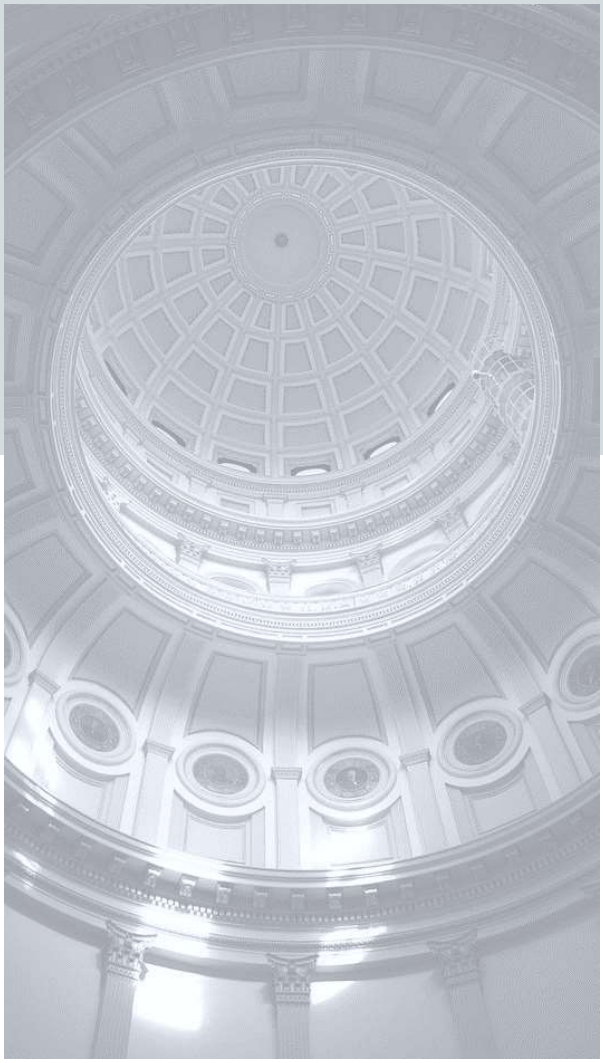
COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2021 Sunset Review

Asbestos Control Act



October 15, 2021

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 15, 2021

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Asbestos Control Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2022 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 7 of Title 25, C.R.S. The report also discusses the effectiveness of the Air Quality Control Commission in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director

COLORADO
Department of Regulatory Agencies
Colorado Office of Policy, Research & Regulatory Reform

October 15, 2021

FACT SHEET

Sunset Review: Asbestos Control Act

Background

What is regulated?
Asbestos is a term referring to a class of minerals that occur naturally in certain types of rock that were mined mainly in the 20th century and widely used worldwide in a variety of construction products due to the mineral's long, very durable fibers. In Colorado, asbestos abatement procedures are required when trigger levels of asbestos-containing materials are exceeded for any buildings defined as areas of "public access."

Why is it regulated?
If asbestos fibers are disturbed through renovation or demolition and become friable, microscopic particles can be released into the air. Exposure to friable asbestos-containing materials can cause a variety of diseases when inhaled including asbestosis, pleural disease, mesothelioma, and lung cancer.

Who is regulated?
During fiscal year 19-20, there were 3,161 certified asbestos professionals in Colorado in the certification areas of worker, supervisor, project designer, air monitoring specialist, building inspector, management planner, and general abatement contractor.

How is it regulated?
The Asbestos Control Act (Act), tasks the Air Quality Control Commission (Commission) with regulatory duties for the operation of the statewide asbestos program. Additionally, the Indoor Environment Program (Program) within the Air Pollution Control Division at the Colorado Department of Public Health and Environment (Division and Department, respectively) is tasked with the administration of asbestos regulatory compliance within the state, and is also responsible for implementing federal asbestos standards, such as the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and the Asbestos Hazard Emergency Response Act (AHERA) to ensure state compliance.

What does it cost?
In fiscal year 19-20, the Department expended $1,558,505 and allotted 16 full-time equivalent employees to implement the administration of the Program.

What disciplinary activity is there?
During the sunset review period of fiscal years 15-16 through 19-20, 405 complaints were filed, 37 fines were issued, and three disciplinary actions were taken against asbestos certificate holders for criminal convictions.

Key Recommendations

- **Continue the Asbestos Control Act for five years, until 2027.**
- **Revise section 25-7-509.5(2)(b), C.R.S., to direct permit applicants to contact the Program regarding state asbestos inspection requirements, to be included in local building permit applications.**
- **Remove the references within the Act stating that rules promulgated under the Act can be no more stringent than the federal Occupational Safety and Health Administration laws and regulations.**

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state, and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures, and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

[1] Criteria may be found at § 24-34-104, C.R.S

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	• Profile of the Industry. • Legal Framework: History of Regulation. • Recommendation 1.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	• Legal Framework: Legal Summary. • Recommendation 2. • Administrative Recommendations 1, 2 and 5.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	• Legal Framework: Legal Summary. • Program Description. • Administrative Recommendations 1 - 7.
(IV)Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	• Program Description. • Administrative Recommendation 5.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	• Program Description. • Administrative Recommendation 7.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	• Profile of the Industry.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	• Program Description: Complaint and Disciplinary Activity. • Program Description: Fining. • Program Description: Audits and Inspections.
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	• Program Description: Examinations. • Administrative Recommendations 3 and 4.

Sunset Criteria	Where Applied
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	• Program Description: Collateral Consequences.
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	• Recommendations 1 and 2. • Administrative Recommendations 1 - 7.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The functions of the Air Quality Control Commission (Commission), as enumerated in Article 7 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2022, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commission pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commission. During this review, the Commission must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Commission meetings; interviewed Air Pollution Control Division (Division) staff, practitioners, and officials with state and national professional associations; and reviewed complaint file summaries, Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Air Pollution Control Division, Indoor Environment Program
- Colorado Air Quality Control Commission
- Colorado Counties, Incorporated
- Colorado Environmental Professionals Association
- Colorado Municipal League
- Department of Regulatory Agencies, Division of Real Estate
- Environmental Protection Agency
- Denver Metro Building Owners and Managers Association
- Occupational Safety and Health Administration

In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of asbestos professionals who are licensed by the Program. The survey was sent to 158 participants; 8 emails were returned as undeliverable. The survey received 71 responses, which is a 47.33 percent response rate. Survey results may be found in Appendix A.

Profile of the Industry

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the industry does, where they work, who they serve and any necessary qualifications.

Asbestos is a term referring to a class of minerals that occur naturally in certain types of rock that were mined mainly in the 20th century and widely used worldwide due to the mineral's long, very durable fibers. There are two defined categories containing six separate types of asbestos fibers: [2]

- Serpentine class – Chrysotile (also referred to as white asbestos); and
- Amphibole class – Crocidolite (also referred to as blue asbestos), amosite (also referred to as brown asbestos), tremolite, actinolite, and anthophyllite.

Asbestos-containing materials (ACMs) are categorized as either friable, or non-friable. *Friable* ACM is material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure and contains more than one percent asbestos by weight, area,

[2] Agency for Toxic Substances and Disease Registry. *Asbestos and Your Health: Overview*. Retrieved June 15, 2021, from https://www.atsdr.cdc.gov/asbestos/overview.html

or volume,[3] whereas *non-friable* ACM cannot be crumbled, pulverized, or reduced by hand pressure.

If asbestos fibers are disturbed through renovation or demolition and become friable, microscopic particles can be released into the air. In addition, mechanical tools can also cause non-friable ACM to become friable, through processes such as sanding, grinding, or dry-buffing.[4]

Exposure to friable ACM can cause a variety of diseases when fibers are inhaled including asbestosis, pleural disease, mesothelioma, and lung cancer. The likelihood and severity of disease following asbestos exposure may also vary, depending upon factors such as the amount of asbestos in the air, the length of exposure, previously existing lung conditions and whether the person smokes tobacco.[5]

Symptoms asbestos exposure may become noticeable 10 to 40 years after the exposure began. Symptoms of exposure may vary in severity and include:[6]

- Loss of appetite or weight loss;
- Chest pain or tightness in the chest;
- Shortness of breath;
- Dry, persistent cough; and
- Clubbing of fingertips or toes (appearing rounder or wider than normal).

Individuals who worked in the construction, mining, manufacturing, milling, or asbestos installation or removal industries during the 1970s are at an increased risk to contract asbestosis, a chronic lung condition.[7]

Beginning in the 1970's, a variety of asbestos-containing products were banned from use by the Environmental Protection Agency (EPA), including, but not limited to, spray-on surfacing for fireproofing, insulating, and decorative purposes, corrugated paper, flooring felt, and any new uses of asbestos.[8]

[3] § 25-7-502(6), C.R.S.
[4] Colorado Department of Public Health and Environment (CDPHE). *General Information on Asbestos*. Retrieved on June 15, 2021, from https://cdphe.colorado.gov/indoor-air-quality/asbestos
[5] Agency for Toxic Substances and Disease Registry. *Asbestos and Your Health: Health Effects of Asbestos*. Retrieved June 15, 2021, from https://www.atsdr.cdc.gov/asbestos/health_effects_asbestos.html
[6] Mayo Clinic. *Asbestosis: Overview*. Retrieved June 15, 2021, from https://www.mayoclinic.org/diseases-conditions/asbestosis/symptoms-causes/syc-20354637
[7] *Ibid.*
[8] CDPHE. *Asbestos Bans*. Retrieved on June 15, 2021, from https://cdphe.colorado.gov/indoor-air-quality/asbestos

The use of asbestos-containing materials has not been completely banned in the United States, and may still be used in products today including, but not limited to:[9]

- Vinyl asbestos floor tile,
- Automatic transmission components,
- Brake blocks,
- Disc brake pads,
- Brake linings, and
- Roof coating.

The Indoor Environment Program (Program) within the Air Pollution Control Division at the Colorado Department of Public Health and Environment (Division and Department, respectively) administers asbestos regulatory compliance within the state, and is also responsible for implementing federal asbestos standards, such as the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and the Asbestos Hazard Emergency Response Act (AHERA) to ensure state compliance.

When a demolition or renovation project is to be undertaken in a building or home, an inspection to determine the amount of ACM present and whether the ACM is friable or non-friable may be required, depending upon the size and scope of the project.[10]

If ACM is determined to be present and will be disturbed through renovation or demolition, abatement is required for amounts of ACM that exceed trigger levels. In a single-family home, the trigger level is currently 50 linear feet on pipes, 32 square feet on other surfaces, or the volume equivalent of a 55-gallon drum. For buildings not defined as single-family homes, the current trigger level is 260 linear feet on pipes, 160 square feet on other surfaces, or the volume equivalent of a 55-gallon drum.[11]

Asbestos abatement procedures are required when trigger levels are exceeded for all buildings defined as areas of "public access."[12] However, it should be noted that within the state of Colorado, although single-family residences are considered a part of public access, single-family homeowners have the option to opt out of portions of the regulation regarding asbestos abatement if the home is the homeowner's primary residence.[13]

Although each abatement project is unique and may require variations to the standard abatement process, most abatement includes the use of techniques such as wetting materials, decontamination units, waste load-out processes, air intake, and exhaust methods.

[9] *Ibid.*
[10] 5 CCR § 1001-10-B-III.A.3, Control of Hazardous Air Pollutants, Regulation Number 8.
[11] 5 CCR § 1001-10-B-I.B.119, Control of Hazardous Air Pollutants, Regulation Number 8.
[12] § 25-7-502(1)(a), C.R.S.
[13] § 25-7-502 (1)(c), C.R.S.

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

In 1985, the General Assembly established the Colorado Asbestos Control Act (Act) to protect public health, safety, and welfare through the regulation of asbestos abatement in locations where the public has general access.[14] Initially, the Act did not contain a certification program for practitioners but directed the Air Quality Control Commission (Commission) to produce a report including performance standards and practices for asbestos abatement.

In 1986, the federal Asbestos Hazard Emergency Response Act (AHERA) was established under the Toxic Substance Control Act, which required the EPA to promulgate regulations to require the inspection of school buildings containing asbestos by local education departments. Additionally, these regulations require asbestos management plans and response actions to mitigate asbestos hazards. Further, AHERA required the EPA to develop a model plan for states regarding accreditation of individuals who conduct asbestos inspections and abatement at school facilities.[15]

The Colorado General Assembly enacted provisions to comply with AHERA in 1987 by requiring inspectors, project designers, management planners, on-site supervisors, and asbestos abatement workers to be certified to be able to conduct abatement work in school facilities.

In 1988, the General Assembly further defined jurisdiction to areas of public access for asbestos abatement. Additionally, the revised Act also established a maximum allowable level of asbestos fibers in the air in areas of public access.

In 2000, COPRRR conducted a sunset review of the Act which recommended that the area of public access defined within the Act be redefined to include single-family residential dwellings. During the 2001 session, the General Assembly passed this recommendation in Senate Bill 01-121.

[14] § 25-7-501(1), C.R.S.

