



## ASBESTOS REGULATORY CLARIFICATIONS

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Environmental and Consumer Safety Section  
Regulatory Services Division  
ARC – 008  
February 2001

**Subject: AHERA, ESA's, EIS's, & the 3-sample requirement**

### **BACKGROUND**

Effective in December 1998, the Department of State Health Services (DSHS) amended the Texas Asbestos Health Protection Rules (TAHPR). One of the significant changes in these rules was the requirement to collect a minimum of three samples of suspect Asbestos-Containing Building Material (ACBM) to confirm or rebut the presence of asbestos. In addition, the new rule specified that a sampling protocol be followed, such as the Asbestos Hazard Emergency Response Act (AHERA) protocol, for doing an asbestos inspection prior to renovation or demolition. As a result of these changes, a variety of questions have been raised.

Often, a licensed inspector may collect a sample of suspect ACBM in a public building for purposes other than renovation or demolition. This practice is common as part of real estate transactions that require Phase I Environmental Site Assessments (ESA's), Environmental Impact Studies (EIS's), or other investigations done at the discretion of the building owner. There may be some question as to whether the new TAHPR requirements apply to these types of inspections, when they are not part of renovation or demolition activities.

Another point needing clarification is the requirement for renovation/demolition inspections to follow an established protocol such as the AHERA. It has been pointed out that the AHERA protocol only requires one sample for miscellaneous material, which seems to be contradicted by the TAHPR, which require a minimum of three samples. In addition, there has been some confusion as to whether the TAHPR intend for the AHERA specifically to be followed, or if it was cited as an example of a protocol that is acceptable to DSHS.

### **RESPONSE**

The requirement in the TAHPR to thoroughly inspect only applies to renovation and demolition activities, not to sampling for ESA's or other transactions. For renovation/demolition inspections, the three-sample requirement is a minimum standard. Any sampling protocol used, such as the AHERA protocol, would have to meet that standard. The AHERA protocol was cited by TAHPR as

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an example, but any protocol may be used, as long as it includes a minimum of three samples for each homogeneous area to confirm or rebut the presence of ACM. Inspections performed in public buildings for purposes other than demolition or renovation would not be subject to the three-sample requirement; however, the collection of samples, for any purpose, would have to be done by a licensed inspector, management planner, or consultant.

### DISCUSSION

Collecting a sample, for any purpose, from a public building is an asbestos-related activity as defined in 25 TAC §295.32. Therefore, asbestos inspections of public buildings that are not related to renovation or demolition would have to be performed by a person having the appropriate license. Section 25 TAC §295.34(c) sets forth the criteria for confirming or rebutting the presence of ACM as part of a thorough inspection prior to renovation or demolition.

In 25 T.A.C. §295.34(c), an asbestos inspection is required: *Prior to any renovation or dismantling within a public building, commercial building, or facility including preparations for partial or complete demolition, as required by 40 CFR, §61.145, ...*

In 25 T.A.C. §295.34(c)(1), the ... *Criteria to rebut the presence of ACM in a public building shall be based upon inspections which conform to accepted standards such as the sampling protocol specified in 40 CFR Part 763 Subpart E, commonly referred to as the "AHERA" rules which are the required method for schools. ...Under no circumstances will less than three samples for each homogeneous area be collected. ...*

25 TAC §295.31(e) states: *Anyone engaged in asbestos-related activities in a public building must provide proof of a current license to any inspecting official from the Department of State Health Services (department), to an employer, or to a prospective employer upon request....*

25 TAC §295.32 states: *Asbestos-related activity - The disturbance (whether intentional or unintentional), removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, bidding for a contract for any of these activities, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.*

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### FREQUENTLY ASKED QUESTIONS

1. Does a person who collects asbestos samples related to an ESA/EIS, in a public building, have to be appropriately licensed by DSHS?

Answer: Yes.

2. Must three samples be collected of each suspect asbestos-containing material sampled as part of an ESA/EIS?

Answer: Only if the ESA/EIS will be used as the basis for renovation or demolition in a public building.

3. Must all the samples collected, be analyzed?

Answer: Once one sample is confirmed positive for asbestos by a DSHS licensed laboratory, the analysis of the additional samples is not required; and, it may be assumed that all of the remaining samples of the homogeneous area are positive for asbestos. A negative result must be confirmed by analysis of all three samples.

This Regulatory Clarification preempts any previous clarification/guidance/policy letters on this subject and remains in effect until superseded in writing by the Department of State Health Services. Attributed use or reproduction of this information is freely granted.