

**Editor's note:** This part 5 was originally enacted in 1985. The substantive provisions of this part 5 were repealed and reenacted in 1987, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the table located in front of the 1989 replacement volume; and the 1985 and 1986 annual supplements to the 1982 replacement volume.

**Law reviews:** For article, "Recovering Asbestos Abatement Costs in Tort Actions", see 19 Colo. Law. 659 (1990).

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**[25-7-501. Legislative declaration.](#)**

(1) The general assembly hereby declares that it is in the interest of the general public to control the exposure of the general public to friable asbestos. It is the intent of the general assembly to ensure the health, safety, and welfare of the public by regulating the practice of asbestos abatement in locations to which the general public has access for the purpose of ensuring that such abatement is performed in a manner which will minimize the risk of release of asbestos. However, it is not the intent of the general assembly to regulate occupational health practices which are regulated pursuant to federal laws or to grant any authority to the department of public health and environment to enter and regulate work areas where general public access is limited. It is the intent of the general assembly that the commission may adopt regulations to permit the enforcement of the national emission standards for hazardous air pollutants as set forth in 42 U.S.C.A. sec. 7412.

(2) Therefore, the general assembly determines and declares that the enactment of this part 5 is a matter of statewide concern to achieve statewide uniformity in the regulation of such asbestos abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement.

**Source:** L. 87: Entire part R&RE, p. 1145, § 1, effective July 1. L. 88: (1) amended, p. 1016, § 1, effective June 11; (1) amended, p. 1440, § 47, effective June 11. L. 94: (1) amended, p. 2786, § 508, effective July 1.

**Editor's note:** This section was contained in a part that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 25-7-501 as said section existed in 1986, the year prior to the repeal and reenactment of this part.

**Law reviews.** For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

**[25-7-502. Definitions.](#)**

As used in this part 5, unless the context otherwise requires:

(1) (a) "Area of public access" means any building, facility, or property, or only that portion thereof, that any member of the general public can enter without limitation or restriction by the owner or lessee under normal business conditions; except that "area of public access" includes a single-family residential dwelling and any facility that charges the general public a fee for admission, such as any theater or arena. For purposes of this subsection (1), "general public" does not include employees of the entity that owns, leases, or operates such building, facility, or property, or such portion thereof, or any service personnel or vendors connected therewith.

(b) Repealed.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (1), a single family residential dwelling shall not be considered an area of public access for purposes of this part 5 if the homeowner who resides in the single family dwelling that is the homeowner's primary residence requests, on a form provided by the division, that the single family dwelling not be considered an area of public access.

(2) "Asbestos" means abestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(3) "Asbestos abatement" means any of the following:

(a) The wrecking or removal of structural members that contain friable asbestos-containing material;

(b) The following practices intended to prevent the escape of asbestos fibers into the atmosphere:

(I) Coating, binding, or resurfacing of walls, ceilings, pipes, or other structures for the purpose of minimizing friable asbestos-containing material from becoming airborne;

(II) Enclosing friable asbestos-containing material to make it inaccessible;

(III) Removal of friable asbestos-containing material from any pipe, duct, boiler, tank, reactor, furnace, or other structural member.

(4) "Commission" means the air quality control commission created by section 25-7-104.

(5) "Division" means the division of administration in the department of public health and environment.

(6) "Friable asbestos-containing material" means any material that contains asbestos and when dry can be crumbled, pulverized, or reduced to powder by hand pressure and that contains more than one percent asbestos by weight, area, or volume. The term includes nonfriable forms of asbestos after such previously nonfriable material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(7) "Person" means any individual, any public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity which is recognized by law as the subject of rights and duties.

(7.5) "Project manager" means a person who has satisfied the experience and academic training requirements set forth by the commission.

(8) (a) "School" means any institution that provides elementary or secondary education.

(b) and (c) Repealed.

(9) "State-owned or state-leased buildings" means structures occupied by any person which are either owned by the state or utilized by the state through leases of one year's duration or longer.

