

AHERA EXEMPTIONS AND COMPLIANCE FOR NEW SCHOOLS

Asbestos Hazard Emergency Response Act (“AHERA”) regulations still apply to new construction. Even if there is no asbestos in your school, a limited Management Plan is required, and certain AHERA responsibilities must be implemented.

What exemptions are available to schools that are new construction?

Schools may obtain a statement from the architect to certify that no asbestos containing materials (“ACM”) were specified or used in the construction. This letter will exempt the school from conducting periodic surveillance every six month, from re-inspections every three years, from notifying outside contractors, from implementing an Operations and Maintenance (“O&M”) program, and from providing awareness training to custodial/maintenance staff.

The architect statement does not offer blanket exclusion to all AHERA requirements. The Local Education Agency (“LEA”) will still need to fulfill some of the AHERA responsibilities. The architect statement also does not provide any exemption to the federal regulation known as NESHAP, the National Emissions Standard for Hazardous Air Pollutants (40 CFR 61, Subpart M). NESHAP covers renovations or demolitions, including school buildings.

Can I obtain an architect statement for an addition?

When a newly constructed addition is made to an existing building, an architect statement for the building materials in the addition should be obtained. This means that only the new addition will be exempt from re-inspections and periodic surveillance.

Can I obtain an architect statement for a renovation?

During a renovation that does not involve total demolition of the existing structure, the renovation may not include a complete removal of all existing asbestos materials. The scope of work and project design must be carefully reviewed to verify whether all the asbestos materials were identified and removed. Most often, only the asbestos containing material (“ACM”) that will be impacted by the renovation is removed. Architects must specify any limitations in the exclusionary statement they provide.

A thorough pre-renovation inspection, called a NESHAP (National Emissions Standard for Hazardous Air Pollutants) inspection is required, which involves sampling of all suspect materials. This type of inspection differs from the AHERA inspection since it requires destructive sampling to penetrate layers of walls, floors, ceilings, etc., that may not be visible or accessible. The purpose of the NESHAP inspection is to identify all suspect materials that may be impacted during the renovation. Failure to identify all the asbestos containing material (“ACM”) may result in a fiber release episode that can create extensive contamination inside and outside the school building, including fiber migration into occupied spaces.

An architect statement can be obtained for the newly installed materials that states, to the best of the architect's knowledge, no asbestos containing materials were specified or used during the renovation. There may still be ACM remaining in the renovated space that were not removed as part of the renovation, such as in crawl spaces or pipe chases, in window caulk or glazing, in waterproofing materials or roofing materials.

Do new materials need to be sampled and analyzed for the presence of asbestos?

For the purpose of AHERA compliance, materials that are newly installed as part of a renovation or building addition may be exempted from sampling if an architect statement is obtained. The LEA should be aware that imported building products may contain asbestos, particularly floor tiles. A manufacturer's product information sheet should be obtained for suspect materials such as ceiling tiles and floor tiles. If neither the architect statement nor product information sheet is available for the newly installed materials, they must be assumed ACM, unless sampling confirms that no asbestos is present.

LEAs need to be aware that, if future renovations will impact the newly installed building materials, a NESHAP inspection and sampling would still be required prior to disturbing any suspect materials. There is no exemption to sampling suspect building materials under the NESHAP, even when an architect statement is provided.

Samples can be collected and analyzed at any time if the school determines such testing is warranted. Best practices would include a minimum of three samples of miscellaneous materials, collected in a randomly distributed pattern that is representative of the entire homogeneous area being sampled. A material is considered homogeneous if it is of similar color, size, texture, and time of application. Several different homogeneous areas of floor tiles and ceiling tiles are typically present in most school buildings.

All laboratory reports for bulk sample analysis must be kept in the management plan.

Does a new school need a management plan?

Yes. A management plan for a new school must contain the following information, and must be maintained in the school office:

1. The Architect statement that indicates whether the exemption is for the entire building, or limited to an addition or renovated portion of the building.
2. The Designated Person statement. Even if all the schools within a Local Education Agency ("LEA") are new construction, a Designated Person must be appointed and trained to ensure that the applicable AHERA responsibilities are fulfilled.
3. Dated copies of the annual notification to building occupants regarding the availability of the management plan, and the method of notification.

For additional information regarding AHERA compliance, visit the DLS website, www.mass.gov/dols or contact us at (413) 765-6201 or (413) 765-6202