklin Department of Environmental Protection shall set reasonable fees and assessments to be used for the safe elimination of asbestos from buildings.

Section 6. Permits. No town or municipality shall issue a permit for a renovation or demolition project involving asbestos unless the applicant has established a plan pursuant to Section 3(a) and can show that each person working on the project holds a valid asbestos handling certificate pursuant to Section 3(b).

Section 7. Regulations to be Issued by the Secretary of the Franklin Department of Environmental Protection. In order to safeguard the health and safety of the public, including all persons who work at a renovation or demolition project involving asbestos, the Secretary of the Franklin Department of Environmental Protection shall establish criteria for: 1) certifying persons as eligible to receive an asbestos handling certificate; 2) certifying programs as approved safety and health programs; and 3) controlling asbestos during renovation or demolition projects. The Department shall implement an assessment procedure for funding the certification and training.

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Department of Environmental Protection
Chapter 4 - Regulations Regarding Asbestos Control
Proposed Regulations Implementing Asbestos Handling Act
May 26, 2000

SUMMARY: These Proposed Regulations implement the Asbestos Handling Act, codified in Chapter 15 of Title 6 of the Franklin Environmental Protection Code. The Proposed Regulations govern procedures for conducting renovation and demolition projects that disturb asbestos and for training and certification of asbestos handlers, asbestos supervisors and asbestos investigators.

BACKGROUND: See attached Report of the Research and Investigation Unit of the Department of Environmental Protection (DEP) on *The Dangers of Airborne Asbestos Created by Construction Work in the State of Franklin*.

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Section 8. Training and Certification of Asbestos Handlers.

(a) Any employee seeking an asbestos handling certificate must complete a five-day, DEP-approved training course and pass a two-hour written examination.

(b) An approved DEP training course for asbestos handlers must cover the following specific topics:

- (1) the physical characteristics, including hazards and effects, of asbestos
- (2) worker protective equipment
- (3) state-of-the-art practices for asbestos abatement and remediation
- (4) procedures for collecting asbestos samples to minimize airborne fibers
- (5) personal hygiene pertaining to asbestos handling

(c) Any employee having an asbestos handling certificate must complete a one-day, DEP-approved biennial review course to renew the handler certificate.

(d) Upon receiving proof of completion of a DEP-approved training or review course for asbestos handlers and payment of \$100, DEP shall issue an asbestos handler's certificate.

(e) Each employer performing work on a project in which any employee must handle asbestos must provide to the DEP the names of all employees possessing an asbestos handler's certificate, along with an assessment of \$600 per year for each such employee.

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Department of Environmental Protection
State of Franklin

**The Dangers of Airborne Asbestos Created by Construction Work
in the State of Franklin**

John P. Ripka, Chief, Research and Investigation Unit

Asbestos, a family of inorganic fibrous mineral substances once thought to be "wonder materials," has been identified in recent years as a formidable health threat. Much attention has been given to workplace hazards created by asbestos, but only recently has the focus been broadened to encompass the public health hazards presented by the widespread presence of friable asbestos.

Asbestos is the name given to a group of minerals that occur naturally as masses of strong, flexible fibers that can be separated into thin threads and woven. Asbestos tends to break easily into a dust composed of tiny particles that can float in the air and stick to clothes. The fibers of this so-called "friable" asbestos may be easily inhaled or swallowed and can cause serious health problems.

Exposure to airborne asbestos fibers may induce several serious diseases: asbestosis, a nonmalignant scarring of the lungs that causes extreme shortness of breath and often death; lung cancer; gastrointestinal cancer; and mesothelioma, a cancer of the lung lining or abdomen lining that develops 30 years after the first exposure to asbestos and that, once developed, invariably and rapidly causes death.

Widespread public concern about the hazards of asbestos has resulted in a significant annual decline in U.S. use of asbestos. In 1972, Franklin completely banned asbestos spraying in construction. Before the deadly hazards of asbestos were understood, however, more than half of the high-rise commercial buildings built in the state between 1958 and 1972 used asbestos as fireproofing material and, moreover, virtually every boiler room used the material as a thermal insulator. Franklin buildings contain an estimated 3.5 million tons of asbestos.

Since the early 1940s, millions of American workers have been exposed to asbestos dust. Health effects have been recognized in workers exposed in many trades and occupations. Even workers who have not worked directly with asbestos but whose jobs were located near contaminated areas have developed diseases associated with asbestos exposure.

Family members of workers heavily exposed to asbestos face an increased risk of developing asbestos-related diseases. This risk is thought to result from exposure to asbestos dust brought into the home on the shoes, clothing, skin, and hair of workers. Asbestos is so widely used that the entire

population has been exposed to some degree. To protect all citizens, proper safety precautions should always be taken by people working with asbestos.

Both the federal government and the state of Franklin have recognized that safety lies in speedy action, which each has taken. The federal Occupational Safety and Health Administration has promulgated regulations to minimize the threat to construction workers from asbestos exposure. To minimize the threat to the general public from asbestos removal, Franklin and its Department of Environmental Protection have established a program to ensure the safe elimination of asbestos from buildings for workers who handle asbestos.

