



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

May 12, 2015

Senator Barbara Boxer
Ranking Member
Committee on Environment and Public Works

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

United States Senate
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senators Boxer and Markey:

In response to your March 31, 2015 letter inquiring about the administration of the Asbestos Hazard Emergency Response Act (AHERA) in Massachusetts, I enclose a detailed set of answers prepared by the Massachusetts Department of Labor Standards (DLS), the agency charged with administering AHERA in Massachusetts.

I hope that this information will be helpful to the Committee on Environment and Public Works. DLS is available to respond directly to any further questions from the Committee concerning the operation of AHERA in Massachusetts.

Sincerely,

A handwritten signature in black ink that reads "Charles D. Baker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles D. Baker



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

RONALD L. WALKER, II
SECRETARY

JEAN ZEILER
ACTING DIRECTOR

May 12, 2015

Commonwealth of Massachusetts Response to
Inquiry by the U.S. Senate Committee on Environment and Public Works
Concerning Implementation of Asbestos Hazard Emergency Response Act (AHERA)

A. Background

Under authority delegated by the United States Environmental Protection Agency (EPA), the Massachusetts Department of Labor Standards (DLS) administers and enforces the Asbestos-Containing Materials in Schools Rule, 40 C.F.R. § 763, Subpart E, commonly known as the Asbestos Hazard Emergency Response Act (AHERA). AHERA focuses on local education agencies (LEAs) and schools operated by LEAs. AHERA requires that each LEA (a) inspect school buildings that the LEA owns, leases, or rents for asbestos-containing building materials (ACBM); (b) create and execute written plans for managing ACBMs in a manner that minimizes asbestos exposure hazards; (c) abate asbestos hazards that cannot be controlled through operations and maintenance (O&M) procedures; and (d) carry out certain record keeping and notification functions. The regulation further specifies the mandatory elements of a management plan.

The Department of Labor Standards (DLS) first promulgated its State-level asbestos regulations in 1988. These regulations, which address the Removal, Containment and Encapsulation of Asbestos, 453 CMR 6.00, set standards for the training and licensure and certification of individuals and businesses conducting asbestos work. The standards adopted in 453 CMR 6.00 ensure that training programs for asbestos management and removal and laboratories engaged in asbestos analysis satisfy the requirements of the EPA's Model Accreditation Plan.

Beginning in 1991, and continuing through present day, in reliance on grant funding provided by EPA, DLS has developed its asbestos enforcement program, refined its AHERA inspection and enforcement skills, and pursued statutory and regulatory amendments designed to narrow differences between its asbestos regulation, 453 CMR 6.00, and the analogous federal standards, AHERA and ASHARA. In 1998 DLS applied for full AHERA/ASHARA enforcement waiver status, which was granted early in the following year. The high level of cooperation between EPA and DLS evidenced in this consolidated regulatory effort has led to more effective and more efficient enforcement of AHERA and ASHARA and to a lessened potential for occupational asbestos exposure in the Commonwealth.

B. Questions from the Committee

The responses below reflect DLS's best efforts to answer the Committee's questions concerning implementation and monitoring of AHERA compliance in Massachusetts. The information available to DLS in responding to these questions is necessarily limited, however, due to the nature of AHERA's regulatory scheme. As the Committee is aware, the AHERA regulations assign the duties of performing periodic inspections and maintaining records relating to asbestos management plans in schools entirely to the LEAs and the individual schools within each LEA.¹ The regulations initially required each LEA to submit an initial asbestos management plan to DLS when AHERA became effective in 1988. LEAs must likewise file such a plan with DLS on opening any new school or leasing or acquiring any building to be used as a school.² Otherwise, the regulations do not direct LEAs to submit any form of AHERA reporting to DLS or to any other authority, even when that agency has like DLS been designated by waiver as the enforcement agency for AHERA compliance.

Given the structure of AHERA's regulatory scheme, the information that DLS relies on in offering the responses below derives from two sources: (1) LEA responses to periodic inquiries made by DLS on its own account and independent of the AHERA regulatory framework; and (2) DLS findings made in the course of the approximately 40 LEA audits that DLS annually performs in its role as enforcement agent according to the terms of the workplan submitted to EPA in each funding cycle.

On this basis, DLS offers the following responses to the questions raised in the Committee's March 31, 2015 letter to Governor Baker.

Scope of Asbestos Hazards in Schools

- 1. How many local education agencies (LEA) 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.**

According to information from the Massachusetts Department of Education website, the number of LEAs and individual schools subject to AHERA breaks down as follows:

Number of LEAs subject to AHERA:

544 Private Schools (each acting as its own LEA)
408 Public School District Operating LEAs, covering 1,860 Public
Elementary, Middle/Jr. High, and Secondary schools

¹ See, e.g. 40 C.F.R. § 763.85 (inspection and periodic re-inspections to be performed by LEA); 40 C.F.R. § 763.93 (asbestos management plans and plan updates to be maintained in offices of individual schools); 40 C.F.R. § 763.94 (all records to be maintained in administrative offices of individual school and LEA)

² See 40 C.F.R. § 763.93(a)(1)-(3).

83 Charter Schools (each acting as its own LEA)
26 Educational Collaborative (each acting as its own LEA)
TOTAL: 1,061 LEAs

Number of school buildings subject to AHERA:

544 Private schools
1,860 Public Elementary, Middle/Jr. High and Secondary schools
83 Charter schools
Total: 2,487 school buildings

The Massachusetts Department of Elementary and Secondary Education (DESE) website can provide detailed listings of individual public and private schools, public school districts, charter schools, student populations, and related information. The numbers above were obtained from the Massachusetts Department of Elementary and Secondary Education (DESE) website, located at <http://www.doe.mass.edu/>. The data was last updated October 1, 2013.

Please see the following specific links used to generate the figures above:

For a listing of individual school names by district:
<http://profiles.doe.mass.edu>

For a listing of public and private schools:
<http://profiles.doe.mass.edu/search/search.aspx?leftNavId=>

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?

Historical data maintained by DLS is limited to the last seven years, pursuant to the State records retention laws. LEAs may however have records reaching back farther as required by AHERA.

When AHERA was first implemented in 1988, all LEAs under AHERA were required to inspect all school buildings for asbestos, develop management plans, and submit those asbestos management plans to DLS for review. AHERA also requires that any school building leased or acquired after October 12, 1988, shall be inspected prior to its use as a school building and included thereafter in the LEA's regularly updated asbestos management plan. Management plans addressing new or newly acquired school facilities must be forwarded to DLS for review.

Anecdotally, when AHERA was first being implemented in 1988 and 1989, EPA provided reimbursement to schools for costs involved in conducting inspections and developing management plans. As a result, LEA compliance with AHERA was high: all LEAs were inspecting their school buildings and, consistent with the regulations, all schools were submitting initial management plans for each school

to DLS for approval. Over the years, in part because of the loss of this funding and in part because of personnel turnover, AHERA compliance became less of a priority for LEAs.

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.

DLS does not have records documenting how many LEAs still occupy school buildings that harbor asbestos-containing materials because AHERA does not require that LEAs provide this sort of updated information to DLS. All of this information should be available through each LEA and individual school. Even after an LEA takes abatement action in removing asbestos containing materials, AHERA still requires inspection and monitoring of those areas from which the asbestos was removed. AHERA also requires that records documenting the removal of asbestos and subsequent, periodic reinspections be incorporated into the LEA's management plans.

As discussed more fully in Response #4 below, DLS has developed some information of this sort on its own. DLS maintains a spreadsheet documenting asbestos and asbestos removal information that DLS has collected or received with regard to specific schools. According to the information that DLS began compiling in 2011:

- 748 Massachusetts schools are known to still have asbestos-containing materials.
- 368 schools have provided an architect statement certifying that a school building built or occupied after October 12, 1988 did not employ any asbestos containing products in its construction.

This database of information is not complete as DLS did not receive responses to its request for information from 1,446 schools.

Going forward, DLS intends to target for AHERA inspections non-responding schools and other schools deemed to present an elevated risk of exposing teachers, staff and students to asbestos.

DLS believes that the majority of the schools in Massachusetts do contain some form of asbestos containing materials, even if these materials are located only in a crawl space or tunnel, or in joint compound.

Awareness and Monitoring of Asbestos Hazards in Schools

4. How frequently do local education agencies report AHERA compliance information to the State?

Under AHERA, LEAs are not required to report compliance information to DLS or any other authority. LEAs consequently provide information to DLS only when responding to a DLS inquiry or follow-up inspection. Since EPA only funds DLS to perform 40 AHERA inspections per year, there are hundreds of schools for which DLS does not have current information.

In 2011, DLS adopted a new strategy aimed at improving AHERA compliance at schools that may present an elevated risk of exposing students, teachers, and staff to asbestos fibers. DLS sent a checklist and information packet to schools that had abatement work planned for the summer months advising them about the sorts of records that must be maintained under AHERA as part of school asbestos management plans.

In addition, at the outset of the 2011-2012 school year, DLS sent a letter to the approximately 2,500 schools regulated by AHERA requesting that each school submit a copy of its most recent three-year re-inspection report to DLS for review. In response to that request, DLS received hundreds of management plans and re-inspection reports. The overall goal of this initiative was to identify schools presenting an elevated risk of exposing occupants to asbestos, identify their deficiencies with regard to AHERA, and aid them in becoming compliant with AHERA. The effort had limited success as less than half of the schools responded. Even with this limited response, however, DLS soon determined that it lacked the resources to perform an in-depth review of each plan and report.

Accordingly, DLS performed a summary review of each of the plans and reports received to glean key information indicating AHERA compliance. DLS then transferred this information to a spreadsheet that can be used to prioritize schools for inspection for AHERA compliance based on each school's potential risk of exposing occupants to asbestos hazards. In developing this system, DLS considered a number of known AHERA or asbestos related factors that can be used to rank schools for inspection. Factors include results from previous AHERA inspections, the age and type of asbestos in a school, the reported condition of any asbestos-containing materials, indications of abatement records, and the fact of any response or non-response to the DLS request to provide re-inspection reports.

Going forward, DLS will prioritize its on-site inspections of Massachusetts schools subject to AHERA by identifying those schools with a greater risk of exposure to building occupants.

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)?

As noted above, AHERA does not require LEAs to submit operations and maintenance programs to DLS or to any State or Federal authority. The regulatory scheme instead directs that all records of this sort be maintained by each LEA and at the individual school office.

The AHERA inspections that DLS performs as the Federally designated AHERA enforcement agency do provide an opportunity to gather information for a limited number of schools each year. In the course of conducting these inspections, DLS will determine if a school is required to have an O&M program and review any O&M program in place to ensure that it contains the basic elements required under AHERA. Over the past seven years, approximately 26% of the schools that DLS has audited and that were required to have an O&M program did not have such a program in place.

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)?

See response to Question #2.

AHERA requires that an LEA submit a management plan to DLS for approval only when an LEA takes possession of a newly acquired building. Most LEAs are not aware that AHERA requires that they must submit these plans to DLS for review and approval. During on-site AHERA inspections, DLS therefore sometimes discovers that LEAs have acquired new buildings without fulfilling this reporting requirement.

Over the past seven years, approximately 17% of the 280 LEAs DLS audited had acquired a new building and conducted an asbestos inspection prior to occupying the space as AHERA requires but had failed submit a copy of the management plan to DLS for review. During this same time period, DLS found six additional LEAs that had acquired and occupied a new facility without conducting an initial inspection.

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.

DLS does not have records that track the periodic inspections required under the AHERA regulations. AHERA requires LEAs to conduct periodic surveillance every 6 months in each of their school buildings, but AHERA does not require that the results of these examinations be reported to DLS. DLS frequently

discovers LEA non-compliance with this periodic surveillance requirement in the course of an on-site AHERA inspection. Citations for failure to perform and document the periodic surveillance every 6 months have been issued to approximately 41% of all schools DLS has audited the past seven years.

AHERA also requires that LEAs ensure that all school facilities be fully reinspected by an accredited asbestos inspector every three years. While the resulting reinspection reports become part of the updated management plan for that school and LEA, AHERA does not direct that these reinspection reports and updated management plans be submitted to DLS for review. When DLS conducts an on-site AHERA inspection, DLS does review a school's management plan to determine if reinspections have been performed timely and if reports documenting those reinspections have been incorporated into the management plan.

Most schools should have conducted multiple 3-year reinspections, performed by a certified asbestos inspector, since the initial inspection period in 1988-1989. In the course of conducting on-site AHERA audits, however, DLS has found that many schools have not consistently performed reinspections every three years as AHERA requires.

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.

Consistent with the program specified in the work plan submitted in its bi-annual grant application to EPA, DLS inspects a minimum of 40 schools per year. DLS has been inspecting schools since 1997. (For more detail, please see Attachment # 1, AHERA Schools Excel Sprsht for EPA Grant 2012 to 2015.)

In each EPA grant cycle, DLS must apply for funds and propose to EPA a work plan outlining the objectives and goals DLS proposes to accomplish during that grant cycle. EPA reviews the application and work plan, and approves the proposed objectives and goals before issuing grant approval. The EPA asbestos grant is awarded in two year increments. For FY 2015/16, the DLS workplan includes the following initiatives:

- a. **80 AHERA compliance inspections.** DLS will review an LEA or school management plan for compliance with AHERA record keeping requirements and conduct a walkthrough of the subject school to verify the accuracy of these records. These inspections are targeted through a neutral administrative inspection scheme.
- b. **8 asbestos laboratory audits.** These inspections will focus on compliance with NVLAP and AIHA requirements for laboratories performing asbestos bulk or air samples and approved asbestos analytical procedures and practices, record keeping, and chain of custody procedures.

- c. **22 training provider audits.** These audits will focus on initial and refresher courses for the following positions: asbestos supervisor, worker, inspector management planner, project designer, and project monitor. The purpose of the audits is to ensure that training providers are providing course material as prescribed in the EPA Model Accreditation Plan and DLS regulations so that those completing these courses have the basic training to perform the duties required under best practices.
- d. **Publication and dissemination of asbestos guidance documents.** Under previous grant applications, DLS has developed asbestos related guidance and informational documents aimed at helping contractors, consultants and other interested parties comply with AHERA and the DLS asbestos regulation, 453 CMR 6.00. Examples of this include a template for the Annual Notification that a school can use to notify parents about the existence and whereabouts of their asbestos management plans, a checklist of asbestos abatement records that must be included in a school's management plan, and recommendations on how to incorporate data from an asbestos inspection in a management plan or reinspection report

In addition to the activities conducted to satisfy the EPA grant requirements, under its own State authority, DLS will continue to inspect asbestos abatement projects to check that work is being performed by licensed companies and trained and certified individuals and that the work is conducted using safe work practices. DLS also audits training providers to ensure the accuracy of instruction and to ensure that asbestos analytical service providers are proficient in the services they provide.

9. For each of the past five (5) years, what were the annual costs of your State's implementation and enforcement of AHERA?

