

## Order Approving a Temporary Variance to Certain Asbestos Requirements for Wildfire Cleanup

### BEFORE THE LANE REGIONAL AIR PROTECTION AGENCY (LRAPA)

Granting temporary Variances from )  
certain asbestos requirements ) FINDINGS and  
for cleanup activity on properties ) ORDER  
burned by the 2020 wildfires )

#### **Findings**

LRAPA regulations must be no less stringent than the Oregon air quality regulations. The Oregon Environmental Quality Commission (EQC) approved a temporary variance from certain asbestos requirements on Friday, October 9, 2020, including a delegation to LRAPA to grant similar variances.

LRAPA staff has been working with Oregon Department of Environmental Quality (DEQ) staff, the Federal Emergency Management Agency (FEMA), and other partners to mitigate the effects of the wildfire debris, to allow people to return to their properties to begin the rebuilding process, and to safely and expeditiously clear, contain, and properly dispose of the debris. Detailed findings are included in the attached EQC order (Attachment 1). The temporary variance is intended to balance the cleanup risks while still allowing the option of property owners to return to their residences and conduct ash and debris removal; each property owner could then weigh their own personal options.

The flexibility afforded to residential property owners under this temporary variance is subject to three important conditions that are intended to help ensure that property owners choosing to conduct their own wildfire debris cleanup does not pose a risk of harm to other people not voluntarily assuming that risk. First, the property owner removing the ash and debris must do the work themselves or with volunteer labor and may not use any paid labor. Second, due to the likelihood that the ash and debris contains asbestos, the property owner conducting the work must use the best management practice of adequately wetting the debris as it is removed and handled on their property, and all the way through to disposal. Third, property owners conducting a cleanup project under the paragraph B variance must treat the material removed from the property as asbestos-containing and follow the transportation and disposal requirements of the Oregon and LRAPA asbestos regulations. These requirements are essential to protecting other members of the public from the risks of asbestos fibers. In addition, many landfills require specific documentation of the waste people drop off so they can handle it properly and comply applicable regulations. Without proper documentation, property owners will need to dispose of the material as asbestos-containing material, for which landfills usually charge a higher tipping fee.

## **LRAPA Order**

On the basis of the findings detailed in Attachment 1, the LRAPA Board grants the following variances under ORS 468A.745(1), 468A.075 and 468A.135, subject to the following requirements, limitations and conditions:

### **A. Variance from certain asbestos requirements for activity on structures and other property burned by the 2020 wildfires**

(1) Class of persons eligible for the variance: Any property owner or operator conducting activity on structures and other property burned by the 2020 wildfires in Lane County.

(2) Rules suspended: The following rules are suspended from the date of issuance through October 1, 2021.

- a. LRAPA 43-015(9)(A), Asbestos Abatement Notification requirements and fees. except that owners of the following types of properties that require demolition must still provide the notification required under this rule: commercial facilities and residential facilities with more than four dwelling units;
- b. LRAPA 43-010(1), 43-015(8)(B), and 43-015(11)(N), that prohibits the open accumulation of friable asbestos material or asbestos-containing waste material;
- c. LRAPA 43-015(11)(C), the requirement to maintain a negative pressure enclosure; and
- d. LRAPA 43-015(11)(L), the prohibition against using mechanical equipment to remove asbestos-containing material outside of a negative pressure enclosure.

### **B. Variance from certain additional asbestos requirements for residential property owners electing to clean up their own property burned by the 2020 wildfires**

(1) Class of persons eligible for the variance:

- (a) Except as provided in subparagraph (b), any owner of an exclusively residential property in Lane County burned by the 2020 wildfires, where the residential building on the property is four units or less.
- (b) Property owners not eligible for this variance include: (i) owners of a facility under State of Oregon or local government agency demolition order, issued because the facility is structurally unsound and in danger of imminent collapse; (ii) owners of a property with more than four dwelling units; and (iii) property owners that use a contractor, meaning a person who undertakes the work for compensation (wages, salaries, commissions, and other forms of remuneration paid to a person for personal services), to collect, clear and load wildfire debris for removal from the property.

