



Colorado Environmental Professionals Association

December 29, 2016

Garry Kaufman, Program Director
Colorado Department of Public Health and Environment
Air Pollution Control Division APCD-SS-B1
4300 Cherry Creek Drive South
Denver, CO 80246

Re: Comments regarding Draft Asbestos Inspection and Report Requirements

Dear Mr. Kaufman;

On behalf of the Colorado Environmental Professionals Association (CEPA), please accept the following comments regarding *your Draft Asbestos Inspection and Report Requirements*. As we have discussed in the past, CEPA is deeply committed to furthering productive communication with CDPHE. It is also our highest priority to make the industry better. Our board and membership seeks to raise up the community by being an example to others.

In general, we in CEPA agree with the notion that asbestos inspections statewide need to be improved. While there are excellent examples of reports by select environmental consulting firms, over time the quality of reports has declined and something must be done.

However, we do not agree with the approach that CDPHE recommends in the *Draft Asbestos Inspection and Report Requirements*. As you will note, our comments fall generally into three categories: lack of authority, incorrect statement or imposition of new regulatory requirements, and practical challenges. We believe that CDPHE is at legal risk should you proceed with your recommended approach. CEPA recommends other avenues of improvement, which we can share during future conversations after you have read and digested our comments.

Our comments focus strictly on our interpretation of the regulations. We address each in turn below.

The Air Pollution Control Division does not have the authority to issue either guidance or regulatory pronouncements that do not conform to Regulation No. 8, Part B – Asbestos.

Regulation No. 8, Part B – Asbestos (Regulation 8) is the Air Quality Control Commission's (AQCC) rule pertaining to the regulation of asbestos in Colorado. As such, the AQCC has responsibility for establishing the regulatory requirements. The job of the Air Pollution Control Division (the Division) is to implement and enforce Regulation 8 as adopted by the AQCC.

The Division's recently issued *Draft Asbestos Inspection and Report Requirements* (the Inspection and Report Requirements) improperly goes beyond the current requirements of Regulation 8. As we read it, the Inspection and Report Requirements aim to impose a number of traditional operation and maintenance requirements on public and commercial buildings as well as other, and more costly, requirements on building owners.



Of significant note is the fact that there is no regulatory requirement mandating that inspection reports be submitted or approved by the Division in advance of abatement or demolition. We commend the Division for taking action to improve the quality of asbestos inspections and reporting. However, failure to enforce the regulations as presently written while creating new and more burdensome requirements results in an unequal playing field for the regulated community and industry.

(Excerpts from the Inspection and Report Requirements appear in bold italics below with CEPA's response following.)

The Inspection and Report Requirements exceed the requirements of Regulation 8.

The inspection requirements in the Asbestos Hazard Emergency Response Act were designed . . . in order to develop a meaningful management plan whose ultimate purpose is to prevent unintended disturbance of ACBM in order to protect building occupants from being exposed to asbestos. Section III.A.1.B of [Regulation 8] requires suspect materials that will be impacted by renovation or demolition activities to be sampled by a certified asbestos building inspector . . . and assessed . . . prior to the start of those activities."

Regulation 8 does not impose the AHERA management plan provisions on public, commercial and single family residential buildings. Only Sections IV.C.1, IV.D and IV.F are applicable.

First and foremost, identify, quantify and categorize all homogeneous areas of suspect ACM. This information is required for all materials, not just those that are confirmed as ACM.

There is no requirement to obtain an exact quantification of suspect materials other than for purposes of determining how many samples should be collected per homogeneous area. Section IV.C.1.d.(vi).(C) requires only "a description of the manner used to determine sampling locations, the name and signature of each certified inspector who collected the samples, and his or her certification number."

Provide a written report of the asbestos inspection findings and assessment. The report shall include: The name (if applicable) and address of the building, structure or facility that was inspected. If there is no street address, GPS coordinates are required.

There is no requirement to provide this information and certainly no requirement to provide GPS coordinates. Obviously a sufficient description of the location or structure being inspected can be inferred from the regulation but nothing more.

The client's name and contact information.

There is no requirement to provide this information. There may be reason to keep this information confidential, especially if a report is submitted to the Division and will become public record.



