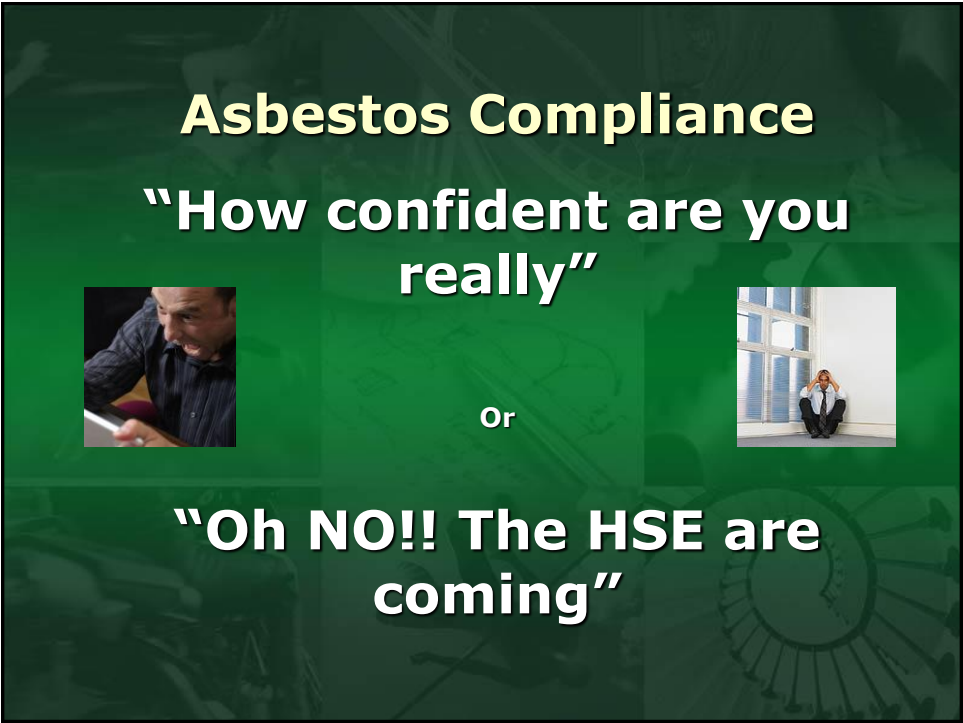


Asbestos Compliance

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Ridge & Partners

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Tersus

Presentation for
The NHMF Conference
24 January 2012



Asbestos Compliance

“How confident are you really”

Or

“Oh NO!! The HSE are coming”

Ridge: Credentials


- 8 offices across the UK
- Qualified Consultants (BiOH P402 / P405 and NIACS)
- Contracts for surveys and remediation
- RSL Asbestos audits / assistance
- Representation for Housing clients during short notice HSE asbestos investigation
- Project Management of survey programmes
- Direct resident asbestos communication assistance

Objectives: the next 60mins

- Provide context/background to compliance
- Recent developments: case law / guidance
- New Control of Asbestos Regulations 2012
- Key findings from 20+ RSL audits
- De-mystify the process: some interpretation
- Examine some practical steps
- Questions, discussion and reflection

Context: the background

- **Widely used** in industrial and domestic buildings (1960's + 70's Council Housing)



**WHEN THE FIRE ALARM WENT OFF,
IT TOOK TWO HOURS TO EVACUATE
NEW YORK'S WORLD TRADE CENTRE.**

The bigger the building, the more important fire-proofing becomes.
That's why today's buildings have asbestos-cement walls and even floors containing asbestos.
Asbestos contains fire, cannot burn and holds up after metal and glass have melted down, giving vital time for people to escape.
You'll also find asbestos sealing plumbing joints, insulating heating pipes, electric motors and emergency generators.
Asbestos. We couldn't live the way we do without it.

ASBESTOS

When life depends on it, you use asbestos.

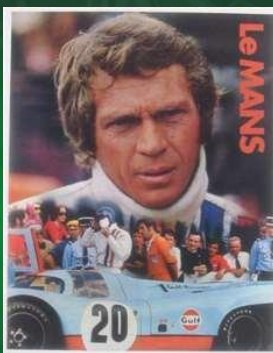
Asbestos Corporation Limited,
Sun Life Building,
Montréal, Québec H3B 2X6,
Canada.

Represented by:
Becker & Haag (GmbH & Co.)
P.O. Box 100 548, Spandau 1-3
2000 Hamburg 1, Germany (FOR WEST GERMANY,
EAST GERMANY, AUSTRIA AND HUNGARY)
Other representatives world-wide.

