

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 686
HOUSE BILL 650

AN ACT TO AMEND ARTICLE 19 OF CHAPTER 130A OF THE GENERAL STATUTES REGARDING ASBESTOS HAZARD MANAGEMENT AND TO MAKE CERTAIN TECHNICAL CHANGES TO CONFORM WITH RECENT FEDERAL REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-22 is amended by adding two new subsections to read:

"(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
- (7) The cost to the State of the enforcement procedures.
- (8) If applicable, the size of the renovation and demolition involved in the violation.

Administrative penalties imposed by the Secretary under this subsection or subsection (b2) of this section shall be credited to the General Fund as nontax revenue.

(b2) The penalty for violations of the asbestos NESHAP for renovations and demolitions, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for renovations and demolitions that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for renovations and

demolitions is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation."

Sec. 2. G.S. 130A-444 reads as rewritten:

"§ 130A-444. Definitions.

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

- (1) 'AHERA' means Title II, Asbestos Hazard Emergency ~~Response, Response Act~~ of the Toxic Substances Control Act, ~~Pub. L. 99-519, 100 Stat. 2970,~~ 15 U.S.C. § 2601, **et seq.**, as ~~amended.~~ amended by the Asbestos School Hazard Abatement Reauthorization Act of 1990, P.L. 101-637, 104 Stat. 4589 ('ASHARA').
- (2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.
- (3) 'Asbestos containing material' means material which contains more than one percent (1%) ~~asbestos by area, asbestos,~~ including friable asbestos containing material and nonfriable asbestos containing material.
- (3a) 'Asbestos NESHAP for renovations and demolitions' means Title II, National Emission Standards for Hazardous Air Pollutants, specifically those regulations pertaining to regulation of asbestos in renovations and demolitions of the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended.
- (4) 'Abatement' means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.
- (5) 'Friable' means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.
- (6) 'Management' means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.
- (6a) 'Person' means an individual, a corporation, a company, an association, a partnership, a unit of local government, a State or federal agency, or any other legal entity.
- (7) 'Public area' means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590, ~~29 U.S.C. § 651 et seq., as amended.~~ (codified as amended in scattered sections of U.S.C.).

- (8) 'Removal' means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.
- (9) 'Residence' means any single family dwelling or any multi-family dwelling of fewer than 10 units."

Sec. 3. G.S. 130A-447 reads as rewritten:

"§ 130A-447. Accreditation of persons performing asbestos management, management and approval of training courses.

(a) No person shall commence or continue to perform asbestos management activities unless he has been accredited by the Department. No person shall commence or continue to provide asbestos related training courses unless the course has been approved by the Department. The Commission shall adopt rules governing the accreditation of ~~such persons.~~ persons performing asbestos management activities and the approval of training courses. Such rules shall include categories of accreditation and shall specify appropriate education, experience, and training requirements. The rules shall establish separate categories of accreditation for inspectors, management planners, abatement designers, supervisors, workers, air monitors, and ~~management consultants.~~ supervising air monitors. These rules shall be at least as stringent as the accreditation plan required under AHERA and regulations adopted pursuant thereto.

(b) A person who applies for accreditation in the worker category may engage in asbestos containing material management activities as though he were accredited in the worker category for up to 90 days after the date he submits his application. No person whose application is rejected may continue to engage in asbestos containing material management activities under this subsection.

(c) The following persons are exempt from the accreditation requirements:

- (1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing ~~asbestos containing material management activities in nonpublic areas of the building;~~ small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).
- (2) A person performing asbestos containing material management activities in his personal ~~residence;~~ residence.
- (3) Governmental regulatory personnel performing inspections of asbestos containing material management ~~services under authority of federal, State, or local regulations or rules;~~ and activities solely for the purpose of determining compliance with applicable statutes or regulations.
- (4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when ~~such activities disturb less than 35 cubic feet, 160 square feet, or 260 linear feet of asbestos containing material per job, or when engaged in such activities under the supervision of an~~

~~accredited supervisor performing small-scale, short duration activities, as defined in 40 C.F.R. Pt. 763, Subpt. E, Appendix C (1993).~~"

Sec. 4. G.S. 130A-448 reads as rewritten:

"§ 130A-448. Asbestos management accreditation fees. fees and course approval fees.

(a) The Department shall establish and collect asbestos containing material management accreditation and annual renewal fees to support the asbestos hazard management program. The fees shall not exceed one hundred dollars (\$100.00) per accreditation category, except that the fee for the abatement worker category shall not exceed twenty-five dollars (\$25.00). A person who is accredited in more than one category shall pay a fee for each category.

(b) The Department shall establish and collect fees for approving asbestos management training courses and fees for renewing course approval annually to support the asbestos hazard management program. The fees for approving a training course shall not exceed one thousand five hundred dollars (\$1,500) for each course. The annual renewal fees shall not exceed five hundred dollars (\$500.00) for each course. Each category of a training course shall be subject to a separate fee for its initial approval and a separate fee for its annual renewal."

Sec. 5. G.S. 130A-451 reads as rewritten:

"§ 130A-451. Commission to adopt rules.

For the protection of the public health, the Commission shall adopt rules to implement this ~~Article and AHERA.~~ Article, AHERA, and the asbestos NESHAP for renovations and demolitions."

Sec. 6. G.S. 143-215.107(a)(5) reads as rewritten:

"(5) To develop and adopt ~~such~~ emission control standards as in the judgment of the Commission may be necessary to prohibit, ~~abate~~ abate, or control air pollution commensurate with established air quality standards. ~~Such~~ The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission. This subdivision does not apply to asbestos NESHAP for renovations and demolitions, defined in G.S. 130A-444, that are subject to regulation by the Commission for Health Services under Article 19 of Chapter 130A of the General Statutes."

Sec. 7. Article 19 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-452. Local air pollution programs.

(a) The Department may authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if that program is certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112. The Department shall authorize any local air pollution program to enforce the asbestos NESHAP for renovations and demolitions if the local air pollution program was certified by the North Carolina Environmental Management Commission pursuant to G.S. 143-215.112 prior to October 1, 1994. A local air pollution program shall continue

to be authorized by the Department to enforce the asbestos NESHAP for renovations and demolitions so long as the program maintains its certification under G.S. 143-215.112 and complies with any rules adopted by the Commission pursuant to subsection (b) of this section.

(b) The Commission shall adopt rules regarding the authorization of local air pollution programs to enforce the asbestos NESHAP for renovations and demolitions."

Sec. 8. This act becomes effective October 1, 1994, and applies to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 6th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives