



October 16, 2007

BULLETIN - New Asbestos Notice to Tenants required as of November 1, 2007

Attention Landlords and Building Managers:

As explained in Fair Exchange in Sept/Oct 2006 and Mar/Apr 2007, a new Ontario government regulation concerning asbestos will take effect on November 1, 2007. **In many cases the new regulation requires a landlord to send their tenants a notice.** This memo provides:

- Information about when the notice is required, or may be advisable
- Information about other requirements regarding asbestos management
- Requirements before doing repairs or renovations
- Advice about handling tenant questions
- Instructions on how to complete the notice
- Who to call for more information

Separately:

- **Templates for both a standard and short-form notice (to be given on November 1, 2007)**
- **An FAQ sheet to attach to the notice or provide to your staff**

Please review the information below carefully. For your reference, a copy of the full asbestos regulation is available at:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_050278_e.htm

or

www.frpo.org > Topics and Issues > Legislation

When is the notice required?

The new regulation (Ontario Regulation 278/05) applies to all buildings in Ontario, except a building of four or fewer units if the landlord or a family member lives in the building. Therefore, the regulation applies to all apartment buildings and even to rental triplexes, duplexes and single family homes, unless the owner or a family member lives in the building. Most commercial, industrial and institutional buildings (such as universities, hospitals and schools) are also affected.

As of November 1, section 8 will replace section 7 of the regulation. Section 8 requires notices to occupants about non-friable asbestos, that is asbestos which is embedded in such material as

- vinyl tiles,
- ceiling tiles,
- ceiling or wall stipple or decorative plaster,
- drywall compound and
- solid or sprayed-on insulation materials.

Material is considered to be asbestos containing material if half of 1% or more of its dry weight consists of asbestos fibres. (Section 7 had required records and notices to occupants for friable asbestos material as of November 1, 2005. Friable material is material which is crumbled, pulverized or powdered or which, when dry, can be crumbled, pulverized or powdered by hand pressure.)

If a landlord knows or ought reasonably to know in their building contains asbestos containing material (“ACM”) the landlord is required to create a record, and give written notices to occupants of any suites that contain ACM.

Note that during many different years, some types of the building materials listed above did not contain asbestos. Therefore, a landlord is not in the position that you ought to know your building contains ACM just because your building contains vinyl tiles, ceiling tiles, ceiling stipple, drywall compound, plaster or insulation materials. (In fact, asbestos was not much used in lather and plaster applications.)

However, if you know or ought reasonably to know that your building contains ACM (for example, because you have a Phase I or Phase II Environmental report, or a designated substance report, that says so, or if you know you installed vinyl asbestos floor tiles), then you are required to:

1. prepare and maintain a record of the location of the ACM, including its location and whether it is friable or non-friable. (For friable sprayed-on material, there are two additional requirements, which are covered below.)
2. give tenants in suites containing ACM, written notice of the presence of the ACM and its location.

Some articles refer to providing notice about ACM in any areas tenants can access, but it appears only to be necessary to give notice of ACM in rental suites themselves, since the requirement is to give notice concerning areas which tenants “occupy”. According to the Ministry of Labour that does not include areas to which the tenants only have access, such as hallways, laundry rooms, pools, saunas or parking garages. (The interpretation issue arises because the regulation uses a very broad definition of the word “occupy”)

When the notice may be advisable

If you are not in the position that you know or ought reasonably to know that your building contains ACM, then you are not required to give the notice. You are also not required to check or test for asbestos until you prepare to perform repairs or renovations. However, buildings will require repairs and you will eventually have to test for asbestos (as noted below in the section on “Requirements before doing repairs or renovations”).

If you have to give the notice in the future, your tenants may react badly and try to move. If you suspect that the suites contain asbestos, you may want to give the short form notice on November 1 that the building may contain asbestos in particular building materials. If you give the notice on November 1 your tenants will get the notice at the same time as many other tenants. That way it will be clear to them that their situation is common and you will just be one of thousands of landlords giving the notice.

Other requirements of the regulation

If you know or ought reasonably to know that *your building contains ACM (whether in the suites or outside the suites)*, you are also required to:

3. give **written notice** of the information in the record to any contractor brought in to do work on the ACM, or near the ACM such that the ACM may be disturbed.
4. **orally advise** your employees of the information in the record if the employee is to do work on the ACM, or near the ACM such that the ACM may be disturbed.
5. **train and instruct your employees** who may do such work about asbestos and asbestos handling according to a list of information.
6. inspect the ACM at reasonable intervals to determine its condition.
7. update the record whenever you receive new information, and at least once every 12 months.

These rules have been in place since November 1, 2005, or earlier, with respect to friable asbestos. As noted above friable material is material which is crumbled, pulverized or powdered, or which, when dry, can be crumbled, pulverized or powdered by hand pressure. However, since friable asbestos was primarily found in insulation material in boiler rooms, and tenants do not normally have access to those areas, there was no obligation to give most tenants notice of the presence of asbestos. In addition, only some of your contractors and workers did work that could disturb the friable asbestos. As of November 1, 2007, the requirements extend to non-friable asbestos as well as to friable asbestos.

