

Frequently Asked Questions Concerning Verification of Asbestos Surveys Before Issuing Building Permits

1. Why do we need Occupations Code §1954.259/ 25 Texas Admin. Code (TAC) §295.34(l)?

The Department of State Health Services enforces state and federal asbestos laws regarding renovation and demolition projects in Texas. Each year, many projects that disturb or remove asbestos in Texas are done in violation of state and federal safety laws that require protection of workers and the public from exposure to dangerous levels of asbestos fibers.

Verifying that an asbestos survey was done prior to a renovation or demolition will educate building owners who are unaware of the legal requirements and make it harder for building owners and contractors to claim ignorance of the asbestos laws. Protection of public health will be enhanced if surveys are conducted and asbestos, if present, is abated and not disturbed by renovation or demolition activities.

2. What kind of “permit” triggers the duty to check for an asbestos survey?

“Permit” means a license, certificate, approval, registration, consent, permit, or other form of authorization issued by a municipality for renovation or demolition of a public or commercial building, that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought. Permits for only mechanical, plumbing, electrical, or other modifications to structures are encompassed by the requirement to verify the survey because asbestos can be disturbed by *any* activity that disturbs existing building materials.

3. How extensive does this survey verification have to be?

There needs to be “evidence acceptable to the municipality” that an asbestos survey, as required by state and federal laws, of all parts of the building affected by the planned renovation or demolition has been completed by a person who is appropriately licensed, accredited, or trained to perform a survey.

This evidence could be as basic as checking a box on the permit form indicating that the owner/operator acknowledges that a survey has been done that meets the regulatory requirements. Alternatively, the municipality could require a sworn affidavit from the applicant, or review the survey and verify if it meets these requirements. DSHS recommends that the municipality actively verify that a survey that complies with the law has been done because many building owners do not understand the requirement or incorrectly assume that others who are involved with the project have complied with it.

4. *How much time does it take to do this verification?*

The City of San Antonio by city ordinance has required verification of surveys prior to issuing renovation and/or demolition permits since August 1999. San Antonio estimates that it adds approximately 10 minutes to the process of getting a permit.*

In Austin, where approximately 2,000 permits are issued annually, it is estimated that verification will require an annual total of approximately 333 hours, about 42 eight-hour workdays.*

5. *Do we need special training to verify these surveys?*

No. The purpose of verifying these surveys is so the owner/operator of a public or commercial building is aware that a survey is needed and is done prior to receiving a permit.

6. *Do the asbestos surveys need to be turned into the Texas Department of State Health Services?*

No. The asbestos surveys need to be kept at the project site and made available to the Texas Department of State Health Services upon request.

7. *Can a municipality require more stringent enforcement of 25 TAC §295.34(l) (i.e., requiring both an asbestos survey and proof of abatement prior to issuing a permit)?*

The rule only requires municipalities to verify that an asbestos survey has been conducted prior to issuing renovation or demolition permits for public or commercial buildings. If the municipality chooses to impose more stringent standards before issuing a permit, the Texas Department of State Health Services recommends that the municipality consult with its legal counsel to determine if an ordinance is needed.

8. *Our municipality does not issue building permits. Does this law still apply to us?*

No, however, the Texas Department of State Health Services wants your citizens to know they must have a survey conducted before renovating or demolishing a public or commercial building, whether or not a local permit is required. This information can be provided by posting posters/brochures in local offices concerning the need for surveys, and referring people to the Texas Department of State Health Services, Policy, Standards, and Quality Assurance Unit for more information.

9. *What is the Texas Department of State Health Services' definition of "public building" and "commercial building"?*

The Texas Department of State Health Services defines a "public building" and "commercial building" in 25 TAC §295.32 as follows:

Public Building: The interior space of a building used or to be used for purposes that provide for public access or occupancy, including prisons and similar buildings. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems

used to condition interior space. The term includes any building during a period of vacancy, including the period during preparations prior to actual demolition. The term does not include:

- (A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;
- (B) a federal building or installation (civilian or military);
- (C) a private residence;
- (D) an apartment building with no more than four dwelling units;
- (E) a manufacturing facility or building that is limited to workers and invited guests under controlled conditions; or
- (F) a building, facility, or any portion of which has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer, registered architect, or a city, county, or state government official.

Commercial Building: The interior space of any industrial or federal government-owned building. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

10. *After what year can a building be built when no asbestos survey is required?*

Asbestos surveys are required on all buildings regardless of the year of construction. For newer buildings, there is an alternative to a survey. See Question 11.

11. *Can people submit information other than an asbestos survey?*

Yes. Instead of an asbestos survey, the owner/operator can submit a certification from a licensed engineer or architect or a statement from an asbestos inspector licensed by the Texas Department of State Health Services, stating that:

The material safety data sheets (MSDS) for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition have been reviewed; and

In the engineer or architect or licensed asbestos inspector's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

This exclusion statement, together with copies of the MSDS, can be used instead of an asbestos survey. This certification may also be supplemented with an asbestos inspection where bulk sampling is performed.

