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Rātonga Hauora ā Iwi o Tamaki Makaurau

Working with the people of Auckland, Waitemata and Counties Manukau

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Feedback on the Management and Removal of Asbestos Code of Practice

Thank you for the opportunity to provide comments on the Management and Removal of Asbestos Code of Practice.

The following submission has been prepared by the Auckland Regional Public Health Service and does not necessarily reflect the views of the three District Health Boards it serves. Please refer to **Appendix 1** for more information on ARPHS.

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Once again, thank you for this opportunity to submit on this issue.

Yours sincerely

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Executive summary

1. ARPHS strongly supports the intent of the Code of Practice for the Management and Removal of Asbestos (the Code). The Code provides effective up to date guidance on the requirements of the new Regulations and the new Health and Safety at Work Act 2015.

2. Clear guidance is particularly welcome in view of the recent increase in the number of reports ARPHS has received regarding concerns and/or complaints about the management of asbestos from work undertaken at a nearby property. Furthermore, increased demand for demolition, renovation, improvement and replacement works on Auckland's housing stock is likely to intensify in response to the region's growing population.

3. It is clear the Code specifically provides guidance for businesses, workplaces and workers, but it has implications for 'do-it-yourselfers' and the general public.

4. ARPHS recommends the following:

    a. Include a clear statement – perhaps in the introduction- for the benefit of home owners who may read this Code whilst considering how to manage or remove asbestos at home. This statement would include a recommendation to contract professionals to do the work. This statement could also outline a pathway for the home owner who was not prepared to engage professionals.

    b. Publically clarify the roles and responsibilities of regulatory agencies in the event of a mishap, in particular, Worksafe NZ's lead role in protecting public health as a result of a workplace incident.

    c. To this end, provide a clear introductory statement of the responsibilities of the persons conducting the business or undertaking (PCBU) to protect and inform neighbours and the public.

5. ARPHS also makes several suggestions to help clarify the intent of particular sections of the Code.

Importance of Code

6. Auckland Regional Public Health Service (ARPHS) congratulates Worksafe NZ for the preparation of this draft Code and welcomes the opportunity to provide feedback.

7. The controls and measures in the Code need to ensure asbestos identification, handling and removal is safe and does not pose a public health risk.

8. All types of asbestos fibres are known to cause serious health hazards in humans. A number of diseases can be related to asbestos fibres including[1]:

    - Asbestosis – scarring of lung tissue;

[1] Asbestosaware. (2016) Retrieved from http://asbestosaware.co.nz/risk.php

- Mesothelioma – malignant cancers developing around the linings of either the chest or abdominal cavity;
- Lung cancer;
- Pleural plaques – thickening of membranes around the lungs which may lead to further disease and varying degrees of debilitation.

ARPHS's role and responsibilities

9. ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region.

10. ARPHS has the following roles and responsibilities when responding to a significant hazardous incident. However, it is not Public Health's role to manage environmental contamination or risks to the public caused by a workplace or as a result of work that has been done by a business. The following roles would lie with Worksafe NZ in this instance, and not Public Health:

    - Enforcement "where necessary to protect public health";
    - Assess public health risk – this may include environmental sampling;
    - Initiate and manage action to protect public health (with other agencies);
    - Advise the incident controller, Hazardous Substances Technical Liaison Committee (HSTLC), and other agencies of any public health risks and actions;
    - Inform the public of health risk issues and mitigation.

Scope of the Code

11. The Code is a valuable resource primarily targeted at a person or persons conducting a business or undertaking (PCBU). The Code guides PCBUs to help protect workers and other people against the harmful effects of asbestos. Section 1.7 (Audience) also states that other people with duties under the Health and Safety at Work Act 2015 or the Health and Safety at Work (Asbestos) Regulations 2016 will benefit from reading the Code.

12. In the same manner, we consider other individuals that are not PCBUs or other duty holders (i.e. property owners and do-it-yourselfers) may consult the Code for advice. Therefore, we consider this introductory section should contain a brief statement explicitly urging do-it-yourselfers to engage licensed contractors to perform asbestos related work or a licensed asbestos removalist if asbestos removal is required. Particular reference could be made to the minimum requirements in the Regulations, which require a licensed removalist to carry out the removal of more than $10m^2$ (cumulatively over the whole course of the removal project for the site) of non-friable asbestos or asbestos containing material (ACM).

13. This section could also refer such users to complementary resources such as the advice provided by the Ministry of Health at http://www.health.govt.nz/your-health/healthy-living/environmental-health/hazardous-substances/asbestos/removing-asbestos-home.

Managing impacts beyond the worksite

14. In the 12 months prior to 20 May 2016 ARPHS received 78 separate inquiries about asbestos. The most prevalent complaints about asbestos occur when a resident does not inform neighbours in the immediate vicinity of works involving asbestos, and subsequently the works create hazards beyond the residence.

15. We therefore support section 25 of the Code, which states that:

    - If the workplace is a home - the licensed asbestos removalist must (so far as reasonably practicable) inform anyone occupying workplaces or homes in the immediate vicinity of the home about the asbestos removal work and its start date;

    - At a workplace – the workplace PCBU must inform anyone occupying premises in the immediate vicinity of the workplace that asbestos removal will be carried out.

16. A general principle of informing neighbours and those in the immediate vicinity about asbestos works being undertaken at a worksite (and the associated risks) should be an important theme of the Code. We consider there is scope for this theme to be embedded in other relevant sections of the Code (not just restricted to asbestos removal).

Clarity of roles and responsibilities

17. There is a common misperception that District Health Board public health units should be managing work-related or workplace asbestos risks to the public, even though the risk might have been generated in the workplace, or as a result of work being done.

18. When responding to asbestos complaints from the public, or an actual/potential contamination incident, our health protection officers advise that it is often unclear who is responsible for managing and controlling the incident. However, the legislation is clear that enforcement is the role of Worksafe NZ when asbestos contamination from a worksite spreads into non occupational settings.

19. We therefore believe the roles and responsibilities of key players, particularly Worksafe NZ, should be clearly stated in the introductory section of the Code.

20. One way of effectively outlining the roles and responsibilities is the use of a cascading diagram similar to that on page 9 of the Environmental Protection Authority's HSNO Enforcement Agencies technical guide.[2] We acknowledge that asbestos is not a hazardous substance under HSNO, but make the point that this diagram provides a good example of how such information could be presented in the Code. The Environmental Protection Authority could assist with developing specific examples to support the development of an asbestos lead agency technical guide.

[2] Available at http://www.epa.govt.nz/Publications/EA-roles-and-responsibilities.pdf

Specific comments on sections of the draft Code

Part B: Information for workplace PCBUs

Section 6 – Managing asbestos risks

21. Figure 15 in section 6.2 represents the hierarchy a workplace PCBU must use when choosing the best measures to control asbestos risks. The Code states that the PCBUs first response should be to eliminate asbestos from the workplace, but if this is not reasonably practicable, the PCBU must minimise the asbestos risks.

22. ARPHS considers the secondary control measure of minimising the asbestos risk is only appropriate if it has first been established that there is an acceptable risk to the health of the most 'susceptible' workers e.g. smokers are more susceptible to the health risks of asbestos. To achieve this level of assurance, PCBUs should be required to complete a health risk assessment, demonstrating that the proposed risk minimisation measures will not pose an unacceptable health risk to the most susceptible workers. Not exceeding the 'airborne contamination standard' is an inappropriate measure for confirming an appropriate level of risk, as risk is cumulative, and would need to be assessed for the most vulnerable workers via a health risk assessment.

23. If adequate risk minimisation cannot be achieved, then the workplace should not be considered fit for human occupation without compulsory personal protective equipment (PPE).

Section 7 Asbestos Management Plans

24. Section 7.4 notes that a PCBU should visually inspect the presence and condition of the asbestos or asbestos containing material (ACM) to help determine the risk of exposure to airborne asbestos. For the purpose of developing an appropriate asbestos management plan, we consider a more detailed risk assessment is required, which should include the following:

    - The potential quantity of liberated asbestos fibres in light of the existing condition of the asbestos or ACM (apparent from visual inspection);
    - Potential routes of exposure;
    - Health condition of workforce (i.e. consideration as to whether any member(s) of the workforce might have comorbid lung conditions or are heavy smokers/drinkers);
    - Maximum potential human exposure periods etc.

Part C: Information for all PCBUs carrying out work involving asbestos

Section 13 Asbestos airborne contamination standard

25. Paragraph 13.1 notes that the airborne contamination standard for asbestos specified in the Regulations is not an exposure standard. Worksafe should consider making a reference to the Workplace Exposure Standard and its relevance to the guidelines to reduce any ambiguity.

26. There may be air monitoring requirements resulting from the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health[3] which should be referenced. If so, this section of the Code could contain the following statement:

> "Air monitoring for asbestos may also be required under the National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health."

Section 14 Health Monitoring

27. This section of the Code should also highlight the impact that individual health behaviours can have on the level of risk a person is exposed to when working with asbestos. In particular, alcohol consumption and smoking are health behaviours that have significant influence on health risks from exposure to asbestos. For instance, studies have shown that the risk of laryngeal cancer from asbestos exposure is greatly increased by smoking and/or drinking with the effects alcohol being additive, while those of smoking or smoking plus alcohol being more than additive[4]. It is also known that smoking synergistically increases the risk of lung cancer from asbestos exposure[5].

28. Including information on smoking and alcohol use would support a preventative approach to managing asbestos risk.

Section 15.5 Decontaminating vehicles or machinery

29. ARPHS has received complaints from the public that inadequate decontamination has taken place resulting in trucks spreading contaminated soil on public roads as they leave worksites. ARPHS is aware that the kind of decontamination unit described in section 15.5 has not always been implemented on medium to large scale worksites. ARPHS is aware of worksites where vehicle decontamination is undertaken in open/unsealed areas. We consider clarification is necessary around the sort of circumstances (including type and scale of works) that will trigger the necessity to install a decontamination unit as described on page 90 of the Code.

Section 16 Laundering clothing

30. Section 16.5 outlines a number of measures laundries should adopt to adequately manage asbestos risk, including the development of a management plan to control the release of respirable asbestos fibres. If not adequately covered elsewhere in the Code, we consider this section could provide further explanation as to how these facilities would prevent the risk of asbestos transmission (i.e. to ensure clean laundry being returned to other sources is not contaminated with asbestos fibres). Laundry workers should undergo health monitoring as occurs with other staff who work with asbestos.

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[3] http://www.mfe.govt.nz/land/nes-assessing-and-managing-contaminants-soil-protect-human-health/about-nes

[4] Menvielle G Fayossé A Radoï L Guida F, et al, 2016. The joint effects of asbestos exposure, tobacco smoking and alcohol drinking on laryngeal cancer risk: evidence from the French population-based case-control study, ICARE. Occup Environ Med 2016 Jan, 73(1): 28-33.

[5] Saracci R. Asbestos and lung cancer: an analysis of the epidemiological evidence on the asbestos-smoking interaction. International Journal of Cancer 1977, 20(3): 323-331.

Section 18 Contaminated sites

31. Section 18 outlines the criteria that should be met when remediating a contaminated site. However, we have concerns that there may be situations where known contamination of a site is not remediated before the site stops being a worksite or there is a change of use on the site. ARPHS is aware of instances where ownership of a site has changed, resulting in a (potentially) contaminated site being inappropriately reoccupied prior to being adequately assessed and cleared as safe. Once a site is known to be contaminated (or potentially contaminated), the responsibility should lie with the current land owner to inform the local authority so this information can be placed on the property's Land Information Memorandum report as soon as possible. We believe this should be reflected in the Code.

