



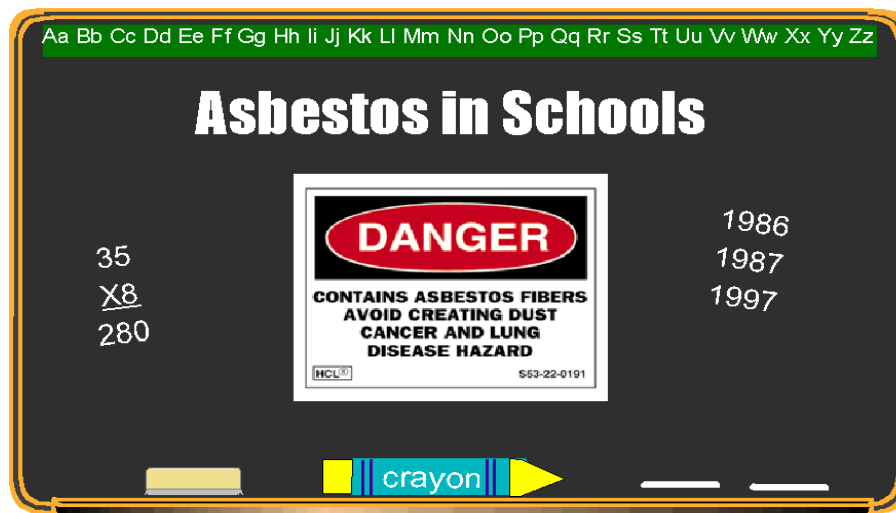
Office of Inspector General Mid-Atlantic Audit Division

Final Audit Report

Final Report on Region III's Children's Health Initiative on the Asbestos Hazard Emergency Response Act (AHERA)

Report Number 2000-P-00024

September 28, 2000



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Philadelphia, PA**

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Compliance Assurance
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Region III

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**We would also like to
acknowledge Garry Sherman,
Former Regional Asbestos
Coordinator, for his
contributions to this report.**




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September 28, 2000

MEMORANDUM

SUBJECT: Final Report on Region III's Children's Health Initiative
on the Asbestos Hazard Emergency Response Act (AHERA)
Report Number 2000-P-00024

FROM: 
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Divisional Inspector General for Audit
Mid-Atlantic Division (3AI00)

TO: Steven A. Herman
Assistant Administrator for Enforcement
and Compliance Assurance (2201)

Bradley M. Campbell
Regional Administrator (3RA00)

Attached is our final audit report on Region III's Children's Health Initiative on the AHERA program. The overall objectives of this audit were to determine the: (1) status of the Region III Children's Health Initiative on the AHERA inspection program; (2) adequacy of EPA's stewardship over the various State inspection programs within Region III; and (3) human resources necessary to maintain a viable AHERA inspection program.

This audit report contains issues that describe conditions the Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings contained in this audit report do not necessarily represent the final EPA position, and are not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

ACTION REQUIRED

This report makes recommendations to the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) and the EPA Region III Administrator. In accordance with EPA Order 2750, the action official is required to provide a written response to the audit report within 90 days of the date of this report.

In responding to the draft report and during the exit conference, Region III officials provided corrective actions and milestone dates for the recommendations applicable to Region III. Therefore, no further response to this report is required by the Regional Administrator.

We have no objections to the further release of this report to the public. Should your staff have any questions about this report, please have them contact Michael Wall or Teri Woodcock at (215) 814-5800.

Attachment

EXECUTIVE SUMMARY

Purpose

The purpose of our audit was to determine the:

- (1) Status of the Region III Children's Health Initiative on the Asbestos Hazard Emergency Response Act (AHERA) inspection program.
- (2) Adequacy of EPA's stewardship over the various State AHERA inspection programs within Region III.
- (3) Human resources necessary to maintain a viable AHERA inspection program.

Results-in-Brief

Our audit disclosed several areas needing improvement with respect to the AHERA inspection program.

Region III Needs to Increase Inspections

At current staffing levels, the Region is unable to perform an adequate number of asbestos compliance inspections. For the most part, the Region inspects only an infinitesimal number of schools because it can only respond to tips and complaints it receives about possible asbestos problems in schools. This situation arose, in part, because the number of Region III inspectors has decreased over the past two years. As a result, the Region is unable to provide the coverage necessary to assure that school districts are complying with AHERA, which in turn places school children and school employees at risk. Moreover, at the time of our audit, EPA Headquarters was suggesting a "disinvestment" from the Agency's asbestos inspection program.

EPA Must Inform Charter Schools About Asbestos

AHERA applies to all public and non-profit private schools, kindergarten through grade 12. However, as of April 2000, EPA has had very limited contact with "charter schools," apparently because of resource constraints. As a result, an unknown but possibly large percentage of the 1,605 charter

schools attended by 250,000 students nationwide have never been inspected for asbestos. This lack of inspections is a consequence of the schools not knowing they are mandated by AHERA to do so. The lack of knowledge occurred in part because EPA did not inform the schools of this mandate. Consequently, school students and employees may be unknowingly exposed to the dangers of asbestos.

Recommendations We recommended that the Region III Administrator devote the resources necessary to operate a viable asbestos inspection, outreach, and enforcement program. Region III officials advised that although the AHERA program would receive no additional inspectors, an inspector from another program would also conduct asbestos inspections. The Region's response is noted. At a future date, we will perform a follow-up review to determine the adequacy of the corrective actions.

We recommended that the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) notify all charter schools of AHERA mandates, and develop a strategy to ensure that the charter schools comply with AHERA.

OECA agreed with our recommendation to notify charter schools of AHERA mandates. With respect to the recommendation that OECA develop a strategy to ensure that charter schools comply with AHERA, OECA advised that due to severe budget constraints, it will not direct the Regions to invest additional resources in compliance assistance or monitoring in the AHERA program. However, during the exit conference, OECA said it will notify the Regions to include charter schools in the universe of schools inspected.

OECA's agreement to disseminate information regarding AHERA requirements is a good step. While we recognize that the Agency has budget constraints, we believe that OECA should, at a minimum, advise the Regions to include charter schools in their current compliance and monitoring strategies. During the exit conference, OECA agreed to do so.

