

**ASBESTOS ON CONSTRUCTION  
PROJECTS AND IN BUILDINGS  
AND REPAIR OPERATIONS**

**SUBMISSION  
TO THE  
MINISTRY OF LABOUR**

**BY THE  
ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

**December 3, 2004**

## INTRODUCTION

The Ontario Public Service Employees Union (OPSEU) is pleased to offer this submission in response to the Ontario Ministry of Labour's proposed Draft Regulation 838: Asbestos on Construction Projects and in Buildings and Repair Operations issued on October 7, 2004.

OPSEU represents more than 100,000 members throughout the province in the public service, the broader public service and in colleges of applied arts and technology. Our members in every sector are exposed to asbestos in a variety of environments: as maintenance workers who work with or around asbestos during the course of their regular duties; as cleaners who unknowingly clean up crumbling asbestos without any personal protective equipment; and as workers in every sector who are working around and under unlabelled, unencapsulated asbestos that releases fibres into the air around them.

Almost monthly, the Health and Safety Unit at OPSEU receives a call from concerned union members who have just discovered (or rediscovered) that there is asbestos in their workplace that must be removed or repaired. In some workplaces, workers had previously been told by their employers that all asbestos had been removed years earlier. In others, the discovery of asbestos-coated pipes and fittings, asbestos in crumbling spackled ceilings or asbestos-lined ductwork appears as a new issue. Equally disturbing are workplaces where an asbestos program was developed in the past and then forgotten so that no one has been inspecting the identified asbestos for years and maintenance workers, contractors and others have most likely been exposed to airborne asbestos fibres. All of these situations are unacceptable.

Former and retired OPSEU members continue to pay the price for the careless and inadequate approach taken by employers and at times, by the Ministry of Labour. In the last five years, at least four former OPSEU members have died of mesothelioma as a result of workplace exposures to asbestos. And according to a recent publication of Cancer Care Ontario (Cancer Facts, November 2004), we should expect to see the incidence of mesothelioma continue to rise reflecting the widespread use of asbestos into the 1970s in Ontario. Although asbestos exposures have been reduced in Ontario since the virtual banning of new asbestos use, some researchers speculate that lower exposures, such as those experienced today, may only result in increased latency periods. So that for example, Correctional Officers who have been exposed to small amount of asbestos from crumbling overhead pipes in the 1980s and 1990s may not be diagnosed with an asbestos-related cancer for 30 years rather than 20 years. We do not see that as progress.

OPSEU appreciates that the proposed changes to the Asbestos Regulation are improvements and may result in reduced exposures of some workers. We are particularly pleased to see the removal of the adjective 'friable' in many sections

of the regulation. The removal of the distinction between friable and non-friable asbestos will serve to clarify actions to be taken when asbestos is found in the workplace. We are also pleased to see proposed changes to sampling and clearance sampling obligations which we believe may result in reduced worker exposures. And the classification as a Type 2 operation of drywall removal when asbestos joint-filling compound is present, is also a positive change.

However, given the circumstances that surround the asbestos exposures of the majority of our members and many other workers, it is OPSEU's position that the proposed regulation changes do not go nearly far enough. Following are a number of issues that we believe the regulation should address.

### **BAN THE USE OF NEW ASBESTOS**

The draft regulation proposes to reduce the content of asbestos in newly applied pipe or boiler insulation from 1 per cent to 0.1 per cent by dry weight. While this is an improvement, we fail to understand why the Ministry is prepared to accept any quantity of asbestos in sprayed-on insulation products. Science indicates that the inhalation of even 1 or 2 asbestos fibres may eventually result in asbestos-induced illnesses in workers. The act of 'spraying' asbestos-containing insulation materials can only result in the release of some asbestos fibres into the air. Over the years as the sprayed-on insulation deteriorates, more asbestos will be released which may lead to worker exposure.

Ultimately when a building or piece of equipment is decommissioned, more asbestos will be released into the air. Even though the amounts may be minimal, there is no known safe level of asbestos exposure. It is OPSEU's position that s.3(1) and (2) of the draft regulation and any other references to newly applied asbestos in the regulation should be amended to indicate that there shall be no asbestos present in any new material installed or applied in a workplace. This must include asbestos-containing floor tiles and ceiling tiles.

