



**ENERGY AND ENVIRONMENT CABINET
OFFICE OF THE SECRETARY**

Steven L. Beshear
Governor

Leonard K. Peters
Secretary

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May 15, 2015

Hon. Edward J. Markey
Hon. Barbara Boxer
United States Senate
Committee on Environment and Public Works
Washington, DC 20510-6175

Dear Senators Markey and Boxer:

On behalf of Governor Steve Beshear, the Energy and Environment Cabinet is submitting responses to the information requested on March 31, 2015, regarding Kentucky's Asbestos Hazard Emergency Response Act (AHERA) program.

Scope of Asbestos Hazard in Schools

- 1. How many local education agencies in your state are subject to AHERA? Please provide a list of the local education agencies subject to AHERA and identify the number of school buildings in each.* Kentucky has 371 Local Education Agencies (LEA) and 2176 school buildings. These numbers may change frequently as private schools often start up or close operations or as county school systems add or decommission school buildings. Please see the enclosed CD for an Excel file titled LEAs with ACBM and ACBM Free Buildings.
- 2. How many local education agencies in your state have conducted an initial asbestos inspection of all buildings owned, leased, or used as school building as required by AHERA? All known LEAs in Kentucky have completed an initial asbestos inspection or have an architect's letter specifying that no asbestos was used in construction of the building. There may be exceptions regarding new private schools but as we become aware of new LEAs we require submittal of an initial Management Plan.*
- 3. How many local education agencies in your state have been identified as having school buildings that harbor asbestos containing materials? Please provide a list of those local education agencies and provide the number of school buildings in each that have been identified as harboring asbestos containing building materials.* Kentucky has 252 LEAs that have school buildings identified as containing Asbestos Containing Building Materials (ACBM). Please see the enclosed CD for an Excel file titled LEAs with ACBM and ACBM Free Buildings.

Awareness and Monitoring of Asbestos Hazards in Schools

4. *How frequently do local education agencies report AHERA compliance information to the State?* LEAs typically report compliance information to the state every three years when they submit the required asbestos re-inspection. These LEAs may report compliance information on a more frequent basis if they close a school, open a new school, or perform a response action.
5. *How many local education agencies in your state have prepared and submitted asbestos operation and management (O&M) plans as required by AHERA regulations (40 C.F.R. §763.91)?* Nearly all LEAs in Kentucky that have ACBMs have submitted Operation and Maintenance plans for asbestos. The exceptions would be LEAs that have no asbestos in their schools. LEAs typically do not have the budget to abate asbestos which requires them to put an O&M plan in place to manage the asbestos until funds for abatement become available.
6. *How many local education agencies in your state have prepared and submitted asbestos management plans as required by AHERA regulations (40 C.F.R. §763.93)?* All of our 253 LEAs have submitted an Asbestos Management Plan. As we discover new schools we will inspect the schools and require submittal of an Initial Management Plan, if required.
7. *How many local education agencies in your state have conducted the periodic inspections as required by AHERA regulations? Please provide a list of those local education agencies and the number of school buildings in each for which periodic inspections have not been conducted.* Periodic Inspections are required by 40 CFR 763.92. When our inspectors perform an inspection on a school building, periodic inspections are one of the record sets they evaluate. Periodic inspections are also evaluated when a school submits their three-year re-inspection. Due to re-inspection audits and school inspections all LEAs submit periodic re-inspection or are required to do so if they fail to complete the inspection on schedule. The Energy and Environment Cabinet's Division for Air Quality (DAQ) is not able to run a report that will itemize each school building that has been issued a Notice of Violation specifically for failure to conduct periodic inspections.
8. *How often does your State conduct inspections and/or audits of each local education agency for their compliance with AHERA? Please provide the dates of state inspections and/or audits since 2010.* The inspection goal for Kentucky is to inspect 20% of all LEAs each year so that all LEAs will be inspected in a 5 year period. This LEA inspection includes the LEA location as well as 3 additional school buildings. Since 2010, the Division has performed 906 inspections on LEAs and school buildings. In 2012, the Division began logging database records of audits of Initial Management Plans or Management Plan Re-inspections. The Division has audited 181 Management Plans or Re-inspections since 2012. Please see the enclosed CD for an Excel file titled On-Site Inspections 2010-2015 and an Excel file titled Plans Reviewed 2012-2015.
9. *For each of the past five (5) years, what were the annual costs of your State's implementation and enforcement of AHERA?* In addition to State Matching Funds, Kentucky provides additional funding to the AHERA program as outlined in an Excel table on the enclosed CD. Please see the enclosed CD for an Excel file titled AHERA Costs FY10-15.
10. *Have any local education agencies in your state been issued penalties for noncompliance with AHERA? If so, please describe these occasions.* Kentucky has had two LEAs that have been referred to the Division of Enforcement and received penalty assessments. In both cases, these LEAs were private schools and did not believe that they were subject to AHERA regulations.

