

AHERA UPDATE 2014

North Carolina Department of Health and Human Services Division of Public Health Health Hazards Control Unit

AHERA

The federal Asbestos Hazard Emergency Response Act (AHERA) of 1986 required the Environmental Protection Agency (EPA) to establish rules regarding the management of asbestos-containing building materials (ACBMs) in schools. The Asbestos-Containing Materials in Schools Rule (40 CFR Part 763) was the result. This Rule is commonly referred to as AHERA, the acronym of the act responsible for its development. The Rule became effective in 1987, and requires all public and private, not-for-profit, elementary and secondary schools to inspect their buildings for the presence of ACBMs. The inspection is to occur before the building is occupied by the school.

Asbestos inspections must be conducted by either a North Carolina-accredited asbestos inspector or a North Carolina-accredited management planner. The asbestos inspection information and subsequent recommendations for the management of the identified ACBMs are included in what AHERA calls a "management plan." The management plan must be developed by a North Carolina-accredited management planner and his/her recommendations must be sufficient to protect human health and the environment.

School systems consisting of a single school (i.e., most private and charter schools) must keep a copy of the management plan in the school's administrative (principal's) office. Public school systems must keep copies of a school building's management plan in that particular school's principal's office, and also in a central location with all the schools' other management plans (usually the school system superintendent's office or the maintenance department).

The Health Hazards Control Unit (HHCU) is part of the NC Department of Health and Human Services, Division of Public Health, and

administers the Asbestos Hazard Management Program (AHMP) in North Carolina. The AHMP Rules require all management plans to be sent to the HHCU for review and approval.

The HHCU is responsible for the accreditation of asbestos inspectors and management planners and can provide you with a list of currently accredited inspectors and/or management planners. These lists are also available on our website at:

www.schs.state.nc.us/asbestos/accredited.cfm

When choosing an inspector or management planner, the HHCU strongly recommends that schools check references. Schools should use contract language that requires inspectors' and management planners' work to meet the requirements of the Asbestos-Containing Materials in Schools: Final Rule and Notice, 40 CFR Part 763, and the North Carolina Asbestos Hazard Management Program (AHMP) Rules, 10A NCAC 41C .0600.

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HHCU CONSULTANT STAFF

The HHCU consultant staff is available to answer any questions you may have about the asbestos regulations.

Health Hazards Control Unit
NC DHHS/Division of Public Health

Phone: 919-707-5950

Fax: 919-870-4808

www.epi.state.nc.us/epi/asbestos/ahmp.html

Asbestos fibers from flooring are typically smaller and best detected by TEM analysis.

FLOOR TILE AND MASTIC

Occasionally, usually for financial reasons, schools will remove asbestos-containing floor tile and leave the asbestos-containing mastic in place. School personnel often lose sight of the mastic when new flooring is installed over it, and it gets dropped from periodic surveillance and from the reinspection process. Future renovations may unknowingly disturb the asbestos-containing mastic and expose the school population to asbestos.

Color-coded site plans indicating the locations of identified and/or assumed ACBMs help track asbestos-containing mastics. The school should have these site plans as part of their original management plan and should be updating them as appropriate.

OSHA requires stripping of finishes off asbestos-containing flooring materials to be conducted using low abrasion pads at speeds lower than 300 rpm while using wet methods.

ASBESTOS ABATEMENT DESIGNS

Removals, encapsulations, enclosures, and repairs to an area of more than three (3) square feet or three (3) linear feet of ACBM, or assumed ACBM, shall be designed and conducted by persons accredited to design and conduct response actions. According to the North Carolina AHMP Rules, an asbestos abatement design is a written or graphic plan prepared by an accredited abatement designer specifying how an asbestos abatement project will be performed, and includes, but is not limited to, scope of work and technical specifications. The signature and accreditation number of the accredited designer are to be included on the asbestos abatement design. A copy of the design is required to be maintained on-site during applicable abatement activities and shall be immediately available for review by AHMP personnel. **A copy of the design must also be kept with the management plan records.**

ASBESTOS SAMPLING

During school inspections in the late 1980s to early 1990s, accredited asbestos inspectors often collected only one sample of suspect miscellaneous ACBMs, such as ceiling tile, floor tile, etc., due to a misinterpretation of AHERA.

