HB

463

HOUSE COMMITTEE REPORT

(11)

Date referred: 2/29/88 FURTHER REFERRALS:

DATE: 5-3-88

The Finance Committee has considered HB 463

"An Act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date."

RECOMMENDS:

[X] replace with CS HB 463 (FIN) [ ] the same title

[ ] attached amendment(s) [X] a new title

[ ] do pass

[ ] do not pass

[X] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______ Committee

ADOPTS: [ ] ______ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ______

[ ] same as previous zero fiscal note published ______

SIGNING DO PASS:

Al Adams

C. Hwack

Mark Boyer

Kay Wallis

SIGNING OTHER RECOMMENDATIONS:

Pat Pourchot no rec

Ron Larson No Rec

Steve Frank

O'Brien No rec.

Fay Brown

Mike Davis

Al Adams

Chairman's signature

5-1856L

Original sponsors: Boyer, Frank,
Davis, et al.

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR FOR HOUSE BILL NO. 463 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making an appropriation to the permanent fund of all money received by the general fund because of amendment of the economic limit factor by the Fifteenth Legislature; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. All money received before July 1, 1989, by the general fund as a result of the amendment of the economic limit factor (AS 43.55.013(b)) by the Fifteenth Alaska State Legislature is appropriated from the general fund to the principal of the permanent fund.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH
JUNEAU AK 998
465 375

HOUSE HESS LETTER OF INTENT

TO HB 463

It is the intent of the House Health, Education and Social Services Committee that the appropriation designated in HB 463, relating to asbestos management plans for schools, be included in HB 375, the budget bill.

Niilo Koponen, Co-Chair
House HESS Committee

Johnny Ellis, Co-Chair
House HESS Committee

DATED: February 29, 1988

ESTIMATED COST OF AHERA COMPLIANCE

March 9, 1988

The following figures were compiled by the Department of Education and are intended only to estimate the cost of AHERA compliance. These figures were received verbally from the indicated firms. Each job will have to be examined separately. In most cases estimates do not include travel expenses to the rural areas.

FIRM/LOCATION	ESTIMATES OF COST
PSI - Professional Testing Lab Anchorage	7¢ per square feet with a $1500 minimum for schools with less than 20,000 square feet - does not include travel or sampling
i-TEM, Inc. Maryland	10.4¢ per square feet - may include additional cost for travel
Hall-Kimbrell Lawrence, Kansas	14.7¢ per square feet
Hazard Management Sitka	26¢ per square feet
Pickering/Kelly Anchorage	14¢ - 35¢ per square feet - does not include travel - (average cost = 24.5¢ per square feet)
Montgomery Engineers Juneau	48¢ per square feet
Ocean Tech Fairbanks	50¢ to 80¢ per square feet - (average cost = 65¢ per square feet)
Environmental Health Science Anchorage	13.0¢ per square feet

The average cost is plus or minus 26¢ per square feet. If you eliminate the high and low estimates, the average cost would be 22.7¢ per square feet. The Statewide impact would then be estimated at $4,438,200.

The State has already received $475,000 in Federal funds and has applied for an additional $500,000 under this same program. The results of the latter application will not be known until after April 1, 1988

Position Paper

Department of Education

on House Bill No. 463

The Department of Education supports House Bill No. 463, an act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date.

William G. Demmert
Commissioner

ASBESTOS INSPECTION AND MANAGEMENT PLAN
ASSISTANCE PROGRAM

FACT SHEET
OCTOBER 1987

On October 17, 1987, $5 million in grants were awarded to states to assist financially needy school districts conduct asbestos inspections and develop management plans for school buildings in accordance with the Asbestos Hazard Emergency Response Act (AHERA).