(10) "Structural member" means any beam, ceiling, floor, or wall.

(11) "Trained supervisor" means an individual certified by the division to supervise asbestos abatement pursuant to section 25-7-506.

**Source:** L. 87: Entire part R&RE, p. 1145, § 1, effective July 1. L. 88: (1) amended, p. 1016, § 2, effective June 11. L. 89: (8) amended, p. 1169, § 2, effective May 9. L. 94: (5), (8)(b), and (8)(c) amended, pp. 2786, 2702, §§ 509, 258, effective July 1. L. 95: (7.5) added, p. 20, § 1, effective July 1. L.

**2001:** (1) and (6) amended, p. 772, § 4, effective June 1. **L. 2005:** (8)(c) repealed, p. 283, § 23, effective August 8. **L. 2006:** (1)(b) and (8)(b) repealed, p. 125, § 10, effective March 27.

**Editor's note:** This section was contained in a part that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 25-7-502 as said section existed in 1986, the year prior to the repeal and reenactment of this part.

**25-7-503. Powers and duties of the commission - rules - delegation of authority to division.**

(1) The commission has the following powers and duties:

(a) To promulgate rules pursuant to section 24-4-103, C.R.S., regarding the following, as are necessary to implement the provisions of this part 5 only for areas of public access:

(I) Performance standards and practices for asbestos abatement which are not more stringent than 29 CFR 1910.1001 and 1926.58;

(II) (A) Determination of a maximum allowable asbestos level, which shall be the highest level of airborne asbestos under normal conditions that allows for protection of the general public; except that, until the commission adopts by rule a level, the maximum allowable asbestos level for the protection of the general public shall be 0.01 fibers per cubic centimeter of air, measured during normal occupancy and calculated as an eight-hour time-weighted average, in accord with 29 CFR 1910.1000 (d)(1)(i).

(B) If airborne asbestos fiber levels exceed such a level, a second test of samples may be collected during normal occupancy, analyzed by transmission electron microscopy (TEM) analysis, and calculated as an eight-hour time-weighted average in accord with 29 CFR 1910.1000 (d)(1)(i).

(C) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the asbestos level in the outside ambient air which is adjacent to an asbestos project site or area of public access exceeds 0.01 fibers per cubic centimeter of air, the existing asbestos level in such air shall be the maximum allowable asbestos level.

(III) Exemptions in emergency situations from the requirements of section 25-7-505 regarding the certificate to perform asbestos abatement;

(IV) Requirements for air pollution permits. Permits shall be required for asbestos abatement projects in any building, facility, or structure, or any portion thereof, having public access; except that the requirements of this subparagraph (IV) shall not apply to asbestos abatement projects performed by an individual on a single-family residential dwelling.

(V) Fees for air pollution permits, site inspections, and any necessary monitoring for compliance with this part 5;

(VI) Fees for certification as a trained supervisor;

(VII) Fees for certification which is required under federal law to engage in the inspection of schools, the preparation of asbestos management plans for schools, and the performance of asbestos abatement services for schools;

(VIII) Fees for a certificate to perform asbestos abatement;

(IX) Assessment procedures which determine the need for response actions for friable asbestos-containing materials. Such procedures shall include, but not be limited to, visual inspection and air monitoring which shows an airborne concentration of asbestos during normal occupancy conditions in excess of the maximum allowable level established by the commission in state-owned or state-leased buildings. Nothing in this subparagraph (IX) shall be construed to require that such assessments be made in state-owned or state-leased buildings; however, such procedures shall be followed in the event any such assessment is made.

