

## Asbestos-Contaminated Soils



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## Jurisdictional Overlap

### **Air Quality Control Regulation 8**

- Demo, “Spills” & Facility Components

### **SW Regulations Part B Section 5**

- Disturbed or Dispersed ACM in Soil

### **Solid Waste Disposal Act**

- “Placement” in Stockpiles or Use as Fill

### **Water Quality Control Act?**

- Special BMPs or Spill Reporting?

### **Voluntary Cleanup Program**

- Brownfield Approach

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## Transactional Considerations

### **Real Estate Due Diligence in Colorado Now Includes Outdoor Asbestos**

- Expanded Scope of Historical Document Review
- Expanded Scope of Site Personnel Interviews
- Expanded Scope of On-Site Visual Inspection
- “High,” “Elevated” and “Low” Potential for “Reason to Know” About ACM

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## Unanticipated Discovery



Oops ... What Now?

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## Key Definitions

### “Management”

- means the handling, storage, collection, transportation and disposal of solid waste.

### “Remediation” or “Remediate”

- means a cleanup or removal to prevent or minimize the possible current or future release of hazardous substances to prevent an unacceptable threat to present or future public health, welfare or the environment.

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## Not A Remediation Regulation

### “Remediation”

- Cleanup and “Chasing” Contamination is Not Required Under Section 5.5 but ... 🤔
- You Might Receive an Order if:
  - there is a serious threat to human health that must be mitigated
  - the facility has demonstrated an unwillingness to perform the necessary actions in response to a serious threat to human health, or
  - serious violations of the regulations have been identified by the Division.

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## Management In-Place

### “Management”

- Complete Delineation and Removal is Not Required, but... 🧐
- All Disturbed Soil Must be Removed

### “Not a Remediation Rule” Redux

- Remediation is Your Choice, but... 🧐
- Manage In-Place > Costs and < Uses
- “Do Nothing” = Another Brownfield

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## Interim Actions

### Site Characterization is Required

- Soil Sampling for (invisible) ACM is Not Required Under Section 5.5, but.. 🧐
- It Might be Under AQCC Reg. 8 or the Solid Waste Disposal Act

### Surface Soils

- Visual Inspection – Grid Protocol

### Subsurface Soils

- Drilling, Potholing, Trenching & GPR

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## Visual Site Characterization



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## Clearance Sampling

### Zero Tolerance in Dirt

- Significant Uncertainty in Toxicology
- EPA Recommends Risk-Based, Site-Specific Numeric Criteria

### Visual Clearance Instead

- Don't Go Looking For Trouble

### Air Monitoring

- Any Fibers by TEM = Notice to CDPHE

### Schools are Different?

- 70 s/mm<sup>2</sup> by TEM (statistical) is Acceptable

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## Other Issues

### Guidance Document

- No Legal Effect, but... 🧐
- Deference to Agency Interpretation

### Training & Certification

- Assures Professional Qualifications, but... 🧐
- Not Wholly Applicable to Agency Personnel

### Exemptions

- This is Necessary to Protect the Public, but... 🧐
- Homeowners are Exempt

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## Media / Matrix Other Than Soils



**Construction Debris**  
**Municipal Solid Waste**

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