



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Pesticides & Asbestos Enforcement
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ENFORCEMENT AND COMPLIANCE ASSURANCE

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MEMORANDUM

SUBJECT: Revision of the AHERA Enforcement Response Policy:
Civil Penalties for Failure to Conduct Reinspections

FROM: Jesse Baskerville, Director *Jesse Baskerville*
Toxics and Pesticides Enforcement Division

TO: Regional Asbestos Coordinators
Regional Enforcement Counsels

In order to improve enforcement of the AHERA asbestos-in-schools regulations we are hereby revising the provision of the AHERA Enforcement Response Policy that addresses the failure of local education agencies (LEAs) to conduct periodic asbestos reinspections. Attached please find the revision to Appendix A at page 22 of the Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act, issued January 31, 1989 (hereinafter, the "ERP"). Please insert this replacement page in your ERPs.

This amendment authorizes EPA to seek civil penalties from LEAs who fail to conduct the periodic reinspections mandated by 40 CFR §763.85(b). The current provision of the ERP relating to the failure to reinspect indicates that only a Notice of Noncompliance will be issued for such violations. This amendment is immediately applicable and should be used to calculate penalties for all administrative actions concerning the failure to conduct reinspections instituted after the date of this policy, regardless of the date of the violation(s).

Background:

We have been receiving reports from the Regions that a significant number of LEAs have developed management plans for public or private schools, but have not followed the requirements for asbestos control mandated by the AHERA regulations. Many LEAs apparently have developed asbestos management plans but have not implemented them, and have not conducted the reinspections required by TSCA §§203(b), 203(e)(3), 203(g)(2), 203(i)(1)(E),

contemplated by TSCA §203 (1) (1) (I), and required by the regulations at 40 CFR §763.85 (b).

Legal Authority:

TSCA §207(a) (1) provides authority for EPA to seek civil penalties from LEAs that fail to conduct inspections pursuant to regulations under TSCA §203 (b). TSCA §203 (b) requires EPA to promulgate regulations prescribing inspection procedures, including the use of persons trained and accredited under TSCA §206 (b) or (c) (the Model Accreditation Plan or any State plan that is at least as stringent). Regulations at 40 CFR §763.85 (b) require that "[a]t least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACM [asbestos-containing building material] in each school building that they [sic] lease, own, or otherwise use as a school building" (40 CFR §763.85 (b) (1)), and require that "[e]ach inspection shall be made by an accredited inspector" (40 CFR §763.85 (b) (2)).

Because we view failure to reinspect using an accredited inspector as a serious violation, we are hereby revising the ERP to treat this violation as subject to a civil penalty, Level 1 (one per-day violation), as authorized by TSCA §207(a) (1). We encourage the Regions to use this enforcement tool in those instances where LEAs are not performing the reinspections required under the AHERA regulations.

If you have questions concerning this matter, you may contact James Handley at (202) 564-4171 or Rebecca Woods at (202) 564-4179.

Attachment

APPENDIX A*

CIRCUMSTANCE LEVELS FOR LEA AHERA VIOLATIONS

| <u>VIOLATION</u> | <u>LEVEL</u> | <u>PER DAY/ ONE DAY</u> | <u>STATUTORY VIOLATION</u> |
|--|--------------|-----------------------------|--------------------------------|
| LEA failed to conduct an inspection pursuant to 40 CFR 763.85(a) of each school building they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACM by October 12, 1988, or by May 9, 1989 if a deferral has been granted by the State (§763.85(a)(1)). | 1† | one day | 207(a)(1) |
| LEA failed to conduct an inspection pursuant to 40 CFR 763.85(a) for a building leased or otherwise acquired on or after October 12, 1988, or by May 9, 1989 if a deferral has been granted, prior to its use as a school building, or within 30 days after commencement of its use as a school building if such use was the result of an emergency (§763.85(a)(2)). | 1† | one day | 207(a)(1) |
| LEA failed to use an accredited inspector to conduct inspections (§763.85(a)). | 1 | one day | 207(a)(1) |
| LEA failed to conduct a reinspection of all friable and nonfriable known or assumed ACM in each school building that they lease, own, or otherwise use as a school building, at least once every three years after a management plan is in effect (§763.85(b)). | 1** | one day | 207(a)(1) |

* The order of violations listed in Appendix A tracks the order of the requirements as they appear in the AHERA statute and regulation at 40 CFR 763 Subpart E.

† See proposal on page 4 for NON.