

**TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH**

**SERIES 63  
ASBESTOS ABATEMENT LICENSING RULE**

**§64-63-1. General.**

1.1. Scope. -- This legislative rule establishes procedures and standards for the licensure and training of persons who engage in activities related to asbestos abatement and the operation of asbestos abatement projects; it also identifies the responsibilities of owners of buildings or other man-made structures where asbestos abatement projects are being conducted.

1.2. Authority. -- W. Va. Code §16-32-3.

1.3. Filing Date. -- April 3, 1998.

1.4. Effective Date. -- May 4, 1998.

1.5. Repeal of Former Rule. -- This rule repeals and replaces West Virginia Division of Health Administrative Rules, 64 CSR 63, Asbestos Abatement Licensing Rule, 1990.

1.6. Application. -- This rule applies to: all owners of buildings and other man-made structures; all persons who conduct asbestos abatement projects; all asbestos analytical laboratories; all persons who perform the work of asbestos clearance air monitors, contractors, inspectors, management planners, project designers, supervisors, workers; and all resilient floor covering workers: Provided, That any individual, corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any business entity which contracts to remove resilient floor covering materials in single-family dwellings is not required to be licensed as an asbestos contractor.

1.7. Enforcement. -- This rule is enforced by

the director<sup>1</sup> of the division of health.

**§64-63-2. Definitions.**

2.1. AIHA. -- American Industrial Hygiene Association.

2.2. Asbestos. -- The asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cumingtonite-grunerite), anthophyllite, tremolite, and actinolite.

2.3. Asbestos Abatement. -- Procedures to control fiber release from asbestos-containing materials.

2.4. Asbestos Abatement Project . -- An activity involving the repair, removal, enclosure, or encapsulation of asbestos-containing material: Provided, That the removal of less than three (3) square feet or three (3) linear feet of asbestos-containing materials required in the performance of a maintenance activity not intended solely as asbestos abatement is not considered to be an asbestos abatement project.

2.5. Asbestos Abatement Project Designer (or Asbestos Project Designer). -- A person who specifies engineering methods and work practices to be used during asbestos abatement projects.

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<sup>1</sup> The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989, and the Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code §5F-1-1 *et seq.*). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

2.6. Asbestos Abatement Supervisor (or Asbestos Supervisor). -- A person responsible for the direction of asbestos abatement projects.

2.7. Asbestos Analytical Laboratory. -- A facility, company, or place at which asbestos bulk samples or asbestos air samples are analyzed.

2.8. Asbestos Clearance Air Monitor. -- A person who performs air monitoring to confirm clearance levels to establish that an area is safe for reoccupancy after an asbestos abatement project.

2.9. Asbestos-Containing Material. -- Any material or product which contains more than one (1) percent asbestos by weight.

2.10. Asbestos Contractor. -- A person who enters into a contract for an asbestos abatement project.

2.11. Asbestos Inspector. -- A person employed to inspect for the presence of asbestos-containing materials, evaluate the condition of the materials and collect samples for asbestos content confirmation.

2.12. Asbestos Management Planner. -- A person employed to interpret survey results, assess hazards, evaluate and select control options or develop an operation and maintenance plan.

2.13. Asbestos Worker. -- A person who works on an asbestos abatement project.

2.14. Building or Other Man-Made Structure. -- A building or a part of a building, or a group of buildings on the same premises, or any other type of man-made construction, such as a pipe line, barn, shed, trailer, or any appurtenance to a building or other man-made structure.

2.15. Bulk Sample. -- A sample of any material, other than air samples, collected from an existing structure or appurtenance for the purpose of analysis to ascertain whether such material contains asbestos.

2.16. Clearance Air Monitoring. -- Air monitoring performed after the completion of any asbestos abatement project and prior to the reoccupation of the contained work area by the public and conducted for the purpose of protecting the public from health hazards associated with exposure to asbestos fibers.

2.17. Contained Work Area. -- Designated rooms, spaces, or other areas where asbestos abatement activities are being performed, including decontamination structures.

2.18. Director. -- The director of the division of health of the department of health and human resources or his or her designee.