To ease the burden on public school districts and private schools to comply with the new AHERA regulations, the Agency developed the Asbestos Inspection and Management Plan Assistance Program (AIMPAP). Five million dollars were made available to assist needy schools in 12 states conduct inspections and develop management plans. The awards range from $100,000 to $500,000 per state and may be used by the recipients to: 1) reimburse schools directly to offset the costs they incur for hiring accredited inspectors; 2) reimburse schools directly to offset the costs they incur for hiring accredited management plan developers; 3) purchase the services of accredited persons who will perform inspections or develop management plans for schools; and 4) compensate state employees (who are accredited inspectors) to perform inspections and develop management plans.

The 12 states receiving these awards were selected from among 27 states which applied for approximately $10 million in federal assistance.

The following states will receive awards to reimburse LEAs for the costs of hiring accredited inspectors:

Kansas
Oregon

The following states will receive awards to reimburse LEAs to offset the costs of hiring both inspectors and management plan developers:

Alaska
Arkansas
Kentucky
Montana
North Dakota
Wisconsin

PROPOSED NEW EPA REGULATIONS WILL HAVE A DRAMATIC EFFECT ON ASBESTOS ABATEMENT INDUSTRY

by: William M. Ewing Jr., CIH

On October 22, 1986 President Ronald Reagan signed into law the Asbestos Hazard Emergency Response Act of 1986. This Act was the Congressional mandate that the U.S. Environmental Protection Agency (EPA) shall establish specific rules and regulations governing the identification, evaluation and control of asbestos-containing materials (ACM) in our Nation's schools. Many in the asbestos identification and control field followed the passage of this law with great interest, knowing that it would undoubtably serve as the blueprint for handling asbestos in other buildings, including public, commercial and even private buildings.

Even before Halloween the EPA's Asbestos Action Program in Washington, D.C. was busily underway planning their strategy to produce the voluminous regulations before the six-month deadline set by Congress. Unlike most previous Congressional Legislation, this one contained a "hammer clause" providing EPA with the incentive to get the regulations proposed quickly. If the EPA had not published the proposed regulations, provisions contained in the Act itself would become law. One of these provisions would have essentially turned the document *Guidance For Controlling Asbestos-Containing Materials in Buildings* into law. The "purple book," as it is readily referred to, was never designed to be a regulation and would be subject to wide-ranging interpretation, misinterpretation, and be almost impossible to enforce. The "hammer clause" did serve a very useful purpose for EPA during the formation of the newly proposed regulations. It was an easy way to determine what was the intent of the Congressional architects of the Act.

Regulation by Negotiation

In the past, most regulations have been written by EPA staffers after studies are reviewed, fact-finding missions completed, experts consulted, and hearings held. However, a more recent trend has been the use of negotiation to prepare proposed regulations. In this process, representatives from numerous factions having differing views on various issues to be addressed are called together and given the task of writing the rule. It is a novel concept which relies on the theory that through the negotiation process and inevitable conflicts that occur, the cream rises to the top. It also can be effective in making the rule more acceptable to the various parties that will be affected by it. In the case of AHERA, the EPA pulled together representatives from various associations and interest groups to comprise a 24-member panel who from February through April, met regularly to wade through the issues surrounding asbestos in schools.

The rule, as published, is the culmination of their efforts. While no one interested party at the regulatory negotiation can say they were in complete agreement with the rule as it was proposed, there did appear to be agreement on the necessity of the rule and the intended impact it was to have on schools (i.e., move those to action that had not done so under the old asbestos-in-schools identification and notification rule).

ELEMENTS OF THE PROPOSED REGULATIONS

The new proposed regulations, commonly referred to as AHERA, will be found in 40 CFR 763 Subpart E §763.80 -§ 763.99 and apply to all primary and secondary schools, public and private, in the U.S. and its territories/possessions, including American schools on military bases in foreign countries. Below, by section, are the key elements of the rule followed by a short discussion of the Model Accreditation Program issued in conjuction with the regulations, but not formerly a part of the proposal for comment by the public and interested parties.

