

I.
INTRODUCTION

§ 20.01. Scope

Pesticide definition and classifications [20.03 and § 20.05] Pesticide registration [20.04] Licensing of pesticide applicators [20.06] Licensing of pesticide businesses and dealers [20.07 and 20.08] Pesticide storage, handling and disposal restrictions [20.09] Enforcement [20.10]

II.
REGULATION OF PESTICIDE DISTRIBUTION AND
APPLICATION

§ 20.02. Regulatory Authority

Authority to regulate the sales, distribution, application and handling of pesticides in Ohio is vested in the Director of the Ohio Department of Agriculture (“Director” or “ODA”). Director has broad authority to promulgate regulations, issue licenses, registrations and administrative orders, as well as to investigate and enforce potential violations of regulatory or statutory mandates related to the sales, distribution, application and handling of pesticides.

§ 20.03. Pesticide Definition

“Pesticide” means any substance or mixture of substance intended for either of the following:

- (1) preventing, destroying, repelling, or mitigating any pest;
- (2) use as a plant regulator, defoliant, or desiccant.

Consider: Anit-Microbial products

§ 20.04. Registration of Pesticides

Anyone who wants to sell, offer for sale or distribute any pesticide in Ohio must secure a registration for each such pesticide. Renewed annually by June 30

Pesticide registration applications require:

- names and addresses of both applicant and person’s name that will appear on label, if different from applicant
- brand name and product name of the pesticide;
- complete copy of all labeling including all claims made, directions for use and use classification;
- ODA registration number for the pesticide, if any; and
- Any other information ODA may require.

ODA may require submission of the complete formula for a pesticide, including active and inert ingredients, as well as a full description of testing the applicant will utilize to support the product’s pesticidal claims. Portions may be designated as Trade Secrets

If already registered with the Feds, then streamlined at Ag.

“low risk” pesticides and pesticidal products are exempt from Fed registration but not from state registration.

ODA has broad authority to deny, cancel or suspend pesticide registrations where a pesticide does not warrant its proposed claims, does not comply with R.C. Chapter 921 or the rules adopted hereunder, or presents an imminent hazard to the environment. Applicants or registrants subject to denials, cancellations or suspensions are entitled to administrative due process rights.

§ 20.05. Restricted and General Use Pesticides

Pesticides are classified as either “restricted use” or “general use” by ODA according to their federal status classification by USEPA.

- U.S. EPA and, correspondingly, ODA, classifies pesticides “restricted use” where it has been determined that ordinary use, even in accordance with directions and warnings, may lead to unreasonable risk of adverse effects on the environment or to the applicator.
- In Ohio, restricted use pesticides may only be applied by licensed commercial and licensed private applicators, or specified categories of persons working under the direct supervision of such authorized persons.
- Pesticides not designated “restricted use pesticides” are “general use pesticides.”

§ 20.06. Licensing of Individuals Applying Pesticides

ODA issues licenses for various categories of pesticide applicators and businesses.

- Licenses are categorized not only by the type of applicator, but also by the type of pest control activities for which license is sought.
- 3 categories of applicators: (1) commercial; (2) private; and (3) non-resident.
 - Must have a Commercial Applicator license to: (1) apply any restricted use pesticide, (2) apply any pesticide for hire for any pesticide business, (3) apply any pesticide as part of one’s duties as a federal, state or local government employee, (4) apply any pesticide as owner or employee of any business other than a pesticide business where the site of application would be any one of several specified categories of publicly accessible sites, or (5) conduct diagnostic inspections.

Securing commercial or private applicator licenses generally requires submission of application materials, demonstration of competence through ODA-administered exams, payment of a fee, and periodic license renewal.

- Applicants undergo examinations both on core principles of pesticide application and also on subject matter specific to the license classification(s) desired.

The Commercial Applicator license is generally suitable for individuals engaging in pesticide application for pesticide businesses.

The private applicator license is generally utilized by agricultural interests seeking to self-apply restricted use pesticides on their crops. Private applicator licensure requirements are somewhat more relaxed than those for commercial applicators, particularly in terms of fees and license duration.

- Classifications for private applicator licenses include: grain and cereal crops, forage crops, field vegetables and specialty crops, fruit crops, ornamentals and turf crops, greenhouse crops,

forest crops, livestock and livestock buildings, non-crop land, stored grain, aquatic, seed treatment, wood preservation, and livestock protection collar.

ODA has also established specific licensing criteria and procedures for non-resident commercial and private applicators.

