

March 1997

## *Presentation on "Asbestos" by Malcolm Wright*

The chairman handed over to the Construction Chairman, Charles Johnson to introduce the main Speaker. It has to be said that, in truth, Malcolm Wright really needs no introduction as he has such a long history with BHSA and gave the main presentation at our November meeting! Charles referred to Malcolm's long experience with asbestos while he was with HSE and that it would remain a serious problem for some time to come, even though its current use has declined almost completely.

Malcolm started by saying that asbestos was the single biggest killer in industry, with the forecast death rate around 10,000 p.a. by the year 2010. He also stressed that the role of the Client was crucial in protecting workers and the public. The HSE control strategy was threefold, as follows:-

- **Prohibition** Forms of Blue and Brown asbestos were banned from use in 1985.
- **Licensing** Work with the most hazardous forms of asbestos had to be licensed by the Asbestos (Licensing) Regulations 1983.
- **Control** The most important step was taken by the Control of Asbestos at Work Regulations 1987, published by an Approved Code of Practice. These were later amended by the Amendment Regulations in 1992.

Malcolm went on to say that there were a few misconceptions about licensed work that he would like to put to rest. Firstly, licenses were issued with written conditions describing what work could be carried out. Secondly, it was up to the licensed Contractor to give the 28 days notice required to the HSE.

Most importantly, Clients must realise that a license is required when the density of the asbestos material is less than 500kgs/m<sup>2</sup>. Malcolm showed a useful slide (enclosed in this Newsletter) on the screen to demonstrate the relationship of density to % fibre content for typical asbestos products found in buildings. It is also vital for Clients to demand a copy of the Notification Form before allowing work to start, because the HSE may have asked for a more detailed 'Plan of Work' than originally submitted.

Malcolm then went on to describe a number of prosecutions from recent case histories to emphasise some of the pitfalls to be avoided.

### ***Case One.***

This concerned a Delta Metals site in Erdington which had been empty for some years. Delta property consultants, Henry Butcher, advised them to clear the site before selling it and engaged contractors for that purpose. Parts of the structure were obviously covered in asbestos cladding and

Limpit spray, as well. In the Summer of 1994 three quotations were duly received

- £54,000      Mentioned Asbestos
- £25,00      Did not mention Asbestos
- £17,000      "      "      "      "

The last quotation was from a '1-man band' who, in the 'Never-mind-the-quality-feel-the-width tradition', got the job on the basis that he was the cheapest. In turn, he sub-contracted it to another firm(?)

In October 94 HSE visited the site and criticised removal methods. Then, in November, Malcolm received a call from another licensed Asbestos Contractor to warn him that a mixture of blue asbestos and limpit sprayed asbestos was lying about the site. Apparently, the site foreman had hired some labour from a pub and sent them up onto the roof to knock off the cladding with hammers. The occupant of a neighbouring house also said he saw "blue clouds" rising above the men's heads as they removed the 'sandwich' of Asbestos-cement tiles, blue asbestos and insulation board. The situation was aggravated by the passage of JCBs moving through the debris.

**The HSE placed a Prohibition Notice on the work until the site had been decontaminated; this took until April the following year, at a cost of £0.5m.**

It emerged from the subsequent investigation that Delta had warned their agents ".....not to forget about the asbestos on site" (This would have been an inadequate measure under the CDM Regulations). In addition, the persons controlling the project at Henry Butcher were inexperienced in demolition work.

After legal advice the HSE took the unusual step, for such a case, of prosecuting the following in the Crown Court under Sections 2,3 and 4 of the HASAWA:-

- Delta Engineering Group  
For offences linked to asbestos working AND  
For not assessing Henry Butcher's competence.
- Henry Butcher
- The Demolition Company
- **Two Directors** of the demolition contractors under Section 37 of the HASAWA.. (The HSE took the view that their firm might easily go into liquidation.)

Interestingly, Henry Butcher & Co. were a partnership and HSE asked for one of the partners to 'volunteer' to act as defendant, to save the unnecessary costs of prosecuting all of them individually!

The outcome was:-

- Delta pleaded "Not Guilty" and was acquitted.
- Henry Butcher was fined £18,000 + £24,000 costs.
- The Demolition Company was fined £40,000 and liquidated.
- The Directors of the demolition Contractors were fined £2/3,000 each and it transpired that one of them had previously been imprisoned for fraud.

