

ASBESTOS AND DESIGNATED SUBSTANCES - OWNER'S DUTIES

In order to assist in Giffin Koerth's ongoing promotion of the health & safety of our own staff and our clients, the following key regulatory and legislative references are provided regarding assessing asbestos and designated substances as part of demolition, restoration & construction projects:

From O.REG. 278/05 – Asbestos on Construction Projects and in Buildings:

Owner's responsibilities before requesting tender or arranging work

10. (1) An owner shall comply with subsections (2), (3), (4), (5) and (6) before, (a) requesting tenders for the demolition, alteration or repair of all or part of machinery, equipment, or a building, aircraft, locomotive, railway car, vehicle or ship; or (b) arranging or contracting for any work described in clause (a), if no tenders are requested.

(2) Unless clause (3) (a) or (b) applies, the owner shall have an examination carried out in accordance with section 3 to establish whether any material that is likely to be handled, dealt with, disturbed or removed, whether friable or non-friable, is asbestos-containing material. .

(3) An examination under subsection (2) is not required if, (a) the owner,

(i) already knows that the material is not asbestos-containing material, or

(ii) already knows that the material is asbestos-containing material and, in the case of sprayed-on friable material, knows the type of asbestos; or

(b) the work is being arranged or contracted for in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed-on friable material, as though it contained a type of asbestos other than chrysotile.

(4) Whether an examination is required under subsection (2) or not, the owner shall have a report prepared, (a) stating whether,

(i) the material is or is not asbestos-containing material, or

(ii) the work is to be performed in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed-on friable material, as though it contained a type of asbestos other than chrysotile;

(b) describing the condition of the material and stating whether it is friable or non-friable; and (c) containing drawings, plans and specifications, as appropriate, to show the location of the material identified under clause (a).

(5) An owner shall give any prospective constructor a copy of the complete report prepared under subsection (4).

(6) Subsection (5) applies, with necessary modifications, with respect to, (a) a constructor and a prospective contractor; and (b) a contractor and a prospective subcontractor.

(7) Subsections (8), (9) and (10) apply if, during work described in clause (1) (a), material is discovered that, (a) was not referred to in the report prepared under subsection (4); and (b) may be asbestos-containing material.

(8) The constructor or employer shall immediately notify, orally and in writing, (a) an inspector at the office of the Ministry of Labour nearest the workplace; (b) the owner; (c) the contractor; and (d) the joint health and safety committee or the health and safety representative, if any, for the workplace.

(9) The written notice referred to in subsection (8) shall include the information referred to in clauses 11 (3) (a) to (f).

(10) No work that is likely to involve handling, dealing with, disturbing or removing the material referred to in subsection (7) shall be done unless, (a) it has been determined under section 3 whether the material is asbestos-containing material; or (b) the work is performed in accordance with this Regulation as though the material were asbestos-containing material and, in the case of sprayed-on friable material, as though it contained a type of asbestos other than chrysotile.

From the Occupational Health & Safety Act (OHSA):

Duty of project owners

[30. \(1\)](#) Before beginning a project, the owner shall determine whether any designated substances are present at the project site and shall prepare a list of all designated substances that are present at the site.

Tenders

[\(2\)](#) If any work on a project is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1).

[\(3\)](#) An owner shall ensure that a prospective constructor of a project on the owner's property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the constructor.

Duty of constructors

[\(4\)](#) The constructor for a project shall ensure that each prospective contractor and subcontractor for the project has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project.

Liability

[\(5\)](#) An owner who fails to comply with this section is liable to the constructor and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

Idem

[\(6\)](#) A constructor who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that was on the list prepared under subsection (1). R.S.O. 1990, c. O.1, s. 30.