§ 763.80 *SCOPE AND APPLICATION:* This rule requires Local Educational Agencies (LEA's) to identify friable and non-friable asbestos-containing material in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling friable materials, and having samples analyzed by appropriate techniques referred to in the rule. The rule requires Local Education Agencies to submit management plans to the Governor of their State by October 12, 1988, begin to implement the plans by July 9, 1989, and complete implementation of the plans in a timely fashion. In addition, the LEA's are required to use persons who have been accredited to conduct inspections, develop management plans, or perform response actions. The rule also includes recordkeeping requirements.

§ 763.81 *DEFINITIONS:* The rule contains some definitions that may be unfamiliar to even the most experienced professionals in the field. For example, friable now means, for the purposes of this rule, material, which when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes non-friable material after such previously non-friable material becomes damaged to the extent that

when dry it may be crumbled, pulverized, or reduced to powder by hand pressure. Other key definitions that created heated disputes during the regulatory negotiations include those for damaged friable surfacing ACM and significantly damaged friable surfacing ACM.

§ 763.82 *GENERAL LEA RESPONSIBILITIES:* This section of the regulation makes it clear that the LEA is responsible for compliance with the provisions of this regulation. It requires the school system to perform inspections, reinspections, periodic surveillance, develop and update management plans, develop and implement response actions (i.e. removal, enclosure, etc.), develop and implement operations and maintenance programs, as well as train all custodial and maintenance personnel. It places the burden on the school to notify parents, school employees, and outside contractors about the locations of the asbestos and what actions are being taken to prevent unnecessary exposure to asbestos. This section further lists other responsibilities of the school system in relation to the law.

§ 763.85 *INSPECTION AND REINSPECTIONS:* This section of the law requires all schools to inspect their buildings for both friable and non-friable asbestos-containing materials and construct an inventory of the locations of proven or assumed ACM. This section further requires the LEA to reinspect the school once every 3 years to reassess the condition of the material and determine if previously non-friable material has become friable. All inspections must be performed by an accredited inspector (See EPA Model Accreditation Plan).

§ 763.86 *SAMPLING:* Bulk sampling is not required since a school may elect to assume any or all materials contain asbestos. However, to prove that a material suspected of being ACM (i.e. fireproofing, pipe lagging) does not contain asbestos bulk sampling must be conducted as described in this section. Bulk samples must be collected by an accredited inspector.

§ 763.87 *ANALYSIS:* All bulk samples must be analyzed in a laboratory accredited by the National Bureau of Standards (or EPA in the interim). The method must be polarized light microscopy (PLM). A finding of less than 1 percent asbestos is required for all samples in a homogenous area to determine no ACM; but only one sample needs to be analyzed to determine the homogenous area contains ACM.

§ 763.88 *ASSESSMENT:* This section of the law requires the accredited inspector to assess all friable known or assumed ACM in a school building. The ACM must be classified into categories according to the degree of damage of the material (i.e., damaged or significantly damaged) and the potential for future damage or significant damage.

§ 763.90 *RESPONSE ACTIONS:* Thermal insulation which is damaged or significantly damaged must be repaired, or if it cannot be repaired, must be removed. Significantly damaged friable surfacing insulation must be removed, unless through the use of encapsulation and/or enclosure the material can be reclassified into the "damage category," where it can either be removed or repaired. Where there exists a potential for damage or significant damage the ACM must be removed, unless it can be shown that enclosure, encapsulation, or an operations and maintenance program alone can eliminate the reasonable likelihood that the ACM will become damaged. All response actions (i.e., removal, enclosure, encapsulation and repair) must be carried out by an accredited design professional, an accredited contractor, and using only certified asbestos abatement workers. Following a removal, enclosure, or encapsulation project the work area must be cleared using visual inspections and aggressive sampling techniques during air monitoring. Small projects (less than 160 square feet or 260 linear feet) may be cleared using phase-contrast microscopy (PCM), when no sample exceeds 0.01 fibers per cubic centimeter of air (f/cc). For larger projects, transmission electron microscopy (TEM) must be performed and the average of the results must not exceed 0.02 f/cc (or the outside air, whichever is higher) to clear the project. These TEM clearance requirements will be phased in over a three-year period to allow for laboratories to become accredited under the National Bureau of Standards accreditation program.

