

When do you need an Asbestos Audit or Designated Substance Audit?

Building Maintenance, Renovations, Alterations and Demolition

We would like to bring to your attention two provincially regulated requirements for buildings in Ontario. The Ontario Ministry of Labour (MOL) enforces regulations pertaining to Designated Substances and Asbestos. Failure to comply can result in charges and steep fines for building owners, employers and contractors. MTE Consultants Inc. (MTE) can provide services to ensure that you are in compliance with these regulations.

The following is a summary of the requirements of Section 30 of the Occupational Health and Safety Act (OHSA) and Ontario Regulation 278/05, and has been paraphrased as a reference only.

Designated Substances

Section 30 of OHSA states the following:

- Prior to any building renovation, alteration or demolition the building owner must prepare a list of all designated substances present at the project site. This is typically done by conducting a designated substance audit.
- If any work on the project is tendered, the list of designated substances must be included in the tender package.
- The owner must ensure that a prospective constructor (contractor) of a project has received a copy of the designated substance list before entering into a contract.
- The constructor (contractor), in turn, must ensure that each prospective contractor and subcontractor has received a copy of the list of designated substances before entering into a contract.
- An owner who fails to comply is liable for any loss or damages suffered (by the constructor and subcontractors) as a result of not providing such a list.
- A constructor who fails to comply is also liable for any loss or damages suffered (by the contractor and subcontractors) as a result of not providing such a list.
- Any corporation that is in contravention is liable to a fine of up to \$500,000.00 per offence.

http://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_6.php

The Act does not provide a cut-off date, building age or type of construction that is exempt. All buildings, new and old, undergoing any form of renovation, alteration, demolition or construction (with the exception of the erection of a new building) must have an audit.

Designated Substances are defined in Ontario Regulation 490/09. This regulation consolidates a total of eleven individual Designated Substances Regulations into a single Regulation and includes the following:

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|------------------|------------------------|--------------------|
| 1. Acrylonitrile | 5. Coke Oven Emissions | 9. Mercury |
| 2. Arsenic | 6. Ethylene Oxide | 10. Silica |
| 3. Asbestos | 7. Isocyanates | 11. Vinyl Chloride |
| 4. Benzene | 8. Lead | |



Acrylonitrile, Arsenic, Benzene, Coke Oven Emissions, Ethylene Oxide, Isocyanates and Vinyl Chloride are not typically found in most buildings and are usually exclusive to specific industrial process. More commonly found Designated Substances include:

- Asbestos
- Lead
- Mercury
- Silica

The following Hazardous Building Materials are not Designated Substances but could be present within a building and pose a significant risk to the health and safety of workers, occupants, and the environment:

- Polychlorinated Biphenyls (PCBs)
- Urea Formaldehyde Foam Insulation (UFFI)
- Ozone Depleting Substances
- Bird and Bat Droppings
- Mould

The above mentioned Hazardous Building Materials do not have dedicated regulations associated with Section 30 or the OSHA; however, the Ministry of Labour recognizes them as workplace hazards and enforces worker protection under the General Duty Clause 25(2)(h) of the OSHA. Clause 25(2)(h) states that employers are required to “take every precaution reasonable in the circumstances for the protection of a worker”. In such cases the Ministry of Labour will refer to industry standards and guidelines for the safe handling and management of such materials.

MTE can provide you with a Designated Substance and/or Hazardous Building Material Audit, which includes a thorough examination of your building in order to identify the abovementioned Designated Substances and Hazardous Building Materials and provide you with recommendations to ensure that you are in compliance with the OSHA.

Asbestos Compliance Audit & Management Plan

Although Asbestos is a Designated Substance and is mentioned in Ontario Regulation 490/09 it also has a dedicated regulation for its management in buildings. Ontario Regulation 278/05 Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations operates in unison with Section 30, however has requirements that must be adhered to regardless of whether Section 30 applies or not. Regulation 278/05 requires an audit to be conducted within nearly all buildings to identify the presence or absence of asbestos-containing materials. If asbestos-containing materials are identified the Regulation requires the owner to implement a written program to safely manage the asbestos.

Ontario Regulation 278/05 replaced Ontario Regulation 838/90 in 2005 and the full requirements of the Regulation came into effect on November 1, 2007. Asbestos Audits and Asbestos Management Programs conducted and prepared before November 1, 2005 are not compliant with the new Regulation (old audits and programs are not automatically 'Grand-fathered'). The Regulation does not provide a cut-off date, building age or type of construction that is exempt. Therefore all building types, regardless of their date of construction, require an asbestos audit.

There are minor exceptions regarding asbestos audits and programs for residential buildings, however, once a contractor is retained to do work at the site they are bound by the OSHA and it's regulations to protect their workers. Although the building itself may fall under an exemption the project does not.



Ontario Regulation 278/05 applies to:

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- Every project;
- Every owner;
- Every constructor, employer or worker engaged on the project;
- The repair, alteration or maintenance of a building;
- Every building in which material that may be asbestos-containing has been used, and
- The repair, alteration, maintenance or demolition of machinery, equipment, aircraft, ships, locomotives, railway cars and vehicles and every employer and worker engaged in the project.

The Regulation requires the following:

- Prepare and maintain an asbestos audit report for the site;
- The report must include information on the location of asbestos, type of asbestos, condition of the asbestos-containing material and whether or not the material is friable or non-friable;
- Building occupants must be notified of the information in the audit;
- Prospective constructors, contractors or sub-contractors must be notified of the audit and must receive a copy of the audit;
- Establish and maintain worker training programs for employees, and
- Reassess the condition of asbestos-containing materials at reasonable intervals and update the report at least annually and/or when new information regarding asbestos is obtained or becomes available.

An "owner" as defined in the OHS Act includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, as well as a person who acts for or on behalf of an owner as an agent or delegate.

In Conclusion

- All buildings in Ontario, new and old, undergoing any form of renovation, alteration, demolition or construction (with the exception of the erection of a new building) must have a Designated Substance Audit. This audit must be in place prior to the commencement of any tendering or work.
- All buildings in Ontario, new and old, require an Asbestos Audit.
- If a building has asbestos-containing materials the building requires an Asbestos Management Program.
- If you are the Owner of a building(s) and do not have an asbestos audit for your building(s) you need to have an audit conducted as soon as possible.
- If you are the Owner of a building and have an old asbestos audit that was conducted prior to November 1, 2005 the Ministry of Labour will not accept this audit under the new Regulation. You need to have your audit updated as soon as possible.
- If you are the Owner of a building(s) and you have an Asbestos Audit that identifies asbestos-containing materials you require an Asbestos Management Program.
- The Ministry of Labour has the authority to shut down job sites and enforce fines and penalties if the necessary documents, measures and procedures are not in place.
- Owners who fail to comply are liable for any loss or damages suffered as a result and may personally face fines of up to \$25,000.00 per offence plus up to one year in prison. Corporations employing a worker who fail to comply are liable to fines of up to \$500,000.00 per offence. It is common that multiple charges are laid during the discovery of noncompliance with the Act or Regulations.