2.19. Division. -- The division<sup>2</sup> of health of the department of health and human resources.

2.20. Encapsulate. -- The application of any material onto any asbestos-containing material to bridge or penetrate the material to prevent fiber release.

2.21. Enclosure. -- The permanent confinement of friable asbestos-containing materials with an airtight barrier in an area not used or designed as an air plenum.

2.22. EPA. -- The United States Environmental Protection Agency.

2.23. Friable. -- Material which is capable of being crumbled, pulverized, or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air, including material normally considered non-friable, which has been or may be rendered friable by the forces acting on the material in the course of demolition or renovation operations.

2.24. HEPA (high efficiency particulate air) Filtering System. -- A filtering system capable of

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<sup>2</sup> See footnote #1.

trapping and retaining at least ninety-nine and ninety-seven one hundredths percent (99.97%) of all monodispersed particles three tenths (0.3) micrometers in diameter or larger.

2.25. NVLAP. -- National Voluntary Laboratory Accreditation Program.

2.26. OSHA. -- The United States Department of Labor Occupational Safety and Health Administration.

2.27. PCM (phase contrast microscopy). -- A technique used for counting fibers in air samples which does not distinguish fiber types.

2.28. PLM (polarized light microscopy). -- A technique used to identify, quantify, and report asbestos content in bulk samples.

2.29. Person. -- A corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any individual or entity.

2.30. Reoccupancy. -- Reoccupancy by individuals of a room, space, or other area in which an asbestos abatement project has been completed.

2.31. Repair. -- Returning damaged asbestos-containing material to an undamaged condition so as to prevent asbestos fiber release.

2.32. Resilient Floor Covering. -- Floor tile, sheet vinyl, and associated adhesives which contain more than one (1) percent asbestos by weight.

2.33. Resilient Floor Covering Worker. -- A person who is employed to remove resilient floor covering in single-family dwellings.

2.34. School. -- Any building or man-made structure used for grades kindergarten through twelve (12).

2.35. TEM (transmission electron microscopy). -- A technique which may be used for identifying asbestos structures or fibers in samples.

### **§64-63-3. License Required, Procedures, Application, Qualifications.**

3.1. No person shall perform the work of an asbestos analytical laboratory, clearance air monitor, contractor, inspector, management planner, project designer, supervisor, or worker, or of a resilient floor covering worker without possessing a valid license issued under this rule.

3.2. Individual persons shall be at least eighteen (18) years of age to be licensed under this rule.

3.3. A license expires one (1) year from the last day of the month in which it is issued.

3.4. The director may refuse to issue a license and retain the license fee if the applicant fails to satisfy the requirements of this rule.

3.5. The director may refuse to issue a contractor's license if he or she finds that the applicant has knowingly falsified or attempted to falsify documents related to an asbestos abatement project or license.

3.6. The director shall provide a written notice of denial and an opportunity for reapplication to all applicants.

3.7. All applicable licensure fees set forth in Table 64-63A found at the end of this rule shall be enclosed with a license application.

3.8. The applicant, or, for a contractor or a laboratory, an authorized agent or officer shall sign the application.

3.9. License applications shall include the following:

3.9.a. A history of all asbestos enforcement actions taken against the applicant by any federal or state agency or court in the two-year period immediately preceding the date of the application;

3.9.b. For an individual person, the applicant's date of birth;

3.9.c. For licensure as a contractor, the number of a current supervisor's license for the contractor, or the number of a current supervisor's license for one (1) of the contractor's employees;

3.9.d. For licensure of an individual person as an asbestos clearance air monitor, inspector, management planner, project designer, supervisor, or worker, or as a resilient floor covering worker, a current certificate of training for the category of license sought;

3.9.e. For licensure of an asbestos analytical laboratory to analyze bulk samples for asbestos, proof of NVLAP accreditation or successful completion of the two (2) most recent rounds of the AIHA bulk asbestos quality assurance program;

3.9.f. For licensure of an asbestos analytical laboratory to analyze air samples for asbestos by PCM, proof of AIHA accreditation or of successful completion of two (2) rounds of the AIHA proficiency analytical testing program (PAT) to analyze air samples;

3.9.g. For licensure of an asbestos analytical laboratory to analyze air samples for asbestos by TEM, proof of accreditation by NVLAP for analysis of air samples by TEM;

3.9.h. For licensure of an asbestos management planner, the number of his or her asbestos inspector's license; and

3.9.i. Any other information relevant to asbestos abatement licensure requested by the director.