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CHAPTER 1

INTRODUCTION

Purpose

The purpose of our audit was to determine the:

- (1) Status of the Region III Children's Health Initiative on the AHERA inspection program.
- (2) Adequacy of EPA's stewardship over the various State AHERA inspection programs within Region III.
- (3) Human resources necessary to maintain a viable AHERA inspection program.

Background

Asbestos Use

Asbestos was most commonly used in schools as insulation and in building materials. But it has also been found in floor and ceiling tile, cement pipe, corrugated-paper pipe wrap, acoustical and decorative insulation, and pipe and boiler insulation. Substantial amounts of asbestos, particularly in sprayed form, were used in school buildings during the period 1940 through 1973. In 1973, EPA banned most uses of spray-on asbestos materials.

Health Risks

Asbestos tends to break down into a dust of microscopic size fibers. Because of their size and shape, these tiny fibers remain suspended in the air for long periods of time and can easily penetrate body tissues after being inhaled or ingested. If inhaled, asbestos fibers can cause mesothelioma (cancer of the chest and abdominal linings), lung cancer, and asbestosis (irreversible lung scarring). Symptoms of these diseases generally do not appear for 10 to 30 years after exposure. Thus, exposure to asbestos early on in childhood can significantly increase health risks because these diseases may not show up until many years afterward.

And, according to EPA, there is no safe level of asbestos exposure.

The potential for an asbestos-containing material to release fibers depends primarily on its condition. If the material crumbles by hand pressure, it is known as “friable” and friable asbestos often flakes off as a fine dust that settles on surfaces. Fibers can then be stirred up into the air as children walk through school buildings.

According to the U.S. Department of Education, there are currently 53.2 million children enrolled in the Nation’s public and private elementary and secondary schools. EPA estimates that there is asbestos in approximately 107,000 of these schools.

Because the average public school in America is 42 years old, and because asbestos has a useful life span of 30 years, some of the asbestos material is releasing asbestos fibers into the air of the schools. Consequently, schools spend a lot of money on asbestos projects. According to a 1995 General Accounting Office report, public schools spent \$1.7 billion over a three-year period to fulfill Federal asbestos requirements (i.e. inspections, response actions including encapsulation, repair, enclosure, and removal) and would need an additional \$2.4 billion over the next three years to fulfill these requirements.

Concerned about the health of school children, in 1986, Congress passed AHERA. The Act required EPA to promulgate regulations requiring: (1) inspections of asbestos-containing material in the Nation’s schools; (2) development of asbestos management plans for such schools; and, (3) implementation of appropriate response actions to remedy any asbestos-related problems in a safe and complete manner.

Asbestos “Rule”

In 1987, EPA issued the “Asbestos-Containing Materials in Schools Rule,” under the authority of the AHERA enacted by Congress.

The “Rule” requires each “Local Education Agency,” e.g., school district, to designate either a consultant or a school

employee, as the single point of contact for public information about asbestos-related activities. This designee is to be trained and is responsible for ensuring that:

- ⏏ All schools within the district are inspected for asbestos.
- ⏏ All schools are reinspected every three years thereafter.
- ⏏ Surveillance activities are performed by qualified personnel on a semiannual basis.

Each school district is also to be aware of any local asbestos control requirements, and must inform parents, teachers, and other school workers annually about the “asbestos management plan.”

Management Plans

The “Rule” requires school districts to develop and implement an asbestos management plan for each of its schools. The purpose of such a plan is to control exposure by assuring that all asbestos-containing materials are kept in good condition. Specifically, the plan indicates the location and condition of any asbestos within a school building, as well as any information regarding sampling, analyses, or assessments that have been performed. These plans were to have been submitted by October 1988 to the appropriate state agencies for review and approval. School districts are required to maintain an updated asbestos management plan in their main offices as well as in each school. In addition, the plans are to be made available to the public for review.

Reinspect Schools Every Three Years

The “Rule” requires a three-year reinspection of each school by a certified inspector, and the inclusion of the inspection results into the asbestos management plan. Also, the school districts are to perform surveillance every six months thereafter, of any school building found to contain asbestos. Although the person conducting such surveillance does not have to be an accredited inspector, this

individual should be familiar with the school building in order to accurately report any changes in the condition of the asbestos, and to include this information in the asbestos management plan.

EPA's Role

It is EPA's role to determine if the Local Education Agencies comply with AHERA and to take enforcement action if needed.

Since 1995, EPA has considered the environmental health risks of children in all risk assessments, risk characterizations, and public health standards set for the United States. In September 1996, the Administrator of EPA announced a national agenda to protect children's health from environmental threats.

In April 1997, the President signed an Executive Order requiring all Federal agencies to: (1) assign a high priority to addressing health and safety risks to children; (2) coordinate research priorities on children's health; and, (3) ensure that their standards take into account special risks to children.

In May 1997, the Administrator of EPA established the Office of Children's Health Protection, whose mission is to make the protection of children's health a fundamental goal of public health, and to facilitate EPA efforts to protect children from environmental threats.

In March 1998, Region III established a project to increase the number of inspections of school asbestos management plans and abatement activities at schools. Some of the specific goals listed in the Waste & Chemicals Management Division's 1999-2000 Implementation Plan were to:

- ⊞ Increase compliance monitoring of schools to ensure compliance with AHERA regulations to minimize risk of asbestos exposure to children and workers in schools.
- ⊞ Improve public awareness of asbestos hazards in schools by monitoring compliance with public notification requirements of AHERA school asbestos management plans.

- ⊞ Implement an outreach program to facilitate compliance.
- ⊞ Conduct at least 50 percent of compliance inspections at high risk or disproportionately exposed communities and other priority areas of non-compliance.

Noteworthy Accomplishments

We believe that Region III has performed commendably, considering the limited number of people assigned to inspecting schools. This is why we recommended that the Region consider increasing the number of people it has inspecting schools.

