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health, safety & environmental management

[e newsletter]

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Newsletter

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Worker Was Inexperienced In Driving Dumper

A demolition site labourer suffered crush injuries to his foot after becoming trapped underneath an overturned skip-loading dumper.

Maidenhead Magistrates' Court heard that the incident took place on 21 May 2008 at a construction site in Warfield, Berkshire, where work was being carried out to demolish a lean-to building and break up a barn floor.

The labourer was operating a skip-loading dumper to transfer waste material to a rubble pile in the yard. He was asked to operate the vehicle even though he had been given no formal training. He used the dumper throughout the day without encountering a problem. But on one occasion, as he was tipping rubble from the skip of the dumper, his foot slipped off the clutch, causing the machine to advance and start to mount the pile of rubble. The vehicle then became unstable and overturned, trapping him beneath it by his foot.

He was freed by colleagues and taken to hospital for treatment for multiple fractures to his ankle. His lower leg was put in plaster and, as a result, he was unable to return to work for 12 weeks.

His employer, Shorts Group Ltd, appeared in court on 22 May and pleaded guilty to breaching s2(1) of the HSWA 1974. The company was fined £5000 and ordered to pay £1772 in costs.

In mitigation, the firm entered an early guilty plea and said it had no previous convictions. It has subsequently conducted a thorough review of its training and assessment procedures, to ensure that all employees receive appropriate training.

HSE inspector, Karen Morris, told SHP: "This incident may have been avoided if the company had provided appropriate information, instruction and training to the operator involved. His lack of experience and competence was undoubtedly a contributory factor to this incident, which in my view was foreseeable and preventable."

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Who Should You Commission to Carry Out Your Asbestos Surveys?

Many companies that provide consultancy and surveying services, sometimes at what initially appears to be at low cost. However, before commissioning an organisation to undertake such work it is important to consider the risks:

- Are you confident that the organisation has the technical competence to undertake the work in question?
- Are you satisfied that the organisation has the resources to do the work?
- Are the surveyors working to suitable codes of conduct to ensure inspections are carried out impartially and with integrity?
- Are you confident that the organisation has an adequate quality system in place?
- Are you satisfied that safeguards are in place, e.g. suitable liability insurance, in case difficulties arise?

The Control of Asbestos Regulations 2006 (CAR 2006) and more specifically Regulation 4: Duty to manage asbestos in non-domestic properties sets a legal requirement for owners and occupiers of non-domestic buildings to carry out a suitable assessment to determine whether asbestos is present or liable to be present.

The HSE is responsible for enforcing compliance with the regulations and penalties are awarded to persons who fail to ensure the safety of their staff and others present on site. Selecting an organisation accredited by the United Kingdom Accreditation Service (UKAS) will ensure that you are appointing a competent surveying organisation that will understand and meet your requirements.

It is important to specify the appropriate requirements on suppliers according to the type of work required. For example, you can be confident in the technical competence of an asbestos surveying organisation if it holds UKAS accreditation to ISO/IEC 17020, the internationally recognised standard that sets out the requirements for organisations performing inspection.

Accredited organisations must show:

Technical Competence

The organisation must demonstrate that individuals carrying out surveys are technically competent to do so. This is demonstrated through:

- Qualifications attained (P402 as a minimum)
- Internal training
- Routine competence monitoring
- Internal auditing to include witnessed survey performance by a qualified auditor
- Quality control of surveys through programme of resurveying properties representative of general business e.g. types of premises

Organisation & Management

The organisation must demonstrate that:

- It has appropriate liability insurance
- It operates a Code of Conduct
- It has implemented processes for working safely
- It has a process to manage contract review to ensure that customer requirements are fully understood, the work is adequately resourced, and any deviations to the work are immediately brought to the attention of the client
- It has a complaints process (with referral to UKAS if not satisfied)

Independence, Impartiality and Integrity

The organisation must demonstrate that:

- Surveys are carried out independently and impartially. UKAS looks for sufficient safeguards to ensure that links to other bodies (such as removal contractors) do not influence the survey or any subsequent recommendations
- Integrity is being maintained by all staff at all levels through contractual obligation to written codes of conduct. Such safeguards are necessary to ensure that inspections are undertaken with sufficient impartiality and that recommendations on the treatment of discovered asbestos materials are appropriate to given situations.