(2) Rules suspended: Subject to the conditions provided in paragraphs B(3) and (4), below, a variance from the following statute and rules is granted from the date of issuance through October 1, 2021.

- a. LRAPA 43-015(11)(P), the requirement that an owner of a facility containing asbestos shall require only a licensed contractor to perform an asbestos abatement project;
- b. LRAPA 43-015(11)(Q) and (R), the requirement that a person performing an asbestos abatement project must be a certified supervisor or worker under OAR 340-248-0130;
- c. LRAPA 43-015(11)(T), the requirement that an owner or operator of a facility may not allow a person to perform an asbestos abatement project in or on the facility unless the person is certified or licensed under the provision of OAR Chapter 340, Division 248 to perform an asbestos abatement project;
- d. LRAPA 43-015(11)(S), the requirement to have a certified supervisor be present on each asbestos abatement project.
- e. LRAPA 43-015(11), asbestos work practices and procedures, except for LRAPA 43-015(11)(K), requirements that apply to a facility under an order of the State of Oregon or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse.

(3) The property owner conducting the asbestos abatement project must adequately wet, as defined in LRAPA 43-015(11)(D), the material being removed or handled, and ensure that the material remains wet until delivered to a disposal site permitted to accept such material, as provided under paragraph B(4) of this variance.

(4) The property owner must assume that all of the wildfire debris and any facility components removed from the property are asbestos-containing waste material and that material must be packaged, labeled, transported, and disposed according to LRAPA 43-015(19).

Dated: 11/16/2020

ON BEHALF OF LANE REGIONAL AIR PROTECTION AGENCY

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*Joe Pishioneri*  
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**ATTACHMENT 1**

**Order Approving a Temporary Variance to Certain Asbestos Requirements for Wildfire Cleanup**

**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**

Granting temporary Variances from	)	FINDINGS and
certain asbestos requirements	)	ORDER
for cleanup activity on properties	)	
burned by the 2020 wildfires	)	

**Findings**

In August and September 2020, catastrophic wildfires in Oregon have destroyed or damaged many homes and other structures, leaving behind large quantities of debris. Since August, Oregon Governor Kate Brown has issued thirteen incident-specific Executive Orders invoking the Emergency Conflagration Act, ORS 476.510-476.610, to mobilize and coordinate state resources to address the threat to life, safety and property posed by those fires. In addition, Governor Brown declared a state of emergency in Executive Order 20-35, due to imminent threat of wildfire. In that order, issued on August 20, 2020, Governor Brown found that Oregon had already “experienced wildfires this season that resulted in evacuations, threatened critical infrastructure, and destroyed homes and other structures.” In a second statewide order, issued on September 9, 2020, Governor Brown invoked the Emergency Conflagration Act statewide in light of extreme fire danger due to hot, dry conditions and extremely high winds that resulted in multiple large fires burning simultaneously. According to the Oregon Office of Emergency Management (OEM), as of September 13, 2020, there were over 30 fires burning statewide, with the largest measuring more than 55 miles wide. As of October 2, 2020, approximately 1 million acres had burned in Oregon. The wildfires that are the subject of this variance are: Almeda Fire, Archie Creek Fire, Beachie Creek Fire, Brattain Fire, Echo Mountain Complex Fire, Holiday Farm Fire, Lionshead Fire, Mosier Creek Fire, North Cascade Complex Fire, Powerline Fire, Riverside Fire, Slater Fire, South Obenchain Fire, Two Four Two Fire, White River Fire (the “2020 wildfires”).

As a result of this already catastrophic wildfire season, OEM reported that as of October 2, 2020, 4,303 structures had been destroyed by the 2020 wildfires; this includes 2,900 residences and 1,403 other structures. The wildfire debris may contain asbestos and other hazardous contaminants. Most of that debris remains in the open and uncontained, where it may impact human health and the environment. In order to mitigate the effects of the wildfire debris, and to allow people to return to their properties to begin the process of rebuilding, the debris must be safely and expeditiously cleared, contained, and properly disposed.

