

DRAFT REPLY TO EU PILOT FILE 2636/11/ENVI CONCERNING REMEDIATION OF THE FORMER TURNER AND NEWALL ASBESTOS FACTORY

I am responding to file 2636/11/ENV1 which has been generated from a complaint from the Chairman of Widnes North Residents' Association concerning the remediation of the former Turner and Newall asbestos factory. You have asked for comments on the allegations made and for the following:

- a) a copy of the screening decision on the need to carry out an environmental impact assessment;
- b) an explanation of how the requirements of Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos have been respected, and in particular Articles 7 and 8; and
- c) information about any breaches identified when the works were monitored.

Screening decision

Attached are the three screening decisions (09/00406/OUT, 09/00407/FUL, and 09/00493/FUL) issued by Halton Borough Council under the Town And Country Planning (Environmental Impact Assessment) (England And Wales) Regulations 1999. They relate to an outline planning consent to build industrial units; full planning consent to build 160 houses; and full, planning permission for remedial works to the site of the former asbestos cement factory.

The lawfulness of the screening decision for demolition (09/00493/FUL) was challenged by an application for permission to seek judicial review. The judge found that there was no arguable basis on which to challenge the screening decision not to require EIA. The judgment of the court is also attached.



0900406OUT.PDF



0900493FUL.PDF



0900407FUL.PDF



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Requirements of Articles 7 and 8 of 87/217/EEC

The following is an extract from a response to a questionnaire which formed part of a Commission inquiry into the application of Directive 87/217 submitted on 9 September, 2009:

Article 7 – Measures to be taken during the working of / demolition of asbestos materials

Article 7 of Directive 87/217/EEC requires that:

Member States shall take the measures necessary to ensure that:

- activities involving the working of products containing asbestos do not cause significant environmental pollution by asbestos fibres or dust,
- the demolition of buildings, structures and installations containing asbestos and the removal therefrom of asbestos or materials containing asbestos involving the release of asbestos fibres or dust do not cause significant asbestos environmental pollution; to that end they shall satisfy themselves that the plan of work provided for in Article 12 of Directive 83/477/EEC prescribes the introduction of all the necessary preventive measures to this end.

What procedures do you currently employ to meet the requirements concerning working with or demolition of asbestos materials within the Directive?

Response:

All work with asbestos is regulated by Health and Safety Executive under the Control of Asbestos Regulations 2006 which implements 83/477/EEC (Protection of workers from asbestos) and subsequent amendments. These regulations require all employers to prevent the exposure of employees to asbestos so far as is reasonably practicable and where exposure cannot be avoided take the measures necessary to reduce exposure to the lowest level reasonably practicable. In addition, Regulation 16 requires that every employer shall prevent, or where this is not reasonably practicable, reduce to the lowest level reasonably practicable, the spread of asbestos from any place of work (including a demolition site).

Where risk assessment shows the control limit of 0.1f/cm³ averaged over a 4 hour period will be exceeded, or the concentration in air will, or is liable to exceed, 0.6 f/cm³ measured in a 10 minute period, then the work must be carried out by a licensed contractor and each job notified to HSE. The employer must adopt the most effective method of work which minimises fibre release and document this in a written plan of work. In practice, other than very exceptional circumstances licensed work will be carried out in temporary enclosures with negative pressure to prevent the spread of asbestos and to ensure people other than those employed to do the work are not at risk of exposure. The exposure of employees must be managed to as far below the control limits as reasonable.

Once removal of the asbestos has been completed the premises must be assessed by an independent analyst to determine that they are thoroughly clean and fit for reoccupation - certificates for re-occupation are required to be issued.

Short non-continuous work on certain types of asbestos from which the risk of release of fibres is low can be carried out without a licence provided the risk assessment shows the control limits will not be exceeded. The ACOP states for non-licensed work the expectation is that enclosures should be used unless it is not reasonably practicable.

Demolition - All demolition work requires a written plan of work under the Construction (Design and Management) Regulations 2007 whether asbestos is present or not. Before demolition work commences asbestos containing materials must be removed from the building in accordance with the requirements of the Control of Asbestos Regulations so as to avoid the spread of asbestos fibres during the demolition work. Exceptionally textured decorative coatings containing low percentages of asbestos maybe left in place for demolition as removal by other means presents a higher risk of fibre release. In this case contractors must still comply with the Control of Asbestos Regulations and use work methods, such as damping down/wetting, to minimise the release of fibres.

Transport - asbestos or waste asbestos is subject to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations ~~2007~~ 2009 and must be transported by a registered waste carrier, the latter enforced by the Environment Agency. In summary, asbestos waste must be in a sealed container or double wrapping and appropriately labelled and be transported to a licensed disposal site in an enclosed vehicle, skip or freight container. Further details are at <http://www.hse.gov.uk/cdg/manual/commonproblems/asbestos.htm>. The Hazardous Waste Regulations are enforced by the Environment Agency.