<u>2 year funding periods</u>	<u>Federal Funds</u>	<u>State Funds</u>	<u>2 year Total</u>
FY 11/12	\$276,000	\$92,495	\$368,495
FY 13/14	\$216,000	\$72,798	\$288,798
FY 15/16	\$216,000	\$72,231	\$288,231

10. Have any local education agencies in your state been issued penalties for noncompliance with AHERA? If so, please describe these occasions.

Where DLS finds non-compliance with AHERA or its own asbestos regulations, DLS issues a civil administrative penalty. DLS has cited individual schools for AHERA and DLS violations. A listing of these citations and penalties is provided on Attachment #2, Civil Administrative Penalties issued to Schools.

Since 2010, DLS has issued 46 civil administrative penalties (CAP) to schools found to be in violation of AHERA and DLS asbestos related regulations. In 44 of these cases, the CAP was in the form of a written warning, which is typically issued for failures in record keeping and other minor violations not resulting in an increased risk of asbestos exposure. In four of the cases, the failure of the school to adhere to AHERA protocol led to asbestos fiber release episodes, resulting in

the shutdown of areas of the school, emergency decontamination procedures, and possible occupant exposure. DLS assessed civil penalties to the schools in these four cases.

Because of the delays caused by school closures and relocation of classrooms and students and the high costs of emergency cleanups, DLS permitted the schools to apply these penalties towards the cost of remediation and establishing compliance with AHERA.

- 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.**

No emergency actions have been necessary.

- 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?**

DLS maintains records going back 7 years pursuant to Massachusetts record retention laws. DLS has been tracking complaints and tips about alleged AHERA violations since 2012. Over that period, DLS has received the following:

2012 – 2 complaints
2013 – 6 complaints
2014 – 2 complaints
2015 – none currently

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.**

AHERA does not require LEAs to abate or remove completely all asbestos hazards. Instead, AHERA requires LEAs to inspect their school buildings for asbestos containing materials and to develop a response action and management plan appropriate to the particular conditions found by a certified asbestos inspector. In many cases, depending on the condition of any asbestos identified by the inspector, the most appropriate management plan may be simply to encapsulate and protect the asbestos containing materials.³

³ See 40 C.F.R. §§ 763.88 & 763.90.

In any case, AHERA's limited reporting scheme does not direct LEAs to notify DLS or any other agency when they have fully abated all known asbestos containing materials in a school. AHERA's only requirement is that LEAs incorporate abatement records into the management plan maintained by the LEA and at the individual school. Consequently, DLS does not have records documenting full abatements.

DLS does track the number of schools that have obtained an architect statement indicating that no asbestos containing materials were specified or used in the construction or renovation of a particular building when an LEA opens a new school facility. See response to Question 3.

- a. Please provide a list of the local education agencies that have completed full abatement and the date upon which the abatement was completed.**

AHERA does not require DLS to track this information, and DLS does not have the resources to do so.

- 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.**

AHERA does not require DLS to track this information, and DLS does not have the resources to do so.

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 to EPA's.**

Yes, DLS applied for full AHERA/ASHARA enforcement waiver status in the FY 98 grant cycle and received that status early in the following year. DLS also enforces our State asbestos regulation, 453 CMR 6.00, which in some instances imposes additional requirements for asbestos related work.

- 15. How does your State verify that professionals conducting asbestos-related work (such as building inspections, abatement projects, etc.) are properly accredited?**

DLS requires certification pursuant to Massachusetts State Regulation, 453 CMR 6.00 et seq. See Attachment #3. An individual applying to DLS for licensure or

certification in any of the asbestos related disciplines DLS regulates must fill out an application and provide all training certifications and other associated documents specified by the regulation. DLS reviews these applications and determines if the applicant meets the minimum requirements before issuing a license or certification.

DLS also performs inspections of abatement work sites and audits of training providers, analytical service providers, consultants, and contractors to ensure they are properly trained and have the required licenses or certifications. If DLS discovers that an inspection or abatement has been conducted by an unlicensed or uncertified provider, DLS implements an enforcement action.

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.**

Massachusetts requires professionals to be licensed or certified to perform asbestos-related work under 453 CMR 6.00 et seq. Please refer to the following sections for specific requirements to become licensed or certified:

453 CMR 6.05: Licensure of Asbestos Contractors

453 CMR 6.06: Certification of Asbestos Workers and Asbestos Supervisors

453 CMR 6.07: Certification of Consultants

453 CMR 6.08: Certification and Other Requirements for Asbestos Analytical Services

453 CMR 6.09: Certification and Other Requirements for Training Providers

In addition to the AHERA requirements for the accreditation of contractors, training providers, and individuals, DLS regulations require persons performing asbestos related work in Massachusetts to be licensed or certified. As prescribed by 453 CMR 6.05, DLS requires contractors to be licensed as asbestos contractors. Under 453 CMR 6.08 and 6.09, analytical service providers and training providers must submit course and quality control manuals, SOPs, and instructor and analyst qualifications to DLS. Asbestos consultants must have current training, document relevant experience and educational requirements, and apply for certification through DLS, in accordance with 453 CMR 6.07.

Failure to comply with the licensure, certification or work practice requirements under 453 CMR 6.00 while performing asbestos-related work may result in the issuance of a civil penalty of not less than \$500 and not more than \$1,500 for each

offense. Such penalties are imposed pursuant to M.G.L. c. 149, § 6F, 453 CMR 6.17, and 453 CMR 9.00, which specifies Civil Administrative Penalty Regulations – see Attachment #4.

To ensure consistency and fairness in issuing citations and civil penalties, DLS has developed an Enforcement Response Policy, which sets forth the procedures DLS inspectors use in issuing civil penalties.

See Attachment #5 – DLS Enforcement Response Policy

Violators of the Asbestos Regulations can be issued civil administrative penalties (CAP) which can range from a written warning, civil citation, or cessation order, and can additionally be issued a civil administrative penalty of up to \$5,000 per violation. Typical violations that receive a CAP include work performed by an unlicensed contractor or untrained and uncertified individual, unsafe work practices, or failure to meet the final clearance monitoring criteria at the end of an abatement project.

See Attachment #6 - Neutral Administrative Inspection Scheme.

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.**

Yes DLS provides LEAs a sample notification letter that includes all the information that must be included in such a notice. LEAs also have the option of developing their own form of notice. Attached is a copy of DLS's template notification letter. The template is also available on DLS's website.

Please see Attachment #7 – Sample Annual Notification Form

- 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.**

AHERA does not require LEAs to submit their annual notification letters to DLS. DLS does not track the names of schools that provide annual notification letters to parents, teachers, and staff, and DLS does not have the resources to do so.

When DLS conducts an on-site AHERA inspection, DLS checks to see if the school's management plan documents use of such notice. Failure to provide the required annual asbestos notification is the most frequently cited violation in an LEA inspection. On average, 78% of the schools DLS has audited over the past seven years have failed to send the annual notification.

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?

DLS submits the following information semi-annually to EPA:

- a. name and address of each school inspected;
- b. date of inspection;
- c. location of the school in an area designated as environmental justice;
- d. number of charter schools inspected;
- e. presence of spray applied fireproofing in a school;
- f. whether school has been inspected in the last six years;
- g. whether public employees conduct any asbestos related work;
- h. number of students impacted as a result of the DLS inspection;
- i. number of violations issued to the LEA; and
- j. type of enforcement action taken.

DLS provides this information to EPA in an Excel spreadsheet. Please see Attachment #1 – AHERA Schools Excel Sprsht for EPA Grant 2012 to 2015

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.

Yes. EPA provides Massachusetts with grants to enforce AHERA/ASHARA and the State's Model Accreditation Plan. Grants span a period of two years.

<u>2 year grant periods</u>	<u>Federal Funds</u>	<u>State Funds</u>	<u>2 year Total</u>
FY 11/12	\$276,000	\$92,495	\$368,495
FY13/14	\$216,000	\$72,798	\$288,798
FY 15/16	\$216,000	\$72,231	\$288,231

DLS summarizes the activities conducted under the current grant approved work plan in a report that is submitted to EPA every 6 months. DLS also provides a closeout report at the end of the grant cycle.

Submitted by

Brian Wong, Chief, DLS Investigations & Enforcement Unit
Anh T. Bungcayao, DLS Counsel II
Janet McKenna, DLS Environmental Engineer

List of Attachments

Attachment #1	AHERA Schools Excel Sprsht for EPA Grant 2012 to 2015
Attachment #2	Civil Administrative Penalties issued to Schools
Attachment #3	453 CMR 6.00: The Removal, Containment or Encapsulation of Asbestos
Attachment #4	453 CMR 9.00: Civil Administrative Penalties Regulations
Attachment #5	DLS Enforcement Response Policy
Attachment #6	Neutral Administrative Inspection Scheme
Attachment #7	Sample Annual Notification Form

ATTACHMENT 1

Year 1 Oct 1, 2012-Sept 30, 2013

2012-2013

MA	Insp. date	FCG=cause gov	Enforcement	Spray on	Charter	EU	Inspected in last 6 yrs	Public EE	# of Students	# of Violations
		C = Complaint R = Routine	AdvLtn							
MA13-01	10/4/2012	R	AdvLtn	n	n	n	n	n	56	8
MA13-02	10/31/2012	R	AdvLtn	n	n	y	n	n	60	4
MA13-03	12/18/2012	Complaint	NON	n	n	n	y	n	526	23
MA13-04	12/18/2012	FCG	NON	y	n	n	n	n	450	6
MA13-05	12/19/2012	R	NON	n	n	n	n	n	80	20
MA13-06	1/17/2013	R	AdvLtn	n	n	n	n	n	27	6
MA13-07	1/18/2013	R	NON	n	n	n	n	n	40	8
MA13-08	1/18/2013	R	WW	y	y	n	n	n	77	5
MA13-09	1/25/2013	FCG	WW	n	y	y	n	n	147	18
MA13-10	1/25/2013	FCG	WW	n	n	n	n	n	454	18
MA13-11	2/4/2013	R	AdvLtn	y	n	n	n	n	230	6
MA13-12	2/5/2013	R	NON	n	n	n	n	n	290	22
MA13-13	2/5/2013	R	NON	n	n	n	n	n	296	22
MA13-14	2/6/2013	R	NON	n	n	n	n	n	249	11
MA13-15	2/6/2013	R	NON	n	n	n	n	n	271	11
MA13-16	2/27/2013	R	NON	n	n	n	n	n	127	9
MA13-17	3/12/2013	R	n/a	n	n	n	n	n	90	0 no viol
MA13-18	3/12/2013	R	AdvLtn	n	n	n	n	n	430	3
MA13-19	3/12/2013	R	NON	n	n	n	n	n	56	6
MA13-20	3/13/2013	FCG	NON	n	n	n	n	n	456	24
MA13-21	3/13/2013	FCG	NON	n	n	n	n	n	272	19
MA13-22	4/29/2013	FCG	AdvLtn	n	n	n	n	n	300	12
MA13-23	4/29/2013	FCG	AdvLtn	n	n	n	n	n	375	5
MA13-24	5/15/2013	FCG	AdvLtn	n	n	n	n	n	238	4
MA13-25	5/15/2013	FCG	AdvLtn	n	n	n	n	n	428	4
MA13-25	5/23/2013	Complaint	NON	y	n	y	n	n	1229	5
MA13-26	5/24/2013	R	AdvLtn	n	n	n	n	n	29	5
MA13-27	5/24/2013	R	NON	n	n	n	n	n	50	8
MA13-28	6/3/2013	FCG	WW	n	n	y	n	n	201	24
MA13-29	6/21/2013	FCG	AdvLtn	N	y	n	y	n	52	5
MA13-30	6/21/2013	FCG	AdvLtn	n	y	n	n	n	969	6
MA13-31	7/17/2013	FCG	NON	n	y	y	n	n		
MA13-32	7/25/2013	FCG	WW	n	n	n	n	n		
MA13-33	7/25/2013	FCG	WW	n	n	n	n	n		
MA13-34	7/8/2013	FCG	WW	n	n	n	n	n		
MA13-35	8/8/2013	FCG	WW	n	y	n	n	n	467	29
MA13-35	8/16/2013	R	WW	n	n	n	n	n		
MA13-37	8/16/2013	FCG	WW	n	n	y	n	n		
MA13-38	8/21/2013	FCG	WW	n	n	n	n	n		
MA13-39	8/21/2013	FCG	WW	n	n	n	n	n		
MA13-40	8/26/2013	FCG	WW	n	n	n	n	n		
MA13-41	8/27/2013	FCG	WW	n	n	y	n	n		

Other Boston Schools inspected 2011

MA14-36 Indian Head School Whitman JM 8/20/2014 compl
 MA14-37 Maquan Elementary Whitman JM 8/20/2014 compl
 MA14-38 Oxford Middle School Oxford JM 9/15/2014 routine
 MA14-39 Hilltown Cooperative Charter Easthampton JM 9/3/2014 routine
 MA14-40 Global Learning Charter New Bedford JM 9/17/2014 routine
 MA14-41 Minot Forest Elementary Wareham JM/AC 9/24/2014 FCG
 MA14-42

Year 1
 Oct 1, 2014-Sept.30, 2015
 2014-2015

MA	School	Staff	Insp date	C = Complaint R = Routine FCG=cause gov	Enforcement	Spray on	Charter	EJ	Inspected in last 6 yrs	Public EE	# of Students	# of Violations
MA15-01	Holland Elementary	JM	10/2/2014	tech asst no	no	no	no	no	no	no	0	0
MA15-02	Brimfield Elementary	JM	10/2/2014	tech asst no	no	no	no	no	no	no	0	0
MA15-03	Mitteneague School	JM	10/10/2014	FCG WW	no	no	no	no	no	no		
MA15-04	Fausey School	JM	10/10/2014	FCG WW	no	no	no	no	no	no		
MA15-05	Lura White School	JM	10/15/2014	routine WW	no	no	no	no	no	no		
MA15-06	Archbishop Williams HS	JM/AC	10/29/2014	Compl no	no	no	no	no	no	no	0	0
MA15-07	Sullivan School	JM	11/5/2014	routine WW	no	no	yes	no	no	no		
MA15-08	Peck School	JM	11/5/2014	routine WW	no	no	yes	no	no	no		
MA15-09	Venerini Academy	JM	11/10/2014	routine WW	no	no	yes	no	no	no		
MA15-10	St Mark School	JM	11/13/2014	tech asst no	no	no	yes	no	no	no		
MA15-11	Holy Name Central Cath HS	JM	11/19/2014	FCG WW	yes	no	no	no	no	no	8	
MA15-12	Warren Elementary	JM	11/21/2014	routine WW	no	no	no	no	no	no		
MA15-13	Sacred Heart HS	JM	11/24/2014	FCG no	no	no	no	no	no	no		
MA15-14	Greater Lowell Voc HS	JM/MO	11/25/2014	Compl no	no	no	no	no	no	no		
MA15-15	Holden Christian Academy	JM/JS/GP	1/15/2015	routine WW	no	no	no	no	no	no		
MA15-16	Foxboro Regional Charter	JM	1/22/2015	tech asst no	no	yes	no	no	no	yes	5	
MA15-17	Watson Elementary	JM	2/5/2015	FCG WW	no	no	yes	no	no	yes		
MA15-18	Morton School	JM/AC	2/5/2015	FCG WW	no	no	yes	no	no	yes		
MA15-19	David Prouty School	JM/AC	2/20/2015	FCG CCCP yes	yes	no	no	no	no	yes		
MA15-20	Lake Street School	JM	2/20/2015	FCG WW	yes	no	no	no	no	yes		
MA15-21	Belcher School	JM	3/30/2015	routine WW	yes	no	no	no	no	yes		
MA15-22	Barry School	JM	3/30/2015	routine WW	yes	no	no	no	no	yes		
MA15-23	Dale School	JM	4/15/2015	tech asst no	no	no	no	no	no	no		
MA15-24	Ralph Wheeler School	JM	4/15/2015	tech asst no	no	no	no	no	no	no		
MA15-25												
MA15-26												
MA15-27												
MA15-28												
MA15-29												
MA15-30												

