



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

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OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: Applicability of AHERA to Newly Installed Building Materials

FROM: Lynn Vendinello, Chief *LMV*  
Fibers and Organics Branch, NPCD, OPPT

TO: Regional Asbestos Coordinators

The Asbestos Hazard Emergency Response Act (AHERA) regulations require local education agencies (LEAs) to conduct an initial asbestos inspection prior to occupying a school building. 40 CFR 763.85(a). The inspection requirements state that the LEA must, among other things, either assume homogeneous areas of suspected asbestos-containing building material (ACBM) contain asbestos or they must collect and submit for analysis bulk samples of that material. 40 CFR 763.85(a)(4)(iv). LEAs are also required to perform triennial reinspections to assess the condition of previously inspected building materials. 40 CFR 763.85(b).

Recently, questions have arisen concerning the applicability of the inspection and reinspection requirements to newly installed building materials in school buildings. In coordination with EPA's Office of General Counsel, OPPT has considered these issues and offers the following:

- The initial inspection requirement under AHERA (40 CFR 763.85)(a) generally does not apply to building materials installed after the initial inspection has been performed. For example, where new building materials are added in connection with the renovation of some portion of an existing school building (e.g., an existing cafeteria, hallway, classroom, etc.), and that school building already was subject to an initial inspection, the initial inspection requirement does not apply to the newly added building materials.
- If the initial inspection requirement does not apply, the newly installed building materials also would not be subject to the reinspection requirement. As alluded to above, this is because the reinspection requirement only extends to previously inspected building materials (i.e., those inspected during the initial inspection).

- However, where entirely new structures are being added to an existing school building (e.g., a new wing, a new building, etc.) for which an initial inspection already was performed, OPPT believes that such new structures constitute a “building . . . acquired on or after October 12, 1988 that is to be used as a school building” and the initial inspection requirement applies fully. (Of course, to the extent that an architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building or, to the best of his or her knowledge, no ACBM was used as a building material in the building, an inspection would not be required). In turn, the reinspection requirement also applies.

In light of this interpretation, OPPT recognizes that there could be a potential exposure issue because asbestos has not been banned from all domestic products or imports, thus raising the possibility that it could be present in new materials installed into previously-inspected buildings. As a result, the Regions should encourage LEAs to screen newly installed building materials for asbestos and recommend that LEAs acquire a statement from the product manufacturer certifying that the building materials do not contain asbestos.

If you have any questions or comments concerning this clarification, please contact Tom Simons of my staff at 202-566-0517.