

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Environmental Protection (“Department” or “DEP”) is proposing to amend its asbestos control program rules to update and clarify various provisions.

When and where is the hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place on September 25, 2024 at 11 am. The hearing will be conducted by video conference and is accessible by:

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

- **Website.** You can submit comments to the Department 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, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department, 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 emailing nycrules@dep.nyc.gov. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit written comments? Yes, you must submit written comments by September 25, 2024.

What if I need assistance to participate in the hearing? You must tell the Department’s 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 postal mail or email to the addresses given above. You may also tell us by telephone at 718-595-6531. You must tell us by September 18, 2024.

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 transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the Department to make these rules? Sections 1043(a) and 1043(g) of the New York City Charter (“City Charter”) and sections 24-105 and 24-136 9f the Administrative Code authorize the Department to make these proposed rules which were included in the Department’s regulatory agenda for fiscal year 2023.

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 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter

Statement of Basis and Purpose

The rule proposes to amend Chapter 1 of Title 15 of the Rules of the City of New York as follows:

- Section 1-02 would be amended to clarify the definitions of “ARTS E-File” and “Asbestos assessment report” and to add a new definition for “Physically present”. Purpose: To clarify definitions as requested by the regulated community and to define a term that is new to these Rules.
- Section 1-03(a) would be amended to clarify procedures for submitting variance applications, to establish a new procedure for applying for a variance from section 1-22(b), and to clarify start date procedures for projects that involve both variance and non-variance work. Purpose: To address issues that have arisen

with regard to variance applications and to prevent confusion as to when projects are required to start.

- Section 1-03(e) would be amended to add variance applications related to notifications, permits and recordkeeping as a separate category for purposes of determining filing fees. Purpose: To provide for a category of rules sections which had been omitted from the list.
- A new subdivision (j) would be added to Section 1-03 to set forth procedures for applications for variances from section 1-22(b), which addresses projects requiring certification to the Department of Buildings.
- Sections 1-11, 1-13, 1-14, and 1-16 would be amended to provide for the issuance of digital or electronic alternatives to the current plastic certificates issued by the Department. Purpose: To provide for digital or electronic certificates in anticipation of DEP transitioning to such certificates in the near future.
- Section 1-16 would be amended to clarify that certified asbestos investigators (CAI) must be physically present while survey work is being performed by non-CAI assistants. Purpose: To clarify that remote or virtual supervision of non-CAIs during asbestos surveys is not permitted.
- Section 1-26(b) would be amended to remove the requirement that a work place safety plan (WPSP) include a list of non-asbestos contractors and to add a requirement that a WPSP include an Occupant Protection Plan. Purpose: To clarify the required elements of a WPSP.
- Section 1-26(c)(3) would be amended to require that records of final inspections of projects with WPSPs be stored in a manner that minimizes the possibility of water damage and to require that any loss of or damage to such records be reported to DEP. Purpose: To address incidents where inspection records have been damaged by floods.
- Section 1-26(i) would be amended to set forth procedures to be followed when additional asbestos abatement work is added to permitted projects. Purpose: To clarify procedure to be followed when additional asbestos abatement work is added to permitted jobs.
- Section 1-26 would be amended to add a new subdivision (j) providing that emergency asbestos projects may be exempted from the requirements of section 1-26. Purpose: To expedite the performance of emergency asbestos removals.
- Section 1-27(b) would be amended to clarify the requirements for emergency asbestos project notifications. Purpose: To clarify the information required to be submitted as part of emergency notifications.
- Section 1-28 would be amended to clarify that each record keeping requirement must be satisfied independently. Purpose: To address situations where CAIs have failed to produce a required record and then argued that they were in compliance with record-keeping requirements because the required information was included in a separate record.

