

7 CURRENT SOUTH AFRICAN REGULATIONS GOVERNING THE SAFE USE OF ASBESTOS

7.1 INTRODUCTION

Occupational Health and Safety in South African is not driven by morality, humanitarian considerations or ethics, but rather by legislation. Although our mining and industrial sectors date back more than a century, it is obvious that every single milestone with regard to the control of asbestos coincides with the promulgation of new acts or regulations.

The health and safety of employees or the public at large is not governed by one single statute, but rather by a number of acts, regulations, ordinances and by-laws. From an Occupational Health and Safety point of view, the main acts are the Mine Health and Safety Act (MHSA) and the Occupational Health and Safety Act (OSHAct). Legislation regarding disability and compensation also needs to be mentioned. There are also various other statutes that deal with Air Pollution, Waste Disposal, Packaging, Transport and Labelling of asbestos and asbestos products.

The following discussion provides an overview of the legislation that governs the safe use of asbestos in South Africa.

7.2 ASBESTOS MINING

The Mine Health and Safety Act (MHSA) came into effect on 15 January 1997, replacing the Minerals Act 50 of 1991 as the legal basis for regulating occupational health and safety in South African mines, including asbestos mines⁶⁵.

The MHSA also replaced those sections of the Occupational Diseases and Mines and Works Act 78 of 1973 (ODMWA), which regulated the control of occupational health hazards in the mines thereby consolidating the provisions dealing with the control of occupational health into a single statute.

The MHSA was enacted after an extensive policy review undertaken by the Commission of Enquiry into Health and Safety in the Mines ("the Leon Commission") which published its report and recommendations in 1995. The Act, as well as the subsequent Mine Health and Safety Amendment Act of 1997, was developed through a tri-partite consultation process involving representatives of government, employers and trade unions. As a result of the high level of participation in its drafting, the Act enjoys substantial legitimacy among employers and workers in the industry.

The Leon Commission concluded that the mining industry had taken inadequate steps to protect mineworkers from work-related health conditions. There was no evidence indicating a decline in the prevalence or severity of the major occupational diseases in the mining industry during the past 20 years. Legislation had been inadequately enforced and the State's enforcement agencies had not been able to control occupational health problems⁶⁶. This led the Commission to recommend a major legislative restructuring coupled with the devotion of greater resources to enforcing of mine health and safety standards.

The MHSA draws upon and modernises the approach in the Occupational Health and Safety Act 85 of 1993, which regulates health and safety in other sectors of the South African economy. The International Labour Organisation's Mine Health and Safety Convention 177 of 1995, adopted during the process of developing the new Act, also significantly influenced the legislation.

The Act is also influenced by the Labour Regulations Act 66 of 1995, particularly in its approach to worker participation on health and safety and the resolution of disputes over the disclosure of information⁶⁷.

The principal features of the MHS Act are –

- The primary responsibility for ensuring a healthy and safe working environment in mines is placed on the mine owner (employer). The act sets out in detail the steps that employers must take to identify, assess, record and control health and safety hazards in the mine
- The act entrenches basic worker rights, most notably, the right of workers to participate in health and safety, the right to receive health and safety information, the right to training and the right to withdraw from the workplace in the face of danger
- The act establishes representative tri-partite institutions to promote a culture of health and safety and develop policy, legislation and regulations
- The responsibility for enforcing the OHS Act lies with the mine health and safety inspectorate. The inspectorate's powers are recast and include the power to impose administrative fines upon employees who contravene the OHS Act. The act also contains innovative approaches to the investigation of accidents, diseases and other occurrences that threaten health and safety

The Act provides for the use of a range of legal and policy instruments in regulating health and safety:

- Mine Health and Safety Act
- Regulations (including regulations previously in force under the Minerals Act). The Minister may make regulations after consulting the Mine Health and Safety Council
- Codes of Practices – Mines must prepare codes of practice as required by the Chief Inspector. Codes of practice must comply with any guidelines issued by the Chief Inspector
- The legal permissible exposure limit for asbestos in the South African mining industry was 5 f/ml, prior to 1975. According to available medical information, employees exposed to a level of 5 f/ml will run a risk of developing asbestosis after 5 years, with the disease presenting itself 10 to 20 years later, i.e. those exposed would have become ill between 1985 and 1995.
- The exposure limit was reduced in 1975 to 2,0 f/ml and again reduced to 1,0 f/ml in 2002.

7.3 ASBESTOS IN THE INDUSTRIAL SECTOR

The health and safety of employees working with asbestos in the industrial sector is governed by the Occupational Health and Safety Act (No 85 of 1993)⁶⁸, which replaced the Machinery and Occupational Safety Act (No 6 of 1983).