§ 763.91 *OPERATIONS AND MAINTENANCE:* The LEA must implement an operations and maintenance program (OMP) in any building where friable asbestos-containing building material (ACBM) is present or assumed to be present. All must receive a two-hour training session; and those employees who may disturb any ACBM must receive an additional 14 hours of instruction. Initial cleaning of the areas containing friable surfacing material or damaged thermal insulation must be performed. Periodic surveillance must be performed at least every six months. Additional requirements for the OMP and specific directions for responding to fiber release episodes are also included in this section.

§ 763.93 *MANAGEMENT PLANS:* On or before October 12, 1988, each LEA must develop an asbestos management plan for each school, including all buildings of the school that they lease, own, or otherwise use. The management plan must be developed by an accredited management planner. The details of the management plan are described in this section. Essentially, the plan must include where the asbestos-containing materials are located, what actions are being taken by the LEA, and how the LEA is complying with the provisions of this standard.

§ 763.95 *WARNING LABELS:* The LEA must attach warning labels adjacent to any friable and non-friable ACBM located in routine maintenance areas of each school building. The warning label must read "CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

§ 763.97 *COMPLIANCE AND ENFORCEMENT:* Depending upon

PROPOSED NEW EPA REGULATIONS (CONTINUED)

the nature of the violation the LEA may be fined $5,000-$25,000 per day in violation. If a violation is knowing or willful, criminal penalties may also be assessed. Additional information regarding injunctive relief, citizen complaints, and EPA inspections are contained in this section of the rule.

§ 763.98 *WAIVER; DELEGATION TO STATE:* This section of the law deals with the procedures for EPA to waive their enforcement of this rule in any state that has an equivalent state program. It also requires EPA to monitor the state program and determine its effectiveness.

§ 763.99 *EXCLUSIONS:* This section of the law deals with the procedures allowing certain LEAs to be excluded from parts of this law if they have already achieved substantial compliance through actions they have already taken. Note: simple compliance with the old "asbestos-in-schools rule" does not exempt a school from this regulation.

APPENDICES: Included among the Appendices to this regulation are the "Interim Transmission Electron Microscopy Analytical Method and Field Sampling Protocol for the Clearance Testing of an Abatement Site" (ed. note: see summary of protocol by James R. Millette, this issue) and the "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Operations, Maintenance and Repair Activities."

EPA MODEL ACCREDITATION PLAN: The 1986 Asbestos Hazard Emergency Response Act required EPA to develop a model plan for the accreditation of persons who perform any of the following functions for compliance with this rule.

(1) Inspect for ACM in school buildings (Accredited Inspectors).

(2) Assess the condition of the material and prepare management plans for schools (Accredited Management Planners).

(3) Design response actions, such as removal projects (Accredited Design Professionals).

(4) Carry out response actions such as removal projects (Accredited Asbestos Contractors).

Additionally, the model accreditation plan specifies the requirements for the certification of asbestos abatement workers. The model accreditation plan does not apply to those persons who perform only small-scale, short-duration operations and maintenance tasks. The training requirements of these personnel are addressed in the operations and maintenance section of the regulation.

The intention of the plan is to provide a guide for states to adopt in setting up their own programs. It is hoped that the states will adopt a plan similar to the model program establishing some degree of uniformity and allowing reciprosity among states. For each accreditation referred to above, specific requirements are listed as minimum to become accredited under the plan. For the most part it includes attendance at an approved training course and successfully completing an examination covering the topics of the course. Re-accreditation is required through re-training. Individuals who can document that they have received equivalent training and passed an equivalent examination can be grand-fathered into the accreditation program for a period of one year.