(X) Requirements for asbestos management plans to be submitted and implemented by schools;

(XI) Fees to be collected from schools for review and evaluation of asbestos management plans;

(b) To promulgate rules pursuant to section 24-4-103, C.R.S., regarding the following, as are necessary to implement the provisions of this part 5, as required by the federal "Clean Air Act", 42 U.S.C. sec. 7412, et. seq., as amended:

(I) Determination of the minimum scope of asbestos abatement to which the provisions of this part 5 shall apply, but not less than:

(A) With regard to asbestos abatement projects on a single-family residential dwelling, fifty linear feet on pipes or thirty-two square feet on other materials or the equivalent of a fifty-five-gallon drum;

(B) With regard to asbestos abatement projects not subject to sub-subparagraph (A) of this subparagraph (I), two hundred sixty linear feet on pipes or one hundred sixty square feet on other materials or the equivalent of a fifty-five-gallon drum;

(II) Requirements of notification, as consistent with the federal act, to demolish, renovate, or perform asbestos abatement in any building, structure, facility, or installation, or any portion thereof, which contains asbestos, except within such minimum scope of asbestos abatement or when otherwise exempt;

(III) (A) Procedures for the inspection and monitoring of sites where demolition, renovation, or the performance of asbestos abatement is taking place, including rules assuring that aggressive air monitoring shall be utilized only in the context of conducting final clearance of an abatement project as outlined in the federal "Asbestos Hazardous Emergency Response Act of 1986", 42 U.S.C. sec. 2641 et seq., and pursuant to the regulations found at 40 CFR 763. Specifications as listed in "measuring airborne asbestos following an abatement action", published by the environmental protection agency in 1985, shall be adopted by the commission as criteria for aggressive sampling.

(B) The division shall provide information to local governments to be used in connection with the issuance of a building permit regarding the need for an inspection for the presence of asbestos-containing materials prior to renovation or demolition of any building, structure, facility, or installation that may contain asbestos.

(IV) (A) Fees for notifications to demolish, renovate, or perform asbestos abatement and for any associated site inspections or necessary monitoring for compliance with this part 5.

(B) Fees pursuant to this subparagraph (IV) shall be paid on an annual basis for large contiguous facility complexes and on an individual notification basis for small noncontiguous facilities.

(V) Requirements to prevent any real or potential conflict of interest between the identification of asbestos-containing materials and the abatement of such materials, including requirements that project managers be used on projects of a certain size, that project managers be independent of the abatement contractor and work strictly on behalf of the building owner to the extent feasible, and that building owners may seek waivers from the project manager requirements.

(c) To approve the examination administered to applicants for certification as a trained supervisor pursuant to section 25-7-506;

(d) To authorize the division to:

(I) Establish procedures regarding applications, examinations, and certifications required under this part 5;

(II) Enforce compliance with the provisions of this part 5, the rules and regulations promulgated thereunder, and any order issued pursuant thereto.

(e) To promulgate rules setting minimum standards for sampling the asbestos in the air and standards for persons engaging in such sampling and to seek injunctive relief under section 25-7-511.5, including relief against any asbestos air sampler who acts beyond his level of competency. In promulgating rules setting such standards, the commission shall not use the term "air sampling professional" in such standards.

(f) (I) To adopt rules pursuant to section 24-4-103, C.R.S., setting out required training for persons applying for certification, recertification, or renewal of certificates as required by regulations promulgated by the federal environmental protection agency or the occupational safety and health administration.

(II) Training required pursuant to this paragraph (f) shall not be unduly duplicative or excessive.

(III) Refresher courses shall be required annually.

(2) Notwithstanding any other provisions of this section to the contrary, neither the commission nor the division shall have the authority to enforce standards more restrictive than the federal standards set forth in the "Occupational Safety and Health Act", on asbestos abatement projects which are subject to such federal standards; except that, nothing in this subsection (2) shall be construed to prevent the application and enforcement of the maximum allowable asbestos level prescribed in subparagraph (II) of paragraph (a) of subsection (1) of this section as a clearance level and a condition of reentry by the general public upon completion of the project.

