

Asbestos 2017 Rulemaking Advisory Committee

Meeting notes

Advisory Committee Meeting No.1

September 28, 2017
OR OSHA Training Center
16760 SW Upper Boones Ferry Rd., Ste. 200
Tigard, OR 97224



State of Oregon
Department of
Environmental
Quality

List of Attendees

Marilyn Bull	Garry Penning
Nancy Thorington	Ed Joyce
Tim Lenihan	Kim Kaminski – by phone
Bob Gordon	Dave Bartz
James Adkins	Dave McCall
BJ Hutchins	Jaclyn Palermo, DEQ
Gerry Strawn	Audrey O'Brien, DEQ
Penny Erickson	Claudia Davis, DEQ
Kathleen Kincade	Cory Ann Wind, DEQ - Facilitator
Willie Tiffany	Michele Martin, DEQ
Greg Olson	Susan Farland, DEQ
Greg Baker	Kieran O'Donnell, DEQ
Rosa Martinez	Killian Condon, DEQ
Ame LeCocq	Zeb Bates, DEQ
	Angela Parker, DEQ

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List of Handouts and Presentation Notes

- [Agenda](#)
- [Nonfriable Asbestos Disposal Requirements](#)
- [Survey Exemption for Residential Renovations](#)
- [Asbestos Surveys and Survey Report Requirements](#)

9:30 a.m. Meeting Commencement

Introduction, Jaclyn Palermo

Welcomed the committee members and thanked them for choosing to spend their time participating in this meeting.

Cory Ann Wind also welcomed the committee members and provided room logistics for the meeting.

Overview of Rulemaking, Michele Martin

This rulemaking is a result of input by members of the rulemaking advisory committee for Senate Bill 705. DEQ reviewed the OAR 340 division 248 rules for opportunities to clarify regulations and standards for asbestos-related activities.

DEQ's draft rule changes and Fiscal Impact Statement will be provided at the next committee meeting.

Section 340-248-0270 Asbestos surveys and survey report requirements, Michele Martin and Cory Ann Wind

The 2015 rulemaking advisory committee for Senate Bill 705 brought up challenges that disposal facilities have to identify asbestos contaminated construction and demolition debris. To address this issue, a concept was provided at the meeting for DEQ to establish requirements for asbestos surveys and asbestos survey reports. The requirements would align with the level of due diligence that is commonly implemented by accredited asbestos inspectors and has the potential to provide consistency in surveys and survey reports used to identify asbestos in project materials.

DEQ reviewed and implemented portions of other state rules and best practices to develop draft language for this rule revision process.

There were no comments from the committee on the informational paper.

DEQ facilitated a discussion of the concepts illustrated in the informational paper: [Asbestos Surveys and Survey Report Requirements](#).

The questions posed by DEQ for discussion were:

- a) What are the impacts of this draft rule change on the regulated community, small business or large businesses, local governments, or the public?
- b) What other group(s) could be impacted by this draft rule change?
- c) What are the fiscal impacts on the regulated community including homeowners, small or large businesses, local governments, the public, or other groups?
- d) What are the environmental risks or consequences of this rule change?

Question: Does it [the rules] talk about what to do with the surveys and survey reports? How does compliance verify that the surveys are being done?

Answer: DEQ will continue to work as before.

There was concern by some committee members that DEQ will not be receiving the surveys, especially if abatement is required.

Some committee members agreed that there needs to be a way to bring weekend warriors (DIY homeowners) into the program. There were suggestions that it would be good to address the issues at the permit stage but what about those that won't be getting a permit?

Penny Erickson: Thank you for including the fiscal impact and would like to see a shift of the financial responsibility upstream so that the receiver is not having to turn people away.

Committee members provided suggestions and comments for DEQ to help promote compliance with asbestos rules that include:

- Educating contractors;
- Providing DIY/homeowners with information where they source their materials;
- Mass mailings to area contractors (with a contact list for reference);
- An outreach program for DIY homeowners;
- In Washington if someone orders a dumpster they cannot receive it until there is an inspection;
- In some counties you can't get a demolition permit unless they submit the [survey] form that is signed by an inspector;
- One member will be adding the survey requirement to their permits; and
- Canvassing/site inspection/verification.

Several committee members requested DEQ provide a cover sheet with the requirements listed in the informational paper for the contractors to sign.

Question: There are impediments to someone doing a full survey (occupied home, rotting floors). How do you address the "suspected" materials that contain asbestos? Answer: An accredited inspector uses their professional judgement to determine what is suspected to contain asbestos. Could list items that aren't tested.

Greg Olson: Create a format where people know where to look for the information.