- Section 1-28 would also be amended to clarify which records must be maintained by CAIs and to specify the requirements to maintain a chain of custody. Purpose: To provide additional clarity for CAIs and for DEP inspectors performing audits of CAI records.
- Section 1-29 would be amended to specify which air monitoring records must be included in the project record and to require that the project record must be stored in a manner that minimizes the possibility of water damage. Purpose: To clarify project record requirements and minimize the possibility that project records will be damaged by floods.
- A new section 1-32 would be added to prohibit an abatement contractor from performing work when no air monitoring is being performed. Purpose: To ensure that required air monitoring is taking place during asbestos removal activity.
- Section 1-36 would be amended to delete the provision stating that only CAIs or New York State-licensed asbestos inspectors can collect bulk samples. Purpose: To make this section consistent with section 1-38.
- Section 1-38 would be amended by adding a new subdivision (d) to establish that CAIs and State-certified asbestos inspectors may perform bulk sampling, and that State-certified asbestos inspectors may do so if supervised by a physically present CAI. Purpose: To clarify what qualifications are necessary to engage in bulk sampling.
- Section 1-51(a) would be amended to provide that workers on asbestos projects must be certified by New York State as well as DEP. Purpose: To clarify worker certification requirements.
- Section 1-51(f) would be amended to clarify what information must be present at the work place in connection with a variance application, and to reflect that certificates may be provided in digital or electronic formats. Purpose: To provide for digital or electronic certifications which will begin to be issued in the near future.
- Section 1-81(f) would be amended to provide that ACM removal during partition erection must be done by wet methods. Purpose: To clarify partition erection procedures.
- Section 1-82(a) would be amended to require one worker decon for each containment. Purpose: To clarify decon installation requirements.
- Section 1-91(l)(3) would be amended to provide that air monitoring must be conducted in spaces affected by damaged negative air ducts. Purpose: To ensure worker and occupant safety in areas where negative air ducts have been damaged or broken.
- Section 1-94(e) would be amended to clarify which documentation of inspections must be maintained in the log. Purpose: To clarify log maintenance requirements.
- Section 1-106 would be amended to clarify which sections must be followed during tent procedures. Purpose: To clarify procedures for removals done in tents.

- Section 1-108(f) would be amended to clarify that abrasive methods of removal are not permitted during flooring abatements. Purpose: To clarify permitted flooring removal techniques.
- Section 1-110(b) would be amended to require that controlled demolitions of asbestos-containing buildings be done in accordance with the approved scope of work. Purpose: To clarify requirements for controlled demolitions.
- Section 1-112(i) would be amended to provide that inspections performed prior to clearance air monitoring must be documented in the air monitor's log. Purpose: To clarify log maintenance requirements.
- Sections 1-112(m) and 1-128(h) would be amended to provide that both the A-TR1 form and the ACP15 Form must be submitted to DEP within 21 days of project completion, that failure to timely submit the ACP15 form will result in the suspension of the contactor and air monitor ARTS E-File accounts, and that final visual inspections must be documented in the air monitor's log. Purpose: To clarify requirements for project closeout.
- The proposed rule includes plain language edits throughout.

Sections 1043(a) and 1403(c) of the New York City Charter and sections 24-105 and 24-136 of the Administrative Code authorize the Department to issue this proposed rule.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Deleted material is bracketed]

§ 1. The definitions of ARTS E-File and Asbestos assessment report set forth in section 1-02 of chapter 1 of Title 15 of the Rules of the City of New York are amended, and a new definition of Physically present is added, in alphabetical order, to read as follows:

ARTS E-File. "ARTS E-File" shall mean the web-based filing system applicants utilize to submit, process, amend and close out asbestos project notifications, asbestos project variances, asbestos work permits, project monitor reports, and related documents to the DEP.

Asbestos assessment report. "Asbestos assessment report" shall mean the "Form ACP-5" form, as approved by DEP, by which a DEP-certified asbestos investigator certifies that a building or structure (or portion thereof) is free of ACM or the amount of ACM to be abated constitutes a minor project, or that ACM is present and will not be disturbed during construction activity.

Physically present. "Physically present" means that an individual is actually in a building or location, and does not include being virtually or remotely present.

Section 2. Subdivision (a) of section 1-03 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(a) Application for any variance must be made directly to the Department through the ARTS E-File System 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. [If the Department approves the] Upon the Department's approval of an application other than an application for a variance from section 1-22(b), the applicant must generate an approved variance (Form V2) by entering a start date in the ARTS E-File System, and must print out and post a copy of the approved variance at the work place. Upon the Department's approval of an application for a variance from section 1-22(b), the Department will issue the variance approval (Form V5) in the ARTS E-File System, and the applicant must then submit the Form V5 to DOB and post a copy of the Form V5 at the work place. Any variance must be approved and issued prior to the commencement of asbestos abatement activities, except that where a project includes both work areas for which a variance application has been filed and work areas for which no variance is being sought, work on the non-variance portion of the project must begin on the start date indicated in the ACP-7.