**Source:** L. 87: Entire part R&RE, p. 1147, § 1, effective July 1. L. 88: (1)(a)(II) and (1)(b)(III) amended, (1)(a)(IX) R&RE, and (2) added, p. 1017, §§ 4, 3, effective June 11. L. 90: (1)(e) added, p. 1320, § 2, effective May 24. L. 92: (1)(b)(I) amended, p. 1231, § 35, effective July 1. L. 95: (1)(b) amended and (1)(f) added, p. 20, § 2, effective July 1. L. 2001: (1)(a)(IV), (1)(b)(I), and (1)(b)(III) amended, p. 772, § 5, effective June 1. L. 2006: IP(1)(a), (1)(a)(II)(A), (1)(a)(II)(B), IP(1)(b), (1)(b)(V), and (1)(e) amended, p. 123, § 6, effective March 27.

**Editor's note:** This section was contained in a part that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 25-7-504 as said section existed in 1986, the year prior to the repeal and reenactment of this part.

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1677-1679, 1723-1731, 1948-1950.

**Law reviews.** For article, "State and Federal Legislative Response to the Asbestos Threat", see 17 Colo. Law. 1973 (1988).

#### **25-7-504. Asbestos abatement project requirements - certification required for schools - certificate to perform asbestos abatement - certified trained persons.**

(1) (a) Any person who inspects schools for the presence of friable asbestos, prepares asbestos management plans for schools, or conducts asbestos abatement services in schools shall obtain certification pursuant to section 25-7-507.

(b) Any person who inspects public or commercial buildings for the presence of asbestos, prepares management plans for public and commercial buildings, designs abatement actions in public and commercial buildings, or conducts abatement actions in public and commercial buildings shall obtain certification pursuant to section 25-7-507.

(2) (a) Any person who conducts asbestos abatement in any building, other than a school, shall obtain a certificate to perform asbestos abatement pursuant to section 25-7-505 unless such abatement project is exempt from the requirement for certification pursuant to rules and regulations promulgated by the commission.

(b) Unless otherwise exempt, asbestos abatement shall be performed under the supervision of an individual certified by the division as a trained supervisor pursuant to section 25-7-506, who shall be at the project site at all times that work is in progress.

(3) The requirements of this section shall apply to asbestos abatement on a single-family residential dwelling; except that the requirements of this section shall not apply to any individual who performs asbestos abatement on a single-family residential dwelling that is the individual's primary residence.

**Source:** L. 87: Entire part R&RE, p. 1148, § 1, effective July 1. L. 92: (1) amended, p. 1231, § 36, effective July 1. L. 2001: (3) amended, p. 773, § 6, effective June 1.

#### **25-7-505. Certificate to perform asbestos abatement - application - approval by division - suspension or revocation of license.**

(1) Any person may apply to the division for a certificate to perform asbestos abatement by submitting an application in the form specified by the division and by paying a fee set by the commission. Such application shall include, but shall not be limited to:

(a) A description of the applicant's employee training program for asbestos abatement;

(b) A statement identifying all individuals employed by the applicant who are certified as trained supervisors pursuant to section 25-7-506.

(2) No applicant shall be certified to perform asbestos abatement unless the applicant, or at least one of the applicant's employees, is certified as a trained supervisor pursuant to section 25-7-506.

(3) Within fifteen days after receiving an application pursuant to this section, the division shall acknowledge its receipt and notify the applicant as to whether the application is complete. Within thirty days after receiving a completed application, the division shall issue a certificate to the applicant if the division finds that, in addition to all other requirements, the employee training program for asbestos abatement described in the application is acceptable. A certificate issued by the division pursuant to this section shall be valid for three years from the date of issuance.

(4) A certificate issued pursuant to this section may be suspended or revoked for the failure to implement the employee training program for asbestos abatement described in the application submitted pursuant to this section.

**Source:** L. 87: Entire part R&RE, p. 1148, § 1, effective July 1.

#### **25-7-505.5. Testing for certification under part 5.**

(1) The division shall develop or purchase the examinations administered pursuant to this part 5 for certification under sections 25-7-506, 25-7-506.5, and 25-7-507 and shall set the passing scores on all such examinations based on a minimum level of competency in the procedures to be followed in asbestos abatement. The division shall administer such examinations at least twice each year or more frequently if demand so warrants and shall administer such examinations at various locations in the state if demand so warrants. The purpose of the examinations required pursuant to this section is to ensure minimum competency in asbestos abatement procedures. If a person fails to achieve a passing score on any such examination, retesting of such person shall be with a different examination and after such person has completed remedial training as determined to be satisfactory to the division for minimum competency in asbestos abatement procedures. Prior to such reexamination, an applicant shall file a new application, and pay a fee set by the division. Such fee shall be no greater than the amount paid for the original examination.