[15] Environmental Protection Agency. *Asbestos Laws and Regulations*. Retrieved on June 15, 2021, from https://www.epa.gov/asbestos/asbestos-laws-and-regulations

The 2005 sunset review made further recommendations to amend air monitoring specialist requirements by adding an examination for certification, which was passed by the General Assembly in House Bill 06-1177.

The most recent sunset review, conducted in 2012, recommended that the General Assembly require an asbestos inspection disclosure to be completed by property owners when applying for building renovation permits to increase awareness regarding the potential presence of asbestos containing materials. This recommendation was passed by the General Assembly in the 2013 session through Senate Bill 13-152.

Legal Summary

The second and third sunset criteria question

> Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Federal Regulation

The Clean Air Act was established by Congress in 1970 with the primary purpose of, "…protect[ing] and enhanc[ing] the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population."[16]

The Clean Air Act sought to establish national ambient air standards regarding commonplace air pollutants. Specifically, air quality standards were developed for six types of chemical pollutants including ozone, nitrogen dioxide, sulfur dioxide, carbon monoxide, lead, and particulate matter.[17] Further, the Clean Air Act required the Environmental Protection Agency (EPA) to establish emissions standards regarding asbestos in section 112.

[16] 42 U.S.C. 85-1-A, § 7401.
[17] Environmental Protection Agency. *Clean Air Act Requirements and History.* Retrieved June 15, 2021, from https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history

As a result, the EPA developed the National Emissions Standards for Hazardous Air Pollutants (NESHAP) in 1973, which established standards for the mitigation of asbestos. NESHAP provided specific work practices and details for all applicable facilities relating to renovation and demolition.[18] In addition, regulations require building owners or contractors to notify applicable state and local agencies and EPA regional offices, when applicable, before commencing any demolitions or renovations of buildings that may contain asbestos.

Enacted in 1990, the federal Asbestos School Hazard Abatement Reauthorization Act (ASHARA) directed the EPA to develop a program to assist schools with the responsibilities required of them under AHERA. Additionally, ASHARA required the EPA to provide technical and scientific assistance to state and local entities for proper identification of asbestos hazards in schools, and funding to state and local entities for reinspection of schools as well as training for asbestos inspectors and workers. Further, ASHARA also directed the EPA to increase the number of training hours required for the training disciplines described under the Asbestos Model Accreditation Plan (MAP), and to expand the accreditation requirements to cover asbestos abatement projects in all public and commercial buildings in addition to schools.

Colorado Asbestos Control Act

The Act is located in Title 25, Article 7, Part 5 of the Colorado Revised Statutes (C.R.S.), with the legislative intent of ensuring the,

> …health, safety, and welfare of the public by regulating the practice of asbestos abatement in locations to which the general public has access for the purpose of ensuring that such abatement is performed in a manner which will minimize the risk of release of asbestos.[19]

The Act tasks the Commission with regulatory duties for the operation of the statewide asbestos program including, but not limited to:[20]

- The promulgation of rules for the implementation of the Act regarding areas of public access;
- The determination of the maximum allowable asbestos level which will be the highest level of airborne asbestos permissable that allows for the protection of the public;
- The development of exemptions from certificate requirements for emergency situations;
- The establishment of fees for pollution permits, site inspections, monitoring, asbestos abatement certifications, and school asbestos management plans;
- The development of assessment procedures needed to determine the level of response required for friable asbestos-containing materials;

[18] Environmental Protection Agency. *Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP); Rule Summary*. Retrieved June 15, 2021, from https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants#rule-history
[19] § 25-7-501(1), C.R.S.
[20] § 25-7-503(1)(a),(b),(e),(f) and (2), C.R.S.

- The promulgation of rules which comply with the federal Occupational Safety and Health Administration (OSHA) standards, although these rules cannot be more restrictive than the OSHA standards;
- The promulgation of rules as are necessary to implement the Act as required by the federal Clean Air Act;
- The development of minimum standards for asbestos air sampling, and for certificate holders performing asbestos air sampling; and
- The development of rules regarding the training required for applicants for certification, recertification and renewal as required by the EPA or the Occupational Safety and Health Administration.

The Commission was established as an entity within the Department of Public Health and Environment (Department) to ensure compliance with national air quality control standards and to prevent deterioration in Colorado's air quality.[21] The Commission is comprised of nine citizen members of Colorado appointed by the Governor,[22] with expertise in scientific, industrial, technical, agricultural, labor, legal training, or with previous experience on the Commission.[23]

The Indoor Environment Program (Program) within the Air Pollution Control Division at the Department (Division) administers asbestos regulatory compliance within the state.

The Commission is further required to authorize the Division to: [24]

- Establish procedures for required applications, certifications, and examinations;
- Enforce compliance with provisions of the Act and any rules, regulations, or orders promulgated or issued pursuant to the Act; and
- Collect fees promulgated by the Commission under the Act.[25]

In the manner required by federal law, the Division also has the authority to require certification of all persons engaged in the inspection for the presence of asbestos, preparation of asbestos management plans, designing of abatement actions, or conducting abatement activities in all public, commercial, and school buildings.[26]

The Act specifically mentions four asbestos-related professions: inspectors, general abatement contractors, abatement supervisors, and air quality monitoring specialists.

Further, the Act describes the application process and experience required to become certified by the Division as a general abatement contractor, abatement supervisor, and air quality monitoring specialist. For all three professions, the applicant must submit an application to the Division and pay the applicable fee.[27] All additional information

[21] § 25-7-105(1)(a)(I), C.R.S.
[22] § 25-7-104(1), C.R.S.
[23] § 25-7-104(2), C.R.S.
[24] § 25-7-503(1)(d)(I), C.R.S.
[25] § 25-7-510 (1)(a) and (2), C.R.S.
[26] § 25-7-507, C.R.S.
[27] §§ 25-7-505(1), 25-7-506(1) and 25-7-506.5(2), C.R.S.

pertaining to certificate application for any asbestos-related profession is located in the Commission's Regulation 8, Part B.

General abatement contractor applicants must also supply additional information including a description of the asbestos training program provided to employees, and a statement including the names of all individuals employed by the applicant that are trained and certified supervisors.[28] Additionally, no applicant will be certified unless the applicant, or at least one of the applicant's employees is a trained and certified supervisor.[29]

Applicants for the position of asbestos supervisor must:[30]

- Complete a training course approved by the Division within 12 months prior to application regarding safe asbestos abatement procedures; and
- Pass an examination administered by the Division regarding the procedures to be followed during an asbestos abatement.

Within 30 days following the successful completion of the required examination, an applicant will be issued a certification by the Division for a period not to exceed five years.

Applicants for the certification of air quality monitoring specialist must also complete any requirements promulgated in rules by the Commission including any experience, education, training, and examination requirements.[31]

The actions of all asbestos certificate holders are also subject to disciplinary action when applicable by the Division.

The Division may issue a letter of admonition to certificate holders or may revoke, suspend, refuse to renew, or deny certification for violations of the Act including, but not limited to:[32]

- Receiving disciplinary action in any other state, territory, or country;
- Entering a plea of *nolo contendre* or equivalent to a charge for violating the law regarding asbestos removal in any other state, territory, or country;
- Receiving a conviction of a felony or entering a plea of guilty or *nolo contendre* related to any activities regulated by the Act;
- Failing to report disciplinary action to the Division specified within the Act;
- Failing to meet permitting or notification requirements, or to correct violations cited by the Division within a reasonable period of time;
- Using misrepresentation or fraud to obtain a certification;
- Failing to adequately supervise an asbestos abatement project as a supervisor;
- Failing to meet generally accepted standards of practice; and
- Engaging in false or misleading advertising.

[28] § 25-7-505(1)(a) and (1)(b), C.R.S.
[29] § 25-7-505(2), C.R.S.
[30] § 25-7-506(2), C.R.S.
[31] § 25-7-506.5(3), C.R.S.
[32] § 25-7-508(1) and (2)(a), C.R.S.

The Division must also provide information to local jurisdictions to be used in connection with a building permit regarding the need for an inspection to determine the presence of asbestos-containing materials prior to building demolition or renovation.[33]

Additionally, local jurisdictions are prohibited from certifying or licensing asbestos abatement projects or the examination or certification of applicants to ensure uniformity in certifications. However, local jurisdictions may develop registration requirements as a condition of performing asbestos abatement within the jurisdiction.[34]

Regulation 8, Part B

The regulatory program established in the Act is administered through the Commission's Regulation 8, Part B of "Control of Hazardous Air Pollutants", located in the Colorado Code of Regulations (Reg. 8).

Reg. 8 provides detailed regulatory provisions established to ensure compliance with the NESHAP regarding asbestos in commercial and public buildings, as well as the AHERA regarding asbestos in school facilities.

On January 22, 2021, the Commission adopted revisions to Reg. 8 which took effect as of March 17, 2021. Revisions included, but were not limited to, changes to definitions, procedures, and processing timelines.

Reg. 8 contains rules and procedures organized by category in the following six subsections:

- Incorporated materials, definitions, and acronyms – This section references seven federal laws or standards documents[35] and provides definitions for 125 terms and 55 acronyms commonly used within the asbestos abatement industry;[36]
- Certification requirements – This section provides detail including, but not limited to, the general and specific requirements for applicants in the asbestos-related professions of general abatement contractor, building inspector, management planner, project designer, worker, supervisor and air monitoring specialist.[37] The section also details requirements for the registration of training providers[38] and required instructor qualifications[39] as well as requirements for the registration of asbestos consulting firms and laboratories;[40]
- Abatement, renovation, and demolition – This section provides regulatory requirements for abatement processes including inspection,[41] the use of certified

[33] § 25-7-503(1)(b)(III)(B), C.R.S.
[34] § 25-7-509, C.R.S.
[35] 5 CCR § 1001-10-B-I.A, Control of Hazardous Air Pollutants, Regulation Number 8.
[36] 5 CCR § 1001-10-B-I.B and I.C, Control of Hazardous Air Pollutants, Regulation Number 8.
[37] 5 CCR § 1001-10-B-II, Control of Hazardous Air Pollutants, Regulation Number 8.
[38] 5 CCR § 1001-10-B-II.E, Control of Hazardous Air Pollutants, Regulation Number 8.
[39] 5 CCR § 1001-10-B-II.F, Control of Hazardous Air Pollutants, Regulation Number 8.
[40] 5 CCR § 1001-10-B-II.L and II.M, Regulation Number 8, Control of Hazardous Air Pollutants.
[41] 5 CCR § 1001-10-B-III.A, Control of Hazardous Air Pollutants, Regulation Number 8.

personnel,[42] project design,[43] and project management.[44] Additional procedural requirements are also provided including, but not limited to, notifications, alternative procedures and variances, permitting processes, abatement procedures, final air clearances, abatement tear down, waste handling, special materials, spill response, maximum allowable asbestos levels, special removal methods, facility component removal, unsound facilities, and exemptions; [45]

- School requirements – This section describes requirements that are intended to mirror AHERA to identify, manage, and limit exposure of asbestos in schools[46] including, but not limited to, general responsibilities, inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, cleaning, school management plans, recordkeeping, and exclusions;[47]
- State building requirements – This section includes additional regulatory requirements for state buildings, including, but not limited to, general responsibilities, inspections, sampling, analysis, assessment, recordkeeping, and exclusions;[48] and
- Use of asbestos in the manufacturing, commerce, and construction industries – This section provides additional regulatory guidance regarding standards including, but not limited to, asbestos mills, roadways, manufacturing, spraying, and fabricating asbestos containing materials.[49]

[42] 5 CCR § 1001-10-B-III.B, Control of Hazardous Air Pollutants, Regulation Number 8.
[43] 5 CCR § 1001-10-B-III.C, Control of Hazardous Air Pollutants, Regulation Number 8.
[44] 5 CCR § 1001-10-B-III.D, Control of Hazardous Air Pollutants, Regulation Number 8.
[45] 5 CCR § 1001-10-B-III.E through III.X, Control of Hazardous Air Pollutants, Regulation Number 8.
[46] 5 CCR § 1001-10-B-IV.A, Control of Hazardous Air Pollutants, Regulation Number 8.
[47] 5 CCR § 1001-10-B-IV.B through IV.M, Control of Hazardous Air Pollutants, Regulation Number 8.
[48] 5 CCR § 1001-10-B-V.A through V.H, Control of Hazardous Air Pollutants, Regulation Number 8.
[49] 5 CCR § 1001-10-B-VI.A through VI.F, Control of Hazardous Air Pollutants, Regulation Number 8.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters;
>
> Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and
>
> Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

Section 25-7-501, *et seq.,* Colorado Revised Statutes (C.R.S.), referred to as the Asbestos Control Act (Act), tasks the Air Quality Control Commission (Commission) with regulatory duties for the operation of the statewide asbestos program including, but not limited to:[50]

- The promulgation of rules for the implementation of the Act regarding areas of public access;
- The development of performance standards which are not more stringent than federal requirements;
- The determination of the maximum allowable asbestos level which will be the highest level of airborne asbestos permissable that allows for the protection of the public;
- The development of exemptions from certificate requirements for emergency situations;
- The establishment of fees for air pollution permits, site inspections, monitoring, asbestos abatement certifications, and school asbestos management plans;
- The development of assessment procedures needed to determine the level of response required for asbestos-containing materials;
- The promulgation of rules which comply with the federal Occupational Safety and Health Administration (OSHA) standards, although these rules cannot be more restrictive than the OSHA standards; and
- The promulgation of rules which are required by the federal Clean Air Act.[51]

[50] § 25-7-503(1)(a) and (b), C.R.S.
[51] § 25-7-503(1)(b), C.R.S.