3.10. An individual person who is licensed as an asbestos management planner is also required to be licensed as an asbestos inspector.

3.11. A contractor or at least one (1) of the contractor's employees is also required to be li-

censed as an asbestos supervisor.

**§64-63-4. Licensed Contractor Duties.**

4.1. Licensed asbestos contractors shall:

4.1.a. Ensure that each of the contractor's employees or agents who will come into contact with asbestos or who will be responsible for an asbestos abatement project is properly licensed;

4.1.b. Ensure that each asbestos abatement project is supervised on-site by a licensed asbestos supervisor;

4.1.c. Not begin an asbestos abatement without written documentation that all the requirements for notification and fees set forth in Section 10 of this rule have been met;

4.1.d. Not participate in an asbestos abatement project not designed by a licensed asbestos project designer;

4.1.e. Ensure that each asbestos abatement project takes place in a contained work area, where required by 29 CFR § 1926.1101 or, where feasible, as determined by a licensed asbestos project designer;

4.1.f. Ensure that each contained work area is under a negative-pressure, HEPA-filtered exhaust system and meets the minimum clearance standard set forth in Section 6 of this rule before allowing reoccupancy;

4.1.g. Ensure that the asbestos clearance air monitor is provided with an accurate and precise written description of the location of any asbestos abatement project prior to the collection of any air samples;

4.1.h. Ensure that each contained work area is visually inspected prior to the clearance monitoring air to determine whether the asbestos abatement project has been properly completed;

4.1.i. Remove exterior asbestos-containing

sidings, cementous materials, and roofing materials intact with minimal breakage during an asbestos abatement project;

4.1.j. Not construct a mobile contained work area to remove large amounts of asbestos-containing materials to circumvent the minimum clearance standards set forth in this rule;

4.1.k. Use disposal sites which are in conformance with applicable federal, state and local laws, rules, and regulations;

4.1.l. Prepare a record of each asbestos abatement project as required by Sections 4.2 and 4.3 of this rule, and make the record available to the department, the division of environmental protection, and the division of labor of the bureau of commerce upon request; and

4.1.m. Keep the records required by Section 4.1.l of this rule at least thirty (30) years.

4.2. The record of each asbestos abatement project shall include:

4.2.a. The name, address and asbestos license number of all individuals who worked on the asbestos abatement project;

4.2.b. The location and a description of the asbestos abatement project, including the amount of asbestos material that was removed;

4.2.c. The starting and completion dates of each asbestos abatement project and a summary of the procedures that were used to comply with all federal and State standards;

4.2.d. The name and address of each site where waste containing asbestos was deposited, and the disposal site receipts; and

4.2.e. The results of the clearance air monitoring required by this rule for each contained work area within the asbestos abatement project.

4.3. Records of clearance air monitoring

results shall include at a minimum the following:

4.3.a. The name and signature of any individual who collected the air samples required by this rule;

4.3.b. The locations where the samples were collected;

4.3.c. The date of collection;

4.3.d. The name and address of the laboratory which analyzed the samples;

4.3.e. The date of the analysis;

4.3.f. The results of the analysis;

4.3.g. The method of analysis;

4.3.h. The name and signature of the individual who performed the analysis; and

4.3.i. Proof that the laboratory meets the applicable requirements of this rule.

4.4. The contractor shall make the records required by this rule available to the director, upon request. Records for current projects shall be immediately available. For completed projects, the director may afford the contractor a reasonable time to comply with the requests, depending upon the length of time since the project's completion and whether or not the advance notice might adversely affect an investigation being conducted by any State agency.

