



Lane Regional Air Protection Agency (LRAPA)
Notice of Proposed Rulemaking Hearing
June 8, 2017
Board of Director's Meeting
Rulemaking Action Item

Update LRAPA Title 43 – Asbestos Requirements
(Asbestos 2017)

This file contains the following documents:

- Staff Report
- Attachment A: Draft rules (4-20-2017) – markup version showing change from current rule

Overview

Short summary

LRAPA proposes that the Board of Directors approve the proposed rule changes based on the need to be as stringent as the Department of Environmental Quality's asbestos regulations regarding the recent changes to the DEQ asbestos survey requirement.

Brief history

On July 26, 2010, the LRAPA Board adopted amendments to [LRAPA Title 43: Asbestos Requirements](#) moving the asbestos survey requirement to the applicability section of the rule and out of the work practices section for the purpose of clarification on the survey requirements. This proposed rulemaking will focus on the residential construction date for the asbestos survey exemption.

Beginning with Senate Bill 705 (2015) and legislature's direction, DEQ proposed rule changes which have been adopted. In January 2016, the DEQ adopted new asbestos rules which are contained in [OAR 340-248](#). DEQ made changes to their asbestos regulation by adopting a residential construction date (January 1, 2004) after which homes are exempt from the survey requirement. The rule amendment was adopted by a temporary rulemaking on December 10, 2015 and effective January 1, 2016, then followed by a full rulemaking in March 2016 effective April 21, 2016. DEQ is in process of revising the entirety of [OAR 340-248 – Asbestos Requirements](#). This larger, more comprehensive rulemaking is scheduled to be completed in early 2018, at which time LRAPA staff will revisit and propose updates to title 43 for consistency and stringency throughout.

Regulated parties

The proposed amendment to LRAPA's Title 43: Asbestos Regulations does not change the regulated parties. These rules apply to any person who owns, controls, or supervises the renovation or demolition of a residential building.

Statement of need

What need would the proposed rule address?

The proposed rule changes address the need to be as stringent as the current state rules. At this time, LRAPA's 43-015-8(A)(4) exempts residential renovations and demolitions from the survey requirement in 43-015-7 if the structure was built after 1987. DEQ recently adopted an exemption date for the demolition of residential structures built after January 1, 2004.

How would the proposed rule address the need?

The proposed rule would update LRAPA's Title 43 to be as stringent as the state rule.

How will LRAPA know the rule addressed the need?

Once the proposed rule is adopted and approved by the Board of Directors, the need will be addressed.

Rules affected, authorities, supporting documents

Lead division
Operations

Program or activity
Asbestos Program

LRAPA title action
Amend
Amend

43-005 Definitions
43-015 Emission Standards and Procedural
Requirements for Asbestos

Statute implemented

ORS 468.020, 468.065, 468A.035, 468A.040, 468A.050 and 468A.310

Legislation

Senate Bill 705 (2015)

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR
Oregon Administrative Rules	http://www.deq.state.or.us/regulations/rules.htm
Oregon Revised Statutes	http://www.deq.state.or.us/regulations/statutes.htm
LRAPA Rules and Regulations	http://www.lrapa.org/205/Rules-Regulations

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

ORS 183.335 (2)(b)(E)

Fiscal and Economic Impact

Staff Report page | 2

LRAPA expects that the proposed rule changes will add a direct collective cost to owners or operators of residential buildings that fall within the 17-year period from 1987 to 2004 in the amount of \$33,750 - \$56,250. This is the approximate total cost to pay for the estimated 75 additional asbestos surveys throughout Lane County ranging from \$450 - \$750 per survey.

LRAPA expects that the additional asbestos surveys will result in approximately 65 additional abatement projects per year in Lane County. As a result of the additional asbestos abatement projects, the proposed rule will impose an indirect cost to residential developers and an increase in revenue to licensed asbestos abatement contractors. However, the current rules already require that licensed asbestos abatement contractors conduct the abatement of asbestos containing material, regardless of whether the asbestos containing material is revealed by an asbestos survey. In addition, the proposed rule will generate public health savings by reducing worker and public exposure to asbestos fibers from the approximately 65 additional residential demolitions and renovations that will be performed under the protective work practices and procedures of a proper asbestos abatement project.

Statement of Cost of Compliance

State and federal agencies

LRAPA does not expect that the proposed asbestos survey rule changes will impose any direct fiscal or economic impact on any federal agency. However, the proposed rule will likely result in minimal fiscal impacts to LRAPA through increased communication between construction contractors, workers, and the public.

Local governments

The proposed rule changes would not create any known direct fiscal or economic impact for local governments' demolition permitting processes. However, some local residential demolition code programs may elect to include an asbestos survey check requirement in residential demolition permitting forms.

