



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

JAN 27 1992

0 -> Greg  
cc: Maw, Jim  
Rogson

Greg; Handle as appropriate.

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OFFICE OF  
PESTICIDES AND TOXIC  
SUBSTANCES  
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U.S. ENVIRONMENTAL PROTECTION AGENCY / REGION I  
PESTICIDES AND TOXIC SUBSTANCES BRANCH  
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MEMORANDUM

**SUBJECT:** Changes Relating to Accreditation Violations/Penalty Amounts Resulting from ASHAA Reauthorization/Amendment

**FROM:** John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

**TO:** Addressees

As you may be aware, Congress passed the Asbestos Hazard Abatement Reauthorization Act of 1990 (ASHARA) in November of 1990. ASHARA amended section 207 of AHERA (15 U.S.C. 2647) to add a new subsection (g), which among other things, establishes penalties at \$5,000 per day, per violation, for certain violations involving the failure of a contractor and his/her employees to obtain proper accreditation. (See section 15(a)(4) of ASHARA, copy enclosed.) Attached to this memorandum are three replacement pages to the AHERA Enforcement Response Policy (ERP) delineating changes to the ERP based on the amendment.

Please note, if Regions have cases that have been filed recently (since November 28, 1991), or which are about to be filed, the penalty amount which should be assessed is \$5,000 per day, in accordance with the changes to the ERP.

To summarize, the current ERP is being changed as follows. For the first and second violations on page 32 (unaccredited inspector), change "Person" to "Contractor." Also, the penalty to be assessed is now \$5,000 per day, per school building inspected.

On page 35 of the ERP, change "Person designed or supervised a response action ..." to "Contractor designed or conducted a response action and was not accredited for that activity under section 206 of AHERA." The penalty for each separate contractor (i.e., the project designer or the abatement company) will now be calculated at \$5,000 per day, per school building.

On page 35 of the ERP, change "The worker(s) conducting the response action ..." to: "The contractor employed workers to conduct the response action who were not accredited under AHERA section 206." The penalty for this violation will now be calculated at \$5,000 per day, per school building. However, this is now considered as only one violation, regardless of the number of employees involved. In addition, there is now a ceiling penalty of \$5,000 per contractor, per day, per school building.

Management planner violations are not affected by the ASHARA changes and may still be assessed under TSCA Title I in accordance with the current ERP as a level 1, one day violation. However, the following additional language is being added to the management planner violation description on page 37 to clarify its applicability to reinspections. "Person who developed the LEA's management plan ... or who was employed by the LEA to review the results of the reinspection, was not accredited ...."

We would appreciate knowing what actions have been filed since November 28, 1991 which may be affected by these changes. Please send this information to Mike Wood, ~~Director~~ of the Compliance Division (EN-342), by February 7. If you have case specific inquiries, please direct them to your regional coordinator in the Case Support Branch of the Compliance Division. If you have other questions concerning this memorandum, please contact Sally Sasnett at FTS 260-7832.

#### Attachments

cc: Mike Stahl  
Mike Wood  
Mary Jane Angelo, OGC  
Cindy Fournier, OE  
Sanda Howland, OCM/CD  
Branch File

ADDRESSEES

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X Gary O'Neal, Director  
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cc: Regional Asbestos Coordinators  
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APPENDIX B\*

CIRCUMSTANCE LEVELS FOR OTHER PERSONS VIOLATIONS OF AHERA

<u>VIOLATIONS</u>	LEVEL
Contractor conducted an inspection or reinspection of a school building for ACBM for the purpose of an LEA's compliance with AHERA without ever being accredited for this activity under AHERA section 206, or that accreditation has expired for more than one year (sec. 763.85(a)(3) and 763.85(b)(2)).	---
Contractor conducted an inspection or reinspection of a school building for ACBM for the purposes of an LEA's compliance with AHERA and their accreditation for this activity has expired within the past year of the activity (sec. 763.85(a)(3) and 763.85(b)(2)).	---
Person who conducted the inspection for ACBM failed to visually inspect all areas of the school building to identify the locations of all suspected ACBM, and/or failed to touch all suspected ACBM to determine whether it is friable, and/or failed to identify homogeneous areas of friable suspected ACBM and all homogeneous areas of nonfriable suspected ACBM (763.85(a)(4)(i), (ii), and (iii)).	2
Person who conducted the inspection for ACBM failed to collect and/or submit for analysis bulk samples, in accordance with sec. 763.86 and/or 763.87, for each homogeneous area for all suspected ACM that was not assumed to be ACM (secs. 763.85(a)(4)(iv) and 763.86 and 763.87) (please note the exception specified in sec. 763.86(b)(4)).	2

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\* The order of the violations listed in Appendix B tracks the order of the they appear in the AHERA statute and regulations at 40 CFR 763 Subpart E.

VIOLATIONS

LEVEL

PER DAY/  
ONE DAY

Laboratory conducted PLM analysis of bulk samples suspect ACBM for the purposes of an LEA's compliance with AHERA and was not accredited at the time of the analysis to conduct PLM analysis by the NIST laboratory accreditation program for PLM once that program became operational (763.87(a)).

2

one day

Laboratory conducting PLM analysis was properly accredited but failed to conduct the analysis in accordance with AHERA (sec.763.87)).

3

one day

Laboratory that conducted the bulk sample analysis failed to provide the information required by sec. 763.87(d) to the LEA designated person within 30 days of the analysis (sec.763.87(d)).

NON

per day for each day over 60 days

Laboratory that conducted the bulk sample analysis failed to provide the information required by sec. 763.87(d) to the LEA designated person within 60 days of the analysis: (763.87(d)).

6

\$5,000 per day, per contractor.

Contractor designed or conducted a response action and was not accredited for that activity under section 206 of AHERA (763.90(g)).

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\$5,000 per day, per contractor.

Contractor employed workers to conduct the response action who were not accredited under section 206 of AHERA. (Considered one violation regardless of number of employees.)

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one day

At the conclusion of a response action, the person designated by the LEA did not visually inspect each functional space where the response action was conducted to determine whether the action was properly completed (763.90(i)(1)).

3

one day

VIOLATIONS

LEVEL

PER DAY /  
ONE DAY

An abatement contractor completed the response action without having cleared the response action using the required air monitoring, and/or the average asbestos concentration in the air samples exceeded the levels specified in sec 763.90(i).

1

one day

Person who developed the LEA's management plan, which was submitted to the State Governor for purposes of the LEA's compliance with AHERA, or who was employed by the LEA to review the results of the reinspection, was not accredited under AHERA section 206 for management plan development (sec. 763.93e)).

1

one day

Person who developed the LEA's management plan did not provide the LEA with a management plan which contained all the information required by sec. 763.93(e) and elsewhere in the regulations.

2

one day

The accredited management planner that signed a statement that the management plan was in compliance with AHERA, as allowed by sec. 763.93(f), was also involved with implementation of the Management plan (please note that this statement is not mandatory, and no violation exists if the statement is not in the management plan (sec. 763.93f)).

5

one day

An accredited inspector, architect, or project engineer provided an LEA an inspection exclusion statement other than in accordance with the conditions provided in sec. 763.99.

1

one day