SUMMARY AND CONCLUSIONS

The new AHERA regulations, in conjunction with the recent OSHA Asbestos Standard (29 CFR 1926.58) will undoubtably serve as the basis for addressing the problem of asbestos-in-buildings. The above regulations are currently proposed, and may change before they become final in October 1987. This offers a great opportunity for those professionals experienced in asbestos identification, evaluation and control to have input through public comment and the inevitable hearings on this new rule during the upcoming weeks. Regardless of the final outcome of the rule, we can expect AHERA to shape the future with respect to asbestos in schools and other buildings.

(Post-script Note: Those wishing to comment on the proposed regulations should send their written comments before June 26, 1987, to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004., 401 M Street, SW, Washington, DC 20460. Comments should include the docket control number (OPTS--62048C). For further information on the comment process contact: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW, Washington, DC 20460; Telephone: (202) 554-1404.

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Fact Sheet
Final Rule: Asbestos-Containing Materials in Schools
Asbestos Hazard Emergency Response Act (AHERA)

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA) of 1986 (PL99-519). Under AHERA, the Environmental Protection Agency (EPA) is directed to promulgate regulations which provide a framework for addressing asbestos problems in public and private elementary and secondary schools. The proposed rule was published on April 30, 1987 and the final rule will be issued on October 17, 1987, in accordance with the statutory deadline. The rule requires schools to inspect buildings, develop management plans and implement response actions.

Inspections

- The rule requires an accredited inspector to visually inspect all areas to identify location of all asbestos-containing materials (ACM) - both friable (easily crumbled) and non-friable.

- Exclusions: An initial inspection of portions of the school or the entire school is unnecessary if:

  1. an accredited inspector has determined that a previous inspection identified ACM or indicated no ACM was present;

  2. the school is built after October 12, 1988 and an architect or project engineer or accredited inspector signs a statement indicating that no ACM was specified for use in construction documents;

  3. a school's inspection and abatement records indicate that all ACM was removed.

Reinspection and Periodic Surveillance:

- Local Education Agencies (LEAs) will be required to monitor ACM left in place.

- Periodic surveillance requires checking ACM every six months to determine if its condition has changed since the last inspection or surveillance.

- LEA may use unaccredited personnel (custodian or maintenance workers) to perform periodic surveillance activities.

- Re-inspection is required every three years, to re-assess the ACM and must be conducted by an accredited inspector.

Management Plans

- LEAs are required to develop an asbestos management plan for each school under their administrative control.

- Plan must be developed by an accredited asbestos management planner.

- Plan must include a description of inspection and response actions; an assurance that accredited persons were used to conduct inspections, develop management plans, and design or conduct response actions; and a plan for reinspection and operations and maintenance.

- LEAs are to submit their management plans to their State on or before October 12, 1988. The state has 90 days to disapprove the plan. The LEA is allowed 30 days to review its plan to conform with the State's changes.

- Each LEA must begin to implement its plan on or before July 9, 1989.

- LEAs must notify in writing parent and teacher organizations annually about the availability of the plan.

Response Actions

- AHERA directs the LEA to select and implement appropriate response actions for ACM which was assessed by the accredited inspector.

- The five major response actions include: operations and maintenance (O&M), repair, encapsulation, enclosure and removal. The rule describes appropriate circumstances for selecting each response action as well as steps which shall be taken to properly conduct the response actions. Response actions must meet the statutory standard -- protect human health and the environment.

- Successful completion of response actions is determined by air sampling. For two years after effective date of rule Phase Contrast Microscopy (PCM) clearance at .01 f/cc is acceptable for projects of 3,000 square feet or 1,000 linear feet or less. Transmission Electron Microscopy (TEM) is required for these projects after two years. For an additional year, PCM is permissible for clearance of 1,500 square feet or 500 linear feet or less, then TEM would be required for these projects. TEM clearance is accomplished through analysis and comparison of indoor and outdoor samples.

