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New York State Department of Labor Industrial Code Rule 56 Asbestos Survey Exemptions

(And why these are not actually exemptions)



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Regulations pertaining to asbestos surveys in New York State are included in the New York State Department of Labor (NYSDOL) Industrial Code Rule 56 (Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, cited as 12 NYCRR Part 56). 12 NYCRR Part 56 requires the identification of asbestos-containing materials (ACM) whenever all or part of a building or structure will be demolished, renovated, remodeled, or repaired. The purpose of the asbestos survey is to determine if the planned work will disturb ACM. The 12 NYCRR Part 56 regulations describe exemptions to asbestos survey requirements in Subpart 5 of the document; however, there are stipulations that do not allow for exemptions to comply with applicable federal requirements for asbestos surveys and inspections. This is specified in 12 NYCRR Part 56-5.1(d):

“Responsibility To Comply. No exemption to the requirement to conduct an asbestos survey shall exempt any person, asbestos contractor, property owner or business entity from the inspection or asbestos survey requirements of EPA, OSHA, and any other applicable section of this Part.”

The exemptions described in the NYSDOL regulations are based on three classes of buildings or structures, as outlined below. While it may appear that 12 NYCRR Part 56 clearly exempts these specific classifications from asbestos survey requirements, further review of other applicable requirements indicates this is not the case.

1. NYSDOL Code Rule 56, Subpart 5(b)(1) Survey Exemption No. 1 - Agricultural Buildings

Reasons why this is not actually an exemption:

- The EPA’s National Emission Standards for Hazardous Air Pollutants: Asbestos (known as Asbestos NESHAP) [40 Code of Federal Regulations (CFR) Part 61, Subpart M] specifies *“the owner or operator of a demolition or renovation activity ... prior to the commencement of the demolition or renovation will thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos.”* This applies for all buildings with the exception of residential buildings with 4 or less units.
- Based on 12 NYCRR Part 56-5.1(d), these inspection and asbestos survey requirements of the EPA do not allow an exemption for agricultural buildings.



Suspect layers of wall materials associated with a concrete block wall.

2. NYSDOL Code Rule 56, Subpart 5(b)(2) Survey Exemption No. 2 - Building or Structure for Which Original Construction Commenced After January 1, 1974

Reasons why this is not actually an exemption:

- The EPA Asbestos NESHAP regulation, 40 CFR 61.145(a), states *“Prior to commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos...”* and intentionally does not discuss dates of construction or installation, as there is no “safe” date when it can be assumed that ACM is not present.
- OSHA 1926.1101(k)(2)(i) specifies *“Before work subject to this standard is begun, building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site...”*
- Per the condition of 12 NYCRR Part 56-5.1(d), these inspection and asbestos survey requirements of the EPA and OSHA do not allow an exemption for buildings with original construction commenced after January 1, 1974. Furthermore, various consumer products are still allowed for use in the U.S. (reference the “Asbestos Ban and Phase Out” rule 40 CFR 763, Subpart I). Such products include the following:
 - vinyl-asbestos floor tile
 - roofing felt and coatings
 - asbestos-cement products (corrugated and flat sheets, shingles, pipe)
 - asbestos clothing
 - pipeline wrap
 - millboard
 - gaskets
 - non-roofing coatings
 - automotive products: automatic transmission components, clutch facings, friction materials, disc brake pads, drum brake linings, brake blocks

3. NYSDOL Code Rule 56, Subpart 5(b)(3) Survey Exemption No. 3 - Certified Structurally Unsound Buildings

Reasons why this is not actually an exemption:

- NYSDOL Code Rule 56-5.1(h) - Removal Required: *“for demolition projects that are exempt from asbestos survey requirements due to being structurally unsound, the demolition is considered an asbestos project and shall proceed as per Section 56-11.5.”*
- This condition requires that all building materials be considered ACM for the purposes of demolition, removal, and disposal. While an asbestos survey is not applicable for this scenario, since it cannot be safely performed, the demolition work is not exempt from having to be completed as an asbestos abatement project.



Suspect thermal system insulation (TSI) materials associated with a boiler heating system.

There really are no exemptions. An inspection for the identification of suspect ACM within affected areas of a building or structure is warranted and is required prior to commencing any type of demolition, renovation, remodel, or repair work, regardless of the building type, date of construction, or date of material installation. Asbestos is a regulated material and is not completely banned in the United States. Asbestos can still be found in many building materials, as an intentional component or as a contaminant.

If you have a project that requires asbestos surveys, design, or project monitoring, ATL, a WBE certified company, offers a wide variety of environmental consulting services that can assist with regulatory compliance, property renovation, business expansion, real estate transfer, and site development.

For more information, contact Joseph Grabowski at 315-386-4578 or JGrabowski@AtlanticTesting.com, and Andrew Amell at 315-699-5281 or AAmell@AtlanticTesting.com, or visit www.AtlanticTesting.com.

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