## ***Case Two***

This case concerned work on the Doug Ellis Stand at the Aston Villa ground where the Stadium Manager was controlling the project and had appointed demolition contractors with little experience of working on asbestos. The stand had previously been surveyed by a licensed contractor who had identified Blue Asbestos on the steel structure. The Stand Manager was away for the week end and had instructed the contractors "...not to touch the asbestos".

### **But they did!**

The HSE thought about placing a Prohibition Notice - but there was an international match the following weekend. The solution was to appoint licensed contractors to sheet up the stand for the game. The HSE then carried out a pitch inspection for asbestos- probably the first and last on record!

At this time the CDM Regulations came into force with Aston Villa as Principal Contractors, true to form, the demolition firm had disappeared (In a cloud of asbestos?) The HSE prosecuted Aston Villa under the HASWA, Sections 2,3 and 4 in the Magistrates Court. Unusually, they directed the case to the Crown Court where the defendants were found guilty and fined £17,500 with heavier costs than in the Magistrates Court.

## ***Case Three***

This happened at the Rolls-Royce Nuclear Engineering Site in Wolverhampton, where landscapers were clearing an adjacent site. They had seen some redundant pipes on the RR site and asked if they could remove them. They hacked off brown asbestos on the site, which was also near a car park, loaded it into a waste skip and drove it 20 miles (uncovered!) to a landfill site. Here the load was refused access - and so it had to be driven back!

The work operation was seen by someone who telephoned the HSE and RR were prosecuted for failing to exercise adequate control on site. They were

fined £15,000 and the two self-employed landscapers received a conditional discharge.

## ***Case Four***

This case took place on a British Steel site where an old boiler house was to be demolished on an isolated part of the plant. The contract was awarded to a licensed firm called Lagfast and was notified in the required manner. This was a firm with which the HSE had experienced problems in the past but they were still in business because it is generally difficult to revoke asbestos licenses very easily.

During the course of the job it became possible for the decontamination area to be by-passed and a dining area was unprotected. The Clients were also criticised for leaving the contractors 'out-of-sight and out-of-mind' on this remote part of the site and for the poor standard of housekeeping. In a subsequent HSE raid on the contractor's premises, illegally stored asbestos was found.

The cause of this situation was lack of competence and poor control on site. The HSE prosecuted Lagfast (£8,000 fine) and one of its directors (£8,000) who was subsequently jailed for non-payment of the fine. Interestingly, this firm were engaged to do work on the notorious QE2 refit which extended into an impromptu North Atlantic cruise!

**Mike Palfreyman** started off the following questions session when he asked what guidance would become available to persons who had to assess the competence of licensed contractors. Malcolm replied that the HSE were currently talking to Institutions about that issue, so we would have to await developments.

**Francis Quinn** of Cornerstone then posed the question that always concerns us all, "How do you Identify it on sight, when you see it?" Malcolm said the only way to do that was to have it analysed

**Mark Hoare** of Birmingham University commented that they had established a Register of Asbestos in buildings as part of their responsibilities to carry out maintenance work. Malcolm agreed that whilst this was an important step, it could not be relied on entirely and that constant vigilance at all levels was still needed if workers were to be protected against previously un-identified sources.

Charles Johnson then drew the discussions to a close and reminded members about the imminent April Workshop which would deal with problems of site control, similar to those outlined in Malcolm's case studies. He then asked

the meeting to show their appreciation to Malcolm for a very worthwhile presentation.

## **Some 'Andy References.**

### **HSE Books**

**IND(G)107(L)(Rev) ASBESTOS and YOU**

Very comprehensive advice on source of risks, routes of entry, effects on the body, Control Limits and Control Measures.

**IND(G)223(L) *MANAGING ASBESTOS in WORKPLACE BUILDINGS.***

An excellent new leaflet containing practical guidance and useful colour photographs of commonly seen asbestos products.

**IND(G)188P *Asbestos Alert card.***

**IND(G)187P *Asbestos Dust - The Hidden Killer: Essential Advice for building maintenance, repair and refurbishment workers.***

**L11 *A Guide to the Asbestos Licensing Regulations 1983***

**L27 *The Control of Asbestos at Work: Control of Asbestos at Work Regulations 1987 Approved Code of Practice 1993.***

**L28 *Work with Asbestos Insulation, Asbestos Coating and Asbestos Insulating Board: Control of Asbestos at Work Regulations 1987. Approved Code of Practice***

### **Department of Environment Publications**

***Asbestos Materials in Buildings 1991***

***WP147 Special Waste Regulations 1996: How they affect you***