The Commission was established as an entity within the Department of Public Health and Environment (Department) to ensure compliance with national ambient air quality control standards and to prevent deterioration in Colorado's air quality.[52] The Commission is comprised of nine citizen members of Colorado appointed by the Governor,[53] with expertise in scientific, industrial, technical, agricultural, labor, legal training, or with previous experience on the Commission.[54]

Additionally, enforcement of the Act is provided by the Indoor Environment Program (Program) located within the Air Pollution Control Division (Division) of the Department. In order to provide enforcement, the Department employs staff to provide professional support for the Program.

Further, the regulatory program established in the Act is implemented through the Commission's Regulation 8, Part B of "Control of Hazardous Air Pollutants", located in the Colorado Code of Regulations (Reg. 8).

In addition to the regulation of asbestos, the staff employed at the Program oversee two additional sets of regulations relating to potentially harmful contaminants to the indoor environment including the regulation of lead-based paint and chlorofluorocarbons (CFCs). According to the Program, asbestos regulation utilizes the majority of staff time, although the focus of work may fluctuate due to rule revisions in any of the three regulatory programs.

Table 1 lists the total number of full-time equivalent (FTE) employees and total related program expenditures for asbestos, lead-based paint, and CFC regulation for fiscal years 15-16 through 19-20.

Table 1
Program Expenditures and Full-Time Equivalent Employees

Fiscal Year	Total Program Expenditures	FTE
15-16	$826,624	13
16-17	$1,333,407	16
17-18	$1,239,545	12
18-19	$1,347,587	13
19-20	$1,558,505	16

Section 25-7-510(2), C.R.S., states that funds generated from fees collected by the Program are to be transmitted to the Stationary Sources Control Fund, which houses funds for a variety of Division programs. Statute further requires that the General Assembly appropriate funds to the Department on an annual basis to implement the

[52] § 25-7-105(1)(a)(I), C.R.S.
[53] § 25-7-104(1), C.R.S.
[54] § 25-7-104(2), C.R.S.

work required by the Act, and all fines generated are credited to the General Fund.[55]

The table indicates that staffing of the Program was reduced in fiscal years 17-18 and 18-19. These reductions can be attributed to budgetary restrictions, and staffing returned to previous levels in fiscal year 19-20. Further, this may have contributed to the increase in expenditures during fiscal year 19-20. The Program has also indicated that a staff of 16 is considered fully staffed, and although fiscal years 16-17 and 19-20 reflect a total of 16 FTE, staffing levels fluctuated during both fiscal years.

In fiscal year 20-21, the staffing allocation for the Program included:

- Program Assistant I – 1.0 FTE. This position is responsible for reviewing and processing applications for certification and registration relating to individual applicants and businesses. In addition, the position is responsible for administering and grading examinations, processing notifications for training courses, and the issuance of certifications and identification cards.
- Administrative Assistant II and III – 2.0 FTE (with two additional vacancies, for a total of 4.0 FTE allocated). These positions provide full comprehensive administrative support to the Program, and each administrative assistant typically provides additional support in one area of expertise, including:
    - Reception, phone support, and mail services;
    - Data entry and distribution relating to permit processing, notices, and payments;
    - Record retention, relocation, and destruction; and
    - Billing, invoicing, and payment processing.
- Environmental Protection Intern – 1.0 FTE (with two additional vacancies, for a total of 3.0 FTE allocated). This position monitors compliance with state and federal regulations by performing inspections under the direct observation of an Environmental Protection Specialist. The position also monitors compliance with permitting and notification requirements and assists with enforcement cases.
- Environmental Protection Specialist I – 2.0 FTE. These positions monitor state and federal regulatory compliance by conducting both independent and joint inspections, including those related to school compliance or spills. The positions also monitor compliance with permitting and notification requirements and develop enforcement cases under the direct observation of Environmental Protection Specialists II and IV.
- Environmental Protection Specialist II – 3.0 FTE. These positions monitor state and federal regulatory compliance by conducting independent inspections initiated by complaints, scheduled inspections, specialized school compliance inspections, development and monitoring of enforcement cases and other targeted statewide activities. The positions also audit training classes and participate in outreach. Further, these positions can also respond to emergency situations including spills and natural disasters.
- Environmental Protection Specialist IV – 2.0 FTE. These positions are commonly

[55] § 25-7-511(6), C.R.S.

referred to as "Field Operations Supervisors" and work in both a technical and supervisory capacity. These positions are responsible for the training of technical and administrative staff, and the assignment of workflow, daily tasks, and progress monitoring. These positions also serve as supervisors for complex technical tasks, including conducting inspections and compliance audits.

- Environmental Protection Specialist V – 1.0 FTE. This position is referred to as the Program Manager, who is responsible for strategic and performance planning for the Program as well as overseeing large-scale work projects including regulation revisions. The position also manages the enforcement program and records, including record retention policies and storage. Additionally, this position manages responsibilities related to fiscal reporting, grants, and contracting.

According to the Program, all staff were previously assigned to one area of regulation specialization in the areas of asbestos, lead-based paint, or CFCs. Due to vacancies and reorganization, Program staff currently work in all three areas of regulatory enforcement.

Training and Certification

The Act authorizes the Commission to establish certification requirements and procedures for asbestos professionals. There are currently six professional occupations within the Colorado asbestos industry that are regulated by the Act: workers, supervisors, air monitoring specialists, project designers, management planners, and inspectors.

Additionally, certain asbestos businesses are regulated. For instance, general abatement contractors must also be certified, and consulting firms and laboratories are required in rule to be registered.

Among other things, workers and supervisors complete and direct the actual work of the abatement process, while project designers determine the process for work completion. Inspectors identify asbestos-containing materials, and management planners utilize data provided by inspectors to design plans to manage asbestos-containing materials in schools. Additionally, air monitoring specialists provide final air clearances at the completion of a project to determine if the air quality is below established clearance levels and if the abatement area may be reoccupied.

The Commission is further required to authorize the Division to:

- Establish procedures for required applications, certifications, and examinations;[56]
- Enforce compliance with provisions of the Act and any rules, regulations, or orders promulgated or issued pursuant to the Act; and
- Collect fees promulgated by the Commission under the Act.[57]

[56] § 25-7-503(1)(d)(I), C.R.S.
[57] § 25-7-510 (1)(a) and (2), C.R.S.

The Act specifies the application process and experience required to become certified for applicants to perform asbestos abatement as workers, abatement supervisors, and air quality monitoring specialists. Additional requirements for any asbestos related professions are located in Reg. 8. In all instances, the applicant must submit an application to the Program and pay the applicable fee. Any additional certification or registration requirements are listed by type below.

General Certification Requirements

Any applicant requesting a certification for the positions of general abatement contractor, worker, supervisor, building inspector, management planner, project designer, and air monitoring specialist must apply with the Program. General abatement contractor certifications are valid for a period of one, two or three years,[58] and all other certification types are valid for a period of one, three, or five years.[59] The Program issues a state-certified identification card to certified individuals that must be present with them at each job site.[60]

General abatement contractors must supply information including a description of the asbestos training program completed and a statement that includes the names of all individuals employed by the applicant that are trained and certified supervisors.[61] Additionally, no applicant will be certified unless the applicant, or at least one of the applicant's employees is a trained and certified supervisor[62] who must be on site for all applicable abatement work.[63]

Applicants for certification as an air monitoring specialist must possess a high school diploma or equivalency, and documentation that he or she has performed a minimum of 80 hours of ambient air monitoring as well as six final visual inspections and six final air clearances.[64]

Project manager is not a certified discipline. However, applicants must demonstrate completion of additional training and educational requirements, including:[65]

- Certification as a Project Designer;
- A minimum of one year of work experience in supervising, monitoring, and overseeing asbestos abatement projects;
- High school diploma or equivalency; and
- Successful completion of a Program-approved air monitoring specialist course.

Completion of a four-year college degree program in the areas of industrial hygiene, environmental health with an emphasis in industrial hygiene, or a certification issued

[58] 5 CCR § 1001-10-B-II.B.1, Control of Hazardous Air Pollutants, Regulation Number 8.
[59] 5 CCR § 1001-10-B-II.C.1, Control of Hazardous Air Pollutants, Regulation Number 8.
[60] 5 CCR § 1001-10-B-II.A.2, Control of Hazardous Air Pollutants, Regulation Number 8.
[61] § 25-7-505(1)(a) and (1)(b), C.R.S.
[62] § 25-7-505(2), C.R.S.
[63] 5 CCR § 1001-10-B-II.B.4, Control of Hazardous Air Pollutants, Regulation Number 8.
[64] 5 CCR § 1001-10-B-II.D.3.a.(ii) and (iii), Control of Hazardous Air Pollutants, Regulation Number 8.
[65] 5 CCR § 1001-10-B-II.J, Control of Hazardous Air Pollutants, Regulation Number 8.

by the American Board of Industrial Hygiene can be substituted for the air monitoring specialist course.[66]

For all other certification categories, the applicant must complete any training required for federal certification through EPA-approved training courses, and all certified individuals must complete annual refresher training requirements in order to keep their certifications current.[67] The yearly refresher training requirements for each certification type are as follows:[68]

- Worker – One full day or eight hours;
- Supervisor – One full day or eight hours;
- Project designer – One full day or eight hours;
- Building Inspector – One half day or four hours; and
- Management planner – One half day or four hours of building inspector training, and one half-day or four hours of management planner training.

All refresher courses are required to contain curriculum regarding the following subject matter:[69]

- Any changes in federal and state law requirements and regulations,
- Any developments and/or changes to state-of-the-art procedures, and
- Any relevant developments regarding the profession or industry.

Table 2 details the total number of active certificates issued per certification type during fiscal years 15-16 through 19-20. The database used by the Program is unable to separate data regarding initial and renewal certificates, so the total per fiscal year in the table includes both initial and renewal data.

Table 2
Certification Data

Certification Type	15-16	16-17	17-18	18-19	19-20
Worker	1201	1225	1103	1141	1222
Supervisor	771	712	623	751	738
Project Designer	97	93	100	91	98
Air Monitoring Specialist	204	202	199	213	210
Building Inspector	664	619	607	634	655
Building Inspector/Management Planner	116	115	103	115	107
General Abatement Contractor	142	139	141	123	131

[66] 5 CCR § 1001-10-B-II.J.1.b, Control of Hazardous Air Pollutants, Regulation Number 8.
[67] 5 CCR § 1001-10-B-II.C.5, Control of Hazardous Air Pollutants, Regulation Number 8.
[68] 5 CCR § 1001-10-B-II.C.5.b, Control of Hazardous Air Pollutants, Regulation Number 8.
[69] 5 CCR § 1001-10-B-II.C.5.c, Control of Hazardous Air Pollutants, Regulation Number 8.

According to the certification data, the number of general abatement contractors declined slightly during the years reviewed. Additionally, with the exception of project designers and general abatement contractors, all other asbestos-related professions declined somewhat in fiscal year 17-18, but then predominantly rebounded in fiscal years 18-19 and 19-20. According to the Program, asbestos abatement projects typically mirror the activities of the construction industry, which may lead to more individuals working in asbestos-related fields during timeframes in which the construction industry is experiencing increases in activity.

Certification Fees

General abatement contractors are required to pay a certification fee to the Program in either one, two, or three-year intervals.[70] Table 3, below, details the fee required for both initial and renewal certifications.

Table 3
General Abatement Contractor Certification Fees

Certification Type	1-year	2-year	3-year
Initial Certification	$2,000	Not applicable	Not applicable
Renewal Certification	$1,000	$2,000	$3,000

All other certification types require that a fee be paid to the Program in either one, three, or five-year intervals. Table 4 details the fee required for each certification type.

Table 4
Certification Fees, All Other Certificate Types

Certification Type	1-year	3-year	5-year
Worker	$125	$375	$625
Supervisor	$250	$750	$1250
Building Inspector	$175	$525	$875
Management Planner	$175	$525	$875
Project Designer	$250	$750	$1,250
Air Monitoring Specialist	$250	$750	$1,250

It should be noted that asbestos professionals are required to complete refresher training and examination on a yearly basis whether they choose to certify for one, three, or five years.

[70] 5 CCR § 1001-10-B-II.B.2, Control of Hazardous Air Pollutants, Regulation Number 8.

Reciprocity

An individual may also apply for certification through reciprocity by, among other things:[71]

- Submitting an application and paying the applicable fee;
- Possessing a valid Asbestos Hazard Emergency Response Act (AHERA) training certificate from another state or the District of Columbia, or any other territory of the United States or a Program-approved national entity with certification and a testing program with EPA approval; and
- Passing an examination administered by the Program in the discipline in which the certification is to be issued.