Scope and Methodology

We performed this audit according to the *Government Auditing Standards* (1994 Revision) issued by the Comptroller General of the United States as they apply to program audits. The audit included tests of program records and other auditing procedures we considered necessary.

We began our review with a survey on March 9, 1999. As a result of the survey, we began an in-depth review on December 1, 1999. Because of personnel constraints, this review was suspended several times between March 1999 and September 1999. We completed our audit fieldwork on April 18, 2000.

Documents reviewed included: the Asbestos Hazard Emergency Response Act and corresponding Federal regulations found in 40 CFR 763 entitled *Asbestos-Containing Materials in Schools*; asbestos compliance inspection reports and enforcement documents issued by Region III; grant agreements issued for fiscal years 1996 through 1999 to the Maryland Department of the Environment and to the West Virginia Department of Health and Human Resources; and, asbestos compliance inspection reports completed by these two State Agencies.

We also verified that compliance and enforcement data was maintained in a national database; however, we did not review the internal controls associated with the input and

processing of information into the database. Review of the Region's fiscal years 1997 through 1999 Assurance Letters, prepared under the Federal Manager's Integrity Act, noted no weaknesses pertaining to the issues raised in this audit.

We conducted our fieldwork in EPA Region III and at the Maryland Department of the Environment. For Region III, we randomly selected for review 98 of the 201 inspections conducted by regional inspectors for fiscal years 1997 through 1999, including 38 inspections with violations and 60 inspections with no violations. The bulk of these inspections were of schools in the District of Columbia. For Maryland, we reviewed 120 of the 127 inspections conducted by State inspectors during fiscal years 1996 through 1999. For West Virginia, we reviewed the 79 inspections conducted by State inspectors during fiscal year 1999.

For simplicity purposes, we refer to the District of Columbia as a "State," because under AHERA, it has the same responsibilities, and is subject to the same requirements as a State.

We issued the draft report on June 15, 2000. We received responses from Region III on July 25, 2000, and the Office of Enforcement and Compliance Assurance on July 26, 2000. For the most part, they agreed with our recommendations. The responses and our evaluation are summarized at the end of Chapters 2 through 4, and are provided in their entirety in Appendices 1 and 2. We held an exit conference with Region III on September 13, 2000, and with the Office of Enforcement and Compliance Assurance on September 20, 2000.

Prior Audit Coverage

There has been no prior OIG audit coverage in this area.

CHAPTER 2

REGION III NEEDS TO INCREASE INSPECTIONS

At current staffing levels, the Region is unable to perform an adequate number of asbestos compliance inspections. For the most part, the Region inspects only an infinitesimal number of schools because it can only respond to tips and complaints it receives about possible asbestos problems in schools. This situation arose, in part, because the number of Region III inspectors has decreased over the past two years.

Specifically, the funding for Senior Environmental Employees who perform inspections under the Toxic Substances Control Act was reduced from \$157,000 in fiscal year 1998 to \$57,000 in fiscal year 2000. Thus, the amount of money actually available for AHERA inspections is substantially less. As a result, the Region is unable to provide the coverage necessary to assure that school districts are complying with AHERA, which in turn places school children and school employees at risk. Moreover, at the time of our audit, EPA Headquarters was suggesting a “disinvestment” from the Agency’s asbestos inspection program.

We believe that Region III should consider expanding rather than curtailing this program. Accordingly, in partnership with regional personnel, we designed a core minimum asbestos program, i.e., we determined the minimum number of inspectors required to maintain a viable inspection presence within the Region.

AHERA Requirements

The AHERA Law requires school districts to perform a variety of tasks regarding the detection of asbestos. EPA’s enforcement responsibilities require that the Agency monitor to ensure that school districts are actually performing these tasks. In Region III, a large part of this monitoring is to be accomplished via asbestos compliance inspections, i.e., an inspector visits schools to verify that they are complying with the Law. For the States of Maryland and West Virginia, such

inspections are performed by State agencies funded by EPA grants. For the District of Columbia, Pennsylvania, Delaware, and Virginia, the inspections are performed by EPA.

Need for Education

Some educators lack knowledge about the hazards of asbestos. As will be explained in Chapter 3 of this report, the current levels of personnel assigned to the asbestos program affects the Region's ability to make newly created "charter schools" aware of these hazards.

Inspections are important because we also noted one case where a School District evidently ignored asbestos hazards. In 1996, about 12,239 square feet of damaged asbestos floor tile was removed from a school building and disposed of by school employees, school students, and other volunteers. As a result of a referral from EPA's Criminal Investigation Division, in 1997, Region III conducted several inspections of the school and determined that: (1) the School District failed to maintain adequate asbestos management plans for three of its schools; and, (2) asbestos had been removed and disposed of without the proper safety precautions being taken. In a newspaper article following the inspections, the superintendent of the School District was quoted as stating: "This is a big joke. They can suck on asbestos the rest of their lives and never get cancer" In 1998, the superintendent was indicted in Federal District Court and later, after a jury trial, was found guilty of failing to follow procedures for properly removing and disposing of asbestos-containing material. In February 1999, Region III issued a Complaint against the School District for Worker Protection and AHERA violations. This Complaint was settled in July 1999, with the School District paying a cash penalty and agreeing to correct the violations.

District of Columbia Public Schools

The asbestos problems of the District of Columbia Public Schools (DCPS) perhaps best support the need to increase EPA's compliance inspection coverage. This School District, which includes 175 schools, had been last inspected for asbestos hazards in 1994 by a contractor. In September

1998, students refused to attend a high school that was undergoing asbestos abatement activities. After inspecting the building, the Region III inspector concluded that the abatement action was proper. However, the inspector also noted that the school was out of compliance because it lacked any of the AHERA-required documentation, including an asbestos management plan.

Upon learning that DCPS's main office also did not have copies of the documents required by AHERA, the Region III inspector expanded the inspection to include all 175 of the schools within the School District. As a result, the Region determined that none of the 175 schools had any of the documentation required by the Law, i.e., asbestos management plans, training records, response action records, reinspection records, and records of periodic surveillance.

