

Environmental Practice Group | November 6, 2009

New York City Issues New Rules for Asbestos Projects

In an effort to improve asbestos abatement project safety, New York City is implementing new reporting, certification, permitting and record-keeping rules governing the city's Asbestos Control Program ("ACP"). These rules require building owners to submit information to regulators and obtain regulatory approval in connection with asbestos abatement projects that disturb more than 25 linear feet or more than 10 square feet of asbestos-containing material ("ACM"). The new rules took effect on October 13 for asbestos projects involving the "abatement of 1,000 or more linear or square feet" of ACM on a single floor of a building. The rules will take effect on January 13, 2010 for asbestos projects involving the "abatement of less than 1,000 linear or square feet" of ACM on a single floor of a building.

Under the ACP, building owners are required to determine whether ACM is present in a building when construction or demolition is planned. Under the new rules, building owners undertaking demolition, alterations, modifications, renovations or certain plumbing work must submit a certification to the New York City Department of Buildings ("DOB"). The type of certification that must be submitted depends on the extent of asbestos to be disturbed during the work.

Building owners undertaking asbestos projects that will disturb more than 25 linear feet or more than 10 square feet of ACM must submit Asbestos Project Notifications to the DOB. For such projects, the DOB will issue a building permit only after the city's new Asbestos Technical Review Unit ("ATRU") determines that the project meets safety requirements, all abatement is complete, and the New York City Department of Environmental Protection ("DEP") issues an Asbestos Project Completion Form to the building owner. Projects that involve the disturbance of less than 25 linear feet or 10 square feet of ACM do not have to submit Asbestos Project Notifications or obtain Asbestos Completion Forms, but must submit Asbestos Assessment Reports.

Building owners undertaking projects that do not involve asbestos must submit Asbestos Exemption Certificates. The submissions can be made through the DEP's online Asbestos Reporting and Tracking System.

The new rules also require building owners to obtain asbestos abatement permits from the DEP for asbestos projects involving the obstruction or removal of exits or fire protection systems. For certain of these projects, building owners must submit workplace safety plans to the ATRU for approval. These workplace safety plans must include floor plans showing the location of asbestos project work areas, fire alarm systems that have been deactivated and any obstructed means of egress. The plans must also include a description of measures taken to mitigate compromised fire protection systems or means of egress, including surveillance by a fire watch and an action plan setting forth safety procedures to be taken in the event of an emergency.

The ATRU will review information submitted under the ACP and permit asbestos projects under the new rules; however, the DOB will not issue building permits until

both the ATRU and the DEP have signed off on asbestos projects.

Emergency asbestos projects, which are defined as ACM abatement projects undertaken as a result of an unexpected event where any delay in abatement would pose an immediate danger to public safety and health, may be exempted from the DEP permitting requirements. The new asbestos rules, however, require the immediate notification of emergency asbestos projects to the DEP by telephone. For such projects, an Asbestos Project Notification must be submitted to the DEP no later than 48 hours after the abatement work commences.

Failure to comply with the rules can result in a maximum civil penalty of \$10,000, or \$15,000 for failure to comply with the DEP permitting and workplace safety plan requirements concerning asbestos projects involving the obstruction or removal of exits or fire protection systems. The rules, which are codified in Chapter 1 of Title 15 of the Rules of the City of New York, can be found at http://www.nyc.gov/html/dep/pdf/asbestos_rules_09_10_2009.pdf.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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