### **REMOVAL OF ASBESTOS AND SUBSTITUTION**

Although the draft regulation increases protective measures to be taken when asbestos is being removed from a workplace, it does not give any direction or set out criteria to apply to determine when asbestos should be removed. It is OPSEU's position that in all cases when asbestos is found to be damaged or deteriorating in a workplace, that it must be removed not encapsulated. We are aware of workplaces where damaged asbestos pipe fittings or insulating materials have been encapsulated, but eventually the encapsulating materials also deteriorate allowing asbestos fibres to escape into the air. The union at a central and at local levels has been involved in many disputes over whether damaged asbestos can be "safely" encapsulated or if it should be removed. And we are acutely aware of the failure of employers to maintain their asbestos programs to ensure that encapsulated asbestos stays that way. The solution to

these problems is to simply remove existing damaged asbestos and asbestos-containing materials.

It is also our position that whenever maintenance or renovation work is to take place in close proximity to asbestos or ACM, that all asbestos must be removed before the work commences. While an Asbestos Program and labeling requirements are useful and somewhat protective, it is the union's position that they are not protective enough. Asbestos, even though it is labeled may be inadvertently disturbed during the work, or it may have become friable since it was last inspected. In both instances, workers, including outside contractors may be exposed. OPSEU understands that some unions such as the Canadian Auto Workers have negotiated agreements that require the removal of asbestos before maintenance or renovation work takes place. This demonstrates that employers are capable of meeting that requirement and OPSEU strongly recommends that such a requirement be legislated for all Ontario workplaces in the proposed asbestos regulation.

OPSEU draws your attention to a minimum requirement in the British Columbia asbestos regulation which would in part address the issue of dealing with existing asbestos and ACM.

#### *6.10 Substitution*

*(1) The employer must substitute material less hazardous than asbestos when practicable.*

*(2) If such substitution is not practicable, the employer must document the reasons why less hazardous material cannot be substituted for asbestos-containing material, and make this documentation available to workers and to the joint committee or the worker health and safety representative, as applicable."*

If such a requirement was added to Ontario's asbestos regulation, employers would be obliged to consider the asbestos and ACM in their workplaces and how substitutions could be made.

### **CHRYSOTILE**

The proposed regulation continues to make a distinction between chrysotile and other types of asbestos (eg. s.5(6)). OPSEU strongly recommends that this distinction be removed throughout the regulation. There is no strong scientific evidence to support claims by the Canadian asbestos industry that chrysotile is "safer" than other types of asbestos, nor is any distinction made in the ACGIH Occupational Exposure Limit for asbestos. The asbestos OEL is 0.1f/cc for all types of asbestos. Given the commitment of the Ministry of Labour to follow the ACGIH limits, it is not logical to propose that distinctions between types of asbestos be made in the Asbestos Regulation.

## **INVOLVEMENT OF THE JOINT HEALTH AND SAFETY COMMITTEE AND HEALTH AND SAFETY REPRESENTATIVES**

The *Occupational Health and Safety Act* sets out a number of opportunities for Health and Safety Representatives and Joint Health and Safety Committee worker members to be involved in health and safety issues in their workplaces. Worker representatives have the right to be consulted about testing strategies, to be present at the beginning of testing, to receive reports regarding health and safety and to have input into health and safety training. For the most part these employer obligations and worker rights are not established in the existing or the draft Asbestos Regulation. In the draft regulation, the only references to joint health and safety committees that OPSEU can find are at Section 14(6)(xiv)2 – the obligation of the employer to furnish the committee with clearance air testing reports – and at Section 15(1) and (2) – the obligation to advise health and safety representatives and JHSCs of asbestos training.

It is our opinion that the regulation must set out the requirements to involve health and safety representatives and JHSCs more explicitly and not depend on employers and workers to apply the general provisions of the OHS Act to this regulation. Worker representatives must be involved in initial investigations to identify the presence of asbestos in the workplace, in the periodic inspections of known asbestos and ACM that are required, in determining testing strategies, and at the beginning of testing itself. Health and safety representatives and JHSCs must receive promptly all reports having to do with asbestos in the workplace. And they must have input into the content and form of worker asbestos training to ensure that it is appropriate for their needs.

It is OPSEU's experience, time after time, that when workers or outside contractors raise their concerns about possible asbestos in the workplace, employers simply hire a consultant to come in to do bulk sampling or air sampling in the area of concern. There is no consultation with JHSC members or health and safety representatives that might reveal other areas of concern that should be tested. In many cases, when the asbestos investigation report is produced, employers do not automatically provide it to the JHSC or health and safety representative. Instead the workers must repeatedly request it and at times involve the Ministry of Labour inspector who will inform the employer of its obligations. It is not good enough that in 2004, workers continue to struggle for the right to participate and the right to know that was supposed to be established by the OHS Act in 1978.

