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Asbestos Control Program Enforcement Policies

The purpose of this document is to outline the policies whereby violators of the Kansas Asbestos Control Licensing Statute and Administrative Regulations may be penalized for violating the applicable rules and regulations.

A. Guidelines for Assessing Civil Penalties

1. As provided in K.S.A. 65-5314, a licensed asbestos firm who violates the state asbestos control regulation(s) is subject to assessment of civil penalties.
2. The proposed civil penalty will be determined by considering the following factors, then applying the factors to the attached "Asbestos Control Section - Fine Schedule":
 - * The amount of asbestos-containing materials involved in the project, which relates to the potential for environmental harm associated with improper removal, encapsulation and disposal.
 - * The severity of the violation(s) in terms of its impact on public health and the environment. Factors to consider include whether if left unabated, would violation(s) results in the potential for unnecessary exposure to the public or employees to airborne asbestos.
 - * The enforcement history of the business entity involved.
 - * The degree of variance from the statutes, administrative regulations or orders of the Secretary.
 - * Responsiveness of the business entity to rectify the observed violation(s).
 - * The amount of money which the business entity saved by not complying with respective regulation(s).
 - * The amount which would constitute an actual and substantial economic deterrent to the violation(s) for which a penalty is assessed.
 - * Considerations of fairness and equity. Factors to consider include whether the business entity was aware of the asbestos-containing materials and whether events occurred which were beyond the control of the business entity.

The Section is not limited to the above factors. Consideration may be given to other factors, if the Section can conclude that the additional factor(s) may be appropriate in selecting the amount of the penalty.

Compliance or cooperation with the agency after the issuance of an administrative penalty order is not generally considered a valid basis to overturn or reduce a penalty.

B. Guidelines for Proposing License Suspensions

1. Licensed asbestos firms cited by the Secretary for two or more violations of regulatory or statutory requirements occurring within a 12 consecutive month periods will be subject to proposed suspensions for a period of not less than 30 or more than 180 days. This suspension will be in addition to any civil penalties proposed for the cited violations and is intended to serve as an additional economic deterrent to the violation.
2. The determination of the length of the proposed suspension will be based upon; 1) timeliness and effectiveness of the firm's efforts to correct the violations at the time that they were first verbally reported to appropriate representatives of the firm; 2) the nature of any actions taken by the firm to prevent a repeat of the violations; and 3) whether or not there were any unusual and/or unforeseeable conditions that may have significantly contributed to the cited violations.
3. The starting date of the suspension may be extended to allow for the completion of an unfinished project, if deemed necessary or advisable to protect the public's health or safety.

C. Guidelines for Proposing Asbestos License Revocations

1. Licensed asbestos firms that are cited for violations of regulatory or statutory requirements will be considered as candidates for license revocation if determined by the Section that the cited violation represents a chronic pattern of violations.
2. Licensed asbestos firms which have a prior suspension and who are subsequently cited for violations of regulatory or statutory requirements shall be subject to proposed license revocation.
3. Licensed asbestos firms that violate regulatory or statutory requirements will also be considered as candidates for license revocation if the violation is determined as by the Section to be of such serious nature the potential to adversely affect the public health.

D. Guidelines of License Renewal

1. The Section may propose to deny a business license application based on prior revocation or suspension of a firm's license.

E. Supplemental Environmental Project

The asbestos abatement community in Kansas is not suited to participate in a Supplemental Environmental Project due to the mobile/temporary nature of their operations. This temporary work would prove difficult to determine long term damage on a site. With asbestos abatement, many of the egregious violations are committed by unlicensed contractors who would fail to complete their long-term obligations. Civil penalties and federal criminal enforcement are the most potent means of achieving good practice.