§ 20.07. Licensing Pesticide Application Businesses and Financial Responsibility

A “pesticide business” is a person who performs pesticide business activities.

“Pesticide business activities” are defined to mean “any of the following:

(1) application of pesticides to the property of another for hire; (2) solicitation to apply pesticides; and (3) the conducting of authorized diagnostic inspections.”

Pesticide businesses wishing to do pesticide business activities in Ohio must secure a license from ODA. The owner or operator of a pesticide business is deemed responsible for recordkeeping and the acts of each employee in the handling, application, and use of pesticides.

Applicants for pesticide businesses must satisfy ODA requirements to demonstrate sufficient financial responsibility through liability insurance or other approved means.

§ 20.08. Pesticide Dealers

A “pesticide dealer” - “any person who distributes restricted use pesticides or pesticides whose uses or distribution are further restricted by the director to the ultimate user or to a commercial applicator who is employed by that pesticide dealer.”

Persons acting or advertising or assuming to act as pesticide dealers must obtain a pesticide dealer license from ODA. Pesticide dealers must comply with record retention and submission requirements relating to all restricted use pesticides distributed.

Every location needs a license. Dealers located outside Ohio wishing to distribute restricted use pesticides in Ohio must secure a pesticide dealer license from ODA for its principal out-of-state location and also for each sales person operating in Ohio. Pesticide dealers are deemed responsible for the acts of employees in solicitation and sale of pesticides and all claims and recommendations for use of pesticides.

§ 20.09. Storage, Handling and Disposal of Pesticides

Specific restrictions on the storage, handling and disposal of pesticides have been promulgated by ODA relating to each of several categories of pesticide storage, including agricultural storage, display storage, and liquid bulk storage.

§ 20.10. Enforcement

ODA has an many enforcement tools, like OEPA.

- ODA may deny, suspend, cancel, revoke or otherwise limit licenses and registrations it has issued where the holder has violated applicable regulatory requirements or where a pesticide does not warrant its claims or is deemed an imminent hazard to the public or the environment.

- ODA also has authority to seize pesticides where it has reasonable cause to believe such is being distributed, stored, transported or used in violation of pesticide regulatory requirements. Statutory authority also has been granted to ODA to take certain investigative measures relative to potential violations or hazards, including authority to inspect records, equipment and pesticides as well as sampling of materials and entry to premises.
- Civil penalty amounts can be assessed up to \$5,000 per violation for a first offense and up to \$10,000 per violation for subsequent offenses.

I. PROCEDURAL CONTEXT

§ 21.01. Scope

Ohio's licensing and permitting for asbestos operations [21.03] □ Ohio's asbestos requirements [21.04] □ Ohio's licensing and permitting for lead abatement [21.05] □ Ohio's lead abatement standards [21.06]

§ 21.02. Asbestos and Lead Overview

This chapter focuses on the Ohio asbestos program and lead abatement in schools, daycares, and residential units.

- Lead abatement activities are regulated by ODH (lead contaminated soils, lead used in industrial or other commercial operations, and lead air emissions are typically governed by TSCA, RCRA, CERCLA, the federal Clean Air Act, or other regulatory programs and will not be examined herein).
- As of 2018, Ohio EPA (DAPC) regulates asbestos in Ohio.

II.

THE OHIO ASBESTOS PROGRAM

§ 21.03. Licensing and Permitting

[1] Licensing for Asbestos Abatement, Renovation, and Demolition

ODH regulates and issues licenses for contractors performing asbestos removal projects, project supervisors, project designers, workers removing asbestos, persons inspecting buildings for asbestos-containing materials and developing plans to manage asbestos found in a facility, persons conducting air sampling for asbestos and the companies that provide required asbestos training.

Specific licenses are issued and required for a number of asbestos activities, including:

- Asbestos abatement contractors, which permits the license holder to perform, directly or indirectly, an asbestos hazard abatement activity
- Asbestos hazard abatement specialists, which permits the license holder to coordinate or supervise abatement projects;
- Asbestos hazard evaluation specialists, which permits the license holder to identify, detect, or assess asbestos containing materials, determine response actions, or prepare asbestos management plans;
- Asbestos hazard abatement project designers, which permits the license holder to determine the work scope, work sequence, or performance standards;
- Asbestos hazard abatement air-monitoring technicians, which permits the license holder to conduct air sampling;
- Asbestos hazard abatement workers, which permits the license holder to conduct asbestos hazard abatement activities.