Question: The surveys have an expiration date of one year. Can you provide that information on the form? Answer: DEQ doesn't have an expiration date for the surveys unless there is more material added or removed from a building after the survey was done. This expiration date may be related to the inspector's license.

A committee member pointed out that there are gaps in the federal rules. This has to do with the quantity of samples required, may not make sense for residential.

A committee member expressed that it would be cost prohibitive for small labs to gain accreditation. There should be some sort of certification/training that a lab tech could go through.

Committee and audience members made suggestions for removing materials from the list: roofing felts, glass fiber roofing, and fiberglass.

A committee member suggested that there should be language that a survey will expire if a renovation has been done based on the (existing) survey. If there have been no changes to the structure, then maybe the existing survey would be good. But if there has been work done since the original survey was completed then a new survey must be done.

Question: What about imported materials? We don't know what is in that.
Answer: We know that there is still may be asbestos out there being sold.

**Section 340-248-0250 Survey exemption for residential renovations,
Michele Martin and Cory Ann Wind**

This was a common theme during the SB 705 rulemaking. We know that human health can be protected by performing asbestos surveys prior to the start of a renovation or demolition. Currently DEQ requires a survey for three out of four projects covered by the rules – generally speaking. Commercial demolitions and renovations, and because of SB 705, residential demolitions. Renovations at residential buildings with 4 or fewer dwelling units are currently exempt from the asbestos survey requirement.

No questions about the informational paper.

DEQ facilitated a discussion of the concepts illustrated in the informational paper: [Survey Exemption for Residential Renovations](#)

Some committee members described difficulty with the definitions. Portland [City of Portland] has different definitions between demolition and renovation. How are you going to deal with the different definitions that are being used out there? Answer: Demolition and renovation are defined the same as in NESHAP. DEQ is not NESHAP but must be at least as stringent as they are. Another committee member believes that local definitions would not be competing with the permitting requirements.

Question: What about small projects? Answer: There are waivers available. If a project is small and they provide photos and we are comfortable that there are no suspect materials then a waiver could be made. For very small projects where asbestos removal is not the primary intent (cable company drilling hole to install cable) a survey would not be required.

Members pointed out that if a waiver is granted this would not carry through to disposal and requested that it either be consistent all the way down or the materials be packaged in a way that protects waste handler safety. DEQ clarified that once the asbestos-containing material leaves the threshold of the home it becomes regulated and that the exemption only applies to the owner or occupant who is doing the abatement work themselves.

Nancy Thorington: It's probably more important for homeowners to have to comply with this. They don't know what it is or how to handle it. Owner occupancy is not allowed in ORS 468A.755 but it doesn't necessarily happen that way.

One member pointed out that DEQ can't exempt it at the top and then not at the bottom. The process needs to be simple all the way along. He would support removing the exemption. DEQ clarified that the exemption only

applies to the owner or occupant that is doing the work themselves but they are required to package and properly dispose.

There was concern that this exemption would not protect a family's health during the handling of asbestos containing materials.

Additionally, some thought that educating people in the waste business would be helpful to protect worker health that is just as important. DEQ clarified that the exemption doesn't change the requirements for materials to be handled or packaged properly once it leaves the threshold of the home.

Garry Penning commented "We've been doing this in southern Oregon for 15 years and it's been extremely painful. Just because it's hard doesn't mean that we shouldn't do it. This will be protecting families."

Committee members suggested that including information in the sale of a property during the disclosure process could be useful. Educating realtors, brokers and home inspectors (real estate) can be helpful in getting the information out there. DEQ currently has fact sheets available but maybe a homeowner's guide could be provided as well.

Public Comment

Greenway Recycling: More than anything, I think, if we can push the whole level of this back to where it's actually made, where it's created, rather than trying to get all the way through the process. If you wait to deal with it until we've got it in a box laying on the floor and it's like 30 minutes from going to the landfill there has probably been a lot of people exposed already. That's probably not the right spot. I know that we are clever enough to find ways to take care of it at the front end. I think that it's the only place that it'll ever be able to be done.

If we treat that asbestos as if it were a product that was manufactured, and garbage is a manufactured product. We manufacture it in every building we take down and then deliver it to somebody, well, the place to deal with it is where it was manufactured not at the other end.

Section 340-248-0280 and 0290 Nonfriable Asbestos Disposal Requirements, Michele Martin and Cory Ann Wind

DEQ's draft rules propose omitting section 0290 and including the nonfriable asbestos disposal requirements with friable asbestos disposal requirements in section 0280 as appropriate. The concept is to reduce the potential of nonfriable asbestos-containing material and asbestos-containing waste material that can become friable when handled, transported, or disposed of at disposal transfer stations, material recovery facilities, and landfills permitted or not permitted to accept asbestos-containing material and asbestos-containing waste material.

