



Asbestos Regulations -

How did we get here and where are we going

Course Number: RC401107

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Rochester Colonial

MFG. CORE

The Window and Door Experts™

AIA CES Provider Number: 404108687



Professional Abatement
Contractors of New York

PACNY

Credit(s) earned on completion of this course will be reported to **AIA CES** for AIA members.

Certificates of Completion for both AIA members and non-AIA members are available upon request.

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Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.



Course Description

This program will provide an overview of how and why asbestos regulations were developed and how they've changed over the years. The focus will be on New York State regulations.



Learning Objectives

At the end of the this course, participants will be able to:

1. Participants will acquire an awareness of how and why asbestos environmental rules and regulations have been developed and implemented such that they will be better equipped to understand and implement them correctly in order to avoid regulatory errors and pitfalls in the course of conducting routine and unusual asbestos abatement activities.
2. How to implement these regulations before, during and after an asbestos project via planning, on-site evaluation, and post-project review.
3. Describe the analyses and assessments that will occur during "quiet" (non-stressful) periods as well as during the elevated stress periods of a project.
4. Success will be measured by the extent that participants integrate job parameters to formulate work practices in order to conduct work activities that are in compliance with the spirit and letter of New York environmental regulations, especially NYS Industrial Code Rule 56 and NYC Title 15.



How did we get here? & Where are we going?



Where are we going with industry regulations?

The Good, the Bad and the Ugly!

Professor Martin S. Rutstein, Ph.D.
Ecological Consulting &
Management Services, Inc.



THE GOOD THE BAD AND THE UGLY



Marc E. Rutstein
Environmental Consulting &
Management Services, Inc.



Hmm,
doesn't
look
clean to
me!

We all have
stories about
the
“bad things”
In the asbestos
industry!



We saved so much
on disposal fees!

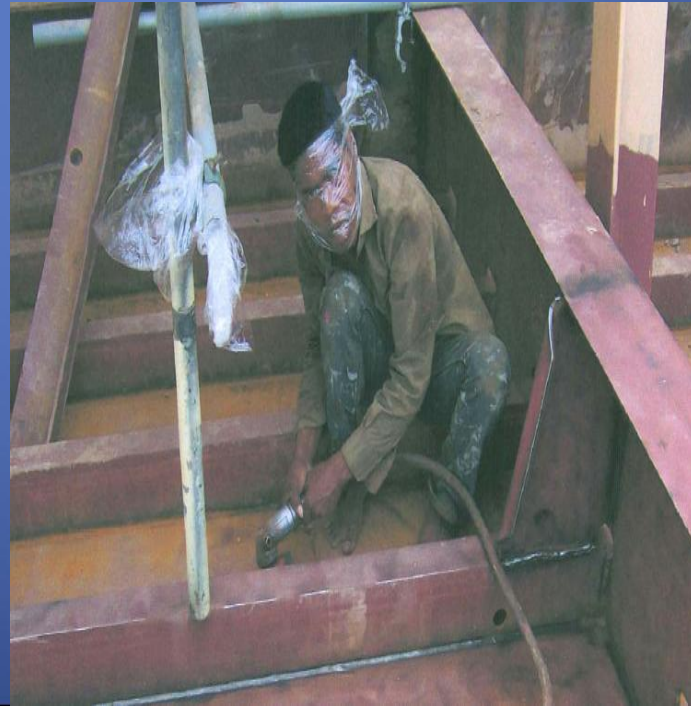
Is my PPE OK?



**Why do I have to
remove ALL of the
“WHITE STUFF”?**



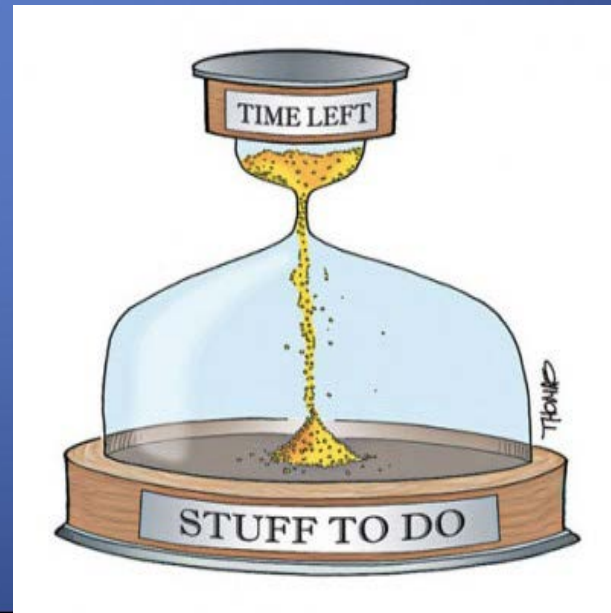
MAJOR Illegalities
Unlicensed workers
Improper PPE
“Rip & Skip”
Dry Removal