**§64-63-5. Clearance Air Monitor Duties.**

5.1. Prior to clearing the contained area of an asbestos abatement project for reoccupancy, a clearance air monitor shall:

5.1.a. Conduct a visual inspection of the contained work area to confirm removal of asbestos-containing materials and for cleanliness prior to taking samples;

5.1.b. Ensure that all sampling equipment is functional and calibrated in accordance with manufacturers specifications, and that a written record of the calibration is maintained;

5.1.c. Ensure that air monitoring incorporates aggressive sampling condition activity to dislodge any remaining dust by sweeping all floors, walls, and ceilings with a leaf blower with a minimum of one (1) horsepower prior to sampling; and by operating one (1) operating stationary twenty inch (20") fan directed at the ceiling for every ten thousand (10,000) cubic feet or fraction thereof in the contained area during sampling;

5.1.d. Ensure that the recommended air volume is drawn on each sampling cassette as prescribed by the analytical method;

5.1.e. Ensure that asbestos abatement projects which take place in schools are completed in compliance with 40 CFR Part 763, Subpart E, Asbestos-Containing Material in Schools;

5.1.f. Ensure that the minimum number of air samples set forth in Table 64-63B found at the end of this rule are collected in non-school asbestos abatement projects; and

5.1.g. Generate a written report to confirm or deny clearance of the contained work areas of an asbestos abatement project at the conclusion of the project.

5.2. The report required by Section 5.1.g of this rule shall include at a minimum the following:

5.2.a. The name and signature of any individual who collected any air sample required by this rule;

5.2.b. The locations indicated by drawings and a sample log where samples were collected;

5.2.c. The date of collection;

5.2.d. The name and address of the

laboratory which analyzed the samples;

5.2.e. The date of the analysis;

5.2.f. The results of the analysis;

5.2.g. The method of analysis;

5.2.h. The name and signature of the individual performing the analysis;

5.2.i. Proof that the laboratory meets the applicable requirements of this rule; and

5.2.j. Either a statement clearing the contained work areas for reoccupancy, or a statement denying clearance of the contained work areas, which shall contain an explanation for denying clearance.

**§64-63-6. Minimum Air Clearance Standards.**

6.1. A contained work area in a school shall be cleared for reoccupancy in accordance with 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools.

6.2. A contained work area in a building or other man-made structure which is not a school may be cleared for reoccupancy when the number of samples required by Section 5.1.f of this rule are taken, and the samples meet the following standards:

6.2.a. 0.01 f/cc (asbestos fibers per cubic centimeter) for each sample analyzed by PCM; or

6.2.b. 0.02 s/cc (asbestos structures per cubic centimeter) for each sample analyzed by TEM.

6.3. Clearance air monitoring is not required for a contained work area in a building or other man-made structure, if the building or other man-made structure is scheduled for immediate demolition.

6.4. When the ambient asbestos fiber or

structure level in the air in a contained work area in a building or other man-made structure which is not a school exceeds the minimum clearance standards established in Section 6.2.a or 6.2.b of this rule, the clearance level may, with the prior approval of the director, be based on the level of asbestos fiber or structures in the air outside the contained work area. The samples of air used to determine the asbestos fiber and structure levels in the air inside and outside of the contained work area shall be taken at the same time. The number of samples collected inside and the number collected outside shall each be equal to the number of samples specified in Section 5.1.f of this rule.

**§64-63-7. Asbestos Inspector Duties.**

Licensed asbestos inspectors shall:

7.1. Thoroughly inspect interior and exterior materials suspected of containing asbestos which may be affected by the renovation or demolition, and sample the material for testing, unless it is assumed to contain asbestos;

7.2. For all asbestos abatement projects, follow the inspection and sampling procedures contained in 40 CFR Part 763, Subpart E, Asbestos-Containing Materials in Schools, to identify interior and exterior materials suspected of containing asbestos; and

7.3. Generate a written report which at a minimum:

7.3.a. Identifies by narrative any sampling locations where the presence of asbestos-containing material has been confirmed;

7.3.b. Details the location and amount of all materials suspected of or assumed to contain asbestos;

7.3.c. Lists analysis results for all samples taken of materials suspected to contain asbestos; and

7.3.d. Includes drawings or narrative

descriptions of the locations where bulk samples of materials suspected of containing asbestos were obtained.

