

CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection is promulgating rules that would amend the existing asbestos rules and regulations. These rule amendments were identified as part of a comprehensive rules review initiative undertaken by the New York City Mayor's Office of Operations to further clarify and simplify certain regulations.

When and where is the hearing? The department will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. on February 14, 2018. The hearing will be held in the 8th floor conference room at 59-17 Junction Boulevard, Flushing, New York.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

Website. You can submit comments to the Department of Environmental Protection through the NYC rules web site at <http://rules.cityofnewyork.us>.

Email. You can email written comments to nycrules@dep.nyc.gov.

Mail. You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.

Fax. You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.

By speaking at the hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on February 14, 2018

Is there a deadline to submit written comments? Yes, you must submit written comments by February 14, 2018.

What if I need assistance to participate in the hearing? You must tell the Bureau of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 718-595-6531. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by February 7, 2018, 2018. This location has the following accessibility option(s) available: Wheelchair Accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a recorded copy will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.

What authorizes the department to make this rule? Section 1043 of the City Charter and sections 24-105 and 24-136 of the New York City Administrative Code authorize the department

to make this proposed rule. This proposed rule was included in the department's regulatory agenda for the 2017 fiscal year.

Where can I find the department's rules? The department's rules are in title 15 of the Rules of the City of New York.

What laws govern the rulemaking process? The department must meet the requirements of section 1403 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of section 1043(b) of the Charter.

Statement of Basis and Purpose of Proposed Rule

Working with the City's rule-making agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. In light of this review, the Department of Environmental Protection ("DEP" or "the department") is making several changes to its asbestos regulations to update them and make them easier for the public and the regulated community to understand.

Among other changes, the proposed rule:

- clarifies the purpose of the rule;
- adds definitions;
- adds sections related to the Asbestos Assessment Report and renewal of the Restricted Asbestos Handler Certificate;
- clarifies variance-related issues;
- clarifies the qualifications required for investigator certificates;
- clarifies record-keeping requirements for the contractor, air monitor and investigator;
- updates language on, and the specifications of, required warning signs and labels;
- prohibits employees of the department's Asbestos Control Program from applying for an asbestos investigator certificate or from applying for renewal of the certificate;
- allows in certain instances individuals denied a certificate to appeal the decision;
- repeals section 1-22 (b)(2), Asbestos Exemption Certification;
- limits the number of times any certificate holder may receive a replacement certificate to twice in any two-year validity period;
- requires an asbestos abatement permit when there is an obstruction of an interior exit stairway;
- requires a sample location sketch to be made within one hour of the beginning of sample collection of suspected asbestos-containing material;
- requires additional training for investigators with a high school diploma including blueprint-reading courses;
- requires a minimum of six months graduate experience in building survey or a certified asbestos investigator;
- allows for electronic recordkeeping;
- clarifies for the investigator what a chain of custody must include;

- sets required procedures for encapsulation and enclosure;
- requires applicants to achieve a passing grade on a departmental examination by the third attempt;
- makes failure to comply with a work place safety plan a violation of the rules;
- requires that a variance for the use of a remote worker decontamination enclosure be obtained;
- requires a building owner or its authorized representative to retrieve the approved stamped copy of the work place safety plan from DEP and post that copy at the work place;
- requires that a sample location sketch must be made within one hour of the beginning of sample collection;
- amends section 1-26 to always require a work place safety plan when a permit is required;
- clarifies the roofing, flooring, vertical surface, and pre-demolition procedures; and
- includes minor plain-language revisions.

Consistent with the above, DEP amends the existing rules found at 15 R.C.N.Y. Chapter 1. The Rule is authorized by section 1043 of the New York City Charter and sections 24-105 and 24-136 of the Administrative Code of the City of New York.

New material is underlined.
 [Deleted material is in brackets.]

“Shall” and “must” denote mandatory obligations and are used interchangeably in the rules as amended.

The text of the proposed rule follows.

Section 1. The chapter heading and table of contents of chapter 1 of title 15 of the Rules of the City of New York are amended to read as follows:

Chapter 1

Asbestos Control Program

Subchapter

- A Purpose, Scope, Application, Definitions and Variances
- B Certification Provisions
- C Notifications, Permitting and Recordkeeping
- D Air and Bulk Sampling, Monitoring and Analysis
- E Personnel Protection and Equipment Specifications
- F Asbestos Project Procedures
- G Pre-Demolition Abatement Activity Procedures

§ 2. The subchapter heading and table of contents of subchapter A of chapter 1 of title 15 of the Rules of the City of New York are amended to read as follows:

Subchapter A

Purpose, Scope, Application, Definitions and Variances

§ 1-00 Purpose

§ 1-01 Scope and Application

§ 1-02 Definitions

§ 1-03 Variances

§ 3. Subchapter A of chapter 1 of title 15 of the Rules of the City of New York has been amended by adding a new section 1-00 to read as follows:

§ 1-00 Purpose. The purpose of these rules is to protect public health and the environment by minimizing the emission of asbestos fibers into the air of the City when buildings or structures with asbestos-containing material are renovated, altered, repaired, or demolished by ensuring that asbestos-containing material is handled appropriately and by individuals qualified to do so.

§ 4. Paragraphs 2 and 3 of subdivision j of section 1-01 of title 15 of the Rules of the City of New York is amended to read as follows:

(2) The maximum civil penalty for any violation of a lettered subsection of these rules, pursuant to a notice of violation returnable before the Environmental Control Board of the Office of Administrative Trials and Hearings, shall be \$10,000, except that a violation of section 1-26 shall carry a maximum penalty of \$15,000.

(3) DEP may block an asbestos investigator from filing an Asbestos Assessment Report (Form ACP5) or deny any application for an asbestos permit pursuant to section 1-26 of these rules, or a variance application pursuant to section 1-03 of these rules, where any party to the asbestos project, including but not limited to the abatement contractor, building owner, [and] or air monitoring company, has docketed, unpaid civil penalties imposed by the Environmental Control Board of the Office of Administrative Trials and Hearings for violations of these rules, sections [24-156.1 and 24-146.3]24-136 and 24-138 of the Administrative Code or NYSDOL IRC 56.

§ 5. The following definitions set forth in section 1-02 of title 15 of the Rules of the City of New York are amended, and the following new definitions are added in alphabetical order in that section, to read as follows:

Amendment. “Amendment” shall mean a form submitted to modify the asbestos project notification (Form ACP7) by changing information that was provided when the ACP7 was originally filed.

Bound Notebook. “Bound notebook” shall mean a notebook manufactured so that the pages cannot be removed without being torn out. A loose-leaf binder is not a bound notebook.

Chain of custody. “Chain of custody” shall mean the form or set of forms that document the collection and transfer of a sample, which must reflect the time and date of all transfers of that sample and identify each person that handles that sample by such person’s printed full name and signature.