**At least
he “uses”
respiratory
protection!**



**“War Stories”
can be entertaining,
but want to leave
you with
“something”
that matters!**

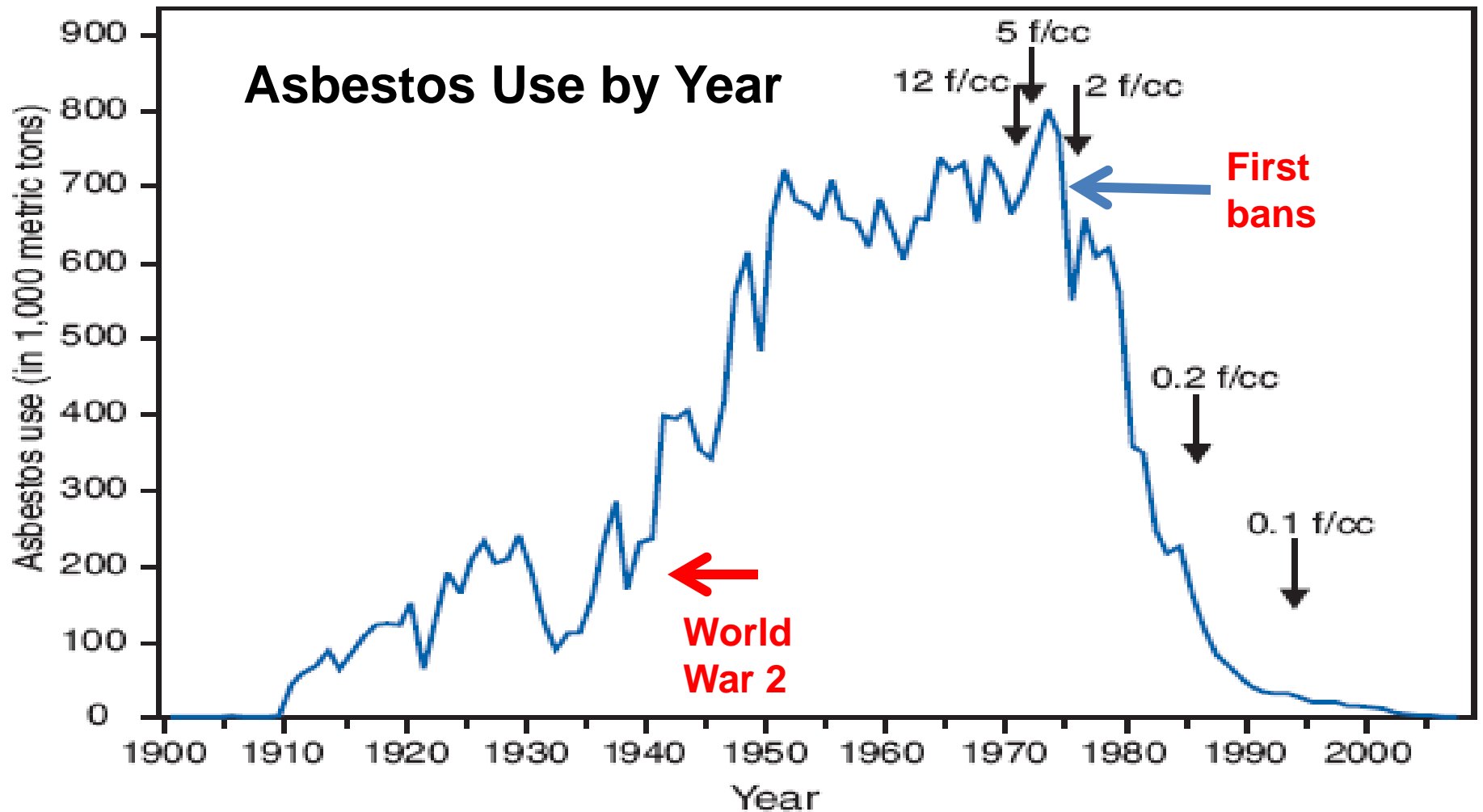


Let's revisit
the
NIOSH
Workplace Exposure
to
Asbestos
“Paper”
of
1980

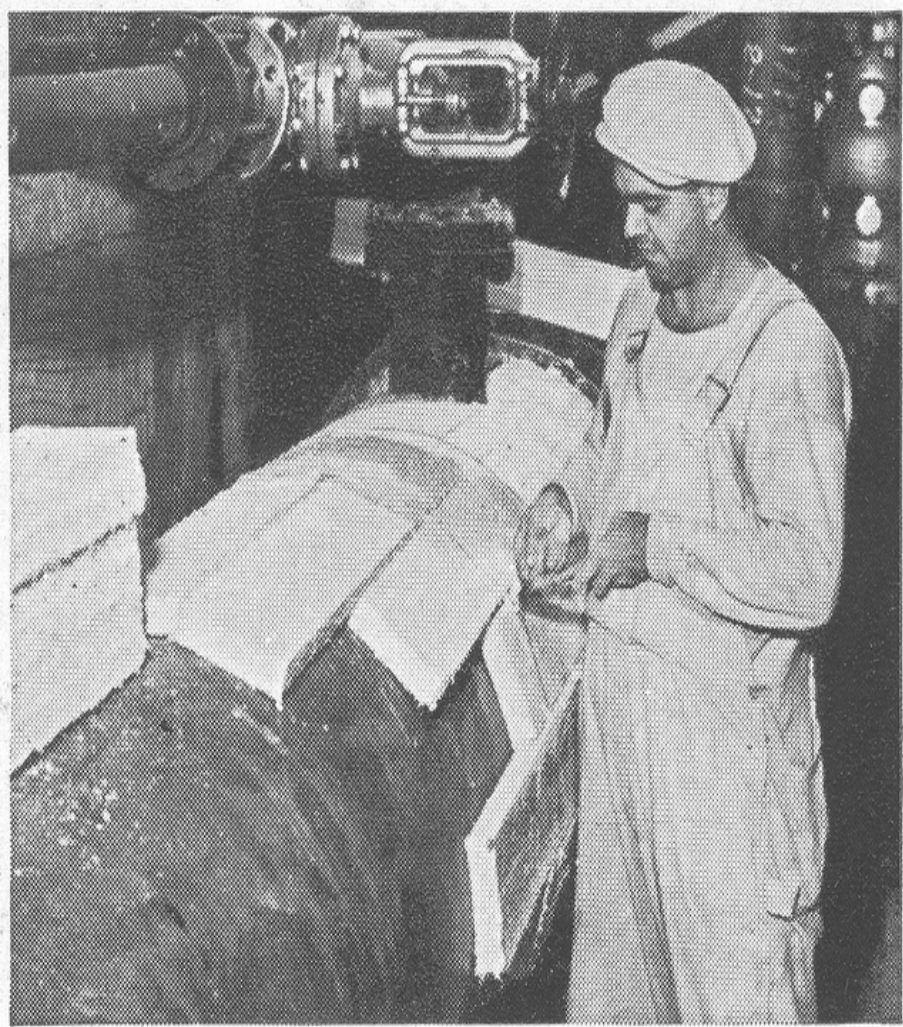
LOOKING
BACK...



**4 million American workers
HEAVILY EXPOSED since the 1940's
shipyard workers, insulators
long AND short duration workers**



Heavily Exposed



J-M 85% Magnesia Blocks.



ASSUMPTIONS

Death rates of
“exposed” workers
will be similar to
insulation workers 33 to 44%



**4 to 7 million
more workers
who were less heavily exposed
will experience
25% greater risk of mesothelioma**

**Normal
Lung**



**Heavy
Asbestos
Exposure**



**Mesothelioma
Effected
Lung**



The NIOSH Estimates “Paper”
predicted
MANY
mesothelioma deaths/year

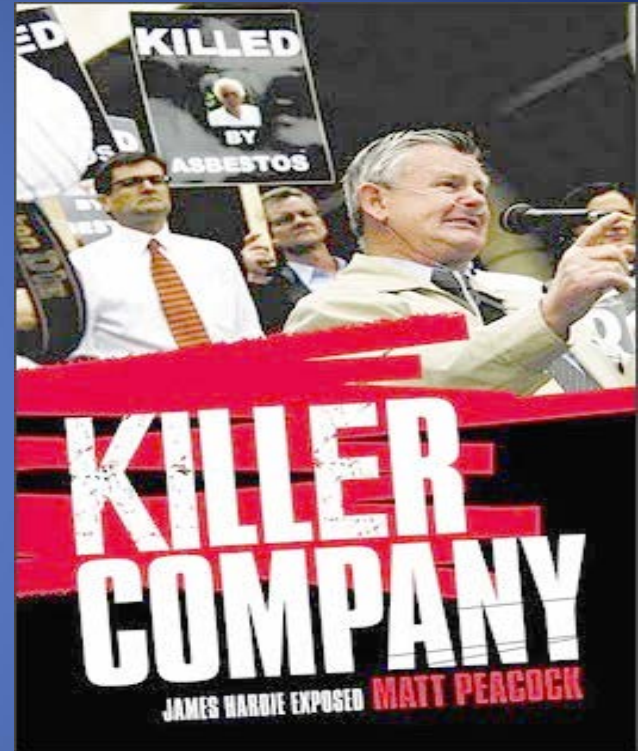


So how
did we
respond?

