

30 May 2022

Lee Miezis
CEO
EPA Victoria
Email: lee.miezis@epa.vic.gov.au

Dear Mr Miezis

RE: ASBESTOS ABATED CONTAMINATED SOIL DESIGNATION

The Australian Landfill Owners Association (ALOA) represents landfill operators across Australia to advance landfill standards and assist in obtaining clarity and where possible uniformity of environmental standards.

The adoption of the General Environmental Duty (GED) and the commitment by EPA during the change of law consultations to simplify the licences for Landfill Operators is being delivered.

Given the changes through the new EPA Act - and if there is not already guidance available - ALOA seek a Designation (or Determination, whichever is appropriate) for the classification of asbestos abated soils.

There are several major construction projects underway or about to commence which have substantial quantities of 'Asbestos contaminated soil' requiring offsite disposal. If these soils are taken directly to landfill, they must be transported under Waste Tracker and will incur the appropriate landfill levy. If however, they are subjected to an 'Abatement Process' prior to leaving the site they may be considered 'Abated Cleanfill' which does not require tracking nor disposal at a landfill (and, in turn, no Landfill Levy applies).

Please note that the practice of removal of asbestos by a class A licensed asbestos removalist has previously been the subject of a WorkSafe Guidance Note of October 2010 (attached).

Some of our members may agree to accept abated material as cleanfill and use for onsite purposes.

One concern stems from the likelihood that large pieces of asbestos are witnessed at the disposal location resulting in the material being reclassified back to Asbestos Contaminated Soil.

It is unclear where and how the material may be used and if there is a possibility of reclassification back to 'Soil Containing Asbestos' this puts the issue of who bears the cost of disposal and waste tracking compliance back on the agenda.

We seek clear guidance from EPA on the process of abating asbestos contaminated soils and the processes that must be applied to be considered compliant.

Whilst this issue may seem minor to your role, it has the potential to be a source of frustration and contention.

We look forward to your advice.

Yours sincerely



Colin Sweet
CEO ALOA

Asbestos-contaminated soil

This information sheet provides advice for any person (including employers, removalists and commercial contractors) inspecting, removing, transporting and disposing of asbestos-contaminated soil.

October 2010

Background

Asbestos may be found in soil on any property, including businesses and residential sites. For example, it may be present because buildings that contained asbestos were not demolished and disposed of properly or asbestos-contaminated soil was used as a top soil or fill material.

Asbestos in soil is a risk to health if fibres can become airborne so they may be inhaled. The risk may be increased depending on the type and amount of asbestos material in the soil, and if there is potential for it to become disturbed or airborne.

Exposure to asbestos can cause mesothelioma, asbestosis and lung cancer. All people must be protected against the risk of asbestos-related disease resulting from the exposure to airborne fibres.

There are legal requirements that prohibit anyone supplying, storing, transporting, selling, using and re-using asbestos-contaminated soil that contains any visible amount of asbestos.

Inspecting asbestos-contaminated soil

If asbestos-contaminated soil is intended to be supplied, stored, transported, sold or used it must be inspected by a competent person.

The person who has management or control of the soil must ensure any visible asbestos-containing material (ACM) is removed so far as is reasonably practicable throughout the supply chain.

After a competent person determines the soil contains no visible asbestos it can be used for its intended purpose.

If ACM becomes visible in the soil at a later stage, the soil must be inspected again and all visible asbestos removed. This is the duty of the person with management and control of the soil at that stage.

This duty does not apply to licensed transporters disposing of asbestos-contaminated soil as asbestos waste.

Sometimes it may be more cost-effective to remove and dispose of soil as asbestos-containing waste instead of following the inspection and clearance processes that may otherwise be required.

Who can inspect asbestos-contaminated soil?

A competent person should inspect the soil to determine the likely amount of contamination and later to confirm all visible ACM has been removed so far as is reasonably practicable.

The extent of the inspection required depends on factors including background knowledge of the soil and site, the likely amount (breadth and depth) of asbestos contamination and the likely source of the contamination.

A competent person should write a statement about the inspection and outcome (see example A). This statement should be given to the person receiving the soil (eg transporter, landfill operator etc).

Note: A competent person must have the ability to identify ACM or potential ACM and have experience in asbestos removal work to undertake visual inspections.

Who can remove asbestos contamination from soil?