The removal of asbestos in the present case was carried out by a licensed contractor. The same questionnaire response states:

“HSE administers the licensing regime under the Control of Asbestos Regulations. Licenses are issued for ~~1 or any period, up to a maximum of~~ 3 years, new licensed holders normally only receive a 1 year licence. Before being granted a licence contractors are subject to an assessment process and subsequently a sample of their work will be inspected. If poor standards are identified a licence can be revoked, reduced in length or additional conditions applied or the contractor refused on reapplication. Enforcement action to issue notices (improvement and prohibition) or to prosecute may also be taken depending on the circumstances.

Non-licensed work will also be inspected where this is identified in the course of other inspection activities.

The inspection and enforcement activity is carried out principally for the protection of workers and so no additional costs are incurred for the purposes of Article 7 as the control of the release of fibres into the air is fundamental to this. “

In addition, this project required planning permission from the local authority. Copies of all three permissions are attached. The planning permission was subject to various conditions including

- Wheel cleansing of vehicles
- A method statement and protocol for asbestos air monitoring
- A method statement for management of site traffic.



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Prior to the grant of planning permission, various studies were provided on the condition of the site. These included

A geo-environmental site assessment
A remediation method statement
A materials management plan.

In the judgment mentioned above, the judge concluded that there was **no evidence of any escape of asbestos from the site during the course of the works.**

“What that evidence also demonstrates in my judgment is that there has been no emission of any asbestos. There may have been some emission of dust but that is an entirely separate matter.

The latter does not imply the former and indeed it is highly pertinent to note that all of the regulatory authorities, which include the Environment Agency and the HSE which have inspected and monitored the site over the period of the works, have been on the face of it entirely satisfied. There was no evidence of any breach of the conditions.”

The questionnaire response to Article 8 was as follows:

Article 8 – Disposal of asbestos materials

Article 8 of Directive 87/217/EEC requires that:

Without prejudice to Directive 78/319/EEC, as last amended by the 1985 Act of Accession, Member States shall take the measures necessary to ensure that:

- in the course of the transport and deposition of waste containing asbestos fibres or dust, no such fibres or dust are released into the air and no liquids which may contain asbestos fibres are spilled,
- where waste containing asbestos fibres or dust is landfilled at sites licensed for the purpose, such waste is so treated, packaged or covered, with account being taken of local conditions, that the release of asbestos particles into the environment is prevented.

What procedures, monitoring and enforcement are in place under Article 8 and how many man days does this require for investment and maintenance?

Response:

Transport and deposition of waste – please see response on Article 7. Transport of asbestos waste will also be covered by the “Duty of Care” (established under section 34 (7) of the Environmental Protection Act 1990) which contains a requirement for carriers of waste to ensure that the waste does not escape from their control.

Landfilling - The Landfill Directive (1999/31/EC) and Council Decision (2003/33/EC) impose specific measures for the disposal of asbestos which are implemented in England and Wales through Schedule 10 of the Environmental Permitting (England and Wales) Regulations 2007. These pieces of legislation require asbestos to be landfilled in a separate cell and ensure that asbestos does not escape by requiring it to be covered daily, capped at the end of the disposal phase and not disturbed (e.g. through drilling holes).

Information about breaches when the works were monitored

The works were monitored by the local authority, Halton Borough Council, by the Health and Safety Executive, and by the Environment Agency.

Halton Borough Council were concerned to ensure that the work was conducted in line with the agreed work plan for the overall remediation of the development site, and responded to complaints and issues raised by the general public. The Environment Agency also checked the remedial works.

The remediation contractor employed an environmental consultancy to monitor works and produced the remediation verification plan (both to fulfil the planning

condition and in line with the Definition of Waste Development Industry Code of Practice).

The Health and Safety Executive regulated the works in relation to the protection of workers, and secondarily the public, from health and safety risks of exposure to asbestos as a result of a work activity. This included notification of the construction under the requirements of the Construction (Design and Management) Regulations 2007, and enforcement of the Control of Asbestos Regulations 2006 concerning the regulation of asbestos and removal work and which implement Directive 2009/148/EC.

There were a few deviations from the agreed work plan. These deviations were notified to the Borough Council by the remediation company or through visual inspection during the regular site visits by Council officers. Any issues were subsequently rectified by the contractor or explanations sought as to the reason why any elements of the plan were not followed as agreed. None of the deviations were considered by the Council to pose any significant risk to air quality or human health. In the Council's view, the deviations encountered are what one may expect through the course of remediation work carried out on a project of this size.

The complainants themselves admit that the court rejected their allegations as to escape of asbestos from this site. They seek to reiterate those allegations to the Commission but the fact remains that they have had the opportunity to seek redress from the courts and were unsuccessful. It would be inappropriate for the Commission to seek to go behind the findings of the court which were based on a full investigation of all the evidence in this case.