#1-The BIG “Game Changer”



#2- Asbestos Trust Fund & Litigation



Case Evaluation
Free of Charge

If you've been diagnosed with Mesothelioma you qualify for a *free case evaluation*.

[→ Learn More](#)



Mesothelioma? Asbestos-Related Cancer?

You May Be Eligible to Collect Millions to Dollars

Get Justice. Click [HERE](#) >>

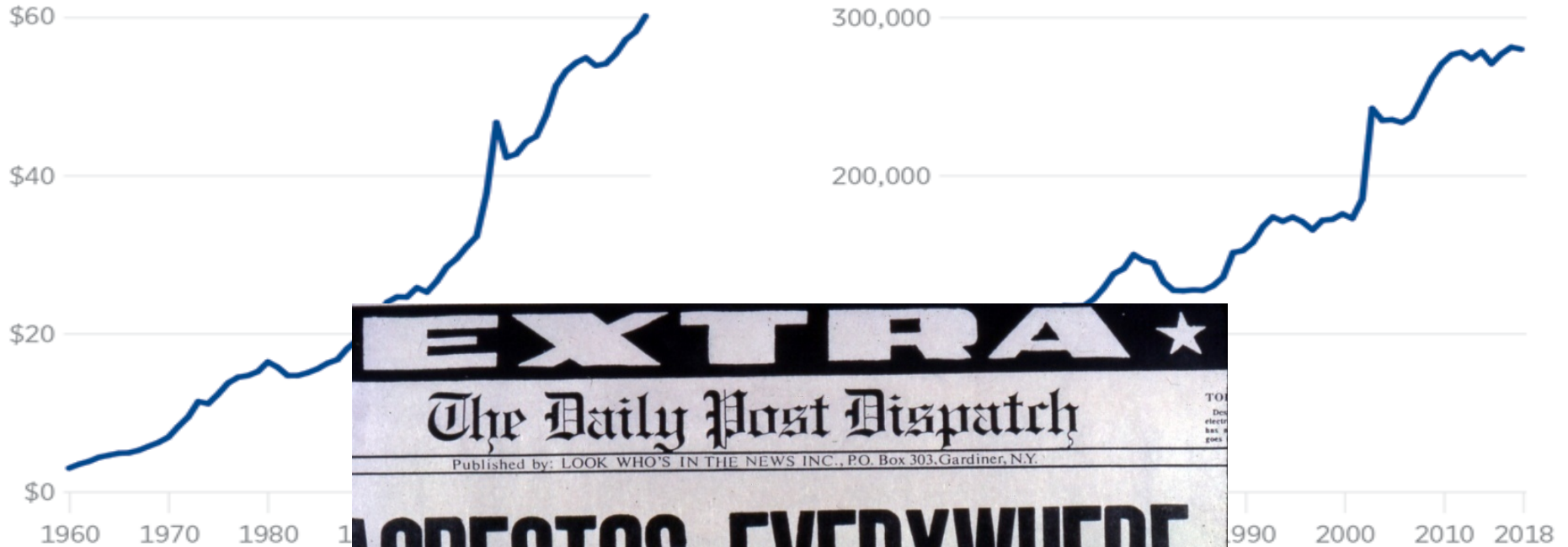
#3- Growth of Regulatory Bureaucracies

CHART 1

Federal Regulatory Activity: Spending and Staffing

ON-BUDGET SPENDING, IN BILLIONS OF 2009 DOLLARS

TOTAL STAFFING, FULL-TIME EQUIVALENT EMPLOYMENT



NOTES: Some figures have been
SOURCE: Susan Dudley and Me
Fiscal Years 1960 through 2018,
downloads/Final%20Regulator:

ysis of the U.S. Budget for
columbian.gwu.edu/files/

“Availability Cascade”

Once you start believing something,
you end up believing it even more!

How does one
stop/control
momentum?



Stage 1 of Regulations

Perceive something as “bad”
and/or “problematical” --
fight to control & regulate!

Say officials

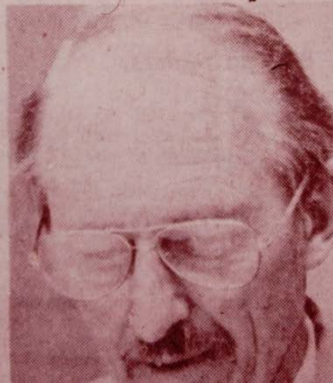
No danger in school asbestos

By ROBERT DE FILLIPPO

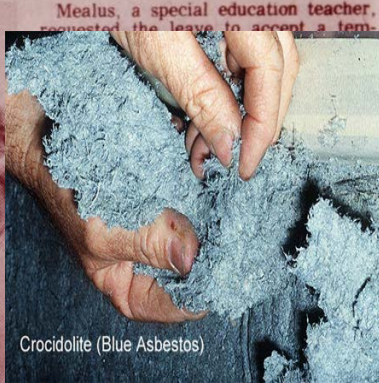
BEACON — A second inspection of classroom ceilings in Beacon High School confirmed an earlier Dutchess County Health Department report which stated there is no immediate danger from asbestos, acting Superintendent John A. Rosenmeier told the Board of Education Monday night.

Dr. Martin S. Rustein, a professor at State University at New Paltz, conducted an inspection of about eight classrooms Monday. He has also analyzed samples of the asbestos material in the ceiling.

Rosenmeier said Rustein was impressed that short-term maintenance has already been started. The Health Department recommended that the exposed material be covered to prevent



EU org MOW
9/15/79



Crocidolite (Blue Asbestos)



Stage 2 of Regulations

Regulations get written, often with substantial compromise (something better than nothing)



Examples –
“bulk” sampling rules, air standards

Stage 3 of Regulations

Many who worked during

Stages 1, 2 have

“departed”

the scene...



