



ASBESTOS REGULATORY CLARIFICATIONS

Environmental and Consumer Safety Section
Regulatory Services Division
ARC – 021
July 2003

Subject: Qualifiable Licensing Experience

BACKGROUND

The Texas Asbestos Health Protection Rules (TAHPR), under the qualifications section for Inspector, Supervisor, Management Planner, and Air Monitoring Technician, requires a person to meet certain experience requirements to qualify for licensure. Uncertainty in the regulated community regarding state and federal requirements to be accredited or trained prior to performing these activities has been raised and clarification requested.

RESPONSE

Qualifying experience for both the Inspector and Management Planner licenses will only be counted toward meeting the experience requirement of the TAHPR if the person performed a qualifiable activity after receiving accreditation in the required Model Accreditation Plan (MAP) discipline. The same would apply to the Supervisor, except that a person may submit a maximum of 30 days, of the required 90 days of experience, in Air Monitoring Technician (AMT) related activities. The additional 60 days of work experience must be acquired after accreditation. Under our current rules, experience counted toward meeting the requirement for an AMT license can be performed prior to or after successful completion of the AMT course.

DISCUSSION

General:

Article 4477-3a, Section 10(a) of the Texas Asbestos Health Protection Act (TAHPA) states, “The board shall adopt by reference the Model Accreditation Plan Developed by the United States Environmental Protection Agency, for the purpose of approving the training for all persons who are required to be licensed or registered under this act.” Section 1954.256(a) in the Occupations Code (effective June 1, 2003) states, “The board shall adopt an asbestos training approval plan to approve the training required for a person to be licensed or registered under this chapter. In adopting the plan, the board shall adopt by reference the Model Accreditation Plan developed by the United States Environmental Protection Agency.” The Texas Board of Health (Board) did adopt the MAP by reference in 25 TAC §295.33(a)(2), and the MAP is therefore part of the asbestos rules.

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Inspector:

The MAP, 40 CFR 763, Subpart E, Appendix C, (I)(B)(3), states “All persons who inspect for ACM in schools or public and commercial buildings must be accredited.”

The following definitions are intended to provide clarity regarding the typical inspection related activities that must be performed by an accredited person.

The MAP, 40 CFR 763, Subpart E, Appendix C, (I)(A)(3), defines inspection as follows, “‘Inspection’ means an activity undertaken in a school building, or a public and commercial building, to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACM, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed ACM which has been previously identified... .”

The TAHP, §295.32(51), states “Inspection- An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable, asbestos-containing building material or suspected asbestos-containing building material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material which has been previously identified... .”

The TAHP, §295.32(91), defines survey with the same definition as inspection. Therefore, they are considered to be one in the same for the purposes of the TAHP.

The TAHP, §295.50(d)(4), states “proof of work experience includes participation in at least five asbestos surveys performed under the direct supervision of a licensed management planner, licensed asbestos inspector, or licensed asbestos consultant.”

Therefore, since the DSHS has adopted the MAP standards by reference, as it was required to do, and since MAP says inspections must be performed by accredited people, the work experience for an inspector to obtain a DSHS license can only be done after accreditation, i.e. training. To allow inspector work experience prior to training would be a violation of the MAP, and because it is adopted by reference, a violation of the DSHS asbestos statute and rules.



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Management Planner:

The MAP, 40 CFR 763, Subpart E, Appendix C, (I)(B)(4), states “All persons who prepare management plans for schools must be accredited.” The TAHPR, §295.51(e)(3), requires that an applicant for a management planner license “must have participated in the preparation of at least five management plans, under the direction of a licensed management planner or licensed asbestos consultant.”

Therefore, to "participate in the preparation" of a management plan requires accreditation before work experience under the same rationale as outlined for inspectors.

Asbestos Abatement Supervisor:

The TAHPR, §295.46(d)(1) requires, “written documentation of at least 90 days of verifiable work experience as a trained and registered worker performed within the past 24 months... .”

The TAHPR, §295.46(d)(1)(G, H, I), provide additional avenues for a portion of the required experience. Most notably is §295.46(d)(1)(G) which allows “experience as an asbestos air monitoring technician, which includes personal air sampling, regulated-area airborne asbestos sampling, aggressive sampling for final cleanup, plus on-site project record keeping documenting daily operations, controlling entry and exit from the containment, etc., may be accepted as qualifying experience, subject to time-period limitation, minimum number of abatement projects (five), or work experience. No more than 30 days may be counted as qualifiable experience under this category;... .”

Therefore, any air monitoring related work experience (limit is 30 days) performed under a licensed AMT could be acquired prior to successful completion of the supervisor course. Any other required work experience must be acquired after accreditation, and all of the above must be acquired within 24 months of the application.

Air Monitoring Technician:

The TAHPR, §295.52(e)(7), requires “proof of performing air monitoring as an apprentice for 30 days of work under the direct supervision of a licensed air monitor technician working for a licensed laboratory or contractor or a licensed consultant.” The TAHPR allows the AMT apprenticeship to be completed either before or after successfully course completion. The MAP does not apply to AMT training and therefore has no relevance in this situation. The Asbestos Programs Branch intends to propose an amendment to its rules that would require the experience to occur after the successful completion of the AMT course, to enhance the educational value of the apprenticeship.

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In conclusion, if a particular discipline is covered by the MAP, which requires accreditation prior to work experience, the Texas Department of State Health Services can only accept experience if it is performed after accreditation in the discipline appropriate for the work being performed.

FREQUENTLY ASKED QUESTIONS

1. Asbestos Abatement Supervisor, Section 295.46(d)(1)(F) allows work experience, performed in an administrative capacity relating to asbestos abatement projects such as Project Manager, Consultant, or Designated Person, to be accepted.

Does this experience have to be gained after successful completion of the courses required for those disciplines? Yes, unless the person is submitting experience as a Designated Person, since neither the TAHPR nor the MAP currently require accreditation to serve as the Designated Person.

2. Section 295.46(d)(1)(H) allows for out of state experience. Does the person have to be licensed in another state for the experience to count? No, since other states may not have licenses for supervisors or workers; however, both the TAHPR and the MAP would require the person be accredited before conducting activities that could be counted toward meeting the TAHPR experience requirements for licensure.

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