Containerize. “Containerize” shall mean the placing of asbestos-containing material in an acceptable container for disposal, as specified by these rules.

Electronic Recordkeeping System. “Electronic recordkeeping system” shall mean an electronic system in which records are collected, organized, and categorized to facilitate their preservation and use, by utilizing a format and a reliable media that enables future retrieval of these records.

Pre-demolition Abatement Activities. “Pre-demolition abatement activities” shall mean any and all asbestos abatement activities required to be performed and completed prior to the partial or total structural demolition of a building or structure, including successful clearance air monitoring.

Start date. “Start date” shall mean the date when a worker decontamination enclosure system is installed and functional.

Substrate. “Substrate” shall mean non-asbestos containing material which is beneath and supports asbestos-containing material.

Variance. “Variance” shall mean relief from specific sections of the rule for a specific project.

Work area. “Work area” shall mean designated rooms, spaces, or areas of the building or structure where asbestos abatement activities take place. For glovebag procedures, the work area shall also include the areas contiguous to where the glovebag procedure takes place. For the purpose of the survey of a building for asbestos, the work area is the premises, or those portions of the premises where the renovation or alteration work is to occur, as reflected in the Form ACP7.

§ 6. Subdivision a of section 1-03 of title 15 of the Rules of the City of New York is amended to read as follows:

(a) Application for any variance [from these rules or Part 56 of Title 12 of New York Codes, Rules and Regulations (subparts 56-4 through 56-17) shall] must be made directly to the Department at least two weeks prior to the commencement of work. Work involving a variance may not commence prior to the receipt of the Department’s approval of the application. The applicant must pull an approved variance by entering a start date in the Department’s database, and must print out and post a copy of the variance at the work place.

§ 7. Section 1-03 of title 15 of the Rules of the City of New York is amended by adding new subdivisions h and i to read as follows:

(h) An approved variance, except for a variance from subdivision b of section 1-22, is valid for a period of six months from the start date. An application to renew an existing variance must be submitted to DEP two weeks prior to the expiration date of the variance.

(i) If the asbestos abatement contractor was the applicant for a variance, or if the building owner changes asbestos abatement contractors during the project, the variance application, and any written approval of the variance, are automatically canceled.

§ 8. The subchapter heading and table of contents of subchapter B of chapter 1 of title 15 of the Rules of the City of New York are amended to read as follows:

Subchapter B

Certification Provisions

Part 1

Certification Provisions

§1-11 Asbestos Handler Certificate

§1-12 Renewal of Asbestos Handler Certificate

§1-13 Restricted Asbestos Handler Certificate

§1-14 Asbestos Handler Supervisor Certificate

§1-15 Renewal of Asbestos Handler Supervisor Certificate

§1-16 Asbestos Investigator Certificate

§1-17 Renewal of Asbestos Investigator Certificate

§1-18 Renewal of Restricted Asbestos Handler Certificate

§ 9. Subdivision d of section 1-12 of title 15 of the Rules of the City of New York is amended to read as follows:

(d) [In the event that]If an asbestos handler certificate is lost or stolen, the certificate holder must immediately notify the department. An application for a replacement [shall]must be made in writing and [shall]must include a notarized statement that the certificate was lost or stolen, a statement that the applicant understands that submittal of a false statement [shall]will subject him or her to penalties and other remedies under the law, and a fee of \$50. A replacement certificate may only be obtained twice in any two-year validity period.

§ 10. Subparagraph iv of paragraph 4 of subdivision b of section 1-14 of title 15 of the Rules of the City of New York is amended to read as follows:

(iv) All other applicants [shall]must submit documentation of one year of experience in asbestos abatement activities. All such experience must be on small or large asbestos projects, and at least half the experience must be on large projects. The applicant's experience in asbestos abatement activities shall be listed chronologically and shall include each contractor's [name/address/phone] name, address and phone number; the number of hours worked per week on asbestos abatement activities; the applicant's job title and a brief description of duties; and the size of each project; and

§ 11. Subdivision d of section 1-15 of title 15 of the Rules of the City of New York is amended to read as follows:

(d) [In the event that]If an asbestos handler supervisor certificate is lost or stolen, the certificate holder must immediately notify the department. An application for a replacement [shall]must be made in writing and [shall]must include a notarized statement that the certificate was lost or stolen, a statement that the applicant understands that submittal of a false statement [shall]will subject him or her to penalties and other remedies under the law, and a fee of \$50. A replacement certificate may only be obtained twice in any two-year validity period.

§ 12. Subdivisions a, b and d of section 1-16 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) (1) No individual shall engage in a building survey [and hazard assessment] for asbestos unless that individual is certified as an asbestos investigator by the department.

(2) [A non-certified]An individual not certified by the department may [participate] assist in an asbestos survey being conducted by a NYC certified asbestos investigator only if such individual works in the presence of the investigator and under his/her direct and continuing supervision. Non-certified individuals may not collect bulk samples as described in paragraph 3 of this subdivision.

(3) The investigator must assume that some or all of the areas investigated contain ACM, and for each area that is not assumed to contain ACM, must collect and submit for analysis bulk samples in accordance with §§1-36, 1-37 and 1-44 and EPA publications 560/5-85-024 and 560/5-85-030A, and 40 CFR Part 763.80, 763.85, and 763.86.

(b) The department shall qualify applicants to be asbestos investigators. The applicant [shall]must satisfy one of the following five sets of conditions:

(1) A registered design professional, a certified industrial hygienist or a certified safety professional shall submit a copy of licensing or certification and documentation of six months post-graduate experienced in building survey for asbestos.

(2) A graduate from an accredited college or university possessing a doctorate or master's degree in architecture, engineering, environmental science, environmental health science, occupational health and safety, industrial hygiene or related environmental science [shall]must submit a copy of the degree and documentation of six months post-graduate experience in building survey[/hazard assessment] for asbestos indicating specific addresses at which the graduate performed such building surveys.

(3) A graduate from an accredited college or university possessing a bachelor's degree in architecture, engineering, environmental science, environmental health science, occupational health and safety, industrial hygiene or a related environmental science [shall]must submit a copy of the degree and documentation of one year post-graduate experience in building survey[/hazard assessment] for asbestos indicating specific addresses at which the graduate performed such building surveys.

(4) A graduate from an accredited college or university possessing an associate's degree in architecture, engineering technology, environmental health, public health, industrial health, applied

science and technology or a related environmental science [shall] must submit a copy of the degree and documentation of one year post-graduate experience in conducting building [survey/hazard assessment] surveys for asbestos, indicating specific addresses at which the graduate performed such building surveys and an additional two years of other building survey-related experience. One year of such experience in building survey for identification of suspect asbestos containing materials and two years of experience in any other type of building surveys of a technical nature including structural, mechanical, or electrical training is required.