Context: the background

- Widely used in industrial and domestic buildings (1960's + 70's Council Housing)
- Mesothelioma and Lung Cancer Deaths
 - Mesothelioma: 153 deaths in 1968 rising to 2,249 in 2008. Predicted peak of 2,038 in 2016
 - Add asbestos-related lung cancer = around 4,000 current annual total

Context: the background



- What killed this iconic daredevil actor?
 - A passion for motorcycles or car racing?
 - The excesses of a Hollywood lifestyle?

Context: the background

- **Relevant Legislation**
 - Health and Safety Work Act 1974 + Workplace H&S Regs. 2002
 - **Control of Asbestos Regulations 2006***
 - Construction, Design and Management Regulations 2007
 - Hazardous Waste Regulations 2005
- **Approved Codes of Practice (ACoP)**
 - L127 Approved Code of Practice – 'Managing asbestos on non-domestic buildings'
 - L143 ACoP – 'Work with materials containing asbestos'
- **HSE Guidance Notes**
 - HSG227 – 'Comprehensive guide to managing asbestos in non-domestic buildings'
 - HSG247 – 'Asbestos: The licensed contractors' guide'
 - HSG248 – 'Asbestos: The analysts' guide for sampling, analysis and clearance procedures'
 - HSG264 – 'Asbestos: The survey guide' (Jan 2010):
 - Survey definitions
 - Housing Organisation Guidance
 - Competency of Surveyors
- ***Chris - CAR changes anticipated**

'CONTROL OF ASBESTOS REGULATIONS 2012'

CONTROL OF ASBESTOS REGULATIONS 2012

The HSE are to replace the current Control of Asbestos Regulations (CAR) 2006 this year - expected in April.

This is to ensure full compliance with the European Directive in including Regulation 3 (2), identification of work exempt from licensing, the terms:

- A) Nonfriable – within works classed as being of 'Short non-continuous maintenance'.
- B) Without deterioration of non-degraded – under works classed as being on 'Materials in which the asbestos fibres are firmly linked to the matrix'.

CONTROL OF ASBESTOS REGULATIONS 2012

The effect of this will be the creation of an additional classification of work, that of:

'NOTIFIABLE NON-LICENSED'

Thus, SOME works currently classified as Non-licensed, will in the future also require NOTIFICATION to the local enforcing authority.

In summary, the requirements under CAR 2012 will be:-

CONTROL OF ASBESTOS REGULATIONS 2012

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- A) Licensed Work – as at present - work to which ALL the requirements apply.**
- B) Non-Licensed Work – as at present - work which can be exempted from:**
 - i) notification of work;**
 - ii) holding a licence;**
 - iii) medical examinations;**
 - iv) maintaining a register of work;**
 - v) arrangements to deal with accidents, incidents and emergencies; and**
 - vi) designation of asbestos areas.**

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- c) Notifiable Non-Licensed works will be SUBJECT to the requirements of:**
 - i) Notification of the works to the relevant enforcing before work is commenced - via e.mail or phone application.**
 - ii) Medical examinations to assess each worker's state of health to be carried out before exposure to asbestos begins and then at least every 3 years.**
 - iii) Register of work (health record) to be kept by the employer for each employee exposed to asbestos.**

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- C) Notifiable Non-Licensed Work shall be EXEMPT from the requirements to:**
- i) Hold a licence from the HSE to work on materials containing asbestos;**
 - ii) Have arrangements to deal with accidents, incidents and emergencies; and**
 - iii) Designate asbestos areas.**

HSE GUIDANCE ON REMOVAL OF AIB SOFFITS - 2012

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HSE will be issuing guidance on the removal and overcladding of external soffits, made from Asbestos Insulating Board (AIB) – it will address:

- 1. Enclosures - full enclosure expected for single storey premises.**

Where not practical a Partial Enclosure – 4 sides and a floor – could be used.

- 2. Type of Respirators - full-face powered assisted respirators required for all works.**

HSE GUIDANCE ON REMOVAL OF AIB SOFFITS - 2012

3. **Site Clearance - full enclosures - required to undergo the four stage clearance procedure.**

Partial enclosures will be required to undergo testing as per the four stage clearance procedure EXCEPT, Stage 3 e.g. disturbance air tests NOT required.

4. **Personal and Background Sampling - to be performed on 10-20% of occasions to confirm that control measures are effective.**

Recent Developments:

- **Consequences of non compliance severe:**

- Financial penalties
- Possible jail sentence
- Refusal of employers & public liability
- **Adverse publicity + concerned residents**
- Case Law Evolves (but one direction)..

- **Dianne Willmore vs Knowsley Metro.BC.**

- 1970's - school ceiling panels
- Electrical contractor + school pranksters
- Mesothelioma (died aged 49)
- Supreme Court March 2011 (£240k)
- Exposure > De Minimus test (above background)
- "Avoidable exposure" enough to prosecute



Recent Developments...

