

Identifying Asbestos Risks Prior to Demolition and Reconstruction: A Property Claims Perspective

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W*ith property claims, such as those for water or fire damage, demolition, reconstruction and restoration of buildings and property are often required. Demolition is often also involved during the initial emergency response and the investigation phases.*

Adjusters often take on the task of initiating and managing the related contractor activities. In so doing, they may take on a role equivalent to that of the owner, in that they may be directly involved in tendering, contracting and administration of payment of contractors. Along with this role come some important regulatory compliance requirements and responsibilities in the province of Ontario that insurance and claims professionals must be aware of. Failure to undertake the necessary pre-demolition and pre-construction surveys of hazardous materials, asbestos in particular, can create exposure to potential liability and

legal penalties—not to mention exposure to harmful contaminants released when unidentified asbestos-containing materials (ACMs) are disturbed! Unfortunately, adjusters (and even some contractors) are often surprised to learn that even recently installed building materials, vinyl floor tiles for example, can contain harmful asbestos.

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 eleven substances, with the most common concerns in modern buildings being 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 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. 278/2005, "Asbestos on Construction Projects and in Buildings,"² applies to the disturbance of ACMs on construction projects, including demolition and reconstruction as part of property claims. 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 an ACM.³ The findings of the examination must also be presented in report format, including drawings and specifications as necessary, and the report is generally included as a subset of the full designated substance survey report. Third-party professionals (e.g., consulting engineers) are often 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 due to exposure to airborne asbestos) 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 important that environmental engineering resources be engaged early for greatest effect and to avoid costly delays once remedial and construction work is underway.

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¹ For full the Act, visit

www.e-laws.gov.on.ca.

² For the full Regulation, visit

www.e-laws.gov.on.ca.

³ For a guide, visit www.labour.gov.on.ca/english/hs/pubs/asbestos