



Department of Environmental Protection

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Enforcement Discretion Statements Related to Implementation of the Massachusetts Asbestos Regulation

January 4, 2016 - Updated May 5, 2016

Introduction

The Massachusetts Department of Environmental Protection (MassDEP) has identified some specific situations in which certain aspects of 310 CMR 7.15, as amended in June 2014, need to be revised so that the regulation can be feasibly implemented. Until an amended regulation is promulgated, MassDEP has issued the following Enforcement Discretion Statements that apply to the specific situations or materials identified.

Nothing in these Enforcement Discretion Statements shall be construed in any way to affect MassDEP's legal rights pursuant to M.G.L. c. 111, § 142A, et. seq. and 310 CMR 7.15. These Statements do not constitute "final agency action," and are not "regulation" as that term is used in M.G.L. c.30A. These Statements may not be relied upon to create rights, duties, obligations or defenses, implied or otherwise, enforceable by any party in any administrative proceeding with the Commonwealth. In addition, these Enforcement Discretion Statements do not exempt any person from complying with the other requirements in 310 CMR 7.15 or any other applicable local, state or federal law, including but not limited to the Massachusetts Department of Labor Standards' (DLS) asbestos regulations at 453 CMR 6.00.

1. Conditional Asbestos Enforcement Discretion Statement for Work Involving Asbestos-Cement Pipe (May 22, 2015 – Updated May 5, 2016)

Asbestos cement pipes often are found in underground utility conduits and municipal water, sewer and drainage systems. Asbestos cement pipes buried below ground are considered non-friable if they are in good condition. It should be noted that active asbestos cement pipe that is exposed and is not intended to be replaced or removed and is not disturbed by repair or replacement activities may remain in place and be backfilled. MassDEP published guidance in June 2011 that prescribed work practices for projects involving repair or replacement of underground asbestos-cement pipe. This guidance was updated in May 2015 to reflect regulation amendments that were promulgated in June 2014.

This Enforcement Discretion Statement supports section III of the updated Guidance. It applies to underground asbestos-cement pipe that supports operating system networks owned by public and private utilities (i.e., pipes conveying drinking water, sanitary sewage, storm water, electricity, and gas) and entities engaged by them to repair or replace asbestos-cement pipes. This Enforcement Discretion Statement allows the "pre-abatement" survey required by 310 CMR 7.15(4) to be performed by a worker who has completed a DLS-approved training course designed specifically for work on asbestos-cement pipe. This Enforcement

Discretion Statement also allows the “post-abatement” visual inspection required by 310 CMR 7.15(8) to be performed by a worker who has completed the same training course. This Enforcement Discretion Statement also states that the establishment of full containment and implementation of work area ventilation systems are not required for the repair or replacement of underground asbestos-cement pipe. The updated Guidance provides forms for documenting the survey and the visual inspection. The Guidance identifies work practices that are specific for work in pipe trenches (including the use of polyethylene tarps in trench bottoms), and provides alternative work practices to be used instead of full containment of the work area and work area ventilation, which are generally impractical in the trenches in which asbestos-cement pipes are usually repaired or replaced. The establishment of full containment and implementation of work area ventilation systems are not required for the repair or replacement of underground asbestos-cement pipe in operating system networks.

Public and private utilities and entities engaged by such utilities to conduct the repair or replacement and associated abatement of asbestos cement pipe in accordance with the provisions of “Asbestos Cement Pipe Guidance Document and Conditional Enforcement Discretion”¹ would not be subject to enforcement by MassDEP for violation of the following requirements of 310 CMR 7.15:

- The use of a DLS-certified asbestos inspector to prepare a written survey report that documents the types, amounts, condition and location of all ACM present in a utility conduit that will be subject to demolition or removal of cement pipe as required by 310 CMR 7.15(4);
- Establishment of full containment in accordance with “Work Area Preparation Requirements” 310 CMR 7.15 (7)(c);
- Implementation of air cleaning in accordance with “Work Area Ventilation System” requirements 310 CMR 7.15 (7)(e); and
- The use of a DLS-certified asbestos project monitor to perform a post-abatement visual inspection in accordance with 310 CMR 7.15(8).

2. Conditional Asbestos Enforcement Discretion Statement from the MassDEP Regulation Requiring the Use of Licensed Asbestos Contractors as Allowed by the Massachusetts Department of Labor Standards (December 21, 2015 - Updated May 5, 2016)

MassDEP’s asbestos regulation at 310 CMR 7.15(7)(b) requires the use of DLS licensed contractors for asbestos abatement activities, except “as allowed by 453 CMR 6.14(1)(a)”. MassDEP is exercising enforcement discretion to allow the use of non-licensed asbestos contractors in asbestos abatement activities in accordance with Department of Labor Standards (DLS) regulations at 453 CMR 6.13(1)(a), 6.13(2)(a)1., 3. and 5., and 453 CMR 6.14(1)(a).

M.G.L. c. 149, §6B gives the Commissioner of DLS the authority to license persons, firms, corporations and entities that engage in work with asbestos. Specific requirements for licensure and training are set forth in DLS’s regulations at 453 CMR 6.00. DLS’s regulation provides exemptions from using a licensed contractor on certain work involving friable and non-friable asbestos carried out in compliance with applicable regulations.

MassDEP’s asbestos regulation at 310 CMR 7.15(7)(b) requires the use of DLS licensed contractors for asbestos abatement activities, except “as allowed by 453 CMR 6.14(1)(a)”. This paragraph of DLS’s regulation covers “[p]ersons, firms, corporations or other entities...*at their own property or usual place of business*” using their “own regular employees or Responsible Persons” for work on friable material greater than 3 square or 3

¹ This Guidance document is published at: <http://www.mass.gov/eea/docs/dep/air/laws/acpguid.pdf>

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linear feet”. Although DLS allows the use of non-licensed contractors for other asbestos work, this is the only DLS exemption that MassDEP cites in its regulations.

MassDEP is currently engaged in discussions with DLS and stakeholders about resolving the inconsistencies between MassDEP’s regulation (310 CMR 7.15) and DLS’s regulation (453 CMR 6.00). MassDEP expects that these discussions will result in recommendations for amending 310 CMR 7.15. In anticipation of proposing regulatory amendments, MassDEP is exercising its enforcement discretion to allow the use of non-licensed contractors pursuant to 453 CMR 6.13(1)(a), 6.13(2)(a) 1., 3. and 5. and 6.14(1)(a), provided that the person conducting the asbestos abatement activity has the requisite training and certification required by 453 CMR 6.00 and complies with all the applicable requirements of 310 CMR 7.15 (see <http://www.mass.gov/eea/docs/dep/air/laws/asbestosreg14.pdf>) and 453 CMR 6.00 (see <http://www.mass.gov/courts/docs/lawlib/400-499cmr/453cmr6.pdf>).

For More Information:

For questions about the scope of these Enforcement Discretion Statements, please contact Jenny Outman in the MassDEP Office of General Counsel (email: jenny.e.outman@state.ma.us, telephone: 617/654-6586) or Michael Elliott in the MassDEP Bureau of Air and Waste (email: michael.elliott@state.ma.us, telephone: 617/292-5575).

For questions about a specific asbestos abatement project, please contact the MassDEP regional office the covers the municipality in which the project is located:

| MassDEP Region | Staff Contact | Email/Telephone Number |
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| Central Region | Gregg Levins | gregory.levins@state.ma.us / 508-767-2768 |
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