(5) An individual with extensive experience in asbestos investigation on a professional level [shall] must submit documentation demonstrating two years of experience [in building survey/hazard assessment] conducting building surveys for asbestos indicating specific addresses at which the individual performed such building surveys and an additional three years of other building survey-related experience. Additionally, such an individual must submit documentation of successful completion of a 12 hour minimum introductory blueprint-reading course or any equivalent building design and construction training or certification as established by the department and posted on the DEP website and must possess a four-year high school diploma or its educational equivalent, approved by a State's Department of Education.

* * *

(d) Applicant shall be allowed three attempts to achieve a passing grade on a departmental examination. If an applicant receives a failing grade after the third attempt, the applicant shall retake a New York State Restricted Asbestos Handler-III Inspector Training course as set forth in paragraph 2 of subdivision (c) of this section before being allowed to retake the departmental examination.

§ 13. Section 1-16 of title 15 of the Rules of the City of New York is amended by adding new subdivisions i, j, and k to read as follows:

(i) Employees of the department's Asbestos Control Program (ACP) are prohibited from applying for an asbestos investigator certificate. Any ACP employee who holds an asbestos investigator certificate is prohibited from applying for renewal of the certificate.

(j) The department may deny any application submitted under this section where it is determined that the applicant has failed to meet the standards established by these rules, including:

- (i) Failure to demonstrate the ability to comply fully with applicable requirements, standards, and procedures set forth in these rules;
- (ii) Submission of false information on an application;
- (iii) Failure to submit all required information and documentation with the application;
- (iv) Past history of violation of federal or state asbestos regulations, or any laws, rules, or regulations relating to occupational or public safety or health;
- (v) Loss of a relevant professional accreditation or license; or
- (vi) Any other cause which the commissioner determines to be of such serious and compelling nature as to warrant denial of the application.

(k) A certified asbestos investigator who is issued a notice of violation under this section alleging that the investigator engaged in unprofessional conduct that demonstrates a willful disregard for public health, safety or welfare shall be subject to immediate suspension, provided that the Commissioner serves the investigator with a notice of charges and an opportunity to be heard within 15 calendar days pursuant to Administrative Code § 24-136(4).

§ 14. Subdivision d of section 1-17 of title 15 of the Rules of the City of New York is amended to read as follows:

(d) [In the event that]If an asbestos investigator certificate is lost or stolen, the certificate holder must immediately notify the department. An application for a replacement [shall]must be made in writing and [shall]must include a notarized statement that the certificate was lost or stolen, a statement that the applicant understands that submittal of a false statement [shall]will subject him or her to penalties and other remedies under the law, and a fee of \$50. A replacement certificate may only be obtained twice in any two-year validity period.

§ 15. Subchapter B of chapter 1 of title 15 of the Rules of the City of New York is amended by adding a new section 1-18 to read as follows:

§ 1-18 Renewal of Restricted Asbestos Handler Certificate.

(a) The restricted asbestos handler must apply for renewal of the certificate at least 60 days prior to the date of its expiration.

(b) Application for renewal must be made on a form approved by the department and must be accompanied by a fee of fifty dollars (\$50).

(c) An applicant denied a certificate on any grounds other than failure to complete a certificate application or failure to meet the minimum requirements set forth in these rules may request a hearing before the commissioner or the commissioner's designee to contest that denial by submitting a written request for such hearing within ten days of receipt of the denial.

(d) If a restricted asbestos handler certificate is lost or stolen, the certificate holder must immediately notify the department. An application for a replacement must be made in writing and must include a notarized statement that the certificate was lost or stolen, a statement that the applicant understands that submittal of a false statement will subject him or her to penalties and other remedies under the law, and a fee of \$50. A replacement certificate can only be obtained twice in any two-year validity period.

§ 16. The subchapter heading and table of contents of subchapter C of chapter 1 of title 15 of the Rules of the City of New York are amended to read as follows:

Subchapter C

Notifications, Permitting and Recordkeeping

§1-21 Size and Scope of Asbestos Project

§1-22 Projects Requiring Certification to the Department of Buildings

- §1-23 Alterations/Renovations/Modifications**
- §1-24 [Reserved] Asbestos Assessment Report**
- §1-25 Asbestos Project Notifications**
- §1-26 Asbestos Abatement Permits**
- §1-27 Emergency Asbestos Project Notification**
- §1-28 Record Keeping Requirements for Investigators**
- §1-29 Maintenance of Project Record and Project Summary**

§ 17. Paragraph 3 of subdivision a, and paragraph 1 of subdivision b, of section 1-22 of title 15 of the Rules of the City of New York are amended to read as follows;

(3) Plumbing work, except [that applications for limited plumbing alterations shall be subject to this section only when the application is for the installation, alteration, or removal of fuel-burning equipment] for the direct replacement of plumbing fixtures.

(b) In accordance with section 28-106.1 of the Administrative Code, the building owner or [his/her] such owner's authorized agent [shall] must submit one of the following certifications to the Department of Buildings except as set forth below:

(1) *Asbestos Assessment Report.* If the building (or portions thereof) affected by the work are free of asbestos-containing material, ACM will not be disturbed by the work, or the amount of ACM to be abated constitutes a minor project, an asbestos assessment report (Form ACP-5) completed, signed, and sealed by a DEP-certified asbestos investigator, along with a fee of \$47.00 [shall] must be submitted to DEP prior to construction document approval and to any amendment of the construction document approval which increases the scope of the project to include [(a) work area(s)] any work area not previously covered.

§ 18. Paragraph 2 of subdivision b of section 1-22 of title 15 of the Rules of the City of New York is REPEALED. Paragraphs 3 and 4 of that subdivision b are renumbered as paragraphs 2 and 3, respectively, and amended to read as follows:

[(3)](2) *Asbestos Project Completion Form.* If an asbestos project has been performed and satisfactorily completed in accordance with these rules, a copy of the asbestos project completion form (Form ACP21) issued to the building owner or its authorized representative by DEP [shall] must be submitted to DOB prior to the issuance of a DOB permit and to any amendment of the underlying construction document approval which increases the scope of the project to include [(a) work area(s)] any work area not previously covered.

[(4) An](3) *Asbestos Project Conditional Completion Form.* If an asbestos project has been performed but would be subject to the procedures of section 1-26(c)(2)(ii), a copy of the asbestos project conditional completion form (Form ACP20) issued to the building owner or its authorized representative by DEP [shall] must be submitted to DOB prior to the issuance of a DOB permit and to any amendment of the underlying construction document approval which increases the scope of the project to include [(a) work area(s)] any work area not previously covered.

