



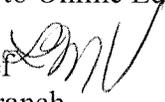
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 27 2008

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: AHERA Applicability to Online Education

FROM: Lynn Vendinello, Chief 
Fibers and Organics Branch
National Program Chemicals Division
Office of Pollution Prevention and Toxics

TO: EPA Regional Asbestos Coordinators

The Office of Pollution Prevention and Toxics (OPPT) recently received a phone inquiry from the Colorado Department of Public Health and Environment (CDPHE) regarding the applicability of the Asbestos Hazard Emergency Response Act (AHERA) to Colorado charter schools that provide online elementary and secondary education through “learning centers” and/or directly in the home. As explained more fully below, when dealing with a charter school that qualifies as an elementary or secondary “school” under AHERA, it is our interpretation that AHERA does apply to facilities such as the learning centers found in Colorado that are used by the charter schools for the purposes of providing online education, but does not apply to private homes where online education is being provided directly by such charter schools.

Under Colorado law, a learning center is defined as a “facility in which a consistent group of students meets more often than once per week under the supervision of a teacher or mentor for a significant portion of a school day for the purpose of participating in an online program.” (C.R.S. 22-30.7-102). Based on the information provided by CDPHE, it is our understanding that these learning center facilities can be located within traditional school buildings, businesses, churches, and office buildings. Through these learning centers, students are given access to computers in order to participate in online education provided by the charter school. In the alternative, some charter schools provide online elementary and secondary education directly in the home, where students may use their own or charter school-supplied computers to participate in the online education.

In addressing the charter school-related questions raised by CDPHE, the first point of inquiry is to determine whether the charter school qualifies as an elementary or secondary school under AHERA. This is determined by reference to state law. *See* AHERA § 202(13) (defining

“school” by reference to section 20 USC 7801, which in turn defines elementary and secondary schools by reference to State law). To the extent that a charter school providing online education is considered an elementary or secondary school under relevant state law, then the second point of inquiry is to determine whether the facilities through which such online education is provided qualify as “school buildings.”

Under AHERA, a “school building” means, among other things, “any other facility used for the instruction of students or for the administration of educational or research programs.” (TSCA § 202(13)(C)). Learning centers of the type described by CDPHE through which a charter school subject to AHERA is providing online elementary or secondary education are covered facilities pursuant to this portion of AHERA’s school building definition. As a result, any such learning centers are subject to the Asbestos-Containing Materials in Schools regulations found at 40 CFR Part 763, Subpart E, thus triggering, among other things, the inspection, reinspection, asbestos management plan, and periodic surveillance requirements contained in those regulations. On the other hand, a private home does not qualify as a “facility” as that term is used throughout the definition of a school building. A private home, therefore, does not meet the definition of a school building and, as a result, is not subject to the Asbestos-Containing Materials in Schools regulations.

Feel free to contact me with any questions at 202-566-0514.