

NEW REGULATION RELATED TO ASBESTOS MANAGEMENT IN BUILDINGS

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Adoption of decree 476-2013 by the Cabinet on May 8, 2013 introduced modifications to the Regulation Respecting Occupational Health and Safety (RROHS) related to safe management of asbestos in buildings.

Although handling of Asbestos-Containing building/construction material or product (ACM) is outlined in a detailed regulation for the construction industry, such was not the case for work outside construction project.

New provisions in section IX.1 of the RROHS now extends the safe management of ACM to all buildings where workers are present. The new provisions mainly concern the following:

- Flocking and heat insulating material
- Other material and product containing asbestos
- Recording and disclosure of information

They include obligations to all employers whose workers are likely to be exposed or to disturb asbestos-containing material during their presence in the building.

The new obligations can be summarized as follow:

- Obligation to inspect and locate flocking and heat insulating material likely to contain asbestos;
- Obligation to verify the presence of asbestos in suspect asbestos-containing materials (SACM) before undertaking work that is liable to generate dust;
- Obligation to correct (repair) suspect asbestos-containing flocking, heat insulation material and interior finishes when they are in such a state that they are likely to generate dust;
- Obligation to control the emission of asbestos dust before undertaking work on materials or products, including flocking and heat insulating material, containing asbestos;
- Obligation to keep and update a register and disclose any relevant information to every person who plans to or will carry out work liable to produce asbestos dust emissions.

These obligations are in force since June 2013. However, targeted employers were given a two-year period to comply with them.

Consequently, since June 2015, inspection and localisation of flocking and heat insulating material must have been carried out in all concerned buildings.

With regard to heat insulating material, the concerned buildings are those constructed prior to May 20, 1999. With regards to flocking, the concerned buildings are those constructed prior to February 15, 1990.

Results of these inspections must be recorded in a register containing the following information:

- The location of flocking and heat insulating material that were inspected and the location of the materials and products that were checked;
- The presence and type of asbestos or the absence of asbestos, in flocking and heat insulating material, materials and products, and the verifiable documentary information or sampling reports carried out by the employer indicating the types of asbestos or showing the absence of asbestos;
- The dates and results of the inspections of flocking and heat insulating material containing asbestos conducted in accordance with sections 69.3 and 69.8 and the dates and results of any other verification of materials and products; and
- The nature and the date of the work carried out on flocking, heat insulating material, materials and products containing asbestos.

It's unlikely that to this day the majority of the targeted employers have complied with the new obligations. In our opinion, one the main reasons explaining this situation is the uncertainty in identifying the targeted employers.

Difficulties in interpretation

The obligation to inspect and locate flocking and heat insulating material as well as the obligation to verify the presence of asbestos in building materials is the responsibility of the owner having authority on the building.

One would think de facto that the employer having authority on the building is the owner. However, the Commission de la Santé et Sécurité au Travail defines in French the term “under his authority” as follows¹ :

Pour l'application du règlement, un bâtiment sous l'autorité d'un employeur correspond à tout bâtiment ou partie de bâtiment que l'employeur utilise pour la production ou la distribution de biens ou de services (à l'exception d'un chantier de construction où les dispositions du Code de sécurité pour les travaux de construction sont applicables), peu importe qu'il soit propriétaire, locataire ou même simple utilisateur du bâtiment ou de la partie de bâtiment

Which can be translated as follows:

For the application of the regulation, a building under the authority of an employer is defined as any building or any part of a building used by the employer for the production or the distribution of goods or services (with the exception of construction sites, where the provisions of the Safety Code for the construction industry are applicable) no matter if the employer is the owner, a tenant or even a mere user of the building or part of the building.

This broader definition of employer in authority will probably create difficulties in the application of the regulation.

Furthermore, the owner of a residential building is not considered to be an employer with regards to the Act respecting Occupational Health and Safety. Consequently we do not believe that a residential owner is targeted by the regulation.

Consequently, after fire or water damages to a residence constructed prior to 1985, where an insurer or a contractor is sent on site, what obligations will apply to these employers?

Being the only employers on site, will they have to inspect and locate flockings and heat insulation material? Produce a register? Verify the presence of asbestos when work is likely to generate dust? Correct building material containing or likely to contain asbestos when they are in poor condition?

If such is the case, will the scope of work be limited to the work area or the entire building?

We do not believe that the legislator wishes to transfer the responsibility regarding the management of ACM to parties present on site for emergency work, in an ad hoc manner or even for a specific event.

However, we do believe in the case of a loss where SACM is to be disturbed during, for example, remediation work, renovation or cleaning procedures that work be executed in a manner such as to avoid the worker and occupants exposure to asbestos dust.



When it is the case, the following steps should minimally be undertaken:

- Verify if a register is available;
- If there is no register on site, find the construction date of the building
- In buildings constructed before 1999, locate heat insulating material within the work area;
- In buildings constructed before 1990, locate flockings within the work area;
- In buildings constructed before 1985, verify if there is suspect asbestos-containing materials notably in interior finish such as plaster and joint compounds.
- When applicable, ensure that the presence of asbestos is verified in material likely to contain some before undertaking work producing dust;
- When asbestos is present in the materials that were verified or that the presence of asbestos is suspected but was not confirmed through testing, carry out work in compliance with section 3.23 of the Safety Code for the construction industry.

This being said, each file will have its lot of specificities and it might prove difficult to find exactly where you stand with regards to the regulation.

CEP can guide you to ensure the safe management of project involving asbestos-containing materials.

We can also provide you with a complete survey of asbestos-containing materials, collect required samples and locate asbestos-containing flocking and heat insulating materials as well as help you prepare and update required registers.

If you have any questions on the new regulation related to asbestos or to organize a training seminar at your office, please contact Michel Millmore at millmore@expcep.com.