OPSEU requests that the Ministry explicitly insert into the proposed regulation the rights of workers and their health and safety representatives to know and to participate as it is currently set out in the *Occupational Health and Safety Act*.

## **LICENSING OF ASBESTOS ABATEMENT CONTRACTORS**

It is vital to the well-being of Ontario workers that only licensed contractors are allowed to engage in asbestos abatement activities. Frequently, the Health and Safety Unit at OPSEU receives calls from concerned members who report that they believe that asbestos is being removed from their workplace but they do not know who the contractors are and whether they are working safely to ensure that other workers are not being exposed. There is no formal licensing requirement for asbestos abatement contractors workers and unions have no way to know if the contractors are taking the regulated precautions. We want to make sure these contractors are competent before they come into any workplace. The Ministry of Labour must have the power to license contractors and revoke their licenses if they do not follow good work practices.

Michigan law, specifically, the *Asbestos Abatement Contractors Licensing Act, 1986*, has required the licensing of abatement contractors for almost 20 years. Ontario workers should not have to accept a lesser standard. A licensing requirement must be added to the regulation.

## **ACCREDITATION AND TRAINING**

Since 1988, the Michigan *Asbestos Workers Accreditation Act, 1988* has required asbestos abatement workers, supervisors, project designers, inspectors and management planners to successfully complete initial or refresher training requirements to become accredited to work in Michigan. The requirements are stringent and detailed. All asbestos course sponsors must submit all course materials, instructors' credentials and a completed application form to the Michigan Asbestos Program for approval. Approved courses are also subject to an on-site review of the program before receiving full course approval.

Currently, no such requirement exists in Ontario and we commend the Ministry for its proposal in Section 15 of the Draft Regulation to introduce the requirement for a training program for asbestos abatement workers and their supervisors. We are also strongly supportive of the Ministry's suggestion that the hazard awareness and recognition components of an asbestos training program be incorporated into the training of certified tradespersons and registered apprentices.

OPSEU suggests that the parties involved in the creation of a training program for Ontario use the Michigan legislation as one important resource. While we agree with the involvement of the Ministry of Training, Colleges and Universities in course development, it is critical to point out that Ontario has a competent worker training organization, the Workers Health and Safety Centre (WHSC), funded by the Workplace Safety and Insurance Board which is well equipped to develop and run such courses. It is our recommendation that the Ministry also

call on the resources at the WHSC to be involved in the development and roll-out of the proposed training.

In addition to the proposed new training requirements in Section 15 of the Draft Regulation, the Ministry proposes to clarify the general training provisions prescribed by the existing sections 15(1)-(3). OPSEU supports such clarification and recommends the involvement of the WHSC in developing and delivering such programs. However, this training is required only for workers working in a Type 1, Type 2 or Type 3 operation.

OPSEU also recommends that the asbestos training requirements be broadened so that in workplaces known to contain asbestos and/or ACM, JHSC members and Health and Safety Representatives also receive training. Although Section 5(2) in the Draft Regulation sets out the requirement for the employer to train workers who may do work that involves asbestos or who work in proximity to such material, there is no requirement to offer similar training to JHSC members or Health and Safety representatives in those workplaces. It is the experience of staff in OPSEU's Health and Safety Unit, that even in workplaces with identified asbestos and an Asbestos Program, workers who may be exposed to asbestos and their health and safety representatives have little knowledge of the hazard, methods of exposure and the employer's regulatory obligations. The result of increased training will be a reduction in workplace exposures. For example, better trained JHSC members will include visual inspections of known asbestos on their regular workplace inspections and will report problems to the employer. Education programs for these representatives can be developed and delivered by the WHSC.

The Ministry proposes to bring the training requirements of the Draft Regulation into force "about 2 years after filing" the new regulation. It is OPSEU's position that this is an excessive delay for training that is required right now. Other jurisdictions such as Michigan in the U.S. already have training packages that could be used as resources. Other states and Canadian provinces as well as the WHSC and some of the Safe Workplace Associations also have existing asbestos training. We see no reason that it should take two years after the new regulation is filed before training is launched. A more reasonable deadline would be six months post-filing.