§ 19. Subdivisions b and c of section 1-23 of title 15 of the Rules of the City of New York are amended to read as follows:

(b) *Asbestos Exemption [Certification (ASB4 Form)]*. Where the work to be performed requires a permit to be issued by the [Department of Buildings]DOB, an asbestos exemption[certification (ASB4 Form) may be submitted to the Department of Buildings in accordance with section 1-22(b)(2) of these rules] may be claimed by checking the appropriate boxes on the DOB permit application forms PW1 or LAA1, where the applicant for construction document approval certifies that:

* * *

(2) no existing building materials, as the term “building materials” is defined in these rules, are to be disturbed by the proposed work; or

* * *

(c) *Asbestos Assessment Report (ACP-5 Form)*. If, after a survey performed by a DEP-certified asbestos investigator, it is determined that the building (or portion thereof) affected by the work is free of asbestos-containing material, the ACM present will not be disturbed by the work, or the amount of ACM to be abated constitutes a minor project, said asbestos investigator [shall] must complete, sign, and affix his or her seal to the asbestos assessment report (ACP-5 Form) which shall be submitted with a fee of \$47.00 to DEP in accordance with section 1-22(b)(1) of these rules.

§ 20. Subchapter C of chapter 1 of title 15 of the Rules of the City of New York is amended by adding a new section 1-24 to read as follows:

§ 1-24 [Reserved] Asbestos Assessment Report.

(a) Each area where work will occur must be surveyed by the asbestos investigator for all Presumed Asbestos Containing Materials (PACM) present. All suspect ACM must be listed in Section 9 of the Asbestos Assessment Report (Form ACP5). The asbestos survey must be clearly described in Section 9 with detailed descriptions of floors and sections of floors. An individual row in Section 9 must be used for each individual homogenous type of suspect ACM and each must be clearly described with its respective identifying characteristics.

(b) An asbestos assessment report (Form ACP5) shall be valid for one year from the date generated within the Department’s Asbestos Reporting and Tracking System website.

§ 21. Subdivisions b and d of section 1-25 of title 15 of the Rules of the City of New York are amended to read as follows:

(b) [*Work constituting a minor project*. If the work is a minor project, no notification or fee payable to the department shall be required, unless notification and fees are otherwise required by these regulations.]Reserved.

* * *

(d) Modification of or deviation from the information provided in any notification submitted to the DEP under this section [shall] must immediately be reported in writing directly to DEP if the change refers to the identity of the building owner or ACM removal contractor or the air monitoring firm; or the amount of ACM to be removed; or the dates of the project; or the

specific project location. A notification may be modified no more than twice, however, a modification related to the extension or reinstatement of an asbestos abatement permit shall not count towards this total. A modification is valid only if it is received by the DEP prior to the previously filed date of completion, except for start date changes which must be received by the original start date. [Thereafter] If the modification is received after that date, a new notification submitted directly to the department will be required. Additional work, identified after the completion of the work indicated on the asbestos project notification and successful clearance air monitoring, shall require a new notification. A notification to DEP shall be valid for one year from the date of original filing.

§ 22. Subdivision a of section 1-26 of title 15 of the Rules of the City of New York is amended by adding a new paragraph 14 thereto to read as follows:

(14) Obstruction of an interior exit stairway.

§ 23. Paragraph 2 of subdivision b of section 1-26 title 15 of the Rules of the City of New York is REPEALED, and that subdivision b is amended to read as follows:

(b) *Work Place Safety Plan.*

(1) Plan required. For projects requiring an asbestos abatement permit due to one or more of the activities listed in [(a)(1-9)](a)(1)-(14), the building owner or its authorized representative [shall] must submit, together with the asbestos project notification, a work place safety plan (WPSP) and any other applicable construction documents, which [shall] must be prepared by a registered design professional, and a permit fee as specified in subsection (g).

[(2)] (2) Plan not required. For projects requiring an asbestos abatement permit due to one or more of the activities listed in (a)(10-13), the building owner or its authorized representative shall submit, together with the asbestos project notification, all applicable asbestos abatement permit construction documents, and a permit fee as specified in subsection (g).

(i) If the WPSP is being submitted pursuant to subsection (a)(9), it [shall] must also set forth the sequencing of the proposed work. The WPSP [shall] may not be approved unless it provides for a buffer of four floors or an adequate buffer as determined by the commissioner between the abatement and the demolition or floor removal work.

[(3)] (2) Work Place Safety Plan requirements. The WPSP [shall] must include, but not be limited to, the following items, depending on the size and scope of the asbestos project:

- (i) Floor plans showing the locations of all asbestos project work areas in the building.
- (ii) Floor plans indicating the locations of any components of the fire alarm system which have been deactivated, and setting forth mitigation measures to be implemented for the duration of the project.
- (iii) Floor plans indicating the locations of obstructed or removed exit signage and lighting and setting forth mitigation measures to be implemented for the duration of the project.

(iv) Floor plans indicating the locations of any obstructed means of egress or required exit and setting forth mitigation measures to be implemented for the duration of the project.

(v) Floor plans or riser diagrams indicating the locations of any disengaged or removed components of the fire protection system and setting forth mitigation measures to be undertaken for the duration of the project.

(vi) A written description of all measures taken to mitigate compromised fire protection systems or means of egress, including but not limited to surveillance by a fire watch and an action plan setting forth procedures to be taken for the safety of building occupants in the event of an emergency.

(vii) If the asbestos project is being performed in a building where any dwelling unit is to be occupied for the duration of the permit, the WPSP shall include a tenant protection plan as required by chapter 1 of Title 28 of the Administrative Code.

(viii) A list of all non asbestos contractors who will perform work on the project.

[(4)](3) *Approval.* The documents submitted pursuant to subsection (b) will be reviewed by DEP's asbestos technical review unit (A-TRU) and by any other relevant city agencies. Upon approval by A-TRU, DEP will issue an asbestos abatement permit to the building owner or its authorized representative, who must retrieve the approved stamped copy of the WPSP from DEP and post that copy at the work place.

(4) Failure to comply with the approved WPSP is a violation of these rules.

§ 24. Paragraphs 1 and 3 of subdivision c of section 1-26 of title 15 of the Rules of the City of New York are amended to read as follows:

(1) All inspections required pursuant to Title 28 of the Administrative Code, including but not limited to special inspections required by Chapter 17 of the Building Code, [shall] must be performed by a registered design professional who is independent of the abatement contractor and hired by the building owner or that owner's authorized representative.

* * *

(3) Final inspection reports shall be filed with the DEP on A-TR1 form. Records of final inspections made by registered design professionals shall be maintained by such persons for a period of six years after final inspection, or for such other period as the commissioner shall require, and shall be made available to the department upon request. These records may be maintained in an electronic recordkeeping system instead of in paper form.

§ 25. Section 1-26 title 15 of the Rules of the City of New York is amended by amending subdivision h, and adding a new subdivision i, to read as follows:

(h) Work covered by the asbestos abatement permit shall not commence until said permit is issued with a specified start date and posted with the approved WPSP by the applicant at the work place.