Use of Accredited Persons

- LEAs shall use accredited persons to inspect for ACM in school buildings, prepare management plans for schools, and design or carry out response actions with respect to ACM in schools.

- As required by AHERA, EPA issued a final Model Contractor Accreditation Plan on April 20, 1987. According to AHERA, each state must adopt a contractor accreditation program at least as stringent as the EPA Model Plan. Persons can receive accreditation from a State that meets the requirements of the EPA Model, or by taking an EPA-approved training course and exam.

- The Model Plan requires persons seeking accreditation to take an initial training course, pass an examination and participate in continuing education.

- AHERA enables EPA to permit persons to be grandfathered into the accreditation system for an interim period if they had attended prior EPA-approved asbestos training and passed or pass an asbestos exam. These provisions apply only to persons who have taken a suitable training course since January 1, 1985. The interim accreditation is for only 1 year after the date on which the State where the person is employed establishes an accreditation program at least as stringent as the EPA Model.

Worker and Occupant Protection

- AHERA extends coverage of the EPA Worker Protection Rule (40 C.F.R., Part 763) to maintenance and custodial personnel in schools who are not covered by OSHA's construction standard or approved State OSHA programs.

- LEAs are required, through air monitoring procedures or historic air monitoring data, to document and assure that the Permissible Exposure Limt (PEL) of 0.2 f/cc has not been reached or to implement proper protection practices to control exposure when the action level of .1 f/cc is met.

- LEAs may choose to institute the provision of Appendix B of the act in the case of small-scale, short duration projects rather than comply with the full EPA worker protection rule.

- Basic occupant protection requirements are established for any O&M activity in a school which disturbs ACBM including restricted areas, posted signs and modified air movement outside of the area.

Waiver for State Program

- States may receive a waiver from some or all of the requirements of the proposed rule if the State has established and is implementing or intends to implement a program of asbestos inspection and management at least as stringent as the requirements of the proposed rule.

10/19/87

- QUESTIONS AND ANSWERS -
FINAL REGULATIONS - ASBESTOS HAZARD EMERGENCY
RESPONSE ACT Of 1986 (AHERA)

1.) What does AHERA require schools to do about asbestos?

The AHERA regulations require all public and private elementary.and secondary schools to inspect buildings for friable (i.e., crumbled to powder under hand pressure) and nonfriable asbestos-containing materials (ACM), develop management plans and submit them to their State Governor or a designated State agency, and implement response actions to reduce asbestos exposure. Schools are required to use accredited persons for these activities.

2.) Are there any deadlines for these activities?

Congress set deadlines in the AHERA legislation for these activities. EPA's regulations reflect the deadlines established by Congress. Schools must complete their inspections and submit their management plans by October 12, 1988. States have 90 days to review and disapprove the plans. Schools must begin implementation of their plans by July 9, 1989. There is no deadline for completion of response actions.

3.) Do schools which have previously inspected their buildings have to inspect again?

This varies according to the individual circumstances at the school. Exclusions can be granted from the AHERA inspection requirements for previous inspections which were done properly. Most schools which have inspected did not check for nonfriable materials and will now be required to do so under the AHERA regulations.

4.) Do the regulations require schools to remove ACM?

No. The regulation requires schools to choose a response action which protects human health and the environment. The range of response actions the school can choose depends on the condition of the ACM. The response action is chosen by the school with the assistance of the accredited management planner. A school may choose to remove ACM if removal is the preferred response action.

5.) How many schools will be affected by the regulation and what is the cost of the regulation?

