

United States Environmental Protection Agency
Region 1
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Boston, Massachusetts 02109-3912

April 2011

**Reminder to Schools of Obligations Concerning
Safe Management of Asbestos**

Dear School Administrator:

The purpose of this letter is to inform you about environmental requirements applicable to your school buildings and facilities, in particular those related to asbestos management.

Asbestos management laws are meant to protect people attending, working at, and visiting schools and other public buildings from exposure to asbestos hazards. The Asbestos Hazard Emergency Response Act, or "AHERA," requires school administrators to identify and manage asbestos-containing materials in schools and to take preventative measures against the release of asbestos fibers. The law requires the schools to use licensed asbestos abatement professionals to carry out response actions. The law also requires schools to survey asbestos-containing materials, conduct periodic inspections of these materials, train personnel on asbestos and asbestos laws, and make asbestos management plans available to the public upon request. Additionally, schools must provide written notification on a yearly basis so that teachers, families, and employee representatives can be informed about the location and condition of asbestos in their schools.

Inspections of schools in New England conducted by EPA over recent years underscore the need for schools and school districts to be vigilant in protecting the health of the school community and the public by following asbestos management requirements. EPA conducts inspections at public and private elementary and secondary schools under various circumstances, including in response to tips and complaints, at schools that have never been inspected or have not been inspected for a considerable period, or where there is a history of noncompliance. EPA may notify schools about planned AHERA inspections in advance, or may conduct unannounced inspections, depending on the situation.

Recent inspections in New England have found some schools to be in violation of AHERA. For example, in 2010 EPA Region 1 (New England Region) fined a Keene, New Hampshire private school \$12,573 for failing to develop required asbestos management plans. EPA specifically found that the school failed to maintain a complete, updated asbestos management plan in school administrative offices and failed to provide annual written notification to parents, teachers, and employee organizations of the availability of the plan.

In 2008 EPA fined a Barre, Vermont public school district \$17,145 for failing to maintain complete, updated copies of its asbestos management plans in the administrative offices of the central district and of each school, failing to have the plans available at the time of EPA's on-site inspection, and failing to provide the required annual notification to parents, teachers, and employee organizations of the plans' availability.

The monetary penalties EPA assessed in these cases were significant; however, unlike most other federal environmental statutes that EPA enforces, AHERA allows schools to credit

compliance costs incurred against civil penalty amounts. In addition to taking the penalty actions mentioned above, EPA has also issued numerous Notices of Noncompliance (NONs) when the agency found initial or less serious deficiencies with AHERA compliance. For example, EPA conducted 193 inspections between 2006 and 2010 and issued 37 NONs to schools in New Hampshire (13) and in Vermont (24). Schools that receive NONs were required to submit corrective action plans to EPA within 30 days to document that the deficiencies were corrected and the schools returned to compliance. While the violations documented by EPA in these cases were serious, the agency is not aware of any human health or environmental harm resulting from these violations.

In addition to inspections by EPA, inspections of schools by states that have received delegated authority (which include all New England states except Vermont) have also resulted in enforcement actions that help to ensure school districts follow requirements for safe management of asbestos in schools.

EPA New England's AHERA enforcement activities have focused for some time on schools in New Hampshire and Vermont because other New England states have been granted the authority to operate their own asbestos-in-schools programs in lieu of the federal program. In May 2009, EPA also granted New Hampshire such a "waiver" allowing the New Hampshire Department of Environmental Services to operate an asbestos-in-schools program moving forward. Waivers may be granted when states seek the authority and demonstrate that they have programs in place that are at least as stringent as the federal AHERA requirements.

For more information on how your state's program can assist you with safe management of asbestos, please refer to the following web sites:

Connecticut Department of Public Health:

<http://www.ct.gov/dph/cwp/view.asp?a=3140&q=417042>

Maine Department of Environmental Protection:

<http://www.maine.gov/dep/rwm/asbestos/asbestosinschools.htm>

Massachusetts Division of Occupational Safety:

<http://www.mass.gov/?pageID=elwdsbtopic&L=5&L0=Home&L1=Workers+and+Unions&L2=Licensing+and+Certification&L3=Asbestos+Program&L4=Asbestos+in+Schools&id=Elwd>

New Hampshire Department of Environmental Services:

<http://des.nh.gov/organization/divisions/air/cb/ceps/ams/index.htm>

Rhode Island Department of Health:

<http://www.health.state.ri.us/healthrisks/poisoning/asbestos/for/schools/>

Vermont Department of Health:

<http://healthvermont.gov/enviro/asbestos/index.aspx>

For more information about EPA's asbestos-in-schools programs please visit:

Asbestos in Schools:

http://www.epa.gov/asbestos/pubs/asbestos_in_schools.html

Asbestos enforcement in New England:

<http://www.epa.gov/region1/enforcement/asbestos/index.html>

ADDITIONAL INFORMATION

What is the Asbestos Hazard Emergency Response Act?

The Asbestos Hazard Emergency Response Act, or “AHERA,” requires local education agencies to identify friable (crumbly) and non-friable asbestos-containing building material in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling the materials if they are not assumed to be asbestos-containing material, and having samples analyzed by qualified laboratories using specified techniques. The law requires local education agencies to submit asbestos management plans to their State Governor by October 12, 1988 and to implement them starting July 9, 1989. In addition, local education agencies are required to use accredited professionals to conduct inspections, reinspections, develop management plans, or perform response actions. AHERA also includes recordkeeping and annual notification requirements.

How do schools comply with AHERA?

The rules implementing AHERA are published in the Code of Federal Regulations (Chapter 40, Part 763, Subpart E), and can be found here:
<http://www.epa.gov/asbestos/pubs/2003pt763.pdf>

For questions about federal AHERA compliance in New England, contact Hugh Pilgrim at (617) 918-1843.

As a school administrator, what else can I do to ensure the school community is safe?

In addition to AHERA requirements, local education agencies also need to comply with the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP). It requires that owners or operators of facilities notify the appropriate authority (usually the state air pollution control agency) before demolishing or renovating facilities. If minimum amounts of regulated asbestos will be removed or disturbed, the owner/operator must adequately wet and carefully remove the asbestos components, keeping them wet until collected for disposal, and then disposing of the asbestos waste in accordance with the regulations. The rules implementing the Asbestos NESHAP are published in the Code of Federal Regulations (Chapter 40, Part 61, Subpart M), and can be found here:
<http://www.epa.gov/asbestos/pubs/40cfr61subpartm.pdf>

For questions about federal Asbestos NESHAP compliance in New England, contact Alexander Aman at (617) 918-1722.