12. Who can do these asbestos surveys?

In a public or commercial building, the following licensed entities can conduct asbestos surveys:

- Consultant Agencies**
- Management Planner Agencies**
- Individual Consultants***
- Individual Management Planners***

Please note that Individual Consultants and Individual Management Planners can conduct an asbestos survey in a **public building** if they obtain liability coverage in the amount of \$1 million for errors and omissions or they must be covered under the consultant's employer's policy as specified in 25 TAC §295.40. It is the building owner's responsibility to verify that the company/individual it hires has the correct insurance. The Texas Department of State Health Services does not verify liability insurance for surveys conducted on commercial buildings.

13. How can I get a list of companies/individuals who do surveys in my area?

The Texas Department of State Health Services website contains an updated list of companies and individuals throughout the state of Texas who are licensed to conduct asbestos surveys. The website is located at:

www.dshs.state.tx.us/asbestos

If unable to access the website, please contact the Policy, Standards, and Quality Assurance Unit at 512-834-6787.

14. How much do asbestos surveys cost?

The average survey costs from \$250 to \$500 for small projects, and up to \$5,000 to \$10,000 for a 100,000-square-foot building.*

15. Does the whole building need an asbestos survey?

No, only the areas of the building where renovation or demolition will occur need to have an asbestos survey. However, if the entire building is going to be renovated or demolished, then an asbestos survey of the entire building is required.

16. Can a Phase I Site Assessment (Phase I) or Environmental Site Assessment (ESA) be used for an asbestos survey?

Phase Is and ESAs are types of general surveys that might or might not comply with the state and federal asbestos laws. If a municipality chooses to accept Phase Is or ESAs for purposes of the survey requirement, the municipality should alert the applicant that unless the Phase I or ESA has been done in compliance with state and federal laws governing asbestos surveys, the Texas Department of State Health Services could cite the applicant for having an improper survey.

17. *If a single residential structure is being demolished to build a residential development or commercial property, is a survey required under 25 TAC §295.34(l)?*

No. The rule only requires verification of an asbestos survey for commercial or public buildings. However, if more than one residence is being demolished, the survey requirement under federal asbestos law applies except for certain government-ordered demolitions of residences on a single site.

18. *If a residence was once a public or commercial building (i.e. gas station), would a survey be required under 25 TAC §295.34(l)?*

No. The rule only requires verification of an asbestos survey for public or commercial buildings. However, the federal asbestos law requires a current survey if the former public/commercial building was converted to a residence after April 6, 1973 (the date the federal rules regulating such buildings came into effect). Therefore, it is recommended that the municipality advise its citizens that an asbestos survey would be needed for compliance with federal law.

19. *Do I need to verify a survey for a roofing project on a commercial or public building under 25 TAC §295.34(l)?*

No. The rule only requires verification of an asbestos survey for the **interior** of commercial or public buildings. However, the federal asbestos law would require a survey for a roofing project. Therefore, it is recommended that the municipality advise its citizens that the survey is needed for compliance with federal law.

20. *Does 25 TAC §295.34(l) apply to renovation or demolition of apartment complexes or condominiums?*

The survey requirement does apply to apartment complexes of more than four dwelling units, but does not apply to condominiums.

21. *Why doesn't 25 TAC §295.34(l) apply to condominiums?*

Condominiums are a cluster of individual dwelling units in which the individual units are owned separately and the common areas are owned jointly. According to the definition of *public building*, private residences are excluded; therefore, the Texas Department of State Health Services (DSHS) clarifies that condominiums, which are a type of private residence, are exempt from state law, regardless of the number of units.

However, the federal asbestos law does regulate condominiums of more than four dwelling units within a single building structure, or if two or more condominiums at a single site are being renovated or demolished by the same owner/operator.

Therefore, DSHS recommends that the municipality advise its citizens that an asbestos survey of a condominium is required under federal law, if the above conditions are met.

22. *Is the verification of an asbestos survey needed for a permit for new construction?*

No, unless the new construction is attached to or will disturb materials in an existing public or commercial building. The verification of an asbestos survey is only needed for existing buildings that have already been used as public or commercial buildings and for more than one residence under certain conditions.

23. *Why don't we need to have a survey for building products that are being installed in new buildings?*

On September 1, 2001, Health and Safety Code Section 161.402 went into effect. This statute prohibits contractors from installing products containing more than one percent asbestos in public buildings unless there is no alternative building material. In addition, contractors are required to have Material Safety Data Sheets (MSDSs) for all building products. The MSDSs along with a signed statement from an architect, engineer, or DSHS licensed inspector, serve the purpose of a survey by identifying the presence of asbestos in new construction.

24. *How old can a survey be to be in compliance with 25 TAC §295.34(l)?*

An asbestos survey is acceptable to the DSHS if the survey was completed in compliance with the state/federal asbestos regulations in effect at the time of the survey, **AND** the survey continues to accurately describe the building materials where the renovation/demolition will occur.