Tantasqua Regional

ATTACHMENT 2

Penalty Type	Lic Type	Issue Date	Docket #	Company Name
WW	Asb	7/27/10	AB-10-033	Spencer-East Brookfield Regional Schools
CC-CP	Asb	9/20/10	AB-10-051	New Leadership Charter School
WW	Asb	6/28/11	AB-11-030	New Leadership Charter School
CC-CP	Asb	3/1/12	AB-12-108	Cape Cod regional Technical School
WW	Asbestos	7/25/12	AB-12-149	Bourne Public Schools/Peebles Elementary School
WW	Asbestos	1/31/13	AB-13-237	W Spfld Pub Schools/Mitteneague
WW	Asbestos	1/31/13	AB-13-238	W Spfld Pub Schools/Coburn
WW	Asb	9/13/13	AB-13-303	Bancroft School
WW	Asb	10/1/13	AB-13-307	St.John's High School
WW	Asb	10/8/13	AB-13-308	Toy Town Elementary
WW	Asb	10/8/13	AB-13-309	Memorial School
WW	Asb	10/18/13	AB-13-310	Butterfield School
CC-CP	Asb	11/13/13	AB-13-320	McCloskey Middle School
WW	Asb	11/26/13	AB-13-326	Memorial School
WW	Asb	11/26/13	AB-13-327	Beeman School
WW	Asb	11/26/13	AB-13-328	Plum Cove School

Company City	Fine Amount/Due Date	Final Disposition
Spencer	N/A	ceiling tiles being replaced, O&M plan being developed
Springfield	900	
Springfield		
Harwich	3,300	Settlement Agreement 4/6/12, use fine to hire consultant to come into compliance.
Bourne	N/A	Responded 8/27/12

W.Springfield N/A

W.Springfield N/A

Worcester NA

Shrewsbury, Ma N/A

Winchendon N/A

Winchendon N/A

Orange N/A

Uxbridge 12,000

Milford N/A

Gloucester N/A

Gloucester N/A

response received

response received

response received

response received

response received

Settlement Agreement signed

signed

partial response recd

response received

response received

\$12,000 applied for the clean up of the classrooms and adjacent areas

Penalty Type	Lic Type	Issue Date	Docket #	Company Name
WW	Asb	7/27/10	AB-10-033	Spencer-East Brookfield Regional Schools
CC-CP	Asb	9/20/10	AB-10-051	New Leadership Charter School
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WW	Asb	9/13/13	AB-13-303	Bancroft School
WW	Asb	10/1/13	AB-13-307	St.John's High School
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WW	Asb	10/8/13	AB-13-309	Memorial School
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CC-CP	Asb	11/13/13	AB-13-320	McCloskey Middle School
WW	Asb	11/26/13	AB-13-326	Memorial School
WW	Asb	11/26/13	AB-13-327	Beeman School
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Company City	Fine Amount/Due Date	Final Disposition
Spencer	N/A	ceiling tiles being replaced, O&M plan being developed
Springfield	900	
Springfield		
Harwich	3,300	Settlement Agreement 4/6/12, use fine to hire consultant to come into compliance.
Bourne	N/A	Responded 8/27/12

W.Springfield

N/A

W.Springfield

N/A

Worcester

NA

response received

Shrewsbury, Ma

N/A

response received

Winchendon

N/A

response received

Winchendon

N/A

response received

Orange

N/A

response received

Uxbridge

12,000

Settlement Agreement signed

\$12,000 applied for the clean up of the classrooms and adjacent areas

Milford

N/A

partial response recd

Gloucester

N/A

response received

Gloucester

N/A

response received

ATTACHMENT 3

453 CMR: DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

453 CMR 6.00: THE REMOVAL, CONTAINMENT OR ENCAPSULATION OF ASBESTOS

Section

- 6.01: Authority, Purpose and Scope
- 6.02: Definitions
- 6.03: General Requirements
- 6.04: Administrative License and Certification Actions/Denial, Revocation, Suspension or Refusal to Renew a License or Certificate
- 6.05: Licensure of Asbestos Contractors
- 6.06: Certification of Asbestos Workers and Asbestos Supervisors
- 6.07: Certification of Consultants
- 6.08: Certification and Other Requirements for Asbestos Analytical Services
- 6.09: Certification and Other Requirements for Training Providers
- 6.10: Training Requirements
- 6.11: Recordkeeping
- 6.12: Notification of Asbestos Projects
- 6.13: Work Practices and other Requirements for Small-Scale Asbestos Projects, Asbestos-Associated Projects, and Work Operation Involving Non-Friable ACBM
- 6.14: Work Practices and Other Requirements for Asbestos Response Actions
- 6.15: Worker Protection Requirements
- 6.16: Cease and Desist Orders
- 6.17: Responsibility for Compliance; Penalties
- 6.18: Severability
- 6.19: The Removal, Containment or Encapsulation of Asbestos Appendix I
- 6.20: The Removal, Containment or Encapsulation of Asbestos Appendix II

6.01: Authority, Purpose and Scope

- (1) Authority. 453 CMR 6.00 is promulgated in accordance with and under the authority of M.G.L. c. 149, §§ 6 through 6F.
- (2) Purpose. 453 CMR 6.00 shall establish and/or constitute:
 - (a) Requirements necessary to protect the health and safety of the general public and persons engaged in, or associated with, the removal, enclosure, encapsulation or disturbance of asbestos or asbestos-containing material and to prevent occupational diseases.
 - (b) Standards of competency for persons or entities engaged in or performing removal, enclosure or encapsulation of asbestos or asbestos-containing material.
 - (c) Minimum standards to be used by insurers in the inspection of risk, measurement of hazards and the determination of adequate and reasonable rates of insurance as prescribed by the provisions of M.G.L. c. 152, § 65J.
 - (d) Standards for the licensure of persons, firms, corporations or other entities who or which enter into, engage in or work at the business of removal, enclosure or encapsulation of asbestos or asbestos-containing material, and for the certification of asbestos workers, supervisors, consultants, providers of asbestos analytical services, and others performing asbestos work.
 - (e) Standards for the certification of entities engaged in the business of training others, where such training is a condition of licensure or certification.
- (3) Scope. 453 CMR 6.00 applies to all work, including construction, demolition, alteration, repair and maintenance involving any facility or location, where such work involves the use, handling or disposal of asbestos, asbestos-containing material or asbestos-contaminated waste. 453 CMR 6.00 also applies to asbestos training, consultation and/or analytical services, including but not limited to: asbestos inspection and hazard assessment services, the preparation of asbestos project designs, asbestos project oversight and/or monitoring, asbestos training required by 453 CMR 6.00 and asbestos analysis performed in connection with any of the above services.

6.02: continued

Asbestos Consultants - Persons who perform design, oversight or assessment functions in asbestos abatement or asbestos hazard control, including asbestos inspectors, management planners, project designers and project monitors, as defined herein.

Asbestos-Containing Material (ACM) - Any material containing more than one percent asbestos.

Asbestos Contractor - Any person, firm, corporation or other entity who or which has a valid license issued by the Commonwealth for the purpose of entering into or engaging in asbestos work.

Asbestos Inspector - A person who identifies, assesses the condition of, or collects pre-abatement samples of asbestos-containing materials.

Asbestos Laboratory Supervisor - A person so designated pursuant to 453 CMR 6.08(4)(a), who is jointly responsible, along with other responsible persons of a certified asbestos analytical service, if any, for the adherence to the applicable analytical protocols, the maintenance of proper quality control procedures and the accuracy of the analytical results.

Asbestos Management Planner - A person who uses data gathered by asbestos inspectors to assess asbestos hazards, determine appropriate response actions and develop implementation plans.

Asbestos Project Designer - A person who determines how asbestos abatement work should be conducted by preparing plans, designs, procedures, work scope or other substantive direction or criteria.

Asbestos Project Monitor - A person who:

- (a) Collects air and bulk samples and performs visual inspections for the purpose of determining asbestos project completion;
- (b) Collects environmental asbestos air samples for the purpose of assessing present or future potential for exposure to airborne asbestos; or
- (c) Functions as the on-site representative of the facility owner or other persons by overseeing the activities of the asbestos contractor.

Asbestos Response Action - Any work operation involving the disturbance of more than three linear feet of friable asbestos on or in pipes, ducts or wires or more than three square feet of friable asbestos on or in structures or components other than pipes, ducts or wires.

Asbestos Supervisor - An individual or agent of an asbestos abatement entity having managerial or supervisory authority over asbestos workers or a foreperson with responsibility for the completion of asbestos response actions or portions thereof.

Asbestos Training Provider - Any entity which has been duly certified pursuant to 453 CMR 6.09 to provide asbestos training required by 453 CMR 6.10(1).

Asbestos Work - The business of removal, enclosure or encapsulation of asbestos or asbestos-containing material in any facility.

Asbestos Worker - A person not acting as a supervisor who performs asbestos work as an employee, or who performs such work under the direction and control of another, with or without compensation.

Category I Non-Friable Asbestos-Containing Building Material - Asbestos-containing packings, gaskets, resilient floor coverings, and asphalt roofing products containing more than 1% asbestos as determined using the method specified in Appendix A, subpart F, 40 CFR Part 763, section 1, Polarized Light Microscopy.

6.02: continued

Glove Bag - A manufactured plastic bag-type of enclosure with built-in gloves, which is placed with an air-tight seal around an asbestos covering and which permits asbestos material contained by the bag to be removed without releasing asbestos fibers into the atmosphere.

HEPA Filtration - High efficiency particulate air filtration capable of filtering 0.3 micron particles with 99.97% efficiency.

Inspection - Any activity undertaken in a facility or location subject to the requirements of these regulations for the purpose of determining the presence, location and/or condition of friable or non-friable asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by the collection of samples of such material. This term includes recordkeeping in connection with such asbestos inspection activities and reinspections of friable and non-friable known or assumed asbestos-containing material which has been previously identified, but does not include the following:

- (a) Periodic surveillance of the type described in 40 CFR Part 763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;
- (b) Inspections performed by employees or agents of federal, state or local government solely for the purpose of determining compliance with applicable statutes; or
- (c) Visual inspections of the type described in 40 CFR Part 763.90(i) solely for the purpose of determining completion of asbestos response actions.

Management Plans - Plans, including operations and maintenance plans, which detail specific response actions appropriate for the abatement of immediate and long term asbestos hazards.

Major Fiber Release Episode - Any uncontrolled or unintentional disturbance of asbestos-containing material which produces visible debris and which:

- (a) involves the falling or dislodging of:
 1. more than three linear feet of friable asbestos-containing material on or in pipes, ducts or wires; or
 2. more than three square feet of friable asbestos-containing material on or in structures or components other than pipes, ducts or wires; or
- (b) produces an amount of friable asbestos-containing material greater than that which can be contained by a single three-foot glove bag of conventional manufacture.

Minor Fiber Release Episode - Any uncontrolled or unintentional disturbance of asbestos-containing material which produces visible debris and which:

- (a) involves the falling or dislodging of:
 1. three or fewer linear feet of friable asbestos-containing material on or in pipes, ducts or wires; or
 2. three or fewer square feet of friable asbestos-containing material on or in structures or components other than pipes, ducts or wires; and
- (b) produces an amount of friable asbestos-containing material which can be contained by a single three-foot glove bag of conventional manufacture.

NIOSH - The National Institute of Occupational Safety and Health.

NIST - The National Institute of Standards and Technology.

Non-Friable Asbestos-Containing Building Materials (Non-Friable ACBM) - Materials used in the construction of facilities or structures which contain asbestos bound by a matrix which cannot, when dry, be crumbled, pulverized, or reduced to powder by hand pressure. The class of non-friable asbestos-containing building materials typically includes, but is not limited to: asbestos cement pipe, sheathingsiding and shingles; vinyl asbestos building materials, such as floor tiles; and asphaltic asbestos building materials, including asphaltic asbestos shingles and felts.

6.03: General Requirements

- (1) Administrative License and Certification Actions. As set forth at 453 CMR 6.04, the Director may deny, suspend, revoke or refuse to renew a license or certificate issued pursuant to 453 CMR 6.05 through 6.09 or take other administrative actions against a license or certificate holder for sufficient cause.
- (2) General Requirement for Licensure of Asbestos Contractors. No person, firm, corporation or other entity shall enter into, engage in or work at the business of Asbestos Abatement unless such person, firm, corporation or other entity has been duly licensed in accordance with 453 CMR 6.05. For purposes of 453 CMR 6.00, the phrase "engage in . . . the business of Asbestos Abatement" includes, but is not limited to, advertising Asbestos Abatement services, and/or submitting bids for projects where the majority of the contract-value is represented by Asbestos Work.
- (3) Requirement for Certification of Asbestos Workers and Asbestos Supervisors. All persons who perform the functions of Asbestos Workers and Asbestos Supervisors at worksites where Asbestos Response Actions are carried out shall be certified pursuant to the applicable sections of 453 CMR 6.06.
- (4) Requirement for Certification of Asbestos Consultants. Persons who provide or work at the business of providing asbestos consultation services, including asbestos inspection, hazard assessment, management planning, project designing and project monitoring services, shall be duly certified in the appropriate consultative discipline pursuant to 453 CMR 6.07 prior to engaging in such work. For the purpose of 453 CMR 6.00, the phrase "work at the business of providing asbestos consultation services" includes, but is not limited to advertising asbestos consultation services and submitting bids for work where the majority of the contract value of the project involves asbestos consultation work.
- (5) Requirement for Certification of Providers of Asbestos Analytical Services. Persons who provide or work at the business of providing Asbestos Analytical Services shall be duly certified pursuant to 453 CMR 6.08 prior to engaging in such work and shall otherwise comply with the requirements of that section. For the purpose of 453 CMR 6.00, the phrase "work at the business of providing Asbestos Analytical Services" includes, but is not limited to, advertising Asbestos Analytical Services and submitting bids for work where the majority of the contract value of the project involves asbestos analysis work. Certified Asbestos Analytical Services shall be authorized to advertise and provide only those services for which separate approval is granted, as set forth at 453 CMR 6.08(1)(a) through (d).
- (6) Requirement for Certification of Asbestos Training Providers. Persons who provide or work at the business of providing asbestos training required by 453 CMR 6.00 shall be duly certified pursuant to 453 CMR 6.09 prior to engaging in such work, and otherwise comply with the requirements of 453 CMR 6.09. For the purpose of 453 CMR 6.00, the phrase "work at the business of providing asbestos training" includes, but is not limited to advertising asbestos training services and submitting bids for work where the majority of the contract value of the project involves asbestos training.
- (7) Requirement for Asbestos Training. All persons requiring asbestos training as a prerequisite for licensure or certification pursuant to 453 CMR 6.05, 6.06 or 6.07 or participation in Small-Scale Asbestos Projects shall be trained pursuant to 453 CMR 6.10.
- (8) Recordkeeping Requirements. All Asbestos Training Providers, Asbestos Analytical Services, Asbestos Consultants, Asbestos Contractors, and Employers of Asbestos-Associated Project Workers shall maintain records as specified at 453 CMR 6.11.
- (9) Notification Requirements. All persons or entities who carry out Asbestos Response Actions shall comply with the notification requirements of 453 CMR 6.12.