The Program accepts training certificates from other EPA-authorized state programs. However, since the Program is unable to ascertain if another state's testing process is as stringent as Colorado's since some states do not have examination requirements, all applicants are required to complete the Program-administered examination.

Registration Requirements

Registration is required in Reg. 8 for both asbestos consulting firms and asbestos laboratories.

Asbestos consulting firms must submit an application for registration and pay the required annual fee in the amount of $500. Government entities including cities, counties, and municipalities employing trained and certified personnel are exempt from the registration fee.[72] Asbestos laboratories must also submit an application for registration and pay the required annual fee of $250.[73]

Table 5 displays the total number of asbestos consulting firms and laboratories registered in the state from fiscal years 15-16 through 19-20.

Table 5
Total Asbestos Consulting Firms and Laboratories

Fiscal Year	Asbestos Consulting Firms	Laboratories
15-16	171	50
16-17	192	67
17-18	190	59
18-19	192	60
19-20	236	60

[71] 5 CCR § 1001-10-B-II.I.1, Control of Hazardous Air Pollutants, Regulation Number 8.
[72] 5 CCR § 1001-10-B-II.L, Control of Hazardous Air Pollutants, Regulation Number 8.
[73] 5 CCR § 1001-10-B-II.M, Control of Hazardous Air Pollutants, Regulation Number 8.

Table 5 indicates that the number of registrations for both asbestos consulting firms and asbestos laboratories steadily increased during the years reviewed.

Asbestos Training Provider Requirements

To become an asbestos training provider, an applicant must submit a written request to the Program and provide a copy of the proposed written course materials along with a fee of $250 per discipline in which they wish to offer courses. Once approved, the applicant must pay an annual renewal fee of $100.[74]

In order for a course to receive approval, it must follow the curriculum requirements established by the EPA's Asbestos Model Accreditation Plan.[75] Upon reviewing the application for course material approval, the Program will provide a response to the applicant within 90 days from the date on which the application was received. [76]

If an applicant receives contingent approval to offer the course, the applicant must apply when required to the Department of Higher Education, Division of Private Occupational Schools (DPOS) for approval as an occupational education course.[77] Final approval for the course will not be granted until the Program can audit the course to ensure that it meets the specified requirements.[78]

Applicants are encouraged to contact DPOS at the onset of the application process to determine if they meet DPOS requirements. For example, if courses will be paid for by individual students, the training program may need to register with DPOS as a vocational school.

Instructor Requirements

To become an asbestos course instructor, an applicant must possess a high school diploma or equivalent and must maintain federal AHERA training requirements and Colorado certification in the discipline in which they wish to instruct.[79]

The applicant must submit an application for registration and documentation regarding required experience including a resume and references.[80] The Program will provide a response regarding contingent approval to the application request within 90 days.[81] Final approval as a full instructor or assistant instructor will not be granted until the Program has the opportunity to audit the instructor's course to determine that the instructor is able to effectively communicate and teach the required principles of the

[74] 5 CCR § 1001-10-B II.E.1, Control of Hazardous Air Pollutants, Regulation Number 8.
[75] 5 CCR § 1001-10-B-II.E.2, Control of Hazardous Air Pollutants, Regulation Number 8.
[76] 5 CCR § 1001-10-B-II.E.3, Control of Hazardous Air Pollutants, Regulation Number 8.
[77] 5 CCR § 1001-10-B-II.E.5, Control of Hazardous Air Pollutants, Regulation Number 8.
[78] 5 CCR § 1001-10-B-II.E.4, Control of Hazardous Air Pollutants, Regulation Number 8.
[79] 5 CCR § 1001-10-B-II.F.1 and F.2, Control of Hazardous Air Pollutants, Regulation Number 8.
[80] 5 CCR § 1001-10-B-II.F.4, Control of Hazardous Air Pollutants, Regulation Number 8.
[81] 5 CCR § 1001-10-B-II.F.5, Control of Hazardous Air Pollutants, Regulation Number 8.

course materials.[82] If approved, the instructor must submit an application for renewal of registration on an annual basis.[83]

Additional minimum requirements for an instructor applicant include a minimum of three years of field experience:[84]

- In the field performing abatement activities in the discipline being taught,
- Working as an assistant instructor teaching classes in the applicable discipline with one month of teaching equal to one month of experience, or
- Completing collegiate or seminar-type courses relevant to the discipline with at least one week of training equal to one month of experience.

Table 6
Total Asbestos Training Providers,

Fiscal Year	Training Providers
15-16	10
16-17	9
17-18	9
18-19	9
19-20	10

Table 6 displays the number of approved training providers during the years reviewed, which appears to have remained consistent. It should be noted that a training provider may employ more than one instructor to administer their program.

School Requirements

The requirements listed in Reg. 8 are meant to mirror the federal requirements of AHERA, which seek to minimize and manage asbestos exposure in schools. Colorado has been authorized by EPA to administer the AHERA Program in the state. Additionally, local education agencies are required to identify and assess friable and non-friable asbestos-containing materials in schools through visual inspection, sampling, and sample analysis where applicable.

Local education agencies are further required to submit management plans to the Division, implement plans in a timely manner, and possess accurate recordkeeping. In addition, local education agencies are required to utilize certified individuals for inspection, re-inspection, development of management plans and response actions. [85]

[82] 5 CCR § 1001-10-B-II.F.7, Control of Hazardous Air Pollutants, Regulation Number 8.
[83] 5 CCR § 1001-10-B-II.F.8, Control of Hazardous Air Pollutants, Regulation Number 8.
[84] 5 CCR 1001-10-B-II.F.3, Regulation Number 8, Control of Hazardous Air Pollutants.
[85] 5 CCR § 1001-10-B-IV.A, Control of Hazardous Air Pollutants, Regulation Number 8.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Any individual seeking either initial or renewal certification in each asbestos-related discipline is required to pass an annual closed-book examination administered by the Program. If an individual fails to pass the examination on the first attempt, the applicant will be required to complete a refresher training and pay an additional $125 retesting fee to retake the examination or sections of the examination that the applicant did not pass. In the event of a second or subsequent failure of the examination, the applicant will be required to retake the initial certification training and pay $125 retest fee for each attempt.[86]

Test takers are allowed two to three hours to complete each examination depending on the type of certification sought, and the applicant may choose to complete multiple examinations within the allotted time frame. All examinations contain a multiple-choice component, and may also include additional reading, diagram interpretations, and math equations.

Table 7 provides the number of examinations completed as well as the pass rates for all certification types for fiscal years 15-16 through 19-20.

Table 7
Total Examinations Administered

Fiscal Year	Number of Written Examinations Given	Pass Rate (%)
15-16	3,687	94
16-17	4,093	95
17-18	4,507	93
18-19	4,659	93
19-20	1,041	94

The data in Table 7 relate specifically to test takers of the examination administered for state certification, and the number of examinations is higher than the number of certified individuals since several disciplines (air monitoring specialist, supervisor, and project designer) all require two examinations.

[86] 5 CCR § 1001-10-B-II.C.4, Control of Hazardous Air Pollutants, Regulation Number 8.

The Program has indicated that the database utilized for storing examination data is unable to differentiate between first-time and renewal test takers.

In response to COVID-19, the Program paused certification testing in March 2020 due to the in-person testing requirement. However, the Program did use its discretion to allow recertification without the examination requirement for applicants who were eligible for recertification or reinstatement. The Program resumed in-person testing in August 2020, but then paused testing again in November 2020. In-person examinations again resumed in February 2021. According to the Program, testing is currently available one day per week.

Table 8 provides the number of examinations completed by profession type as well as the pass rate for calendar year 2019.

Table 8
Examination Pass Rates (Calendar Year 2019)

Profession Type	Number of Written Examinations Given	Passed First Attempt (%)	Passed Second Attempt (%)
Worker	1,779	89.25	69.24
Supervisor	862	95.13	85.72
Project Designer	148	97.98	66.67
Air Monitoring Specialist	242	89.25	69.24
Building Inspector	808	99.88	100
Project Designer	148	97.98	66.67
Management Planner	97	100	Not applicable

The Program does not currently track examination pass/fail rates through an automated process. The data in the table above were tabulated by COPRRR staff from fail rates provided by the Program to demonstrate general pass rates as an example in calendar year 2019.

Examinations are also currently offered in Spanish to test takers in the worker category only. Examination data for Spanish test takers in the worker category were unavailable. However, the examination data for Spanish test takers is included in the total number of test takers in the two tables above.

The Program has indicated that it recently purchased a computer system with plans to implement its utilization beginning in the fall of 2021 that will track these data in the future.

Permits, Notices, and Variances

Permitting Process

In Colorado, a permit must be obtained from the Program for asbestos abatement projects in any building or structure considered an area of public access if the amount of friable asbestos material is deemed to exceed trigger levels.[87]

In a single-family home, the trigger level is currently 50 linear feet on pipes, 32 square feet on other surfaces, or the volume equivalent of a 55-gallon drum. For buildings not defined as single-family homes, the current trigger level is 260 linear feet on pipes, 160 square feet on other surfaces, or the volume equivalent of a 55-gallon drum.[88]

Single-family homeowners can opt out of portions of the asbestos abatement regulations by requesting that the single-family home not be considered an area of public access,[89] or may also elect to opt out if the home is the homeowner's primary residence.[90]

Table 9 provides the fees associated with permit applications for both single-family residences and all other building types in areas of public access.

Table 9
Permit Fees

Length of Project	Permit Fees for ALL facilities (including single-family residences	Permit fees for single-family residences ONLY
Applicable Trigger Levels	*Greater than 260 linear feet/160 square feet/55-gallon drum*	*Greater than 50 linear feet/32 square feet/55-gallon drum but less than trigger levels for ALL facilities*
1-30 days	$400	$180
31-90 days	$800	$300
91-365 days	$1200	$420

Single-family residences are required to pay permit fees based upon the trigger level present in the abatement area. For example, a fee of $180 would be required for a permit of less than 30 days relating to a single-family residence if the abatement area exceeds the trigger level of greater than 50 linear feet/32 square feet/55 gallon drum but does not exceed the trigger level of greater than 260 linear feet/160 square feet/55 gallon drum. In the event that a single-family residence abatement project exceeds both trigger levels, the fee required would be $400 for a permit of less than 30 days.

[87] 5 CCR § 1001-10-B-III.G.1.a, Control of Hazardous Air Pollutants, Regulation Number 8.
[88] 5 CCR § 1001-10-B-I.B.119, Control of Hazardous Air Pollutants, Regulation Number 8.
[89] 5 CCR § 1001-10-B-III.G.5.a, Control of Hazardous Air Pollutants, Regulation Number 8.
[90] 5 CCR § 1001-10-B-III.G.5.b, Control of Hazardous Air Pollutants, Regulation Number 8.

Inspections of the abatement work site may also be performed by the Program. If inspections exceed one for a 30-day permit, two for a 90-day permit, or three for a one-year permit, the rate of $80 per additional hour for the inspection may be assessed by the Program.[91]

Project Modifications

A supplemental application must also be filed with the Program in order to modify permitted abatement projects, including any changes to the scope of work, scheduled work dates and times, or project personnel.[92]

If an abatement project contains multiple phases (abatement occurring in more than one building at a single location, or in more than one area in a single building), additional information must be supplied on a separate application to the Program including information regarding any additional phases that are being added to the multi-phase project. There is an additional $80 application fee per additional phase if any additional phases are added following the initial application submission, and no work on any additional phases can begin without approval from the Program. [93]

Variance Requests

Variances can also be granted by the Program for instances in which alternative procedures may need to be performed on an abatement project. In order to request a variance, the proposed alternative procedures must be submitted to the Program along with a $50 review fee. The Program will notify the applicant regarding the approval or denial of the variance request within 45 days of the receipt of the initial request. If denied, the Program will provide a reason for the denial to the applicant. Additionally, no alternative procedures can be used on any abatement project unless the variance has been requested and is approved in writing by the Program.[94]

Standard variances can be independently approved by the inspector who is reviewing the permit application. Examples of these types of standard variances include not installing a viewport at the abatement site because of site conditions or utilizing a pre-approved direct waste load out. In other instances, variance requests may be more complex in nature, require a larger review process separate from the permit inspection, and may also utilize more than one inspector.

[91] 5 CCR § 1001-10-B-III.G.1.c, Control of Hazardous Air Pollutants, Regulation Number 8.
[92] 5 CCR § 1001-10-B-III.G.2, Control of Hazardous Air Pollutants, Regulation Number 8.
[93] 5 CCR § 1001-10-B-III.G.3.a, Control of Hazardous Air Pollutants, Regulation Number 8.
[94] 5 CCR § 1001-10-B-III.F, Control of Hazardous Air Pollutants, Regulation Number 8.

