

# AHERA UPDATE 2019

## North Carolina Department of Health and Human Services Division of Public Health Health Hazards Control Unit

The Health Hazards Control Unit (HHCU) is part of the NC Department of Health and Human Services, Division of Public Health, and administers the Asbestos Hazard Management Program (AHMP) in North Carolina.

### AHERA

The federal Asbestos Hazard Emergency Response Act (AHERA) of 1986 required the Environmental Protection Agency (EPA) to establish rules regarding the management of asbestos-containing building materials (ACBMs) in schools. The Asbestos-Containing Materials in Schools Rule (40 CFR Part 763) was the result. This Rule is commonly referred to as AHERA, the acronym of the act responsible for its development. The Rule became effective in 1987, and requires all public and private, not-for-profit, elementary and secondary schools to inspect their buildings for the presence of ACBMs. The inspection must occur before the building is occupied by the school. If you receive any communication from the HHCU and you are a private **“for profit”** school, please contact the HHCU so we can update our records.

Asbestos inspections must be conducted by either a **NC accredited** asbestos inspector or a **NC accredited** management planner. A search engine to find accredited inspectors and management planners is available on our website. The asbestos inspection information and subsequent recommendations for the management of the identified ACBMs are included in what AHERA calls a “management plan”. The management plan (MP) must be developed by a NC accredited management planner and his/her recommendations must be sufficient to protect human health and the environment. The AHMP Rules require all management plans to be sent to the HHCU for review and approval.

The MP shall include all school buildings. A School Building as per the AHERA definition is any structure or portion thereof used for instruction, recreational activities, housing of students, administration,

maintenance, storage, or utility facility as well as porticos or covered exterior walkways, and any exterior portion of a mechanical system.

When choosing an inspector or management planner, **the HHCU strongly recommends that the schools check references of hired contractors.**

AHERA requires each local education agency to designate a person (LEA Designee) to ensure that the requirements under AHERA are properly implemented. Some of the key responsibilities include ensuring that any person who performs activities such as: updating management plans, implementing response actions (e.g., removal of ACBM, repairs and maintenance), ensuring workers, occupants, or their legal guardians, are informed about response actions, and ensuring post-response action activities are carried out in accordance with Subpart E of this rule. Additionally, the designee plays an important role in assisting the local education agency in maintaining and updating its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. To ensure compliance with the regulatory requirements of AHERA, and for the designee to effectively function, the HHCU strongly recommends the designee be incorporated into the routine information flow (e.g., maintenance work order requests, planning, or emergency building renovations). This will ensure the protection of the school occupants when ACBM may be disturbed.

**Periodic Surveillance** must be performed every six months and must list the condition of the ACBM by either the LEA Designee or a person assigned by the school. This must be documented with the name and date of the person performing this 6-month surveillance and included in the school Management Plan. It is not necessary for this person to be accredited to perform this activity.

## **2019 LEA DESIGNEE TRAINING**

2019 LEA Designee training is being offered by the HHCU in Raleigh, NC on September 19-20<sup>TH</sup> and October 21-22<sup>nd</sup>. The HHCU is also offering LEA training in Mills River, NC on October 8-9<sup>th</sup>. All LEA Desingees must receive training, contact the HHCU if you have questions.

## **MANAGEMENT PLANS FOR NEW SCHOOL BUILDINGS**

AHERA defines a "new" school building as one built after October 12, 1988. For such a building, no asbestos inspection is required by AHERA, (but other items are required, see next paragraph). If the architect or project engineer responsible for the building's construction, or an accredited asbestos inspector, signs a document stating either that: 1) No ACBM was specified in any construction document for use in the building or; 2) To the best of his or her knowledge, no ACBM was used in the construction of the building.

A copy of this signed statement, along with these three form: "AHERA Management Plan Cover Sheet" form DHHS 3531, the "School Buildings" form DHHS 3532, and the "Steps to Inform Others" form DHHS 3538, will make up the new building's management plan for your school. These forms are available at: <http://epi.publichealth.nc.gov/asbestos/forms.html>. These forms can be completed by school personnel.

School buildings built after October 12, 1988, must also designate someone (LEA Designee) to ensure that the school is complying with the asbestos regulations:

- The LEA Designee must receive training.
- The building(s) must have an approved AHERA Management Plan.
- Schools must notify parents, teachers and employees annually of the availability of the management plan.

## **FLOOR TILE AND MASTIC**

The improper removal of asbestos-containing floor tiles continues to occur, from classroom-size to cafeteria-size projects. The projects may be

improperly conducted by school maintenance personnel or general contractors and involve tiles being reduced to small fragments by chipping or breaking. When floor tiles are **not** removed intact, the AHERA, NESHAP, and AHMP rules/regulations apply (**OSHA** regulations are always applicable when handling an asbestos-containing material). If it is determined at any point in a floor tile removal project that the tile cannot be removed in an intact manner, accredited asbestos removal personnel must be used, a design must be written, and air monitoring must be conducted. A permit from the HHCU is also required if the project exceeds 160 square feet of regulated material or mastic is removed with a mechanical buffer.

The HHCU recommends TEM analysis for all ambient air and air clearance monitoring be conducted during **all** floor tile projects. This is because asbestos fibers from flooring are typically smaller and cannot be detected by phase contrast microscopy (PCM).

Occasionally, schools will remove asbestos-containing floor tile and leave the asbestos-containing mastic in place. The HHCU does not recommend this practice because once the new tile is overlaid on the asbestos-containing mastic, it becomes asbestos-contaminated and may be overlooked in the future.

**OSHA** requires stripping of finishes off asbestos-containing flooring materials to be conducted using low abrasion pads at speeds lower than 300 rpm while using wet methods. For questions contact NC OSHA at 1-800-NC-LABOR.

