

# C&R

**CLEANING & RESTORATION**

A PUBLICATION OF THE RESTORATION INDUSTRY ASSOCIATION

## TO TEST OR NOT TO TEST

Redefining the Role of Third-party Consultants

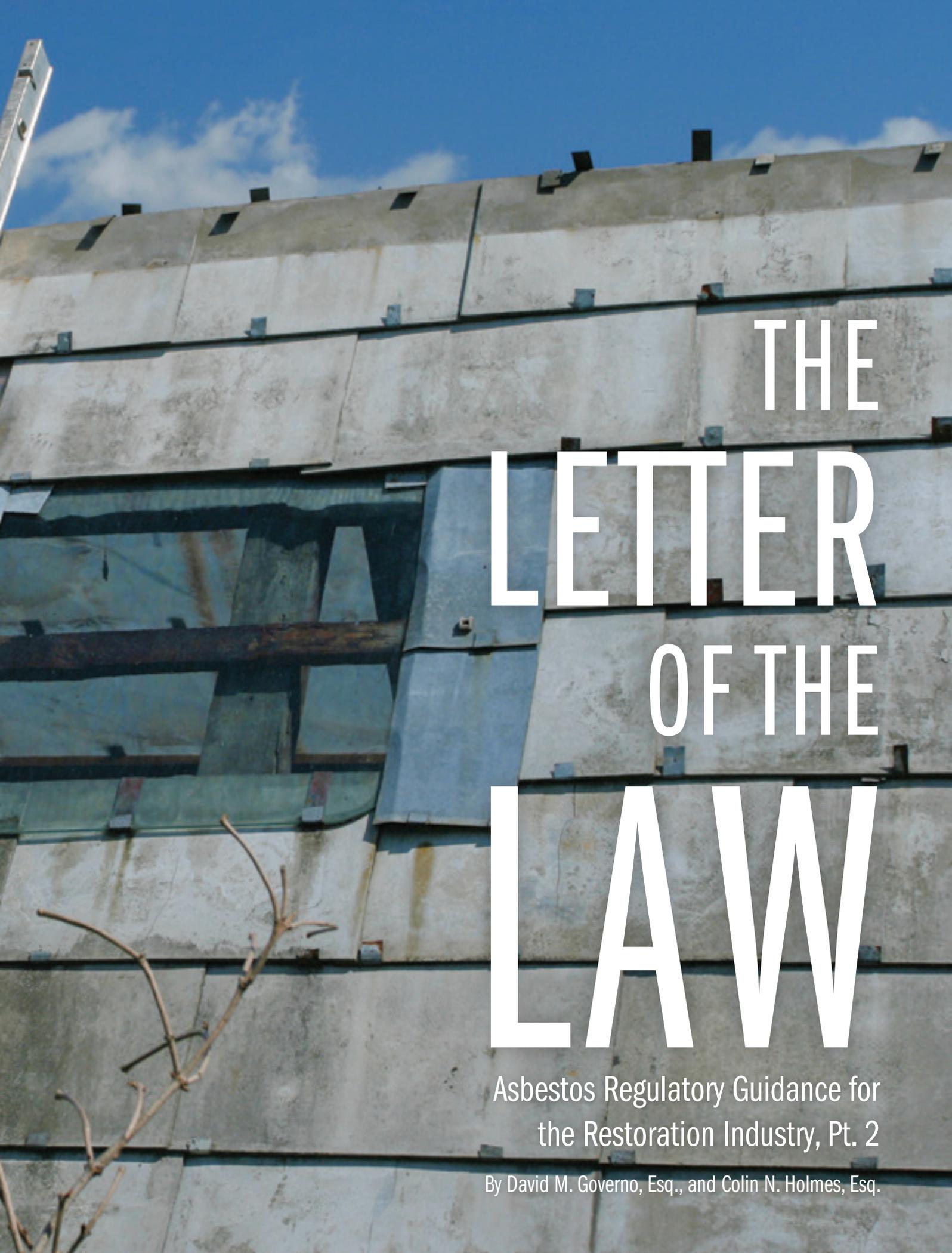
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**Underdog Leadership**

**The Letter of the Law: Asbestos  
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**5 Questions With Scott Stamper**





# THE LETTER OF THE LAW

Asbestos Regulatory Guidance for  
the Restoration Industry, Pt. 2

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*RIA recently released a comprehensive fact sheet providing asbestos guidance specifically for the restoration industry. It can be downloaded free of charge from the RIA website, [www.restorationindustry.org](http://www.restorationindustry.org).*

*Author's note: Information in this article is not intended to be and should not be interpreted as legal advice. Each situation is different and you should consult with an attorney licensed to practice in your state about specific legal issues.*

Contrary to popular belief, asbestos is omnipresent in America and abroad. To protect employees from health hazards and to avoid potential civil liability and criminal penalties, everyone involved in the cleaning and restoration industry should be aware of the prevalence of asbestos at job sites.

The rules related to restoring a building containing asbestos are complicated and differ depending on a job-site's location. Contractors should familiarize themselves with the relevant laws and the specific local enforcement policies for a jobsite before engaging in such work.

The U.S. Environmental Protection Agency (EPA) and the U.S. Consumer Product Safety Commission have banned several asbestos products, and many manufacturers have since voluntarily limited the use of asbestos. Nevertheless, asbestos remains present throughout the country, particularly in buildings constructed before 1980. It is commonly found in insulation, floor tiles, ceiling tiles, roofing, paints and coating materials, fireproofing and many other materials.