Section 3. Subdivision (e) of section 1-03 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(e) Section categories shall be as follows:

CATEGORY	NYC	12 NYCRR Part 56 Section #s
	Asbestos Control Program Section #s	
<u>Notifications Permitting & Recordkeeping</u>	<u>21-29</u>	
Air Monitoring	31-45	56-4, 6
Materials and Equipment	61	56-7
Work Place Preparation	81-84	56-7
Work Place Procedures	91-94	56-7
Abatement Procedures	101-110	56-8

Clean-up Procedures	111-112	56-9
Pre-Demolition Abatement Activity Procedures	120-129	-

Section 4. Section 1-03 of chapter 1 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision (j), to read as follows:

(j) Variances from Section 1-22(b)

- (1) A variance from section 1-22(b) requires the submission of the following:
 - (i) The DOB plan application number submitted with the application must be in approved status; and
 - (ii) An ACP-5 form must be submitted for those work areas listed on the plan application that are not listed on the ACP-7 form.
- (2) When the 1-22(b) variance is submitted after the ACP-7 has been submitted and abatement work has commenced, the ACP-7 must be placed in postponed status in ARTS until the variance application is approved.
- (3) Upon approval of a variance from section 1-22(b), concurrent abatement and demolition or other DOB-permitted work must start simultaneously. Compliance with this requirement is the responsibility of the building owner.

Section 5. Subdivision (b) of section 1-11 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) The department shall issue an asbestos handler certificate in the form of a photo identification card or digital or electronic equivalent as approved by DEP which shall be valid for two years from the date of issuance to applicants who meet the following conditions:

- (1) Applicant [shall] must be at least eighteen (18) years of age at the date of application; and
- (2) Applicant [shall] must submit a completed application provided by the department accompanied by a fee of one hundred dollars (\$100); and
- (3) Applicant [shall] must submit documentation of successful completion within the prior 12 months of a NYSDOH-approved Asbestos Handler training course; and
- (4) Applicant [shall] must achieve a passing grade on a departmental examination.

Section 6. Subdivision (b) of section 1-13 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) The department shall issue a restricted asbestos handler certificate, in the form of a photo identification card or digital or electronic equivalent as approved by DEP which

shall be valid for two years from the date of issuance to applicants who comply with the requirements of 15 RCNY § 1-11(b)(1) - (4), except that the fee shall be \$50.

Section 7. Subdivision (b) of section 1-14 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) The department shall issue an asbestos handler supervisor certificate in the form of a photo identification card or digital or electronic equivalent as approved by DEP, which shall be valid for two years from the date of issuance, to applicants who meet the following conditions:

(1) Applicant [shall] must be at least twenty-one (21) years of age at the time of application; and

(2) Applicant [shall] must submit a completed application provided by the department accompanied by a fee of one hundred dollars (\$100); and

(3) Applicant [shall] must submit documentation of successful completion within the prior 12 months of a NYSDOH-approved Asbestos Supervisor training course.

(4) Applicant [shall] must submit additional credentials as follows:

(i) A registered design professional, certified industrial hygienist, or certified safety professional [shall] must submit a copy of the licensing credentials or certification, and documentation of one month post-graduate experience in asbestos abatement activities.

(ii) A graduate from an accredited college or university possessing a bachelor's or advanced degree in engineering, architecture, environmental health science, industrial hygiene, occupational health and safety or a related science [shall] must submit a copy of the degree, and documentation of three months post graduate experience in asbestos abatement activities.

(iii) A graduate from an accredited college [of] or university possessing an associate's degree in applied science and technology, environmental health science, public health, industrial health or a related science [shall] must submit a copy of the degree, and documentation of six months post- graduate experience in asbestos abatement activities.