11. *Has your State ever taken an emergency action against any local education agencies for noncompliance with AHERA? If so, please describe these occasions and their outcomes.* Kentucky has not had to take any emergency actions against and LEAs for noncompliance with AHERA regulations.
12. *How many complaints or informant tips about alleged AHERA violations has your state received from parents, teachers, students, janitorial staff, etc. each year since AHERA became law in 1986?* Kentucky's electronic records date back to 2008. Since that time, the Division has received 48 complaints, tips, or information about alleged AHERA violations.

Asbestos Abatement Status

13. *Of the local education agencies known to have or have had buildings with asbestos-containing material, how many local education agencies have completed full abatement of the asbestos hazards? By "full abatement" we mean full removal of the asbestos hazards and not management in place through encapsulation, enclosure, or other means.* Kentucky's electronic records are not currently capable of returning a report that will indicate the names of LEAs that have completed a full abatement and the date of that action. The second part of this question may be found on the enclosed CD in the Excel table title LEAs with ACBM and ACBM Free Buildings.

Asbestos Accreditation, Training, and Licensure

14. *Did your State adopt the EPA's Model Accreditation Plan (i.e., the EPA's template establishing definitions, training, examinations, continuing education, qualifications, recordkeeping, deaccreditation, reciprocity, and electronic reporting as set forth in 40 C.F.R. Pt. 763, SubPt. E, App. C) to ensure contractors, inspectors, and other professionals are adequately trained to handle asbestos-containing materials safely? If not, please describe the differences of your State's accreditation plan as compared with EPA's.* Kentucky has adopted EPA's Model Accreditation Plan.
15. *How does your State verify that professionals conducting asbestos-related work (such as building inspections, abatement projects, etc.) are properly accredited?* Kentucky has Asbestos Inspectors in seven regional offices throughout the state. These inspectors check accreditation status of asbestos professionals during their on-site inspections. The Asbestos Inspectors also coordinate with central office staff to ensure accreditations and certifications are valid.
16. *In addition to AHERA requirements for accreditation of contractors and laboratories, does your State require any professionals to be licensed to perform asbestos-related work? If so, please describe the requirements for licensure, penalties for doing asbestos-related work without a license, and disciplinary procedures for not performing asbestos-related work in conformity with professional standards in your State. Provide appropriate citations to State statutes when applicable.* Kentucky requires individual accreditation (401 Kentucky Administrative Regulations (KRS) 58:005) and company certifications (401 KRS 58:040) for workers that perform asbestos abatement for both AHERA and NESHAP regulations. The Division issues accreditations for Asbestos Abatement Supervisors, Asbestos Abatement Workers, Management Planners, Inspectors, and Project Designers. Requirements for licensure include EPA or EPA State approved training, a completed application and the appropriate fee. Individuals or companies that perform asbestos related work without the appropriate license may be issued a Notice of Violation and may be referred to the Division of Enforcement. Disciplinary actions may involve revoking a license and civil penalties (Kentucky Revised Statutes 224.99-010) up to twenty-five thousand dollars for each day during which the violation continues.

Asbestos Notifications to Parents, Teachers, and Staff


17. *Does your State have a template notification letter for use by local education agencies to provide parents, teachers, and staff annual notifications about asbestos management plans? If so, please provide a copy.* Kentucky does not have a template for notifications to parents, teachers, and staff.
18. *How many local education agencies have provided annual notification letters to parents, teachers, and staff each year since 2010?* Kentucky's electronic database is not able to provide a report detailing which LEAs specifically have or have not provided annual notification letters to parents, teachers and staff. As a part of our onsite inspection process and our audit of Three Year Re-inspections we review the dates of annual notification and review them for content. If a school is not providing these letters our staff will address the deficiency with the LEA.
- a. *Please provide a list of the local education agencies that have provided annual notification letters to parents, teachers, and staff each year since 2010.*
- b. *Please provide a list of the local education agencies that have not provided annual notification letters to parents, teachers, and staff each year since 2010.*

Reporting to EPA

19. *What information related to AHERA and asbestos hazards in schools does your State report to the EPA? How frequently does this reporting occur?* Kentucky reports a midyear and end of year status report for our AHERA program. This report contains information pertaining to any asbestos research that may have occurred, draft language for regulations, problems encountered with the program, and accomplishments under the Cooperative Agreement.
20. *Does your State receive grant funding to assist in the enforcement of AHERA (e.g., funding to conduct inspections)? If so, please describe the funding amount, funding period, and reporting requirements.* Kentucky receives funding to assist in the enforcement of AHERA regulations. For fiscal year 2014-2015 the Division received \$60,000 in federal funding. Reporting requirements include a midyear and end of year status report.

If you have any questions or comments concerning this matter, please contact Mr. Eric Eisiminger, Field Operations Branch Manager, at the Division for Air Quality at (502) 564-3999.

