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## **HOW TO DEAL WITH ASBESTOS-CONTAINING MATERIALS IN MEXICO**

The question of how to address the issue of asbestos-containing materials, or ACMs arises often when conducting Phase 1 Environmental Site Assessments, or corporate EH&S compliance audits of newly acquired facilities in Mexico. In the U.S., extensive guidelines published by EPA in response to AHERA legislation have shaped the standard practices regarding ACMs. Also, regulations restricting the use of asbestos in building products allow for inferences to be made on the potential presence of ACMs based on the age of the structure. But can the same criteria be applied in Mexico, and should they?

The Mexican regulatory framework regarding asbestos has a number of gaps that make answering this question difficult. Let's start with what is clearly regulated, albeit, in a less extensive than in the U.S. Worker protection from exposure to asbestos fibers is covered in two Official Mexican Standards, called NOMs for their Spanish-language acronym. NOM-125-SSA1-1994, issued by the Health Secretariat (SSA) in 1996 established the health requirements for the use and processing of asbestos. While this standard specifically covers workers in industries, which process or use asbestos fibers, its language may be interpreted as extending to any employee who is exposed to asbestos. The standard basically requires safe work practices, air monitoring, training, and medical surveillance of workers. This standard is complemented by NOM-010-STPS-1999, a Labor Secretariat (STPS) standard, which establishes Permissible Exposure Limits to a number of workplace contaminants, including asbestos. The rule applies in any workplace where asbestos exposure potential exists.

The main environmental standard regulating asbestos is the hazardous waste characterization rule, NOM-052-SEMARNAT-1993 (the environmental NOM names were recently changed from the former "ECOL" acronym to "SEMARNAT", for the Secretariat of Environment and Natural Resources). This NOM lists types of asbestos wastes, including waste from manufacture of ACMs, waste containing asbestos dust or friable asbestos, and bags or filtering equipment, which contain asbestos fibers, unless these wastes are encapsulated.

So what about ACMs? Which are they and how are they regulated? Mexican federal environmental, health, and commerce regulations do not contain substantive restrictions on asbestos-containing building materials. Asbestos-cement pipes, corrugated roofing and structural panels, and water tanks are still

being manufactured in Mexico, as are asbestos-containing vinyl floor tiles, asbestos fiber filters, asbestos brake shoes, and asbestos-containing felt hats and footwear. There are prohibitions on asbestos content in electrical and gas appliances, thermal insulation for industrial use, and filters used in pharmaceutical production. No references were found on asbestos content of ceiling acoustical panels, non-industrial thermal systems insulation, or building fire retardant systems. While imports and exports of asbestos-containing materials are legal, importing and exporting asbestos fiber waste requires special environmental permits.

So, can ACMs still be found in buildings? Up to how old? State and municipal laws, regulations and ordinances of some border states and the Federal District were also consulted to determine if state or local building codes regulate ACMs in new building construction. No references to asbestos in building materials were found in the building construction regulations in the states of Baja California, Chihuahua, and Tamaulipas, and the Federal District (Mexico City), as well as the cities of Tijuana and Mexicali, Ciudad Juarez, and Matamoros, Reynosa, and Altamira, respectively.

So what are some options for addressing ACM issues during facility ESAs and audits? One option used in some cases of new or recent construction is to request a letter from the builder stating that no asbestos was used in the construction of the facility. Even when the letter can be obtained, however, in the absence of any regulatory requirements, it may provide insufficient assurance that the facility is actually free of ACMs. Conducting an asbestos survey may be more easily said than done. Due in part to the lack of substantial regulation on ACM, and the absence of asbestos-related tort litigation, Mexico has not developed much of an asbestos testing and abatement industry, and there are no certification requirements for asbestos consultants. While industrial hygiene air sampling and PCM analysis are routinely performed for compliance with health and safety regulations, even otherwise well regarded Mexican environmental labs have been known to grossly misidentify asbestos bulk samples by consistently reporting false positives. Short of contracting a U.S. asbestos surveying firm, one option is to find a qualified Mexican asbestos consultant and sending the samples, or at least duplicates, to a U.S. asbestos laboratory. In either case, be prepared to pay substantially more than for a comparable job in the U.S.

A third alternative may be taken right from the pages of the EPA's guidance books. That is to skip the survey, and go directly to the management of suspected ACM. Developing and implementing an Asbestos Operations and Management Plan in a well maintained, and relatively new building may be more cost-effective in the long run. This may involve training facility maintenance personnel to identify friable, suspected ACM, and safely managing asbestos in place. Procedures can be developed to perform limited confirmation sampling prior to disturbing suspected ACM during routine projects, shipping samples to the U.S. for analysis, and performing minor repair operations. In time, a complete inventory of suspected ACM may be compiled, and the O&M plan scaled back or even closed. Whichever strategy you choose, keep in mind that if asbestos testing is difficult in Mexico, asbestos abatement raises the complexity and potential liability to a much higher level. You should assume that practically all the equipment, tools, and expertise will need to be brought in from the U.S. to ensure the job is completed safely and successfully.

Coming back to the original question of how to address ACMs during Phase 1 ESAs and audits, the bottom line is that it depends on the purpose of the investigation. In a property acquisition, performing a visual assessment of suspected ACM, and their condition as part of a limited Phase 2 ESA, may help the buyer incorporate renovation costs into the offer. In the case of a corporate asset, the building's condition and inventory of suspected ACMs may dictate whether U.S. corporate policies on asbestos can be followed or need to be modified for conditions in Mexico. At least, the regulatory requirements will be more flexible. In either case, it is advisable that policies be developed to ensure that no additional ACM are introduced into the facility during ongoing renovation or maintenance projects.

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