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‘Crucial Updates to Asbestos Legislation’



Nick began by explaining that he will be focussing today on the aspects of the legislation that have changed and will include, at the end, the changes to guidance on surveys. Nick said that his company, DMW Environmental Safety Limited, is based in Wolverhampton and that they specialise in pathology issues with asbestos forming 80% of their work. DMW have analysts country-wide. Nick said that he was happy to take questions during his presentation rather than wait until the end.

Bit of Background/Reminder:

Nick reminded us that asbestos is present in more than 3,000 domestic products. The Building Research Establishment suggests that asbestos is still present in 75% of buildings. It is not mined in the UK, but imported and used in many products which are sold across the world. And yes! the UK kept a lot of those products for our use.

In March 2000, asbestos was banned in all its forms. The law requires the employer to identify the risks and to manage them. Newer buildings will have a Construction Design and Management (CDM) file that should be checked prior to carrying out work, and yet even after 2000, asbestos has been detected in buildings. If it's sealed and in good condition it is harmless. Problem is that you can't see or smell it.

Health Effects:

Between 4 and 5 thousand people still die every year due to asbestos exposure. The size of asbestos fibres means that it gets into the lungs very easily, where it causes scar tissue and tumours can develop. The lung tissue is not only scarred but it also becomes rigid, thereby reducing the elasticity of the

lungs. Further, the amount of air that can be breathed in and expired is reduced.

New cases of asbestosis are very rare because asbestosis is associated with the 'bad old days' of dry stripping for example in power stations. Workers there endured snow storm conditions. More common nowadays is a condition called mesothelioma, which is cancer of the pleura (the outer lining of the lungs and internal chest wall). Malignant mesothelioma is a rare form of cancer that can take between 50 and 60 years to manifest itself.

Today, there are drugs available that can delay the onset. Following diagnosis, life expectancy is normally 5 years. 'One off' exposures are unlikely to cause disease. This means that people working in trades (with regular exposure) are most at risk.

HSE Campaign:

The increased risk to trades people prompted the HSE's massive campaign – which is still available on the HSE website – in 2007/08. The 'You are more at risk than you think' Campaign targeted 80,000 contractors. Despite this, more people are dying each day from asbestos exposure than being killed on the roads.

Legislation:

Of course, asbestos legislation is not new. The first was in 1931 and yet 80 years or so later, we're still amending asbestos legislation. A big step change in asbestos legislation came in 2002 with the duty to manage in non-domestic premises. Prior to this, proactivity was not required and there was no presumption that asbestos is present.

The Control of Asbestos at Work Regulations (CAR) 2012 didn't change much of CAR 2006. The requirements:

- Identification
- Risk assessment
- Method statement
- Condition monitoring
- Management plans and
- Notifying licensed work

are all still there. Licensed work is normally the most hazardous and requires the completion of an ASB5 and 14 days notification to the Enforcing Authority (prior to start on site). Waivers are given in certain circumstances.

CAR 2012 – Key Change – 'NNWL':

Under CAR 2006 there were **2** classes of work with asbestos:

- 'Licensed' including:
 - Asbestos Insulation Board (AIB) is normally always licensable and notifiable.
 - Artex if it has to be scraped off, then the work would be licensable.
- 'Non-licensed' including:
 - AIB if it involves short-term work, i.e. one hour duration (exempt).

- Artex because it is a lower risk material and if it can be removed intact then the work would be non-licensable.
- Floor tiles which typically contain a small amount of asbestos i.e. 3-4%.

CAR 2012 brought in a new 'middle' class of work referred to as:

'Notifiable, Non-Licensed Work' (NNLW),

What are the Requirements for NNLW?

- Notification to HSE using the online portal (however, the 14 day lead in period is not required).
- Statutory requirement to monitor exposure and keep health records (exposure monitoring) for operatives undertaking NNLW, minimum of 4 years retention of certificate. A representative number of asbestos jobs should be monitored.
- Statutory requirement for operatives undertaking NNLW to be under medical surveillance (3-yearly examinations).

A General Practitioner (GP) can do the health surveillance for NNLW. An Employment Medical Advisory Service (EMAS) registered physician is required to carry out surveillance for licensed work.

What about the ACoP L143?

The ACoP L143 hasn't yet been revised to account for the changes. Duty holders achieve compliance in the meantime using the information published on the HSE website, the Regulations themselves (available at www.legislation.gov.uk), must be considered in line with the existing ACoP.

What is required under NNLW?

- Equipment including Type H Vacuum (DOP tested every 6 months).
- PPE and RPE (fit-testing)
- Employers and public liability cover for work with asbestos (excluded from most general policies).
- A means of decontamination following works.

Application of NNLW under CAR 2012:

Factors to be considered:

- Type of asbestos and is it friable?
- How firmly the asbestos is bonded in a matrix.
- Materials condition i.e. has the material been damaged or is it in a poor condition, for example, due to flood or fire damage?
- Is removal or maintenance work being planned that is likely to disturb/destroy the asbestos containing material (ACM)?
- Aggravating factors e.g. the material is a higher risk non-matrix bound material such as asbestos insulation board (AIB) or paper.
- Mitigating factors i.e. the material is lower risk such as floor tiles or bitumen sink pads.

A Member described his own job which involves drains and pipe laying. Pipes containing asbestos fibre are broken up when being laid and removed. The fibre must be contaminating the soil? Nick commented that there is currently very little guidance on this issue. However, there might be some existing guidance being reviewed next year which would cover land contaminated with asbestos fibre. Meanwhile, broken pipe nuggets can be handpicked and properly disposed of, in which case the remaining soil can be disposed of as non-hazardous waste. This waste method is, of course, cheaper than disposal of hazardous waste. This situation would be treated as NNLW and there would be no requirement to wait 14 days. The NNLW Form can only be completed on-line and sent to the HSE.

A Member asked whether asbestos sheets, removed without breaking or damaging, would be non-notifiable? Nick suggested that if it's likely to break and there is a chance of breaking it, then it would be classed as NNLW.

Roger Caleb, from the National Grid, asked about his Company's changeover to new metering. Some of the meters are mounted on products (e.g. shelves), that contain asbestos fibre. Does each meter removal require a separate notification to the HSE? Nick replied that if it is an asbestos cement product then it may be possible to remove under controlled conditions with sufficient training and protection. **BUT** if it is AIB, Nick recommends that National Grid and other employers use a licensed contractor in these circumstances.

Are there any Changes Regarding Surveys under CAR 2012?

Yes...

- Type 2 Survey has been changed to 'Management Survey'.
- Type 3 Survey has gone.

What about Training?

Nothing really changed since 2006.

There are 3 legally required training categories under CAR:

- Asbestos awareness training for all general trades at risk of coming across asbestos. Training can be the full course first time round, followed up with annual refreshers in the style of a tool box talk.
- Non-licensed training for all employees carrying out non-licensed and NNLW work. This training should consist of theory as well as practice
- Licensed asbestos work training for all employees carrying out licensed asbestos work.

See ACoP L143 for further information about asbestos training. Basically, nothing has changed since '06. Asbestos training providers should be members of IATP and/or UCATA (affiliated). The HSE look to these organisations for competency training in higher risk situations.

A Member reminded colleagues present that under CDM Regs the client is required to provide certain information including that relating to the presence of ACM's.