

# Managing Hazardous Materials During Demolition and Construction:

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## A Risk Management Perspective

Whether due to the need to renovate, rebuild or respond to a property loss, Risk Managers are often involved in assessing and managing environmental, health and safety risks relating to the demolition, reconstruction and restoration of buildings and property. As members of project planning, facility and procurement teams, Risk Managers often take on the task of initiating and managing the related in-house and/or third party contractor activities – such as engaging consultants and abatement contractors in having damaged asbestos insulation stripped from a piece of machinery that has sustained fire damage. In so doing, they may be involved in tendering, contracting and administering payment of contractors directly.

Along with these roles come some important regulatory compliance requirements and responsibilities within the province of Ontario (and other provinces) that risk and insurance professionals must be aware of. Failure to undertake the necessary pre-demolition and construction surveys of hazardous materials, asbestos in particular, can create exposure to potential liability and legal penalties for those involved. It could also turn a simple lobby renovation project into a building-wide evacuation (and business interruption claim!) should asbestos fibres be released into the air as a result of improper handling of demolished building or insulation materials.

Under Section 30 of the Ontario Occupational Health and Safety Act<sup>1</sup>, Designated Substances and other potentially hazardous building materials must be identified prior to construction or demolition activities that could potentially disturb such materials. The regulated Designated Substances include: asbestos, lead, mercury, silica, isocyanates, vinyl chloride, benzene, acrylonitrile, coke oven emissions, arsenic and ethylene oxide. Of these eleven, the most common concerns in buildings are asbestos, lead, mercury and silica. Specifically, the Act mandates that the project



owner prepare a list of identified Designated Substances, generally in the form of a survey report. A copy of the report must be provided to the General Contractor (GC) in advance of the initiation of the subject work. The GC must in turn submit the report to all subcontractors and trades prior to work being initiated.

Additional regulatory requirements must be met for the most rigorously controlled Designated Substance: Asbestos. Regulation O. Reg. 278/05 – “Asbestos on Construction Projects and in Buildings”<sup>2</sup> applies to the disturbance of asbestos-containing materials (ACMs) on construction projects. Similarly, the Regulation requires that owners arrange for an examination of the building or project area to establish whether any material that is likely to be handled, dealt with, disturbed or removed is asbestos-containing<sup>3</sup>. This must also be presented in report format including drawings, plans and specifications as necessary and is generally included as a subset of the full Designated Substance survey report.

Third party professional (consultant) resources are generally retained for such survey and reporting activities given the special health & safety precautions and environmental and materials expertise involved.

Failure to carry out this critical regulatory requirement can carry with it significant consequences under the Act. An owner who fails to comply is liable to the GC and every subcontractor who suffers any loss or damages (including injury) as a result of the subsequent discovery of a Designated Substance that the owner ought reasonably to have known of but that was not reported.

It is therefore essential that Risk Managers incorporate this critical due diligence step into their project and loss resolution timeframes (and budgets!). It is also key that environmental, health & safety resources are engaged early for greatest effect – and to avoid costly delays once work is underway.

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<sup>1</sup> For full Act visit [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

<sup>2</sup> For full Regulation visit: [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

<sup>3</sup> For Guide visit [www.labour.gov.on.ca/english/hs/pubs/asbestos](http://www.labour.gov.on.ca/english/hs/pubs/asbestos)