(2) Notwithstanding the provisions of sections 25-7-506, 25-7-506.5, and 25-7-507, the division may certify an individual under this part 5 by endorsement if such individual possesses in good standing a valid license, certificate, or other registration from any other state or territory of the United States or from the District of Columbia, if the applicant presents proof satisfactory to the division that at the time of application for a Colorado certificate by endorsement the applicant possesses qualifications substantially equivalent to those of this part 5 as determined by the division.

**Source:** L. 90: Entire section added, p. 1320, § 3, effective May 24. L. 2006: Entire section amended, p. 123, § 4, effective March 27.

#### **25-7-506. Certificate of trained supervisors - application - approval by division - responsibilities of trained supervisors - renewal of a certificate.**

(1) Any individual may apply to the division to be certified as a trained supervisor by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(2) Within thirty days after receiving a completed application and the results of the examination administered pursuant to paragraph (b) of this subsection (2), the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding:

(a) That the applicant has, within twelve months prior to the date of the application, completed a training course on safe asbestos abatement procedures which has been approved by the division; and

(b) That the applicant has passed an examination administered by the division pursuant to section 25-7-505.5 on the procedures to be followed in asbestos abatement.

(3) An individual acting as a trained supervisor pursuant to this section shall be responsible for supervising a specific asbestos abatement project in such a manner as to assure that asbestos abatement is performed in compliance with the provisions of this part 5 and the rules and regulations promulgated thereunder.

(4) (Deleted by amendment, L. 92, p. 1232, § 37, effective July 1, 1992.)

(5) (Deleted by amendment, L. 95, p. 22, § 3, effective July 1, 1995.)

**Source:** L. 87: Entire R&RE, p. 1149, § 1, effective July 1. L. 90: (2)(b) amended and (5) added, p. 1321, § 4, effective May 24. L. 92: (2) and (4) amended, p. 1232, § 37, effective July 1. L. 95: IP(2) and (5) amended, p. 22, § 3, effective July 1. L. 2006: IP(2) amended, p. 125, § 8, effective March 27.

#### **25-7-506.5. Certification of air monitoring specialist.**

(1) No person may perform air monitoring or air monitoring specialist activities for asbestos, as set forth in rules promulgated by the commission, including visual clearance inspections of an asbestos abatement project, without first obtaining a certificate pursuant to this section.

(2) Any individual may apply to the division to be certified as an air monitoring specialist by submitting an application in the form specified by the division and paying a fee set by the commission. Within fifteen days after receiving an application, the division shall notify the applicant as to whether the application is complete.

(3) Within thirty days after receiving a completed application, the division shall issue a certification valid for a period not to exceed five years as established by the commission by rule from the date of issuance upon a finding that the applicant has successfully met the experience, education, examination, and training requirements and has paid a fee, as set forth in rules promulgated by the commission.

**Source:** L. 2001: Entire section added, p. 773, § 7, effective June 1. L. 2006: (3) amended, p. 123, § 5, effective March 27.

#### **25-7-507. Certification required under federal law for asbestos projects in schools, public, and commercial buildings.**

Pursuant to the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519) and the federal "Asbestos School Hazard Abatement Reauthorization Act of 1990" (Public Law 101-637), the division shall certify, in the manner required under the federal law, all persons engaged in the inspection of schools or public or commercial buildings, the preparation of management plans for schools or public or commercial buildings, the design of abatement actions in schools or public or commercial buildings, or the conduct of abatement actions in schools or public or commercial buildings.

**Source:** L. 87: Entire part R&RE, p. 1149, § 1, effective July 1. L. 92: Entire section amended, p. 1232, § 38, effective July 1.  
**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, § 1670.