Products can contain widely varying concentrations of asbestos, ranging from 100 percent to trace amounts. Products with less than 1 percent of asbestos generally are not treated as asbestos for regulatory purposes.

In the past few decades, federal and state governments have enacted complicated regulatory regimes by which asbestos abatement is governed. Cleaning and restoration professionals should understand and comply with these rules or be prepared to face significant fines, civil liability and even criminal penalties. Before starting a project that might disturb asbestos, company owners and managers must be familiar with the full range of federal and state—and even local—regulations that govern licensing, certification, notification, worker safety and disposal.

The federal government regulates asbestos exposure in buildings chiefly through two agencies, the U.S. Occupational Safety and Health Administration (OSHA) and the EPA. OSHA sets standards for worker protection involving construction, including the renovation or demolition of buildings, while the EPA sets broader standards to protect workers and the environment from asbestos. Restoration

contractors need to comply with regulations promulgated by both agencies when working at a job site that may have asbestos-containing material (ACM).

In the March-April issue of *C&R*, we discussed federal regulations. This month, we will cover state regulations.

In addition to federal asbestos requirements under OSHA and the EPA, contractors must consider often-overlapping requirements at the state level. Each state has its own rules, and asbestos-related regulations can differ significantly. Contractors must review the laws of the state where the job site is located and determine what regulations apply.

Nevertheless, it is a useful exercise to examine the rules from one state, Massachusetts, as a case study to understand the types of regulations that exist.

#### *1. State and Federal Asbestos Regulation Overlap*

Under the Clean Air Act, the EPA may delegate its authority to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) to state and local agencies. Even after the EPA delegates such power, however, it retains its authority to oversee agency performance and enforce NESHAP. In Massachusetts, for example, the EPA has delegated its authority to implement and enforce NESHAP to the Massachusetts Department of Environmental Protection (MassDEP). This means that the MassDEP asbestos regulations, at a minimum, include all of the requirements of NESHAP.

Contractors must examine the state rules carefully, however, because states can depart from NESHAP's requirements. MassDEP rules are more stringent than NESHAP in several instances. For example, MassDEP imposes additional notification requirements and worker safety protection rules. The most pertinent regulation in Massachusetts is *310 CMR 7.15*, which governs the renovation or destruction of residential, commercial and institutional buildings and requires that all owners, operators and contractors adhere to a series of asbestos-related requirements. The Massachusetts Division of Occupational Safety (DOS) in the Department of Labor Standards also sets out worker protection regulations similar to OSHA. *453 CMR 6.00*

MassDEP requires that contractors, before beginning work on a project, inspect for asbestos-containing material (ACM) and determine whether asbestos will be disturbed by the proposed renovation or demolition activity. *310 CMR 7.15(b)* Inspection must be performed by a consultant certified by DOS. MassDEP requires 10 days notification before any renovation or demolition project begins and a fee of \$85 per notification.

When no asbestos is present, work on residential buildings with one to 20 units does not trigger the duty to file a notification for construction or demolition work. However, if asbestos is present, work on residential buildings of any size triggers the notification requirements. The MassDEP website provides the requisite notification forms.

Like NESHAP, MassDEP mandates several work practice standards that govern the disposal of ACM and require that it be wetted and sealed in airtight containers with specific labels and warnings, and disposed of at an approved landfill. *310 CMR 7.15(c)-(e), 19.061 and 453 CMR 6.13-6.15* Records are required to document the shipment of such waste. *453 CMR 6.11* Massachusetts has also established a licensing program, through DOS, which requires the training and certification of asbestos abatement contractors, supervisors, workers, inspectors and management planners in asbestos safety, abatement procedures and the health effects of asbestos. *453 CMR 6.00-6.10*

DOS has several worker-protection regulations similar to OSHA regulations. Contractors need to consider both sets when engaged in renovation or demolition work. DOS rules govern construction, demolition, alteration, repair and maintenance involving any facility or location where ACM is present. *453 CMR 6.13-6.15* Massachusetts also requires the same personal protection and medical monitoring as OSHA. *453 CMR 6.03* Like the OSHA regulations, DOS requires businesses to establish designated work areas where ACM is handled and provide warnings, decontamination rooms, ventilation systems and particular methods of disposal. *453 CMR 6.13-6.15*

## 2. Inspections and Penalties

MassDEP inspects buildings and can issue fines and other penalties. In the past few years, it has issued heavy fines against construction and renovation companies for not complying with state asbestos regulations. In 2011, MassDEP imposed

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a \$41,235 fine against a Natick real estate agent and a Milford-based construction company for the improper removal and storage of ACM and for not providing proper respiratory equipment for workers. The same year, it fined a Milford property company \$28,372 for violations that occurred during a rental property renovation. In 2013, it imposed a \$10,000 fine against a demolition company in Pembroke for the improper handling of ACM when removing siding.

### ASBESTOS-CONTAMINATED CONTENTS

We are aware of no federal or state regulations directly addressing the restoration of asbestos-contaminated soft goods such as clothing, carpets, furniture and textiles. Consequently, the proper approach to handling such a situation depends on the characteristics and value of the particular item, as well as the desires of its owner, consistent with the applicable science, technology and industry standards.

### CONCLUSION

The legal system is no substitute for the training, diligence and integrity needed to ensure that asbestos health hazards are properly handled. Before engaging in any work that could impact asbestos, it is important to understand the specific scope of the work to be performed, the governmental regulations that apply to your business and the applicable industry standards of care.

Consult with licensed asbestos professionals to ensure compliance with the applicable regulations. Most importantly, take the necessary steps to protect workers, as well as yourself, and be sure to comply with the restoration industry's code of ethics. **RIA**

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