Adding nonfriable into friable disposal requirements, we support the integration of DEQ's Air Quality asbestos rules with DEQ's Solid Waste Permitting rules.

No questions or comments on the informational paper.

DEQ facilitated a discussion of the concepts illustrated in the informational paper: [Nonfriable Asbestos Disposal Requirements](#)

DEQ asked the committee to discuss how the removal of 0290 would impact the handling of the materials that are contained in 0290 that are going to facilities?

Question: Are there any types of nonfriable materials that stay nonfriable no matter how they are handled? Is this an issue?

Question: Is nonfriable defined in statute? Answer: In 468A.700 asbestos is defined and nonfriable is not. The idea is not to remove nonfriable, but to include them in the disposal requirements similar to friable. The disposal requirements would be the same for both; we would not be deleting nonfriable.

Ame LeCocq told the committee that this is already the way their company manages material at the end of the line for disposal. This change is helpful because 0290 contains some vague language that is open to interpretation by anyone who uses it, specifically homeowners. This supports the way they already use these regulations and this makes sense. It has always been in their Solid Waste permits that they cannot accept friable or nonfriable asbestos. During the discussion other members agreed that they treat all commercial (roofing) materials as potentially containing asbestos, including friable or nonfriable, except three-tab.

DEQ explained that incorporating nonfriable still offers the exemption for two things: petroleum bound roofing product or a mastics. Three-tab is not included in that exemption unless it is non-asbestos containing. The proposal is that all asbestos containing materials (friable and nonfriable) must be packaged in the same way unless it was an exempt material which would be a mastic or a petroleum bound roofing product.

Question: How would this affect DEQ's IMD for when asbestos-containing materials make their way through to a facility? Is there any differentiation between the definitions of friable and nonfriable and the procedures that you would expect a facility to use? Answer: IMDs and guidance would have to be updated to reflect more recent rule language. We would look at the management plans that the disposal site has in place. In terms of the inadvertent loads of asbestos-containing material; we would work with the facility using their special waste management plan.

DEQ asked the committee how this draft rule change will impact the way business is being done now? The committee responded that it will increase costs and impact the landfills in the Portland area and asked if there will be any new landfills that will be certified to accept the waste? All the plastic encased material will fill the existing ones quickly. This will also impact project schedules.

DEQ explained that for individual roofing materials if there is proof that they don't have asbestos. For built up roofing there isn't enough confidence that there is not asbestos in the layers. DEQ wants to prevent it going to a recycling plant and have it ground up to release asbestos fibers into the air. In order to send built up roofing materials for disposal you must have documentation that it does not contain asbestos.

Question: Is any of this discussion going to be included in the IMD process?

Answer: This topic should probably be handled during the rulemaking process, if possible, as opposed to an IMD. The rules would be a more appropriate place to come up with agreed upon language for this purpose.

Question: What if you get asbestos to a disposal site and instead of "hand pressure" it is run over by a front loader, doesn't this create the same sort of hazard in terms of handling things? Answer: This distinction may not need to be there if friable and nonfriable are going to be handled in the same way.

There are challenges for the contractor to determine whether the material will remain nonfriable. The owner has to step up to the plate and get an inspector to say what may or may not happen.

Willie Tiffany suggested that DEQ add in some exception in 248-0280 for material that inadvertently makes its way through without being handled properly.

Question: This question came up during the rulemaking in 2003. Has something changed tremendously since then? Answer: The rulemaking didn't include the appropriate people in the room for the development of the rules. As a result of feedback, some of the changes that were made to rule were removed. This is why you are here, so we don't make that mistake again.

Question: Can you clarify how nonfriable is being handled now? Answer: There is not a clear method for handling it properly now, there are no specific requirements in 248-0290.

The moderator asked the committee "If removing nonfriable is not the right way of getting to this issue, what would be a better way?" Answer: There is committee support for friable and nonfriable to be treated the same.

Question: when you remove nonfriable material will you have to suit up like nonfriable? Answer: this is not applicable.

Garry Penning pointed out that the nonfriable is not placed in a lined landfill because it won't leach. Other landfills encapsulate and record the asbestos and that makes it easier for future usage (drilling, etc.).

Marilyn Bull commented that when someone samples materials it should be a complete sample of the material. Some samples are a cross section that come in are completely useless.

Advisory Committee Input of Asbestos Rule Changes

DEQ asked the committee if there are any other things that you see in the asbestos rules that might need to be updated or changed.

Nancy Thorington: Make the rule language consistent with SB 871

Gerry Strawn: Delete the term survey and replace it with inspection. We are not surveyors we are inspectors.