#### **25-7-507.5. Renewal of certificates - recertification.**

(1) Any certificate issued pursuant to this part 5 that has lapsed shall be deemed to have expired.

(2) (a) A certificate issued pursuant to this part 5 may be renewed prior to expiration upon payment of a renewal fee set by the commission.

(b) Renewal of a certificate may be made for a period not to exceed five years as established in rules promulgated by the commission.

(3) An individual may reinstate an expired certificate within one year after such expiration upon payment of a reinstatement fee in an amount set by the commission.

(4) An individual whose certificate has lapsed for a period longer than one year after expiration shall apply to the division for certification as required by this part 5 and shall not be recertified until the division determines that such individual has fully complied with the requirements of this part 5 and any rules promulgated pursuant thereto.

(5) (a) Any individual whose certificate has lapsed because such individual has not completed the refresher course required pursuant to section 25-7-503 (1) (f) may complete such refresher course within one year after the date the certificate lapses.

(b) Completion of the refresher course shall be a requirement for recertification.

(c) (I) The commission shall promulgate rules governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519) and any rules promulgated pursuant to such federal law.

(II) In adopting rules the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures.

(III) The division shall implement a system of testing to measure the knowledge obtained by certified persons attending the refresher training programs. Such testing shall not exceed the requirements of refresher training mandated pursuant to federal law.

**Source:** L. 95: Entire section added, p. 22, § 4, effective July 1. L. 2006: (2)(b) amended, p. 125, § 9, effective March 27.

**25-7-508. Grounds for disciplinary action - letters of admonition - denial of certification - suspension, revocation, or refusal to renew - requirement for corrective education - administrative fines.**

(1) When an application for certification pursuant to section 25-7-505, 25-7-506, 25-7-506.5, 25-7-507, or 25-7-507.5 is denied by the division, the applicant may contest the decision of the division by requesting a hearing before the office of administrative courts. A request for a hearing must be made within thirty calendar days after the division has issued a denial of the application in writing to the applicant. The hearing shall be held pursuant to section 25-7-119.

(2) (a) The division may take disciplinary action in the form of the issuance of a letter of admonition or, in conformity with the provisions of article 4 of title 24, C.R.S., the suspension, revocation, or refusal to renew certification pursuant to section 25-7-505, 25-7-506, 25-7-506.5, 25-7-507, or 25-7-507.5 should the division find that a person certified under this part 5:

(I) Has violated or has aided and abetted in the violation of any provision of this part 5 or any rule or regulation or order of the division or commission promulgated or issued under this part 5;

(II) (A) Has been subject to a disciplinary action relating to a certification or other form of registration or license to practice asbestos abatement under this part 5 or any related occupation in any other state, territory, or country for disciplinary reasons, which action shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of certification by the division.

(B) This subparagraph (II) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those set out as grounds for disciplinary action pursuant to this part 5.

(C) A plea of nolo contendere or its equivalent to a charge of violating a law or regulation governing the practice of asbestos removal in another state, territory, or country that is accepted by the disciplining body of such other state, territory, or country may be considered to be the same as a finding of guilt for purposes of a hearing conducted by the division pursuant to this subsection (2).

(III) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to engage in activities regulated pursuant to this part 5. A certified copy of the judgment of a

court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the division shall be governed by the provisions of section 24-5-101, C.R.S.

(IV) Has failed to report to the division a disciplinary action specified in subparagraph (II) of this paragraph (a) or a felony conviction for an act specified in subparagraph (III) of this paragraph (a);

(V) Has failed to meet any permit and notification requirement or failed to correct any violations cited by the division during any inspection within a reasonable period of time;

(VI) Has used misrepresentation or fraud in obtaining or attempting to obtain a certificate under this part 5;

(VII) Has failed to adequately supervise an asbestos abatement project as a certified trained supervisor;

(VIII) Has committed any act or omission which does not meet generally accepted standards of the practice of asbestos abatement;

(IX) Has engaged in any false or misleading advertising.

