



Industrial Code Rule 56: Obligations of property owners during asbestos remediation - by Jeffrey Lhuillier

November 07, 2017 - Long Island

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The revised Industrial Code Rule 56 has expanded obligations for property owners during construction projects. Industrial Code Rule 56 relates to hazards to the public safety and health during the remediation of asbestos. Such remediation includes the removal, encapsulation, enclosure, repair, or the disturbance of friable and non-friable asbestos, or any handling of asbestos material that may result in the release of asbestos fiber (see Rule 56-1.) The intent of Industrial Code Rule 56 is to reduce the risks of exposure of asbestos to the public and to conform to federal requirements and asbestos handling standards in the construction industry, including OSHA standards (see Rule 56-1.2) For example, pursuant to OSHA guidelines, it is presumed that materials contain asbestos if the building was construction prior to 1980, unless testing confirms otherwise. Moreover, these requirements apply to all structures except agricultural, structurally unsound, condemned, or one or two-family dwellings where the owner does not control the work. As a result, property owners are subject to, and must manage, many risks and obligations during construction projects which may result in a required asbestos remediation.

Industrial Code Rule 56, as revised, specifies that property owners are responsible for asbestos cleanups (see Rule 56-1.5), placing the burden squarely upon the owner to take the required steps to arrange for isolation and removal of discovered asbestos, and to also ensure that areas affected by asbestos are vacated until completion of the remediation.

In general, property owners are required to hire contractors with a valid asbestos handling license on all asbestos remediation projects to conduct the abatement, and such license must be displayed in proximity to the worksite for the duration of the project (see Rule 56-3.1.) Furthermore, property owners and asbestos remediation contractors are required to provide a minimum of 10 days' notice (or three days' notice for small or minor abatement projects) to residential and business occupants of the worksite, and postings concerning the abatement work must remain on display for the duration of the project (see Rule 56-3.4.) An independent air sampling firm must be contracted by the property owner and laboratory analysis must be conducted, along with the maintenance of an air sample log throughout the course of the abatement work. Recordkeeping requirements also specify that all records remain on-site for the duration of the project and must be produced upon request to

the Asbestos Abatement Bureau (see Rule 56-4.)

Property owners are also required to have conducted an asbestos survey completed by a licensed asbestos contractor using inspectors certified in compliance with Rule 56 to determine whether the building to be demolished, renovated, remodeled, or repaired contains asbestos material prior to the start of work (see Rule 56-5.1.) When conducting a survey, the risk to a property owner depends on when the asbestos is detected. Once asbestos is detected, the property owner is required to have it removed and must bear the cost of doing so. Furthermore, no other work on the project site may commence until the asbestos removal is completed, thus causing a property owner to endure the possibility of a lengthy and costly project delay. Should asbestos be detected after the start of construction, during the course of demolition or when various trades have commenced work at the project, the property owner must immediately contact the Asbestos Abatement Bureau and cause all work to cease on the project until the asbestos can be handled accordingly, again resulting in a possible lengthy and costly project delay.

Furthermore, should asbestos be detected prior to or during the course of a project, property owners must also replace HVAC filters and treat the filters as asbestos contaminated waste material. In connection with the replacement of filters, HVAC ducts must be wet-cleaned to ensure the removal of any asbestos material in the HVAC ductwork, (see Rule 56-7.9.) Again, the often-times extensive costs for such required actions are the obligation of the owner.

To ensure that property owners are in compliance with Industrial Rule Code 56, charts have been added to the Rule reflecting the phases of asbestos abatement work and air sampling required during the course of the project. Furthermore, ensuring that personnel meet the minimum requirements under Rule 56 normally will fall upon the property owner - demanding strong contract language stating that the chosen contractor meets the minimum licensing requirements is a priority for property owners. In all, property owners are tasked with ensuring compliance with many requirements under Rule 56. Accordingly, a wise property owner would become familiar with Rule 56 before starting any construction on their property.

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