Nancy Thorington: This might not be consistent with SB 871 that refers to the survey.

Cory Ann Wind: there might be a bit of discretion if you follow the intent of the statute.

John Hill: If you solve the problem at the beginning of the process with generators it will reduce the costs. Once it is discovered in the waste stream it increases the cost quite a bit.

Dave McCall: How are you going to address asbestos in relation to disasters?
Answer: We have handled asbestos as a part of disasters already. We would work through the existing incident command system to address the disaster. We have an Emergency Management Plan on our website.

Gerry Penning: The 12 month expiration has really worked in our favor. People can take advantage of the fact that they don't expire. Would like to see an expiration date be considered.

Greg Baker: It would make sense to choose older than the mid 90's. Things haven't changed that much since then.

Marilyn Bull: DEQ's analytical methods haven't changed since the 80's.

Rosa Martinez: Does DEQ foresee going electronic in the future? Payment of permits, viewing surveys, public records.

Audrey O'Brien: We are looking at an electronic data management system and following the State procurement procedures as required is lengthy. We've asked how soon DEQ can receive electronic payments; we have been discussing this with our Business Office.

Nancy Thorington: Washington has a pretty good system. They take payments and submit paperwork online. Have you considered reaching out to them?

Bob Gordon: If you get in touch with CCB you'll find that the requirements for handling these materials aren't included in continuing education, yet.

Killian Condon: There has been outreach to contractors since SB 705 took effect. DEQ is working with the CCB to roll out some online training for contractors to get their continuing education (3 CEUs).

James Adkins: Would be good to be able to provide training to our members (Home Builders Association) as well.

Roundtable

Bob Gordon: A project can be delayed for quite some time and would hate to see the owner be encumbered by having to do another survey when nothing has changed. Agrees with Rosa that moving to an electronic system would be great.

Claudia Davis: We've been wanting to move to electronic system for quite some time. Don't have the infrastructure. It's five years out.

Ed Joyce: If there is a way you can get out in front of this with a homeowner it is very important. Education for homeowners/buyers would be good. Follow the money, when there is money changing hands that is a good opportunity to say here's what you can and cannot do.

Ame LeCocq: There was a lot of good dialogue today about looking at these rules from the approach of consistency as asbestos containing materials make it all the way through the process.

John Sandie: will volunteer 10 hours a week for an internship to help with verification.

Penny Erickson: Reiterates consistency throughout the process. Public education is key to making this successful. Would like us to be mindful of taking the government speak out of the training materials. DEQ's website is not very user friendly.

Nancy Thorington: Appreciates the opportunity to be in a public format to talk through this. With all of the demolition in Portland this has become very

important. The city is very willing to collaborate. Have a lot of resources that they dedicate to outreach so feel free to partner with us.

Greg Olson: Glad to hear that there are 28,000 Contractors through the CCB that will be educated on this subject. It will be critical for these people to be able to educate the homeowners and clients. Would like to see it go from optional to mandatory. (Clarification from the Tim Lenihan: There are 35,000 licensed contractors. The DEQ training for the CCB are optional courses, so we don't know how many will choose it.)

Tim Lenihan: Agrees with Greg. They have a newsletter that goes out quarterly and there is now talk about doing it monthly since it's electronic. It would be easy to send this information to the contractors and make them aware. (Note: DEQ has worked with CCB on outreach since 2015.) One of the problems is that some contractors don't open their emails to read the information. An awareness campaign (like RRP) is also an elective that they can choose, and often do because it's an easy course. This could be another way to get the information out there. CCB prefers to attain compliance over penalties wherever possible.

Garry Penning: It's got to be regulated all the way through the system not just at the end.

Jim Slusher: Will thank his state representative for asking him to be here.

Dave Bartz: You did a really good job of taking all of the information, suggestions, criticism received in the past, and creating something that didn't require a lot of criticism.

Greg Olson: When issues arise, contractors are held responsible (penalties, etc.). It seems that the owners need to be held responsible as well because they are the ones that hire the contractors, some of whom decide not to follow best practices, and should have to share in the pain. (Note: DEQ does often assess penalties against both parties, the owner and the contractor. We view penalties and enforcement as a deterrent. If contractors know that penalties will be assessed for a violation, they tend not to violate.)

Robbye Lanier, LRAPA: We do outreach to a list of homeowners each month to make them aware of asbestos and other things.

2:30 p.m. Adjourn

Next steps

Written comments on today's discussion are due October 10, 2017 to martin.michele@deq.state.or.us.

Draft rules will be available at the next meeting.

Documents will be provided two weeks in advance of the next meeting.

Next meeting scheduled

9:30 am, Wednesday, Nov. 29, 2017

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