- **HSE** Unannounced Construction Site Visits:
 - Commenced February 2011
 - Include checks that “asbestos **surveys** have been **carried out** prior to any refurbishment work”

Recent Developments...

- Not just an HSE prosecution.....



- An **M&S** HSE prosecution
 - Who is responsible (Case Sept 2011)?
 - Asbestos Removal Contractor - **£200** (fine)
 - Willmot Dixon - **£125K** (incl. costs)
 - M&S - **£1.6 million** (incl. costs)
 - Time / Resources - “**This verdict a wake up call**”

Asbestos 'Health Checks' for Housing:

Purely Ridge findings
From
20+ RSL / Group Compliance Audits

Key Findings:

Recurring themes requiring corrective action:

- Asbestos Management Plan / Procedures:
 - Primary intentions / **interpretations missing**
 - **Out of date** (HSG 264 / staff structure?)
 - Not adopted (Board/ownership/input)
 - Contradictory / Non specific / Irrelevant sections
 - **No Review** (HSG 227 – 6 monthly)
- No Defensible Survey Strategy:
 - Ad Hoc / **driven by works** / voids / budget constraints

Key Findings Cont...

- Specialist Surveys Not Fit For Purpose
 - Quality Control poor / non existent (no mechanism)
 - **Scope** of surveys **never properly rehearsed** (knowledge)
 - **Deviation from standard guidance** (terms/method/risk rating)
 - Risk Assessments on Material Risk Assessment (MRA)
 - Priority Risk Assessment (**PRA**) left to 'Duty Holder'
- Poor Coms. Between survey Co and RSL:
 - 'Pulling together' or in different direction (shared objective?)
 - Many different survey companies (inconsistency)
 - Surveys **not commissioned by RSL** (suitable for register?)
 - **Differing interpretation of guidance** (Actions/Banding/Time)
 - Poor contracts – **No Partnering** / VFM / SO's
- Surveys by those undertaking removal works

Key Findings Cont...

- Asbestos Registers:
 - Not current (incl. the stock list + removal data)
 - **No 'Management Reporting'** Capability
 - Limited Access / No links to HMIS (works orders)
 - **Inconsistent Risk Evaluations** applied (for ACMs)
 - **Non-compliant** algorithms / terminology embedded
 - Data not made available or consulted (**auditing**)
 - Emergency Services not advised (ACoP L127)
- Appropriate docs. not requested / retained
- **Processes** falling **outside compliance** processes:
 - DIY approvals / Disabled adaptations / Voids procedure
- Insufficient controls for un-licensed work (DLO?)

Key Findings Cont...

- **No Re-Inspection Surveys** undertaken
 - Deliberate / accidental / on own register?
 - ACoP L127: "As a minimum the material (ACM) should be checked every **six to twelve months** even if it is in good condition and not likely to be disturbed, as it may for example be accidentally damaged" (Domestic too?)
- No or **insufficient 'Refurbishment' surveys** undertaken (prior to refurbishment works)

HSG 264 - Refurbishment surveys:

67 Refurbishment and demolition surveys should also be carried out on a proportion of properties in the work programme. The ratio again will depend on asbestos variability within the housing stock and may be high where there is substantial variation. A proportion should be surveyed until the results demonstrate as far as reasonably practicable that there is consistency in the range of ACMs in the property type and there is an accurate picture of asbestos presence. The refurbishment and demolition survey will only be necessary in the specific area/location where the works will take place, e.g cupboard, part of a room, kitchen/bathroom.

Key Findings Cont...

- **Insufficient** or infrequent asbestos **training**
 - RSL based staff (technical / non technical)
 - DLO / External Contractors
- **Residents not formally advised:**
 - Of known asbestos in their home
 - Of suspected asbestos in their home (cloned)
 - General "do's + don'ts"
 - Inconsistent - only some told (new residents?)
 - KLOE / TSA / HCA increased focus

**Recent Audit Commission Inspection Report Extract:
Midlands Based Housing Association.**

Recommendation:
R4 Improve asset management by:

- Introducing procedures to notify tenants formally of the presence of asbestos and the do's and don'ts.

