



State of Oregon Department of Environmental Quality

# Comments from Advisory Committee Members on Sept. 28, 2017 Meeting Topics

**Asbestos 2018 rulemaking**

Contact: [Michele Martin](#)  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
503-229-5103

<b>Commenters</b>	<b>Date Submitted</b>
John Sandie	Oct. 2, 2017
David Bartz	Oct. 10, 2017
Kim Kaminski	Oct. 10, 2017
Willie Tiffany	Oct. 10, 2017

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**From:** The Sandies  
**Sent:** Monday, October 02, 2017 12:47 PM  
**To:** MARTIN Michele

**Subject:** DEQ 2017 Asbestos Rules Review

DEQ staff,

First let me thank everyone for the time and effort to facilitate this effort to control exposure to asbestos and open up the proceedings to the public.

The discussions regarding survey requirements, differences between friable and non-friable asbestos containing materials (ACM) and exemption of renovations were all very enlightening and gave me understanding of the issues faced by those, who are daily, actively involved in adhering to the regulations to the best of their understanding and abilities. I will continue to give my time and talents towards reviewing the draft language influenced by our group discussions and continue to be fully engaged at the next meeting in November.

However, I continued to be concerned that we often get caught up with the minutia and language of regulations and laws during these review projects, and lose sight of the core reason and spirit these were developed and enacted in first place. **Our goal for these regulations is to protect workers and neighbors from exposure to asbestos through adherence to safe handling practices.** Exposure to asbestos fibers in even small amounts can have traumatic health impacts including death; and we, as a society, must do everything in our power to protect the public from this risk by living up to our established safe guards!

So while the discussion of handling the waste through hauling and at transfer stations is vitally important, as was brought up in the meeting several times, the real onus has to be placed on compliance at the point of generation. I had expected that the asbestos regulation review project would have been more in tune to this. While outreach efforts and training opportunities need to be continued for both contractors and property owners, so far the level of asbestos abatement compliance at residential demolitions remains extremely disappointing. Within the last couple of years data analysis by United Neighborhoods for Reform (UNR) and the Oregonian shows that compliance to proper asbestos abatement at residential demolitions within Portland are at levels < 35%; and the UNR's study of a couple neighborhoods puts it at <10%.

Since my advocacy over the last 3 years has focused on responsible demolition methods, it is very apparent that a key action point for this process is the issuing of a permit and required documents to be included in that application. Requiring documented surveys and abatements for asbestos, as well as lead based paint, offers the most effective action to increase compliance resulting in acceptable risk levels. Even given the potential problems of statutory language and coordination within agencies, other environmental oversight organizations have recognized this fact and require these documents. These requirements of surveys and abatement address basic health and safety of our population and must be enacted in Oregon.

While I do not adhere to the sentiment of some citizens when their frustration turns to cries of "they are just going through the motions", I would be disingenuous to not express my frustration that the single most important requirement to impact compliance has not been initiated in the last three years of lobbying. In addition, simple cross communication between permitting agencies and DEQ has been brought up several times in the past, yet little progress seems to have been made.

DEQ must be consistently aware of points of airborne asbestos generation to have any opportunity to improve this critical stage of compliance. In my close to 20 years experience in manufacturing medical devices, I came to appreciate the impacts that periodic FDA audits had on our own processes and compliance efforts. I would encourage DEQ to figure out some means to perform a minimum level of site verification inspections to maintain some conceptual measurement of compliance. The old adage -- if it isn't measured, it isn't important and won't get attention -- holds true in any endeavor.

If you have other ideas that you think will have a greater impact on enforcing the core goal of protecting the public health within the demolition process and handling of the ensuing hazardous waste stream, I will gladly engage in that discussion.

Respectfully,

John Sandie  
Member UNR steering committee

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**From:** Winterbottom, Doreen on behalf of Bartz, David  
**Sent:** Tuesday, October 10, 2017 2:37 PM  
**To:** Michele Martin  
**Cc:** Bartz, David  
**Subject:** Asbestos Advisory Committee/2017 Asbestos Rulemaking

Dear Ms. Martin:

I am providing you some concepts for consideration for asbestos rulemaking.

I am not providing precise rule language, but would be happy to work on such if the department or the committee thought there was a good reason to consider rules in the areas that I will highlight.