6.04: Administrative License and Certification Actions/Denial, Revocation, Suspension or Refusal to Renew a License or Certificate

(1) General Administrative Proceedings. The Director may deny, revoke, suspend or refuse to renew a license or certificate issued pursuant to 453 CMR 6.00 upon finding of sufficient cause. License or certificate applicants or holders shall be advised by the Director in writing of the proposed denial, revocation, suspension or refusal to renew and the reasons therefore. Said parties shall have the right to appeal the Director's determination through an administrative hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.00 by submitting a written request for such hearing within 14 calendar days of receiving notice of such administrative action.

(2) Sufficient Cause. The following shall be sufficient cause for the Director's denial, revocation, suspension or refusal to renew a license or certificate issued pursuant to 453 CMR 6.00:

- (a) False statements in the application.
- (b) Omission or falsification of documentation or information required to be submitted to the Director pursuant to any provisions of 453 CMR 6.00.
- (c) Failure to comply with the applicable provisions of M.G.L. c. 149 or 111F, 453 CMR 6.00, M.G.L. c. 111, §§ 189A through 199B, or rules or orders issued thereunder.
- (d) Failure to comply with laws, rules and regulations relating to occupational or public safety and health.
- (e) Failure to maintain records required by 453 CMR 6.11 or make them available to the Director upon request.
- (f) In the case of certified Asbestos Training Providers, or applicants for certified Asbestos Training Provider status, the following shall also constitute sufficient cause:
 1. Failure to demonstrate the ability to provide the training courses for which the applicant seeks to be certified in compliance with the requirements of 453 CMR 6.09;
 2. Failure to provide or maintain the standards of training required by 453 CMR 6.09(3); or
 3. Failure to provide minimum instruction required by 453 CMR 6.10.
- (g) In the case of certified Asbestos Consultants or applicants for certification in one or more of the consultant categories listed at 453 CMR 6.07(1)(a) through (d), the following shall also constitute sufficient cause:
 1. Gross technical errors or errors of judgment.
 2. Failure to properly execute authorized consultative activities.
- (h) In the case of certified providers of Asbestos Analytical Services, or applicants for certification as providers of Asbestos Analytical Services, the following shall also constitute sufficient cause:
 1. Failure to maintain successful participation in required proficiency testing programs.
 2. Gross technical errors or errors of judgment relating to activities covered by the certification.
 3. Loss of professional accreditation or license, where such is a required qualification.
- (i) Any other cause affecting the responsibility of the license or certificate holder which the Director determines to be of such serious and compelling nature as to warrant denial, suspension, revocation or refusal to renew.

(3) Probation. The Director may place the license or certificate holder on probation for sufficient cause for a period of three months or longer.

(4) Suspension Prior to Hearing. The Director may summarily suspend a license or certificate on an emergency basis, if, in his/her determination, the actions of the license or certificate holder show willful disregard for the health, safety or welfare of the public or workers. If a license or certificate is summarily suspended, the affected party may appeal the summary action in accordance with 453 CMR 6.04(1). If an appeal is filed, the matter shall be set down for hearing at the earliest possible time. At such hearing the Director must establish that the summary action is factually supported and that there is a substantial likelihood of sustaining the suspension in a full evidentiary hearing. The summary action shall continue against the affected party unless the hearing officer determines that the Director did not meet his/her burden under the standard specified herein. Summary suspensions may be issued in conjunction with license or certificate revocations or refusals to renew.

6.06: Certification of Asbestos Workers and Asbestos Supervisors

(1) Application for Certification as an Asbestos Worker. Applicants for certification as Asbestos Workers shall appear in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and submit the following:

- (a) A completed application form with attachments as prescribed by the Director.
- (b) Asbestos training certificates, or legible copies thereof, indicating that the applicant has successfully completed the applicable initial and refresher training requirements specified by 453 CMR 6.10(2), 6.10(4)(b), and/or 453 CMR 6.10(5).
- (c) A list of all occupational safety and health-related citations or notices of violation, including notices of noncompliance, notices of responsibility, notices of intent to assess an administrative penalty, orders, consent orders and court judgements, received by the applicant in the two years prior to the date of application, and the issuing agency or department and final disposition of such citation or notice.
- (d) Such other information as the Director may reasonably require.
- (e) A money order or certified bank check payable to the Commonwealth of Massachusetts in the amount of the entire annual fee of \$25.00, or any other amount established for such certificate pursuant to M.G.L. c. 7, § 3B. If the Director denies, revokes, suspends or refuses to renew a certificate for reasons specified in 453 CMR 6.04, the fee payment is not refundable.

(2) Renewal of an Asbestos Worker Certificate. An Asbestos Worker certificate is valid for a period of one year. The Director may renew an Asbestos Worker certificate, provided the current certificate holder appears in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and makes written application for renewal. Application for renewal should be made no later than seven calendar days before the expiration of the current certificate. The submission of a renewal application later than seven days before the expiration of the current certificate may result in renewal after the expiration of the current certificate. Said application for renewal shall include submission of the items referenced at 453 CMR 6.06(1)(a) through (e), including a current certificate of refresher training specified by 453 CMR 6.10(5).

(3) Application for Certification as an Asbestos Supervisor. Applicants for certification as Asbestos Supervisors shall appear in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and submit the following:

- (a) A completed application form with attachments as prescribed by the Director.
- (b) Asbestos training certificates or legible copies thereof, indicating that the applicant has successfully completed the applicable initial and refresher training requirements specified by 453 CMR 6.10(2), 6.10(4)(c), and/or 453 CMR 6.10(5).
- (c) A list of all occupational safety and health-related citations or notices of violation, including notices of noncompliance, notices of responsibility, notices of intent to assess an administrative penalty, orders, consent orders and court judgments, received by the applicant in the two years prior to the date of application, and the issuing agency or department and final disposition of such citation or notice.
- (d) Such other information as the Director may reasonably require.
- (e) A money order or certified bank check payable to the Commonwealth of Massachusetts in the amount of the entire annual fee of \$100.00, or any other amount established for such certificate pursuant to M.G.L. c. 7, § 3B. If the Director denies, revokes, suspends or refuses to renew a certificate for reasons specified in 453 CMR 6.04, the fee payment is not refundable.

(4) Renewal of an Asbestos Supervisor Certificate. An Asbestos Supervisor certificate is valid for a period of one year. The Director may renew an Asbestos Supervisor certificate, provided the current certificate holder appears in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and makes written application for renewal. Application for renewal should be made no later than seven calendar days before the expiration of the current certificate. The submission of a renewal application later than seven days before the expiration of the current certificate may result in renewal after the expiration of the current certificate. Said application for renewal shall include submission of the items referenced at 453 CMR 6.06(3)(a) through (e), including a current certificate of refresher training specified by 453 CMR 6.10(5).

6.07: continued

2. Current status as a registered architect or engineer with a minimum of 12 months experience in asbestos abatement fields; or
 3. A combination of education and experience equivalent to that set forth in 453 CMR 6.07(2)(c)1. and 2., as determined by the Director.
- (d) Asbestos Project Monitors. Applicants shall have successfully completed the training requirements set forth at 453 CMR 6.10(4)(g) and shall have, at a minimum:
1. Two years of college credit or an associate or technical degree or equivalent; and
 - a. six months employment experience in the asbestos abatement field or
 - b. two months field experience under the direct supervision of a certified Asbestos Project Monitor; or
 2. A combination of education and experience equivalent to that set forth in 453 CMR 6.07(2)(d)1. as determined by the Director.
- (3) Application for Certification as an Asbestos Consultant. Applicants for certification in one or more of the consultant disciplines shall appear in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and submit the following:
- (a) A completed application form with attachments, as prescribed by the Director.
 - (b) Asbestos training certificates, or legible copies thereof, indicating that the applicant has successfully completed the applicable initial and refresher training requirements for the Asbestos Consultant discipline for which certification is sought, as set forth in 453 CMR 6.10(2), 6.10(4)(d) through (g) and/or 453 CMR 6.10(5).
 - (c) Documentation demonstrating fulfillment of the qualifications listed at 453 CMR 6.07(2)(a) through (d).
 - (d) A list of all occupational safety and health-related citations or notices of violation, including notices of noncompliance, notices of responsibility, notices of intent to assess an administrative penalty, orders, consent orders and court judgements, received by the applicant in the two years prior to the date of application, and the issuing agency or department and final disposition of such citation or notice.
 - (e) Such other information as the Director may reasonably require.
 - (f) A money order or certified bank check payable to the Commonwealth of Massachusetts in the amount of the entire annual fee of \$300.00, or any other amount established for such certificate pursuant to M.G.L. c. 7, § 3B. A person applying for certification as an Asbestos Inspector and as an Asbestos Management Planner at the same time need pay only one \$300.00 fee. If the Director denies, revokes, suspends or refuses to renew a certificate for reasons specified in 453 CMR 6.04, the fee payment is not refundable.
- (4) Renewal of an Asbestos Consultant Certificate. An Asbestos Consultant certificate is valid for a period of one year. The Director may renew an Asbestos Consultant certificate, provided the current certificate holder appears in person at one of the Division of Occupational Safety offices listed in 453 CMR 6.19: *Appendix I*, and makes written application for renewal. Application for renewal should be made no later than seven calendar days before the expiration of the current certificate. The submission of a renewal application later than seven days before the expiration of the current certificate may result in renewal after the expiration of the current certificate. Said application for renewal shall include submission of the items referenced at 453 CMR 6.07(3)(a) through (f), including a current certificate of refresher training in the discipline for which certification is sought, as specified at 453 CMR 6.10(5).
- (5) Delivery of Services. Because of the highly diversified, technical nature of asbestos consulting, comprehensive requirements for the conduct of the work are not set forth in 453 CMR 6.00. Asbestos Consultants shall perform the functions authorized at 453 CMR 6.07(1)(a) through (d), as applicable, in accordance with the requirements of 453 CMR 6.00, applicable EPA asbestos standards and protocols, including 40 CFR Part 763, Subpart E, other applicable federal standards and in accordance with professional standards generally recognized as "state-of-the-art" by the asbestos consulting industry and asbestos professional associations, and in accordance with current practices taught by Certified Training Providers.

6.08: continued

6. A description of the quality control procedures and programs utilized by the applicant.
- (c) Results indicating proficiency in the two most recent rounds of the applicable quality control program(s) required by 453 CMR 6.08(4)(e). Documentation shall be in the form of legible copies of official correspondence or certificates from the provider of the applicable quality control program. Applicants from within the Commonwealth seeking certification as Class B or Class C Asbestos Analytical Services may submit the single most recent quality control round result, but their receipt of certification and approval pursuant to 453 CMR 6.08(2) may be contingent upon the results of a laboratory inspection at the discretion of the Director.
- (d) A money order or certified bank check payable to the Commonwealth of Massachusetts in the amount of the entire annual fee of \$350.00, or any other amount established for such certificate pursuant to M.G.L. c. 7, § 3B. If the Director denies, revokes, suspends or refuses to renew a certificate for reasons specified in 453 CMR 6.04, the fee payment is not refundable.
- (e) Such other information as the Director may reasonably require.

(3) Renewal of an Asbestos Analytical Service Certificate. A certificate as a provider of Asbestos Analytical Services is valid for a period of one year. The Director may renew an Asbestos Analytical Service certificate upon written application for renewal by the certificate holder. Renewal applications should be submitted to the Department of Labor and Workforce Development no later than 30 calendar days before the expiration of the current certificate. The submission of a renewal application later than 30 days before the expiration of the current certificate may result in renewal after the expiration of the current certificate. Said application for renewal shall include submission of the items referenced at 453 CMR 6.08(2)(a) through (e). The Director may waive the requirement for resubmission of the information specified at 453 CMR 6.08(2)(b) where there has been no substantive change in the information submitted with a previous application, and the applicant attests to such.

(4) Operating Requirements for Asbestos Analytical Services. Because of the highly diversified, technical nature of asbestos analysis, comprehensive requirements for the conduct of the work are not set forth in 453 CMR 6.00. Certified providers of Asbestos Analytical Services shall conduct asbestos analytical work in accordance with officially recognized methodologies and generally accepted industrial hygiene laboratory practices. Providers of Asbestos Analytical Services shall minimally adhere to the following operating requirements, as a condition of certification:

- (a) Designation of Asbestos Laboratory Supervisor. Applicants for certification as providers of Asbestos Analytical Services shall designate a qualified Asbestos Laboratory Supervisor, who shall be jointly responsible with other Responsible Persons of the certified Asbestos Analytical Service, if any, for the adherence to the applicable analytical protocols, the maintenance of proper quality control procedures and the accuracy of the analytical results.
- (b) Use of Personnel. The Asbestos Laboratory Supervisor and the Responsible Persons of the certified Asbestos Analytical Service shall ensure that no person shall perform, or be directed to perform, any asbestos analysis in the direct business interest of an Asbestos Analytical Service unless that person is a Responsible Person or an employee of said Asbestos Analytical Service.
- (c) Possession of Adequate Equipment and Supplies. Asbestos Analytical Services shall possess all equipment and supplies necessary to perform the services offered. Equipment shall be calibrated and maintained as specified by the analytical protocols used or generally accepted industrial hygiene practices.
- (d) Training. All employees and Responsible Persons of an Asbestos Analytical Service who perform any asbestos analysis shall have successfully completed appropriate training, as specified at 453 CMR 6.08(4)(d)1. through 3.:

1. Training Requirements for Class A and Class B Certificates. All employees and Responsible Persons of Class A and Class B Asbestos Analytical Services shall have successfully completed an approved course of training in the techniques and procedures for identification of asbestos in bulk samples (*e.g.* McCrone Research Institute Asbestos Bulk Analysis course, or an equivalent course acceptable to the Director).

