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Reminder to employers : The deadline for complying with certain regulatory provisions for safe asbestos management expires June 6, 2015

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In Quebec, it is possible to find materials and products containing asbestos in civil engineering works, construction materials, facilities and equipment in all types of buildings, whether industrial, commercial, public or residential. According to various sources, the need to adopt new standards on safe asbestos management arose particularly due to the fact that a significant number of buildings in Quebec dating back to the end of the 1980s may contain asbestos and are probably in need of renovation. In addition, several statistical studies have shown that the majority of cases of death due to occupational diseases recognized by the CSST for workers aged 45 and up were caused by asbestos.[1]

It is in the context of this factual backdrop that the *Regulation to Amend the Regulation Respecting Occupational Health and Safety and the Safety Code for the Construction Industry*[2] came into force on June 6, 2013. It provides for the addition of sections 69.1 to 69.17 to the *Regulation Respecting Occupational Health and Safety*[3] (the “RROHS”) and, among other things, introduces new standards for safe asbestos management in order to reduce workers’ exposure to asbestos dust.

In view of the approaching two-year deadline of June 6, 2015 given to employers to comply with their obligations for locating flocking and heat insulating materials,[4] the purpose of this article is to provide a brief overview of employers’ requirements under these new provisions of the RROHS. It should also be noted that the failure to comply with a provision of the *Act Respecting Occupational Health and Safety*[5] (the “AROHS”) or any of its regulations can lead to regulatory liability.[6]

OBLIGATIONS RELATING TO FLOCKING AND HEAT INSULATING MATERIAL

Under the new RROHS provisions, the employer, whether a tenant or owner of the workplace, is

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required to inspect every building built prior to February 15, 1990 to locate flocking, and every building built prior to May 20, 1999 to locate heat insulating material containing asbestos.[7].

“Flocking” is a mixture of friable materials which is sprayed over a surface, while “heat insulating material” is used as an insulator to cover a facility or equipment in order to protect against fire or to prevent heat loss.[8] Flocking and heat insulating materials are presumed to contain asbestos in a concentration of at least 0.1%.[9] The employer may however rebut this presumption by submitting verifiable documentary information or a sampling report in accordance with the criteria contained in the RROHS.[10]

Thus, the employer must conduct an initial inspection of flocking and heat insulating materials containing asbestos by June 6, 2015, and further inspections every two years thereafter, unless an exception applies.[11] Such an inspection requires a [TRANSLATION] “careful examination” of the workplace.[12] Where flocking or heat insulation material contains asbestos or is liable to produce asbestos dust emissions, the employer must, while taking into account the degradation and dispersal factors, remove it, enclose it entirely in a permanent structure resistant to fibres, coat it with or soak it in a binder, or cover it with materials resistant to fibres.[13]

REQUIREMENTS RELATING TO MATERIALS AND PRODUCTS CONTAINING ASBESTOS

Since June 6, 2013, prior to undertaking any work that is liable to produce asbestos dust emissions, the employer must check for the presence of asbestos in the materials and products likely to contain it, unless it can show that the work to be carried out is not liable to produce asbestos dust emissions, specifically by means of verifiable documentary information or a sampling report.[14] Depending on the availability of information, the employer must also check for the presence of asbestos when purchasing those materials or products.[15] We note however that the RROHS states that gypsum panels and joint compounds manufactured after January 1, 1980 are presumed not to contain asbestos.[16]

Where an interior finish likely to contain asbestos may emit dust because of its state, the employer must repair it or remove it, taking into account the degradation and dispersal factors.[17] The employer must also take the necessary measures to control asbestos dust emissions before undertaking work on materials or products containing asbestos, including flocking and heat insulating material. In this respect, the *Safety Code for the Construction Industry* requirements apply.[18]

Finally, the employer must train and inform the workers of the risks, prevention and safe working methods relevant to the work to be done prior to undertaking work liable to produce asbestos dust emissions.[19]

REQUIREMENTS RELATING TO RECORDING AND DISCLOSURE OF INFORMATION

In addition, since June 6, 2013, the employer must keep a register containing the entries and documents required by the RROHS (including information on the inspection dates of the building, the location of flocking and heat insulating material, the nature of the work previously done and type of asbestos sampled) and make it available to the workers in the establishment and their representatives.[20] As well, the employer must disclose the relevant entries in the register to any person who will be doing, or plans to do, work that could produce dust emissions, and that person must inform the workers who are likely to be exposed to asbestos dust.[21]

CONCLUSION

Since this article only provides a brief overview of the new requirements for safe asbestos

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management, we would encourage employers to seek out additional information on these requirements, should they feel it is necessary. The authors are available to answer your questions.

For any employers who may not yet have implemented these new requirements, they should act quickly in order to decrease the risk of facing potential regulatory liability in this regard.

Lavery will keep you informed of any further significant developments.

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[1] See, in particular, Équipe des études et analyses, Service de la statistique et de l'information de gestion, CSST, Portrait des lésions professionnelles chez les travailleurs de 55 ans et plus 2002-2011, March 2014, p. 34, online: http://www.csst.qc.ca/publications/200/Documents/DC200_1049_1web.pdf (site consulted April 21, 2015), "[TRANSLATION] A more detailed examination of occupational disease-related deaths between 2002 and 2011 demonstrates that 81% of such cases are due to asbestos (873 deaths)" and Équipe d'analyse, Service de la statistique, CSST, Portrait des lésions professionnelles chez les travailleurs de 45 ans et plus 1999-2008, May 2010, p. 38, online: http://www.csst.qc.ca/publications/200/Documents/DC200_1049web1.pdf (site consulted April 21, 2015), "Over the course of the last ten years studied, occupational disease-related deaths are mainly caused by asbestos (at least 7 out of 10 cases)."
[2] (2013) GOQ II, 1999.
[3] CQLR c S-2.1, r 13 ("RROHS").
[4] *Regulation to Amend the Regulation Respecting Occupational Health and Safety and the Safety Code for the Construction Industry*, supra, note 2, section 6.
[5] CQLR c S-2.1 ("AROHS").
[6] We are referring, in particular, to section 236 of the AROHS.
[7] RROHS, section 69.3. See also section 56 of the AROHS.
[8] RROHS, section 69.1.
[9] *Ibid,*, sections 69.2, 69.4 and 69.6.
[10] *Ibid,*, sections 69.4 and 69.7.
[11] *Ibid,*, section 69.8.
[12] Commission de la santé et de la sécurité du travail, «Amiante», *Foire aux questions* (question 15), online: http://www.csst.qc.ca/prevention/theme/amiante/Pages/foire_aux_questions.aspx (site consulted April 21, 2015).
[13] RROHS, section 69.9.
[14] *Ibid,*, section 69.11.
[15] *Ibid*.
[16] *Ibid,*, section 69.10.
[17] *Ibid,*, section 69.13.
[18] *Code de sécurité pour les travaux de construction*, RLRQ c S-2.1, r 4; RSST, article 69.14.
[19] RROHS, section 69.15.
[20] *Ibid,*, section 69.16.
[21] *Ibid,*, section 69.17.

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