According to DCPS officials, the asbestos management plans at the schools disappeared during a dispute between the School District and the contractor hired in 1994 to conduct the inspections. Moreover, the officials explained that the copies of the documents stored in the main office were destroyed after having been contaminated by asbestos.

School Closures

In acknowledgment of the serious nature of the violations, DCPS funded the U.S. Army Corps of Engineers (USACE) with \$2 million to hire contractors to inspect its schools for asbestos and to develop asbestos management plans. These inspections showed that many of the schools had "major asbestos fiber releases" requiring over \$5 million to remediate. A major fiber release is the dislodging of more than 3 square or linear feet of friable asbestos; the inspectors of the DC schools found that some schools had thousands of feet of friable asbestos dislodged. Consequently, 55 of the 175 schools were partially or fully closed during the Summer and/or Fall of 1999. In addition, DCPS employees worked with asbestos-containing building materials without proper training and personal protection equipment, a violation of EPA's Worker Protection Standards.

Inadequate Inspections

To further complicate matters, the Region III inspector concluded that a contractor hired by USACE performed numerous inadequate inspections. When the Region III inspector reinspected one of the schools, he found that significant areas of the school had been omitted. The inspector also learned that significant areas had been improperly defined, thus resulting in invalid sampling and assessments. A further evaluation by the USACE indicated other inspections with similar problems. This discovery necessitated reinspecting all the schools inspected by three of the seven contractor inspection teams.

Status of DCPS

Region III notified the Department of Justice that EPA would be referring a multi-million dollar case to that Agency for enforcement. As of December 1999, EPA and DCPS were negotiating a Consent Decree to stipulate the size of penalties for any future violations. Also, the Region planned to issue a Complaint against the contractor who had conducted the inadequate inspections.

Region III Program

According to the *1998-1999 Quality Education Data Guide*, there are 10,609 schools with 5,282,650 students and teachers within Region III. Regional personnel affiliated with the asbestos program can be called upon to perform a variety of tasks under various laws and regulations. For instance, under the Toxic Substances Control Act (TSCA), they can respond to complaints pertaining to three sections: AHERA, the Asbestos School Hazardous Abatement Reauthorization Act, and the Worker Protection Rule. Under the Clean Air Act, they focus on inspections of asbestos abatement actions under the National Emissions Standards for Hazardous Air Pollutants (NESHAP). And, under normal circumstances, most NESHAP activities are also regulated by one of the three TSCA sections. Consequently, the renovation of a school by public school employees would fall under all of the above. Moreover, in addition to conducting the various types of inspections, regional asbestos personnel provide compliance assistance to the schools, and help develop enforcement cases when violations warrant doing so.

Inspection Resources

During fiscal year 1999, the AHERA and NESHAP asbestos inspections for the District of Columbia, Pennsylvania, Delaware, and Virginia were performed by two EPA employees and by two Senior Environmental Employment Program¹ employees. There are 7,684 schools with 3,910,471 students and teachers within these four States. Under normal circumstances, the inspectors conduct approximately a total of 35 inspections a year, the bulk of which arise from tips or complaints reported to EPA.

The AHERA inspections for the remaining States within Region III, Maryland and West Virginia, were performed by State inspectors under grant agreements with EPA. There are 2,925 schools with 1,372,179 students and teachers within these two States. During fiscal year 1999, Maryland conducted 26 compliance inspections, for which EPA paid \$103,730, and West Virginia conducted 79 inspections (plus 13 Worker Protection inspections) for which it received \$124,570. Although the two States initiated some of these inspections because of tips or complaints, many of them were also “neutral” in origin, meaning the schools were randomly selected for inspection.

Sixty-five percent of the Maryland schools inspected, and 33 percent of the West Virginia schools inspected, were in violation of AHERA. However, Region III was unaware of this situation because neither State reported any violations, because the States’ inspectors assisted the schools to remedy said violations. As commendable as this may be, it understated the problems found, as well as the accomplishments of the compliance inspections. (Chapter 4 of this report provides more details concerning the under-reporting of violations.)

While it appears that EPA will continue to fund the two State grants, the resources available to the Region itself have diminished. As recently as April 1998, there were four Federal employees and four Senior Environmental

¹ The Senior Environmental Employment Program was created by EPA to give workers 55 and older an opportunity to use their skills, in this case, conducting asbestos inspections in schools.

Employment Program (SEE) employees working in the asbestos program. These employees were funded under TSCA and the Clean Air Act. However, one year later this level had dropped to two Federal and two SEE employees. Moreover, the TSCA funding of the SEE program has been drastically reduced, both nationwide and within the Region, from fiscal year 1998 to fiscal year 2000. Specifically, SEE funding for TSCA inspections was cut from \$1.4 million to \$500,000 overall, and from \$157,000 to \$57,000 for Region III. Thus, the amount of money actually available for AHERA inspections is substantially less. As a result of the decrease in Federal inspectors and the \$100,000 cut in SEE funding, the Region's ability to adequately respond to tips and complaints, to provide compliance assistance, and to initiate outreach activities has considerably lessened. Moreover, the oversight and management of the two State asbestos grants, as well as the development of asbestos enforcement cases, is now being handled by personnel on loan from the Pesticides Program.

**Disinvestment of
Small Federal
Programs**

In May 1999, EPA's Office of Enforcement and Compliance Assurance proposed disinvesting resources from four small Federal programs, one of which was the AHERA program. OECA recognized that:

Small programs are vital to the Agency's mission. They address a huge regulated community that presents real environmental problems, including at times substantial risks. In many cases, the federal government provides the only enforcement presence as there are no authorized state programs.

These programs have very few resources to cope with the enormous universe of regulated entities and transactions they are responsible for. In some cases, the programs are virtually on life support and we have ceased to have any real presence.

However, in light of budget restrictions OECA considered whether it should obtain economies of scale by consolidating programs and selectively increasing investment in areas presenting high risk and high noncompliance. After a series of meetings, issue papers, and comments by the Regions, in November 1999, OECA issued a memorandum announcing its decision regarding compliance and enforcement resources for the small Federal programs. This decision, to be phased in over fiscal year 2000 and fully implemented by fiscal year 2001, would allow each Region to propose resource shifts between national priorities and small programs depending on its specific and unique circumstances. Such shifts would have to be negotiated and agreed upon with OECA. If a Region chooses to disinvest in a particular program, the Region is still required to maintain a core program including activities to determine compliance problems and to develop strategic approaches to solving those problems. However, we believe that the Region III environmental situation justifies investing rather than disinvesting in AHERA.

