

Asbestos Abatement Regulations, 2020 promulgated under the Occupational Health and Safety Act No. 85 of 1993 (as amended)

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Exposure to asbestos dust has long since been known as an occupational risk; however, it is often overlooked because of the difficulty in identifying asbestos 'in place' and the long latency period before symptoms or diseases present in exposed persons.¹ Asbestos in place is defined in the Regulations as any asbestos, asbestos cement products, asbestos coatings, asbestos-containing material, asbestos dust, asbestos insulation, asbestos insulation board and asbestos waste at the workplace.

South Africa began mining asbestos around 1883, after a crocidolite mine was established in the Northern Cape region, in Koegas.² The country developed into a major producer of crocidolite, supplying Australia and the United Kingdom,² for many years, with the (then) sought-after heat-resistant mineral. South Africa's mining of asbestos peaked in 1977, when it was the third-largest supplier in the world.³ Within a decade, however, the Northern Cape mines were closed due to the related health risks and a growing concern over litigation against mining companies.

In 2001, the (then) Department of Labour promulgated the Asbestos Regulations under the Occupational Health and Safety Act No. 85 of 1993.⁴ These Regulations directed how asbestos needed to be controlled in a work environment to limit and control exposure to employees. At this time, South Africa was still manufacturing materials containing asbestos, such as water pipes, roof sheets and insulation rope. In 2008, the (then) Department of Environmental Affairs promulgated the Regulations for Prohibition of the Use, Manufacture, Import and Export of Asbestos and Asbestos Containing Material.⁵ This resulted in the cessation of the manufacturing of asbestos-containing materials in the country. However, many buildings built between the 1940s and 1980s still contain materials that contain asbestos.

The Department of Employment and Labour established a Technical Committee to review the Asbestos Regulations (2001) in 2014. The Committee comprised representatives from organised business, organised labour and Government, and technical specialists in the field. The work of the Technical Committee culminated in the promulgation of the Asbestos Abatement Regulations in November 2020⁶ after approval from the Advisory Council of the Minister for Occupational Health and Safety (ACOHS) and the Minister of Employment and Labour.

The Asbestos Abatement Regulations focus on asbestos in place as no new asbestos products may be produced or imported, as well as the elimination of health risks associated with asbestos exposure. The Regulations require an employer to identify all asbestos-containing building materials. A written inventory of all asbestos building materials should be drawn up and regularly reviewed by the employer. Where the employer is not the owner of the building or facilities used by him/her, an agreement should be reached with

the building owner, as the employer is accountable for assessing the risk to his/her employees at that place of work. Once an inventory of asbestos building materials is available, a management plan should be developed for maintaining and/or removing asbestos-containing building materials. A transition period provided for in the Regulations allowed time for employers to develop these management plans after the Regulations were gazetted in November 2020. The transition period of 18 months came to an end in the middle of May 2022.

The Regulations also changed the approach to registered asbestos contractors, dividing asbestos work into three types:

Type 1 asbestos work is the painting of asbestos cement products in a manner that does not require surface preparation and does not cause the release of asbestos fibres; or the removal of < 10 m² 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; and does not require registration as an asbestos contractor with the Chief Inspector of the Department of Employment and Labour.

Type 2 asbestos work is the repair or encapsulation of asbestos cement products in a manner that does not require surface preparation, or the removal of asbestos cement products or asbestos insulating boards.

Type 3 asbestos work is the removal, repair or encapsulation of any asbestos and asbestos-containing material. Both asbestos and asbestos-containing material are defined in the Regulations.

Companies performing type 2 and/or type 3 asbestos work require registration as asbestos contractors with the Chief Inspector of the Department of Employment and Labour. Registration is valid for a three-year period and companies are provided with a registration certificate with a unique reference number.

The risks associated with performing type 1 asbestos work are considered to be negligible ONLY if there is adherence to the restrictions for volume, frequency and type of material. The intent of type 1 asbestos work is to allow for once-off small asbestos removals to be conducted by building owners themselves, without incurring exorbitant costs; a plan of work does not need to be submitted to the Department of Employment and Labour. However, a written safe operating procedure that includes the disposal of waste needs to be developed and adhered to at all times, and the Department should be notified of such work before commencement.