**§64-63-8. Asbestos Project Designer Duties.**

Licensed asbestos project designers shall generate a written project design that provides:

8.1. A chronological time frame for each facet of the abatement activity;

8.2. The name and address of the building or other man-made structure where each asbestos abatement project is to occur;

8.3. The name, address, phone number, and copies of the asbestos-abatement training certificates and licenses of the project designer;

8.4. A schematic floor plan showing the asbestos abatement project area, including a description of the characteristics of the material;

8.5. A statement identifying the abatement activity as repair, removal, encapsulation, or enclosure;

8.6. A schematic floor plan of the containment area which shows the physical dimensions, entrance, exit, windows, decontamination unit, load-out area, emergency exits, placement of the HEPA exhaust air filtration units, any measuring devices, warning signs, and barrier tape;

8.7. The specifications for:

8.7.a. The construction of and the amounts of materials needed to build the project containment area structure, which shall be separated from the uncontaminated environment by polyethylene sheeting or other materials used in conjunction with the existing floors, ceilings, and walls of the structure;

8.7.b. The number and capacity of HEPA exhaust air filtration units and backups;

8.7.c. Air monitoring of personnel; and

8.7.d. Clearance of the contained work area for reoccupancy, including the number of sample collection points and the analytical method to be employed;

8.8. A schematic location and the specifications for the heating, ventilation and air-conditioning system shut-offs, electrical power, water source, fire exits, fire extinguisher, fire alarm, telephone, tool and equipment room, supply box, air monitoring station, project field office, and bathrooms;

8.9. A description of the work procedures to be used; and

8.10. A description of the materials and tools to be used in the abatement project.

**§64-63-9. Training Accreditation.**

9.1. The director has the authority to accredit asbestos abatement courses provided within West Virginia. In approving asbestos abatement training courses, the director shall rely on the standards for training courses found at 40 CFR Part 763, Subpart E, Appendix C, Model Accreditation Plan, and these standards are hereby adopted by reference.

9.2. Persons wishing asbestos abatement training course accreditation shall submit an application on forms approved by the Director, together with the fee required by W. Va. Division of Health Administrative Rules, 64 CSR 51, Fees for Services.

**§64-63-10. Responsibilities of Owners.**

10.1. Except as stated in Sections 10.3 and 10.4 of this rule, the owner of a building or other man-made structure shall ensure that:

10.1.a. Each building or other man-made structure he or she owns is inspected for the presence of asbestos by a licensed asbestos

inspector prior to any renovation or demolition activities;

10.1.b. Each asbestos abatement project in the building or other man-made structure is designed by a licensed asbestos abatement designer;

10.1.c. The division is notified at least ten (10) working days prior to commencement of each asbestos abatement project and that the notification fees specified in W. Va. Division of Health Administrative Rules, 64 CSR 51, Fees for Services, are submitted with the notification: Provided, That in an emergency resulting from a sudden unexpected event which is not a planned renovation or demolition, the notification and fees shall be submitted to the division as soon as possible after the emergency, but no later than the next working day following the emergency;

10.1.d. Any other applicable West Virginia and federal notification requirements for asbestos abatement projects are carried out; and

10.1.e. The asbestos clearance air monitor is provided with an accurate and precise written description of the asbestos abatement project prior to the collection of air samples used to determine compliance with clearance standards.

10.2. The owner of a building or other man-made structure may delegate, in writing, the responsibilities for compliance with this section to a person who is responsible for the operation of the building, and may delegate the responsibilities for compliance with State and federal notification requirements for asbestos abatement projects to the person who contracts for the projects.

10.3. For asbestos abatement projects involving less than one hundred sixty (160) square feet or two hundred sixty (260) linear feet of asbestos-containing material in buildings or other man-made structures which are not used as schools, notification may consist of a weekly summary in lieu of separate notifications for each project. The notification fees specified in W. Va.

Division of Health Administrative Rules, 64 CSR 51, Fees for Services shall be submitted with the weekly summary.