For example, if a survey was conducted in 1989 and the entire building was remodeled in 1992, then a new survey or an update to the 1989 survey would be needed for the new building products installed in 1992, prior to renovation or demolition of the building.

25. *Is asbestos still manufactured?*

Yes. In 1989 the Environmental Protection Agency imposed a ban to phase out asbestos products; however, the United States Supreme Court overturned this ban in October 1991. Asbestos-containing products such as floor tiles, adhesives (mastic), and roofing materials can still be purchased.

26. *If asbestos is still manufactured, is it alright to install it in a public building?*

No. Health and Safety Code Section 161.402, effective September 1, 2001, prohibits the installation of materials containing more than one percent asbestos in public buildings unless there is no other alternative building material. To verify if a building material contains asbestos, you must obtain a Material Safety Data Sheet (MSDS) and make sure that if there is asbestos in the material, that it is no more than one percent.

27. *Who do I call if I have any questions?*

You may contact your Texas Department of State Health Services regional office or telephone the Texas Department of State Health Services, Policy, Standards, and Quality Assurance Unit in Austin, Texas at 512-834-6787. You may also visit our website at:

To help implement 25 TAC §295.34(1), the DSHS has enclosed example language that your municipality may choose to include in the permit application process for applicants to answer. This language is intended to assist the municipalities in verifying that an asbestos survey has been conducted. DSHS is not requiring that municipalities use these examples, but is attempting to provide guidance and assist building permit officials. The Optional Additional Language may be included with any of the Examples as a way to inform and educate or simply remind permit applicants of their responsibilities under state and federal law.

Example 1

An asbestos survey has been conducted in accordance with the Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the area(s) being renovated and/or demolished. A Phase I Site Assessment (Phase I) or Environmental Site Assessment (ESA) may not comply with these requirements unless it contains an asbestos survey including sampling performed by a DSHS-licensed or accredited asbestos inspector. Substantial penalties may result from failure to conduct a proper asbestos survey.

Yes___ No* ____

*If the answer is No, then as the owner/operator of the renovation/demolition activity, I understand that it is my responsibility to have this asbestos survey conducted in accordance with Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

Optional additional language:

I understand that if any of the samples collected in the required survey contain more than 1% asbestos, it is my responsibility to have asbestos-containing materials properly abated that would be disturbed or rendered Regulated Asbestos-Containing Material (RACM) during renovation or demolition activities before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

Example 2

Was an asbestos survey performed in accordance with Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the area(s) being renovated and/or demolished? A Phase I Site Assessment (Phase I) or Environmental Site Assessment (ESA) may

not comply with these requirements unless it contains an asbestos survey including sampling performed by a DSHS-licensed or accredited asbestos inspector. Substantial penalties may result from failure to conduct a proper asbestos survey.

Yes ____ No* ____

Date of survey: ____/____/____

DSHS Inspector License No. 60-_____

*If the answer is No, then as the owner/operator of the renovation/demolition site, I understand that it is my responsibility to have this asbestos survey conducted in accordance with Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

Optional additional language:

I understand that if any of the samples collected in the required survey contain more than 1% asbestos, it is my responsibility to have asbestos-containing materials properly abated that would be disturbed or rendered Regulated Asbestos-Containing Material (RACM) during renovation or demolition activities before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

Example 3

I hereby certify that an asbestos survey has been done in accordance with the Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the area(s) being renovated and/or demolished. A Phase I Site Assessment (Phase I) or Environmental Site Assessment (ESA) may not comply with these requirements unless it contains an asbestos survey including sampling performed by a DSHS-licensed or accredited asbestos inspector. Substantial penalties may result from failure to conduct a proper asbestos survey.

Optional additional language:

I understand that if any of the samples collected in the required survey contain more than 1% asbestos, it is my responsibility to have asbestos-containing materials properly abated that would be disturbed or rendered Regulated Asbestos-Containing Material (RACM) during renovation or demolition activities before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

Example 4

□ A copy of the asbestos survey for the area(s) to be renovated/demolished has been included with this permit application. This survey has been done in accordance with the Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). A Phase I Site Assessment (Phase I) or Environmental Site Assessment (ESA) may not comply with these requirements unless it contains an asbestos survey including sampling performed by a DSHS-licensed or accredited asbestos inspector. Substantial penalties may result from failure to conduct a proper asbestos survey.

Optional additional language:

I understand that if any of the samples collected in the required survey contain more than 1% asbestos, it is my responsibility to have asbestos-containing materials properly abated that would be disturbed or rendered Regulated Asbestos-Containing Material (RACM) during renovation or demolition activities before a renovation/demolition permit is issued by the Municipality of _____ and before I may begin any renovation or demolition activity.

* Austin-American Statesman articles by Kevin Carmody
Special Report: Asbestos Exposure, January 7, 2001 and January 8, 2001