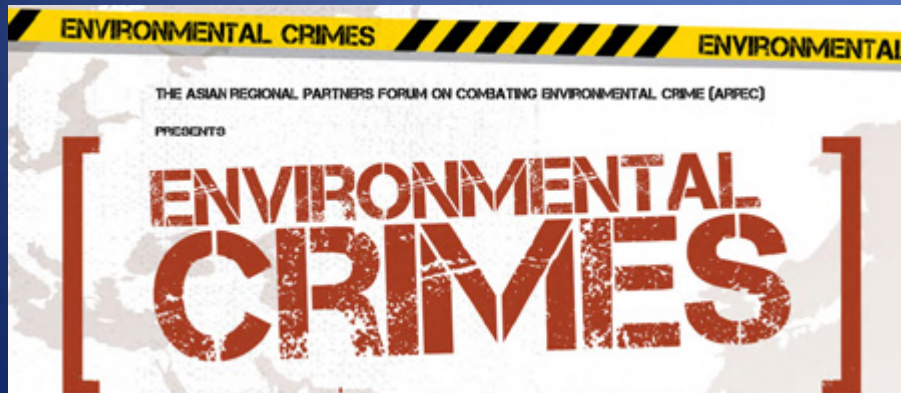
Stage 4 of Regulations

New ideologues come on board and work to strengthen the rules

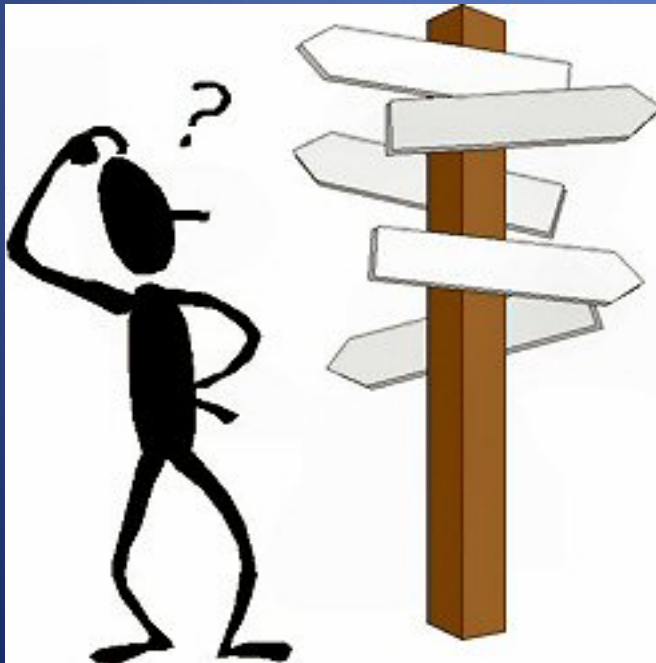


Stage 5 of Regulations

A regulatory bureaucracy needs something to do, so new regulations get written, “supposedly” to protect the environment!



**Sometimes,
changes are made
with little grasp of
the original conditions that
inspired the original goals!**



**If something was deemed bad
enough to regulate
“back then”,
“now”,
any level
should be regulated!**

Zero Fibers

Zero Exposure

Strict Adherence to the Rules

Stage 6 of Regulations



EMP's

(elongate mineral particulates/particles)

The Regulated "Six"

>5 μm long; aspect ratio $\geq 3:1$



**Medically
Bio-reactivity**

**>0.5 μm long
(SAF- "short" fibers)**

Stage 6 of Regulations



Inspection
Identification
Remediation



WHY Focus on New York City?

New York City is a template for New York State
which is a template for California
which is a template for other states...



NYS DOL & NYC DEP

Agency goals

Number of Inspectors

Number “bad players”

Complexities of buildings

Violations as an income source

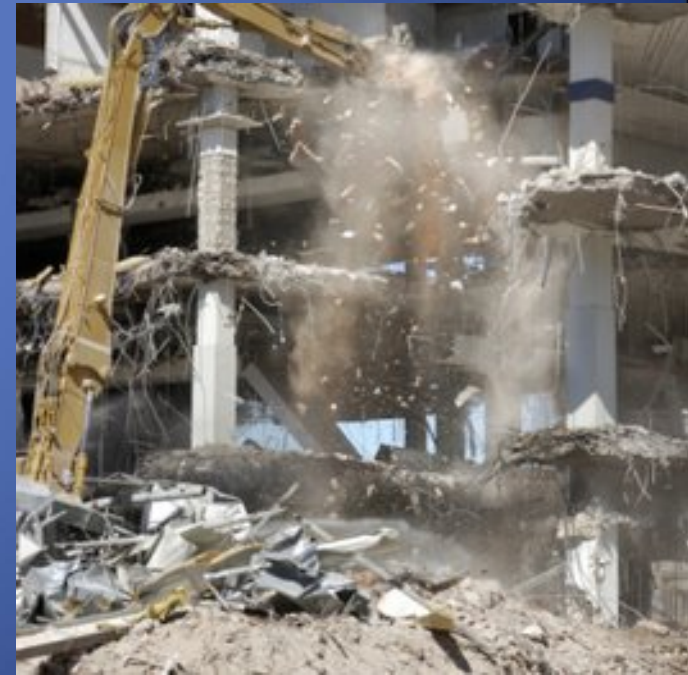


New York City Rules & Regulations

First regulated asbestos in 1985 under
Local Law 76 governing buildings.

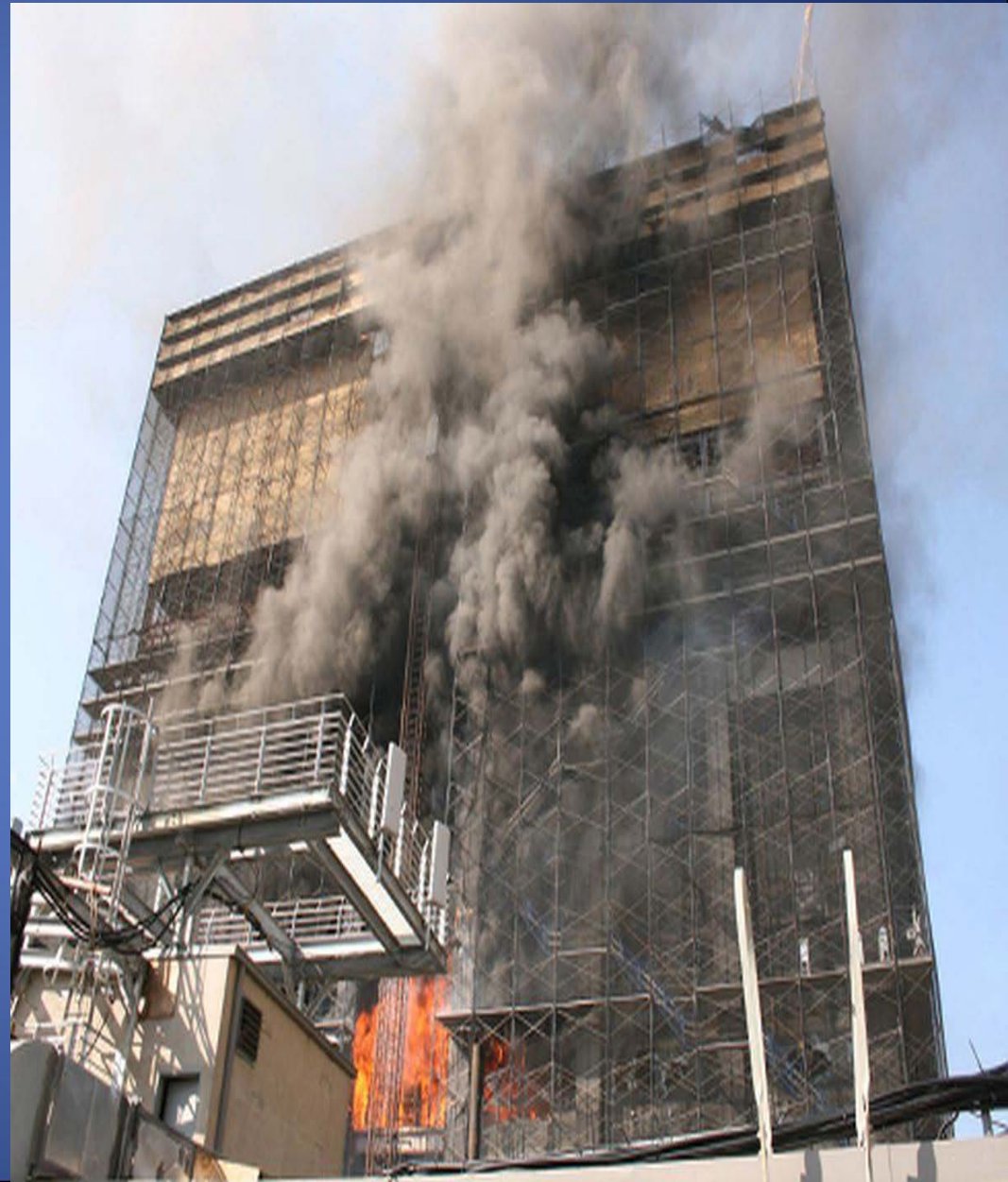
Encompassed
ALL
building alterations
and
demolitions