Demolition Notices

Demolition notices are required when any structure is being demolished and are required regardless of whether or not asbestos is present in a structure. Demolition is defined in Reg. 8 as,[95]

> …the wrecking or removal of any load-supporting structural member of a facility together with any handling of debris related to the demolition, the intentional burning of any facility, or moving a facility from a permanent foundation.

Prior to any demolition in a structure considered a part of the public access that may disturb suspect asbestos-containing materials exceeding the established trigger levels, the portion of the structure which will undergo demolition must either be assumed to have asbestos-containing materials present, or an inspection must be performed.[96] In these circumstances, demolition notices may be issued after asbestos abatement has occurred.

Table 10 provides the number of demolition notices, abatement and renovation permits/notices, and complex variance requests issued each year during fiscal years 15-16 through 19-20.

Table 10
Permits and Notices Issued

Permit or Notice Type	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Demolition Notices	4,457	4,712	4,787	5,816	3,855
Abatement and Renovation Permits/Notices	6,445	6,204	6,815	7,276	6,991
Complex Variance Requests	51	40	13	18	19

According to the Program, abatement or renovation permits and notices are issued for any removal of an asbestos-containing material—whether considered friable or non-friable—which is present in a structure in an amount greater than the trigger levels, and many abatement permits or notices are issued prior to renovation activities with no intent of demolition.

Permits and notices are valid for up to one year, and a new permit or notice must be obtained for any project lasting longer than one year. Approved permits and notices

[95] 5 CCR § 1001-10-B-I.B.40, Control of Hazardous Air Pollutants, Regulation Number 8.
[96] 5 CCR § 1001-10-B-III.A.1, Control of Hazardous Air Pollutants, Regulation Number 8.

must be posted on the abatement project site in a visible location at all times.[97]

Standard approved variances are not tracked separately by the Program since standard variances can be reviewed by the inspector at the time of the initial permit inspection. Therefore, data regarding the number of standard variance requests are not available.

Data are tracked by the Program by calendar year rather than fiscal year. Further, the Program has indicated that the data for complex variance requests for calendar year 2018 are unavailable. Therefore, the data itemizing complex variance requests per year in the table above only contain six months of reported complex variance request data for fiscal years 17-18 and 18-19.

Further, the demolition notices and complex variance requests appear to be reduced in fiscal year 19-20, which may be due to the cancellation of projects resulting from COVID-19.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Program also reviews and investigates complaints filed against practitioners. Table 11 provides the total number of complaints filed with the Program from fiscal year 15-16 through fiscal year 19-20. The average number of complaints reported is 81 per year for the years reviewed relating to both major spills and failure to inspect categories.

Table 11
Complaint Information

Complaint Type	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Major Spills	37	46	30	42	12
Failure to Inspect	52	77	51	49	9
Total	89	123	81	91	21

Table 11 demonstrates that there appears to be a downward trend in the number of complaints filed with the Program from its five-year peak in fiscal year 16-17 to fiscal year 19-20.

[97] 5 CCR § 1001-10-B-III.E, III.G.1 and III.G.4, Control of Hazardous Air Pollutants, Regulation Number 8.

According to the Program, many types of complaints are filed. However, the majority of complaints of highest concern fall into the category of failure to inspect, which often leads to a major spill. These are the two categories most closely tracked by the Program in which reporting was available.

Additionally, staff typically follow up regarding complaints by performing a site visit to investigate the nature and validity of the complaint. If an inspection is determined to be warranted, a notice of inspection is filed. The Program can track each notice of inspection but does not have the ability to track all complaints utilizing the current computer system and does not manually track complaints that do not generate a notice of inspection. Therefore, data regarding complaints filed with the Program reflect only those complaints where a notice of inspection has been filed.

During the COVID-19 pandemic, Program staff that typically followed up with complaints through a physical inspection were no longer able to perform the same number of site visits. Therefore, complaint data for fiscal year 19-20 are significantly lower than previous years during the review cycle.

Table 12 summarizes the case closure codes utilized by the Program in fiscal years 15-16 through 19-20.

Table 12
Case Closure Codes

Type of Action	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
Compliant	0	0	0	3	0
Rectified	18	1	8	7	6
Notice of Noncompliance	24	29	18	23	16
Compliance Determination Letter	13	2	1	13	9
Early Settlement Agreement	0	0	0	0	2
Statute of Limitations	18	13	7	1	0
Timeliness	9	7	11	0	0
Warning Letter	0	0	4	8	2
Inquiry	1	0	0	0	0
Evidence	1	1	2	0	0
Dismissal	2	3	6	1	3
Fines Issued	13	6	0	7	11

Each case closure code in the table is defined by the Program in the following manner:

- Compliant – Code relating specifically to schools, indicating that the school has no violations;
- Rectified – Code relating specifically to schools, indicating that the school corrected violations before a Notice of Noncompliance was issued;
- Notice of Noncompliance – Code relating specifically to schools, indicating that the inspector found one or more violations;
- Compliance Determination Letter – Code indicating that the Program found violations;
- Early Settlement Agreement –Code indicating that the Program has evidence of violation which supports proposing a reduced penalty without going through a formal enforcement process;
- Statute of Limitations – Code indicating that a case was initiated by an inspector, but no action was taken within 18 months of the discovery date;
- Timeliness – Code indicating that a case was initiated by an inspector, and action was taken but not followed up on. May indicate that the violator was unresponsive;
- Warning Letter – Code indicating that the inspector found limited violations that did not rise to the level of formal enforcement;
- Inquiry – Code indicating that a formal request for information occurred;
- Evidence – Code indicating that the program inspector was unable to produce sufficient evidence of a violation; and
- Dismissal – Code indicating that a case is closed without pursuing enforcement.

According to the Program, these codes are utilized for tracking purposes relating to case closure for complaints received or alleged violations which may not necessarily lead to an enforcement action.

The Program indicated that the statute of limitations code includes cases in which no action was taken within an 18-month timeframe, either due to lack of sufficient evidence or because the complainant could not be located, and the Program does not have resources to pursue. Additionally, the Program has indicated that some staff loss during this timeframe may have affected the timely closure of cases.

Further, the Program indicated that the timeliness category relates to instances in which Program staff was not able to follow through with the generation of enforcement documents, such as in situations where an investigating inspector may have vacated a position, for example. The Program also mentioned that previous Program administrators may have utilized disposition codes with different context from the way in which each term is currently applied.

The table above demonstrates that although instances of both statute of limitations and timeliness categories were high at the beginning of the review period, both categories have consistently dropped through the years reviewed.

Table 13, below, provides the average number of days to close a jurisdictional complaint (those complaints handled by the Program that are not criminal in nature. Criminal complaints are processed by the Colorado Attorney General's Office). The yearly average provided is calculated from the date that the complaint is received until the conclusion of the final agency action.

Table 13
Average Time to Closure

Fiscal Year	Number of Days to Case Closure
15-16	318
16-17	287
17-18	295
18-19	307
19-20	419

The table indicates that the average time to complaint closure increased significantly in fiscal year 19-20. According to the Program, this increase is associated with a decrease in staffing levels leading to staffing shortages in fiscal year 19-20. Additionally, COVID-19 had an impact on enforcement processes toward the beginning of the pandemic, and most cases were postponed due to the cancellation of in-person meetings.

Fining Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Table 14 shows the total number and dollar amount for fines imposed as well as the total dollar amount of fines collected and deferred for each fiscal year 15-16 through 19-20.

Table 14
Fines Imposed, Collected, and Deferred

Fiscal Year	Number of Fines Imposed	Total of Fines Imposed	Total of Fines Collected	Total of Fines Deferred
15-16	13	$153,850	$13,500	$20,000
16-17	6	$185,500	$26,400	$159,100
17-18	0	Not applicable	Not applicable	Not applicable
18-19	7	$130,525	$33,275	$96,750
19-20	11	$99,250	$52,250	$47,000

The data in Table 14 indicate that no fines were imposed for fiscal year 17-18, and no case closures led to fines in fiscal year 17-18 due largely to changes in internal processes within the Program.

During fiscal year 15-16, the Program has indicated that the difference in fines deferred, fines collected, and fines imposed may be related to fines assessed that were never received through a collections process.

According to the Program, fines are often deferred for first-time offenders who may not have prior knowledge regarding asbestos regulations. However, second time offenders are rarely deferred. The Program evaluates each instance on a case-by-case basis when determining whether to defer a fine.

Audits/Inspections

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the Program according to this criterion.

Table 15 demonstrates the total number of inspections and audits performed per fiscal year during the years reviewed.

Table 15
Inspections and Audits

Fiscal Year	Number of Inspections	Number of Audits
15-16	528	6
16-17	417	12
17-18	896	10
18-19	614	9
19-20	442	14

The number of audits performed relate specifically to audits performed by the Program for instructors, training classrooms, and training providers according to the requirements established in Reg. 8. Additionally, the number of inspections illustrated in the table above relates to all inspections performed by the Program, including those related to abatement sites, demolition sites, school inspections, new general abatement contractor inspections, and inspections triggered as a response to a complaint.

The table also indicates that site inspections performed by the Program decreased in fiscal years 18-19 and 19-20 from their previous high levels in fiscal year 17-18. According to the Program, this decrease largely related to staffing shortages and turnover.

It should be noted that new inspectors were hired during this period. However, new inspectors in training are not able to perform inspections independently during their training period, which also contributed to the decrease in inspections during this timeframe.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Section 25-7-508(2)(a), C.R.S., provides the Program with the authority to revoke, suspend, deny, refuse to renew, or impose additional conditions upon a certificate holder based on a felony conviction that would constitute a violation of the Act. The term "conviction" within the Act also applies to entering a guilty plea or a plea of *nolo contendere*.

Table 16, below, depicts the total number of disqualifications and sanctions for fiscal years 15-16 through 19-20 for collateral consequences.

Table 16
Collateral Consequences

Sanction or Disqualification	FY 15-16	FY 16-17	FY 17 -18	FY 18-19	FY 19-20
Denials	1	0	0	0	0
Suspensions	0	0	0	0	0
Revocations	0	0	1	0	0
Conditional Licenses	0	0	0	0	0
Other	0	1	0	0	0

In fiscal year 15-16, an individual was denied certification due to substandard inspection performance, and a permanent injunction was later placed to prevent the individual from practicing asbestos-related work in Colorado due to a criminal impersonation conviction resulting from fraudulently practicing as an inspector without certification.

In fiscal year 16-17, an individual was barred from practice for four years due to a felony fraud conviction for practicing asbestos abatement without certification and substandard practice.

In fiscal year 17-18, an individual's certification was revoked following a felony fraud conviction of practicing asbestos abatement without the correct certification and substandard practice. The individual was barred from recertification for 10 years.

COVID-19 Response

The COVID-19 pandemic placed extraordinary pressures on the citizens of Colorado, the Colorado economy and Colorado state government. As a result, COPRRR asked the Program to summarize any measures the agency may have implemented in response to the COVID-19 pandemic, the results of those efforts and any lessons learned. This section of the report is intended to provide a high-level summary of those responses.

According to the Program, a number of measures were implemented as safety precautions for both Program staff and members of the regulated community during the COVID-19 pandemic including:

- Closing the lobby to walk-in visitation;
- Developing safety protocols for necessary in-person inspection including personal, equipment and vehicle decontamination procedures;
- Adapting processes to allow applications for certification and permitting to be received via email;

- Developing criteria for synchronous remote refresher courses;
- Pausing examination requirements for renewal certification for eligible applicants;
- Developing safety protocols for applicants that were required to complete examinations in person; and
- Increasing remote follow up processes regarding complaint investigation.

The Program has indicated that although synchronous remote refresher courses were utilized by asbestos professionals throughout the COVID-19 pandemic, some individuals may not have access to the technology required for synchronous learning. Therefore, in-person refresher course options will still be made available. The Program has also indicated that the shift during the COVID-19 pandemic to more electronic processes has demonstrated that the Program does possess a need for additional technology, including updated data processing systems, equipment, and technical support.

The transition to a fully online payment system has proven to be an effective tool for increasing efficiency and reducing the need for in-person fee collection, including the elimination of the need to process cash payments. The implementation of the additional digital processes mentioned have further reduced the handling of paper documents, which has also increased the Program's efficiency.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 – Continue the Asbestos Control Act for five years, until 2027.

Asbestos is a term referring to a class of minerals that occur naturally in certain types of rock that were mined predominantly in the 20th century and widely used worldwide in a variety of products due to its long, very durable fibers.

Asbestos-containing materials (ACMs) are categorized as either friable, or non-friable. *Friable* asbestos is ACM that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure, whereas non-friable ACM cannot be crumbled, pulverized, or reduced by hand pressure.

Asbestos fibers are still widely present in a variety of common construction materials utilized in structures throughout Colorado. Alarmingly, if asbestos fibers are disturbed through renovation or demolition and become friable, microscopic particles can be released into the air, and can cause a variety of diseases when inhaled including asbestosis, pleural disease, mesothelioma, and lung cancer. Additionally, there is no known level of asbestos exposure that is considered safe, and symptoms of the effects of asbestos exposure can develop many years after initial exposure.