## **THE ASBESTOS REGISTRY**

The Draft Regulation, as with the current legislation, has the provision for entering the names of asbestos workers into the Asbestos Workers Registry. OPSEU is concerned with two changes in this section of the regulation. Section 17(2) establishes "on the recommendation of the Provincial Physician," a worker may volunteer to undergo the prescribed medical examination. It is not clear from the way this section has been rewritten if there is a substantive change from the intention of the existing Section 17(2). Does the proposed language mean that

the Provincial Physician is supposed to consider each individual worker on the Registry to determine the need for the prescribed medical evaluations or will the Provincial Physician's recommendations take a more general form that includes all workers on the Registry? The second change that concerns us is also in Section 17(2). The current legislation clearly states that it is the employer's responsibility to pay for required medical examinations of asbestos workers. The proposed Section 17(2) no longer has that requirement.

OPSEU strongly objects to this change. We do not believe that it is appropriate for these costs to be shifted from the employer to the publicly funded health care system.

OPSEU has an additional recommendation regarding the registering of asbestos exposures. Currently, as we understand it, only workers designated as "asbestos workers" are entered into the Registry. We also are aware of the WSIB's Program for Exposure Incident Reporting (PEIR) and believed that non-asbestos workers who became aware that they had experienced asbestos exposures in the workplace would be able to register those exposures with PEIR. However, OPSEU has been learning through anecdotal reports from other unions that WSIB is not accepting asbestos-exposure reports into the PEIR system. If this is true, the only place where such reports can be registered is with workers' own personal physicians. This presents numerous problems if those records are not required for a compensation claim for another 20 or 30 years following the initial doctor's report.

OPSEU's Health and Safety Unit is aware of a number of our members who have experienced significant exposures to asbestos over extended periods of time. For example, OPSEU members working on the ferry system in eastern Ontario, workers in correctional facilities where friable asbestos has been crumbling directly overhead of staff-occupied areas, workers exposed when maintenance work has disturbed previously unidentified asbestos – all have suffered what we believe to be significant exposures. It is not at all clear whether reports of these types of exposures will be accepted by PEIR.

Consequently, OPSEU recommends that the regulation be amended to provide for an additional registry for workers other than those designated as "asbestos workers" because of their work in asbestos abatement. Such a registry might be simply called an Asbestos Registry for Exposed Workers. The registration process might require a worker or employer to offer proof of exposure and a baseline medical examination. Additional exposures over the years could be added to the initial report. Such a registry would ensure that exposure records would be centralized and maintained for a worker's lifetime and would simplify the compensation process if a worker developed an asbestos-related illness.

## DEFINITIONS

OPSEU believes that the proposed regulation requires the definition of the following two terms: “reasonable intervals” in Section 5(2)(e) and “aggressive sampling” in Section 14(6)xiv.1 A.

Because there is currently no definition of how frequently the inspection of the condition of identified asbestos in the workplace is to take place, it is our experience that inspections of asbestos and ACM often does not take place at all. JHSC members, Health and Safety Representatives and supervisors change, buildings are sold, and Asbestos Programs are lost. There is any number of reasons or excuses to explain why long periods of time elapse between initially identifying asbestos in the workplace and follow-up inspections. While inserting a requirement for an annual (for example) inspection of identified asbestos and ACM into the regulation will not ensure that all necessary inspections take place, it would certainly lead to an increased awareness of the obligation and more vigilance towards the condition of existing asbestos. A legislated requirement for an annual inspection of asbestos would assist JHSC members and Health and Safety Representatives to encourage their employers to ensure these inspections are completed.

The proposed regulation adds a requirement for aggressive sampling for airborne asbestos following asbestos abatement activities (s.14(6)xiv.1 A). OPSEU strongly supports that requirement and in fact we regularly request that aggressive clearance sampling be done. However, without a definition of aggressive sampling, no doubt there will be controversy in the workplace about the measures to take to ensure that sampling is aggressive enough to measure a worst-case scenario and to ensure that the environment is safe for workers. OPSEU strongly recommends that this term be defined either within this section of the regulation or in the Definitions section in order to ensure that all workplaces are using comparable methods to perform clearance sampling.

We appreciate the opportunity to comment on the Ministry’s proposal to amend the current asbestos regulation. As we have indicated, we are in support of many of the proposed revisions. However we encourage you to seriously consider the other issues we have raised which we believe will substantially contribute to worker safety in the province.