

**When are Asbestos Exposures  
not a Concern for Building  
Owners? Almost Never.**

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Chubb Global Risk Advisors

Regardless of a building's construction date, building owners and managers still have a regulatory and risk management responsibility to comply with current regulations that govern the use of asbestos in building materials today.



Exposures to asbestos are often dismissed by owners and managers of buildings constructed after asbestos was classified as a hazard. And while asbestos has been banned for use in certain materials, it can still be used in a variety of products that are commonly used in building construction. Regardless of a building's construction date, building owners and managers still have a regulatory and risk management responsibility to comply with current regulations that govern the use of asbestos in building materials today.

Non-compliance can indeed be costly. In 2017, the U.S. Environmental Protection Agency (EPA) alone issued over \$180 million in fines. That a number does not include penalties levied by Occupational Safety and Health Administration (OSHA), fines imposed by state and other local regulatory agencies, settlements associated with exposure claims, or the intangible costs associated with a reputation damaged by real or perceived environmental violations.

### **A Brief History of Asbestos Regulations**

The laws governing the use of asbestos date back to the 1970s. Beginning with the Clean Air Act, which classified asbestos as a hazardous air pollutant, numerous laws and guidelines have been established, ranging from the Toxic Substances Control Act (TSCA) to regulations set forth by the U.S. EPA and OSHA, and regulations promulgated by various state and local agencies.

In 1973, the use of spray-applied asbestos-containing surfacing materials used for fireproofing and insulating purposes was banned under the U.S. EPA's National Emissions Standards for Hazardous Air Pollutants (NESHAP). In subsequent years, the U.S. EPA also banned the use of asbestos in wet-applied and block-formed insulation on pipes, hot water tanks, and boilers, as well as remaining uses of spray-applied surfacing materials, such as decorative ceiling applications.

In 1989, the EPA finally implemented the Asbestos Ban and Phase-out Rule, which outlined a plan to phase out nearly all uses of asbestos over a period of seven years. However, a court challenge from a number of industry groups resulted in much of this rule being overturned in 1991 and, as a result, only certain provisions remained.

Currently, the use of asbestos is still banned in spray-applied insulating and decorative materials, insulating products, corrugated paper and any new uses. Products not banned from use include such items as asbestos-cement corrugated and flat sheets. This list of non-banned products includes building materials used in modern construction that may contain asbestos. Relying on the construction date of a building alone as a way of determining whether it is free from asbestos containing materials (ACMs) is indeed a precarious indicator of exposure.

### **Asbestos-Related Laws and Regulations In Effect Today**

Asbestos laws and regulations are designed to protect the environment and individuals from the potentially harmful effect of asbestos exposure, but they come at the issue from different angles. Some of the key laws and regulations include:

#### **EPA Asbestos-related Laws**

- The Asbestos Hazard Emergency Response Act (AHERA)
- The Asbestos Information Act (AIA)
- The Asbestos School Hazard Abatement Reauthorization Act (ASHARA)
- The Clean Air Act (CAA)
- Safe Drinking Water Act (SDWA)
- The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

#### **EPA Asbestos Regulations**

- Asbestos-containing Materials in Schools Rule (40 CFR Part 763, Subpart E)
- Asbestos Worker Protection Rule (40 CFR Part 763, Subpart G)
- Asbestos Ban and Phase-out Rule (Remanded) (40 CFR Part 763, Subpart I)
- Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP)
- CERCLA Hazardous Substances and Reportable Quantities

#### **Other Federal Agencies with Asbestos Regulations**

- Occupational Safety and Health Administration (OSHA)
- Consumer Product Safety Commission (CPSC)
- Mine Safety and Health Administration (MSHA)

Source:  
[www.epa.gov/asbestos/asbestos-laws-and-regulations](http://www.epa.gov/asbestos/asbestos-laws-and-regulations)

## Banned or Not Banned?

That is the question for building owners and managers. The complicated regulatory landscape and sometimes fluid legal environment can make it difficult to know the status of certain building materials and related items. Here is a breakdown of some of the most common materials that asbestos was or is used for:

### Banned

- Spray-applied insulating and decorative materials
- Insulating products such as pre-molded, corrugated papers used for piping systems insulation
- Corrugated paper, roll board, commercial paper, specialty paper, flooring belt
- Boiler and heating vessels
- Conduits for electrical wire
- Any new uses

### In use today

- Asbestos-cement corrugated and flat sheets
- Asbestos clothing
- Pipe wrap
- Roofing felt
- Vinyl asbestos floor tile
- Asbestos cement shingles
- Mill board
- Asbestos cement pipe
- Automatic transmission components and clutch facings
- Friction materials such as brake pads and linings
- Gaskets
- Roofing and non-roofing components

## A Strategic Approach to Managing Your Asbestos Exposures

Controlling asbestos hazards can be a daunting prospect, but it can be managed by developing and implementing a strategy for controlling such hazards, regardless of a facility's construction date.

Because a strategy can include a number of components, there are a number of ways in which it can be implemented. But any strategy has two basic components:

### Engage a Licensed or Accredited Asbestos Building Inspector to Conduct an Asbestos Inspection.

This inspector will perform a survey and collect samples of suspect ACM. The majority of surveys are undertaken in two ways, each of which has its advantages and drawbacks:

- A facility wide survey. This approach can give the building owner a holistic understanding of the liability associated with the ACMs at the building, which can be incorporated into ACM exposure prevention and long term decision making when planning upcoming renovations and building maintenance activities.
- Survey of selected areas of the building. This approach may be an option for a building owner that wishes to incorporate the cost of inspection into individual renovation projects. When this approach is used, project schedule and budgets should make allowances for the asbestos inspection, and the removal of ACMs if found in the planned renovation work area. Any inspection reports should document the inspection parameters and provide the type, quantity, condition, and location of any ACMs identified.

## Implement an Asbestos Operations and Maintenance (O&M) Program.

The information gathered as part of the asbestos inspection can be used to create an inventory of ACMs and form the basis for an O&M program, which specifies various controls and procedures to minimize the risks associated with managing ACMs in a building. While an O&M program is prepared by a licensed or accredited asbestos professional, it needs to be a priority of the building owner or manager.

The program should outline requirements for identifying ACMs, performing repairs and renovations, or demolishing projects when ACM is present. It should also detail steps for preventing and responding to unplanned releases of asbestos fibers as well as provide training requirements for individuals tasked with managing ACM identified in the building, including those who manage the program, perform routine maintenance, or perform routine condition evaluation of existing ACMs. Building engineers, contractors, service personnel, and tenants must be notified of the presence of asbestos in the building in order to minimize the risk associated with the accidental disturbance of the ACM.

Managing the risks of asbestos can indeed be challenging, especially for building owners and managers of relatively newer construction. But a reasoned, rational approach will not only ensure compliance but also create operational efficiencies during renovations and safeguard workers from potentially deadly exposure to asbestos.

### Connect With Us

For more information about protecting your business, contact Chubb Global Risk Advisors at [globalriskadvisors@chubb.com](mailto:globalriskadvisors@chubb.com) or 866-357-3797

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