Public

The proposed rule changes will likely add minimal cost to a member of the public who purchases or owns a residential building requiring demolition that is between the years 1987 and 2004. This small group of purchasers or owners of a residential building requiring demolition or renovation will likely spend approximately \$450-\$750 for the asbestos survey depending on the size and location of the building. In addition, if the survey confirms the presence of asbestos-containing material at the residential building, the purchaser or owner will likely spend approximately an additional \$2,000 to \$18,000 to properly abate the asbestos-containing material prior to or during demolition. Therefore, LRAPA estimates that the proposed rule changes would likely add an average cost of approximately \$9,600 to the demolition of a residential building if the survey finds asbestos-containing materials.

The proposed rule changes would also create positive fiscal and economic effects in public health and welfare. By requiring asbestos surveys the rule changes will identify additional sources of potential asbestos fiber release and require removal of those sources under protective asbestos work practices and procedures. This will result in positive health cost savings for workers and the public through reduced exposure to dangerous asbestos fibers.

Large businesses - businesses with more than 50 employees

Most of the businesses affected by these proposed rule changes are small businesses. However, there are likely some large businesses that will be affected by these proposed rule. Depending on the business activity, large businesses will likely experience either a positive or negative fiscal impact as a result of these proposed rule changes.

Residential Developers. Many residential developers in Oregon may be considered large businesses. These businesses will likely experience negative fiscal impacts as a result of the proposed rule. Specifically, the cost of demolishing a residential building will likely increase by an average of approximately \$9,600. This additional cost may ultimately be passed on to the purchaser of the developed property.

Licensed Construction Contractors. The vast majority of the approximately 28,000 licensed residential construction contractors in Oregon are small businesses. However, there are some large business-licensed residential construction contractors. These businesses will likely incur a direct cost of approximately \$450-\$750 to pay for an asbestos survey. This cost will likely pass through to the residential building developer.

Licensed Asbestos Abatement Contractors. Out of the 45 licensed asbestos abatement contractors in Oregon, approximately only two may be considered large businesses. Licensed asbestos abatement contractors will likely experience a positive fiscal impact from the proposed rule generated by the increased demand for asbestos abatement projects. Each project may net increased revenue ranging from \$2,000 to \$18,000 depending on the amount asbestos-containing material.

Waste Haulers and Disposal Facilities. Most, if not all, businesses that dispose of asbestos-containing material are large businesses. These businesses will likely experience a positive fiscal impact from these rules generated by an increase in identified asbestos-containing waste material in the construction and demolition waste stream. Waste haulers and transfer stations will also likely experience an increased flow of asbestos containing material. This may result in either positive or negative fiscal impacts.

Small businesses – businesses with 50 or fewer employees [ORS 183.336](#)

Most of the businesses these proposed rule changes affect are small businesses. Depending on the business activity, small businesses will likely experience either a positive or negative fiscal impact as a result of the proposed rule.

Residential Developers. Many residential developers in Oregon may be considered small businesses. These businesses will likely experience negative fiscal impacts as a result of the proposed rule. Specifically, the cost of demolishing a residential building will likely increase by an average of approximately \$9,600 if the survey finds asbestos-containing materials.

Licensed construction contractors. The vast majority of the approximately 28,000 residential construction contractors are small businesses. These businesses will likely incur a direct cost of approximately \$450-\$750 to pay for an asbestos survey. This cost will likely pass through to the residential building developer.

Licensed Asbestos Abatement contractors. The vast majority of the licensed asbestos abatement contractors are small businesses. Licensed asbestos abatement contractors will likely experience a positive fiscal impact from these rules generated by the increased projects. Each project may generate an increase in revenue ranging from \$2,000 to \$18,000 depending on the amount of asbestos-containing material.

Accredited Asbestos Inspectors. The vast majority of the accredited asbestos inspectors are small businesses. These businesses will likely experience a positive fiscal impact from the proposed rule generated by the increased demand for asbestos surveys. Each survey may generate an increase in revenue ranging from \$450-\$750.

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

- Estimated 28,000 licensed construction contractors
- Estimated 45 licensed asbestos abatement contractors
- Additional unknown number of active residential property development businesses. These businesses are likely diverse in size, ranging from sole proprietorships to national property development companies.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

Projected total cumulative direct cost of \$33,750 to \$56,250 on residential developers to conduct an estimated additional 75 asbestos surveys countywide. In addition, residential developers will incur increased costs for additional asbestos abatement projects if the survey finds asbestos-containing materials. Finally, the proposed rule will impose minimal administrative costs for the transmittal of asbestos survey reports to LRAPA upon request.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rule changes will not affect these costs.

d. Describe how LRAPA involved small businesses in developing this proposed rule.

LRAPA presented to their standing advisory committee that includes small business representatives the proposed rule changes.