6.09: Certification and Other Requirements for Training Providers

(1) Application for Certification as an Asbestos Training Provider. Applicants for certification as an Asbestos Training Provider shall submit the following to the Director:

(a) A completed application form with attachments as prescribed by the Director, which shall, at a minimum, include the following:

1. A list of all names, acronyms or other identifiers under which the applicant intends to conduct training and the address(es) and telephone number(s) of the business.
 2. A list of those training course(s) set forth in 453 CMR 6.10 which the applicant intends to offer.
 3. Corporate Articles of Organization and a Certificate of Good Standing issued by the Massachusetts Secretary of State or a DBA (doing business as) certificate for the Asbestos Training Provider issued by the city or town where the business is located.
 4. A certified and notarized statement by a Responsible Person of the applicant that the applicant has paid all tax obligations current and due to the Commonwealth as of the date of application.
 5. Evidence that asbestos training services to be performed by the applicant are covered under a current workers' compensation policy or self-insurance program acceptable to the Commonwealth.
 6. A list of all occupational safety and health-related citations or notices of violation, including notices of noncompliance, notices of responsibility, notices of intent to assess an administrative penalty, orders, consent orders and court judgements, received by the Responsible Persons of the applicant in the two years prior to the date of application, and the issuing agency or department and final disposition of such citation or notice.
 7. A sample agenda for each training course which the applicant intends to offer, which shows topics covered and the amount of time to be given to each topic.
 8. A copy of the training manual and all printed material to be distributed in each course.
 9. A description of the teaching methods to be employed, including audio-visual aids.
 10. A description of the hands-on training to be provided (where required), including facilities, training methods, numbers of students to be accommodated, and ratio of students to instructors.
 11. A description of the equipment that will be used in both classroom lectures and in hands-on training.
 12. A list of the names and qualifications of the persons who will provide the training in each course, including their education, training, and experience.
 13. An example of the written examination to be given in each course.
 14. A list of the tuition or other fees required.
 15. A copy of the certificate of completion to be given to participants.
 16. A list of all states and federal agencies which have certified, accredited or given other forms of approval to the applicant to provide asbestos training, including the name, address and telephone number of the person, department, or agency giving such approval, and copies of all such written approvals received.
 17. A statement made under the penalties of perjury by a Responsible Person of the applicant that the applicant will comply with the applicable requirements of 453 CMR 6.00.
- (b) Such other information as the Director may reasonably require.
- (c) A money order or certified bank check payable to the Commonwealth of Massachusetts in the amount of the entire annual fee of \$850.00, or any other amount established for such certificate pursuant to M.G.L. c. 7, § 3B. If the Director denies, revokes, suspends or refuses to renew a certificate for reasons specified in 453 CMR 6.04, the fee payment is not refundable.

6.10: continued

(2) Allowance for Prior Training Courses.

(a) Any person who has successfully completed the applicable initial and refresher training for certification as an Asbestos Worker, Asbestos Supervisor, Asbestos Inspector, Asbestos Management Planner, Asbestos Project Designer or Asbestos Project Monitor prior to the effective date of 453 CMR 6.00 shall not be required to take another initial training course to fulfill his or her training requirements for certification in that discipline pursuant to 453 CMR 6.00, provided that said training was:

1. Supplied by an EPA-approved provider of asbestos training;
2. Approved by a state asbestos licensing and/or accreditation program with applicable asbestos training requirements no less stringent than those set forth in Appendix C to Subpart E of 40 CFR Part 763; or
3. Approved by the Director; and provided that said course was substantially equivalent in length and content to the applicable asbestos training course specified at 453 CMR 6.10(4).

(b) Any person who had successfully completed Asbestos-Associated Project Worker training required by 453 CMR 6.10(4)(h) and 453 CMR 6.13(1)(a) prior to June 26, 1998, shall not be required to take another training course to fulfill his or her training requirements for participation in Asbestos-Associated Project Work or Small-Scale Asbestos Projects, provided that said training course meets one of the criteria set forth at 453 CMR 6.10(2)(a)1. through 3.. The refresher training requirements of the OSHA Asbestos Standard 29 CFR Part 1926.1101 shall also apply to the the training of Asbestos-Associated Project Workers.

(c) Where an initial or refresher training certificate has expired, the holder shall have a grace period of one year from the date of expiration of said training certificate in which to take another refresher training course in the same discipline in lieu of re-taking the applicable initial course of training.

(3) Determination of Course Equivalency. The Director shall determine whether courses and examinations are equivalent to the training and examination requirements of 453 CMR 6.00.

(4) Training Curriculum. Training courses required for licensure or certification pursuant to 453 CMR 6.05 through 6.07 or work on an Asbestos-Associated Project or a Small-Scale Asbestos Project shall be conducted by training providers certified pursuant to 453 CMR 6.09, except as provided in 453 CMR 6.10(2) and at a minimum, meet the following criteria of duration, subject matter and examination:

(a) General.

1. Courses of instruction required by 453 CMR 6.10(1) and (4) shall be specific for each of the disciplines as set forth in 453 CMR 6.10(1). The topics or subjects of instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and field trips or hands-on practice, as appropriate.
2. Courses requiring hands-on training must be presented in an environment suitable to permit participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participant participation shall not substitute for hands-on training. Hands-on training sessions shall maintain a student-to-instructor ratio of not greater than 10:1. The Division of Occupational Safety recommends that lecture sections of asbestos training courses have a student to instructor ratio no higher than 25:1.
3. For purposes of 453 CMR 6.00, one training day shall consist of eight-hours of actual classroom instruction, hands-on training and field trips, or combinations thereof, including lunch and breaks.
4. Asbestos-Associated Project Worker training may be given on non-consecutive days, provided that the entire course of instruction is given within a two-week period. Asbestos training for the asbestos disciplines requiring certification pursuant to 453 CMR 6.00 shall be given on consecutive days, except as authorized by the Director in writing.
5. The Director reserves the right to administer a proficiency examination to any person applying for certification pursuant to 453 CMR 6.00.

6.10: continued

(h) Asbestos-Associated Project Workers. Persons seeking designation as Asbestos-Associated Project Workers shall successfully complete an approved two-day training course. The training course for Asbestos-Associated Project Workers shall include lectures, demonstrations, and a minimum of four hours of hands-on training. An examination is not required. The course shall adequately address the following subjects:

1. Background information on asbestos.
2. Potential health effects related to asbestos exposure.
3. Recognition of damage, deterioration and delamination of asbestos material.
4. Employee personal protective equipment.
5. Personal hygiene.
6. Proper methods of handling asbestos material.
7. Relevant federal, state and local regulatory requirements.
8. Hands-on training.

(5) Refresher Training. Annual refresher training is required for Asbestos Workers, Asbestos Supervisors and all Asbestos Consultant disciplines as a condition of maintaining certification. Annual refresher training is recommended but not required for Asbestos-Associated Project Workers. Satisfactory completion of such training shall be a condition of certification renewal and evidence of satisfactory completion shall be included in the annual renewal application. Training providers shall determine successful completion of a refresher course by conducting a written examination consisting of 25 questions at the conclusion of the course. A score of 70% or higher shall be considered passing.

(a) Refresher training for all disciplines except Asbestos Inspectors shall be of one-day duration. Refresher training for Asbestos Inspectors shall be ½ day in length. Asbestos Management Planners shall attend the Asbestos Inspector refresher course plus an additional ½ day on management planning.

(b) The refresher curriculum for all disciplines shall include a review of changes in applicable state and federal laws, regulations, policies and guidelines; developments or changes in state-of-the-art procedures and equipment; and the key areas of initial training specific to each discipline.

6.11: Recordkeeping

(1) Maintenance, Submission and Retention of Records. Certified Training Providers, Asbestos Contractors, Asbestos Analytical Services, Asbestos Consultants and employers of Asbestos Associated Project Workers shall maintain the records as indicated at 453 CMR 6.11(2) through (6) and make said records available to the Director upon request. Entities whose principal place of business is outside of the Commonwealth of Massachusetts shall provide photocopies of such records or documents within ten business days of receipt of a written request from the Director. Records and documents required to be kept by 453 CMR 6.11 shall be retained for a period of 30 years from the date of project or activity completion, except that records required to be kept by 453 CMR 6.11(2) shall be kept for a period of at least 15 years. Entities or persons ceasing to do business, or relocating the principal place of business shall so notify the Director in writing within 30 days of such event. The Director, on receipt of such notification may instruct that the records be surrendered to the Department, or may specify a repository for such records. The entity or person shall comply with the Director's instructions within 60 days.

(2) Certified Training Providers. Certified Training Providers shall maintain the following records:

- (a) Copies of all written materials required to be submitted with the application for certification and course approval by 453 6.09(1).
- (b) Copies of all pre-course notifications required to be filed by 453 CMR 6.09(3)(a) with applicable course agendas.
- (c) Copies of all post-course notifications required by 453 CMR 6.09(3)(g), including the name, address, telephone number, Social Security Identification Number and final examination score of each person who completed each course.
- (d) A copy of the certificate of completion of each student passing the course.
- (e) The name, business address and telephone number of the person(s) who proctored the examinations.

6.11: continued

(5) Certified Asbestos Consultants. Certified Asbestos Consultants shall maintain all documentation pertaining to inspections, assessments, management plans, project designs sampling, project monitoring, or other asbestos consultation performed by them within the scope of each consultant discipline set forth at 453 CMR 6.07. Said records shall include an identification of the client, the dates and locations of service and the results or conclusions. Logs for completed projects shall be maintained at the consultant's principal place of business. Logs for current projects shall be kept at the asbestos project worksite.

(6) Employers of Asbestos-Associated Project Workers. Employers of Asbestos-Associated Project Workers shall maintain at the place of employment copies of each worker's Associated-Project Worker training certificate issued by a certified Asbestos Training Provider and any and all documents required to be kept by 29 CFR Part 1926.1101.

6.12: Notification of Asbestos Projects

An Asbestos Contractor or operator of an Asbestos Response Action shall notify the Director before engaging in any Asbestos Response Action which involves more than three linear feet of asbestos on or in pipes, ducts or wires or more than three square feet of asbestos on or in structures or components other than pipes, ducts or wires. Notification shall be on forms jointly prescribed by the Director and the Department of Environmental Protection. Notification shall be postmarked, hand-delivered or Faxed at least ten days before the project start date, or, in the case of an Emergency Project, within one working day after the project start date. Fulfillment of the notification requirements of 453 CMR 6.12 shall not relieve the Asbestos Contractor, operator of the project or facility owner of the responsibility for making written notification as may be required by any other municipality, agency of the Commonwealth, or any agency of the federal government.

6.13: Work Practices and other Requirements for Small-Scale Asbestos Projects, Asbestos-Associated Projects and Work Operations Involving Non-Friable ACBM(1) Requirements for Small-Scale Asbestos Projects and Asbestos-Associated Projects.

(a) Exemption from Licensing and Certification Requirements; Requirements for Training. Persons or entities who carry out Small-Scale Asbestos Projects need not be licensed as Asbestos Contractors or certified as Asbestos Workers or Asbestos Supervisors, provided that all persons participating in the work have received the Asbestos Associated Project Worker training specified by 453 CMR 6.10(4)(h), the Asbestos Worker training specified at 453 CMR 6.10(4)(c) or the Asbestos Supervisor training specified at 453 CMR 6.10(4)(c) and provided that the work is conducted in accordance with the applicable provisions of 453 CMR 6.13.

(b) Personal Protection. All employees who perform Small-Scale Asbestos Projects shall be provided with personal protection in accordance with the requirements of 453 CMR 6.03(12).

(c) Work Practice Requirements. Persons or entities carrying out, or having supervisory authority over, Small-Scale Asbestos Projects or Asbestos-Associated Projects shall ensure that the work practice requirements of 453 CMR 6.13(1)(c) are met.

1. All persons not directly involved in the work shall be excluded from the Work Area. Physical barriers shall be used as necessary to limit access to the Work Area for the duration of the project.

2. Dust-tight barriers shall be constructed to insure that asbestos fibers released during work activities are contained within the Work Area. Glove bags and prefabricated mini-enclosures are permitted in place of constructed barriers.

3. Before any ACM is disturbed it shall be wet with Amended Water, and it shall be kept wet throughout the work operation until properly containerized.

4. Any friable ACM exposed as a result of the work operation shall be suitably enclosed or encapsulated as specified by 453 CMR 6.14(4)(d)4. or 6.14(4)(d)5.

5. HEPA vacuuming or wet cleaning shall be used to decontaminate the Work Area and any equipment used in the work operation until all surfaces are free of visible debris.

6.14: continued

(3) Requirement for Use of Certified Asbestos Workers. The Responsible Persons of the licensed Asbestos Contractor or other entity carrying out an Asbestos Response Action shall ensure that all persons who perform the functions of Asbestos Workers in the Work Area are Responsible Persons or employees of said Asbestos Contractor or entity and that said persons are certified pursuant to 453 CMR 6.03(3).

(4) Required Work Practices. Asbestos Contractors, Asbestos Supervisors and others carrying out, or having supervisory authority over, Asbestos Response Actions shall ensure that the work practice requirements of 453 CMR 6.14(4) are met.

(a) Work Area Preparation.

1. Exclusion of Persons from the Work Area. All persons not directly involved in the work operation shall be excluded from the Work Area.

2. Sign In/Out Log. The Asbestos Contractor or other entity carrying out an Asbestos Response Action shall ensure that each person entering or leaving the Work Area individually completes the appropriate entries in the sign-in/out log referenced at 453 CMR 6.11(3)(b)5., including printed name, signature, Massachusetts Certification Number, where applicable, and the time of each entry or exiting.

2. Posting of Warning Signs. Warning signs meeting the specifications set forth in 29 CFR Part 1926.1101 (k)(6)(i) shall be posted at all approaches to the Work Area. Signs shall be posted a sufficient distance from the Work Area to permit a person to read the sign(s) and take precautionary measures to avoid exposure to asbestos.

3. Shutdown of HVAC Systems. The facility heating, ventilation and air-conditioning (HVAC) systems of the Work Area shall be shut down, locked out and isolated.

4. Removal of Moveable Objects. All moveable objects shall be removed from the Work Area. Items to be reused which may have been previously contaminated with asbestos shall be decontaminated by HEPA vacuuming and/or wet cleaning prior to their being removed from the Work Area. All other contaminated items which are not to be reused shall be disposed as asbestos waste.

5. Covering of Non-Moveable Objects. All non-moveable or fixed objects remaining within the Work Area shall be wrapped or covered with six mil thick (minimum) plastic sheeting. Plastic sheet coverings shall be completely sealed with duct tape or equivalent.

6. Isolation of Work Area. The Work Area shall be isolated by sealing all openings, including but not limited to, windows, doors, ventilation openings, drains, grilles, and grates with six mil thick (minimum) plastic sheeting and duct tape or the equivalent. For Asbestos Response Actions performed in Public Facilities, large openings such as open doorways, elevator doors, and passageways shall be first sealed with solid construction, such as plywood over studding, which shall constitute the outermost boundary of the asbestos Work Area. All cracks, seams and openings in such solid construction shall be caulked or otherwise sealed, so as to prevent the movement of asbestos fibers out of the Work Area.