(i) If additional ACM is added to a project that has an approved WPSP, a registered design professional must submit a letter to the Asbestos Technical Review Unit affirming that the

professional has visited the work place and that the additional asbestos abatement is consistent with the approved WSP and that proposed changes will not impact egress or fire protection requirements.

§ 26. Subdivision a of section 1-27 of title 15 of the Rules of the City of New York is amended to read as follows:

(a) An emergency asbestos project involves the removal, enclosure[or], encapsulation or cleanup of asbestos-containing material that was not planned but is undertaken when sudden unexpected event(s) result in a situation in which any delay in abatement would pose an immediate danger to public safety and health.

§ 27. Subdivision a and paragraphs 1 and 3 of subdivision b of section 1-28 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) The asbestos investigator [shall]must maintain a permanent record as required under this section for every building survey[/hazard assessment] for asbestos that is conducted pursuant to or submitted in accordance with [§§] sections 1-22 through 1-27 of this chapter.

(b) For each building survey[/hazard assessment] conducted prior to preparation of either the asbestos project notification (ACP-7) or asbestos assessment report (ACP-5), the investigator [shall] must compile a record which [shall] must include at a minimum:

(1) A survey report that reflects the condition of the work area at the date and time of the investigator's inspection. The report is to include, at a minimum, the [building's] building or structure address and the name and address of the building or structure owner, as well as the locations, quantities, and condition of all building materials in the affected portion(s) of the building or structure [relative to the ACM contained therein; the building or structure's address; and the name and address of the building owner;] and

* * *

(3) The printed name and signature of any and all persons who collect bulk samples for the purpose of determining the presence of ACM, a copy of the current [DEP asbestos handler certificate and NYSDOL asbestos handler] New York State asbestos inspector certificate of each such person, the name of the firm performing the survey and a copy of its current NYSDOL asbestos handling license, the name and address of the laboratory analyzing the samples, the date of analysis, the results of the analysis, the method of analysis and the name and signature of the person performing the analysis; and

§ 28. Section 1-28 of title 15 of the Rules of the City of New York is amended by amending subdivision d thereof and adding a new subdivision f to read as follows:

(d) The investigator [shall]must maintain these records for thirty (30) years. These records may be maintained in an electronic recordkeeping system instead of in paper form. Upon the death of the investigator, records may be destroyed and notification must be sent to the Asbestos Control Program.

* * *

(f) Records must be stored in a manner that minimizes the possibility of damage from water. The investigator must immediately report if any records are damaged, lost or destroyed.

§ 29. Section 1-29 of title 15 of the Rules of the City of New York is amended by amending paragraph 6 of subdivision a, amending the introductory language of subdivision b, amending subdivision c, and adding a new subdivision d to read as follows:

(6) A copy of the abatement contractor's and air monitor's daily log [book]books;

* * *

(b) In addition to the project record required in subsection (a), the asbestos abatement contractor shall maintain, for at least thirty (30) years after the end of the project, a project summary for each asbestos project in which they engage[, consisting]. These records may be maintained in an electronic recordkeeping system instead of in paper form. That project record must consist of the following:

* * *

(c) The building owner [or], contractor or air monitor, as applicable, must make the project record or project summary required by this section available for inspection by DEP within 72 hours of request, except that during the project the project record must be made available immediately upon request.

(d) In addition to the project record required in subdivision (a), the air monitoring company must maintain, for at least thirty (30) years after the end of the project, a project summary for each asbestos project in which the company engages. These records may be maintained in an electronic recordkeeping system instead of in paper form. The project summary must consist of the following:

(1) The DEP certificate number of all individuals who worked on the project;

(2) The location and general description of the project;

(3) The start and completion dates for the project;

(4) The name, address, and ELAP registration number of the laboratory used for air sample analysis; and

(5) A copy of the project air sampling log.

§ 30. Paragraph 4 of subdivision a, and subdivision b, of section 1-36 of title 15 of the Rules of the City of New York are amended to read as follows:

(4) Only persons certified by the Department as asbestos investigators or (only if under the direct in-person supervision of an asbestos investigator) by New York State Department of Labor as Asbestos Inspectors may select and collect bulk samples for analysis.

(b) [An]One air sampling technician [shall] must be present at [the]each work [site]place to observe and maintain air sampling equipment for the duration of the air sample collection.

§ 31. Subdivision d, the introductory language of subdivision f, and paragraph 3 of subdivision f of section 1-37 of title 15 of the Rules of the City of New York are amended to read as follows:

(d) Air sampling pumps [shall]must have a constant controlled flow and [shall]must have the flow rate capacity to perform sampling as specified in these rules. A properly calibrated rotometer [shall]must be used to check the flow rate. A rotometer[shall], along with its current calibration sheet, must be available at the work place for the duration of air sample collection. Primary and secondary calibration devices [shall]must be calibrated as per NYSDOH ELAP requirements.

* * *

(f) A project air sampling log [shall]must be created and maintained in a bound notebook by the air monitoring company. The project air sampling log [shall]must be available at the work site. A copy of the log [shall]must be submitted to the department within 24 hours of request. The log [shall]must contain the following information for all area air samples collected on the asbestos project:

* * *

(3) Sample location sketch, showing the sample ID numbers, identifying all project air sample locations, per work shift or day of area air samples. The sketch must be made within one hour of the beginning of sample collection.

§ 32. Subparagraph i of paragraph 1 and subparagraph i of paragraph 2 of subdivision d of section 1-41 of title 15 of the Rules of the City of New York are amended to read as follows:

(1) For small asbestos projects:

(i) involving full containment or interior foam method (if required by section 1-41(a)), three area samples inside and three outside the work area;

* * *

(2) For large asbestos projects[.,]:

(i) a minimum of five area samples inside and five outside the work area, for projects involving full containment or interior foam method (if required by section 1-41(a)). In addition to the [5]five sample minimum, one representative area sample [shall]must be collected both inside and outside the work area for every 5,000 square feet above 25,000 square feet of floor space when ACM has been abated.

§ 33. Subdivisions b and c of section 1-44 of title 15 of the Rules of the City of New York are amended to read as follows:

(b) TEM area air samples [shall]must be analyzed and reported in accordance with the mandatory or non-mandatory Electron Microscopy Methods set forth at 40 C.F.R. Part 763, Subpart E[, Appendix A].

(c) Bulk samples [shall]must be analyzed and reported in accordance with [Interim] Method for the Determination of [Asbestiform Materials] Asbestos in Bulk [Insulation Samples] Building Materials found in 40 C.F.R. Part 763, Subpart [F]E, [Appendix A as amended on September 1, 1982,] or other methods approved by the National Institute of Standards and

Technology, the National Institute of Occupational Safety and Health, the United States Environmental Protection Agency, or New York State Department of Health.