Persons without the licenses described above are not permitted to engage in asbestos abatement, including project planning, monitoring, coordination, on-site management, or any other asbestos abatement activities, unless the Director of ODH waived the certification requirement in an emergency.

There is an application process for the licenses described above, includes the fees, completion of forms, including pertinent background information, and the completion of required training courses.

[2] Permitting for Certain Asbestos Operations

Certain activities involving asbestos require a permit to install and permit to operate from Ohio EPA. These activities include the operation of an active asbestos waste disposal site, operation of an asbestos mill and the manufacturing of certain products using commercial asbestos such as cement products or the manufacturing of fireproofing and insulating materials, the fabrication of products using commercial asbestos such as friction products or the fabrication of cement or silicate board for ventilation hoods, or operations that convert asbestos-containing waste material into non-asbestos material.

§ 21.04. Asbestos Program

[1] General Requirements for Demolition and Renovation Activities

Demolitions and renovations of facilities trigger asbestos regulations and requirements potentially involving handling, notification, and safety procedures.

- A demolition involves the removal of load bearing structures in a building or handling those structures once removed, as well as burning of a building.
- A renovation involves altering a building in any way, including the “stripping or removal of regulated asbestos containing material from a facility component” or the removal or handling of renovated materials.

Ohio EPA, with regulations that track the federal NESHAP regulates demolitions and renovations occurring to almost all buildings, excepting residential homes or buildings with four or fewer dwelling units.

An owner or operator of a building that contains asbestos with material (“ACM”) must thoroughly inspect the building for the presence of asbestos. If at least 260 linear feet of “regulated asbestos-containing material” is found on pipes, 160 square feet on other facility components, or thirty-five cubic feet if measurement cannot be obtained previously, other rules are triggered including specific notification and handling requirements.

Otherwise, only general notification must occur, consisting of notice of the intent to demolish, made to Ohio EPA, through the local Ohio EPA district office.

“Regulated asbestos-containing material” is friable ACM, and certain categories of non-friable ACM that becomes friable or undergoes activities such as grinding that allow the ACM to become airborne. Notifications also must be made by licensed asbestos hazard abatement contractors if removal of greater than fifty linear or square feet of friable ACM is to occur.

Furthermore, asbestos abatement contractors must enter into written contracts with building owners that contain specific requirements that ensure proper cleanup & removal.

[2] Emission Control Requirements in Demolitions and Renovations

All friable ACM must be removed from a facility prior to it being demolished or renovated.

Regulated ACM must be made adequately wet prior to cutting or disjuncting operations, prior to their being stripped, or prior to their removal. Furthermore, wetting must occur on pieces of the building, such as steel beams, that are being removed or could be disturbed and are surrounded by regulated ACM. Can get a waiver from wetting requirements, if wetting could cause damage to equipment or provide a safety hazard. Only for renovations, not demolitions.

Other requirements also exist, such as the requirement to carefully lower sections of the building to the floor and to ground level and not “dropping, throwing, sliding, or otherwise damaging or disturbing” the regulated ACM. Furthermore, transportation of ACM to the ground must be made via leaktight chutes, HEPA equipped vacuum cleaners, or in leak tight containers if the materials were removed or stripped more than fifty feet above ground level and were not removed in units or sections.

For cold temperatures (i.e., below thirty-two degrees Fahrenheit), only certain wetting requirements are applicable if local exhaust ventilation and collection systems are used that meet criteria such as the presence of no visible emissions, components are removed as units or sections to the maximum extent possible, and temperatures are recorded at the beginning, middle, and end of each day.

[3] Asbestos Regulations in Circumstances Other than Demolitions and Renovations

Ohio EPA prohibits the construction of a roadway with asbestos tailings or asbestos containing waste material unless, for asbestos tailings, it meets certain requirements. These include temporary roadways on areas of asbestos ore deposits (an asbestos mine), temporary roadways at active asbestos mill sites that are encapsulated with resinous or bituminous binders and are maintained annually, or the asbestos tailings are encapsulated in asphalt concrete meeting requirements for construction of roads and bridges on federal highway projects.

Asbestos mills and manufacturing operations that utilize commercial asbestos are also regulated by Ohio EPA. Examples of regulated operations include facilities that manufacture textile materials, including rope, cord, wicks, tubing, and similar products, facilities that manufacture cement products, fireproofing and insulating materials, friction products, floor tile, paints, coatings, and adhesives, and other operations that are listed in OAC 3745-20-10.58

- The requirements placed on these facilities include alternatives, such as having no visible emissions, the use of air cleaning, monitoring of potential sources of asbestos emissions, or inspection of cleaning devices.