The criteria that provide guidance for the preparation of an application to register for type 2 and type 3 asbestos work are available on the Department's webpage under (<https://www.labour.gov.za/DocumentCenter/Pages/Forms.aspx>). An up-to-date list of registered asbestos contractors is available from the Department. This is useful for verifying that a company has a valid registration certificate.

While asbestos demolition was a main focus of the old Regulations and allowed for registered asbestos contractors to perform this work, asbestos demolition is prohibited under the new 2020 Regulations. Demolition work is defined as a method to dismantle, wreck, break, pull down or knock down a structure, or part thereof, by way of manual labour, machinery, or the use of explosives in line with the Construction Regulations of 2014.⁷ All asbestos-containing materials must be safely removed for disposal before any demolition may start on a building.

The Regulations gazetted in November 2020 allowed for an 18-month transition period for the identification of asbestos in place in all buildings and the development of asbestos inventories and asbestos management plans. The management plan should contain, for example, a description of the asbestos or asbestos-containing material; the location, quantity, and state of deterioration; labelling that is in place; and the planned maintenance activities for the following years until final removal and disposal. The timeframe for final disposal is not prescribed and should be based on the risk and unique circumstances of each building.

There is no cut-off date by which all asbestos building materials will have to be removed (banned). There is, however, a National Asbestos Management Strategy that aims for an asbestos risk-free South Africa by 2030.⁸

The reason for there being no 'cut-off' date for the removal of all asbestos-containing building materials is that many buildings in South Africa still contain asbestos. If these asbestos materials are kept in a good state of repair (not broken or damaged) they can safely remain in place for many years, with no risk to health. The cost of safely removing and disposing of asbestos and asbestos-containing materials is high and may be disproportioned to the risk, should a 'cut-off' or ban be instituted. In addition, the cost of disposal of asbestos waste at hazardous waste landfill sites can be expensive, and disposal reduces the lifetimes of the sites when large quantities of contaminated building materials are added to them. Every maintenance plan for asbestos in place must include the phase-out of all asbestos and asbestos-containing material, within a self-selected timeframe.

The 2020 Asbestos Abatement Regulations stipulate specific requirements for the major role players in the removal of asbestos or asbestos-containing material. Responsibilities are assigned to the client, the registered asbestos contractor, and the approved inspection authority (AIA). The asbestos client, being an employer, cannot simply hand over an asbestos removal project to the registered asbestos contractor; the employer remains accountable.

Although established as 'good practice' in the past and provided by many AIAs, a 'dispensing of asbestos clearance certificate' is now required for the final closure of an asbestos project. Requirements for certifying that an area or building is 'clear', after an asbestos project, include visual inspections and environmental air sampling compared to the clearance indicator of 0.01 fibres per millilitre of air.

A change has been introduced regarding the time period for safe keeping of records, from 40 to 50 years, mainly due to research, which has shown that the latency period of asbestos-related disease can be up to 50 years after exposure.

On 20 May 2022, the Minister of Employment and Labour gazetted an amendment to the Asbestos Abatement Regulations of 2020.⁶ Three changes were made to the Regulations that impact their implementation. First, clarity is provided that the occupational exposure

limit (OEL) for asbestos is related to a four-hour sampling time. To this purpose, a short section was added to the definition: 'OEL for asbestos' means an occupational exposure limit of 0.1 regulated asbestos fibres per millilitre of air over a continuous period of four hours, measured in accordance with the Health and Safety Executive's analysts' guide for sampling, analysis and clearance procedures for asbestos.⁹ Second, some text was deleted from Regulation 7(4)(a) in order to clarify who can deem a person competent.⁶ The intention is not for the Chief Inspector, Occupational Health and Safety to 'declare' persons competent, but for everyone following the definition of a competent person to come to the same conclusion regarding a person's competency to perform a task, as required in the Regulations. Last, Regulation 13(e) has been deleted; it is no longer the responsibility of an AIA to obtain acknowledgement from the Chief Director, Provincial Operations for notification of type 2 and type 3 asbestos work. This is an important change to keep in mind during SANAS audits of AIAs.

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