7. Covering of Floor and Wall Surfaces. Except as allowed by 453 CMR 6.14(4)(a)7.a. through c., floor and wall surfaces shall be covered with plastic sheeting. All seams and joints shall be sealed with duct tape or equivalent. Floor covering shall consist of at least two layers of six mil plastic sheeting, with the edges up-turned to cover at least the bottom 12 inches of the adjoining wall(s). Wall covering shall consist of a minimum of two layers of four mil plastic sheeting. Wall covering shall extend from ceiling to floor and overlap the up-turned floor coverings without protruding onto the floor. Duct tape shall be used to seal the seams in the plastic sheeting at the wall-to-floor joints.

a. Exception to Covering Requirement Where Surfaces Are Impervious. Compliance with 453 CMR 6.14(4)(a)7. is optional where floors and walls are covered by ceramic tile or other impervious materials that are free from holes, drains, cracks, fissures or other openings and which may be thoroughly decontaminated by washing at the conclusion of the work, provided that such action does not result in the passage of asbestos fibers from the Work Area.

b. Exception to Covering Requirement For Abatement Surfaces. Compliance with 453 CMR 6.14(4)(a)7. is not required for those floor and wall surfaces from which asbestos coverings are removed.

6.14: continued

(c) Requirement For Work Area Ventilation System. Except as allowed by 453 CMR 6.14(4)(c)1. and 2., a HEPA-filtered Work Area ventilation system shall be used to maintain a reduced atmospheric pressure of at least -0.02 column inches of water pressure differential within the contained Work Area. The system shall be in operation at all times from the commencement of the asbestos project until the requirements of 453 CMR 6.14(5)(b) have been met. The ventilation equipment utilized shall be of sufficient capacity to provide a minimum of four air changes per hour. Ventilation units shall be operated in accordance with Appendix J of EPA Guidance Document EPA 560/5-85-024 and 29 CFR Part 1926.1101(g)(5)(i). Make-up air entering the Work Area shall pass through the decontamination system whenever possible. Exhaust air shall be HEPA-filtered before being discharged outside of the Work Area. Exhaust air tubes or ducts associated with the Work Area ventilation system shall be free of leaks. In all cases where feasible exhaust air shall be discharged to the outside of the building. If access to the outside is not available, exhaust air shall be discharged to an area within the building, but in no case shall exhaust air be discharged into occupied areas of the building or into areas of the building which contain exposed or damaged asbestos. When exhaust air is discharged to the interior of a building, the outflow shall be sampled and analyzed at least once per day per machine using sampling and analysis methods prescribed by the NIOSH Analytical Method 7400 referenced at 40 CFR Part 763, Appendix A. If at any time fiber levels in the exhausted air exceed 0.01 fibers/cc the work operation shall stop immediately, and the corresponding ventilation unit(s) shall be shut off and repaired or replaced before the Asbestos Response Action is resumed.

1. Exception to Work Area Ventilation System Requirement for Work Less than 25 Linear/Ten Square Feet. Compliance with 453 CMR 6.14(4)(c) is optional for Asbestos Response Actions which involve the removal, encapsulation or enclosure of 25 or fewer linear feet of asbestos on or in pipes, ducts or wires or ten or fewer square feet of asbestos on or in structures or components other than pipes, ducts or wires.

2. Exception to Work Area Ventilation System Requirement where Glovebags are Used. Compliance with 453 CMR 6.14(4)(c) is optional for Asbestos Response Actions where Glovebags are used as the sole means of removal or repair.

(d) Work Procedures.

1. Wetting of Asbestos. Prior to removal, ACM shall be thoroughly wetted with Amended Water. Water shall not be applied in amounts that will cause run-off or leakage of the water from the Work Area. Once removed, ACM shall be kept wet until containerized pursuant to 453 CMR 6.14(4)(d)2.

2. Containerization of Asbestos. Removed ACM and asbestos-contaminated debris within the Work Area shall be promptly cleaned up and containerized. Containerized ACM shall be removed from the Work Area at least once each working shift. Waste not containing components with sharp edges shall be containerized in double-thickness plastic bags (six mil minimum thickness each bag) or in metal, plastic or fiber drums with locking lids. ACM with sharp-edged components shall be contained in metal, plastic or fiber drums with locking lids. Large components removed intact shall be wrapped in a minimum of two layers of six mil polyethylene sheeting with all joints and seams sealed with duct tape, and labeled as ACM prior to removal from the contained Work Area.

3. Material Deposition. ACM shall not be dropped or thrown from heights greater than 15 feet. Materials that must be lowered from greater than 15 feet must be transported through a dust-tight chute, or containerized prior to lowering to the ground or floor.

4. Enclosure. Where friable ACM is enclosed during an Asbestos Response Action, the following provisions shall also apply:

a. Enclosures over pipes, ducts, tanks, boilers or other objects shall be labeled as containing ACM and identified on building records.

b. Enclosure systems shall be constructed to be dust tight.

5. Encapsulation. Where friable ACM is encapsulated during an Asbestos Response Action, encapsulant shall not be applied to severely damaged or deteriorating ACM.

6.14: continued

(5) Clearance Monitoring Procedures. The clearance monitoring procedures specified by 453 CMR 6.14(5)(a) and (b) shall be performed only by a certified Asbestos Project Monitor who is not an employee or Responsible Person of the Asbestos Contractor or entity which conducted the work. The Asbestos Contractor shall not subcontract with an Asbestos Project Monitor to perform the visual inspection required by 453 CMR 6.14(5)(a) or the clearance air monitoring required by 453 CMR 6.14(5)(b) for an Asbestos Response Action conducted in a facility subject to the requirements of AHERA.

(a) Visual Inspections. A certified Asbestos Project Monitor shall inspect all surfaces within the Work Area for dust, debris and other particulate residue. Should any Visible Debris be found in the Work Area, it shall be repeatedly cleaned by the Asbestos Contractor or entity performing the work in accordance with 453 CMR 6.14(4)(f) until the no visible debris criterion is achieved. Where clearance air monitoring is required by 453 CMR 6.14(5)(b), the achievement of the no visible debris criterion shall precede the collection of clearance air monitoring samples.

(b) Clearance Air Monitoring. The clearance air monitoring requirements of 453 CMR 6.14(5)(b) shall be met for all Asbestos Response Actions except those conducted in facilities not subject to the requirements of AHERA where the Glove Bag is used as the sole means of removal or repair.

1. Clearance Air Monitoring Requirements for Larger Asbestos Response Actions Conducted in School Facilities Subject to AHERA. For Asbestos Response Actions conducted in school facilities subject to AHERA which involve the removal, encapsulation or enclosure of greater than 160 square feet or 260 linear feet of friable ACM, clearance air monitoring samples shall be collected and analyzed by transmission electron microscopy (TEM) as prescribed by Appendix A to Subpart E of 40 CFR part 763.

a. In addition to adhering to the above, the certified Asbestos Project Monitor shall use a rotameter or other appropriate flow measuring device, the calibration of which is traceable to a primary standard, to measure the air flow in the sampling train immediately prior to and immediately following the collection of the clearance air monitoring samples.

b. Air samples shall be collected using the aggressive sampling methods described in Appendix A of 40 CFR Part 763, Subpart E.

c. The analysis of all clearance air monitoring samples collected pursuant to the requirements of 453 CMR 6.14(5)(b)1. shall be analyzed by Asbestos Analytical Services certified and approved pursuant to 453 CMR 6.08.

d. Where clearance air monitoring samples are collected and analyzed pursuant to the requirements of 453 CMR 6.14(5)(b)1. an Asbestos Response Action shall be considered complete when the average concentration of asbestos in five air samples collected within the work area and analyzed by the TEM protocol described in Appendix A of 40 CFR Part 763, Subpart E, is not statistically different, as determined through application of the Z-test calculation found in that Appendix A, from the average asbestos concentration of five air samples collected at the same time outside the work area and analyzed in the same manner, and the average asbestos concentration of the three field blanks described in the same Appendix A of Subpart E, of 70 structures per square millimeter.

e. An action may also be considered complete if the volume of air drawn for each of the five samples collected within the work area is equal to or greater than 1,199 L of air for a 25 mm filter or equal to or greater than 2,799 L of air for a 37 mm filter, and the average concentration of asbestos as analyzed by the TEM method in Appendix A of 40 CFR Part 763, Subpart E, for the five air samples does not equal the filter background level of 70 structures per square millimeter.

f. Should the work area fail the clearance air testing requirements of 453 CMR 6.14(5)(b)1.d. or e., as applicable, it shall be repeatedly cleaned by the Asbestos Contractor or other entity performing the work as prescribed by 453 CMR 6.14(4)(f) until the requirements of 453 CMR 6.14(5)(b)1.d. or e. are met.

6.15: continued

(3) Protective Clothing and Equipment.

(a) The employer shall provide all employees involved in asbestos projects with full body disposable clothing, including head, body, and foot coverings consisting of material impenetrable by asbestos fibers, and equipment as required by OSHA Asbestos Regulations at 29 CFR Part 1926.1101 or EPA Asbestos Regulations at 40 CFR, Part 763, Subpart G, as applicable.

(b) Non-skid footwear shall be provided to employees where slipping hazards exist. Disposable protective clothing shall be adequately sealed to the footwear to prevent contamination.

(c) Employees shall be provided with eye protection, gloves and hard hats, as required.

(4) Medical Monitoring. The employer shall provide employees engaged in asbestos projects with the medical monitoring specified by OSHA Asbestos Regulations at 29 CFR Part 1926.1101(m). Physical examinations shall be given by a board eligible/certified occupational health physician or by a licensed physician with known expertise in occupational health. Persons other than licensed physicians who administer the pulmonary function testing shall have completed a training course in spirometry sponsored by an appropriate academic or professional institution. Roentgenograms shall be interpreted and classified only by a B-reader.

6.16: Cease and Desist Orders

(1) General. The Director, upon determination that there is a violation of any work place standard which compromises the protection of the general public or the occupational health and safety of workers, or of any standard or requirement for licensure, may order any worksite to be closed by way of the issuance of a cease and desist order enforceable in the appropriate courts of the Commonwealth. For purposes of such cease and desist orders, the worksite may include the area where asbestos-related work is being performed and other areas of the facility which the Director determines may be hazardous to the health and safety of workers and the general public as a result of such asbestos work.

(2) Form and Content of Order. Cease and Desist Orders shall be in writing and shall, at a minimum, contain the following:

(a) A description of the premises or work area to which the order applies;

(b) Violations serving as the basis for issuing the order; and

(c) Any conditions that must be met or remedial action to be taken before the order can be lifted.

(3) Issuance of Cease and Desist Orders. A cease and desist order shall be effective immediately upon delivery in hand or by certified mail to any Responsible Person or agent of the contractor or entity performing the work. A copy of the order shall also be delivered in hand or by certified mail to the facility owner or his or her agent. A party objecting to such order must comply with such order but may make a written request for a hearing pursuant to M.G.L. c. 30A within ten days following service of the order.

(4) Posting of the Work Site. At the time the cease and desist order becomes effective, the Director shall cause the work site to be conspicuously posted, such posting to contain the content of the cease and desist order and any other information the Director determines necessary to secure the work site and to adequately warn of hazards. Notices shall remain posted until the order is lifted.

(5) Access to Closed Work Site. Access to the work site closed by a cease and desist order shall be restricted to persons authorized by the Director.

6.17: Responsibility For Compliance; Penalties

(1) Any person, firm, corporation, or other entity performing work subject to the requirements of 453 CMR 6.00, including, without limitation, Asbestos Contractors, Asbestos Workers, and Asbestos Supervisors, shall be responsible for compliance with the provisions thereof.

6.20: The Removal, Containment or Encapsulation of Asbestos Appendix II

453 CMR 6.20: *Appendix II* describes the course content for asbestos training as set forth at 40 CFR Part 763, Appendix C to Subpart E - Asbestos Model Accreditation Plan.

1. Workers.

...The training course shall adequately address the following topics:

- (a) Physical characteristics of asbestos. Identification of asbestos, aerodynamic characteristics, typical uses, and physical appearance, and a summary of abatement control options.
- (b) Potential health effects related to asbestos exposure. The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency periods for asbestos-related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.
- (c) Employee personal protective equipment. Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance, and storage procedures for respirators; methods for field testing of the face piece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.
- (d) State-of-the-art work practices. Proper work practices for asbestos abatement activities, including descriptions of proper construction; maintenance of barriers and decontamination enclosure systems; positioning of warning signs; lock-out of electrical and ventilation systems; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high-efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair of ACM; emergency procedures for sudden releases; potential exposure situations; transport and disposal procedures; and recommended and prohibited work practices.
- (e) Personal hygiene. Entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and potential exposures, such as family exposure.
- (f) Additional safety hazards. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.
- (g) Medical monitoring. OSHA and EPA Worker Protection Rule requirements for physical examinations, including a pulmonary function test, chest X-rays, and a medical history for each employee.
- (h) Air monitoring. Procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.
- (i) Relevant Federal, State and local regulatory requirements, procedures, and standards. With particular attention directed at relevant EPA, OSHA, and State regulations concerning asbestos abatement workers.
- (j) Establishment of respiratory protection programs.
- (k) Course review. A review of key aspects of the training course.

2. Contractor/Supervisors.

...The contractor/supervisor training course shall adequately address the following topics:

- (a) The physical characteristics of asbestos and asbestos-containing materials. Identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of abatement control options.
- (b) Potential health effects related to asbestos exposure. The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; and latency period for diseases.

6.20: continued

(b) Potential health effects related to asbestos exposure. The nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency periods for asbestos-related diseases; a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(c) Functions/qualifications and role of inspectors. Discussions of prior experience and qualifications for inspectors and management planners; discussions of the functions of an accredited inspector as compared to those of an accredited management planner; discussion of inspection process including inventory of ACM and physical assessment.

(d) Legal liabilities and defenses. Responsibilities of the inspector and management planner; a discussion of comprehensive general liability policies, claims-made and occurrence policies, environmental and pollution liability policy clauses; state liability insurance requirements; bonding and the relationship of insurance availability to bond availability.

(e) Understanding building systems. The interrelationship between building systems, including: an overview of common building physical plan layout; heat, ventilation and air conditioning (HVAC) system types, physical organization, and where asbestos is found on HVAC components; building mechanical systems, their types and organization, and where to look for asbestos on such systems; inspecting electrical systems, including appropriate safety precautions; reading blueprints and as-built drawings.

(f) Public/employee/building occupant relations. Notifying employee organizations about the inspection; signs to warn building occupants; tact in dealing with occupants and the press; scheduling of inspections to minimize disruptions; and education of building occupants about actions being taken.

(g) Pre-inspection planning and review of previous inspection records. Scheduling the inspection and obtaining access; building record review; identification of probable homogeneous areas from blueprints or as-built drawings; consultation with maintenance or building personnel; review of previous inspection, sampling and abatement records of a building; the role of the inspector in exclusions for previously performed inspections.