Today, inspectors and management planners must take at least two samples of any suspect miscellaneous ACBM. The second sample must be taken before a miscellaneous material can be considered non-asbestos containing.

If there are miscellaneous materials of which only one sample was taken during the initial inspection, and these materials are documented as non-asbestos containing, the school is not in compliance. This is often easily corrected during the reinspection process by the accredited asbestos inspector or management planner.

The HHCU encourages schools to resample suspect materials which were originally found to not contain asbestos, prior to disturbance and perhaps during reinspections. Analytical methods have improved, and schools may be saved from expensive clean-ups and may prevent asbestos exposures.

MOBILE UNITS

Removing a mobile unit from school property, for any reason, is considered a demolition activity under the NESHAP regulations. In addition, dismantling a unit for recycling purposes is considered a demolition activity. The interior and exterior of the mobile unit, like any other school building, must be thoroughly inspected for the presence of asbestos prior to conducting a renovation or demolition activity. Additionally, a demolition notification must be submitted to the AHMP 10 working days prior to moving the mobile unit off school property.

Consider adding language to all future construction or renovation contracts that prohibits the use of ACBMs.

MANAGEMENT PLANS FOR NEW SCHOOL BUILDINGS

AHERA defines a "new" school building as one built after October 12, 1988. For such a building, no asbestos inspection is required (but other items are required, see next paragraph) by AHERA if the architect or project engineer responsible for the building's construction, or if an accredited asbestos inspector, signs a document stating that either: 1) No ACBM was specified in any construction document for the building; or 2) To the best of his or her knowledge, no ACBM was used in the construction of the building.

A copy of this signed statement, along with the "AHERA Management Plan Cover Sheet" form, the "School Buildings" form, and the "Steps to Inform Others" form, make up the management plan for a new school building. These three additional forms can be provided by the HHCU, and they can be completed by school personnel.

A copy of this management plan is required to be sent to the HHCU for review and approval. The original is to be kept at the school's administrative office. If this is a public school system, an additional copy must be kept in the school system's central administrative office (or maintenance office).

Schools built after October 12, 1988, must also designate someone (LEA Designee) to ensure that the school is complying with the asbestos regulations. The LEA Designee must receive training, and finally, the school must annually notify parents, teachers and employees of the availability of the management plan.

Please note that while the above-mentioned signed statement will exempt your school from the AHERA asbestos inspection requirement, there are other state and federal regulations that require an asbestos inspection prior to renovation or demolition activities regardless of your school's date of construction. See the article on page 5, The NESHP Regulation, for more information.

REINSPECTIONS

The AHERA regulation requires schools with identified ACBMs to conduct a "reinspection" at least once every three (3) years after the implementation of the original management plan. The reinspection may be conducted either by a North Carolina-accredited inspector with oversight by a North Carolina-accredited management planner, or by just a North Carolina-accredited management planner.

During a reinspection, the accredited person is to look at, and physically touch, all known or assumed ACBM in order to ascertain it's condition. This ensures that the material is being maintained in good condition. The accredited person is to generate a reinspection report which is required to be submitted to the school within 30 days of the reinspection.

All demolished and/or sold school buildings and/or school buildings that have been vacated and are no longer used by the school system for any reason must be reported in the first reinspection report following the "retirement" of the building.

A copy of the reinspection report must be sent to the HHCU. The HHCU will review the report and send a summary of the findings back to the schools. If changes or clarifications are requested by the HHCU, the schools should then contact the accredited person responsible for the reinspection report. The reinspection report review is one way the schools can gauge the quality of work being provided by the accredited person(s).

MISCELLANEOUS

- If your LEA Designee should change please give us a call so we can update your contact information.
- Schools are required to ensure that all maintenance and custodial personnel have appropriate training in asbestos. This requirement is applicable to both school employees and contract workers.