Locate
ALL ACM
prior
to
possible
disturbance!



New York City Rules & Regulations

**Post-2011:
Many major
changes went
into effect in
2011, after the
Deutsche Bank
Fire**



**Goals of NYC Rules Title 15
Added City Record 12/7/2018, eff. 1/6/2019)**

“protect public health and the environment

***by minimizing the emission of asbestos fibers into
the air of the City***

***when buildings or structures with asbestos-
containing material are renovated, altered,
repaired, or demolished***

***by ensuring that asbestos-containing material is
handled appropriately and by individuals qualified
to do so.”***

2019-NYC Department of Environmental Protection Senior Inspector pled guilty to taking bribes from an asbestos abatement contractor for a decade

cash, meals

“fish”



Wasn't Much that Corrupt Inspector Didn't Do Wrong!

gave warnings of coming inspections

kickbacks on referred jobs

overlooked PPE requirements

allowed dry removal

overlooked no decon

allowed improper air monitoring, etc...



NYC DEP Inspector Plea Bargain (2019)

“former” Inspector Nebedum
pled guilty to multiple charges;
sentenced to
a conditional discharge and a fine of \$15,000!

WOW!



ASBESTOS

DO NOT DRILL OR SCREW AROUND!

In 2018, 17 NYC consultant inspectors accused of exposing construction workers to asbestos

via

**FAKING, FORGING, COVERING UP, FAILING DUE DILIGENCE
and not even inspecting!**

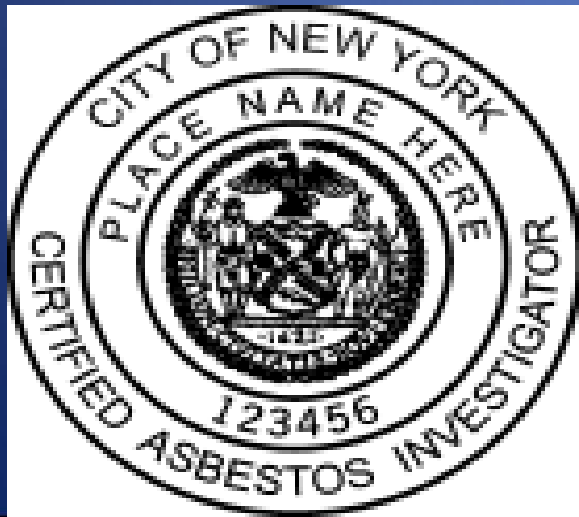


New York City Rules & Regulations-1/6/2019

As a result of the
recent environmental crimes,
new amendments went into effect.

especially
for

Certified Asbestos Inspectors (C.A.I.)



**229 CAI's for
all of NYC**

See PACNY Website: Angelo Garcia, III,
Future Environment Designs, Inc.- PACNY
Annual Meeting, 2018



The “Economics” of Violations



IF YOU THINK
COMPLIANCE
IS EXPENSIVE

TRY
NON-COMPLIANCE

FORMER U.S. DEPUTY ATTORNEY GENERAL PAUL MCNULTY



Title 15 Violations

ASBESTOS PENALTY SCHEDULE - June 1, 2002

**20 Pages of violations
and fines- literally
Code item by item!**

ECB Code	15RCNY Section	Description	1st Offense		Penalty	Stip. Compliance	
			Penalty	Stip.			
X14	1-36(C)	Used Lab without required qualifications to perform Air sample analysis	2400	1500	4800	3000	Retain accredited laboratory for Air sample analysis (PCM)
X15	1-36(D)	Employed unqualified analyst to perform Air sample analysis (TEM)	2200	1500	4800	3000	Have TEM analysis performed by qualified analyst as specified
X16	1-37(A)	Failed to perform bulk sampling as required	1200	1000	2400	1500	Perform bulk sampling procedures as specified
X17	1-37(B)	Failed to utilize area Air sampling equipment for PCM per 60 NIOSH 7400	1200	1000	2400	1500	Utilize required equipment and follow procedures specified
X2A	1-37(C)	Failed to utilize area Air sampling equipment for TEM as required	1200	1000	2400	1500	Utilize required TEM equipment and follow procedures as specified
X2B	1-41(A)	Failed to conduct Air sampling in accordance with required schedule	4800	3000	9600	6000	Use required protocol for Air sampling
X2C	1-41(B)	Failed to conduct Pre-Abatement Air sampling as required	1200	1000	2400	1500	Take required number of Air samples as specified
X2D	1-41(C)	Failed to conduct Air sampling during abatement as required	2400	1500	4800	3000	Take required Air samples as specified
X2E	1-41(D)	Failed to conduct Post-Abatement Air monitoring as required	1200	1000	2400	1500	Take required number of Post-Abatement samples as required
X2F	1-42(A)	Utilized unrepresentative sampling zone for indoor Air samples	1200	1000	2400	1500	Utilize representative sampling zone as specified
X2G	1-42(B)	Failed to locate ambient samplers properly	1200	1000	2400	1500	Place Air samplers in locations as specified
X2H	1-42(C)	Placed Air sampling equipment in corners or near obstructions	1200	1000	2400	1500	Place sampling equipment away from corners and obstructions
X2I	1-42(D)	Failed to have a chain of custody record for air samples	2400	1500	4800	3000	Provide chain of custody record for samples
X2J	1-42(E)	Failed to follow specified area sampling schedule for air monitoring	2400	1500	4800	3000	Conduct Air sampling in accordance with area sampling schedule

*A second offense is a violation within two years, for an infraction within the same category as the prior infraction. (Categories are defined by description subheadings on this schedule, e.g. "Notification".)

NYC DEP Penalty Example

Conducted building survey and hazard assessment without DEP certification-

Civil Penalty:

1st occurrence @ \$2,400

Stipulated @ \$1,500

2nd occurrence @ \$4,800

And Owner gets to pay as well!