Core Minimum Program

In consultation with Region III personnel, we developed two options for maintaining a core minimum program, i.e., the minimum number of personnel necessary to run a viable asbestos program.

Option 1

This option entails restoring the program to its April 1998 level, i.e., four Federal and four SEE employees. Adopting this option would allow the Region to improve inspection coverage to the four States — Delaware, Pennsylvania, Virginia, and the District of Columbia, that are within its purview.

Option 2

This option uses the logic that if Region III devoted the same resources to the other four States as is devoted to Maryland and West Virginia, it could afford to increase its inspections, enforcement capacity, and outreach services. For example, in fiscal year 1999, EPA spent an average of \$114,150 each for Maryland and West Virginia grants. If the Agency devoted similar resources to the four other States, the

Region could afford the services of two additional SEE employees per State.

Conclusion

It appears that the EPA grants provided to Maryland and West Virginia afford those States better asbestos inspection programs than that of Region III's, which is "bare bones." The Region can basically only respond to emergencies, rather than conduct compliance inspections in Delaware, Pennsylvania, Virginia, and the District of Columbia. The Region is also challenged to take enforcement actions, which only EPA can do, as enforcement cannot be delegated to the States. This situation arose, in part, because the number of inspectors has decreased. As a result, school children and employees are at risk. For example, the District of Columbia was unaware that major fiber releases had occurred, and that students and employees may have been needlessly exposed to an environmental hazard in the five years since the schools had been last inspected. Accordingly, we believe that Region III should consider expanding rather than curtailing this program.

Recommendation

2.1 We recommend that the Region III Administrator devote the resources necessary to operate a viable asbestos inspection, outreach, and enforcement program. This could be accomplished by adopting the options we developed in partnership with regional personnel, or by developing some other alternative.

Option 1 - Entails restoring the program to its April 1998 resource level (four Federal and four SEE employees). Adoption of this option would allow the Region to improve inspection coverage to the four states that are within its purview.

Option 2 - Uses the logic that if the Region devoted the same resources to the four States within its purview as is devoted to Maryland and West Virginia, it could afford to increase its inspections, enforcement capacity, and outreach services. For example, in fiscal year 1999, EPA spent an average of \$114,150 each for

Maryland and West Virginia grants. If the Agency devoted similar resources on the four other States, the Region could afford the services of two additional SEE employees per State.

**Region III's
Response**

In its response, Region III initially agreed with our recommendation and advised that it is in the process of requesting additional inspector resources for this important program from the existing regional inspector pool. However, during the exit conference, regional officials advised that the AHERA program will not receive additional inspector resources. Instead, an inspector from another TSCA program will also be conducting asbestos inspections.

OIG's Evaluation

The Region's response is noted. At a future date, we will perform a follow-up review to determine the adequacy of the corrective action. No further response to this report is necessary.

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CHAPTER 3

EPA MUST INFORM CHARTER SCHOOLS ABOUT ASBESTOS

AHERA applies to all public and non-profit private schools, kindergarten through grade 12. However, as of April 2000, EPA has had very limited contact with “charter schools,” apparently because of resource constraints. As a result, an unknown but possibly large percentage of the 1,605 charter schools attended by 250,000 students nationwide have never been inspected for asbestos. This lack of inspections is a consequence of the schools not knowing they are mandated by AHERA to do so. The lack of knowledge occurred in part because EPA did not inform the schools of this mandate. Consequently, school students and employees may be unknowingly exposed to the dangers of asbestos. We recommend that the Agency inform the schools in the most expedient manner possible. We also recommend that EPA develop a strategy to ensure that the charter schools adhere to the Law, as EPA is the only Agency, Federal or State, with such enforcement authority.

History of Charter Schools

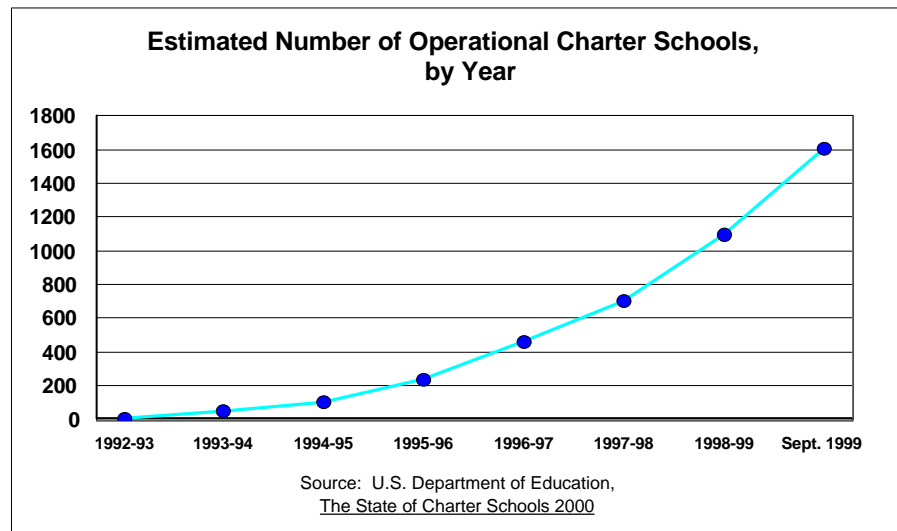
Charter schools are public schools that come into existence through a contract with either a State agency or a local school board. This charter, or contract, establishes the framework within which the school operates and provides public support for the school for a specified period of time. But unlike traditional school systems, charter schools are obligated to obtain their own school buildings.