(iv) All other applicants 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, except employees of electric utilities, whose full year of experience may be on minor or small projects. The applicant's experience in asbestos abatement activities [shall] must be listed chronologically and [shall] must include each contractor's 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

(5) Applicant [shall] must achieve a passing grade on a departmental examination, which shall be given in English.

Section 8. Subdivision (a) of section 1-16 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

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

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

Section 9. Subdivision (c) of section 1-16 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(c) The department shall issue an asbestos investigator certificate in the form of a photo identification card or digital or electronic equivalent as approved by DEP which shall be valid for two years from the date of issuance to qualified applicants who submit the following:

(1) A completed application provided by the Department accompanied by a fee of two hundred fifty dollars (\$250); and

(2) Documentation of successful completion within the prior 12 months of a [New York State Restricted Asbestos Handler-III] NYSDOH-approved Asbestos Inspector Training course, and a passing grade on the required investigator training course; and

(3) Documentation of a medical examination performed by a physician within the prior 12 months, which [shall] must include at a minimum a pulmonary function test, evaluation of a recent chest x-ray and a physician's recommendation as to whether the applicant is able to wear a respirator in the performance of his/her job; and

(4) Documentation of a qualitative or quantitative fit test performed within the prior three months, which [shall] must include brand name and type of respirator, date and location of test, and the signature of the industrial hygienist administering the test.

(i) Qualitative fit test may be used only for fit testing of half-mask negative pressure respirators.

(ii) Quantitative fit test [shall] must be performed on all full-face negative pressure respirator.

Section 10. Subdivision (b) of section 1-26 of chapter 1 of Title 15 of the Rules of the City of New York 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) - (15), the building owner or its authorized representative must submit, together with the asbestos project notification, a work place safety plan (WPSP) and any other applicable construction documents, which must be prepared by a registered design professional, and a permit fee as specified in subsection (g). If the WPSP is being submitted, pursuant to subsection (a)(9), it must also set forth the sequencing of the proposed work. The WPSP 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.

(2) *Work Place Safety Plan requirements.* The WPSP 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 and decontamination enclosure systems [in the building] required under subdivision (a) of this section.

(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.] If the asbestos project is being performed in a building where both asbestos abatement workers and non-asbestos abatement workers are working at any time during the permitted project, the WPSP must include an Occupant Protection Plan as specified in Title 28, Chapter 1 of the Administrative Code.

(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 post a copy [at] of the permit at the work place.

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

Section 11. Paragraph (3) of subdivision (c) of Section 1-26 of Chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(3) Final inspection reports [shall] must be filed with DEP on A-TR1 form. Records of final inspections made by registered design professionals [shall] must 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 within 72 hours. These records may be maintained in an electronic recordkeeping system instead of in paper

form. Records must be stored in a manner that minimizes the possibility of water damage. The registered design professional must immediately notify DEP if any records are lost, damaged or destroyed.

Section 12. Subdivision (i) of Section 1-26 of Chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(i) If additional ACM is added to a project that has an approved WPSP, a registered design professional must submit a letter and a revised WPSP through the ARTS E-File system affirming that the professional has visited the work place and that the additional asbestos abatement is consistent with the approved WPSP, and that proposed changes will not impact egress or fire protection requirements. If additional ACM from a different floor with A-TRU triggers is added to a notification that has an approved WPSP or if the abatement phasing sequence is modified, the applicant must submit a new notification through the ARTS E-File system along with a WPSP for review.

Section 13. Section 1-26 of chapter 1 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision (j), to read as follows:

(j) DEP may, based on inspections conducted by DEP and other relevant agencies, exempt emergency asbestos projects for which a notification has been filed pursuant to section 1-27 of these rules from all requirements of section 1-26.

