



May 19, 2015

Via U.S. Mail and Electronic Mail Delivery

Office of Senator Edward J. Markey
Attn. Jen Wagner
255 Dirksen Senate Office Building
Washington, DC 20510

RE: State Enforcement and Implementation of the Asbestos Hazard Emergency Response Act of 1986

Dear Senators Edward J. Markey and Barbara Boxer:

Thank you for your March 31, 2015 letter and the opportunity to provide information regarding implementation of the Asbestos Hazard Emergency Response Act of 1986 (AHERA) in Arkansas. Upon receiving your inquiry, Arkansas Governor Asa Hutchinson forwarded your letter to me as the Director of the Arkansas Department of Environmental Quality in order to provide answers.

Based on the information provided to me by staff, AHERA has not been delegated by the United States Environmental Protection Agency (EPA) Region 6 to the State of Arkansas for administration or enforcement. Therefore, I would encourage you to seek the detailed information you seek from the EPA Region 6 office in Dallas, Texas.

While I am unable to provide direct responses to your specific questions related to AHERA, I can offer the following information regarding Arkansas' state asbestos program. This program is authorized by state statute enacted by the Arkansas General Assembly. Furthermore, ADEQ administers and enforces Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation No. 21, the Arkansas Asbestos Abatement Regulation. The purpose of the state statutes and APC&EC Regulation No. 21 is as follows:

- (A) To protect public health and safety and the environment;
- (B) To administer and enforce a program for the licensing of Asbestos Abatement Contractors, Asbestos Abatement Consultants and Training Providers and for the certification of Air Monitors, Contractor/Supervisors, Inspectors, Management Planners, Project Designers, and Workers in accordance with the Asbestos School Hazard Abatement Reauthorization Act (ASHARA [MAP]), 40 CFR Part 763; and
- (C) To establish and enforce standards for demolitions, renovations, and disposal of friable asbestos-containing materials in order to reduce visible emission of asbestos-containing materials as provided by the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR, Part 61, and to establish

standards for response actions as provided by the Asbestos Model Accreditation Plan, 40 CFR, Part 763, Subpart E, ASHARA.

The state asbestos laws and regulations are enforced via routine compliance inspections conducted by ADEQ Asbestos Inspectors of facilities subject to APC&EC Regulation No. 21. Asbestos Inspectors conduct these inspections and determine compliance by:

1. Reviewing the asbestos survey conducted by the asbestos consultant;
2. Confirming that persons impacting regulated asbestos containing material (RACM) are certified by ADEQ;
3. Confirming that the Notice of Intent (NOI) and/or Notice of Intent Revision (NOIR) submitted by the owner/operator are specific to the scope of work indicated in the notices; and
4. Ensuring the RACM is properly containerized and disposed of in a Class I or Class IV landfill.

The provisions of AHERA being implemented by EPA in Arkansas specifically require public school districts and private non-profit schools to appoint an asbestos management coordinator, referred to as the "AHERA Designated Person." This person is responsible for a number of asbestos-related activities, including the implementation of the plan for managing asbestos-containing building materials (ACBM) in the school buildings and compliance with the federal asbestos regulations.

The provisions of AHERA require school officials to:

1. Prepare a Management Plan (MP) by an Arkansas licensed asbestos consultant trained by an approved licensed training provider and certified by ADEQ in the discipline of Management Planner;
2. Update the MP every three years in what is termed a "3 Year Re-Inspection" by the asbestos consultant; and
3. Maintain trained personnel (the AHERA Designated Person), who are usually employees of the school or school district (i.e., the building engineer/janitor) because they are the most familiar with the facilities on the campus or school-wide facilities governed by the District.

The AHERA Designated Person conducts an operations and management review of the school every six months utilizing the MP as a guide. During this review, the AHERA Designated Person must visit every room in every building on the school campus identified by the MP, both visually observing and physically touching the ACBM to verify that it is both in the location documented by the MP and that it is still in good condition and has not become friable.

Although the AHERA program has not been delegated to the State of Arkansas, the Arkansas Department of Education requires any accredited school, which includes both public and private schools in public school districts and non-profit schools, to maintain a MP. ADEQ Asbestos Inspectors ask to review the MP during both their routine compliance inspections at schools or

facilities operated by schools in which a Notice of Intent (NOI) has been submitted to ADEQ or during inspections initiated in response to an anonymous complaint that has been received.

If the ADEQ Asbestos Inspector identifies AHERA violations during the inspection, they are reported by ADEQ to EPA Region 6. Additionally, if violations are noted during a routine compliance inspection or an asbestos complaint, discretionary or formal enforcement is implemented via a warning letter or consent order, respectively. To date there have been no gross violations of the MP identified by the ADEQ Asbestos Inspectors. There have, however, been instances within which the MP has been determined to be out of date, thus requiring updating. In the normal course of action, if an individual school or school district is cited by an ADEQ Asbestos Inspector during a compliance inspection, then that school or school district immediately contacts a consultant to update the MP. Most instances of an out-of-date MP occur because of a change in personnel such as the Building Engineer or Principal and in even more rare cases, the District Superintendent.

If you have any further questions, please do not hesitate to contact me at (501) 682-0959.

Sincerely,


Becky W. Keogh
Director, ADEQ