A charter gives a charter school autonomy over its operation and frees it from some regulations that other public schools must follow. In exchange for this flexibility, the charter schools are held accountable for achieving specific goals, such as improving student performance. However, this flexibility does not exempt charter schools from complying with AHERA. Thus, by Law, all charter schools must:

- ⌠ Inspect school buildings for asbestos-containing materials;
- ⌠ Develop, implement, and update asbestos management plans; and,
- ⌠ Take appropriate response actions to remedy any asbestos-related problems.

Charter schools have spread rapidly since the first one opened in 1992. According to a report funded by the U.S. Department of Education issued in January 2000:

- ⌠ There were more than 1,600 charter schools in operation, 421 of which opened in 1999.
- ⌠ These schools taught 250,000 students in the 1998-1999 school year.
- ⌠ During 1999, three States passed charter legislation, bringing the total number of jurisdictions with charter laws to 37 States, including the District of Columbia.



The number of students in charter schools increased in the 1998-99 school year by 90,000, bringing the total to more than 250,000 students. According to the Charter Friends National Network web site, the number of students attending charter schools will rise to 350,000 by the Fall of 2000.

Lack of Information

Since 1994, the U.S. Department of Education has provided grants to support charter schools. In fiscal year 1995, such grants amounted to \$6 million. In fiscal year 1999, the grants reached \$100 million. However, despite these expenditures, the topic of asbestos in charter schools has been basically ignored. In a review of various web sites, we found only one instance (Florida Department of Education) where this issue was addressed. On the other hand, there was no mention of asbestos or AHERA on the internet web sites for the U.S. Department of Education, the U.S. Charter Schools, or the National Parent and Teacher Association.

Violations Found at Charter Schools

In fiscal year 1999, Region III inspected 23 charter schools, all of which were in violation of AHERA. Three of these schools are located in the building complex that also houses EPA Headquarters offices in Washington, DC. However, due to a shortage of inspectors, Region III is currently unable to inspect any additional charter schools. Also, the Region does not provide "outreach" to charter schools to make them aware of their responsibilities under AHERA and the dangers of asbestos. Moreover, according to regional personnel, such schools are unlikely to be aware of these obligations, because none of the applications used to obtain their charters even mention asbestos.

In order to determine the status of EPA's contact with charter schools nationwide, we sent a questionnaire to the Regional Asbestos Coordinators (RACs) in the other nine Regions. The responses we received are as follows:

REGION	RESPONSE
I	Although the Region has had no contact with charter schools, the state agencies in Connecticut, Massachusetts and Rhode Island are aware of these schools, and have conducted outreach efforts and inspections. State agencies in Connecticut and Rhode Island work with their State Department of Education in identifying charter schools and advising them about AHERA. Results of inspections conducted by State personnel in Massachusetts indicates a pattern of noncompliance. Most of the schools failed to: appoint a designated person, train the designated person, provide annual notification, include a signed statement of the designated person, conduct six-month surveillance, post warning labels, and provide training to custodial and maintenance staff.
II	The Region has had no contact with any charter schools to date. But the Region suspects that there are problems. Although aware of the number of schools in New Jersey, the Region does not yet know the number of charter schools in New York. The New Jersey schools were inspected by the State, funded by an EPA grant. None of the New Jersey schools submitted management plans. The State will refer these schools to Region II for enforcement action. Region II personnel will inspect a small number of New York charter schools and notify the remainder of the schools that they are subject to AHERA.
IV	The RAC was aware of the number of charter schools in the Region and has inspected a number of them in Florida and Georgia. Overall, the charter schools in Region IV are very much aware of the AHERA requirements, and do not show a pattern of non-compliance.
V	The RAC was aware of the charter schools in the Region, and over the last two years, special efforts have been taken to advise charter schools of AHERA requirements. Region V performed a general mailing to the State Educational Associations which represent the charter schools. However, problems still exist; 7 of the 9 charter schools inspected in Minnesota and Michigan after the general mailing had no asbestos program, while the programs of the 2 other schools were deficient.
VI	The RAC was unaware of the number of charter schools within the Region, but believed that the Region had processed some enforcement actions in this area. He also believed that charter schools were unaware of AHERA requirements and deemed their non-compliance as a problem.
VII	No response received
VIII	No response received
IX	The Region has done little to date regarding charter schools, but plans on inspecting a number of schools before the end of this fiscal year.
X	The Region has had little experience with charter schools.

Conclusion

The number of charter schools is growing at a rapid pace. Charter schools fall under AHERA, whose enforcement belongs to EPA and to EPA alone. By and large, most charter schools are unaware of their responsibilities to inspect for asbestos. The lack of knowledge occurred in part because EPA did not inform the schools of this obligation. As a result, students and employees within these schools may be unwittingly exposed to asbestos hazards.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 3.1 Notify all charter schools of AHERA mandates. This could be accomplished by contacting the U.S. Department of Education and the National Parent and Teacher Association, which in turn could disseminate AHERA information over their internet web sites. Through its own web site, EPA could also disseminate AHERA information aimed specifically at charter schools. Another option OECA could consider is to award grants to provide outreach activities to charter schools.
- 3.2 Develop a strategy to ensure that the charter schools comply with AHERA.

OECA's Response

OECA agreed with recommendation 3.1, and advised it is willing to work with the U.S. Department of Education, State Education Associations, the National Parent and Teacher Association and other groups to disseminate AHERA information, particularly aimed at charter schools. With respect to recommendation 3.2., due to severe budget constraints facing EPA's compliance monitoring and enforcement programs, OECA will not direct the Regions to invest additional resources in compliance assistance or monitoring in the AHERA program. During the exit conference, OECA advised that it will notify the Regions to include charter schools in the universe of schools inspected.

OIG's Evaluation OECA's agreement to disseminate information regarding AHERA requirements is a good step. While we recognize that the Agency has budget constraints, we believe that OECA should, at a minimum, advise the Regions to include charter schools in their current compliance and monitoring strategies. OECA agreed to do so. In response to this report, OECA should provide milestone dates for corrective actions planned or taken. At a future date, we will perform a follow-up review to determine the adequacy of the corrective actions.

