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Legal requirements to be complied with when performing type 1 asbestos work

The purpose of this memo is to explain the legal requirements contained in the Asbestos Abatement Regulations, 2020 as promulgated under the Occupational Health and Safety Act, 1993 applicable to type 1 asbestos work. "Type 1 asbestos work" means:

a. **Painting of asbestos cement products** in a manner that does not require surface preparation (See explanatory notice titled "Asbestos Prohibitions") and does not cause the release of asbestos fibres; or

b. **The removal of less than 10 square metres of asbestos cement products** or equivalent gutters and piping or asbestos insulating board, where removal work may not be repeated on the same site within a period of six months.

As can be seen from above mentioned definition type 1 asbestos work will in most cases involve the removal of less than 10m² of asbestos cement products such as the removal of roof sheets, gutters and rainwater down pipes. The intention with the legislation is to make it easier and cheaper for property owners to remove small quantities of asbestos cement products. For this reason, the legislation allows for type 1 asbestos work to be performed by contractors who do not need registration as a registered asbestos contractor (RAC). Type 1 asbestos work also do not require the involvement of an approved inspection authority (AIA). Above said, performing type 1 asbestos work is not a free for all as the following legal requirements will apply:

1. Prior to any type 1 asbestos work being performed the asbestos client (Person for whom asbestos work is being performed / owner of property) must ensure that an inventory of asbestos in place and an asbestos risk assessment be drafted and handed to all persons who will be performing asbestos work on site, detailing all asbestos containing material (ACM) present on site. Knowing the location of all ACM will ensure that these persons do not by accident remove material which contains asbestos. In line with the legal requirements the above-mentioned inventory of asbestos in place and asbestos risk assessment must also be provided to a contractor, i.e., RAC, should the asbestos client decide to rather appoint such contractor to perform the type 1 asbestos work;

2. Type 1 asbestos work may not be performed more than once every 6 months per premises. This legal requirement would prevent a person or contractor from over a short period of time remove a large quantity of ACM by removing 10m² per day;

3. Should the asbestos client decide to appoint and charge a contractor with the responsibility of performing type 1 asbestos work, then as per the Construction Regulations, 2014, as promulgated under the Occupational Health and Safety Act, 1993, any such appointment must be made in writing with a copy kept available on site in the contractors' health and safety file;

4. While it is envisaged that most type 1 asbestos work will either be performed by handymen or smaller contractors the Asbestos Abatement Regulations, 2020, require of the asbestos client that the following be in place prior to the type 1 asbestos work being performed, viz.

    a. An up-to-date copy of the inventory of asbestos in place for the premises and/or building where the type 1 asbestos work is to be performed;

    b. An asbestos risk assessment, categorizing the risk of potential exposure to asbestos dust, on the asbestos products to be removed. If such assessment is not available, the client is legally required to ensure that such asbestos risk assessment is drafted and handed to the removal people;

    c. A developed written safe work procedure for the asbestos work to be performed, which should be always followed; and

    d. Ensure that information, instruction and training has been provided to any person who may be exposed to asbestos because of the asbestos work to be performed.

5. Prior to any type 1 asbestos work being performed, an Annexure 2, as per the Asbestos Abatement Regulations, 2020, must be completed in full, signed by the asbestos client and submitted to the office of the Department of Employment and Labour. The notification in the form of the Annexure 2 should reach the office of the Department of Employment and Labour at least 7 days prior to the start of any type 1 asbestos work. Effectively type 1 asbestos work may not commence should the Department of Employment and Labour not have been informed of the project in the form of Annexure 2;

6. The asbestos client is also required to as per the National Waste Information Regulations, 2012 promulgated under the National Environmental Management: Waste Act, 2008 register as a Hazardous Waste Generator. This

is because most type 1 asbestos work projects will result in more than 20 kg of hazardous waste being removed on the day of removal. On registration using the electronic portal the computer system will generate a certificate. This certificate will be vital when safely disposing of the waste as hazardous waste sites will not accept waste for disposal without this certificate;

7. In line with the provisions of the Construction Regulations, 2014, as promulgated under the Occupational Health and Safety Act, 1993, the contractor is required to submit to the asbestos client for approval a health and safety file which should contain all legally prescribed risk assessments, legal appointments, inspection checklists, training records, medical certificates of fitness, written safe work procedures and others. This legal requirement will apply irrespective of the extent of the project; and

8. Type 1 asbestos work to start once all above-mentioned legal requirements have been complied with. On completion of asbestos removal work all waste will be transported to a properly registered waste site for safe disposal. On disposal, a safe disposal certificate will be issued by the waste site, which will serve as proof that waste was properly disposed of.

Any type 1 asbestos work done without above mentioned legal requirements being complied with will be regarded as "illegal" asbestos work and could lead to criminal charges.

As can be seen from above, although the services of a RAC and AIA is not required for type 1 asbestos work the legislation requires of the asbestos client to draft and avail documents which for type 2 asbestos work would have been drafted by the appointed RAC or AIA. Considering the liability on the part of the asbestos client it may be advisable to appoint a RAC for all type 1 asbestos work even though not required by the legislation. Most of the documents, risk assessments and procedures required would be common practice for RACs resulting in some liability transferring to the RAC as the asbestos client would find it easier to prove competence on the part of the RAC.

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Should you require any further assistance, you are welcome to contact Thabied Davids – 073 657 0293 or Dylan Prange 081 047 9957