## **REINSPECTIONS**

The AHERA regulation requires schools with identified ACBMs to conduct a "reinspection" at least once every three (3) years after the implementation of the original management plan. The reinspection may be conducted either by a NC accredited inspector with oversight by a NC accredited management planner, or by a NC accredited management planner only.

During a reinspection, the accredited person is to visually look and physically touch to reassess the condition of all known or assumed ACBM and ensure that the material is being maintained in good condition. The accredited person will generate a

reinspection report which is required to be submitted to the school within 30 days of the reinspection.

All demolished and/or sold school buildings and/or school buildings that have been vacated and are no longer used by the school system for any reason must be reported in the next reinspection report following the “retirement” of the building. After that, they should no longer be included in the reinspection process.

A copy of the reinspection report must be sent to the HHCU within 120 days of the on-site inspection. If changes or clarifications are requested by the HHCU, the schools should then contact the accredited person responsible for the reinspection report. The reinspection report review is one way the schools can gauge the quality of work being provided by their inspector/management planner.

## **AVAILABILITY OF THE MANAGEMENT PLAN**

Remember: your schools’ management plans are to be available for public review. According to EPA’s Asbestos-Containing Materials in Schools Rule, 40 CFR Part 763.93(g), the management **shall** plans kept at the public school’s central administration or maintenance office and shall be available during normal business hours, without cost or restriction, for inspection by representatives of EPA and the State, and the public -- including parents, teachers, and other school personnel and their representatives. The school system may charge a reasonable fee to make copies of management plans.

In addition, public, private, or charter schools must also keep a copy of their management plan at each individual school and shall be available for review by workers, without cost or restriction, before work begins in any area of a school building.

## **THE NESHAP REGULATION**

The federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, 40 CFR 61.145(a), requires a thorough asbestos inspection of a facility, or the affected part of a facility, prior to renovation or demolition. For

purposes of the NESHAP regulation, a demolition is defined as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. **A demolition notification is required even if there is no asbestos present in the structure.**

***The NESHAP asbestos inspection requirement is not fulfilled by an AHERA inspection or letter from the architect or builder.*** The AHERA inspection is not destructive (i.e., it does not require sampling behind walls or above finished ceilings, etc.), nor does it include exterior building materials except for covered walkways and/or exterior parts of mechanical systems used to condition interior space.

There is no cut-off date for the NESHAP regulations. **NESHAP requires sampling of all suspect building materials, even those recently installed, that may be affected by an upcoming renovation or demolition.** The schools may even consider sampling new materials for asbestos content prior to installing them.

## **LEAD-BASED PAINT REGULATIONS**

The North Carolina Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting (RRP) became effective January 1, 2010, with the primary purpose of these programs is to protect children’s health from potential lead hazards caused by the disturbance of lead paints and/or coatings during renovation activities.

**The RRP applies to renovation activities conducted in housing and child-occupied facilities built before 1978.** If a school, pre-school, daycare, etc. is visited regularly by the same child under 6 years of age, the definition of child-occupied facility is met and the RRP regulations would apply.

Subsequently, school and their employees would have to meet the requirements of the regulation when conducting applicable work (see below). The regulation requires certification of Firms as well as training and certification of Renovators. Prior to the start of renovation activities, all of the following requirements should occur: pre-renovation education of the parents/guardians; the use of lead-safe work practices; documentation that the work

has been done correctly; cleaning verification and more.

Individuals that have completed a Renovator training course **must** apply to the HHCU for certification. Merely attending the training **does not** mean you are certified.

Applicable renovation work to this regulation includes:

- The subject building must be residential property or a child-occupied facility and be constructed prior to 1978. Paint and/or surface coatings in such buildings are considered to contain lead **unless** tested and found to be otherwise by a NC certified Lead-Based Paint Inspector, Risk Assessor or Certified Renovator.
- Greater than 6 square feet of interior painted or coated surfaces (i.e. stains, varnishes etc.) per room or greater than 20 square feet exterior will be disturbed during the renovation, repair or painting project. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity not requiring appropriate certifications.
- The renovation work is always applicable when it involves window replacement or demolition of painted surface areas, even if less than 6 square feet will be disturbed.
- The HHCU has a Guidance Document regarding “Emergency” Lead-Based Paint Renovation, Repair and Painting activities that is useful during emergency renovations such as flooding or hurricane events. Contact the HHCU for a copy.

Please be advised that the HHCU administers a second Lead-Based Paint Hazard Management Program (LHMP) which has been in place since 1998. The LHMP regulates Lead-Based Paint abatements, inspections, risk assessments, designs, etc. For more information about either of North Carolina’s lead-based paint regulatory programs and which one

applies to your school, contact the HHCU consultative staff.

Schools should consider becoming their own **NC Certified Lead Renovation Firm** and have a NC Certified Renovator when conducting in house activities that may disturb components with lead-based paint. Schools contracting out for this renovation work should hire a NC certified lead renovation firm by going to our website at: <https://schs.dph.ncdhhs.gov/lead/accredited.cfm>.

## **HHCU CONSULTANT STAFF**

The HHCU consultant staff is available to answer any questions you may have about the asbestos or lead-based paint regulations:

Phone: 919-707-5950  
Fax: 919-870-4808

**The HHCU has new web links to the Asbestos and Lead Paint Programs - Please update your records:**

**NC AHMP:** Asbestos  
<https://epi.dph.ncdhhs.gov/asbestos/ahmp.html>

**NC LHMP and LHMP-RRP:** Lead-Based Paint Abatement and Renovation Programs:  
<https://epi.dph.ncdhhs.gov/lead/lhmp.html>