



# ASBESTOS REGULATORY CLARIFICATIONS

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Toxic Substances Control Division

ARC – 020

November 2001

## Subject: Work Practices that Deviate from the Provisions – Alternate Control Method Format and Process Approval

### BACKGROUND

The design criteria specified in the Texas Asbestos Health Protection Rules (TAHPR), Section 295.60 for asbestos abatement in public building are the minimum requirements to be used for work practices provisions/alternate control methods for asbestos abatement. These criteria promote the design of abatement technologies in accordance with public health protection and air quality engineering control practices. These criteria include the minimum requirements for a preliminary engineering control report which supplies the rationale for the proposed alternate control method, and a final plans and specifications report detailing the fully developed project plans and specifications.

The Texas Department of Health (TDH) in an internal memorandum dated August 12, 1999, detailed how the TAHPR authorizes a licensed asbestos consultant to depart from the provisions of 25 TAC 295.60 (a)(2). The TDH's description of the three ways in which a licensed consultant may depart from the traditional method lends support and encouragement for alternate control methods and/or work practices. The three ways are as follows:

- A consultant may depart from 25 TAC 295.60 and design or specify the alternate control methods with the best available control technology listed in the Occupational Safety and Health Administration (OSHA) rules, 29 Code of Federal Regulation (CFR) 1926.1101(g)(5) applicable to class one asbestos removal operations.
- A consultant who is also a licensed professional engineer (P.E.) or certified industrial hygienist (C.I.H.) may design or specify the alternate control methods with the best available control technology enunciated in 29 CFR 1926.1101(g)(6) including the best professional judgment that is equally protective of public health and safety.



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- A consultant must seek a variance in writing from the TDH to depart from the traditional methods of 25 TAC 295.60. The work practices or the alternate control method selected by the consultant through the variance applications/requests must be at least as protective of public health as the traditional method and must be clearly described in the project plans and specifications submitted to the TDH for prior written approval. The burden of proof to show equivalency rests with the asbestos consultant.

For all projects seeking variance, a preliminary engineering control report proposing work practices and/or specifying alternate control methods or procedures should be submitted as early in the planning stage as is practical. Submission of a preliminary engineering control report at this point is necessary to resolve any potential disagreements between the design consultant and the TDH regarding the essential planning information, design data and other requirements of the TDH.

The preliminary engineering control report shall form the conceptual basis for the containment, prevention of visible emission, and/or the abatement system proposed. The document shall bear the signed and dated seal of the P.E., or C.I.H. If consultant is not a P.E. or C.I.H., the plans and specifications shall bear his signature and license number.

## **RESPONSE**

Information sufficient to review variance applications/requests shall be submitted in the form of plans and specifications. All applications/requests for variance shall include all requested changes, substitution to the changes and a detailed justification on how the practice or method is equally protective of public health in **bold letters**. The applications/requests approved within the scope of this clarification shall incorporate at a minimum all terms and conditions specified in 25 TAC 295.60, entitled Operations: Abatement Practices and Procedures for Public Buildings. The rules set forth the characteristics and standards for granting variances for projects involving demolition, asbestos abatement and waste management in public buildings. An approval to work practice and/or alternate control specifications within the scope of this clarification does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the owner or operator. The issuance of approval does not authorize any injury to persons or property or any infringement of federal or state or local law or regulations. The approval is for a single project only.



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## DISCUSSION

The review of applications/requests for work practices/alternate control method variance by the Asbestos Programs Branch, Toxic Substances Control Division in the TDH involves several processing steps and coordination with the TDH in Austin and various Public Health Region (PHR) offices.

Applications/requests are received by the administrative staff and reviewed by the Branch Chief or Administrator for technical completeness. This review is usually completed within 10 days of the receipt of the applications/requests. If the applications/requests are incomplete, additional information is requested and the applicant typically has 30 days to respond.

When the applications/requests are administratively complete, a copy of the applications/requests are sent to the PHR where the project will take place for final technical review for consistency with the TAHPR and the National Emission Standard for Hazardous Air Pollutant (NESHAP). The purpose of this transmittal to PHR is to provide early information to the PHR that may potentially be affected by the proposed work practices/alternate control methods variance.

For all work practices/alternate control method variances, the TDH and the PHR perform an evaluation of the proposed work practices/alternate control methods. The evaluations may run concurrently.

This determination on how the proposed method will protect public health and be consistent with the TAHPR and NESHAP utilizes information contained in the applications/requests and the TDH records. The PHR appraisal consists of the nature, characteristics, quality and observations at the abatement site of visible emissions and monitoring of airborne asbestos fibers. Data collected as part of the PHR evaluation is used to assess the adequacy of public health protection of the proposed work practices/alternate control methods. Once an evaluation has been made, the PHR prepares a memorandum documenting the determination of the method's appropriateness. Technical review and preparation of an approval letter including evaluation of the methods are required to be completed by TDH within 20 working days of applications/requests being declared administratively and technically complete. Letters of approval are reviewed for accuracy and consistency within the Asbestos Programs Branch. The Letter of approval or approval with conditions or denial is then mailed to the applicant with a ten-day comment period. Comments on the letter of approval by the applicant or requestor are evaluated and the letter of approval is revised as appropriate.

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In general, an applicant should allow 30 days from the time of submitting an administrative complete application until final TDH approval is issued.

Agree to form and substance

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**John O. Onyenobi, Acting Chief**  
Asbestos Programs Branch

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**Alan Morris, Director**  
Toxic Substances Control Division

This Regulatory Clarification preempts any previous clarification/guidance/policy letters on this subject and remains in effect until superseded in writing by the Branch Chief, Asbestos Program, or Division Director for the Texas Department of Health, Toxic Substances Control Division. Attributed use or reproduction of this information is freely granted.