

Asbestos and the Law

by Quenda Behler Story

So there you are, a licensed contractor, preparing a bid on that fifties-era ranch that the new owner wants to update, and you're wondering what all that hairy-looking stuff on the family room ceiling is. And what about the wrappings on those pipes in the basement? They've got hairy-looking stuff in them, too.

A nasty surprise is waiting for you — the ceiling has been sprayed with asbestos, and the pipes are wrapped with insulation that contains asbestos. Back in more naive days, asbestos was considered the new miracle fiber, and people were using it for everything. They didn't just insulate with it, they did things like spray it on their ceilings for sound abatement and even decoration.

Now we know that asbestos is dangerous and must be handled with care — but how? Do you need a special license for asbestos abatement before you can touch it? How do you abate asbestos, anyway? Can you cover it up or seal it, or do you have to rip it out and carry it away — to where? The local landfill? Is this even your problem?

Whose Problem Is it?

Technically, legally, it is not your problem. It's the homeowner's problem. The homeowner has the lawful responsibility to abate regulated asbestos before a renovation or demolition, so that during that renovation or demolition, no asbestos fibers will be released.

If you were an architect, it wouldn't even be an issue. The standard AIA contract says that the property owner is entirely responsible for evaluating and correcting all conditions involving hazardous material. It goes on to disclaim all "responsibility for the discovery, presence, handling, removal or disposal of, or exposure . . . to hazardous materials."

So it's the homeowner's problem. The same homeowner who's standing there waiting for you to tell him what you're going to do about his problem — and if you can't, he'll find a contractor who can.

Activities involving asbestos are highly regulated by OSHA and the Environmental Protection Agency (EPA) and by most states. If you're a licensed contractor, your choices of how to deal with the situation may depend somewhat on the state you're in. If you're not a licensed contractor, you have to hire an asbestos abatement contractor; you can't do anything with the asbestos yourself.

In Michigan, where I am, and in most states, you must obtain the services of a licensed asbestos abatement contractor unless the "friable asbestos materials" constitute an area less than 160 square feet or 260 lineal feet. That's a total figure. Don't start calculating all over again for each patch of asbestos you find in the building.

Handling It Yourself

So let's suppose that you measure off the pipes and the ceiling and find that you fall within the exception. You decide that instead of getting an asbestos abatement contractor, you will take care of the ceiling and pipes yourself.


Well, don't just start ripping away. Even though you fall within an exception that allows you to do it yourself, you are still handling hazardous material. You must handle that material in a safe and lawful manner, or you will expose yourself to potential liability from your employees, the homeowners, the homeowners' neighbors, people walking by on the street, and even trespassers. If one person is damaged by the way you handle the asbestos, that person can sue you. Even the home-

owner, whose problem it was in the first place, can sue you.

To say nothing about your own health. The allowable standard for inhaling asbestos particulate is zero. Just one tiny asbestos fiber in your lungs is a major health hazard. You cannot be too cautious about exposing yourself, your employees, and anyone else to the release of asbestos. You must find out what the recommended procedures are and follow them.

The Minimum

Keep in mind that I'm a lawyer not a hazardous waste handler, but here's the minimum you'll be required to do in your fifties house: If the total amount of asbestos is small enough for an exception, you may be able to encapsulate the ceiling (think sealant or paint), but you should not use any kind of high-pressure spray, because that could release asbestos fibers. You may be able to remove the wrappings on the old pipes by first soaking those wrappings enough to prevent the release of any particulate when you tear them off, but you must not crumble any material that contains asbestos — or pulverize it or reduce it to powder. As you remove those water-soaked wrappings, you will have to segregate them, wrap them in secure material, and haul them to a landfill licensed to receive hazardous waste.

The most important thing is that if you fall into an exception, you should contact the agency in your state that handles hazardous materials — or the EPA or OSHA — for its fact sheets, brochures, and videos before you touch any asbestos. 

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