10.4. The removal of resilient floor covering materials in single-family dwellings is exempt from the notification and fee requirements of this rule.

**§64-63-11. Applicable Federal Standards.**

All persons licensed under this rule shall comply with the applicable portions of the following federal standards which were in effect as of August 19, 1996 which are hereby incorporated by reference:

11.1. 40 CFR Part 763, Subparts E, Asbestos-Containing Materials in Schools; F, Friable Asbestos-Containing Materials In Schools; and G, Asbestos Abatement Projects;

11.2. 40 CFR Part 61, Subpart M, National Emission Standards for Hazardous Air Pollutants;

11.3. 29 CFR, Part 1926, Safety and Health Regulations for Construction, Subpart D, Occupational Health and Environmental Controls § 1926.1101, Asbestos; and

11.4. 15 U.S.C. 2646, Toxic Substances Control Act, Section 206.

**§64-63-12. Inspections.**

The director has the right to enter any asbestos abatement project and to conduct inspections to determine compliance with this rule.

**§64-63-13. Penalties.**

13.1. The director shall, depending upon the severity of the violation and upon the degree of health hazard created, reprimand, or suspend or revoke the license of an asbestos analytical laboratory, clearance air monitor, contractor, inspector, management planner, project designer, supervisor, worker, or a resilient floor covering worker, if the licensee:

13.1.a. Fraudulently or deceptively obtains or attempts to obtain a license;

13.1.b. Fails at any time to meet the qualifications for a license or to comply with the requirements of W. Va. Code §16-32-1 et seq. or this rule; or

13.1.c. Knowingly falsifies or attempts to falsify documents related to an asbestos abatement project or license.

13.2. The director may impose a civil penalty of not less than two hundred fifty dollars (\$250) and not more than five thousand dollars (\$5,000) for each separate violation of this rule payable within thirty (30) days of receipt of the penalty notification.

13.3. The director shall investigate all alleged violations of this rule or of W. Va. Code §16-32-1 et seq. reported to the division. Upon the finding of a violation in connection with any asbestos abatement project the director shall, depending upon the severity of the violation and upon the degree of health hazard created, initiate an appropriate enforcement action which may include the issuance of a cease and desist order directing that all work on the project be halted immediately. Posting of the cease and desist order on the project site constitutes notice of its contents to the property owner and all persons working on the asbestos abatement project. Where practicable, however, the director shall deliver a copy of the order by certified mail, return receipt requested, to the property owner and to the contractor.

13.4. In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation is presumed to be willful and the person shall be assessed a civil penalty by the director of not less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000) for an initial violation and not less than twenty-five thousand dollars (\$25,000) nor more than fifty thousand dollars (\$50,000) for each subsequent violation payable within thirty (30) days of receipt of the penalty

notification.

13.5. Any person who violates any provision of this rule or of the W. Va. Code § 16-32-1 et seq. is guilty of a misdemeanor.

**§64-63-14. Administrative Due Process.**

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in W. Va. Division of Health Administrative Rules, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

**Table 64-63A. Licensure Fee Schedule.**

Type of License	Fee
Asbestos Worker	\$ 50
Asbestos Inspector	100
Asbestos Project Designer	100
Asbestos Supervisor	100
Asbestos Management Planner	100
Asbestos Clearance Air Monitor	100
Asbestos Contractor	300
Asbestos Analytical Laboratory	
Air Sample Analysis Only	200
Bulk Sample Analysis Only	200
Bulk and Air Sample Analysis	300
Resilient Floor Covering Worker	50

**Table 64-63B. Minimum Number of Air Samples for Non-School Asbestos Abatement Projects.**

Size of Contained Work Area	Minimum Number of Samples
≤ 49 ft <sup>2</sup>	0
50 - 160 ft <sup>2</sup>	2
161 - 2,500 ft <sup>2</sup>	3
2,501 - 5,000 ft <sup>2</sup>	4
5,001 - 10,000 ft <sup>2</sup>	5
>10,000 ft <sup>2</sup>	Calculate*

\*Five (5) samples plus one (1) additional sample for each additional 5,000 square feet.