The Oregon Department of Environmental Quality (DEQ) is working with OEM, the Federal Emergency Management Agency (FEMA), and impacted counties to implement a government-funded cleanup

effort, known by its FEMA designation as the “Public Assistance” program. The first part of this effort, known as “Step 1,” involves the removal of household hazardous waste or other hazardous substances (e.g. fuel and petroleum, car batteries, antifreeze, solvents, fertilizers, pesticides, propane tanks, disinfectants, aerosols, paint, bleach, and ammunition). Due to the significant health risks involved with handling this material, DEQ recommends that property owners participate in those cleanup programs by signing right of entry forms to allow federal contractors to remove household hazardous waste. Property owners may obtain right of entry forms from their counties, generally available on county websites and in some in-person locations. If property owners choose to remove, handle and dispose of household hazardous waste themselves, they must follow all applicable regulations. “Step 2” of the government-funded cleanup process is ash and debris removal. As with the Step 1 cleanup, property owners will be able to participate in Step 2 by signing a right of access document to authorize government contractors to enter their properties for this purpose.

But some homeowners are already returning to burned properties and initiating their own cleanup efforts ahead of the government sponsored Step 1 or Step 2 efforts. Other property owners may decide not to participate in government-funded cleanup assistance. DEQ does not recommend that property owners undertake wildfire ash and debris cleanup themselves but also understands that some property owners will choose to do so. The first variance (paragraph A of the Order) addresses requirements that the commission finds to be overly burdensome or impractical in the context of that ash and debris clean up. The paragraph A variance applies to all projects, including the case where a property owner hires a DEQ-licensed contractor to remove asbestos-containing material from their property. The second variance (paragraph B of the Order) suspends additional requirements where a property owner chooses to undertake the work themselves, with no paid labor. The paragraph B variance includes conditions to ensure that asbestos-containing material handled on and removed from burned properties does not pose threat to other members of the public, and that it is properly disposed.

DEQ regulates activity that involves the removal, salvage, handling or disposal of asbestos-containing material or asbestos-containing waste material through its OAR Chapter 340, Division 248 rules. There is no known safe level of exposure to asbestos fibers, and the purpose of these rules is to minimize the public health risk associated with exposure to those fibers. Because wildfire ash and debris may contain asbestos, DEQ has received numerous inquiries in recent weeks about how the asbestos requirements apply to the cleanup of properties and structures burned by the wildfires.

A. Findings regarding the variance from certain asbestos requirements for activity on structures and other property burned by the 2020 wildfires

As a result of the 2020 wildfires, many residential and commercial properties in Oregon are currently storing ash, debris, and the remnants of structures that may contain asbestos. Thus, the open accumulation of asbestos-containing material or asbestos-containing waste material—which is prohibited under Oregon’s asbestos rules according to OAR 340-248-0205(1)—is a condition that exists

beyond the control of the property owners and the contractors who may be called upon by property owners to clean it up. In addition, certain asbestos abatement work practices, including OAR 340-248-0270(8)(e)(D) (the requirement to maintain a negative pressure enclosure), and OAR 340-248-0270(8)(g) (the prohibition against using mechanical equipment to remove asbestos-containing material outside of a negative pressure enclosure) are unreasonable, burdensome and impractical to comply with in the context of a wildfire debris cleanup. A negative pressure enclosure is an area sealed with thick plastic to prevent asbestos fibers from escaping a regulated area during an asbestos abatement project. Such an enclosure is impractical to set up in the context of an asbestos abatement project where facilities have been extensively burned and only ash and debris or partial structures remain. Similarly, it is impractical to limit the use of mechanical equipment, which would hinder and delay the cleanup of asbestos-containing ash and debris.

Under normal circumstances, OAR 340-248-0260 requires property owners and contractors to submit a written notification to DEQ, along with a fee, at least 10 days prior to conducting a friable asbestos abatement project. Due to the special circumstances of wildfire debris cleanup—where time is of the essence to get a large volume of asbestos-containing waste material cleaned up in locations throughout the state—the commission finds that strict compliance with this requirement to be burdensome and impractical. Nevertheless, in order to better track larger projects involving demolition, DEQ is still requiring notifications (but not fees) for commercial facilities and residential facilities with more than four dwelling units.

Asbestos abatement project notifications will likely be required for all government-sponsored asbestos abatement projects, along with other federal requirements and up-front documentation needs. Thus, any work conducted by property owners or contractors under the paragraph A variance will not qualify for government assistance.

