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Revitalizing the CIAA

Managing Hazardous Materials During Demolition and Reconstruction: The Claims Perspective

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Whether resulting from wind, fire or water damage, insurance claims often involve the demolition, reconstruction and restoration of buildings and property. Insurance companies and adjusters often take on the task of initiating and managing the related contractor restoration and reconstruction activities. In so doing, they may take on the equivalent role of the owner in that they may tender, contract and administer payment of contractors directly. Along with this role comes some important regulatory compliance requirements and responsibilities within the province of Ontario (and other provinces) that insurance and claims professionals must be aware of. Failure to undertake the necessary pre-demolition and reconstruction surveys of hazardous materials, asbestos in particular, can create exposure to potential liability and legal penalties for those involved.

Under Section 30 of the *Ontario Occupational Health and Safety Act*¹, 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 modern 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 in advance of the initiation of the subject work. The general contractor 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 Pro-*

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*jects and in Buildings*² 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.³ 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 general contractor 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 property loss adjustment and insurance professionals incorporate this critical step into their claims resolution timeframes and budgets. It is also key that environmental engineering resources are engaged early for greatest effect and to avoid costly delays once work is underway. 🍁

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1. For full Act visit www.e-laws.gov.on.ca

2. For full Regulation visit www.e-laws.gov.on.ca

3. For Guide visit www.labour.gov.on.ca/english/hs/pubs/asbestos