Prohibitions also exist on the installation of insulating materials that contain asbestos, except spray-applied ACM that have one percent or less asbestos, or spray applied ACM with greater than one percent asbestos where notification to Ohio EPA occurs and no visible emissions are discharged. The prohibition and requirements on spray applied ACM does not apply to the application of materials that are encapsulated with a bituminous or resinous binder and are not friable after drying.

[4] Asbestos Waste Handling Requirements

All asbestos-containing waste material must be deposited by the generator at a waste disposal site that is operated in Ohio in accordance with the requirements of OAC 3745-20-06, operated in accordance with 40 C.F.R. § 61.154 for sites outside of Ohio, or at a site that converts asbestos containing waste materials into non-asbestos material.

No visible emissions are permitted when collecting, processing, packaging, transporting, or depositing asbestos-containing waste material. Moreover, during those processes, asbestos containing waste materials must be adequately wetted and sealed in a durable leak-tight container or wrapping that meets certain requirements and contain adequate marking as defined in the regulations. Ohio EPA may authorize alternative waste handling procedures if permission is obtained in advance.

Vehicles used to transport asbestos containing waste material must be marked as defined in the regulations and waste shipment records maintained for asbestos containing waste material shipped offsite.⁶⁹ In order to assist manufacturers that ship asbestos waste containers under OAC Chapter 3745-20-05(c)(1), Ohio EPA issued a Standard Operating Guidance in May 2015.

[5] Asbestos Disposal Requirements

Separate requirements exist for active and inactive asbestos disposal sites. Under Ohio's solid and construction and demolition debris waste regulations, sanitary landfills regulated under OAC Chapter 3745-27, industrial landfills regulated under OAC Chapter 3745-29, and construction and demolition debris landfills regulated under OAC Chapter 3745-400 may accept asbestos waste if a permit to install and a permit to operate has been issued by Ohio EPA.⁷⁵ Other landfills, such as residual landfills or composting facilities may not accept asbestos wastes.

Active asbestos disposal sites are prohibited from discharging visible emissions. Alternatively, active asbestos disposal sites may comply by:

- (1) preventing visible emissions from asbestos-containing waste materials; (2) conducting burial operations so as to not cause asbestos-containing waste materials to be broken up or disbursed prior to burial; (3) covering asbestos containing waste materials with at least one foot of compacted nonasbestos containing material by the end of each operating day; (4) controlling access to the site so as to prevent the general public or unauthorized personnel from gaining unauthorized entry to any location within 100 feet of the operations; and (5) posting signs that contain the language specified by the regulation.

Waste shipment records must be maintained and records kept showing the deposits of asbestos waste containing material. Must be submitted to Ohio EPA upon closure of the site. Also must notify Ohio EPA must occur for any excavations or disturbance of asbestos-containing waste material that has been deposited and covered.

Inactive sites also cannot have visible emissions. For inactive sites, as an alternative to having no visible emissions, the asbestos-containing waste must be: covered with at least six inches of compacted non-asbestos containing material and vegetation must be grown and maintained on the area; or the asbestos containing waste material must be covered by at least two feet of compacted non-asbestos-containing material. Warning signs posted unless natural barrier to the site.

Specific regulations also apply to facilities that convert asbestos-containing waste materials into non-asbestos materials. Detailed permit to install requirements apply to such facilities. Detailed monitoring and sampling must also occur during the first ninety days of operation of such facilities, including monitoring of operational parameters, input materials, and the analysis of samples of output materials for the presence of asbestos.

Other monitoring requirements apply after the first ninety days of operation, including monitoring during start up periods and performance testing and monitoring of output during periods that the facility was outside of operating conditions established to ensure the production of non-asbestos material and monthly composite samples collected and analyzed.

Any residual waste that is asbestos-containing must be disposed of at an active asbestos site or rerecycled. Records for such facilities must also be maintained and reports submitted to Ohio EPA.

[6] Enforcement

Ohio EPA

III.

LEAD ABATEMENT

§ 21.05. Lead Abatement Licensing

Lead abatement licensing is regulated by ODH. Only residential units, schools, daycare centers, and the land that surrounds them are regulated by ODH. Ohio EPA does not regulate residential lead based paint, as it falls under the household hazardous waste exemption.

Licenses are granted by ODH upon the payment of required fees, passing an examination, completing required training (if required for that particular license), and, for certain licenses such as lead risk assessors, a college degree and obtaining relevant work experience.