The variance from certain asbestos requirements for activity on structures and other property burned by the 2020 wildfires (paragraph A of the Order) suspends the above-described rules through October 1, 2021 to allow sufficient time for cleanup efforts of wildfire burned properties to be carried out.

B. Findings regarding the variance from certain additional asbestos requirements for residential property owners electing to clean up their own property burned by the 2020 wildfires

In addition to the rule suspensions described above, some property owners want to return to their residences and conduct ash and debris removal, and even some demolition activities, themselves. While DEQ understands the urgency that property owners feel, DEQ does not recommend this path. While waiting for a larger process to get set up can be frustrating, property owners will save money by waiting for state and federal programs that may cover a majority of the costs for disaster-related debris removal and demolition. In addition, property owners that do their own cleanup without proper training and

protection put their own health (and the health of anyone who helps with the debris removal) at risk. Burned buildings are likely to contain asbestos, which is carcinogenic. The removal and handling of asbestos-containing debris, or the demolition of structures with asbestos-containing materials is an asbestos abatement project with the potential of releasing asbestos fibers into the air, and those fibers may be breathed in by anyone working on or nearby the project. There is no known safe level of exposure to asbestos fibers. Property owners allowing any volunteers to help with ash and debris cleanup are advised to inform their helpers of these risks, and may want to obtain a written acknowledgement of risk from those volunteers.

Despite the risks identified above, the commission has determined that is appropriate to authorize residential property owners to undertake ash and debris cleanup on their own properties. Many Oregonians have witnessed the generosity of friends, family and community organizations ready to assist people whose homes have burned. The commission does not want to prevent such activity. However, under the paragraph B variance, this activity may use only volunteer labor.

In the case where property owners and their volunteers choose to clean up wildfire debris on their own, despite the potential risk of exposure to asbestos and other hazards, the commission finds that strict compliance with certain requirements of OAR Chapter 340, Division 248 to be unreasonable, burdensome and inappropriate. Specifically, the requirements in ORS 468A.715(1), OAR 340-248-0110(1), OAR 340-248-0110(2) and OAR 340-248-0110(5) that prevent property owners from conducting their own asbestos abatement project are unreasonable and burdensome in the case of a property owner who wants to clean up their own property. The variance does not suspend OAR 340-248-0270(8)(f), requirements that apply to a facility under an order of the State of Oregon or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse. Property owners under such an order are not authorized by this variance to undertake asbestos abatement work, even on their own properties, due to the heightened risk to human life involved in such projects.

The above-described flexibility afforded to residential property owners is subject to three important conditions that are intended to help ensure that property owners choosing to conduct their own wildfire debris cleanup does not pose a risk of harm to other people not voluntarily assuming that risk. First, the property owner removing the ash and debris must do the work themselves or with volunteer labor and may not use any paid labor. Second, due to the likelihood that the ash and debris contains asbestos, the property owner conducting the work must use the best management practice of adequately wetting the debris as it is removed and handled on their property, and all the way through to disposal. Third, property owners conducting a cleanup project under the paragraph B variance must treat the material removed from the property as asbestos-containing and follow the transportation and disposal requirements of OAR 340-248-0280. These requirements are essential to protecting other members of the public from the risks of asbestos fibers. In addition, many landfills require specific documentation of the waste people drop off so they can handle it properly and comply applicable regulations. Without

proper documentation, property owners will need to dispose of the material as asbestos-containing material, for which landfills usually charge a higher tipping fee.

The variance from certain additional asbestos requirements for residential property owners electing to clean up their own property burned by the 2020 wildfires (paragraph B of the Order) suspends the above-described statute and rules through October 1, 2021 to allow property owners sufficient time to clean up their residences and other structures, many of which have been burned to the ground.

For the reasons described above, strict compliance with certain requirements of ORS 468A.715 and OAR Chapter 340, Division 248 are inappropriate as applied to the classes of persons described in the Order below.