(b) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the division, does not warrant suspension or revocation by the division but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the certified person against whom a complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the division to a certified person complained against, such certified person shall be advised that such person has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against such person to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(3) A person aggrieved by an action taken by the division pursuant to subsection (2) of this section may contest the action by requesting a hearing before the office of administrative courts within thirty days after the applicant is notified in writing of the division's action. The hearing shall be held pursuant to section 25-7-119. Any person aggrieved by an action taken by the office of administrative courts pursuant to subsection (2) of this section may appeal the action to the court of appeals in accordance with section 24-4-106 (11), C.R.S.

(4) In addition to or in lieu of the forms of disciplinary action authorized in subsection (2) of this section, the division, in its discretion, may require corrective education in the area of asbestos abatement as a disciplinary action against a certified person when the situation so warrants, such corrective education to be directed toward weak or problematic areas of a certified person's practice.

(5) Any certified person who violates any provision of this section, in addition to any other enforcement action available under this article, may be disciplined upon a finding of misconduct by the division as follows:

(a) In any first administrative proceeding against a certified person, a fine of not less than one hundred dollars nor more than one thousand dollars;

(b) In a second or subsequent administrative proceeding against a certified person for transactions occurring after a final agency action determining that a violation of this part 5 has occurred, a fine of not less than one thousand dollars nor more than ten thousand dollars.

(6) If a certification is revoked by the division, the person against whom such action was taken shall not apply for recertification for a period of one year after such revocation and shall be required to demonstrate compliance with any disciplinary action imposed by the division and to demonstrate competency in asbestos abatement procedures prior to receiving a new certificate.

**Source:** L. 87: Entire part R&RE, p. 1149, § 1, effective July 1. L. 90: (2) R&RE, (3) amended, and (4) to (6) added, pp. 1321, 1323, §§ 5, 6, effective May 24. L. 92: (1), (3), and (5) amended, p. 1232, § 39, effective July 1. L. 95: (2)(a)(II), (2)(b), and (6) amended, p. 23, § 5, effective July 1. L. 2001: IP(2)(a) amended, p. 774, § 8, effective June 1. L. 2005: (1) and (3) amended, p. 858, § 23, effective June 1. L. 2006: (1) and IP(2)(a) amended, p. 124, § 7, effective March 27.

#### **25-7-509. Prohibition against local certification regarding asbestos abatement.**

Inasmuch as uniformity in the regulation of asbestos abatement practices and uniformity in the qualifications and certification of persons performing asbestos abatement is a matter of statewide concern, no certification or licensing of asbestos abatement projects nor any examination or certification of persons certified under this part 5 shall be required by any city, town, county, or city and county; however, any such local governmental authority may impose reasonable registration requirements on any person performing asbestos abatement as a condition of performing such activity within the jurisdiction of such authority. Registration fees charged by any such local governmental authority to any such person shall not exceed those costs associated with such registration requirements and functions.

**Source:** L. 87: Entire part R&RE, p. 1150, § 1, effective July 1.

#### **25-7-510. Fees.**

(1) (a) The fees required pursuant to this part 5 shall be established pursuant to rules and regulations promulgated by the commission.

(b) The commission shall adjust the fees so that the revenue generated from such fees is sufficient to cover the division's direct and indirect costs in implementing the provisions of this part 5.

(2) All fees collected by the division pursuant to this part 5 shall be transmitted to the state treasurer, who shall credit the same to the stationary sources control fund established pursuant to section 25-7-114.7 (2) (b). The general assembly shall appropriate to the department of public health and environment, at least annually, from the fund, an amount sufficient to implement the provisions of this part 5.

**Source:** L. 87: Entire part R&RE, p. 1150, § 1, effective July 1. L. 92: (2) amended, p. 1233, § 40, effective July 1. L. 94: (2) amended, p. 2787, § 510, effective July 1.