§ 34. The subchapter heading and table of contents of subchapter E of chapter 1 of title 15 of the Rules of the City of New York are amended to read as follows:

Subchapter E

Personnel Protection and Equipment Specifications

**Part 1 [Worker] Personnel Protection and Hygiene
2 Equipment Specifications**

Part 1

[Worker] Personnel Protection

§ 35. The heading of section 1-51, and the introductory language of subdivision c and paragraph 2 of that subdivision c of section 1-51, of title 15 of the Rules of the City of New York are amended to read as follows:

§1-51 [Worker] Personnel Protection and Hygiene Requirements.

* * *

(c) Personal protective equipment [shall]must be worn by all individuals inside the work place during abatement activities, except that gloves need not be worn during those work place preparation activities which do not involve the disturbance of ACM. Personal protective equipment [shall]must meet the following specifications:

* * *

(2) Hard hats, protective eyewear, gloves, rubber boots and/or other footwear [shall]must be provided by the contractor as required for workers and authorized visitors. Safety shoes and hard hats [shall]must be in accordance with [ANSI Z89.1 (1969) and ANSI Z41.1 (1967)] the most recent ANSI standards.

§ 36. The introductory language of subdivision f, and paragraphs 3, 4, and 5 of subdivision f, of section 1-51 of title 15 of the Rules of the City of New York are amended to read as follows:

(f) The contractor [shall]must have available the following information at the work place:

* * *

(3) A copy of these Rules, the most recent Asbestos Abatement Notice (Form ACP-13), ATRU permits, any variance application (Form ACP-9) and DEP approval thereof, and

(4) A copy of all [Material] Safety Data Sheets [(MSDS)](SDS) for chemicals used during the asbestos project, and

(5) Original New York City Asbestos handler and supervisor certificates of all workers in the work site, and

§ 37. Subdivisions g and h of section 1-51 of title 15 of the Rules of the City of New York are amended to read as follows:

(g) The contractor [shall]must post signs during all abatement activities. Signs [shall]must be posted at all approaches to the work place including internal doorways which provide access to the work place. These signs [shall]must [bear]include the following information:

DANGER
ASBESTOS [CANCER AND LUNG DISEASE HAZARD] MAY CAUSE CANCER,
CAUSES DAMAGE TO LUNGS
AUTHORIZED PERSONNEL ONLY
[RESPIRATORS] WEAR RESPIRATORY PROTECTION AND PROTECTIVE
CLOTHING
[ARE REQUIRED] IN THIS AREA

(h) Warning labels [shall]must be affixed to all waste containers containing asbestos material [in] and [shall]must [bear]include the following information:

DANGER
CONTAINS ASBESTOS FIBERS
MAY CAUSE CANCER, CAUSES DAMAGE TO LUNGS
DO NOT BREATHE DUST
AVOID CREATING DUST
[CANCER AND LUNG DISEASE HAZARD]

§ 38. Subdivision e of section 1-61 of title 15 of the Rules of the City of New York is amended to read as follows:

(e) Airtight and watertight containers [shall]must be provided to receive and retain any asbestos-containing waste materials. Plastic bags used for waste storage or disposal [shall]must be a minimum of 6-mil in thickness. All containers [shall]must be labeled in accordance with OSHA Regulation 29 C.F.R. [1926.58K(2)(ii) and (iii)] 1926.1101.

§ 39. Subdivisions a and k of section 1-81 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) The building owner or designated representative [shall] must provide notification to all occupants of the work place and immediate adjacent areas of the asbestos project or minor project. Information provided in the notification [shall] must include contractor, project location and size, amount and type of ACM, abatement procedure, dates of expected occurrence and the Call Center “311” for government information and services. Postings of this notification [shall] must be in English and Spanish, at eye level, in a conspicuous, well-lit place, at the entrances to the work place and immediate adjacent areas. The notice [shall] must have the following heading: **NOTICE OF ASBESTOS ABATEMENT**, in a minimum of [one] two inch sans serif, gothic or block style lettering, with the balance of the lettering of the notice to be of the same type lettering in a minimum of one [quarter] inch size. The notices [shall] must be posted 7 calendar days prior to the start of the project and [shall] must remain posted until clearance air monitoring is satisfactorily concluded. A lessee initiating an asbestos project [shall] must give 10 calendar days notice to the owner of the subject building.

* * *

(k) Fixed objects which will remain within the proposed work areas [shall] must be pre-cleaned using HEPA filtered vacuum equipment and/or wet cleaning methods as appropriate, and enclosed with two layers of fire retardant 6-mil plastic sheeting sealed to protect from re-contamination. Sprinklers, standpipes, and other fire [suppression] protection systems [shall] must remain in service and [shall] must not be plasticized.

§ 40. Subdivision x of section 1-81 of title 15 of the Rules of the City of New York is amended by amending paragraphs 1 and 4 thereof and adding a new paragraph 5 thereto, to read as follows:

(x) Elevators running through the work area [shall] must conform to the following:

(1) The elevator door in the work area [shall] must be enclosed with conventional 2 x 4 stud framing, covered with $\frac{3}{8}$ ” fire rated plywood sheeting and sealed at all edges and seams. The barrier [shall] must be covered and lapped for 8 inches with two layers of fire retardant 6-mil plastic sheeting adhered individually with edges taped for air tightness. There shall be zero clearance between the elevator door and hard wall barrier.

* * *

(4) Elevator shafts shall not be used as waste chutes or to convey any ACM.

(5) Signage must be posted in the main lobby stating the specific floors where the elevators are out of service due to abatement.

§ 41. Subdivision y of section 1-81 of title 15 of the Rules of the City of New York is amended to read as follows:

(y) Adequate toilet facilities [shall] must be provided in the vicinity of the clean room external to the work place. Where such facilities [so] do not exist, portable service [shall] must be provided.

§ 42. Subdivision f of section 1-91 of title 15 of the Rules of the City of New York is amended to read as follows:

(f) If the containment area of an asbestos project covers the entire floor of the affected building, or an area greater than 15,000 square feet on any given floor, the installation of a negative air cut off switch or switches shall be required at a single location outside the work place, such as inside a stairwell[,] one floor below the lowest floor containing a work place, or at a secured location in the ground floor lobby when conditions warrant (such as when the work place is in a basement or below). The required switch or switches [shall]must be installed by a licensed electrician pursuant to a permit issued by the Department of Buildings. If negative pressure ventilation equipment is used on multiple floors the cut off switch [shall]must be able to turn off the equipment on all floors.