AVAILABILITY OF THE MANAGEMENT PLAN

Remember: your schools' management plans are to be available for public review. According to EPA's Asbestos-Containing Materials in Schools Rule, 40 CFR Part 763.93(g), the management plans kept at the public school's central administration or maintenance offices shall be available during normal business hours, without cost or restriction, for inspection by representatives of EPA and the State, and by the public. This includes teachers, other school personnel and their representatives, and parents. The school system may charge a reasonable fee to make copies of management plans.

The above requirements also apply to the copy of the management plan, which must be kept at each individual school (public, private, or charter). However, individual schools do have up to five (5) days to respond to such a request.

In addition, the management plan kept at each individual school (public, private, or charter) shall be available for review by workers, without cost or restriction, before work begins in any area of a school building.

SAM and AHERA AIR MONITORING

According to AHERA and the NC AHMP Rules, an accredited air monitor shall conduct ambient air samples during removals, encapsulations, enclosures, and repairs to areas of more than three (3) square feet or three (3) linear feet of ACBM, or assumed ACBM, in a school building. An accredited air monitor shall visually inspect the project area upon completion, and collect air samples for clearance purposes using aggressive sampling methods.

A project monitoring plan (also referred to as an air monitoring plan) is prepared by the accredited supervising air monitor (SAM). The plan describes the ambient and clearance air sampling procedures, air sample locations, and the frequency of air sampling that will be conducted as part of the project. The plan is to consider the abatement project scope of work, building use, occupant locations, and occupant potential for exposure to airborne asbestos

fibers, type of asbestos-containing material, and the asbestos abatement design, including work practices and engineering controls. The SAM may amend this plan as necessary. A copy of the project monitoring plan is required to be maintained on site during applicable projects and shall be immediately available for review by AHMP personnel. **A copy must also be kept with the management plan records.**

Air samples collected for the purpose of clearing a project that is greater than small-scale, short duration and less than or equal to 160 square feet or 260 linear feet may be analyzed by either Phase Contrast Microscopy (PCM) or Transmission Electron Microscopy (TEM). Air samples taken to clear projects larger than 160 square feet or 260 linear feet must be analyzed by TEM.

The HHCU strongly recommends having clearance samples taken at the conclusion of an interior, non-regulated ACBM removal project. This will provide the school with assurance that the project was conducted appropriately and the school is safe for re-occupancy.

The SAM must ensure that *ambient* air sampling results are available on site within 24 hours of sample collection and analysis by PCM, and within 48 hours of sample collection and analysis by TEM.

SAMs must personally inspect any individually permitted asbestos removal project that exceeds 10 working days, but is less than 30 working days, at least once. SAMs must visit projects that exceed 30 days at least once during the first 30 days and at least once during each 30 day period thereafter.

SAMs must also provide the building owner with a signed and dated report documenting all site visits made to the project, the final visual inspection, and all ambient and clearance air sampling conducted. **Schools must keep a copy of this report with the asbestos management plan record.**

Please be advised that the AHERA air monitoring clearance requirements for schools are different from the AHMP requirements for public areas. Air monitoring clearance requirements for schools must follow the AHERA requirements.

THE NESHAP REGULATION

The federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, 40 CFR 61.145(a), requires a thorough asbestos inspection of a facility, or the affected part of a facility, prior to renovation or demolition. (For purposes of the NESHAP regulation, a demolition is defined as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.)

The NESHAP asbestos inspection requirement is not fulfilled by an AHERA inspection. The AHERA inspection is not destructive (i.e., it does not require sampling behind walls or above finished ceilings, etc.), nor does it include exterior building materials with the exception of covered walkways and/or exterior parts of mechanical systems used to condition interior space. **The NESHAP requires sampling of all suspect building materials, even those recently installed, that may be affected by an upcoming renovation or demolition.** The schools may even consider sampling new materials for asbestos content prior to installing them.

The initial AHERA inspections in the public schools were conducted in the late 1980's. Analytical methods for determining asbestos content in bulk samples have improved since then. It would, therefore, be prudent for the school to take additional samples of building materials previously found not to contain asbestos before conducting renovation and/or demolition activities.

