

**Faculty of Asbestos Management of Australia & New Zealand (FAMANZ)  
Response to Proposed Amendments to EPA Vic Regulations**

The following submission is made on behalf of FAMANZ to the proposed amendments to the Victorian EPA Regulations. The feedback is specific to the application of the proposed regulations to asbestos contamination. The feedback is aimed at aligning the proposed regulations with the management of other contaminants as well as aligning the regulations with the Victorian OH&S regulations framework.

FAMANZ sees 4 key issues with the proposed regulations:

- Asbestos is not defined in the Proposed EPA regulations.
- There is a disparate view (even among experts) of whether asbestos contaminated soil is “likely to result in exposures >0.01 f/m<sup>3</sup>” (see Reg 9). Hence there will be significant inconsistency in the types of sites being reported and difficulty in regulating this.
- Only friable asbestos contaminated sites will require to be reported (grossly impacted bonded asbestos contaminated sites) will not be required to be reported.
- NEPM defines a “Competent Person” but this needs to be clarified further for asbestos given the expertise required with this contaminant.

**1. Asbestos is not defined in the Proposed EPA regulations**

Asbestos is a generic term applied to a group of fibrous mineral silicates, which are naturally occurring and ubiquitous in the environment. Challenges exist under both OH&S and EPA regulations where there is an unclear definition of what constitutes “Asbestos”. The proposed EPA regulations define “Friable Asbestos” but omit a definition of “Asbestos”.

FAMANZ propose that asbestos be defined as follows:

“Asbestos means—

- (a) the asbestiform varieties of [mineral](#) silicates belonging to the serpentine or amphibole groups of rock-forming [minerals](#), including—
  - (i) actinolite asbestos; and
  - (ii) anthophyllite asbestos; and
  - (iii) chrysotile (“white asbestos”); and
  - (iv) crocidolite (“blue asbestos”); and
  - (v) grunerite asbestos (or amosite) (“brown asbestos”); and
  - (vi) tremolite asbestos; or
- (b) any material or object, whether natural or manufactured, that contains one or more of the [mineral](#) silicates referred to in paragraph (a);”

Under OH&S Regulations, where there is uncertainty, the material may be sampled and analysed in accordance with AS4964<sup>1</sup> to determine whether the material contains asbestos. This method has a Level of Reporting of 0.01 w/w%, which avoids the regulations applying to soils with minor contamination. OH&S Regulations also require analysis, for the purposes of determining whether the material is asbestos, to be undertaken at a NATA accredited laboratory and that reporting be undertaken in accordance with the reporting requirements of AS4964.

2. **There is no firm opinion or view (even among experts) of whether asbestos contaminated soil is “likely to result in exposures >0.01 f/ml”; and**
3. **Only friable asbestos contaminated sites will be required to be reported**

There has been an expansion of OH&S regulation in the 2017 regulatory update to include asbestos contaminated soils. This is in response to concerns regarding worker exposure to soils contaminated with asbestos.

For the purposes of reporting under the proposed updates to the EP Regulations, Regulation 9 proposes:

#### 9 “Asbestos in or on soil

For the purposes of section 37(a) of the Act, the following is prescribed notifiable contamination—

- (a) the presence of friable asbestos in or on soil on land; and
- (b) a person has been, or is likely to be, exposed to airborne asbestos fibre levels in excess of 0.01 fibres per millilitre by means of inhalation.”

The “presence of friable asbestos” is problematic due to laboratories reporting individual fibre bundles as friable (presumably on the basis they are not bonded into a matrix). Modifier (b) helps with this variable reporting but there should be consistent reporting in accordance with AS4964.

Depending on the degree of experience of the person in undertaking air monitoring on a range of asbestos contaminated sites, there will be large scale inconsistency in determining the “likelihood” of exposure greater than 0.01 f/ml.

Furthermore, the reporting requirements only relate to friable asbestos. Sites grossly contaminated with non-friable asbestos are far more common and ought to be reported on a risk based approach. This is a significant regulatory gap.

The NEPM publishes risk-based Health Screening Levels (HSL) for asbestos in soil. These are conservative but objective criteria of risk, and apply to various land uses.

FAMANZ propose that the threshold for reporting be altered from the highly subjective trigger criteria of “likely to result in exposures in excess of 0.01 f/ml”, and be replaced with reference to:

- a) “Exceeding the HSL prescribed in NEPM (excluding Asbestos contamination which is less than 10m<sup>2</sup>) and
- b) Site occupants being likely to be exposed to the contamination.”

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1 AS 4964-2004 Method for the qualitative identification of asbestos in bulk samples

This trigger is consistent with other contaminants and excludes Minor Contamination which is defined consistently within the current OH&S Regulatory framework. The trigger is also objective and is risk based, making enforcement clearer.

#### 4. Definition of a Competent Person

Since the introduction of the NEPM which specifically included asbestos as a contaminate in soil, there has been a range of persons assessing and advising on asbestos contaminated soils. There are also significant commercial pressures at play which have seen a decline in professional standards viz 'franchised or discounted inspection services'. In many instances, the assessor holds little, if any training in the risk management of asbestos containing materials. In addition, considerable sums of money are often spent unnecessarily, in excavating and disposing of soil that presents negligible or no measurable risk to human health.

Similarly, air monitoring for airborne asbestos fibres is increasingly being conducted by untrained personnel, facilitated by large commercial laboratories who hire the sampling equipment and provide training in how to turn the equipment on and off. There is certainly no training in the selection of sampling positions to conform with *AS/NZS3580.1.1 Guide to siting air monitoring equipment*. NATA accreditation for sampling for compliance purposes is a requirement of EPA Publication 440.1 A Guide to the Sampling and Analysis of Air Emissions and Air Quality.

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Given that this Regulation proposes prescribed notifiable contamination, the persons conducting the assessment must be competent as prescribed in Publication 440.1, that is hold NATA accreditation for sample collection.

Note:

NATA no longer assesses the competencies of individual laboratory personnel. The assessment of laboratory personnel is by the laboratory itself, with variability in the level of competency accepted by the individual organisations. NATA simply reviews documentation to verify that training has been completed in accordance with the documented laboratory procedure.

SafeWork Australia considers a “Competent Person” to mean a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

FAMANZ recommends that a “competent person for asbestos risk management” be an individual that holds the following qualifications, as appropriate, developed by the British Occupational Hygiene Society, which are now available in Australia through FAMANZ and a range of BOHS approved training providers:

- IP403 Asbestos Fibre Counting (PCM)
- IP404 Air Monitoring, Clearance Inspections and Reoccupation following the removal of asbestos; and
- IP408 Identification and Quantification of Asbestos in Soils using PLM and PCM.

As a minimum, any person conducting field work and airborne asbestos monitoring should hold the IP404 qualification given that there is a mandatory reporting condition proposed.

Copies of the course specifications are attached.

### **Further Information**

If you require further information or clarification regarding this submission, please do not hesitate to contact:

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