Stock investment and asset management: Planned, major and cyclical works:

61. Strengths marginally outweigh weaknesses. Customer standards are in place and tenants are involved. Tenants rate major refurbishment work highly and work is packaged to minimise disruption. The association has agreed a 'standard' for decent homes work and a programme has been developed and resourced. However, the association has not begun an up to date risk assessment of its stock against the HHSRS criteria and **tenants are not formally informed of the presence of asbestos.**

69. Opportunities are not always taken to build up a more comprehensive picture. Void inspections are not used to provide stock condition information. The association has not begun an up to update risk assessment against the HHSRS criteria; although this work is included in the next planned stock condition survey. **Nor is there a proactive programme for surveying non-communal areas for asbestos.** However, post repair inspections extend to a full property condition survey which is added to the database. All work done to improve properties is recorded on the database and includes gas engineer assessments of property energy efficiency. As a result information is incomplete and **risks faced by current and potential occupants are not being effectively assessed.**

73. One significant weakness impacts on the effectiveness of asbestos procedures. The association maintains an asbestos register with appropriate procedures confirmed as operating effectively by Internal Audit in December 2006. Properties are surveyed for the presence of asbestos before any capital works is carried out. Procedures are in place to alert all contractors to the presence of asbestos when work is being carried out on a property. **However, tenants are not formally notified of the presence of asbestos. They are only informed informally which provides no formal record of the association's obligation. As a consequence, tenants may mistakenly carry out DIY work on an area affected by asbestos.**

Maximising Your Compliance



Possible Steps / Approaches:

- Management Plan / Policy and Procedures:
 - **Thoroughly review** format + relevance (+ append)
 - Specific roles / **named persons (ownership)**
 - Get it endorsed (formally)
- Set up specific '**Asbestos Steering Group**'
 - **Delegated authority** (for Group and/or Board)
 - Relevant stakeholders and Clear TOR (tasks + timescale)
- Asbestos Action Plan
 - **Discrete steps** (SMART) + Monitor Progress

Possible Steps Cont...

- Clarify basis of On-going Survey Programme:
 - Is it robust or accidental?
 - **Desk Top Study** to establish 'asbestos status' of groups of property (**HSG 227** + HSG 264)
 - **Prioritise** and target surveys (explicit protocol)
 - **Review** programme priority against findings
 - Validate existing / historic data (is it helpful?)

Possible Steps Cont...

■ Registers:

- Evaluate – fit for purpose (future proof/options?)
- Harmonise data + risk assessments / actions
- PRA's – agree protocols + add retrospectively?
- Align risk banding / Management Actions (consistency of risk management)
- Clarify + record underlying algorithms / criteria
- Insist on guidance compliant approach
- Add back **removal data** (validated)
- Hyper-link to photos / plans / certification
- Want: **management tools** / search engine
- Want **Web enablement** (secure password)
- **Use audit trail** (protocol)

Possible Steps Cont...

■ Institute a Resident Endorsed Asbestos **Communications Strategy**:

- Clear objectives + **Resident editorial panel (3*)**

■ Audit Framework:

- **Like gas servicing** (difference 20-40 yrs)
- Independent 4 stage ACT / re-assurance
- Method statements + Risk Assess (DLO?)
- General **Contractors** (ask questions/ record/ **test use of data**)

Possible Steps Cont...

- Procurement / Contracts:
 - **Consistency**: 1 surveying, 1 removing
 - **Partnering** (more important?)
 - Shared protocols (mobilisation the key)
 - VFM testing (SoRs / Value Engineering)
 - Retained advices / Training (matrix)
 - Co-ownership of Man. Plan approach?
 - Resident friendly focus (E&D / advice)
 - Process Mapping (timelines / ownership)

Possible Steps Cont...

- Re-inspection Protocols:
 - Practical but **defensible approach** (HSE view)
 - **Risk based** (see previous consistency aspects)
 - Agree with surveying Co and Register provider
 - Actively review if 'fit for purpose' (Man. Body)
 - Site inspection protocol (who / training / P Map)

Possible Steps Cont...

- Survey Formats:
 - Essential to **scope + Pilot** (Man/ RFD/ Com/ Grge)
 - **Test** exact **outputs** (hard copy / interface templates / attachments / timelines)
 - **RDF surveys** require most work to establish:
 - Phasing + individual scoping (with contractor also)
 - Work stream / archetype specific (culture shift?)
 - How many?
- Key Recommended Actions (SMART Action Plan)

The Usual Suspects



Boiler / under stairs cupboard; asbestos insulation board screwed to the back of the door for fire protection

The Hidden Suspects



Asbestos Debris Hidden Within Ducting (after previous removal?)

Summary:

- If not done within the last 12 months – start by having your **Management Plan** / Policy and Procedures **audited** (competent to do so 'critical friend')
- Test the reality (then formulate '**Action Plan**')
 - Check Surveys / Register fit for purpose
 - Keep residents sufficiently informed
 - Engage at Board level for resources/ capacity
 - Establish real asbestos management framework – continual monitoring / review
 - Celebrate getting it right (HSE inspection)!

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