Requirements before doing repairs or renovations

Additional requirements apply when an owner arranges for alterations or repairs of a building (but not for maintenance). Before doing alterations or repairs an owner is required to have an examination carried out to determine if any material that is likely to be handled, disturbed or removed is ACM, unless the owner already knows that the material is ACM or treats the material as if it is ACM.

In dealing with asbestos containing material, contractors (or landlords employing employees directly) are required to take steps to minimize the exposure of their workers to asbestos dust. Depending on the type of work to be done, those measures include a variety of steps to reduce dust, to provide respirators or protective clothing, to use power tools attached to dust collecting HEPA filters, or to seal off areas and provide for negative air pressure and decontamination rooms and showers. Once contractors gear up to take those steps, the price of some renovations and repairs will undoubtedly rise.

Advice about handling tenant questions

Tenants have no need to be alarmed at notices received due to the new asbestos regulation. FRPO is developing a public relations strategy should the notices raise undue concern. You are welcome to refer any media inquiries to FRPO at 416 385-1100, *BUT NOT TENANT INQUIRIES*. (If you need to refer tenants to an authority, please refer them to the Ministry of Labour’s Occupational Health and Safety Branch at 1-800-268-8013)

If your tenants ask about the notices, some points you can convey include the following:

- the building materials in question are very common in hospitals, schools, universities, government buildings, work places and single family homes, not just in rental apartments
- the new measures are designed to protect workers who will be disturbing materials which contain asbestos while they do repair or renovation work
- the various building materials which contain asbestos usually contain very small amounts, and constitute no health risk unless the materials are disturbed through repair or renovation work
- asbestos is a natural mineral in the environment and living in a dwelling with the building materials in question poses no more risk than walking outside
- Health Canada reports that in buildings with asbestos containing materials the indoor asbestos levels in the air are usually as low as the outdoor levels

See also the Answers to Possible Questions sheet which is attached. Please feel free to give that to tenants with the notices on November 1.

Instructions on how to complete the notice

The long form notice template lists the building materials which commonly contain asbestos, together with a statement of whether the material is friable or non-friable. **The regulation requires that level of detail in the record of the material, and thus may require it in the notice to the occupants. You are best to adapt the notice to each building.** If you know the situation is different in different suites, you may want or need to make the notice specific to each suite or type of suite.

Optional Short Form Notice

If you do not know the situation in the building, but you suspect it contains asbestos, then you may wish to use a short form of the notice (that omits listing of specific building materials). The Ministry of Labour indicates that it will constitute acceptable notice to occupants. The two downsides are the possibility that the Ministry might change its view, and the likelihood that the short form notice will be more upsetting to tenants because it is less specific and does not contain the issue to the least possible building materials.

According to section 8(4) of the regulation, the record is to contain the following information:

1. “ the location of” all asbestos containing material;
2. for each location, whether the material is friable or non-friable; and
3. in the case of friable sprayed on material, for each location,
 - i. if the material is known to be asbestos-containing material, the type of asbestos, if known, or
 - ii. in any other case, a statement that the material will be treated as though it contained a type of asbestos other than chrysotile. [Chrysotile is the benign kind of asbestos which is still being mined.]

Your notice must tell the occupant *the information in the record which pertains to any area which the tenant occupies, which means their suite, but probably not the common areas of the building.*

Using the long form notice you should delete any lines which do not apply to your building, ensure that the non-friable versus friable statements are accurate for your building, and add in the information in point 3 immediately above for any friable sprayed-on material.

If you have no friable asbestos in areas to which the tenants have access, you will want to remove the paragraph about friable material. Removing that paragraph will reduce the level of alarm the notice is likely to generate.

Please also review the last paragraphs of the notice for accuracy, and decide whether to attach the FAQ sheet or to provide it only to your staff unless questions arise from the tenants.

Please do not give the notices to any tenants before November 1 because the industry response may not be ready before November 1. If you give the notice early, any attention will be focused on your building.

Who to call for more information

Questions regarding Ministry of Labour enforcement practices:

Mr. Chris Beatson
Provincial Specialist, Construction Health & Safety Program
Ministry of Labour, Occupational Health & Safety Branch
505 University Ave, 19th flr
Toronto, ON M7A 1T7
Telephone: 416-326-1430
E-mail: chris.beatson@ontario.ca

Questions regarding health and safety measures in the construction industry:

Construction Safety Association of Ontario (CSAO)
21 Voyager Court South,
Etobicoke, Ontario M9W 5M7
Telephone: (416) 674-CSAO (2726)
Toll Free: 1(800) 781-CSAO (2726)
Fax: (416) 674-8866
Hours: Monday to Friday, 8:30 am to 4:30 pm
E-mail: info@csao.org (general inquiries)
For more information on CSAO please visit their website: <http://www.csao.org>