



May 15, 2015

Senator Edward J Markey
Senator Barbara Boxer
United State Senate
Committee on Environment and Public Works
Washington DC 20510-6175

Dear Senators,

In response to your letter to Governor Hickenlooper dated March 31, 2015 concerning the implementation of the Asbestos Hazard Emergency Response Act (AHERA) in the State of Colorado, the Colorado Department of Public Health and Environment is pleased to provide the following responses to the questions posed in your letter.

Background Information:

The State of Colorado has been regulating asbestos-containing materials since 1985 when the State Legislature declared that “it is in the interest of the general public to control the exposure of the general public to friable asbestos”. In 1986 the Air Quality Control Commission first promulgated Regulation No. 8, Part B, which allowed the Colorado Department of Public Health and Environment’s (CDPHE) Air Pollution Control Division to regulate asbestos abatement in Colorado in public and commercial buildings.

On November 20, 1995, Colorado received a waiver from the Environmental Protection Agency (EPA) authorizing the state to administer the AHERA Regulation and the requirements of AHERA were incorporated into Regulation No. 8, Part B. Prior to that date, CDPHE was inspecting Local Education Agencies (LEAs) for compliance with the AHERA Regulation and forwarding the results to EPA Region 8 Headquarters for enforcement. Since then, CDPHE has continued to inspect LEAs for compliance and if violations of AHERA are found, appropriate enforcement actions are taken to ensure compliance and the safety of the occupants of school buildings.

Scope of Asbestos Hazards in Schools

1. *How many local education agencies in your state are subject to AHERA? Please provide a list of the local education agencies subject to AHERA and identify the number of school buildings in each.*

At present, there are approximately 650 active LEAs in the state of Colorado subject to the AHERA Regulation. Each year new LEAs open and some close. Attachment #1 contains the list of these current LEAs and the number of building in each. Several



LEAs have “unknown” listed as to the total number of buildings. CDPHE contacted these LEAs but did not receive the information in time for this response.

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?*

Of the 650 active LEAs, there are 638 LEAs that are known to have completed an initial inspection. The remaining twelve LEAs have opened this year and have not yet been inspected by CDPHE to determine if they have conducted an initial inspection. In addition to the 650 LEAs identified in response to question 1 above, Colorado has identified an additional 171 LEAs that have existed since 1986 but have since closed. Of those 171 closed LEAs, 90 had conducted the initial inspection, the remaining 81 closed before they were inspected.

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.*

A total of 380 active LEAs in Colorado have been identified or assumed as having some buildings with some asbestos-containing materials. Attachment #2 has a listing of all active LEAs in the state and the number of buildings that contain or are assumed to contain some asbestos-containing materials.

Awareness and Monitoring of Asbestos Hazards in Schools

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

LEAs that have previously submitted their management plans to CDPHE for review are not required to make specific reports concerning compliance to CDPHE, only to report the addition of new buildings along with an accompanying management plan for that building. CDPHE inspects at least 48 LEAs for compliance with AHERA each year. At that time, a determination is made as to whether or not the LEA is in compliance. If the LEA is not in compliance, steps are taken to assist the LEA to come back into compliance.

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.P.R. §763.91)?*

There are 381 active LEAs that have submitted management plans that have buildings that contain asbestos and were therefore required to have an Operations and Maintenance Program in place to manage their asbestos-containing materials.



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)?*

To date, CDPHE has received 636 management plans from active LEAs. We also have on file management plans from 90 LEAs that are no longer active and have since closed.

7. *How many local education agencies in your state have conducted the periodic inspections as required by AHERA regulations? Please provide a list of those local education agencies and the number of school buildings in each for which periodic inspections have not been conducted.*

Periodic surveillance is expected of any LEA with asbestos-containing material remaining in their buildings. While documentation of surveillance is not required to be submitted to CDPHE on an annual basis, documentation of surveillances are verified and reviewed when CDPHE inspectors conduct compliance inspections. If an LEA has failed to conduct a periodic surveillance, the LEA is required to correct the violation within 30 days. Since 2010, out of 246 LEAs inspected, by CDPHE staff, 150 LEAs conducted the required periodic inspections and 96 had not. Many of the LEAs inspected during this time period were newly formed and were unaware of the requirements of AHERA. Attachment #3 has a listing of the LEAs inspected since 2010 which were found not to have conducted periodic surveillances.

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.*

CDPHE has conducted at least 48 inspections of LEAs each year since 1989. Newly opened LEAs are placed at the top of the list of LEAs to be inspected for that year. Remaining inspections consist of LEAs selected from a randomly generated list of LEAs which have not been inspected within the past five years. Attachment #4 has a listing of LEAs inspected since 2010 and the date of the inspection.

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

On average, the annual cost of implementation and enforcement of Colorado's AHERA program was \$166,000.00. Part of this cost (75%) is supported by federal grant funding from EPA and the remainder by a 25% state match.

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

CDPHE works closely with LEAs to assist them in achieving compliance with the AHERA Regulation. Non-compliance issues are identified by CDPHE and brought to the attention of the LEA. The LEA is given time, typically 30 days, to come into compliance. If the LEA fails to take steps to come into compliance a penalty is



assessed, but with the proviso that the state will consider foregoing the penalty if the LEA takes steps to come into compliance within a reasonable time period.

CDPHE has issued penalties to LEAs on six occasions. In four of the cases the LEAs successfully achieved compliance and the penalty was dropped; in the two remaining cases penalties were collected. Attachment #5 contains information on the occasions penalties were issued to LEAs.