1. OAR 340-248-0130/Certification.

An issue that arises often for asbestos contractors is that a poor worker or the worker who is connected to some poor work practices can easily change jobs and the poor practices are “erased”. It is relatively easy for workers to move from employer to employer taking their bad practices or habits with them. The Construction Contractor’s Board has a mechanism now for cross-referencing/keeping track of contractors who commit “bad acts” of one variety or another and then shut down their current company or find other employment. We have a representative from the Construction Contractor’s Board on the Advisory Committee, but I have not talked to Mr. Lenihan. Nevertheless, that model was something we should consider. We can improve the overall quality of the work being done by tracking the poor performers. For instance, any applicant seeking recertification could be required to list any enforcement actions that have been connected with their work in the previous year or longer. If an applicant has had some prior enforcement, there could be additional training that would require such as a specific extra hour of training in a particular area of the enforcement or the applicant could be required to go back and repeat the training as if they were starting as a new member.

2. Electronic Filing/Notification Requirements/OAR 340-248-0260.

A second area for consideration of some rulemaking is in the electronic filing area. What are the barriers to using the electronic filing for the notices? Is it primarily or solely a budgetary limit? If that is the case, what is the rough approximate cost for “digitizing” the notification process? On a related area, looking at notifications to the department, is the department open to considering a rule which would make clear that electronic notification to the department via email or text would be satisfactory for “notifying” the department as is required in several of the subsections of OAR 340-248-0260? Email provides a printable record. It is my understanding that inspectors are equipped with smart phones and can get emails on the move.

3. Fees/Refunds. OAR 340-248-0260.

As is appropriate, notification isn’t complete until the department receives the fee.

On the back end, however, slow refunds are a reality for contractors and at times, a burden. Projects change through no fault of the contractor. Is the department open to a rule which would put some time limit to require prompt refunds? This would be in connection with OAR 340-248-0260 (probably following (6) and (7) which also concern fees). I

am not lobbying for a particular time period, but is there a period at which the department would commit to refunding fees after a request has been submitted by an applicant?

Conclusion.

As I mentioned at the start of this letter, I am happy to join in some meetings with the department and/or with the committee to help work out specific rule language if any of these concepts make sense to the larger group. I appreciate the opportunity to be involved in the rulemaking process. Thank you for the preparation that was evident in the first meeting.

Dave

**Schwabe Williamson & Wyatt**

**Doreen Winterbottom**

Legal Secretary/Assistant

Assistant to David F. Bartz, Jr., Carson D. Bowler & Brent Gale

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**From:** Kaminski, Kim  
**Sent:** Tuesday, October 10, 2017 4:27 PM  
**To:** Michele Martin  
**Subject:** Comments to 1st Asbestos A/C Meeting Rule Proposals

Hi Michele,

Thank you to DEQ for convening this advisory committee to tackle the varied asbestos issues that are occurring in Oregon. There seemed to be relative agreement by committee members on several asbestos issues and the proposed resolutions to those issues. I am submitting some comments to the asbestos topics that were discussed during the first advisory committee meeting.

### **Asbestos Survey Exemption for Residential Renovations**

Waste Management of Oregon (WMO) supports the removal of the asbestos survey exemption for residential renovations. Exemptions to the asbestos survey or to other asbestos requirements do not travel and apply throughout transport and disposal. Additionally, exemptions do not protect our employees from exposure to asbestos fibers when the material arrives at our facilities. An exemption is simply meaningless when asbestos-containing materials (ACM) arrives at our disposal facilities, especially given that the primary purpose of asbestos regulations, both federally and in Oregon, is to protect human health and the environment throughout the entire asbestos abatement process from removal to disposal. As stated in the legislative findings of the Asbestos Abatement Projects statutes, 468A.705 ORS: "There is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health." The removal of this exemption appeared to have general support from the committee and thus, should be removed from the asbestos rule.

### **Other Asbestos Exemptions**

Although not a topic of discussion on the agenda, other exemptions to the asbestos survey requirements were discussed: that is, demolition activities at residential buildings with 4 or fewer dwelling units and that were constructed after January 1, 2004 and asbestos abatement conducted by an owner occupant in a single private residence are currently both exempt from asbestos surveying requirements. We support excising the exemption for demolition activities as part of this rulemaking. When construction and demolition debris arrives at our facilities, it can be impossible to discern whether the materials originate from a renovation or demolition project. WMO would support the elimination of this exemption as part of this rulemaking. However, the owner occupant exemption is part of Asbestos Abatement Projects statutes, and will require a legislative fix, rather than a rule revision.

The same reasoning applies to the elimination of these exemptions as it applies in the aforementioned renovation exemption above. That is, these exemptions allow ACM to be "exempted" and thus undetected and exposed during demolition and renovation activities. When the undetected ACM arrives at either a transfer station or a final disposal destination, there has been potential exposure along the pathway from transportation to disposal. When it arrives at our disposal facility, it is essentially too late in the process and there could be conceivable significant exposure along the way.