What are the risks of using a non-accredited inspection Body?

- Inexperienced staff – competence is built on qualifications, knowledge and experience (P402 alone is not a demonstration of competence)
- Insufficient resource leading to inadequate and incomplete surveys and possibility of missing asbestos products especially those that are not immediately obvious by sight alone
- Unclear reports and inappropriate recommendations for remedial action
- A lack of impartiality
- No comeback (no formal complaints procedure, no higher authority)
 - Lack of due diligence/exposure to future claims
 - Possible insurance gaps

Three Directors Disqualified After Firm “Put Business Before Safety”

A haulage company that was recently fined for health and safety breaches in relation to the death of a member of the public has been put out of business.

The traffic commissioner for Scotland, Joan Aitken, revoked Munro & Sons (Highland) Ltd's operating licence and disqualified two directors for seven years, and a former director for two years.

Sending a warning to other operators, she said: “Disqualified operators often seek to re-emerge in other corporate form. I warn other operators and persons to be very wary of providing a front for continued operation by Messrs Munro.”

The commissioner's decision follows a successful prosecution of the company under sections 3(1) and 33(1) of the HSWA 1974. This related to an incident on 5 July 2006, on the A9 Inverness to Scrabster road, when a 30-tonne wheeled loader, which the company was considering buying from Umax Ltd, rolled off the trailer it was being transported on for tests, and crushed a car carrying two members of the public. Christina Fraser was killed in the collision, while Julia Mackay was injured.

A court concluded that inadequate plant, materials and information were available to Munro's driver, who had no information about the weight of the vehicle, and had an inadequate number of sufficient weight-bearing chains to secure the loader. He was also not informed about the poor quality of the brakes on the loader.

Further information to the Crown included a remark attributed to Munro's contracts manager, Andrew Gillies, who said: “The chains broke once the lorry went up the hill and the machine came off. These old f**king chains are never checked.” Company director William Munro declined any responsibility for the wheel loader or agreement to purchase it, and it was returned to Umax.

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Munro & Sons was fined £3750 in April 2008. However, in January this year, an Appeal Court judge raised the penalty to £30,000, after ruling that the sentencing judge had incorrectly based the original fine principally on Munro's ability to pay, and not taken account of the gravity of the offence.

The company has now been put out of business, following a public inquiry and driver-conduct hearing held at Inverness in March.

Said Traffic Commissioner Aitken: “The operator clearly had no idea of modern competence in the manner of moving heavy equipment. It was the grossest error of judgement undertaking that journey with that equipment. For a goods-vehicle operator it was an act of astonishing recklessness.”

The company was also involved in an incident on 13 November last year, when a trailer came loose and seriously injured the driver of a private vehicle. Considering the omissions of Munro's driver, Kenneth Finlayson, Aitken remarked: “I am in no doubt that this trailer coupling was defective and that the defect should have been spotted by the driver, and that there was also something amiss in the communication between the driver and the workshop, in respect of the operation of the plate within these couplings.

“I do not believe that Mr Finlayson properly coupled that trailer combination that evening. I do not believe that coupling to have been properly maintained in the operator's workshop.”

Aitken accepted that the company had organised some driver training, and had appointed a health and safety consultant to look after its road-haulage business. However, she concluded that the directors, William and David Munro, had “put business before safety”, adding that their “demeanour as respectable and responsible has the allure of the mirage”.

She reserved special condemnation for David Munro, the firm's transport manager, who she described as “so out of date” in relation to his responsibilities that: “I am not at all convinced that I could trust him with an operator licence or responsibility for a transport operation ever again.”

She disqualified both men for seven years, as well as former director, Pamela Munro, for two years. Finlayson was deemed not fit, by reason of his conduct, to be entitled to hold a large-goods vehicle driver licence, and was subsequently disqualified for 12 months.

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