A description of the purpose and scope of the inspection.

There is no requirement to state the purpose and scope of the inspection.

Date(s) of construction and any known renovations.

There is no requirement to provide dates of construction or any known renovations.

A description of the manner used to determine homogeneous areas and sampling locations.

There is no requirement to provide the manner used to determine homogeneous areas.

The location and quantity or volume of each homogeneous area of all suspect ACM. All spaces represented by each homogeneous area shall be listed.

There is no requirement to provide this information.

A blueprint, diagram or drawing It is recommended that photographs and detailed descriptions of each suspect and/or known ACM and assumed material are included in the report.

There is no requirement to submit blueprints, diagrams, drawings or photos. Section IV.C.1.d.(vi).(B) requires only “an inventory of the locations of homogeneous areas where samples are collected, exact locations where each bulk sample is collected, dates that samples are collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where non-friable suspected ACBM is assumed to be ACM.”

An assessment of all known or assumed ACM as to whether . . . it is friable or non-friable. If the ACM is non-friable in its current condition, the inspector’s opinion as to whether the ACM will remain nonfriable if disturbed by renovation or demolition.

There is no requirement for an inspector to make a determination as to whether non-friable ACM will remain non-friable if disturbed by renovation or demolition. All provisions of Section IV.F.3 are optional.

For ACM that will remain . . . the following shall be provided:

All provisions of Section IV.F.3 are optional – they cannot be mandated. There is no requirement to inspect building materials that are not going to be disturbed. Section III.A.1 requires inspection “prior to renovation or demolition that may disturb greater than the trigger levels of material identified as a suspect ACM.” The

Operations and Maintenance provisions of Section IV are not applicable to public and commercial buildings. Without amendment to Regulation 8, there can be no mandate to test, quantify, assess, etc. materials that remain after a renovation.



The Colorado certified asbestos building inspector's conclusion and recommendations. This shall include a list of all known or assumed ACM based on the scope of the inspection along with a physical description.

There is no requirement for an inspector to give separate conclusions and recommendations apart from reporting the results of the inspection, sampling and assessment consistent with Section IV.C.1, IV.D and IV.F.

If ACM has been disturbed, the inspector must quantify the amount of ACM disturbed and determine if there is a major or minor asbestos spill present.

There is no requirement for an inspector to make a determination as to quantification of ACM disturbed in a spill situation. The regulation requires only that the owner or contractor take the necessary response actions depending on the area of ACM disturbed. See Sections III.T.1 and III.T.2. If known ACM is disturbed, an inspector need not be utilized at all to determine whether the spill is major or minor.

Regarding the final paragraph concerning demolition –

It is impractical to require that a building be empty prior to inspection and it is not required. There is no requirement to submit an inspection report in addition to a demolition permit application prior to demolition. There is no requirement for an inspection report to contain a certification by the inspector. The proper certification is already required on the demolition permit application - that the inspector has thoroughly inspected the facility and sampled all suspect materials. Finally, there is no requirement for an inspector to be on site during demolition to spot previously unidentified suspect materials.

The Inspection and Report Requirements present practical challenges that will bring asbestos inspections, abatement and demolition to a halt.

We can appreciate that the Division is attempting to improve compliance with the inspection requirements of Regulation 8 and, as stated above, we commend you for doing so. A guidance document that conforms to the actual text and requirements of Regulation 8 would serve as a good guide for the industry and owners alike. That being said, the current *Draft Asbestos Inspection and Report Requirements* goes too far in that the Division does not have authority to mandate anything other than compliance with the provisions of Regulation 8 as presently written. CEPA would be happy to work collaboratively with the Division to develop an acceptable guidance document.

To hold an entire industry to a new standard overnight will result in massive failure of the system. Practically speaking, even if the *Draft Asbestos Inspection and Report Requirements* did conform 100% to Regulation 8, instantaneous implementation of a “new normal” by the Division and rejection of already existing reports will have a catastrophic effect on the abatement industry in Colorado, causing project delays and other problems.

Any future guidance document issued by the Division must, by its nature, be advisory only. That said, we still urge the Division to work closely with inspectors, contractors and building owners in a phased manner to usher in the renewed, and much needed, emphasis on compliance with existing regulation.