## **Order**

On the basis of these findings, the commission grants the following variances under ORS 468A.745(1) and 468A.075, subject to the following requirements, limitations and conditions:

### **C. Variance from certain asbestos requirements for activity on structures and other property burned by the 2020 wildfires**

(1) Class of persons eligible for the variance: Any property owner or operator conducting activity on structures and other property burned by the 2020 wildfires in the following counties: Clackamas, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Wasco, and Washington.

(2) Rules suspended: The following rules are suspended from the date of issuance through October 1, 2021.

- e. OAR 340-248-0260, Asbestos Abatement Notification requirements and fees, except that owners of the following types of properties that require demolition must still provide the notification required under this rule: commercial facilities and residential facilities with more than four dwelling units;
- f. OAR 340-248-0205(1), that prohibits the open accumulation of friable asbestos material or asbestos-containing waste material;
- g. OAR 340-248-0270(8)(e)(D), the requirement to maintain a negative pressure enclosure; and
- h. OAR 340-248-0270(8)(g), the prohibition against using mechanical equipment to remove asbestos-containing material outside of a negative pressure enclosure.

### **D. Variance from certain additional asbestos requirements for residential property owners electing to clean up their own property burned by the 2020 wildfires**

(1) Class of persons eligible for the variance:

- (c) Except as provided in subparagraph (b), any owner of an exclusively residential property burned by the 2020 wildfires, where the residential building on the property is four units or less, in the following counties: Clackamas, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Wasco, and Washington.
- (d) Property owners not eligible for this variance include: (i) owners of a facility under State of Oregon or local government agency demolition order, issued because the facility is structurally unsound and in danger of imminent collapse; (ii) owners of a property with more than four dwelling units; and (iii) property owners that use a contractor, meaning a person who undertakes the work for compensation (wages, salaries, commissions, and other forms of remuneration paid to a person for personal services), to collect, clear and load wildfire debris for removal from the property.

(2) Statute and rules suspended: Subject to the conditions provided in paragraphs B(3) and (4), below, a variance from the following statute and rules is granted from the date of issuance through October 1, 2021.

- f. ORS 468A.715(1), the requirement that an owner of a facility containing asbestos shall require only a licensed contractor to perform an asbestos abatement project;
- g. OAR 340-248-0110(1), the requirement that a person performing an asbestos abatement project must be a certified supervisor or worker under OAR 340-248-0130;
- h. OAR 340-248-0110(2), the requirement that an owner or operator of a facility may not allow a person to perform an asbestos abatement project in or on the facility unless the person is certified or licensed under the provision of OAR Chapter 340, Division 248 to perform an asbestos abatement project;
- i. OAR 340-248-0110(5), the requirement to have a certified supervisor be present on each asbestos abatement project.
- j. OAR 340-248-0270, asbestos work practices and procedures, except for OAR 340-248-0270(8)(f), requirements that apply to a facility under an order of the State of Oregon or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse.

(3) The property owner conducting the ash and debris removal project must adequately wet, as defined in OAR 340-248-0010, the material being removed or handled, and ensure that the material remains wet until delivered to a disposal site permitted to accept such material, as provided under paragraph B(4) of this variance.

(4) The property owner must assume that all of the wildfire debris and any facility components removed from the property are asbestos-containing waste material and that material must be packaged, labeled, transported, and disposed according to OAR 340-248-0280.

**E. Delegation to LRAPA to Grant Variances under ORS 468A.075(2) and 468A.135**

Pursuant to ORS 468A.075(2) and 468A.135, the Lane Regional Air Protection Agency (LRAPA) is authorized to grant variances from the asbestos requirements it administers within its jurisdiction, Lane Regional Air Protection Agency, Title 43, Asbestos Requirements, provided such variances are equivalent to the variances granted by the commission under paragraphs A and B of this order, such that the asbestos regulations that LRAPA administers remains no less strict than DEQ's asbestos regulations.

D. Delegation to the DEQ Director

The commission delegates authority to the Director (i) to modify the date parameters provided in paragraphs A(2) and B(2) of this order, if the Director determines, based on the factors in ORS 468A.075(1)(a) and (b), that this variance is no longer necessary or that the deadline in this variance should be extended; and (ii) to make other technical modifications to any such variance as deemed necessary and appropriate by the Director.

Dated: \_\_\_\_\_

ON BEHALF OF THE COMMISSION

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Its