(h) Inspecting for friable and non-friable ACM and assessing the condition of friable ACM. Procedures to follow in conducting visual inspections for friable and non-friable ACM; types of building materials that may contain asbestos; touching materials to determine friability; open return air plenums and their importance in HVAC systems; assessing damage, significant damage, potential damage, and potential significant damage; amount of suspected ACM, both in total quantity and as a percentage of the total area; type of damage; accessibility; material's potential for disturbance; known or suspected causes of damage or significant damage; and deterioration as assessment factors.

(i) Bulk Sampling/documentation of asbestos. Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials (EPA 560/5-85-030a October 1985)"; techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials; sampling of non-friable materials; techniques for bulk sampling; inspector's sampling and repair equipment; patching or repair of damage from sampling; discussion of polarized light microscopy; choosing an accredited laboratory to analyze bulk samples; quality control and quality assurance procedures. EPA's recommendation that all bulk samples collected from school or public and commercial buildings be analyzed by a laboratory accredited under the NVLAP administered by NIST.

(j) Inspector respiratory protection and personal protective equipment. Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures for respirators; methods for field testing of the face piece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing.

6.20: continued

(h) Regulatory review. Focussing on the OSHA Asbestos Construction Standard found at 29 CFR 1926.58; the National Emission Standard for Hazardous Air Pollutants (NESHAP) found at 40 CFR part 61 Subparts A (General Provisions) and M (National Emission Standard for Asbestos); EPA Worker Protection Rule found at 40 CFR part 763, Subpart G; TSCA Title II; applicable State regulations.

(i) Recordkeeping for the management planner. Use of field inspector's data sheet along with laboratory results; on-going recordkeeping as a means to track asbestos disturbance; procedures for recordkeeping. EPA recommends that States require the use of standardized forms for purposes of management plans and incorporate the use of such forms into the initial training course for management planners.

(j) Assembling and submitting the management plan. Plan requirements in TSCA Title II section 203(I)(1); the management plan as a planning tool.

(k) Financing abatement actions. Economic analysis and cost estimates; development of cost estimates; present costs of abatement versus future operations and maintenance costs; Asbestos School Hazard Abatement Act grants and loans.

(l) Course review. A review of key aspects of the training course.

5. **Project Designer.**

... The abatement project designer training course shall adequately address the following topics:

(a) Background information on asbestos. Identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings; physical appearance of asbestos.

(b) Potential health effects related to asbestos exposure. Nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period for asbestos-related diseases; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancers of other organs.

(c) Overview of abatement construction projects. Abatement as a portion of a renovation project; OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.58).

(d) Safety system design specifications. Design, construction, and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; proper techniques for initial cleaning; use of negative-pressure exhaust ventilation equipment; use of HEPA vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove bag use.

(e) Field Trip. A visit to an abatement site or other suitable building site, including on-site discussions of abatement design and building walk-through inspection. Include discussion of rationale for the concept of functional spaces during the walk-through.

(f) Employee personal protective equipment. Classes and characteristics of respirator types; limitations of respirators; proper selection, inspection; donning, use, maintenance, and storage procedures for respirators; methods for field testing of the face piece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing.

(g) Additional safety hazards. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards.

(h) Fiber aerodynamics and control. Aerodynamic characteristics of asbestos fibers; importance of proper containment barriers; settling time for asbestos fibers; wet methods in abatement; aggressive air monitoring following abatement; aggressive air movement and negative-pressure exhaust ventilation as a clean-up method.

(i) Designing abatement solutions. Discussions of removal, enclosure, and encapsulation methods; asbestos waste disposal.

6.20: continued

(e) Asbestos abatement contracts, specifications, and drawings. Basic provisions of the contract; relationships between the principal parties, establishing chain of command; types of specifications, including means and methods, performance, and proprietary and nonproprietary; reading and interpreting records and abatement drawing; discussion of change orders; common enforcement responsibilities and authority of project monitor.

(f) Response actions and abatement practices. Pre-work inspections; pre-work considerations, precleaning of the work area, removal of furniture, fixtures, and equipment; shutdown/modification of building systems; construction and maintenance of containment barriers, proper demarcation of work areas; work area entry/exit, hygiene practices; determining the effectiveness of air filtration equipment; techniques for minimizing fiber release, wet methods, continuous cleaning; abatement methods other than removal; abatement area clean-up procedures; waste transport and disposal procedures; contingency planning for emergency response.

(g) Asbestos abatement equipment. Typical equipment found on an abatement project; air filtration devices, vacuum systems, negative pressure differential monitoring; HEPA filtration units, theory of filtration, design/construction of HEPA filtration units, qualitative and quantitative performance of HEPA filtration units, sizing the ventilation requirements, location of HEPA filtration units, qualitative and quantitative tests of containment barrier integrity; best available technology.

(h) Personal protective equipment. Proper selection of respiratory protection; classes and characteristics of respirator types, limitations of respirators; proper use of other safety equipment, protective clothing selection, use, and proper handling, hard/bump hats, safety shoes; breathing air systems, high pressure v. low pressure, testing for Grade D air, determining proper backup air volumes.

(i) Air monitoring strategies. Sampling equipment, sampling pumps (low v. high volume), flow regulating devices (critical and limiting orifices), use of fibrous aerosol monitors on abatement projects; sampling media, types of filters, types of cassettes, filter orientation, storage and shipment of filters; calibration techniques, primary calibration standards, secondary calibration standards, temperature/pressure effects, frequency of calibration, recordkeeping and field work documentation, calculations; air sample analysis, techniques available and limitations of AHERA on their use, transmission electron microscopy (background to sample preparation and analysis, air sample conditions which prohibit analysis, EPA's recommended technique for analysis of final air clearance samples), phase contrast microscopy (background to sample preparation, and AHERA's limits on the use of phase contrast microscopy), what each technique measures; analytical methodologies, AHERA TEM protocol, NIOSH 7400, OSHA reference method (non-clearance), EPA recommendation for clearance (TEM); sampling strategies for clearance monitoring, types of air samples (personal breathing zone v. fixed-station area) sampling location and objectives (pre-abatement, during abatement, and clearance monitoring), number of samples to be collected, minimum and maximum air volumes, clearance monitoring (post-visual-inspection) (number of samples required, selection of sampling locations, period of sampling, aggressive sampling, interpretations of sampling results, calculations), quality assurance; special sampling problems, crawl spaces, acceptable samples for laboratory analysis, sampling in occupied buildings (barrier monitoring).

(j) Safety and health issues other than asbestos. Confined-space entry, electrical hazards, fire and explosion concerns, ladders and scaffolding, heat stress, air contaminants other than asbestos, fall hazards, hazardous materials on abatement projects.

(k) Conducting visual inspections. Inspections during abatement, visual inspections using the ASTM E1368 document; conducting inspections for completeness of removal; discussion of "how clean is clean?"

(l) Legal responsibilities and liabilities of project monitors. Specification enforcement capabilities; regulatory enforcement; licensing; powers delegated to project monitors through contract documents.

(m) Recordkeeping and report writing. Developing project logs/daily logs (what should be included, who sees them); final report preparation; recordkeeping under Federal regulations.

ATTACHMENT 4

453 CMR 9.00: CIVIL ADMINISTRATIVE PENALTIES

Section

- 9.01: Authority, Purpose, Scope and Severability
- 9.02: Definitions
- 9.03: Issuance of Written Warnings
- 9.04: Civil Citations
- 9.05: Temporary Restraining Orders and Preliminary and Permanent Injunctions for Certain Asbestos and Lead Violations
- 9.06: Service of Written Warnings and Civil Citations

9.01: Authority, Purpose, Scope and Severability

- (1) Authority. 453 CMR 9.00 is promulgated in accordance with and under the authority of M.G.L. c. 111, § 197B, M.G.L. c. 140, § 46R, and M.G.L. c. 149, § 6F½.
- (2) Purpose. 453 CMR 9.00 is intended to:
 - (a) Promote the health, safety, and welfare of workers, businesses, and the general public by deterring noncompliance with the laws, regulations, and related requirements to which 453 CMR 9.00 applies.
 - (b) Ensure that the Division assesses civil administrative penalties lawfully, fairly, and consistently.
- (3) Scope. 453 CMR 9.00 applies to M.G.L. c. 111, § 197B; M.G.L. c. 140, §§ 46A through 46R; and M.G.L. c. 149, §§ 6A through 6F½.
- (4) Severability. If any provision of 453 CMR 9.00 shall be held inconsistent with the laws of the Commonwealth, or held unconstitutional, either on its face, or as applied, the inconsistency or unconstitutionality shall not affect the remaining provisions.

9.02: Definitions

As used throughout 453 CMR 9.00, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

Civil Citation. A citation issued by the Commissioner pursuant to 453 CMR 9.00 for a violation or violations of a law or regulation enforced by the Division, as set forth at 453 CMR 9.01(3). Such citation shall identify each violation upon which it is based and may include an Order that the infraction be rectified or a civil penalty imposed or both.

Civil Penalty. A monetary penalty, payable to the Commonwealth of Massachusetts, ordered as part of a Civil Citation issued by the Commissioner pursuant to 453 CMR 9.00 for a violation or violations of a law or regulation enforced by the Division, as specified in 453 CMR 9.01(3).

Commissioner. The Commissioner of the Massachusetts Division of Occupational Safety who has been authorized to administer and enforce 453 CMR 9.00 by the Director of the Massachusetts Department of Labor.

Division. The Division of Occupational Safety of the Massachusetts Department of Labor.

License. Any document issued by the Division of Occupational Safety pursuant to M.G.L. c. 111, § 197B; M.G.L. c. 140, §§ 46A through 46R; or M.G.L. c. 149, §§ 6A through 6F½, that is nominally referred to as a "license", "certification", or "registration" and that authorizes the holder to exercise a certain privilege that would otherwise be prohibited without such license, certification, or registration.

Order. Any order issued by the Commissioner under the provisions of 453 CMR 9.00, including, but not limited to, an order for the cessation of all relevant activities of the person, firm, corporation, or other entity for failure to comply with the requirements of a Civil Citation.

9.04: continued

- (b) A monetary penalty of not more than \$2,500 may be issued for each Violation if:
1. the person, firm, corporation or other entity has not previously been criminally convicted of a Violation of M.G.L. c. 111, § 197B; M.G.L. c. 140, §§ 46A through 46R; or M.G.L. c. 149, §§ 6A through 6F½; or been issued a Civil Citation pursuant to 453 CMR 9.00; and
 2. the Commissioner has determined that the person, firm, corporation, or other entity possessed a Specific Intent.
- (c) A monetary penalty of not more than \$5,000 may be issued for each Violation if the person, firm, corporation or other entity has previously been criminally convicted of a Violation of M.G.L. c. 111, § 197B; M.G.L. c. 140, §§ 46A through 46R; or M.G.L. c. 149, §§ 6A through 6F½; or been issued a Civil Citation pursuant to 453 CMR 9.00.
- (3) Determination of the Amount of a Civil Penalty. In determining the amount of each Civil Penalty, the Division shall include, but not be limited to, the following considerations:
- (a) The actual and potential impact on public health, safety and welfare, and the environment of the failure to comply;
 - (b) Whether the person, firm, corporation, or other entity being assessed the Civil Penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance;
 - (c) Whether the person, firm, corporation, or other entity being assessed the Civil Penalty has previously failed to comply with any regulation, order, license, or approval issued or adopted by the Division, or any law which the Division has authority or responsibility to enforce;
 - (d) The deterrence of future noncompliance by the person, firm, corporation, or other entity, or by other such persons, firms, corporations or entities;
 - (e) The financial condition of the person, firm, corporation, or other entity being assessed the civil penalty; and
 - (f) The public interest.
- (4) Payment of a Civil Penalty. Payment of a Civil Penalty shall be made by certified check, cashier's check, or money order payable to the order of the Commonwealth of Massachusetts. No other form of payment shall be accepted. Payment of Civil Penalties shall be made within 21 days of the issuance of a Civil Citation or, if the Civil Citation is appealed, within 21 days of settlement or final administrative or judicial adjudication of the appeal, whichever is later.
- (5) Consequence(s) of Failure to Comply with the Requirements of a Civil Citation.
- (a) If a person, firm, corporation, or other entity to whom a Civil Citation is issued fails to pay a Civil Penalty or otherwise fails to comply with the requirements set forth in a Civil Citation, the Commissioner may order the cessation of all relevant activities of the person, firm, corporation, or other entity. Said Order shall be effective immediately upon service.
 - (b) If a person, firm, corporation, or other entity to whom an Order has been issued pursuant to 453 CMR 9.04(5)(a) is also the holder of a License issued by the Division pursuant to M.G.L. c. 111, § 197B; M.G.L. c. 140, §§ 46A through 46R; or M.G.L. c. 149, §§ 6A through 6F½, the Commissioner shall propose the suspension or revocation of the License at the same time the Order is issued and shall schedule an administrative hearing on said proposed suspension or revocation, within ten days after such Order is issued. Said administrative hearing shall be held in accordance with the requirements of M.G.L. c. 30A and 801 CMR 1.00. Any License suspension or revocation shall also apply to all affiliates of the person, firm, corporation, or other entity, as well as to any successor company or corporation that the Commissioner, upon investigation, determines not to have true independent existence apart from that of the violating person, firm, corporation, or other entity.
 - (c) No officer of any corporation which has failed to pay a Civil Penalty issued pursuant to 453 CMR 9.04 shall incorporate or serve as an officer of any corporation which did not have a legal existence as of the date that the penalty became due and payable to the Commonwealth.

9.06: continued

2. any officer, employee, or agent of the person, firm, corporation, or entity to whom the Written Warning or Civil Citation is addressed, who has been authorized by said person, firm, corporation, or entity, or by law, to accept service;
3. the last known address of said person, firm, corporation or other entity; or
4. the last known address of any officer, employee, or agent of the person, firm, corporation, or entity to whom the Written Warning or Civil Citation is addressed, who has been authorized by said person, firm, corporation, or entity, or by law, to accept service

(b) Mail Delivery. Written Warnings and Civil Citations posted as First Class Mail with the U.S. Postal Service shall be deemed to have been received no later than the third business day after mailing, or when returned by the U.S. Postal Service to the Division as unclaimed, unless the Commissioner determines that the said Written Warning or Civil Citation was not claimed for reasons beyond the control of the person to whom the Written Warning or Civil Citation was sent. Written Warnings or Civil Citations posted with the U.S. Postal Service by Certified Mail shall be deemed to have been received when signed for by:

1. the person, firm, corporation, or other entity to whom the Written Warning or Civil Citation is addressed; or
2. any officer, employee, or agent of the person, firm corporation, or entity to whom the Written Warning or Civil Citation is addressed, who has been authorized by said person, firm, corporation, or entity, or by law, to accept service.