Section 14. The introductory language of subdivision (b) of section 1-27 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) When such an emergency asbestos project occurs, applicants with an ARTS E-File account must submit an emergency notification, including a detailed scope of work, on the asbestos contractor's letterhead, and a cover letter from the building owner or authorized agent including the items listed in (1) to (7) [must be submitted] through the ARTS E-File system. If the applicant does not have a valid ARTS E-File account or is unable to access the ARTS E-File system, the applicant must immediately call [telephone notification shall be made to] 311 and [include] provide:

Section 16. Subdivision (b) of section 1-28 of chapter 15 of Title 1 of the Rules of the City of New York is amended to read as follows:

(b) For each building survey conducted prior to preparation of either the asbestos project notification (ACP-7) or asbestos assessment report (ACP-5), the investigator must compile a record [which]. Each of the requirements listed below must be satisfied independently. A requirement to maintain a particular record may not be satisfied by inclusion of the information required to be set forth in that record in another record (e.g.,

information that is required to be set forth in the blueprint, diagram, or drawing must be in that record and the requirement to provide certain information in the blueprint, diagram, or drawing cannot be satisfied by its inclusion of the specified information in a survey report). The record must include at a minimum:

(1) A survey report that [reflects the condition of the surveyed area at the date and time of the investigator's inspection. The report is to] includes, at a minimum, the building or structure address and the name [and], address, and contact information 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] ;a description of the scope of work, the location (floor, section, room) of areas where bulk samples were collected or material was assumed to contain asbestos; the material type, name dimensions and condition of all suspect ACM, and the number of samples taken of each material; and the name, address and contact information of any non-certified individual who participated in the survey, along with a description of the activities engaged in by said person; and

(2) A blueprint, diagram, or drawing[, or written description] of each building or portion thereof inspected by the investigator that identifies clearly each exact location and type of material where bulk samples were collected or assumed to be ACM. The blueprint, diagram or drawing must include the approximate linear or square footage of all areas affected by the proposed work where material was sampled and/or assumed to be ACM[, the exact locations where bulk samples were collected,] and the date of collection[.]; 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 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

(4) [A detailed written description of any proposed demolition, renovation, alteration or modification work to be performed, including the techniques to be used and a description of affected facility components; and

(5)] A chain of custody for all bulk samples collected as part of the survey. The chain of custody must be prepared in accordance with EPA recording requirements (QA Handbook Volume II Section 8.00.

A record that lacks any of the foregoing components will be deemed defective.

[(c) The investigator shall indicate in each record all instances in which work was performed by a non-certified individual pursuant to 15 RCNY § 1-16(a)(2), and shall include such individual's name, address, telephone number, and a specific description of all activities performed by such individual.] Reserved

Section 17. Paragraph 5 of subdivision (d) of section 1-29 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(5) A copy of the air sampling log, chains of custody, laboratory reports, and sample location sketches.

Section 18. Section 1-29 of chapter 1 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision (e), to read as follows:

(e) All records required to be kept by this section must be stored in a manner that minimizes the possibility of water damage. The party responsible for maintaining the records must immediately notify DEP if any records are lost, damaged, or destroyed.

Section 19. Subchapter D of chapter 1 of Title 15 of the Rules of the City of New York is amended by adding a new section 1-32, to read as follows:

§ 1-32 Abatement Not To Proceed Without Air Monitor.

The abatement contractor shall not perform any abatement activities unless the air monitoring technician is physically present at the work place and the air monitoring required by this subchapter is being conducted.

Section 20. Section 1-36 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 1-36 Persons Qualified to Perform Sampling and Analysis.

(a) Sampling and analysis shall be performed by:

(1) A third party who is contracted by the building owner, holds a current NYSDOL asbestos handling license, and is completely independent of all parties involved in the asbestos project. The third party who conducts air sampling on an asbestos project shall not be a subcontractor of the abatement contractor, and shall not have any business, personal, or other relationship with the abatement contractor. The building owner [shall] must select and hire the air monitoring company without recommendation or reference from the abatement contractor. It shall be a violation of this subsection, chargeable against the abatement contractor, the air monitoring company, and the building owner, for an air monitoring company to conduct air monitoring on an asbestos project where there is a business or personal relationship between the abatement contractor and the air monitoring company. It shall be considered prima facie evidence of a business or personal relationship between an abatement contractor and an air monitoring company when the same company performs air monitoring on all or virtually all of a given abatement contractor's projects. The person who conducts air sampling [shall] must be currently certified as a New York State Asbestos Project Air Sampling Technician when performing air sampling. Failure to have a valid certification based either on office records or upon request shall be a violation chargeable against the individual conducting the sampling; or

(2) Sampling and analysis staff which may not be independent of the building owner but are independent of the abatement contractor involved in the asbestos project, but only if such staff:

(i) performs in conjunction with a [third party] third-party quality assurance program in which 10 percent of the samples, except for bulk samples initially found to contain ACM, from each project are randomly selected and will be analyzed by both entities; and

(ii) in the case of air sampling, possesses valid New York State Asbestos Project Air Sampling Technician Certification.