The Asbestos Control Act (Act) provides insight regarding the intent of the legislature in the establishment of these regulatory mechanisms designed to minimize the harm of friable asbestos exposure for Coloradans,

> The General Assembly hereby declares that it is in the interest of the general public to control the exposure of the general public to friable asbestos. It is the intent of the General Assembly to ensure the health, safety, and welfare of the public by regulating the practice of asbestos abatement in locations to which the general public has access for the purpose of ensuring that such abatement is performed in a manner which will minimize the risk of release of asbestos. However, it is not the intent of the General Assembly to regulate occupational health practices which are regulated pursuant to federal laws or to grant any authority to the Department of Public Health and Environment to enter and regulate work areas where general public access is limited.[98]

[98] § 25-7-501(1), C.R.S.

The Act tasks the Air Quality Control Commission (Commission) with regulatory duties for the operation of the statewide asbestos program and to delegate enforcement and administration tasks to the Indoor Environment Program (Program) within the Air Pollution Control Division at the Colorado Department of Public Health and Environment (Division and Department, respectively). The Program oversees asbestos regulation enforcement in the state, and is also responsible for implementing federal asbestos standards, such as the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and the Asbestos Hazard Emergency Response Act (AHERA) to ensure state compliance.

The first sunset criterion questions if regulation is necessary to protect the public health, safety, and welfare. Through the application of the regulatory framework established in the Act, the Commission and the Program provide the oversight required to protect the public interest. Given the number of administrative recommendations contained within this report that suggest structural and policy changes to the Program, the General Assembly should continue the Act for five years, until 2027.

Recommendation 2 – Revise section 25-7-509.5(2)(b), C.R.S., to direct permit applicants to contact the Program regarding state asbestos inspection requirements, to be included in local building permit applications.

In the 2012 sunset review performed by COPRRR, a recommendation was made with the intent of raising public awareness regarding asbestos inspection requirements in demolition and renovation projects. Specifically, the recommendation was to increase public awareness of asbestos inspection requirements by adding a check-off to local building department permitting applications for renovation or demolition, indicating whether an asbestos inspection has occurred.

In 2013, the General Assembly added this requirement to the Act in section 25-7-509.5(2)(b), C.R.S. As a result, local building departments were directed to include the following language with check box options to their permitting applications:

- I do not know if an asbestos inspection has been conducted on the building materials that will be disturbed by this project;
- An asbestos inspection has been conducted on the building materials that will be disturbed by this project on or about: (Date); or
- An asbestos inspection has not been conducted on the building materials that will be disturbed by this project.

According to the Program, this inclusion, while providing an important educational tool, has also created confusion among permit applicants which has led to major asbestos spills.

According to the Program, most individuals select the check box indicating that they do not know if an inspection has been performed. Since local building departments are not involved with enforcement of the Act, applicants may still receive local approval, regardless of the check box that they select. Consequently, applicants may believe that they have met all requirements through the completion and approval of the local building permit application and may not perform further research to ensure that they have met requirements under state law as well.

In these circumstances, when demolition or renovation begins on a project site in an area of public access that would be required by state law to undergo an inspection and one is not performed, the permit applicant may not be aware of the presence of asbestos-containing materials (ACM). When ACM is present in an amount that exceeds trigger levels and if proper abatement techniques are not employed, a major asbestos spill may occur which could jeopardize public safety and welfare.

Further, since local building departments are not charged with the regulation or enforcement of the Act, it is not realistic to assume that every instance in which an applicant selects the "I do not know if an asbestos inspection has been conducted" check box that local building departments will provide additional information regarding state requirements.

Therefore, additional language should be added to the form below the check boxes, indicating,

> *If you have questions regarding whether an asbestos inspection is required under state law for your permitted project, please contact the Indoor Environment Program within the Department of Public Health and Environment for additional details before beginning any demolition or renovation.*

Since local building departments do not currently have this language in permit applications that are printed and in circulation, the language could be added as an insert to the application and could be formally added to the application the next time a new application is developed by the permitting jurisdiction.

The second and tenth sunset criteria ask,

> If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest; and
>
> Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

The current check boxes included in local permit applications throughout the state accomplish their intended purpose by making permit applicants aware that asbestos

inspections do occur. However, since the check box section does not also include additional information for applicants regarding what to do if they are unsure whether an inspection is required, the public health and welfare may be at risk in situations where demolition or renovation occurs without the required inspection and an asbestos spill results.

Further, amending the language in the permit applications will direct applicants to the appropriate resources and relieve any pressure felt by local building departments to provide additional information. Since no regulatory mechanism is added to the form, only additional resource information, this amended language is a less restrictive form of regulation consistent with protecting and informing the public of the asbestos inspection requirement. Therefore, the General Assembly should revise section 25-7-509.5(2)(b), C.R.S., to direct permit applicants to contact the Program regarding state asbestos inspection requirements, to be included in local building permit applications.

Recommendation 3 – Remove the references within the Act stating that rules promulgated under the Act can be no more stringent than the federal Occupational Safety and Health Administration laws and regulations.

The Act and subsequent rules promulgated by the Commission are required to ensure compliance with the standards established in the NESHAP, AHERA, and the federal Asbestos School Hazard Abatement Reauthorization Act (ASHARA). These federal laws and the Act have similar stated goals and perspectives, which are predominantly to protect the public welfare in areas of public access.

In addition, there are references within the Act that relate specifically to laws and standards administered by the Occupational Safety and Health Administration.

Section 25-7-503(1)(a), Colorado Revised Statutes, (C.R.S.), states that the Commission has the authority to promulgate rules including,

> Performance standards and practices for asbestos abatement which are not more stringent than 29 CFR 1910.1001 and [29 CFR] 1926.1101.

The two federal references mentioned refer to the Occupational Safety and Health Standards, and the Safety and Health Regulations for Construction, administered by the federal Occupational Safety and Health Administration (OSHA).

Additionally, section 25-7-503(2), C.R.S., states,

> Notwithstanding any other provisions of this section to the contrary, neither the Commission nor the Division shall have the authority to enforce standards more restrictive than the federal standards set forth in the "Occupational Safety and Health Act", on asbestos abatement projects which are subject to such federal standards; except that, nothing

> in this subsection (2) shall be construed to prevent the application and enforcement of the maximum allowable asbestos level prescribed in subparagraph (II) of paragraph (a) of subsection (1) of this section as a clearance level and a condition of reentry by the general public upon completion of the project.

This section states that standards may not be enforced that are more restrictive than the Occupational Safety and Health Act.

These comparisons are confusing, since the intent of the Act is to protect the health, safety, and welfare of the public, whereas the Occupational Safety and Health Act and other OSHA regulations refer specifically to worker protections, which may or may not occur in areas of public access regulated by the Act.

The second and tenth criteria ask,

> If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest; and
>
> Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Essentially, the Act and federal OSHA regulations do not utilize the same regulatory perspective, and do not intend to provide similar protections, although they may provide complementary protections which serve to better protect the public welfare.

To require that the Act be no more restrictive in its protections of the public in areas of public access than the Occupational Safety and Health Act and OSHA regulations in their protections of workers in work environments, whether public or private, is an unequal comparison and may lead to misinterpretation of the Act.

Therefore, the General Assembly should remove the references within the Act stating that rules promulgated or enforced by the Act can be no more stringent than the federal Occupational Safety and Health Administration laws and regulations.

Administrative Recommendation 1 – The Commission should authorize the option to complete synchronous online refresher courses for all eligible asbestos professions.

Historically, most asbestos professions regulated by the Act have been required to complete in-person refresher courses and pass an examination on a yearly basis to meet ongoing certification requirements.

The regulatory program established in the Act is administered through the Commission's

Regulation 8, Part B of "Control of Hazardous Air Pollutants", located in the Colorado Code of Regulations (Reg. 8). Specifically, Reg. 8 establishes that workers, supervisors, and project designers must complete eight hours of refresher training per year and air monitoring specialists, building inspectors, and management planners are required to complete four hours of refresher training per year. These refresher requirements are consistent with the Environmental Protection Agency's (EPA's) refresher course requirements outlined in the Asbestos Model Accreditation Plan, with the exception of air monitoring specialists whose requirements are specific to Colorado. Unlike coursework for initial licensure, refresher courses do not contain hands-on components that would require courses to be completed in person.

As a result of the COVID-19 pandemic, refresher courses have been offered on a limited basis in an online, synchronous capacity. Stakeholders have specifically expressed support for the continuance of the online synchronous options in a post-COVID-19 environment, mainly due to the additional costs and burdens associated with the in-person refresher course requirement. Further, stakeholders have largely expressed favor for a synchronous format as preferred above an asynchronous format, since synchronous courses would allow for live collaboration and discussion when completing coursework related to the complexities of asbestos abatement.

Due to limited in-person course availability, asbestos professionals who live in rural parts of Colorado have often travelled predominantly to the Denver metro area, Pueblo or Grand Junction to complete yearly refresher coursework. This often requires multiple days of hotel rooms, meals, gas, and vehicle utilization. Additionally, this in-person requirement may lead to a loss of work for the days required for coursework completion.

The second, third, and tenth sunset criteria ask,

> If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

By authorizing synchronous online refresher courses as a permanent refresher course option, individuals working in applicable asbestos professions in rural communities could complete certification refresher course requirements without unnecessary travel

and expense.

Additionally, important asbestos abatement work could potentially continue without this annual interruption, which would be in the public interest.

Therefore, the Commission should make permanent the option to complete synchronous online refresher courses for all eligible asbestos professions.

Administrative Recommendation 2 – The Program should continue to evaluate the option to implement online recertification examinations and update recertification examination content.

All examinations for recertification are administered by the Program and must be performed in person, predominantly at the Program's location in Metro Denver. During the COVID-19 pandemic, the Program did use its discretion to allow recertification without the examination requirement for eligible applicants.

The Program has indicated that online testing options have been considered, although there are no known current plans to either develop an online examination administered by the Program or to pursue other available testing vendor options.

Although additional expenditures may be required, the Program should continue to evaluate options for online recertification examinations, including whether an outside vendor could be utilized to ensure that testing is psychometrically validated and can develop testing mechanisms that are offered in a secure, online format.

The current requirement that many asbestos professionals must travel to complete the recertification examination on an annual basis creates an undue burden of expenses, including travel, food, accommodations, and loss of time at work.

Additionally, recertification examinations have not been fully updated by the Program for a number of years. Stakeholders have indicated that some of the current recertification examinations contain questions that are outdated or incorrect. The Program has indicated that it has continued to make changes to the examinations over time. However, all of the tests are currently in paper copy and changes to outdated questions are corrected as each test is updated individually. If questions are known to be incorrect on an examination, the Program has indicated that these questions are not counted toward the overall examination score.

Further, the Program has considered utilizing additional technology to increase efficiency with examination processes and formats and has indicated that transitioning to a digital format would make it easier to keep examinations updated and current. Therefore, through the implementation of an online recertification examination, the Program could simultaneously update these tests to contain more up-to-date content

while utilizing technology purchased to allow tests to be completed online.

The second, third, and tenth sunset criteria ask,

> If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

If online examination options for recertification were developed and the examination content updated, professionals could complete up-to-date examination requirements within their own communities, which would benefit asbestos professionals and, in turn, better serve the public interest since the current examination requirement may require asbestos professionals to take several days away from their schedules and could delay asbestos abatement completion in some instances. Therefore, the Program should continue to evaluate options to implement online recertification examinations and update examination content.

Administrative Recommendation 3 – The Program should update the initial certification examinations utilizing psychometric evaluation to ensure that all certification examinations for asbestos professionals reflect any practical application skills required to perform their work with minimal competency.

The Program currently administers certification examinations for all applicable asbestos professionals, based upon the content included in the training course for each specific discipline.[99]

Throughout the course of the sunset review, stakeholders raised concerns that based upon the requirements listed in statute and rule, an individual could potentially complete a training course lasting only a few days and pass the examination administered by the Program to become a certified asbestos professional without any prior experience in the asbestos industry. Specifically, this concern was raised relating to the categories of asbestos supervisor and asbestos inspector.

[99] 5 CCR 1001-10-B-II.C.4. Regulation Number 8, Control of Hazardous Air Pollutants.

Errors related to asbestos abatement or inspection can indeed lead to a public health emergency, which is why it is crucial to ensure that asbestos professionals receive adequate training necessary to perform their jobs with minimal competency.

Some stakeholders have suggested that the solution may be to add a work experience requirement to ensure that these asbestos professionals have previous experience in the field as a remedy. However, previous experience requirements are subjective. The creation of a requirement for a certain number of hours, weeks, months, or even years of physical presence in an industry does not ensure that the individual has received adequate training and experience that would make them a minimally competent asbestos professional in the specific certification sought.

As an alternative, the Program already requires the passing of its certification examinations for each applicable asbestos profession. Rather than selecting a seemingly subjective amount of field experience as a requirement, the Program could reformulate its examinations utilizing psychometric validation.

When psychometric validation is performed to develop an examination, the primary source of information utilized is typically occupational analysis. This examination development method assists to determine that the applicant truly possesses the skills and specific occupational knowledge required to practice with minimal competency at an entry level and helps to ensure that necessary knowledge and job-related skills are appropriately weighted within the examination, given their importance.