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.*

CDPHE has never taken an emergency action against an LEA for violations of AHERA or Regulation No 8, Part B.

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?*

CDPHE has received complaints about AHERA violations over the years but we do not track the number of complaints. When a complaint is received, we do a follow-up investigation and staff works with the LEA to determine if the complaint is valid. If it is, steps are taken to ensure the issues are resolved.

Asbestos Abatement Status

13. *Of the local education agencies known to have or have had buildings with asbestos-containing material, how many local education agencies have completed full abatement of the asbestos hazards? By "full abatement" we mean full removal of the asbestos hazards and not management in place through encapsulation, enclosure, or other means.*

- a. *Please provide a list of the local education agencies that have completed full abatement and the date upon which the abatement was completed.*
- b. *Please provide a list of those local education agencies that have not fully abated known asbestos hazards and the number of school buildings in each that continue to harbor asbestos-containing materials.*

We know of 50 LEAs that have completed full abatement of all asbestos-containing materials in their buildings. Attachment #6 contains the list of LEAs that have completed full abatement and the date abatement was completed (if known). Attachment #7 contains the list of LEAs that have not completed full abatement.

Asbestos Accreditation, Training and Licensure



14. *Did your State adopt the EPA's Model Accreditation Plan (i.e., the EPA's template establishing definitions, training, examinations, continuing education, qualifications, recordkeeping, deaccreditation, reciprocity, and electronic reporting as set forth in 40 C.F.R. Pt. 763, SubPt. E, App. C) to ensure contractors, inspectors, and other professionals are adequately trained to handle asbestos-containing materials safely? If not, please describe the differences of your State's accreditation plan as compared with EPA's.*

Colorado has incorporated EPA's Model Accreditation Plan into its asbestos regulation. One distinction between EPA's MAP and Colorado's is that Colorado has established a sixth asbestos discipline, called an Air Monitoring Specialist (AMS), whose responsibilities include conducting a final visual inspection of the post abatement work area as well as final air clearance monitoring inside the work area. Creation of this discipline was based upon the recommendation in the MAP to develop a discipline which it calls Project Monitor.

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

Since 1990, CDPHE has operated a certification program for all asbestos related disciplines, which, among other things, requires each applicant to provide documentation of successful completion of AHERA training, after which they must also pass a Colorado-administered exam for each discipline in which they wish to obtain certification. CDPHE staff routinely checks that individual and company certifications are current whenever we review permit applications, conduct abatement inspections, and review documents such as management plans.

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.*

Colorado requires certification in every AHERA discipline (i.e., worker, supervisor, inspector, management planner, and project designer) as well as certification for General Abatement Contractors (GAC). Colorado also requires certification for Air Monitoring Specialist (AMS) - these are the individuals who conduct the final visual inspections and final air clearance monitoring on each asbestos abatement project. In addition, Colorado requires *registration* of asbestos consulting firms, asbestos training providers and asbestos laboratories.

Individuals desiring certification must submit the original of all AHERA training certificates, a completed application form and proof of right to work. An AMS must also provide evidence of satisfying the required on-the-job- training hours. Individuals must then take and pass the applicable Colorado exam. GACs, consulting firms, training providers and laboratories must submit a completed form and the required information applicable to each type of company.



For companies and individuals found to have been in violation of the requirements of Regulation No. 8, Part B, including conducting asbestos related work without proper certification, the State may assess penalties of up to twenty five thousand dollars (\$25,000.00) per day of violation. (Colorado Revised Statutes 25-7-501, et seq) The Air Pollution Control Division also works closely with the Colorado Attorney General's office to handle any cases in which it is felt that criminal activity has occurred.

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.*

CDPHE does not have a standard template for the annual notification but instead allows each LEA to determine what works best for them. LEAs may make notification in a number of ways, including sending letters, placing the information in student handbooks or providing the information electronically. A copy of any notification must be printed each year and kept with the hard copy of the asbestos management plan. Documentation of annual notification is verified and reviewed when CDPHE staff conducts compliance inspections.

18. How many local education agencies have provided annual notification letters to parents, teachers, and staff each year since 2010?
- Please provide a list of the local education agencies that have provided annual notification letters to parents, teachers, and staff each year since 2010.*
 - 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.*

Documentation of the annual notification letter is not required to be submitted to CDPHE. Documentation of annual notification is verified and reviewed when CDPHE staff conducts compliance inspections. Since 2010, out of 246 inspections conducted by CDPHE staff, 97 LEAs had conducted the required annual notification and 149 had not. If an LEA has failed to issue an annual notification letter, the LEA is required to correct the violation within 30 days. Many of the LEAs inspected during this time period were newly opened and were unaware of the requirements of AHERA. Attachment #8 has a listing of the LEAs inspected since 2010 which have provided annual notification. Attachment #9 has a listing of the LEAs inspected since 2010 which have not provided 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?*



Colorado reports to EPA on a quarterly basis the status of our program involving the implementation of the AHERA requirements. The report includes listing of all inspections conducted during the reporting period, the number of certifications issued and the status of all AHERA based enforcement actions the state had conducted during the reporting period.

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, Colorado receives grant funding from EPA to assist in the implementation and enforcement of AHERA. The amount of federal funding for the federal fiscal years of 2010 - 2014 averaged approximately \$125,000 per year. The funding period corresponds to the federal fiscal year and all expenditures under this grant are reported to EPA annually as part of the Performance Partnership Grant (PPG) report.

Thank you for the opportunity to provide these responses to your questions.

Sincerely,



William C. Allison V
Director, Air Pollution Control Division