§ 43. Subdivisions b and d of section 1-102 of title 15 of the Rules of the City of New York are amended to read as follows:

(b) When amended water is used, the ACM [shall]must be sprayed with sufficient frequency and quantity for enhanced penetration. Sufficient time [shall]must be allowed for penetration to occur prior to removal action or other disturbance taking place. Accumulation of standing or free water is prohibited. [Fluffy materials shall]Soft loosely bound ACM must be saturated. [Non-hygroscopic materials] Material that resists wetting, such as tremolite or amosite, [shall]must be thoroughly wetted on all surfaces while work is being conducted.

* * *

(d) ACM on detachment from the substrate is to be bagged directly or dropped onto a flexible catch basin and promptly bagged. Detached ACM is not permitted to lie on the floor for any period of time. Excess air in the bag [shall]must be minimized and the bag [shall]must be sealed. [Non-hygroscopic materials shall] Material that resists wetting must not be dropped. ACM [shall]must not be dropped from a height greater than 10 feet. Above 10 feet in height dust-free enclosed inclined chutes may be used. Vertical chutes are prohibited. [Maximum inclination from horizontal shall be 60 degrees.] The angle of the chute must not exceed 60 degrees from horizontal.

§ 44. Subdivision d and the introductory language of subdivision l of section 1-103 of title 15 of the Rules of the City of New York are amended to read as follows:

(d) The encapsulant solvent or vehicle [shall]must not contain a volatile [hydrocarbon] substance.

* * *

(l) The following maintenance procedures are [recommended] required, except when the encapsulated material is on utility lines located in the street:

§ 45. The introductory language of subdivision e of section 1-104 of title 15 of the Rules of the City of New York is amended to read as follows:

(e) The following maintenance procedures are [recommended]required:

§ 46. Subdivision a of section 1-105 of title 15 of the Rules of the City of New York is amended to read as follows:

(a) Glovebag procedures [shall]must be done using commercially available glovebags of 6-mil clear plastic, appropriately sized for the project. Glovebag procedures may only be used in conjunction with the full containment of the work area (see § 1-81) or the tent procedure (see § 1-106). Glovebags may not be shifted and [shall]must not be moved from the initial surface to another surface, or reinstalled on the initial surface once removed. Glovebag procedures may only be used on horizontal piping.

§ 47. The introductory language of section 1-106 of title 15 of the Rules of the City of New York, and subdivisions a, b, and d of that section, are amended to read as follows:

§1-106 Tent Procedures. All sections of these rules must be followed in conjunction with this section except §1-112(a) - (l). Tent Procedures [shall]must be conducted as follows:

(a) Tent procedures [shall]must be limited to the removal of less than 260 linear feet and 160 square feet of ACM on any individual floor and [shall]must not result in disturbance of ACM during tent erection. Tent procedures may be used as part of a large asbestos project only as provided for in section 1-81(f) or in conjunction with the glovebag procedure set forth in section 1-105 of these rules. Multiple tent enclosures may be used as part of a large asbestos project on an individual floor only in conjunction with the use of the glovebag procedure and a variance for the use of a remote worker decontamination enclosure. Multiple tent enclosures without the use of the glovebag procedure on a large asbestos project require a variance for the use of modified tent procedures and a remote worker decontamination enclosure.

(b) Tent procedures [shall]must be [accomplished]conducted in a constructed or commercially available fire retardant plastic tent, plasticizing and sealing all surfaces and fixed objects not being abated within the tent periphery forming an enclosure. The tent [shall]must be of fire retardant 6-mil plastic at a minimum, with seams heat-sealed, or double-folded, stapled and taped airtight and then taped flush with the adjacent tent wall. This is a single use barrier that [shall]must not be reused once dismantled or collapsed.

* * *

(d) Asbestos handlers involved in the tent procedure [shall]must wear personal protective equipment as specified in §1-51(c), plus a second disposable suit. All street clothes [shall]must be removed and stored in a clean room within the work site. The personal protective equipment with two disposable suits [shall]must be used for installation of the tent and throughout the procedure if a decontamination unit with a shower is not [contiguous]physically connected to the work area. If a decontamination unit (with shower and clean room at a minimum) is [contiguous]physically connected to the work area, only one disposable suit shall be required; in this case, prior to exiting the tent, the worker [shall]must HEPA vacuum and wet clean the disposable suit.

§ 48. Paragraph 3 of subdivision i of section 1-106 of title 15 of the Rules of the City of New York is amended to read as follows:

(3) be [lightly]encapsulated to lockdown residual asbestos.

§ 49. Subdivisions a, e, i, and j of section 1-107 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) These procedures apply only to the removal of asbestos-containing roofing material (ACRM) from exterior roof surfaces. The work area on the roof [shall]must be cordoned off with clearly visible barriers such as caution tape, and only authorized persons [shall]may have access. All sections of these rules [shall]must be followed in conjunction with this section with the exception of[,] §1-81(m), §1-81(p), §1-91, §1-102(b), §1-112(d), and [§1-112(e)] §1-112(g).

* * *

(e) Persons entering the work area [shall]must wear personal protective equipment as required by section 1-51 as well as correctly-fitting, good traction rubber boots.

* * *

(i) Provisions [shall]must be made to ensure a safe and adequate air supply to any affected [building(s)]building. All vents, skylights, air intakes, windows and doors opening onto the roof, and all other openings [shall]must be sealed with 2 layers of fire retardant 6mil plastic or [fitting]fitted with HEPA filters when appropriate. [Temporary extensions may be installed to a height of 10 feet to ensure adequate air exchange instead of sealing vents, air intakes, etc,] Vents, air intakes, etc. can be vertically extended temporarily to a height of ten feet instead of sealing them with 2 layers of plastic or HEPA-filters. Drains may be equipped with 5 micron filtering system in lieu of being sealed.

(j) Fixed objects including perimeter walls, bulkheads, cooling towers, ducts and other rooftop [appurtenances shall] accessories must be covered in one sheet of fire retardant 6 mil plastic up to a height of at least six feet.

§ 50. Subdivisions a and e of section 1-108 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) These procedures only apply to the removal of surface flooring material including vinyl asbestos floor tiles (VAT), ACM floor coverings (e.g., linoleum) and associated mastics and adhesives, where the only ACM being abated in the work area is flooring material. All sections of these rules [shall]must be followed in conjunction with this section with the exception of §1-81(m), §1-81(p), §1-91(c), §1-91(h), §1-102(b), §1-112(d), and [§1-112(e)] §1-112(g).

* * *

(e) Persons entering the work area [shall]must wear personal protective equipment as required by section 1-51 as well as correctly-fitting, good-traction rubber boots.

§ 51. Existing subdivisions c, d, e and f of section 1-109 of title 15 of the Rules of the City of New York are relettered as subdivisions e, f, g and h respectively and amended, and new subdivisions c and d are added to that section, to read as follows:

(c) Persons entering the work area must wear personal protective equipment as required by section 1-51.

(d) Removal Procedure.