It should also be noted that in the 2005 sunset report, an administrative recommendation was made by COPRRR to the Program to psychometrically revalidate all certification examinations every five years. As of the writing of this report, no psychometric validation is known to have occurred since 2005 for any of the Program's certification examinations.

The third and eighth sunset criteria ask,

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices…; and
>
> Whether the scope of practice of the regulated profession contributes to the optimum use of personnel...

Since the Program administers certification examinations, it can increase examination thresholds to require that applicants demonstrate real-world practical application of procedural knowledge. This change could lead to a more qualified work force, which would better contribute to the optimum use of personnel and more fully protect the public interest.

Therefore, the Program should update the initial certification examinations utilizing psychometric validation for asbestos professional certification to ensure that the examinations reflect any practical application skills required to perform the work with minimal competency.

Administrative Recommendation 4 – The Program should continue discussions with the Environmental Protection Agency regarding whether initial certification examinations may be offered in Spanish for asbestos abatement supervisors.

Presently, asbestos abatement workers are the only category of asbestos professionals that have the option to complete the initial certification examination administered by the Program in Spanish. It is presently unknown how many abatement workers have opted to complete the examination in Spanish, since the Program does not currently track this information separate from other initial certification examination types.

Throughout the course of the sunset review, stakeholders had largely indicated that they would like to see a Spanish examination option expanded to asbestos supervisors as well. Further, stakeholders have indicated that many talented asbestos workers have expressed reluctance with attempting the initial certification examination for the supervisor category, since this examination must be completed in English. Therefore, this requirement to test in English may create an undue barrier to entry into the asbestos supervisor profession.

The EPA has indicated, during the course of this sunset review, that only the asbestos worker category can complete *coursework* in Spanish.[100] However, the EPA has provided no additional information through the course of the sunset review as to whether initial certification examinations may be provided in Spanish, or if other disciplines can take their initial certification examinations in Spanish even if the coursework must be completed in English. The Program has indicated that based upon previous discussions with the EPA, they perceive current requirements to exclude the completion of examinations in Spanish for any category of asbestos professional other than asbestos workers.

However, if the extent of the EPA's requirement regarding Spanish language certification requirements relate specifically to *coursework* and not to examination, then individuals may potentially have the ability to complete an examination in Spanish for the asbestos supervisor category even if they are required by the EPA to complete coursework in English.

[100] Environmental Protection Agency. *Can Courses Taught under the Asbestos Model Accreditation Plan (MAP) be Taught in Foreign Languages?* Retrieved July 12, 2021, from https://www.epa.gov/asbestos/can-courses-taught-under-asbestos-model-accreditation-plan-map-be-taught-foreign-languages

The eighth and tenth sunset criteria ask,

> Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action; and
>
> Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

The ability to perform an examination in one's native language can provide efficacy in the examination process which may, in turn, help an individual to relay learned information more effectively, and this change could potentially eliminate barriers to entry. Additionally, increased opportunities within the asbestos supervisor category may lead to more competition in the industry, which would better serve the public interest.

Therefore, the Program should continue to hold further discussions with the EPA regarding whether initial certification examinations may be offered in Spanish for asbestos abatement supervisors, and if not, determine if a forum is available within the EPA for discussion regarding any suggested changes to related federal requirements.

Administrative Recommendation 5 – The Program should complete business process reengineering to increase efficiency in the services offered.

The purpose of business process reengineering is to reevaluate the fundamentals of all workflows within an organization with a stated purpose of streamlining processes and increasing customer satisfaction. In fact, private companies and government entities have utilized this approach for many years as a means of increasing efficiency.

Through the sunset review process, stakeholders have discussed a variety of Program processes and procedures that may warrant revisitation through business process reengineering, including the variance approval process, the homeowner opt out process, the instructor approval process, and asbestos professional certification requirements. Additionally, stakeholders have expressed confusion regarding the rules and policies of the Program as they relate to statutory authority and regulatory requirements.

Stakeholders who have raised these issues have done so to provide examples of Program processes that they feel are overly burdensome to the asbestos industry and consumers, which may cause delays in asbestos abatement projects throughout Colorado, and—in turn—potentially become an issue of public protection.

The Program has further indicated that, due to the complexity and importance from a public protection perspective, stringent regulatory requirements are necessary to

ensure that members of the industry are following state and federal requirements with minimal competency.

However, neither the perspective of the stakeholders nor the perspective of the Program is mutually exclusive. The completion of business process reengineering may provide a method of ensuring that the general welfare of the public is protected while at the same time, utilizing the most efficient processes to ensure timeliness and safety in the completion of asbestos abatement projects throughout Colorado.

The second, third, and fourth sunset criteria ask,

> If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the agency rules enhance the public interest and are within the scope of legislative intent;
>
> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> Whether an analysis of agency operations indicates the agency performs its statutory duties efficiently and effectively.

By undertaking business process reengineering, the Program can evaluate opportunities to increase regulatory effectiveness and streamline processes, thereby increasing consumer satisfaction while still ensuring minimal competencies are met.

Therefore, the Program should complete business process reengineering to increase efficiency in the services offered.

Administrative Recommendation 6 – The Program should upgrade to a new computer system and implement its utilization as soon as possible.

As evidenced from the data provided in this sunset review, the Program is currently utilizing a computer system with extreme limitations that affect the quality and quantity of data that the Program can track.

Specifically, for the purposes of this sunset review, data were unavailable in standard metric areas, including: examination pass rates generated through an automated process; examination pass rates for those examinations completed in Spanish; separate statistical data for initial and renewal certification applicants; and complaint data tracking separate from the data reported for notice of inspections filed.

Program staff has indicated that a new computer system would be beneficial to the administration of the Program and would welcome the opportunity to implement a new system with more efficient tracking mechanisms.

The Program has also indicated that the Division has identified a vendor to implement new systems. However, the computer system that was slated for Program use did not appear that it would serve the needs of the Program specifically, and there are no official plans in place to secure another computer system.

The third sunset criterion asks,

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices, and any other circumstances, including budgetary, resource, and personnel matters.

The main computer system currently utilized by the Program is not adequate to support needs related to data tracking, which is a crucial component of any regulatory program. The implementation of a new computer system that is designed to meet the unique needs of the Program would undoubtedly benefit Program staff in process efficiency and data tracking, and would better protect the public welfare, since the Program could more effectively identify and communicate regulatory trends. Therefore, the Program should upgrade to a new computer system and implement its utilization as soon as possible.

Administrative Recommendation 7 – The Commission should form a temporary stakeholder group to assist with the implementation of all other administrative recommendations.

This sunset report contains a variety of substantive administrative recommendations which will require time and resources to implement. With a staff of only 16 full-time equivalent employees and limited financial and technological resources, it may not be feasible to task the limited staff at the Program with sole implementation.

Therefore, if the Commission were to form a diverse stakeholder group which could include Commission members, Division and Program staff, industry professionals and consumers, each recommendation could be explored from a variety of perspectives, which could help to ensure that the method of implementation is in the public interest.

Additionally, the Commission could receive regular reports from the stakeholder group regarding potential implementation strategies, and the Commission would then have the ability to provide available feedback or support when necessary. The stakeholder group could also be dissolved upon completion of recommendation implementation when the work is completed.

The third and fifth sunset criteria ask,

> Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and
>
> …whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

The formulation of a stakeholder group through the Commission would allow participation from a variety of stakeholders, many of whom may be directly impacted by the implementation of these administrative recommendations, including members of the industry and consumers. Further, the Program could receive additional support with recommendation implementation, and the resulting administrative changes could produce a more measured outcome, which is in the public interest. Therefore, the Commission should form a temporary stakeholder group to assist with the implementation of all other administrative recommendations.

Appendix A – Customer Service Survey

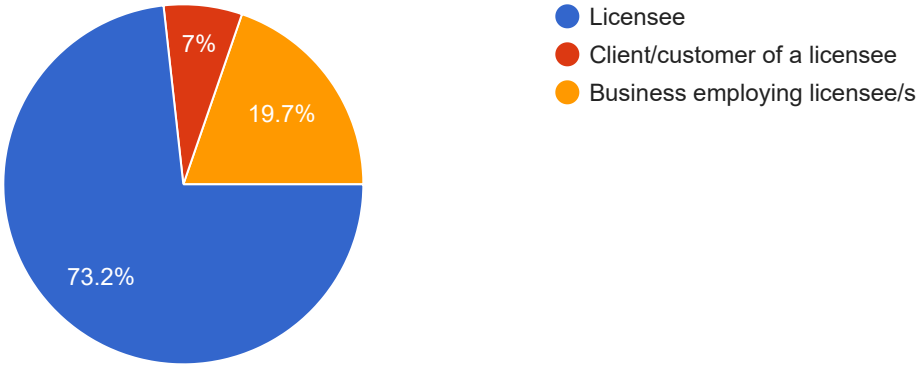
In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of asbestos professionals who are licensed by the Indoor Environment Program. The survey was sent to 158 participants; 8 emails were returned as undeliverable. The survey received 71 responses, which is a 47.33 percent response rate. Survey results may be found on the pages that follow.

COPRRR Customer Service Survey for the Indoor Environment Program

72 responses

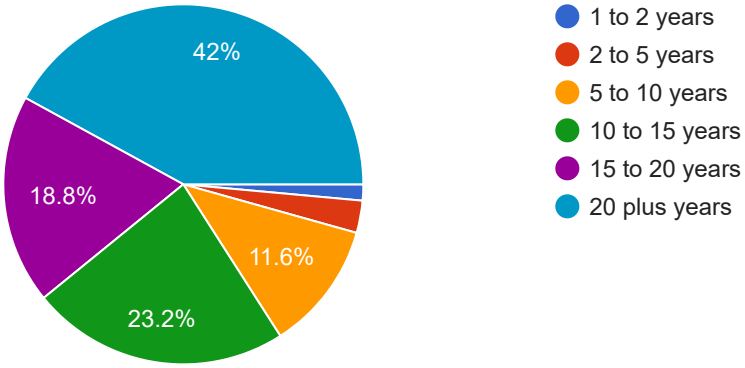
What is your relationship to the Indoor Environment program?

71 responses



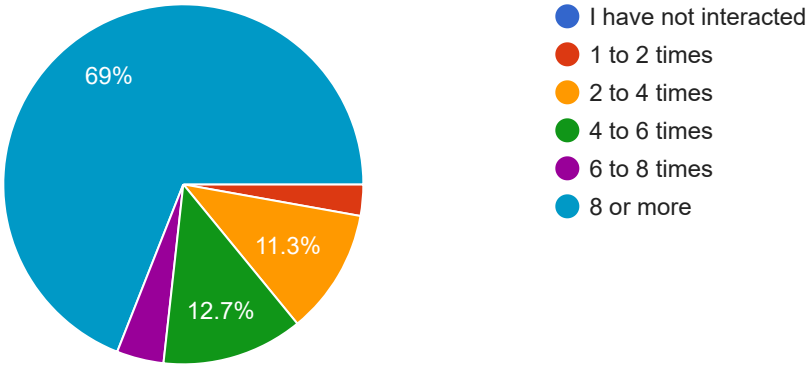
If you are a member of the profession or occupation that is regulated by the Indoor Environment Program, please indicate your years of experience.

69 responses



In the past year, how many times have you interacted with the Indoor Environment Program. Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).

71 responses



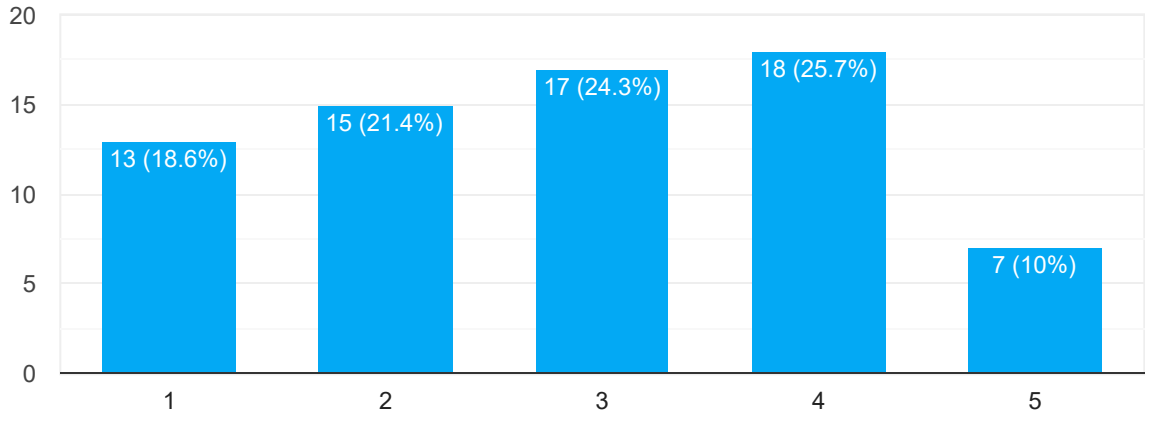
What was your primary purpose in interacting with the program?

