



Texas Department of Health

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Commissioner of Health

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Gary R. Bego
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May 6, 2002

Re: Senate Bill 509 – More Frequently Asked Questions

Dear Building Permit Official:

On August 10, 2001, the Texas Department of Health (TDH) sent a list of Frequently Asked Questions to all Texas building permit officials. The Frequently Asked Questions addressed Senate Bill 509. Senate Bill 509 requires municipalities to verify that an asbestos survey has been conducted prior to issuing renovation or demolition permits for public or commercial buildings and affects renovation and demolition permits for public or commercial buildings issued by municipalities on or after January 1, 2002.

On November 16, 2001, TDH sent out example language the cities may choose to include on the permit application to verify that an asbestos survey has been conducted.

The TDH, Asbestos Programs Branch would like to continue to work with your municipality on the implementation of this law by providing outreach information and guidance for the verification of survey information. To help continue the implementation of this bill, TDH has enclosed a second round of Frequently Asked Questions concerning this law as it pertains to municipalities

If you have any questions concerning this information or would like additional assistance, please contact Jennifer Delk, Asbestos Programs Branch, Outreach/Information Section, at either 1-800-572-5548 or 512-834-6610 or the Asbestos Program at the nearest Texas Department of Health regional office.

Sincerely,

John O. Onyenobi, P.E., N.S.P.E., Acting Chief
Asbestos Programs Branch
Toxic Substances Control Division

More Frequently Asked Questions Concerning Senate Bill 509

1. *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.

2. *If a single residential structure is being demolished to build a residential development or commercial property, is a survey required under Senate Bill 509?*

No. Senate Bill 509 only requires verification of an asbestos survey for commercial or public buildings. However, the federal asbestos law would require a survey. Therefore, it is recommended that the city advise their citizens that the survey is needed for compliance with federal law. If a single residential structure is demolished to building another single residential structure, neither the state nor federal asbestos laws require a survey.

3. *If a residence was once a public or commercial building (i.e. gas station), would a survey be required under Senate Bill 509?*

No. Senate Bill 509 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 city advise their citizens that an asbestos survey would be needed for compliance with federal law.

4. *Do I need to verify a survey for a roofing project under Senate Bill 509?*

No. Senate Bill 509 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 city advise their citizens that the survey is needed for compliance with federal law.

5. *Does Senate Bill 509 apply to renovation or demolition of apartment complexes or condominiums?*

Senate Bill 509 does apply to apartment complex of more that four dwelling units. Senate Bill 509 does not apply to condominiums.

6. *Why doesn't Senate Bill 509 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 Health (TDH) 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, TDH recommends that the city advise their citizens that an asbestos survey of a condominium is required under federal law, if the above conditions are met.

7. *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 city chooses to accept Phase I or ESAs for purposes of Senate Bill 509, the city 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 Health could cite the applicant for having an improper survey.

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

No. The verification of an asbestos survey is only needed in existing buildings that have already been used as a public or commercial building.

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

On September 1, 2001, House Bill 1927 went into effect. House Bill 1927 prohibits contractors from installing asbestos products 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 TDH license inspector, serve the purpose of a survey by identifying the presence of asbestos in new construction.

10. *How old can a survey be to be in compliance with Senate Bill 509?*

An asbestos survey is acceptable to the Texas Department of Health (TDH) 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 would be needed for the new building products installed in 1992, prior to renovation or demolition of the building.

11. 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 Health does not verify liability insurance for surveys conducted on commercial buildings.

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

The Texas Department of Health, Asbestos Programs Branch web site contains an updated list of companies and individuals throughout the state of Texas who are licensed to conduct asbestos surveys. The web site is located at:

www.tdh.state.tx.us/beh/asbestos

If a person is unable to access the website, please contact the Asbestos Programs Branch at 1-800-572-5548.

13. Can a city require more stringent enforcement of Senate Bill 509 (i.e., requiring both an asbestos survey and proof of abatement prior to issuing a permit)?

Senate Bill 509 only authorizes cities to verify that an asbestos survey has been conducted prior to issuing renovation or demolition permits for public or commercial buildings. If the city chooses to require a more stringent standard before issuing a permit, the Texas Department of Health recommends that the city consult with its legal counsel to determine if an ordinance is needed.

14. What is the Texas Department of Health's definition of "public building" and "commercial building"?

The Texas Department of Health 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.