All activities required to remove asbestos from soil must be done by a class A licensed asbestos removalist, unless it takes less than one hour to remove the contaminated soil. This includes the use of any machinery and equipment (eg an excavator) to move contaminated soil to disposal vehicles.

If the asbestos contamination is only minor (eg it takes less than one hour to be removed) it can be removed by a class A or class B removalist, or an appropriately trained person.

Transporting asbestos-contaminated soil

Asbestos contaminated soil must be damp before being packaged for transport. This prevents the chance of dust and fibres becoming airborne.

Soil should be carefully transferred to a suitable container, then sealed and labelled as asbestos-containing.

Owners and operators of vehicles that transport waste asbestos from an industrial or commercial source must hold an Environment Protection Authority (EPA) waste transport permit.

If a commercial contractor (eg a licensed asbestos removalist) removes asbestos from a domestic source, they must have transport certificates and a permitted vehicle.

Further information on the transport, disposal and packaging of waste asbestos can be found in Industrial Waste Resource Guidelines – *Asbestos transport and disposal* at epa.vic.gov.au

To find a list of licensed transporters see EPA's *Prescribed industrial waste database*.

Disposing of asbestos-contaminated soil

The EPA controls the disposal of waste asbestos from a workplace or household and the transportation of asbestos of industrial origin (including commercial or trade).

Asbestos from industrial and commercial activities, and asbestos from domestic premises that is removed by a contractor, is prescribed industrial waste and must be deposited at a site licensed to accept asbestos using waste code N220.

Soil that contains asbestos and no other contaminants must be disposed of as asbestos-containing material using waste code N220.

Before disposing of waste asbestos, the removalist, appropriately trained person or commercial contractor should contact the disposal site to confirm if and when it can accept this type of waste.

To find sites licensed to accept waste asbestos, go to Asbestos at epa.vic.gov.au

If a landfill is licensed to receive asbestos, it can also receive soil with asbestos (no other contaminants). A \$30 per tonne asbestos landfill levy would apply.

Soil with contaminants in addition to asbestos must be assessed and labelled as category A, B or C using the Industrial Waste Resource Guidelines – *Soil hazard categorisation and management* at epa.vic.gov.au

Soil must then be packaged appropriately for disposal and taken to a facility licensed to accept both asbestos and the category of waste. The waste transport certificate must note the soil category code (contaminated soil A, B, C), listing asbestos as a contaminant.

Example A

Sample statement of a soil inspection and outcome by a competent person

As a competent person in relation to asbestos matters, I inspected the soil at [insert address and specific soil location] for the visible presence of asbestos-containing material (ACM) on [insert date and time].

This inspection was undertaken in the presence of a class A licensed asbestos removalist and all removal of ACM was undertaken by a class A licensed asbestos removalist.

The process involved removing any visible ACM from the surface of the soil, then dispersing the soil to a satisfactory depth to be inspected for the presence of asbestos. Any further visible ACM was removed.

I confirm visible asbestos-containing material has been removed so far as is reasonably practicable from the soil at the above-named address and specific soil location. Hence the prohibitions (for supply, storage, transport, sale, use or re-use) relating to asbestos-containing material do not apply to this soil.

If ACM becomes visible at a later stage, any person who has management and control of this soil must also inspect it and remove any visible ACM. If ACM becomes visible and is not removed, the prohibitions relating to asbestos-containing material will again apply to this soil.

Signature: _____

Name: _____

Position: _____

Date: _____

Further information

WorkSafe Advisory Service

1800 136 089

worksafe.vic.gov.au/asbestos

Environment Protection Authority

03 9695 2722

epa.vic.gov.au

Related WorkSafe publications

Compliance Code, *Removing asbestos in workplaces*

Related websites

ephc.gov.au/contam

On 18 June 2017, the Occupational Health and Safety Regulations 2017 (OHS Regulations 2017) replaced the Occupational Health and Safety Regulations 2007 (OHS Regulations 2007), which expired on this date. **This publication has not yet been updated to reflect the changes introduced by the OHS Regulations 2017 and should not be relied upon as a substitute for legal advice.**

Information on the key changes introduced by the OHS 2017 Regulations can be found in the guidance titled *Occupational Health and Safety Regulations 2017: Summary of changes* - available at https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0011/207659/ISBN-OHS-regulations-summary-of-changes-2017-04.pdf. However, this guidance document contains material of a general nature only and is not to be used as a substitute for obtaining legal advice.