**Analogue- U.S. Department of Labor:
Office of Federal Contract Compliance Programs
[OFCCO]**

**Operates an administrative “trial system”
wherein agency officials
prosecute, try and punish
without legislative authority to do so!**

C.A.I. Requirements ACP-5

**Each area where work will occur
must be surveyed by the asbestos investigator
for**

all

**Presumed Asbestos Containing Materials (PACM)
present.**

**All suspect ACM must be listed in the
Asbestos Assessment Report
(Form ACP-5)**

Survey/Inspection & Due Diligence

(US EPA Guidance Document)

“Regarding the extent of the asbestos survey, the entire area impacted by the demolition, renovation, remodeling or repair project must be surveyed.

If only a portion of the room/area/space is impacted by the project, then only that portion of the room/area/space needs to be surveyed.”

What does
“impacted”
mean?

How Much and What to Survey/Inspect

“Due Diligence”

LOOK

“everywhere”

&

SAMPLE

“everything”



IT'S ALL ABOUT DUE
DILIGENCE, DUE
DILIGENCE, DUE
DILIGENCE.

ALL Materials Must be Characterized

Who Thought of
Sink Mastic?



How many samples?

“enough” sampleS
to locate the asbestos!

NYS Code Rule 56

MINIMUM of 2 for TSI & Miscellaneous

AHERA

**for surfacing
(3, 5, 7 or 9)**

**TSI & Miscellaneous
(minimum 3)**



**TSI
mixed
on site
so great
variability**



**Locally mixed
TSI
(heterogeneous)
VS.
factory
manufactured
such as
ceiling tiles
(homogeneous)**

NYC DEP Penalties for Failure to Sample “Sufficiently”

DEP asserted that the kitchen sink undercoating material was suspect "miscellaneous" material that required at least two bulk samples, not the one sample taken...

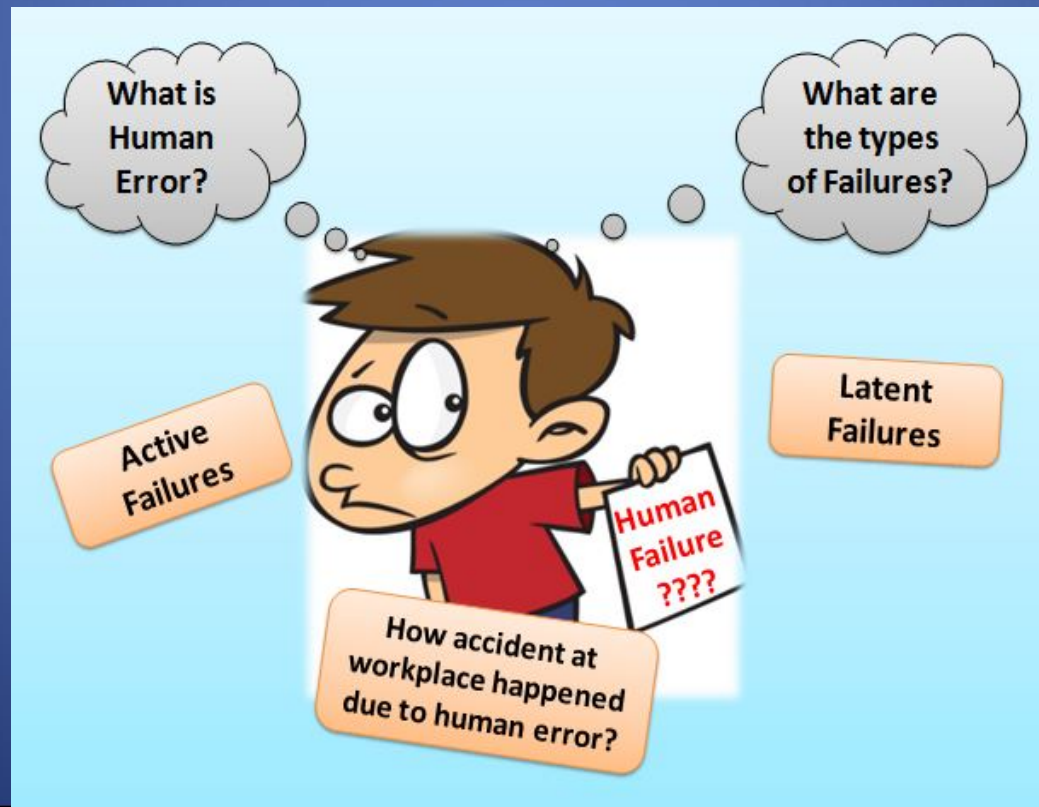
.....total civil penalties of \$7,200

(\$2,400 ea. for 3 buildings) for the insufficient sampling.



*City of New York v.
Gajer, Appeal No.
1501272, 1501273-5
(N.Y.C. Env'tl. Control
Bd. Feb. 25, 2016).*

Human Error is NOT an Adequate Excuse



Key Factors & Changes

- a. The premises or the portion(s) included in the scope of renovations was/were determined that there was no asbestos-containing materials (ACM) present.
- c. Asbestos is present and will not be disturbed during construction activity (*specify quantity and areas*)
- d. Entire building is free of asbestos containing material (ACM).



GLITCH: a new window opens to pay the filing fee, Box entry “CHANGES” text!

Scope of Work **Payment Filing Form**

- a. Portion(s) of the premises affected by the work is free of asbestos containing material (ACM).
- b. Premise (or portions thereof) affected by the work contains 10 square feet or less or 25 linear feet or less of ACM.
- c. Asbestos is present and will not be disturbed during construction activity.
- d. Entire building is free of asbestos containing material (ACM).

Changed from:

The premises or the portion(s) included in the scope of renovations was/were determined that there was no asbestos-containing materials (ACM) present.

Add New Investigation Date

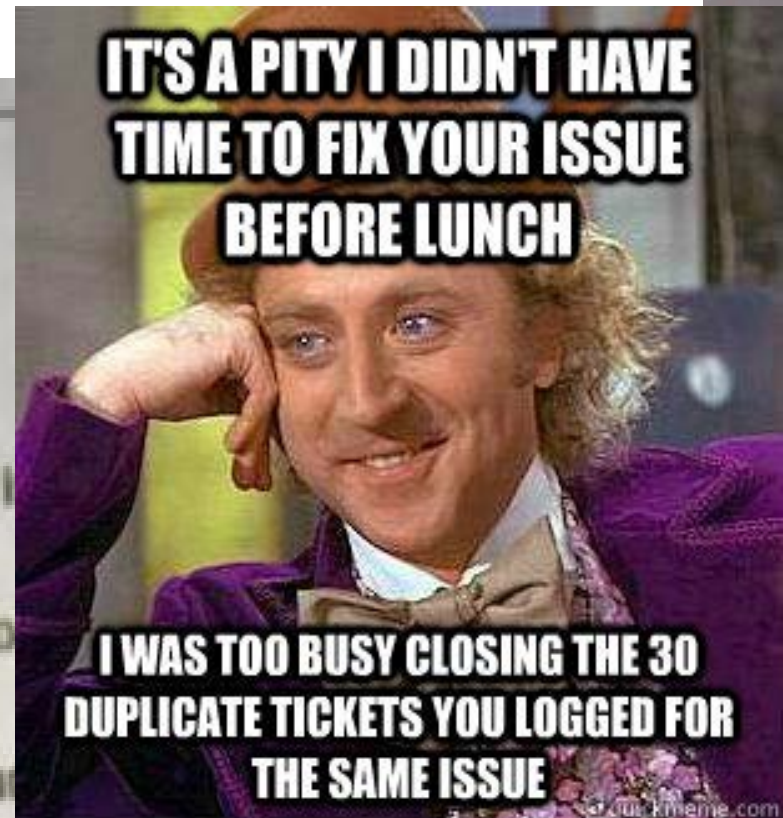
AFFECTED by vs. IMPACTED by

So, ACM roofing “might/could/possibly”
be affected by renovation on upper floors.