(3) Sampling and analysis staff of a public service corporation with respect to asbestos projects that involve electric, steam or gas generation, distribution or transmission facilities provided that the requirements of subparagraphs (i) and (ii) of paragraph 2 of this section are complied with.

[(4) Only persons certified by the Department as asbestos investigators or by New York State Department of Labor as Asbestos Inspectors may select and collect bulk samples for analysis.]

(b) One air sampling technician must be present per three work areas in one work site to observe and maintain air sampling equipment for the duration of the air sample collection, except that if there are multiple work areas on the same floor, only one air sampling technician is required for that floor.

(c) Bulk sample analysis (PLM or gravimetric reduction and TEM analysis) [shall] must be performed by laboratories with the appropriate accreditation in the ELAP.

(d) Air Sample Analysis (PCM) [shall] must be performed by laboratories with the following qualifications:

(1) Successful completion by the laboratory's active analysts of the NIOSH 582 training course which outlines the NIOSH 7400 method; and

(2) Analysts with skills in the appropriate methodology and proficiency in the NIOSH PAT Program for PCM analysis; and

(3) Accreditation in ELAP for the appropriate analytical method.

(e) Air Sample Analysis (TEM) [shall] must be performed by analysts who possess skills in TEM analysis, are accredited in ELAP, and participate in an in-house quality assurance program using the National Institute of Standards and Technology (NIST SRM 1876 b) or traceable standard.

Section 21. Section 1-38 of chapter 1 of Title 15 of the Rules of the City of New York are amended by adding a new subdivision (d) to read as follows:

(d) Only persons certified by DEP as asbestos investigators or by NYSDOL as Asbestos Inspectors may select and collect bulk samples for analysis. NYSDOL-certified Asbestos Inspectors may only do so in the physical presence of and under the supervision of a DEP-certified asbestos investigator.

Section 22. Subdivision (c) of section 1-44 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(c) Bulk samples must be analyzed and reported in accordance with analytical

methods approved by ELAP and the Method for the Determination of Asbestos in Bulk Building Materials found in 40 C.F.R. Part 763, Subpart E, or other methods approved by the National Institute of Standards and Technology, the National Institute of Occupational Safety and Health, or the United States Environmental Protection Agency[, or New York State Department of Health].

Section 23. Subdivision (a) of section 1-51 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(a) Prior to project initiation, all workers engaged in abatement activities or on an asbestos project or minor project must be certified by DEP and NYSDOL.

Section 24. Subdivision (f) of section 1-51 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

- (f) The contractor must have available the following information at the work place:
- (1) A copy of the U.S. Environmental Protection Agency Regulations for Asbestos, 40 C.F.R. 61 Subparts A and M and a copy of OSHA Asbestos Regulations, 29 C.F.R. § 1926.1101, and 12 NYCRR Part 56; and
 - (2) A list of telephone numbers for local hospital, location of hospital and/or emergency squad, local fire department, the building owner (or representative) and the N.Y.C. Asbestos Control Program, and
 - (3) A copy of these Rules, the most recent Asbestos Abatement Notice (Form ACP-13), asbestos abatement (ATRU) permits, any variance application (Form ACP-9 and all associated documents and drawings) and DEP approval thereof, and
 - (4) A copy of all Safety Data Sheets (SDS) for chemicals used during the asbestos project, and
 - (5) Original New York City Asbestos handler and supervisor certificates, or their digital or electronic equivalent as approved by DEP, and NYSDOL asbestos handler and supervisor certificates, of all workers in the work site, and
 - (6) A copy of the current New York State Department of Labor asbestos handling license of the abatement contractor and air monitoring company.
 - (7) A copy of any asbestos survey performed in the affected building in accordance with these rules.