Additionally, the NESHAP requires that the owner or operator of regulated asbestos abatements or any demolition activity submit a written notification to the HHCU at least 10 working days prior to beginning work. (The LEA is considered the owner of a school building or other structure owned by a school system. All demolition or renovation contractors are considered operators at the site.)

A demolition notification is required even if there is no asbestos present in the structure. Administrative enforcement actions may be taken against schools that fail to notify of demolitions.

AHERA COMPLIANCE INSPECTIONS

The EPA requires the HHCU to conduct AHERA compliance inspections at schools that are randomly selected by the EPA. In the recent past, the EPA has increased the emphasis on private and charter school inspections.

The compliance inspection is a complete and comprehensive review of the management plan, reinspection reports, and documentation of response actions, as well as walk-throughs of designated school buildings. Once the compliance inspection is complete, a report is submitted to EPA for review. Based on the findings of the report, the EPA may or may not pursue enforcement action.

Schools in North Carolina are most often cited for the following deficiencies:

- 1) failure to acquire exclusion letters for new construction;
- 2) failure to maintain records and document response actions;
- 3) failure to sample or adequately sample;
- 4) failure to post warning signs; and
- 5) failure to provide 2-hour asbestos awareness training.

Periodic surveillance must be performed every six months by either the LEA Designee or a person assigned by the school. This must be documented and included in the Management Plan. It is not necessary for this person to be accredited to perform this activity.

EPA, and NC OSH CONTACT INFORMATION

US EPA Region IV -- Asbestos Program
Atlanta, Georgia

Phone: 404-562-9900

EPA's website:

<http://www.epa.gov/region4/air/asbestos/>

North Carolina Department of Labor
Phone: 1800-NC LABOR or 919-807-2796

NC OSH's website: www.nclabor.com

LEAD BASED PAINT REGULATIONS

In 2008, (EPA) initiated a new regulatory program aimed at protecting children from lead-based paint hazards and helping to ensure a healthier living and working environment. The resulting Lead-Based Paint Renovation, Repair and Painting Program was phased in over two years and became fully effective in 2010. It applies to renovation, repair and/or painting work in housing and/or child-occupied facilities built before 1978. **North Carolina is administering its own RRP program in lieu of EPA administering the program in our state.** The North Carolina Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting (RRP) became effective January 1, 2010. The NC RRP rules fully adopt the EPA rules.

A child-occupied facility is a building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Therefore, school employees will have to meet the requirements of the regulation when conducting applicable work. The regulation requires training, certification, the use of lead-safe work practices, documentation that the work has been done correctly, pre-renovation education of occupants, cleaning verification, etc.

Applicable work meets the following parameters:

- The subject building must be residential property or a child-occupied facility and be constructed prior to 1978. Paint and/or surface coatings in such buildings are considered to contain lead *unless* tested and found otherwise by an North Carolina-certified Lead-Based Paint Inspector, Risk Assessor or Certified Renovator.
- Greater than six (6) square feet of painted or coated surfaces per room inside, or greater than 20 square feet outside, will be disturbed during the renovation, repair or painting project **(However! Lead-safe work practices should always be used no matter the size of the area to be disturbed.)**
- The work is always considered applicable when it involves window replacement or demolition of painted surface areas, even if less than six (6) square feet.

There are many additional requirements for the RRP regulation, as well as prohibited work practices. If any guidance is necessary, please contact the HHCU at (919) 707-5970 and ask to speak to a consultant.

The HHCU administers a second Lead-Based Paint Hazard Management Program (LHMP) which has been in place since 1998. The LHMP regulates lead-based paint abatements, inspections, risk assessments, designs, etc. For more information about both of North Carolina's lead-based paint regulatory programs and which one applies to you, call the NC Department of Health and Human Services, Division of Public Health, Health Hazards Control Unit (HHCU) at (919) 707-5950.

Information can also be found on the following websites:

NC LHMP-RRP and NC LHMP
<http://epi.publichealth.nc.gov/lead/lhmp.html>

EPA (Lead in Paint, Dust and Soil)
<http://www2.epa.gov/lead>



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Department of Health and Human Services
Aldona Z. Wos, M.D., Secretary
www.ncdhhs.gov • www.publichealth.nc.gov

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