Region III's Response Although the recommendations are addressed to the Assistant Administrator for Enforcement and Compliance Assurance, Region III agrees that greater levels of compliance assurance should take place with regards to the AHERA program and is already in the process of providing such to charter schools and non-profit private schools. Region III will send a letter to each public school district and every charter and non-profit private school that can be identified to provide information on how they can comply with the AHERA requirements, and a strategy to ensure compliance will be implemented.

OIG's Evaluation We commend Region III for its efforts in notifying charter and non-profit private schools about AHERA mandates and for attempting to ensure that these schools comply.

CHAPTER 4

EFFECTIVENESS OF INSPECTIONS UNDERSTATED

Region III needs to improve its oversight of the TSCA grants awarded to Maryland and West Virginia. As mentioned previously in Chapter 2, State inspectors found violations and assisted schools to return to compliance with AHERA, but never reported into the Region's tracking system that violations occurred. Although providing compliance assistance may be praiseworthy, the lack of notification on violations identified understates the value of the inspections. By not informing the Region of violations, Maryland and West Virginia have inadvertently misled EPA into believing that no violations ever existed, when in fact they did. Lacking any evidence to the contrary, EPA could logically conclude that it should "disinvest" from funding these inspections, because the States never report any violations.

The grant agreements with both Maryland and West Virginia required the States to notify the Region of any violations found as soon as possible after the inspection, but in all cases, prior to the end of each quarter in which the inspection takes place. The grant agreements specified two methods of notification: (1) completion of forms for the Region's tracking system; and, (2) submission of inspection reports. Such data is important because EPA can use it to make decisions such as where to use resources and where to target areas for enforcement.

We found that 78 of the 120 inspections conducted by Maryland during fiscal years 1996 through 1999 detected violations, the majority of which were for schools failing to: (1) inspect their buildings for asbestos; (2) maintain asbestos management plans; or, (3) conduct followup inspections every three years. However, Region III was unaware that these violations ever existed.

A similar review of the 79 inspections conducted by West Virginia during fiscal year 1999 disclosed that 26 schools had violations (albeit mostly of a less serious “record keeping” nature), yet the Region was unaware of these violations. Further, there were a few instances where West Virginia took informal enforcement action for serious violations such as failing to use an accredited person to remove asbestos. Although West Virginia advised the Region of these informal actions, the data was not in the tracking system.

The violations identified by both States, particularly Maryland, are considered crucial to managing asbestos in schools. The Region should be aware of these violations because EPA is the only authority that can take formal enforcement action. Our review shows that the Region has been unaware of these violations for as long as five years. Furthermore, Region III staff advised us that some of the violations it had identified also went unrecorded because, like the States, the Region also provided compliance assistance to schools. The lack of knowledge about violations identified in Maryland and West Virginia, as well as its own unrecorded violations, places the Region at a disadvantage and thus a logical candidate for disinvestment from the AHERA program.

In summary, violation data on the AHERA program is deceptive. Lacking any evidence to the contrary, EPA assumes the AHERA programs in Maryland and West Virginia are experiencing a high compliance rate, when in fact there are numerous violations. Moreover, Region III has also understated the violations it discovered. As a result, the Region’s AHERA program inaccurately portrays a zero non-compliance rate for both States, rather than the actual non-compliance rates of 65 percent for Maryland and 33 percent for West Virginia.

We also found that neither State submitted inspection reports as per instructions received from Region III in 1995. Regional personnel informed us that they made this decision because they lacked staff to review and store the reports. In acknowledgment of resource constraints, we suggested that the Region delete the inspection report requirement from the two grants. The Region agreed with this suggestion and

deleted the inspection report requirement for fiscal year 2000. Instead, it plans to review a sample of inspection reports twice a year at each State. However, we believe that the Region must still record all violations detected by any inspection in its tracking system.

Recommendation 4.1 We recommend that the Region III Administrator ensure that any violation detected by either the Region or by the States is recorded in the Region's tracking system.

Region III's Response The Region agreed that it needs to have accurate data to reflect the Region's compliance rates, and has taken corrective measures to ensure this. The recommendation will be implemented immediately.

OIG's Evaluation Region III's response meets the intent of our recommendation. At a future date, we will perform a follow-up review to determine the adequacy of the corrective action. No further response to this report is necessary.

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APPENDIX 1

Region III's Response to Draft Report

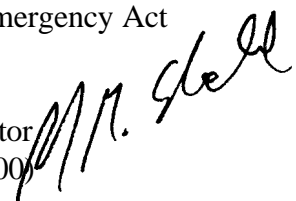
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

July 21, 2000

SUBJECT: Response to Draft Audit Report of Region III's Children's Health Initiative on the Asbestos Hazard Emergency Act (AHERA)

FROM: Bradley M. Campbell, Regional Administrator
Office of the Regional Administrator (3RA00)



TO: Carl A. Jannetti, Divisional Inspector General for Audit
Office of Inspector General (3AI00)

Thank you for the opportunity to comment on the Draft Audit Report of Region III's Children's Health Initiative on the Asbestos Hazard Emergency Act (AHERA). The objectives of your audit were to determine the:

1. status of the Region III Children's Health Initiative on the AHERA inspection program;
2. adequacy of EPA's stewardship over the various State inspection programs within Region III; and
3. human resources necessary to maintain a viable AHERA inspection program.

The Draft Report makes four recommendations, two which require a Regional response (Chapter 2 and 4) and two which require a response from the Assistant Administrator for Enforcement and Compliance Assurance (Chapter 3) since the latter concern your recommendations for national program direction. In addition to any response at the national level, I will share with you the Region's plans to notify charter schools in Region III about AHERA mandates and share the Region's strategy to ensure compliance. Our comments are as follows:

Recommendation 2.1:

The Draft Report recommends that the Region devote the resources necessary to operate a viable asbestos inspection, outreach and enforcement program.

Regional
Response:

The Draft Report accurately states that Region III's extramural funds used to fund Senior Environmental Employees in WCMD's Toxics Enforcement Programs have decreased from \$157,000 in FY 1998 to \$57,000 in FY 2000, thereby reducing the Region's inspection capability in AHERA to merely responding to tips and/or complaints. However, the Draft Report incorrectly concludes that all of those

funds are available to the AHERA program. In fact, those funds are compliance monitoring/toxics funds, which are allocated to be used for a variety of programs: asbestos (AHERA), PCBs, and Toxics (including EPCRA). Therefore, the amount of money actually available for AHERA is substantially less than the Draft Report indicates.

