



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

MAR 16 1994

Daniel Segall
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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Segall:

I received your letter of January 10, in which you asked three questions concerning the responsibilities of an AHERA project designer. On February 2, one of my staff (Bob Jordan) telephoned you to discuss your inquiry. You told Bob that you would like to have answers as they are affected by publication of the Revised Model Accreditation Plan (MAP) Rule. The revised MAP was published in the Federal Register on February 3 (59 FR 5236), and takes effect April 4, 1994.

Your questions, and our answers according to the revised MAP, follow:

1. Can the contractor performing the work also act as the designer or hire the designer, is this a conflict?

A: The question has two parts. 1) Effective with the revised MAP, all persons must take separate initial and refresher training that is specific to their discipline in order to obtain or retain valid accreditation. To work as a Project Designer, one must take the specific course and receive accreditation as a project designer; it is no longer permissible to perform as a Project Designer on the basis of having only Contractor/Supervisor accreditation. If a person obtains and maintains dual accreditation, by taking both a project design course and a contractor/supervisor course and subsequent refreshers, then that person might qualify to prepare the design and perform the work.

2) With regard to a conflict of interest in a situation where the Contractor performing the asbestos removal also hires the Designer, there could very well be a conflict of interest. However, you, or the Local Education Agency (LEA), need to make that determination based on the AHERA Rule section 763.84 and Appendix A, pg. 41858.

2. Who is responsible to ensure that a project has been reviewed by a project designer?



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A. AHERA response actions ("projects") are required to be designed (not reviewed) by accredited persons (a Project Designer, according to the revised MAP). The LEA (and its "designated person") has the responsibility to ensure that AHERA requirements are carried out. For asbestos work in public and commercial buildings, it is any contractor who employs individuals to conduct the response action. An enforcement authority (EPA or a State) could have an ultimate role relative to your question.

3. At what stage is a designer required? Before bidding or after bidding of the project?

A. Your first question contains the regulatory issue: A designer is required before the response action begins. AHERA 763.90, Response Actions (52 FR 41850) requires that response actions including removal, encapsulation, enclosure, or repair, other than small-scale, short-duration repairs, shall be designed by persons accredited to design ... response actions. (The revised MAP now requires an accredited Project Designer.)

Your second question is not a regulatory issue; it seems wise for an LEA or building owner to have the design in hand before the project is bid, and for an accredited contractor to have the design before the project is bid, in order to know best how to enter a bid. It does not seem prudent to have it otherwise.

I hope this answers your questions to your satisfaction. If you would like to discuss this further, feel free to call our office at 202-260-7849.

Sincerely,



Gina Bushong, Chief
Field Programs Branch
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