(1) Removal of ACM must be by wet methods in accordance with section 1-102.

(2) ACM removed must be placed in a leak-tight container without dropping the ACM into the container.

[(c)](e) Cleanup Procedure.

(1) The stripped substrate [shall]must be HEPA vacuumed and wet-wiped.

(2) A visual clearance inspection [shall]must be conducted by the asbestos handler supervisor and project monitor after the work area dries, to ensure the absence of ACM residue or debris in the work area.

(3) After the inspection is completed, the warning tapes and barriers may be removed.

(4) The clearance inspection [shall]must be documented in the log and the project air sampling log.

[(d)](f) Air monitoring [shall]must be conducted in accordance with the relevant provisions of subchapter D of these rules.

[(e)](g) Abatement [shall]must not be performed under this section during [adverse]bad weather [conditions] (e.g. precipitation, high winds, [ambient]temperatures in the immediate outdoor surroundings below 32 degrees Fahrenheit, etc.).

[(f)](h) Power tools used to drill, cut into, or otherwise disturb ACM [shall]must be equipped with HEPA-filtered local exhaust ventilation and operated to prevent potential fiber release.

§ 52. Subdivision d of section 1-111 of title 15 of the Rules of the City of New York is amended to read as follows:

(d) [Excessive water accumulation] If there is free standing water or if flooding occurs in the work area, [shall require] work [to]must stop until the water is collected and [disposed of properly] safely and properly removed.

§ 53. Subdivisions a, i, and m of section 1-112 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) After removal of visible accumulations of asbestos-containing waste material, [a HEPA vacuuming shall be performed on]all surfaces must be HEPA vacuumed. To pick up excess water and [gross] saturated debris, a wet-dry shop HEPA vacuum, dedicated to asbestos abatement, may be used.

* * *

(i) [As a prerequisite to commencement of] Before starting clearance air monitoring, a thorough visual inspection [shall] must be conducted to verify the absence of asbestos-containing waste material (e.g. dust).

* * *

(m) Within 21 days of the completion of all steps set forth above, including successful clearance air monitoring, a project monitor's report (Form ACP15) [shall]must be submitted to DEP [on a DEP-approved form]. This report [shall]must be based on an inspection performed after the completion of all steps listed in this section, and [shall]may not be based on the visual inspection performed prior to the commencement of clearance air monitoring. The project monitor who prepares the report [shall]must be independent of the abatement contractor. If a project is being performed on multiple floors of a building, a separate project monitor's report may be submitted as each floor is completed. [Failure to comply]Compliance with this subdivision [shall be]is the responsibility of the building owner.

§ 54. Section 1-120 of title 15 of the Rules of the City of New York is amended to read as follows:

§1-120 Applicability of Regulations to Pre-Demolition Abatement Activities. The following regulations shall apply to pre-demolition abatement activities:

§§1-01 through 1-61 General Regulations

1-81*	<u>Work Place Preparation Requirements</u>
1-82	Worker Decontamination Enclosure System
1-83	Waste Decontamination Enclosure System
1-91 through 1-94	Work Place Procedures
1-102	ACM Disturbance, Handling and Removal Procedures
1-105	Glovebag Procedure
1-106	Tent Procedure
1-107	Foam Procedure for Roof Removal
1-108	Foam/Viscous Liquid Use in Flooring Removal
1-109	Abatement from Vertical Exterior Surfaces
1-120 through 1-128	Pre-Demolition Abatement Activity Procedures

*Subsections (b), (j), (l), (u), (v) and (z) only

§ 55. Subdivisions a, j, and m of section 1-125 of title 15 of the Rules of the City of New York are amended to read as follows:

(a) Prior to the start of abatement activities on asbestos projects and minor projects the building owner or designated representative [shall]must post a general notification at all main entrances to the structure. Postings of this notification [shall]must be in English and Spanish, at eye level in a conspicuous well-lit place that can be viewed by the public without obstruction.

Information provided in the notification [shall]must include contractor, project location, that the project is regulated by NYC DEP, and the Call Center “311” for government information and services. The notice [shall]must have the following heading: NOTICE OF ASBESTOS ABATEMENT, in a minimum of 2 inches sans serif, gothic or block style lettering, with the balance of the lettering of the notice to be of the same type lettering in a minimum of 1 inch size. The notification [shall]must be posted throughout all abatement activities.

* * *

(j) Cinderblock and porous construction materials, painted or unpainted, [shall]must be covered with one layer of fire retardant 6- mil plastic sheeting, sealed at edges and seams.

* * *

(m) Required means of egress, including emergency and fire exits, [shall]must be maintained at all times during abatement activities except as otherwise provided pursuant to [section 3303 of] the New York City Building [Code] and Fire Codes. Exits [shall]must be checked daily [against] to ensure that there is no blockage or impediments to exiting.

§ 56. Paragraph 2 of subdivision a, and subdivision d, of section 1-127 of title 15 of the Rules of the City of New York are amended to read as follows:

(2) Visible accumulations of asbestos-containing waste material may be containerized utilizing rubber dust pans and rubber squeegees or HEPA vacuums. Metal shovels may also be used EXCEPT in the vicinity of [isolation or surface barriers] plastic sheeting which could be perforated by these tools.

* * *

(d) [Excessive water accumulation] If there is free standing water or if flooding occurs in the area [shall require]work [to]must stop until the water is collected and [disposed of properly] safely and properly removed.

§ 57. Subdivisions d, g, and h of section 1-128 of title 15 of the Rules of the City of New York are amended to read as follows:

(d) [Where porous construction materials or cinder block-like materials have been plasticized for surface barrier containment, the] The plastic sheeting [shall] installed pursuant to section 1-125(j) must be cleaned as in subdivision (c) above, then sprayed with a lockdown encapsulant and removed when dry.

* * *

(g) After successful clearance air monitoring (see [15 RCNY §§] § 1-31 et seq.) [the isolation barriers shall be removed in conjunction with the use of a HEPA vacuum.] a HEPA vacuum must be used to clean up any dust or debris when removing the isolation barriers.

(h) Within 21 days of the completion of all steps set forth above, including successful clearance air monitoring, a project monitor’s report (Form ACP15) [shall]must be submitted to

DEP [on a DEP-approved form]. This report must be based on an inspection performed after the completion of all steps listed in this section, and shall not be based on the visual inspection performed prior to the commencement of clearance air monitoring. The project monitor who prepares the report must be independent of the abatement contractor. If a project is being performed on multiple floors of a building, a separate project monitor's report may be filed as each floor is completed. Compliance with this subdivision is the responsibility of the building owner.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment of Asbestos Control Program Rules

REFERENCE NUMBER: 2017 RG 029

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 14, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment of Asbestos Control Program Rules

REFERENCE NUMBER: DEP-36

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

January 2, 2018
Date