Section 25. Subdivision (f) of section 1-81 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

- (f) (1) Prior to erection of partitions, ACM that may be disturbed during this activity [shall] must be:
- (i)] removed using a tent procedure (including engineering controls) using wet methods]; and/or
 - (ii) treated via wet methods].

(2) Removal by the above procedures shall be limited to a maximum of a one foot wide strip running the length and/or height of the partition and is allowed only to facilitate erection of the partitions.

Section 26. Subdivision (a) of section 1-82 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(a) Worker decontamination enclosure systems [shall] must be located outside the work area and attached to all locations where workers will enter or exit the work area. One system at a single location for each contained work area is [preferred] required. These systems may consist of existing rooms outside of the work area, that offer direct access to the work area and general egress from the work place. When this situation does not exist, enclosure systems may be constructed or may consist of prefabricated or trailer units. Adequate heat and light shall be safely provided.

Section 27. Paragraph 3 of subdivision (l) of section 1-91 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(3) All ducting [shall] must be sealed and braced or supported to maintain airtight joints. Ducts [shall] must be reinforced and [shall] must be installed so as to prevent breakage. Damage to ducts must be repaired immediately and air monitoring must be conducted in the affected space.

Section 28. Subdivision (o) of section 1-91 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(o) Routine smoke testing[, air monitoring] and daily inspection [shall] must be performed by the Asbestos Handler Supervisor to ensure that the ducting does not release fibers into uncontaminated building areas.

Section 29. Subdivision (e) of section 1-94 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(e) Inspections (including all inspections and testing required by subdivision (b) of this section), observations, and unusual incidents (e.g. barrier damage, contamination beyond the work area, etc.) [shall] must be documented in the abatement contractor's log by the asbestos handler supervisor and in the project air sampling log.

Section 30. Section 1-106 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

§1-106. Tent Procedures.

All sections of these rules must be followed in conjunction with this section except 15 RCNY §1-112 (a) – [(l)] (h).

Section 31. Subdivision (f) of Section 1-108 of Chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(f) Baseboards and wall surfaces up to a minimum height of four feet above the floor [shall] must be covered with a layer of fire retardant 6-mil plastic sheeting. If hand power tools are used during the abatement, wall surfaces [shall] must be covered with a layer of 6-mil polyethylene sheeting to a minimum height of six feet. Abrasive removal methods, including the use of grinders and beadblasters, are prohibited.

Section 32. Subdivision (b) of section 1-110 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) A condemnation order or declaration issued by the Department of Buildings (DOB) or a signed and sealed condemnation letter from the Owner's registered design professional which has been acknowledged by DOB must be submitted to the DEP through the ARTS E-File system. A site-specific scope of work identifying the steps to control asbestos emissions during the controlled demolition must be submitted and approved by DEP prior to the commencement of work. The contractor must comply with all procedures set forth in the approved scope of work document. Any variation from the approved scope of work must be approved in advance by DEP.

Section 33. Subdivision (i) of section 1-112 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(i) Before starting clearance air monitoring, a thorough visual inspection must be conducted to verify the absence of asbestos-containing waste material (e.g. dust). This inspection must be documented in the project air sampling log.

Section 34. Subdivision (m) of section 1-112 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(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) and A-TR1 final inspection report form must be submitted to DEP. Failure to submit the ACP15 Form will result in suspension of the air monitor's account and the contractor's account in the ARTS E-File System until the form is submitted. This report must be based on an inspection performed after the completion of all steps listed in this section, and may not be based on the visual inspection performed prior to the commencement of clearance air monitoring. This inspection must be documented in the project air sampling log. 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 submitted as each floor is completed. Compliance with this subdivision is the responsibility of the building owner.

Section 35. Subdivision (h) of section 1-128 of chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(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) and A-TR1 final inspection report form must be submitted to DEP. Failure to submit the ACP15 Form will result in suspension of the air monitor's account and the contractor's account in the ARTS E-File System until the form is submitted. This report must be based on an inspection performed after the completion of all steps listed in this section, and may not be based on the visual inspection performed prior to the commencement of clearance air monitoring. This inspection must be documented in the project air sampling log. 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 submitted as each floor is completed. Compliance with this subdivision is the responsibility of the building owner.