71 responses

- licensing or registration - 31%
- to obtain help with an issue - 28.2%
- to participate in a board, committee, commission, taskforce, or working group for the agency - 8.5%
- comment on or learn about an existing/proposed rule or legislation - 8.5%
- respond to a request made to you - 7%
- questions about scope of practice - 7%
- inspection, audit, examination - 5.6%
- other - 4.2%

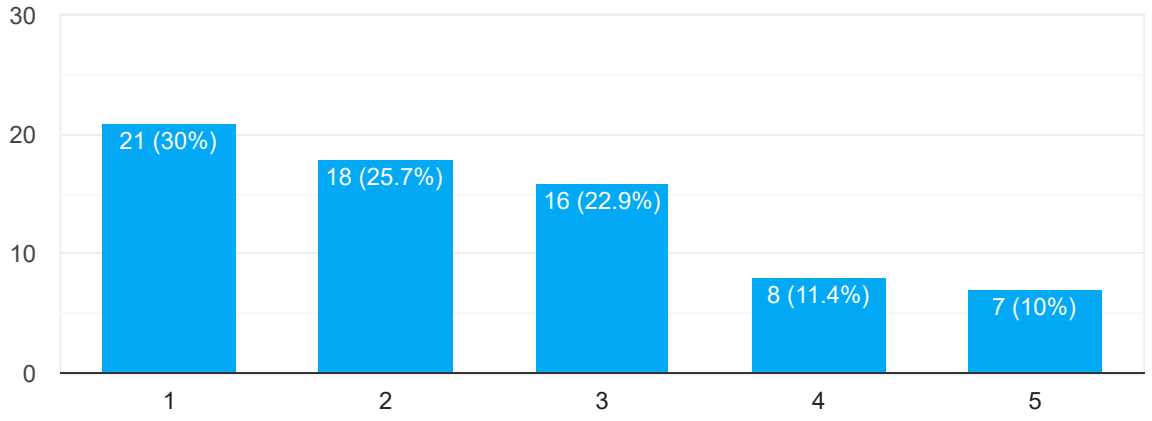
Overall please rate the service provided by the Indoor Environment Program on a scale of 1 to 5 with 1 being unacceptable and 5 being very acceptable.

70 responses



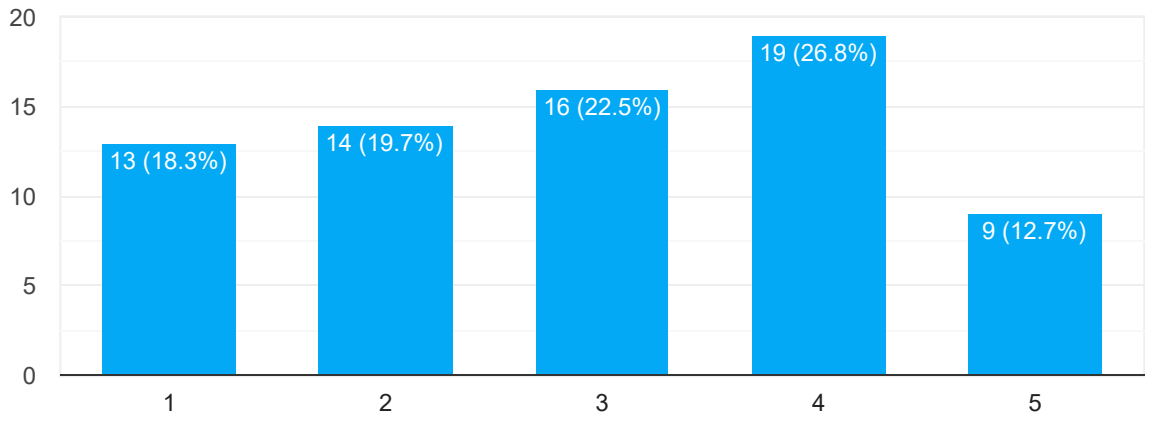
Please rate the the usefulness of the Indoor Environment Program's website in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

70 responses



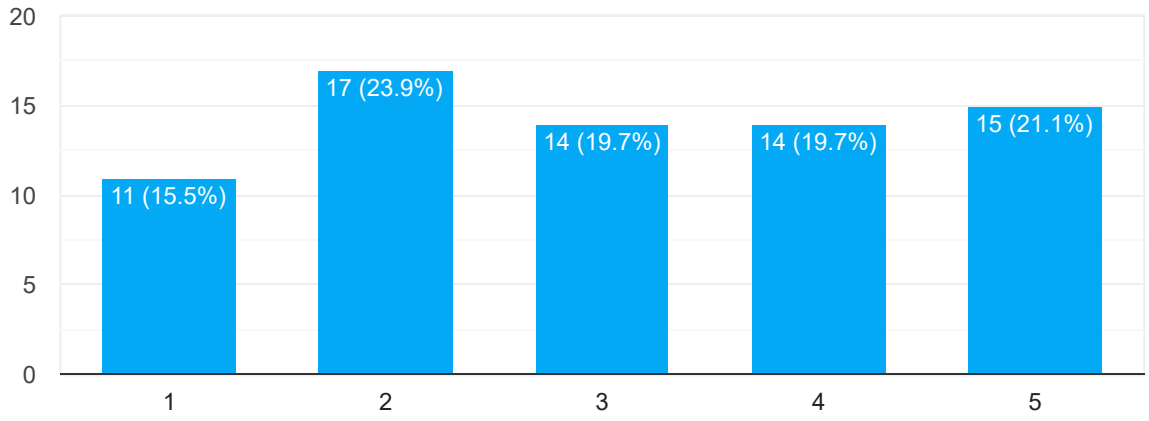
Please rate the the usefulness of the Indoor Environment Program's communications in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

71 responses



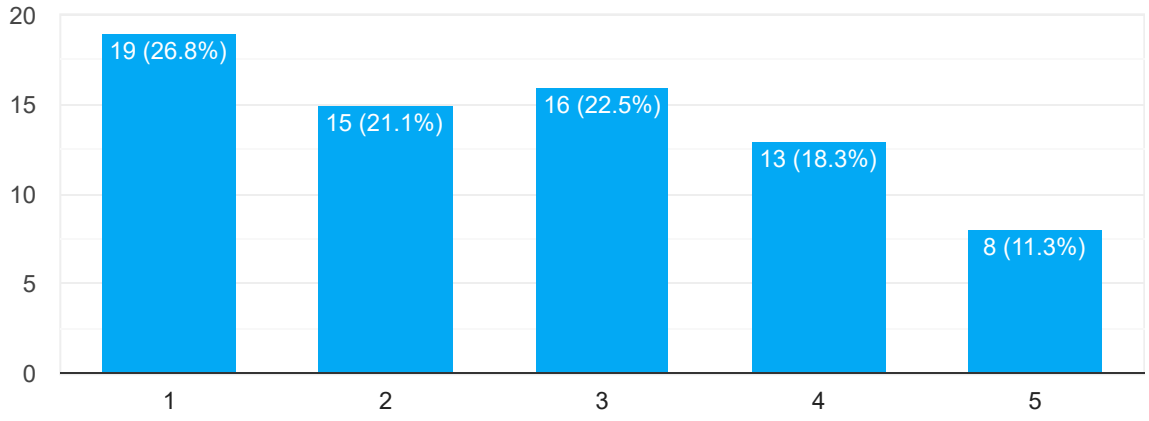
Regardless of the outcome of your most recent issue, do you feel the Indoor Environment Program listened to your concerns? Please use a scale of 1 to 5, with 1 being none of my concerns were heard and 5 being all of my concerns were heard.

71 responses

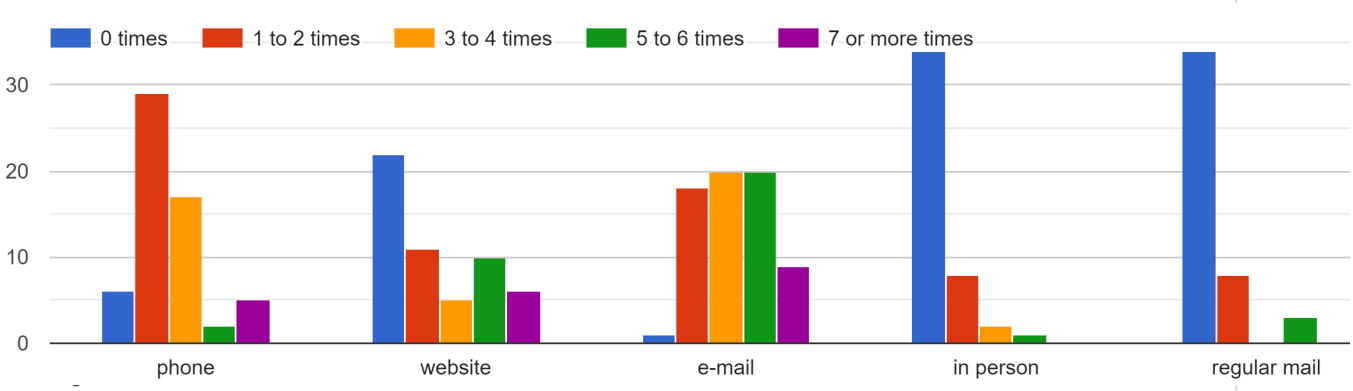


Please rate the timeliness of the Indoor Environment Program in responding to your issues on a scale of 1 to 5 with 1 being very untimely and 5 being very timely.

71 responses

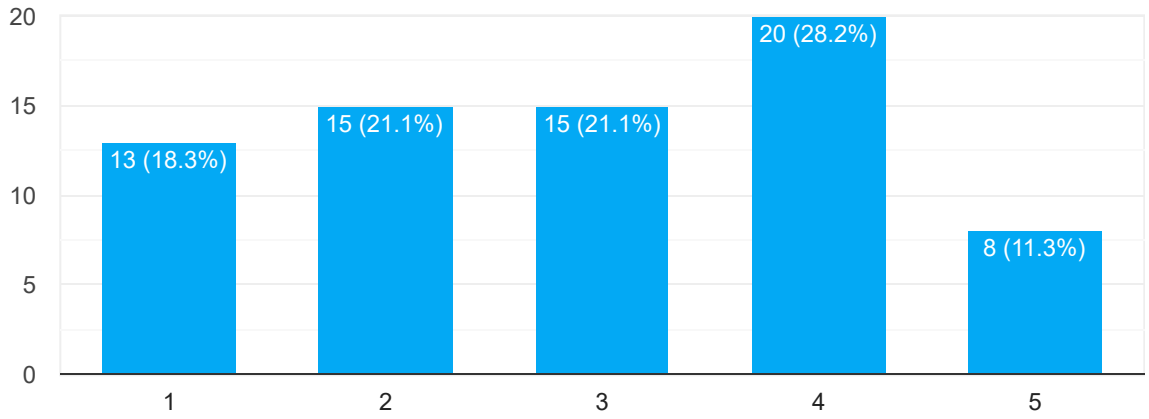


Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type interaction selected.)



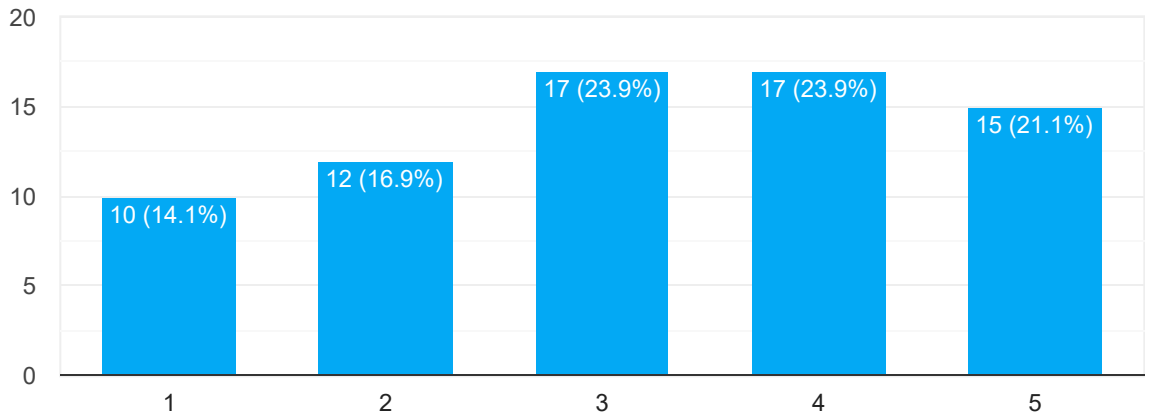
Please rate the helpfulness of the Indoor Environment Program in resolving your issue or need with 1 being not very helpful and 5 being very helpful.

71 responses



Please rate the professionalism of the Indoor Environment Program's staff on a scale of 1 to 5 with 1 being very unprofessional and 5 being very professional.

71 responses



On a scale of 1 to 5 please rate the accuracy of information provided by the program with 1 being not very accurate and 5 being very accurate.

71 responses