32. This section should make more specific reference to the MfE's 'National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health' (NES-CS) and associated Contaminated Land Management Guidelines. Asbestos-contaminated soil is covered by the NES-CS. The Western Australian guideline referred to appears to cover a lot of similar territory to the NES-CS guidelines, but while the WA guideline may well be useful as a supplement, it is not a substitute for the NES-CS, and is not legally applicable in New Zealand.

33. We therefore recommend additional wording for paragraph 18.1:

> "Sites contaminated with asbestos are covered by the 'National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health' (NES-CS)[6]. All requirements in the NES-CS for site assessment, consent and management need to be met. PCBUs should seek advice from the appropriate regional council."

34. The section titles on page 105 need to be reversed to be consistent with the subsequent text.

Part E: PCBUs doing demolition and refurbishment

Section 21 Demolition and refurbishment work

35. We support the provisions in this section. ARPHS has recently dealt with situations where asbestos contamination of neighbouring properties occurred during an unprofessional house demolition. The proposed provisions in this section provide clear guidance and assistance that will potentially help avoid such incidents from occurring in future.

Part F: Asbestos assessors and licensed asbestos removalists

Section 23 Licensing asbestos removalists

36. There appears to an error in the first dot point in the last row of Table 7 under heading 23.2.2. In the 'No Licence required' box, the first dot point currently reads, "up to and including 10m^2 of

[6] http://www.mfe.govt.nz/land/nes-assessing-and-managing-contaminants-soil-protect-human-health/about-nes

non-friable asbestos or ACD, cumulatively over the whole course of the removal project for the site". "ACD" should read "ACM" at this point.

Section 29: Air Monitoring and Sampling

37. Air monitoring: Our comments about Section 13 of the Guideline regarding the Workplace Exposure Standard and NES-CS apply for this section as well.

Part G: PCBUs doing licensed and unlicensed asbestos removal work

Section 30 Clearance inspections

38. We strongly endorse the inclusion of these important provisions.

39. However, we note the last paragraph in section 30.2 states:

> "The person doing the monitoring must not issue a clearance certificate unless they have confirmed the area is safe for normal use. To do this, the person must conduct an inspection, including a visual inspection for evidence of dust and debris. The person may need to carry out clearance monitoring and *surface testing*."

40. We consider surface testing for absence of asbestos fibres is a minimum requirement to give any sort of confidence that an asbestos removal job has been conducted properly. We note clause 41(3)(a) in the Regulations requires surface testing for Class A asbestos removal work - this should be reflected in the Code.

Other matters

41. To avoid ambiguity, all efforts should be made to ensure the terminology in the Code is clear and consistent throughout, and any explanations are prescriptive in nature. We cite the following examples where the Code could provide greater clarification:

- "Small scale" asbestos removal work is referred to in section 27, and then in section 28, the Code refers to removing "10m^{2}" or less of asbestos. At first glance a user of the Code may question what constitutes 'small scale', and subsequently draw comparisons to the 10m^{2} figure. It appears the term small-scale in section 27 is referring to friable asbestos removal only, (which requires a class A licence), and the "10m^{2} or less" is associated with the removal of non-friable asbestos (which can be done without a license). If this is the case, we consider the distinction between the relevant sections should be clearer up front. We suggest that the title for Section 27 could be amended to *Methods for Small-Scale Friable Asbestos Removal Work*. We also consider "small-scale" work should be explicitly defined for this purpose.

- Further to our above comment, we consider a matrix table could be utilised to present the differences between the type and scale of removal work, and associated license requirements, in an easy-to-understand manner.

- The second dot point in section 28.2 (page 145) refers to "minor" contamination without further defining 'minor'.

Conclusion

42. Thank you for the opportunity to submit on the draft Code of Practice for the Management and Removal of Asbestos. We welcome feedback from Worksafe on the issues raised in this submission.

Appendix 1 - Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Auckland, Counties Manukau and Waitemata District Health Boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects on population health.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.