Documents relied on for fiscal and economic impact

Document title	Document location
Code of Federal Regulations	http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
Federal Register	http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR
Oregon Administrative Rules	http://www.deq.state.or.us/regulations/rules.htm

Advisory committee

LRAPA has a standing advisory committee that meets most months. LRAPA consulted their advisory committee for this rulemaking and presented a summary of the changes to the committee at their February 2017 meeting. The committee members that attended the meeting agreed to the proposed changes and had no concerns about LRAPA's proposal.

Housing cost

As ORS 183.534 requires, LRAPA evaluated whether the proposed rule would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

LRAPA determined the proposed rule may affect the development costs by increasing the cost of demolishing or renovating a residential building. In these instances, at a minimum, the cost of demolition will increase by the cost of the asbestos survey. At a maximum the cost of demolition will increase by the cost of the asbestos survey and the cost of asbestos abatement.

Federal relationship

Relationship to federal requirements

The proposed rules add requirements additional to those in federal requirements.

The proposed rules would update the asbestos requirements adopted by DEQ in April 2016. As is our responsibility to uphold our authority under state asbestos requirements, LRAPA does not have the authority to have less stringent asbestos requirements than the EQC adopts for DEQ.

What alternatives did LRAPA consider if any?

LRAPA has not considered an alternative to the residential survey requirement date change because SB 705 clearly required DEQ to adopt this rule and, by doing so, requires LRAPA to change their rules accordingly.

Land use

“It is the (*Environmental Quality*) Commission's policy to coordinate the Department's (*DEQ's*) programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.” [OAR 340-018-0010](#)

Land-use considerations

To determine whether the proposed rule involve programs or actions that are considered a *land-use action*, LRAPA considered the following state and/or DEQ program requirements:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goal relating to DEQ's authority:

Goal	Title
------	-------

5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial Resources
19	Ocean Resources

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how DEQ will:

- Comply with statewide land-use goals, and
- Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#).
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

Determination

LRAPA determined that the proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

Stakeholder and public involvement

Advisory committee

LRAPA consulted their advisory committee for this rulemaking and presented a summary of the changes to the committee at their February 2017 meeting. The committee members that attended the meeting agreed to the timeliness of the proposed changes and had no concerns about LRAPA's proposal. The committee notes are at: <http://www.lrapa.org/DocumentCenter/View/2574>

Roster

Name	Representing
Maurie Denner, Chair	General Public (absent)
Chuck Gottfried, Co-Chair	Agriculture
Larry Dunlap, Member	Public Health
Jim Daniels, Member	Large Industry
Paul Engelking, Member	General Public
Laura Seyler, Member	Large Industry
Leonard Epstein, Member	General Public
Gery Vander Meer, Member	General Public
John Tamulonis, Member	Public Planning (absent)
Randy Hledik, Member	Industry (absent)
Kathy Lamberg, Member	General Public (absent)
Link Smith, Member	Fire Suppression (absent)
Terry Richardson, Member	General Public (absent)

Meeting notifications

To notify people about advisory committee's activities, LRAPA posted the agenda on our website at: <http://www.lrapa.org/AgendaCenter/ViewFile/Agenda/02282017-73>

- LRAPA sent a one-time notice to the Citizens Advisory Committee subscribers email list alerting to the meeting agenda for the month.

LRAPA prior involvement

LRAPA shares general rulemaking information with the Board through the monthly Director's Report and information items on the Board agenda. LRAPA did not present additional information specific to this proposed rule revision beyond the periodic rule report.

Public notice

LRAPA provided notice of the Notice of Proposed Rulemaking with Hearing on June 8, 2017 to:

- Secretary of State for publication in the [Oregon Bulletin](#) to be published in the June 1, 2017 edition.
- The LRAPA Web page notice: <http://www.lrapa.org/calendar.aspx?CID=22>
- 132 interested parties on the Agency Rulemaking List
- LRAPA provided legal notices in the following newspapers:
Register Guard (Eugene) Publication date - May 8, 2017
Dead Mountain Echo (Oakridge) Publication date - May 11, 2017
Siuslaw News (Florence) Publication date - May 10, 2017
The Sentinel (Cottage Grove) Publication date - May 10, 2017

Public hearings

LRAPA plans to hold one public hearing. The table below explains how to participate in the hearing.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](#), the presiding officer staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](#) and respond to any questions about the rulemaking.

LRAPA will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. LRAPA will consider all oral and written comments received at the hearing listed below before completing the proposed rule. LRAPA will summarize all comments and respond to comments on the staff report.

Hearing	
Date	June 8, 2017
Time	12:30 p.m.
Address line 1	Lane Regional Air Protection Agency (LRAPA) Meeting Room
Address line 2	1010 Main Street
City	Springfield, Oregon 97477
Presiding officer	Merlyn Hough, Agency Director
Staff presenter	Kim Singleton, Compliance Officer and Robbye Lanier, Rules Coordinator
Conference number	(541) 736-1056 x302

Close of public comment period

The comment period will close on Thursday, June 8, 2017 at 12:30 p.m.