Moreover, in light of the finite nature of these funds, if the Region were to increase the total resources dedicated to the TSCA AHERA program as the report recommends, there would have to be corresponding decreases in other Region III Enforcement programs.

While we agree that more resources would benefit this important program we are also cognizant of the fact that all of our "small programs" are clearly directed at protecting public health and the environment. Both FTE and contract dollars to support Senior Environmental Employees have been declining in recent years as you note in your report. It should also be noted that our present aggregate allocation to the AHERA and CAA Asbestos programs is approximately 3.8 Federal FTE (includes management overhead) and 2.2 SEE employees. These Federal FTE Staffing levels actually slightly exceed our historical Federal allocations for the two asbestos programs. The real decrease has been in the ability to maintain our SEE inspector core because of drastically reduced contract funds. We would also like to point out that WCMD is in the process of requesting additional inspector resources for this important program from the existing Regional inspector pool.

Recommendation 3.1

EPA Headquarters should notify all Charter schools of AHERA mandates.

Recommendation 3.2

EPA should develop a strategy to ensure that the Charter schools comply with AHERA

Regional
Response:

While these recommendations are addressed to the Assistant Administrator for Enforcement and Compliance Assurance who will provide a response for the national program, the Region agrees that greater levels of compliance assurance activities should take place with regards to the AHERA program and is already in the process of providing such. Increased compliance assistance will ensure that schools, particularly charter or non-profit private schools, are aware of the regulatory requirements with which they must comply. To this end, WCMD will send a letter to each public school district and every charter and non-profit private school that can be identified to provide information on how they can comply with the AHERA requirements and a strategy to ensure compliance will be implemented [Schools in the State of Delaware will receive this letter by the end of FY 2000; schools in all other Region III states will receive a letter in FY 2001]. We believe that this outreach is necessary and will have a positive impact on the compliance rates at schools. However, it must be understood that fewer inspections and enforcement actions may result because the overall resource level provided to the Region by EPA headquarters for AHERA compliance and enforcement has not increased and could be subject to further disinvestments.

Recommendation 4.1

The Draft Report recommends that the Region ensure that any violation detected by either the Region or by the States is recorded in the Region's tracking system.

Regional

Response: The Region agrees that it needs to have accurate data to reflect the Region's compliance rates. The Region will reinforce this issue with the States of Maryland and West Virginia (the only two States with whom the Region has grant agreements) and will reinstate the requirement that these States submit FTTS forms for each inspection conducted as well as provide additional guidance to the States on how they should document compliance monitoring and compliance assistance activities. The Region will also examine the data input process for violations found by the Region to ensure the violations are properly recorded. This recommendation will be implemented immediately.

Cc: James J. Burke (3WC00)
James N. Webb (3WC30)
Harry T. Daw (3WC32)
John Bocelli (3PM70)

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APPENDIX 2

OECA's Response to Draft Report

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

July 24, 2000

MEMORANDUM

SUBJECT: OECA Response to Draft IG Report on Region III's Children's Health Initiative on the Asbestos Hazard Emergency Response Act (AHERA)

FROM: Steven A. Herman
Assistant Administrator

A handwritten signature in black ink, appearing to read "Steve Herman", written over the typed name and title.

TO: Carl A. Jannetti, Divisional Inspector General for Audit
Mid-Atlantic Division

Thank you for offering the opportunity to review and comment on the Office of the Inspector General's (OIG) draft audit report regarding EPA Region III's Children's Health Initiative on the Asbestos Hazard Emergency Response Act (AHERA). With only a few exceptions, OECA agrees with the draft report's findings. The draft report makes two recommendations for OECA response: to notify all charter schools of AHERA mandates and to develop a strategy to ensure that the charter schools comply with AHERA.

OECA is willing to work with the U.S. Department of Education, State Education Associations, the National Parent and Teacher Association and other groups to disseminate AHERA information, particularly aimed at charter schools. However, given the severe budget constraints facing EPA's compliance monitoring and enforcement programs, OECA will not direct the Regions to invest additional resources in compliance assistance or monitoring in the AHERA program.

The audit, similar to other audits conducted by OIG of EPA's enforcement program, only looked at an individual program component without accounting for resource limitations or how enforcement priorities are determined. There is no analysis of the relative importance of this particular component of our program as compared to other program components or of our diminishing resources, which limit the value of the report.

Regarding OECA recent evaluation of Small Federal Programs, the Office has identified national investment areas with critical resource needs and that are areas of high risk, noncompliance and/or environmental impact: lead based paint; wetlands; and the Oil Pollution Act and spills. OECA has asked the Regions to shift resources into these important areas in FY 2001. The draft report at page 11 inaccurately states that at the time of the audit, "EPA Headquarters was suggesting a "disinvestment" from the Agency's asbestos inspection program." The AHERA program was discussed as a "disinvestment" area, however, Regions

have flexibility to strategically choose the amount of resources to be shifted in the investment areas, as well as to choose "disinvestment" areas, based on the unique circumstances in the Region. If a Region chooses to "disinvest" in a particular program, the Region is still required to maintain a core program including activities to determine compliance problems and to develop strategic approaches to solving those problems.

I agree that there are environmental problems that remain unaddressed in the AHERA program and that resource constraints are a factor. However, given the already enormous responsibility and workload shouldered by the compliance and enforcement program here in OECA and in the Regional offices, I do not believe that the risks attributed to non-compliance under AHERA outweigh Region III's local priorities or our national priorities, such as the risk posed by petroleum refineries or coal fired power plants.

If you have questions please contact me at (202) 564-2440 or have your staff contact Seth Heminway at (202) 564-7017.

cc: Michael Alushin, OC/ METD
Jesse Baskerville, ORE/TPED
Eric Schaeffer, ORE

APPENDIX 3

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