So what is CAI to do?

Report, gamble, lie?

”Explain”?





Asbestos Project Completion ACP-15 & ACP-21

After abatement, an asbestos project notification (ACP-15 Form) submitted to DEP within 21 days.

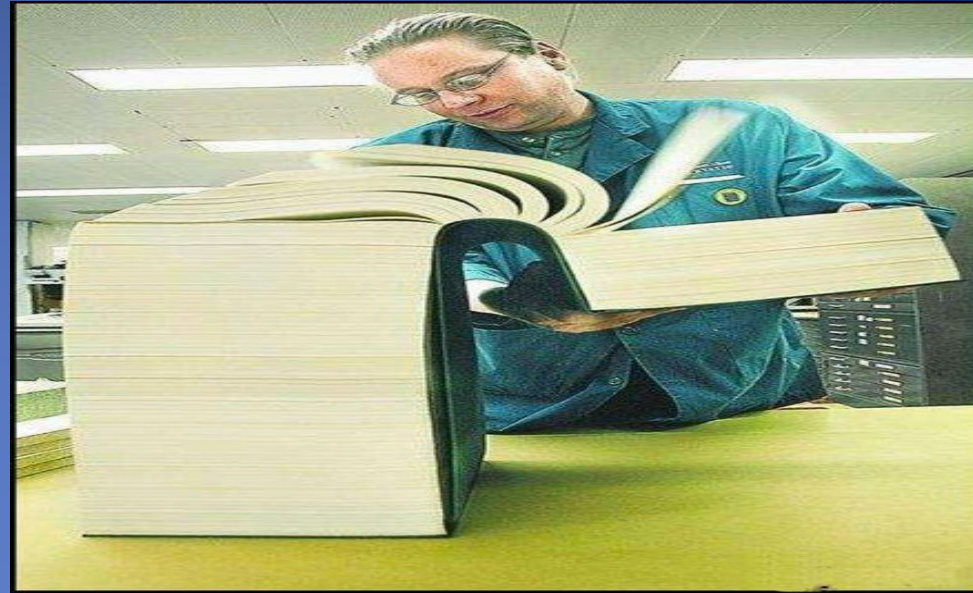
Upon completion of project and submission of all required documentation, DEP issues an asbestos project completion form (ACP-21) to the Contractor to give to building owner or authorized representative.

(Amended City Record 12/7/2018, eff. 1/6/2019)

Revisions to Amendments & Interpretation Changes



Changing The Rules



Word meanings can change with time!

And meanings change with those who make and enforce the rules!

“I am in charge and I decide what I want the word to mean!”



Recent NYC DEP Enforcement Topics

- Sample location sketches must be made within one hour of the beginning of sample collection.



Who starts the time clock?

Violation issued for “no map”/
however, job hadn’t even
begun and air tech was
waiting for owner to issue
contract.

A New DEP “Twist”



Inspector brings camera back to office & supervisor reviews images & then decides on issuing violations (which get mailed, often months after the event!)



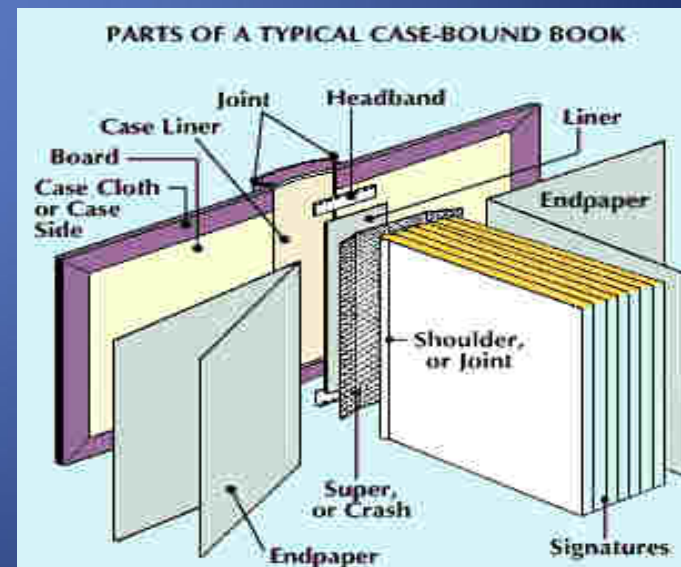
Equal violations & fines



Recent NYC DEP Enforcement Topics

Project air sampling log
must be created & maintained
in a bound notebook
by
the air monitoring company.

Title 15: “Bound notebook” shall mean a notebook manufactured so that the pages cannot be removed without being torn out. A loose-leaf binder is not a bound notebook



Log Book Violation Issued for Not Using...



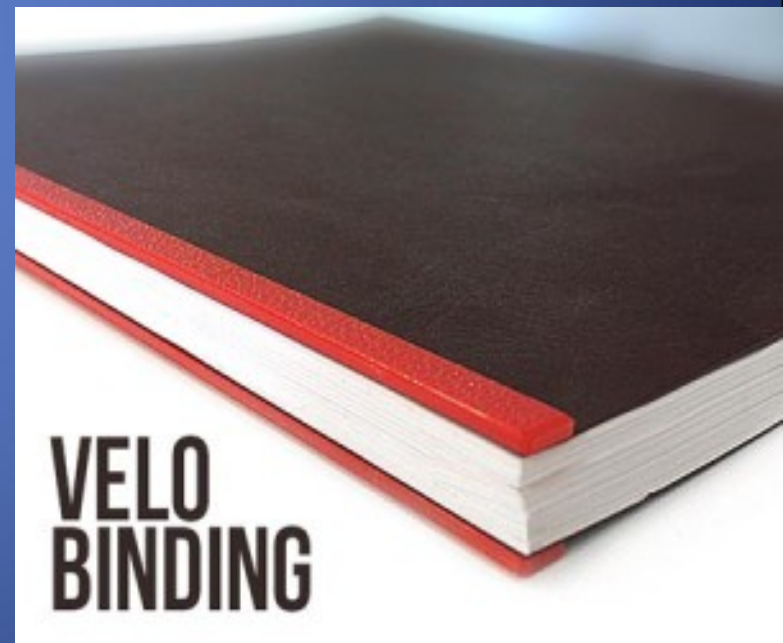
**“The GOLD
STANDARD”
(traditionally)**

We Used VELO_{TM} Binding, but DEP Deemed it not Permanently Bound

VeloBind_{TM} Binding was created specifically for the legal industry because of its ...tamper-proof bind; it is the most secure of all binding methods.