Licenses are required for clearance technicians, lead inspectors, lead risk assessors, lead abatement contractors, lead abatement workers, and lead abatement project designers.

§ 21.06. Lead Abatement Standards

The law defines “lead abatement” to include measures designed and intended to eliminate lead hazards, including removal, encapsulation or enclosure of lead hazards; replacement of lead-contaminated surfaces or fixtures; removal or covering of lead-contaminated soil; and preparation, cleanup, disposal and post-abatement activities associated with the abatement.

Reports are required for all lead inspections and lead abatement professionals must complete abatement assessments and abatement operations in accordance with the federal Department of Housing and Urban Development (“HUD”) standards, which have been adopted by reference in applicable regulations. In order to comply with OAC 3701-32-07(G)(3), the Ohio Department of Health has a “Lead Visual Assessment Form” for Lead Risk Assessments to use when performing a risk assessment of a residential unit, child care facility or school.

Samples must be tested at approved laboratories and proper quality control must be maintained.

Prior to beginning a lead abatement project, a plan must be prepared by a qualified professional, and the ODH must be notified.

- Lead abatement workers and other onsite professionals must have been examined by a physician within the year prior to conducting the abatement and be declared physically capable of working while wearing a respirator.
- Approved encapsulants must be used and certain work practices are prohibited.

- There can be no open flame burning of lead-based paint, machine sanding lead based paint, and dry sanding lead based paint for example.
- OSHA standards must also be followed.
- Certain ethical requirements apply, such as the prohibitions on lead abatement contractors giving advice on the need for lead abatement and then participating in the abatement.

Post-abatement cleaning must be completed pursuant to HUD standards. A lead risk assessor or lead inspector must perform a clearance examination following a lead abatement of schools, daycares, and residential units to ensure that the facility meets the clearance standards; and, prepare a report, written in the format prescribed under the regulatory requirements:

- (a) Start and completion dates of the abatement;
- (b) Address, unit number, and date of construction of the residential unit, child day-care facility or school;
- (c) Name, address, and telephone number of the owner of the residential unit, child day-care facility or school;
- (d) Name and address of each firm conducting the abatement, the name of the designated lead abatement contractor or lead abatement project designer, and the name(s) of other lead abatement contractor(s) or lead abatement project designers present at the abatement project;
- (e) A detailed written description of the abatement, including the abatement methods used, location of rooms and/or components where abatement occurred, and the reason for selecting particular abatement methods for each component abated, and any suggested monitoring of encapsulants or enclosures.
- (f) The occupant protection portion of the pre-abatement plan as required in paragraph (I)(4)(a) of this rule;
- (g) The written compliance plan portion of the pre-abatement plan as required in (I)(4)(b) of this rule;
- (h) A copy of all clearance examination reports as required by rule 3701-32-12 of the Administrative Code;
- (i) If applicable, information on the storage, transport and disposal of any hazardous waste generated during the abatement;
- (j) Name, license number, and address of each lead abatement project designer who prepared the pre-abatement plan for the lead abatement project, if any; and
- (k) The statement prescribed in paragraph (E) of rule 3701-32-15 of the Administrative Code prominently displayed at the top of the report in bold letters.

Certain record keeping and reporting requirements apply. Real estate transactions require lead disclosure reports and notifications issued to the property owner or manager of a residential unit, day-care facility or school where a lead abatement occurred.

Finally, ODH is empowered to grant variances from lead abatement requirements (including licensing requirements) upon a showing of no jeopardy to the health and safety of the public as well as a showing of “unusual and unnecessary” hardship.

§ 21.07. Enforcement

Enforcement is handled both criminally and civilly.

The OAG, upon referral by the ODH, is required to bring an action for civil penalties and an injunction. Civil penalties may be assessed in the amount of up to \$1,000 per day, per violation. Criminal

prosecutions may also be brought based on a referral by ODH to a county prosecuting attorney or city attorney. A first violation is a misdemeanor, punishable with up to six months of jail and a fine of up to \$1,000. Subsequent violations constitute a felony, which is punishable with up to three years imprisonment and a \$5,000 fine for each day of each violation.

In response to recent issues with drinking water containing lead in other states, the Ohio Governor's office is proposing more protective standards to protect the public against lead in drinking water. By March 2017, community and non-transient community public water systems were required to identify areas that are known or likely contain lead service lines. Almost all water systems provided maps to Ohio EPA in response to the new law.