Sincerely yours,


Leonard K. Peters
Secretary

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POMIER, DEMOCRATIC STAFF DIRECTOR

March 31, 2015

The Honorable Governor Steven L. Beshear
700 Capitol Avenue, Suite 100
Frankfort, KY 40601

Dear Governor Beshear,

In 1986 Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) to protect students, teachers, and other employees from the dangers of asbestos hazards in school buildings. As implementation of this law approaches the twenty year mark, the extent of asbestos hazards remaining in schools across the nation is largely unknown. We think it is an appropriate time to assess how the law is being implemented in each state and whether any legislative or other reforms are needed.

Please answer the following questions by May 15, 2015 as they relate to AHERA implementation in Kentucky.

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2. How many local education agencies in your state have conducted an initial asbestos inspection of all buildings owned, leased, or used as school buildings as required by AHERA?
3. How many local education agencies in your state have been identified as having school buildings that harbor asbestos-containing materials? Please provide a list of those local education agencies and provide the number of school buildings in each that have been identified as harboring asbestos-containing building materials.

Awareness and Monitoring of Asbestos Hazards in Schools

4. How frequently do local education agencies report AHERA compliance information to the State?
5. How many local education agencies in your state have prepared and submitted asbestos operation and management (O&M) plans as required by AHERA regulations (40 C.F.R. §763.91)?
6. How many local education agencies in your state have prepared and submitted asbestos management plans as required by AHERA regulations (40 C.F.R. §763.93)?
7. How many local education agencies in your state have conducted the periodic inspections as required by AHERA regulations? Please provide a list of those local education agencies and the number of school buildings in each for which periodic inspections have not been conducted.
8. How often does your State conduct inspections and/or audits of each local education agency for their compliance with AHERA? Please provide the dates of state inspections and/or audits since 2010.
9. For each of the past five (5) years, what were the annual costs of your State's implementation and enforcement of AHERA?

10. Have any local education agencies in your state been issued penalties for noncompliance with AHERA? If so, please describe these occasions.
11. Has your State ever taken an emergency action against any local education agencies for noncompliance with AHERA? If so, please describe these occasions and their outcomes.
12. How many complaints or informant tips about alleged AHERA violations has your state received from parents, teachers, students, janitorial staff, etc. each year since AHERA became law in 1986?

Asbestos Abatement Status

13. Of the local education agencies known to have or have had buildings with asbestos-containing material, how many local education agencies have completed full abatement of the asbestos hazards? By "full abatement" we mean full removal of the asbestos hazards and not management in place through encapsulation, enclosure, or other means.
 - a. Please provide a list of the local education agencies that have completed full abatement and the date upon which the abatement was completed.
 - b. Please provide a list of those local education agencies that have *not* fully abated known asbestos hazards and the number of school buildings in each that continue to harbor asbestos-containing materials.

Asbestos Accreditation, Training, and Licensure

14. Did your State adopt the EPA's Model Accreditation Plan (*i.e.*, the EPA's template establishing definitions, training, examinations, continuing education, qualifications, recordkeeping, deaccreditation, reciprocity, and electronic reporting as set forth in 40 C.F.R. Pt. 763, SubPt. E, App. C) to ensure contractors, inspectors, and other professionals are adequately trained to handle asbestos-containing materials safely? If not, please describe the differences of your State's accreditation plan as compared with EPA's.
15. How does your State verify that professionals conducting asbestos-related work (such as building inspections, abatement projects, etc.) are properly accredited?
16. In addition to AHERA requirements for accreditation of contractors and laboratories, does your State require any professionals to be licensed to perform asbestos-related work? If so, please describe the requirements for licensure, penalties for doing asbestos-related work without a license, and disciplinary procedures for not performing asbestos-related work in conformity with professional standards in your State. Provide appropriate citations to State statutes when applicable.

Asbestos Notifications to Parents, Teachers, and Staff

17. Does your State have a template notification letter for use by local education agencies to provide parents, teachers, and staff annual notifications about asbestos management plans? If so, please provide a copy.
18. How many local education agencies have provided annual notification letters to parents, teachers, and staff each year since 2010?
 - a. Please provide a list of the local education agencies that have provided annual notification letters to parents, teachers, and staff each year since 2010.
 - b. Please provide a list of the local education agencies that have *not* provided annual notification letters to parents, teachers, and staff each year since 2010.

Reporting to EPA

19. What information related to AHERA and asbestos hazards in schools does your State report to the EPA? How frequently does this reporting occur?

20. Does your State receive grant funding to assist in the enforcement of AHERA (e.g., funding to conduct inspections)? If so, please describe the funding amount, funding period, and reporting requirements.

Thank you very much for your consideration of this matter. If you have any questions, please contact Dr. Jennifer Wagner or Dr. Michal Freedhoff at 202-224-2742.

Sincerely,

Edward J. Markey

Edward J. Markey, Ranking Member
Subcommittee on Superfund, Waste
Management, and Regulatory Oversight

Barbara Boxer

Barbara Boxer, Ranking Member
Committee on Environment and Public
Works