### **Asbestos Survey Requirements**

There should be a required format for asbestos surveys and preferably a generic, universal form that perhaps DEQ develops for use statewide. The disposal site operator should be able to look to a specific section on every asbestos survey they receive to quickly digest whether there is ACM in the load. Asbestos surveys should also have an expiration date, especially if there is more renovation or demolition work after a first survey occurs. Contractors reported that new work requiring an asbestos survey does occur but a new asbestos survey is not always conducted.

## **Non-Friable Asbestos vs. Friable Asbestos Handling Requirements**

There was broad support for combining management and disposal of non-friable asbestos with friable asbestos management and disposal requirements since non-friable could become friable in abatement activities and in the handling and transportation of ACM. WMO also supports this change as, in most circumstances, we do treat ACM received at our facilities as friable unless it is absolutely certain that it is non-friable (e.g., some undisturbed, intact roofing materials). The current language in the rule, 340-248-0290 OAR, is ambiguous, particularly, that non-friable ACM “must be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.” A homeowner working on a weekend renovation project, for example, may not understand what “methods” should be employed to avert the release of asbestos fibers and may inadvertently bring friable ACM to our facilities, leaving our landfill personnel to potentially reject that customer’s load. This could lead to a frustrated customer who may resort to illegally dumping their load. Indeed, by allowing different handling and management requirements for non-friable and friable ACM, DEQ is essentially asking our landfill and transfer station personnel to be asbestos experts and render a judgment as to whether ACM is friable or non-friable.

Nevertheless, even though we may handle non-friable roofing material as non-friable in some instances as noted above, WMO would even support eliminating roofing material and products as an exempted material, by rule, under the Asbestos Abatement Project Exemptions, 340-248-0250(f) OAR. Roofing material, even if once encapsulated, can still contain asbestos such in patching material, in some built-up roofing layers, or found in silver paint or backing materials, and can arrive fragmented and broken at our sites. Customers have tried to exploit this loophole exemption by claiming that because the material is “exempted” by rule, although it is broken in the load, that it should still be handled as if it is non-friable ACM. We are not convinced by their claims, especially when the protection of our employees from asbestos fiber exposure is foremost.

With that said, it is important to have a type of exception or allowance in the rule for inadvertent ACM that can arrive at solid waste facilities, such as outlined in DEQ’s 2006 Internal Management Directive. We would isolate and contain it in accordance with the site special waste management plans, with the ultimate goal of protecting human health and the environment.

Please let me know if you have any questions regarding our comments or if you would like to discuss any comments further.

Sunny Regards,  
**Kim Kaminski**  
Sr Government Affairs Mgr, Pacific NW/British Columbia

**Waste Management**  
720 4th Ave, Ste 400  
Kirkland, WA 98033

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## OREGON REFUSE & RECYCLING ASSOCIATION

October 10, 2017

Michele Martin  
Department of Environmental Quality  
700 NE Multnomah St, Suite 600  
Portland, OR 97232

Dear Michele,

Thank you for the opportunity to comment on potential new Oregon Administrative Rules (OARs) relating to asbestos regulations. ORRA's fundamental position is that any exemptions to regulations regarding the handling of Asbestos Containing Material (ACM) granted to generators of ACM must also be extended to the collection, transport and disposal of that material. Moreover, if DEQ decides that unabated ACM is unacceptable for collection, transport and disposal then the onus of abatement of that material should be the direct responsibility of the generator.

Under discussion item 3 during the September 28<sup>th</sup> Asbestos 2017 Rulemaking Advisory Committee, DEQ staff suggested removing the separate definitions and regulations between friable and nonfriable asbestos. ORRA is concerned that removing the definitional difference between friable and nonfriable asbestos could impact the treatment of unintended, unabated ACM that arrives at transfer stations (TS) and material recovery facilities (MRFs). Currently, TS and MRFs operate under a 2006 Internal Management Directive (IMD) which draws a distinction between unintended friable and nonfriable ACM arriving at the facility. The IMD encourages the containment and quick disposal of unabated nonfriable material when possible for the protection of public health and the environment, yet also requires appropriate abatement of friable ACM. ORRA supports a similar process/exception in the new rules for handling of unintended, unabated ACM that arrives at TS and MRFs that incorporates the current IMD's distinction between friable and nonfriable ACM.

Thank you for the opportunity to comment and please feel free to follow up with any questions you may have.

Sincerely,

Willie Tiffany  
Governmental Affairs Director