REGULATORY AUTHORITY

453 CMR 9.00: M.G.L. c. 111, § 197B; c. 140, § 46R; and c. 149, § 6F½.

ATTACHMENT 5

Flexible Remedies

Enforcement Response Policy (ERP) for Asbestos Compliance Inspections Conducted by the Department of Labor Standards

I. Background and Rationale for ERP

The Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. ss. 2641 through 2654, which was signed into law on October 22, 1986, mandated that public and private not-for-profit elementary and secondary schools institute controls to minimize the asbestos risk occasioned by asbestos-containing building materials used in the construction of their facilities. To implement the protections authorized by AHERA, the United States Environmental Protection Agency ("EPA") promulgated the Asbestos-Containing Materials in Schools Rule, 40 CFR Part 763, Subpart E, on October 30, 1987. This Rule required schools to use accredited personnel to inspect buildings that they own, lease or rent for asbestos-containing building materials (ACBM's), create and execute written plans for managing ACBMs in a manner that minimizes asbestos exposure hazards, abate asbestos hazards that cannot be controlled through operations and maintenance (O&M) procedures and carry out certain recordkeeping and notification functions. In 1994, as authorized by the Asbestos School Hazard Abatement and Reauthorization Act (ASHARA), P.L. 101-637, 104 Stat. 4589, EPA extended the accreditation requirements of AHERA to persons who perform asbestos consultative, analytical and abatement activities in public and commercial buildings through amendments to Appendix C of its Asbestos In Schools Rule. The Asbestos In Schools Rule also contained provisions for states with asbestos regulatory programs as protective of human health and the environment as that set forth in the federal standard to receive delegation from EPA to administer their own asbestos standards, in lieu of the federal standards being administered by EPA in those states.

On October 30, 1987, the Department of Labor Standards ("DLS"), formerly the Division of Occupational Safety, promulgated asbestos regulations, 453 CMR 6.00, that contained accreditation (licensing or certification) requirements for persons and firms carrying out asbestos analytical, consultative and abatement activities in homes and public and commercial buildings, including schools. In addition to these accreditation requirements, which were quite similar to those specified by AHERA and ASHARA, the DLS standards also contained work practice requirements for asbestos abatement work carried out in these facilities. Amendments to 453 CMR 6.00, which fully incorporated the AHERA-related requirements that apply to schools were promulgated in 1999, and DLS subsequently applied for, and received, EPA authorization to administer and enforce its own asbestos regulatory program at that time. DLS has been carrying out asbestos enforcement inspections in schools and other facilities under EPA auspices since receiving this authorization.

Written Warnings must include:

1. An identification of the conditions that resulted in the issuance of the Written Warning and the specific requirement(s) of the applicable regulation or statute that has been violated.
2. The date and location of the alleged violation(s).

Written Warnings may contain an Order to Correct the Violation(s) and specify a reasonable period of time for the correction of said Violation(s). Not all situations will warrant the issuance of an Order to Correct Violations; however, if the Written Warning does contain such an Order, DLS may issue a Civil Citation or take some other enforcement action if the corrective action is not satisfactorily completed within the specified period of time.

C. Issue a Civil Citation pursuant to 453 CMR 9.04(1)

A Civil Citation may be issued either after a Written Warning with an Order to Correct the Violation has not been complied with, or as an initial action taken by DLS if it believes that the violations warrant more than a Written Warning. The Civil Citation may include an Order to Correct the deficiency or infraction that resulted in the issuance of the Civil Citation, a Civil Penalty, or both. A Civil Citation is required to include the following:

1. A statement of the alleged act or omission for which the Civil Citation is issued.
2. Identification of law, regulation or order that has not been complied with as a result of such alleged act or omission.
3. An Order to Correct the Violation (if applicable) and a period of time for the correction of the Violation.
4. If a Civil Penalty is issued, the amount of the Civil Penalty for each alleged act or omission for which the Civil Penalty is assessed.¹
5. A statement that the regulated entity to whom the Civil Citation is issued has a right to appeal the Civil Citation through an adjudicatory hearing

¹ Determination of the amount of the civil penalty under the ERP shall be in accordance with Section II(C) of this ERP and Addendum 1, "Penalty Matrix for RRP and Asbestos Violations," Addendum 2, "Penalty Matrix for LEA AHERA Violations," and Addendum 3, "Penalty Matrix for Consultant AHERA Violations." In the case of a violation of c. 140, § 46A through 46R, the penalty shall be determined in accordance with § 46R in consultation with the DLS counsel and Chief of Investigations and Enforcement.

2. Prepare a draft of the Written Warning, including inspection information, relevant facts, and list of violations as set forth in Section I(B), above. Where applicable, list the actions and specific date by which the actions must be completed to come into compliance in the Order to Correct.
3. Save the draft warning into a named sub-folder under the appropriate Civil Penalties section on the S: drive, along with copies of your inspection report, photos, and any supporting documentation. Forward a draft of the Written Warning to the Chief of Investigations and Enforcement for initial review, and following that review, then to legal counsel for final review.
4. After approval, obtain a docket number from the most recent Civil Penalties Chart and fill in all appropriate fields and due dates.
5. Print, date, and sign the Written Warning, scan the documents and store them on the S:/ drive under Civil Penalties Folder in the appropriate subfolder. Mail the Written Warning by first class mail and cc: the Chief of Investigations and Enforcement and the legal counsel.
6. Track the dates by which any conditions must be met. If conditions are not met by the deadline set forth in the Written Warning, consult with Chief of Investigations and Enforcement and/or to determine the next steps, as set forth in Section I, above. Update the civil penalties chart appropriately as actions are completed.

B. Issuance of a Civil Citation (with or without Penalty)

1. Obtain the template of the Civil Citation and Civil Penalty ("CC-CP") from the S:/Civil Penalties folder/Template folder.
2. Prepare a draft of the CC-CP, including inspection information, relevant facts, list of violations, and the Civil Penalty (if included), as set forth in Section I(C), above. Where applicable, list the actions and specific date by which the actions must be completed to come into compliance in the Order to Correct. Insert the specific date by which the appeal must be filed (13 calendar days from the date of issuance), and the specific date by which the civil penalty must be paid (due no later than 21 days after issuance).
3. Save the draft citation into a named sub-folder under the appropriate Civil Penalties section on the S: drive, along with copies of your inspection report, photos, and any supporting documentation. Forward a draft of the CC-CP to the Chief of Investigations and Enforcement for initial review, and following that review, to legal counsel for final review.

Level 2 violation – assigned a numerical weight of “2” – Has the potential to pose an intermediate threat to the public health, safety and welfare and the environment.

Level 3 violation – assigned a numerical weight of “3” - Causes an immediate or serious threat to the public health, safety and welfare and the environment.

- b. Violations are also assigned weights according to the criteria listed in the top row of boxes on the penalty matrixes, attached as Addendums 1, 2 and 3.

2. Factors Applied in Assessing the Amount of a Civil Penalty

The second step in the calculation of a proposed Civil Penalty should be determined in consultation with the LEGAL COUNSEL and Chief of Investigations and Enforcement. During this consultation, the base penalty for a particular violation or group of violations may be adjusted up or down after consideration of the following adjustment factors, as provided in 453 CMR 9.04(3):

- a. The actual and potential impact on public health, safety and welfare, and the environment of the failure to comply;
- b. Whether the person, firm, corporation, or other entity being assessed the Civil Penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance;
- c. Whether the person, firm, corporation, or other entity being assessed the Civil Penalty has previously failed to comply with any regulation, order, license, or approval issued or adopted by the Division, or any law which the Division has authority or responsibility to enforce;
 - i. Where it has been determined that the person responsible for the violation possessed specific intent in committing it, i.e., that the violation was willful, the base penalty may be adjusted upward by up to a factor of **2.5 times the base penalty** (250%), provided that the maximum penalty assessed for the violation does not exceed \$2,500; or

III. Steps After the Issuance of an Enforcement Response

A. Issuance of a Cessation Order

If the regulated person or entity fails to timely pay the Civil Penalty after the issuance of the Civil Citation or following an appeal determination, DLS will issue the regulated person or entity a Cessation Order, in accordance with 453 CMR 9.04(5).

1. Obtain the template of the Cessation Order ("CO") from the S:/Civil Penalties folder/Template folder.
2. Prepare a draft of the CO, including the name and address of the entity being cited, date of issuance of the corresponding CC-CP, as set forth in Section I(D), above. Insert the specific date by which an appeal must be filed with DLS (13 calendar days from the date of issuance).
3. Obtain docket number off the most recent Civil Penalties Chart and fill in all appropriate fields. If the CO is a result of non-compliance with a previously issued WW or CC-CP, use the same docket number from that document and enter the new information in the civil penalty chart.
4. Forward the draft CO to the Chief of Investigations and Enforcement for review. The Chief of Investigations and Enforcement will print, date and sign the CO, scan the documents into a folder and store on S:/ drive under Civil Penalties Folder. Mail the CO by first class mail and cc: legal counsel.
5. Copies of COs should also be forwarded to building permit boards of the town(s) where the contractor is located or is likely to be working.

B. Referral to Debt Collection Agency

If the regulated entity fails to timely pay the Civil Penalty after the issuance of the Civil Citation or following an appeal determination, DLS will refer the case to the DIA Debt Collection Unit to collect monies and any balance owed to DLS. If the entity further fails to pay their CP, DIA will refer the case to a state contracted private collection agency.

4. Consent or Settlement Agreements

Where non-criminal, non-egregious violations of the DLS' asbestos regulations, including AHERA-related requirements, have been committed, entering into a consent or settlement agreement with the violator is sometimes an appropriate vehicle for ensuring current and future

ATTACHMENT 6

Neutral Administrative Inspection Scheme

For Asbestos Inspections Conducted by the Department of Labor Standards

I. Background and Reasons for Inspections

The Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. ss. 2641 through 2654, which was signed into law on October 22, 1986, mandated that public and private not-for-profit elementary and secondary schools institute controls to minimize the asbestos risk occasioned by asbestos-containing building materials used in the construction of their facilities. To implement the protections authorized by AHERA, the United States Environmental Protection Agency ("EPA") promulgated the Asbestos-Containing Materials in Schools Rule, 40 CFR Part 763, Subpart E, on October 30, 1987. This Rule required schools to use accredited personnel to inspect buildings that they own, lease or rent for asbestos-containing building materials (ACBM's), create and execute written plans for managing ACBMs in a manner that minimizes asbestos exposure hazards, abate asbestos hazards that cannot be controlled through operations and maintenance (O&M) procedures and carry out certain recordkeeping and notification functions. In 1994, as authorized by the Asbestos School Hazard Abatement and Reauthorization Act (ASHARA), P.L. 101-637, 104 Stat. 4589, EPA extended the accreditation requirements of AHERA to persons who perform asbestos consultative, analytical and abatement activities in public and commercial buildings through amendments to Appendix C of its Asbestos In Schools Rule. The Asbestos In Schools Rule also contained provisions for states with asbestos regulatory programs as protective of human health and the environment as that set forth in the federal standard to receive delegation from EPA to administer their own asbestos standards, in lieu of the federal standards being administered by EPA in those states.

On October 30, 1987, the Department of Labor Standards ("DLS"), formerly the Division of Occupational Safety, promulgated asbestos regulations, 453 CMR 6.00, that contained accreditation (licensing or certification) requirements for persons and firms carrying out asbestos analytical, consultative and abatement activities in homes and public and commercial buildings, including schools. In addition to these accreditation requirements, which were quite similar to those specified by AHERA and ASHARA, the DLS standards also contained work practice requirements for asbestos abatement work carried out in these facilities. Amendments to 453 CMR 6.00, which fully incorporated the AHERA-related requirements that apply to schools were promulgated in 1999, and DLS subsequently applied for, and received, EPA authorization to administer and enforce its own asbestos regulatory program at that time. DLS has been carrying out asbestos enforcement inspections in schools and other facilities under EPA auspices since receiving this authorization.

In carrying out DLS' mission, agency inspectors visit schools, other facilities and asbestos abatement worksites for the purpose of determining compliance with the AHERA-related requirements and other health and safety-related requirements of its asbestos standard. In carrying out AHERA inspections in schools, DLS uses the requirements listed in 40 CFR 763, Subpart E as an inspection template in the assessment of violations. To appropriately allocate

3. In the case of AHERA inspections, DLS will attempt to inspect schools where asbestos coverings with a higher potential to cause asbestos exposures are known to exist on a more frequent schedule. Such schools include those where friable sprayed-on ceiling and beam coverings are present, and those containing larger amounts of damaged, friable asbestos coverings, such as pipe and boiler coverings and ceiling tiles.

4. Follow-up inspections will be conducted to ensure that a school, contractor, consultant or other entity has corrected previous violations and is in compliance with previously-issued civil administrative penalties or administrative orders. Where a school, contractor, consultant or other entity is found to be out of compliance with AHERA or other requirements of the DLS' asbestos standard, 453 CMR 6.00, DLS will attempt to conduct a follow-up inspection to ensure that the deficiencies have been corrected.

Routine Inspections

DLS will conduct routine AHERA inspections and other inspections to determine compliance with 453 CMR 6.00 in the absence of any information suggesting non-compliance. Normally, these inspections will be randomly selected through one of the following venues: (1) statutorily mandated notifications of asbestos abatement activity; (2) A DLS chart that ranks schools for an AHERA inspection based on a number of factors, including but not limited to, the age of the school, the type of asbestos containing building materials in the school, reinspection history, previous compliance history, and others; (3) local building permits and Dodge reports of construction/renovation projects; (4) lists of schools issued by the Department of Elementary and Secondary Education. DLS will also attempt to focus routine AHERA inspections and general asbestos compliance inspections on special emphasis areas, as identified and requested by EPA. In the past, these special emphasis areas have included charter schools and other schools and facilities located in environmental justice areas.

In determining the number and timing of routine AHERA inspections and other asbestos compliance to be performed, DLS administrative and supervisory staff will review the number of for-cause and follow-up inspections that have been performed, compare this performance to the annually projected number of inspections and assign routine inspections based on whether the agency is either ahead of or behind its performance schedule. Seasonal adjustments for various kinds asbestos inspection activities will be accounted for, i.e., the fact that few, if any, major asbestos abatement projects in schools would take place outside of the summer months. Other inspections and projects may be selected for inspection through a review of the local building permit records and Dodge reports and through a review of lists of schools maintained by the Department of Elementary and Secondary Education. In reviewing such lists, DLS would attempt to determine schools that have not previously been inspected and older schools, which would be more likely to contain friable asbestos materials.

IV. Tentative Apportionment of AHERA Inspections

A tentative apportionment of AHERA inspections based on a target number of 40 inspections per year is presented below.

ATTACHMENT 7

**Tips for Superintendents –
Sample Annual Written Notification**

SAMPLE: Schools may adapt or expand this sample template in order to comply with minimum requirements to provide annual notification to staff and guardians. Keep a dated copy in each school's Management Plan. For more assistance with AHERA compliance, visit www.mass.gov/dols/ahera

INSERT YOUR LETTERHEAD

ANNUAL ASBESTOS NOTIFICATION LETTER

For School Year 2013-2014

Date: September 20##

Dear Staff, Guardians and Students:

A copy of our district's Asbestos Management Plan is available in each school and at the main administrative office during regular school hours.

The district continues to update and improve the AHERA Asbestos Management Plans. Any inquiries regarding the management of asbestos-containing materials in our schools should be directed to our district's AHERA Designated Person, __ (name) __ who can be reached at __ (work location) __, and __ (email) __ and __ (phone) __.