The OHS Act applies to all employers and employees in the RSA. It also applies to self-employed persons, as well as private households. The following are exceptions:

- Any premises where the Mine Health and Safety Act applies, and
- An explosives factory and an explosives magazine within the meaning of the Explosives Act (27 of 1956)⁶⁹

It includes those in such diverse spheres as the public sector, agriculture, commerce and local government.

Apart from the State and the South African Transport Services, more than 220,000 employers and approximately 6,5 million employees\ are covered by this legislation. The purpose of the OHSAct is to provide for the Health and Safety of employees at work as well as members of the public where the activities of other persons may affect them.

The OHSAct empowers the Minister of Labour to make regulations in the interest of Occupational Health and Safety. The Asbestos Regulations were the first occupational hygiene regulations and were published on 10 April 1987. The asbestos regulations were amended and the new Asbestos Regulations came into effect March 2002⁶⁸.

The new Asbestos Regulations are comprehensive, and make provision for:

- Informing and training employees that may be exposed regarding, amongst others, the health risks of asbestos and how to work safely with this material.
- Assessment of potential exposure
- Air Monitoring
- Medical Surveillance
- Zoning of asbestos work areas
- Implementation of control measures, and
- Housekeeping

The regulations also make specific provision for the control of asbestos in the following applications:

- Asbestos that forms part of the structure of a workplace, building, plant or premises
- Asbestos cement sheeting and related products, and
- Demolition (of buildings and structures that contains asbestos in its raw mineral form, including the gleaning of any spilt asbestos)

The new Asbestos Regulations make provision for an Occupational Exposure Limit of 0,2 regulated asbestos fibres per millilitre of air averaged over any continuous period of 4 hours, and a short term exposure limit of 0,6 regulated asbestos fibres per millilitre of air averaged over any 10 minutes.

7.4 COMPENSATION

The compensation of asbestos related diseases are dealt with in two independent systems.

The Occupational Diseases in Mines and Works Act, No 78 of 1973 (as amended by Act 208 of 1993) (ODMWA) covers occupational lung diseases in miners⁷⁰. The following asbestos related diseases are compensable under ODMWA.

- Asbestosis in asbestos miners
- Malignant mesothelioma in asbestos miners
- Pleural Plaques in asbestos miners
- Asbestos-related lung cancer in asbestos miners

The Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA), covers compensation of employees for asbestos related diseases sustained in the industrial sector⁷¹.

The following asbestos related diseases are compensatable under COIDA.

- Pneumoconiosis (asbestosis)
- Pleural thickening causing significant impairment of function
- Mesothelioma of the pleura or peritoneum, or other lung malignancy

7.5 ENVIRONMENTAL DUST POLLUTION

The Atmospheric Pollution Prevention Act (45 of 1965) is administered by the Department of Health and provides for the control of, amongst others, dust pollution⁷².

Part IV of the act provides for the abatement of dust at two main sources, namely dust arising from waste mine dumps and dust emanating from industrial processes. The abatement of dust pollution centres on control at the source.

7.6 TRANSPORT

Chapter VIII of the National Road Traffic Act, 93 of 1996 and the SABS Codes of Practice incorporated in the act governs the transport of asbestos by road⁷³. Quantities less than 20 kg is exempted from the requirements of this legislation. SABS 0228, Identification and Classification of Dangerous Substances and Goods, as well as SABS 0229, Packaging of Dangerous Goods for Road and Rail Transportation in South Africa are worthy of special mention.

The legislation, in addition to the identification and classification of goods also lists packaging requirements (SABS 0229), statutory vehicle inspection (SABS 0230), rules and procedures during the transportation of dangerous goods (SABS 0231), signage requirements and emergency response guides (SABS 0232/1 and SABS 0232/3).

Documentation to be carried by the driver is stipulated in Regulation 281. This includes, inter alia, a Dangerous Goods declaration issued by the consigner, reflecting confirmation that the load is correctly identified, packed, labelled and basically in all respects compliant with legislation.

Asbestos transported by air is packed in accordance with the current edition of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, or the IATA Dangerous Goods Regulations.

Asbestos transported by sea are packed in accordance with the current edition of the IMDG Code and are acceptable for inland transportation by road or by rail.

7.7 WASTE DISPOSAL

Asbestos waste must be disposed of at sites specifically designated for this purpose in terms of the Environment Conservation Act (73 of 1989) and the National Environmental Management Act (107 of 1998)^{74 75}.

7.8 SUMMARY AND CONCLUSIONS

South Africa has some of the best legislation in place to protect employees against asbestos health risks. The legislation is based on similar statutes and regulations as those found in most developed countries, and often exceeds their standards.

However, in a report presented to the Parliamentary Portfolio Committee, researchers suggested poor compliance with legislation in South Africa and stated that self-regulation is not enough to protect workers⁷⁶. There are too few inspectors to police regulations and they are poorly trained.