#### **25-7-511. Enforcement.**

(1) Whenever the division has reason to believe that any person has violated any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may issue a notice of violation and cease and desist order. The notice of violation shall set forth the provision, rule, or regulation alleged to have been violated and the facts constituting such violation. The cease and desist order shall set forth the measures which the person shall take to eliminate the violation and the time within which these measures shall be performed. The order may require that the person stop work at the asbestos abatement project until the violation has been eliminated or may require a school to submit and implement an asbestos management plan by a date specified by the division.

(2) If the recipient of a cease and desist order issued pursuant to subsection (1) of this section fails to comply with the terms of the order within the time specified, the division may file an action in the district court of the county where the violation is alleged to have occurred requesting that the court order the person to comply with the cease and desist order. When the division alleges that the violation poses a significant danger to the health of any person, the court shall grant such action priority.

(3) Unless the division has filed an action in the district court pursuant to subsection (2) of this section, a recipient of a cease and desist order may request a hearing before the commission to contest the cease and desist order. Such request shall be filed within thirty days after the cease and desist order has been issued. A hearing on the cease and desist order shall be held pursuant to section 25-7-119.

(4) Upon a finding by the division that a person is in violation of any of the provisions of this part 5 or the rules and regulations promulgated thereunder, the division may assess a penalty of up to twenty-five thousand dollars per day of violation or such lesser amount as may be required by applicable federal law or regulation. In determining the amount of the penalty to be assessed, the division shall consider the seriousness of the danger to the public's health caused by the

violation, whether or not the violation was willful, the duration of the violation, and the record of the person committing such violation.

(5) A person subject to a penalty assessed pursuant to subsection (4) of this section may appeal the penalty to the commission by requesting a hearing before the commission. Such request shall be filed within thirty days after the penalty assessment is issued. A hearing pursuant to this subsection (5) shall be conducted pursuant to section 25-7-119.

(6) All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**Source:** L. 87: Entire part R&RE, p. 1150, § 1, effective July 1.

**Am. Jur.2d.** See 61C Am. Jur.2d, Pollution Control, §§ 1723-1731, 1948-1950.

#### 25-7-511.5. Injunctive proceedings.

(1) The division may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction:

(a) To enjoin any person from committing any act prohibited by the provisions of this part 5;

(b) To enjoin a certified person from practicing the profession for which he is certified under this part 5.

(2) If it is established that the defendant has been or is committing any act prohibited by this part 5, the court shall enter a decree perpetually enjoining said defendant from further committing said act or from practicing asbestos abatement.

(3) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 5.

(4) When seeking an injunction under this section, the division shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

**Source:** L. 90: Entire section added, p. 1323, § 7, effective May 24.

#### 25-7-511.6. Refresher training - authorization.

The commission shall promulgate rules and regulations governing refresher training programs for persons in both school and nonschool asbestos abatement. Such programs shall not exceed the requirements of refresher training mandated under the federal "Asbestos Hazard Emergency Response Act of 1986" (Public Law 99-519), as amended, and any rules and regulations promulgated under such federal law. In adopting such rules and regulations, the commission shall ensure that refresher training requirements are related to ensuring continuing competency in asbestos abatement procedures. The division shall implement a system of testing to measure the knowledge obtained by certified persons attending such programs.

**Source:** L. 90: Entire section added, p. 1323, § 7, effective May 24.

#### 25-7-512. Repeal of part.

This part 5 is repealed, effective July 1, 2013. Prior to such repeal, the functions of the division under this part 5 shall be reviewed as provided for in section 24-34-104, C.R.S.

**Source:** L. 87: Entire part R&RE, p. 1151, § 1, effective July 1. L. 88: Entire section amended, p. 931, § 16, effective April 28. L. 90: Entire section amended, p. 1324, § 8, effective May 24. L. 91: Entire section amended, p. 688, § 57, effective April 20. L. 94: Entire section amended, p. 1457, § 9, effective May 25. L. 95: Entire section amended, p. 24, § 6, effective July 1. L. 2001: Entire section amended, p. 771, § 3, effective June 1. L. 2006: Entire section amended, p. 122, § 1, effective March 27.