...heat seals a set of hard plastic binding strips and locks in **every** page permanently.

NOTE: abatement contractor needs “permanently bound”;
air monitor needs “bound”



Abatement Contractor's “Solution” to Log Book Violation



But, NOT GOOD ENOUGH!
Air Monitor Violation from
OATH

**Office of Administrative
Trials & Hearings**

Code	Code Section	Description	Face Amount
BX9R	15RCNY 1-37(F)	FAILED TO CREATE MAINTAIN AIR SAMPLING LOG	\$2,400.00

***Stipulated to civil penalty of
\$1,500.00***

A “catch all” Charge: Filing False Document

Falsely labeling building location for samples



multiple
addresses



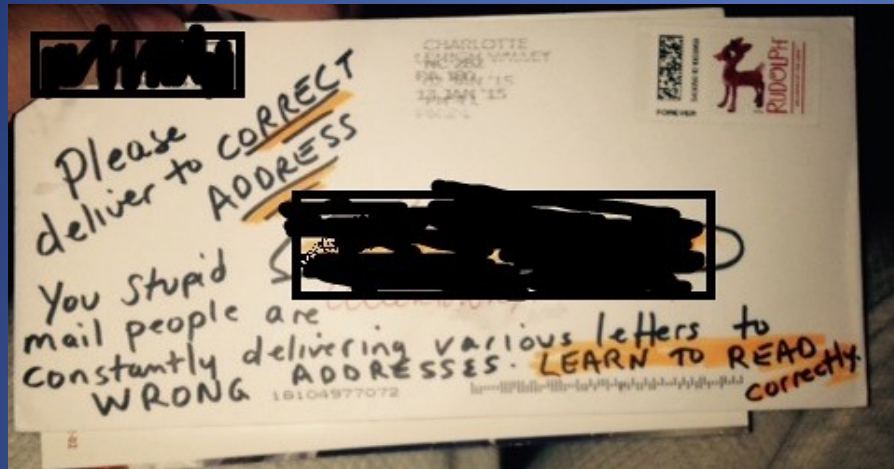
Draw a
GOOD/EXCELLENT
Sample Location
Sketch/Map

Recent NYC DEP Enforcement Topics

Air sampling results/reports must be submitted within 72 hours of request
(used to be 5 calendar days)

**HOW
to
report?**

I didn't get the message
is NOT
a defense or excuse or reason!



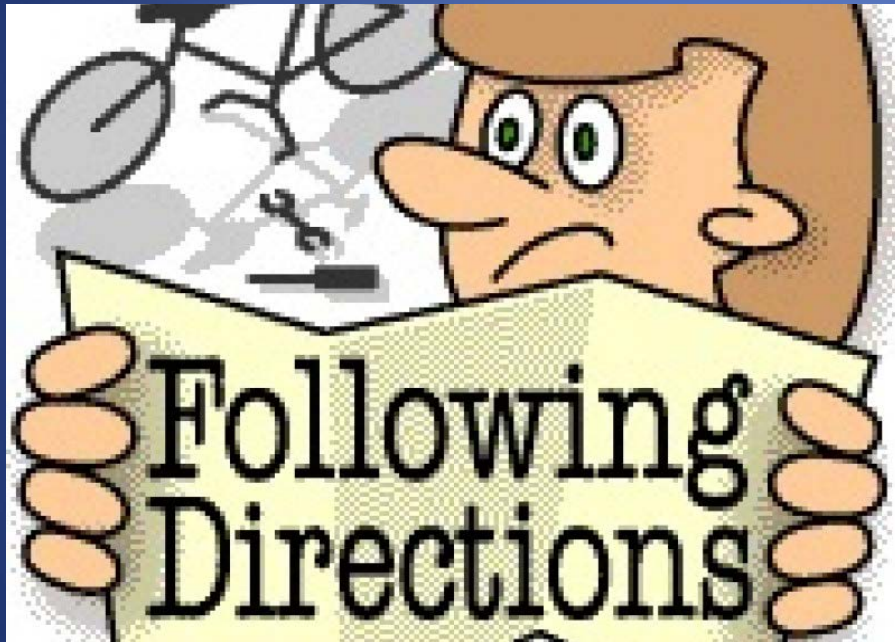
My phone
wasn't
working!



No
TIMELY
response =
violation

So, Just Follow the Rules (as written or interpreted?)

The “downside”



Poorly thought out judgment calls can end up costing you!

**"I didn't do it. Nobody saw me do it.
You can't prove anything"**



Just “Give Up”
and call it
a cost of doing
business?



“

THE GAME IS RIGGED.

We can
whimper,

we can
whine,

or we can
fight back.

or work with
professional groups
to lobby for change!

How to Stay Informed & Up-to-Date

Refresher Courses

(often just re-hash AHERA)

Professional Meetings

Small Group Meetings

On-the-job Experiences

Posting on-line

**Asbestos
Awareness**

**Online Asbestos
Awareness Training**



So, Some Concluding Advice to Asbestos Professionals

Understand the nature of
the inspection & project:
correct mistakes!



**Know
the
Rules!**

**IF YOU'RE
GOING TO
DO IT
THEN DO IT
RIGHT**

Some Advice to Asbestos Professionals

Plan the job - Take fresh look

Hire good staff

Exert oversight of site staff

Maintain required records

Plan for unexpected contingencies!

**Can be Tough to Plan
for
What Might Happen,
but....**



Things don't always work out the way they were intended!





In traveling the road to
Utopia,
remember our goal:
to reduce asbestos
exposures to levels
NOT
associated with
disease occurrence!

“ **SUCCESS IS SIMPLE
DO WHAT’S RIGHT
THE RIGHT WAY
AT THE RIGHT TIME** ”



- Yuppitibut, that's all, folks!



THANK YOU FOR LISTENING

MEOW, DO YOU HAVE ANY QUESTIONS?

memegenerator.net



I have some!

STACK N°13
MAIN HALL
1st FLOOR



**How did we get “here”?
“Where” are we going?**



What's the Future for the Asbestos Industry?



Things will get more complicated!

“bad guys” will profit

&

“good guys” will get squeezed



I used to do it “this way”
and it was OK!

Now, a whole bunch of new rules and
enforcement by folks who lack abatement
industry experience.



How do
I follow the
rules,
make a
profit
and
still stay in
business?



Our Advice

Try to take a fresh look at
your approach.

Re-read the current
regulations and learn
to follow them diligently!



You Can Teach an Old Dog New Tricks. Learn How



This concludes The American Institute of Architects
Continuing Education Systems Course

Rochester Colonial

MFG. CORP.

The Window and Door Experts™

AIA CES Provider Number: 404108687

Contact: Kevin Hutton

KevinH@RochesterColonial.com



**Professional Abatement
Contractors of New York**

PACNY