About 107,000 schools in over 40,000 school districts will be affected in some way by the requirements. Some schools have little remaining work to do to meet the requirements, other schools which have not even inspected could have many tasks ahead of them. The cost of the

regulation will vary according to the circumstances in the school, but EPA estimates the average cost of conducting inspections and developing management plans to be $3,600 for a public secondary school. Response action costs will vary depending on the response action chosen. EPA estimates that about 46,000 schools will implement response actions (removal, enclosure, encapsulation or operations and maintenance) over a 30 year period and at an average cost of $40,000. The total cost of the regulation over a 30 year period will be about $3.1 billion.

6.) What has EPA done to ensure that there will be enough accredited persons to perform the AHERA work?

One of the challenges of AHERA implementation will be training and accrediting a cadre of inspectors, management planners, and abatement contractors. The combination of existing or newly developing state programs plus EPA-approved training courses should supply a sufficient number of accredited persons.

EPA has done the following ...

- reviewed and approved more than 40 courses for accreditation of inspectors, management planners, and contractors -- these courses will be listed in Federal Register when rule is published

- developed a model inspector/management planner course for use by state accreditation programs and other training providers

- prepared grant awards for 17 states to fund new program to train and accredit inspectors and management planners (These will be awarded as soon as FV 88 appropriation is received)

7.) Are there any funds available to assist schools?

EPA has issued a total of $5 million in grants to 12 states to help schools pay for inspections and management plan development required by AHERA. Under the Asbestos School Hazard Abatement Act of 1984 (ASHAA), EPA has issued about $134 million in grants and loans to schools for asbestos abatement over the last three years. At this time, Congress has not completed the 1988 appropriation process, so availability of further funds is not clear.

8.) What will EPA do to promote compliance with this regulation?

EPA will be mailing the regulations and a guidance document to over 40,000 public school districts and private schools in the next few weeks. A teleconference for school administrators is also being planned. EPA will immediately begin a compliance outreach program designed to respond to LEA's of their compliance responsibilities under the AHERA regulations. EPA will also conduct inspections of LEA's and schools to assure compliance with AHERA.

9.) Will EPA continue to conduct compliance inspections for the 1982 school inspection rule after the effective date of the AHERA regulations?

No.

10.) When will EPA begin to inspect for violations of AHERA regulations?

Compliance inspections for the AHERA regulations will start on October 12, 1988, the statutory deadline for submission of management plans by the schools.

11.) Will EPA impose the statutory civil penalty of $5,000 per day for each violation of AHERA?

A civil penalty of $5,000 per day per violation is the maximum allowable civil penalty. AHERA also provides that the actual civil penalty assessed must reflect the significance of the violation, the culpability of the violator (including previous history of violations under AHERA), the ability of the violator to pay the penalty, and the ability of the violator to continue to provide educational services to the community. AHERA specifies that fines assessed against schools are to be used by the school for the purpose of asbestos abatement in that school. Residual amounts of fines are to be added to the Asbestos Trust Fund. AHERA also contains provisions for assessing criminal penalties of up to $25,000 per day.

12.) What will schools be required to do regarding transport and disposal of asbestos waste?

EPA had planned to use revised final regulations issued under the National Emission Standards for Hazardous Air Pollutants (NESHAP) of the Clean Air Act to provide requirements for transport and disposal of asbestos from schools. Unfortunately, revised NESHAP regulations have not been completed and, as specified in Section 204 of AHERA, the EPA publication "Asbestos Waste Management Guidance Document" is now in effect for transport and

disposal of asbestos waste. (This document is in addition to existing Department of Transportation and NESHAP regulations.) EPA will soon issue proposed revised NESHAP regulations to supersede the guidance document.

13.) What are states required to do under AHERA?

First, states are required to notify schools by October 17, 1987 regarding where school management plans are to be submitted. Second, states may review and disapprove plans within 90 days of receipt from schools. (If states do not disapprove plans, the plans are implemented.) Finally, states are required to establish accreditation programs.

QUESTIONS FOR INTERNAL USE

Q. Why has EPA not issued the study of asbestos in public and commercial buildings?

A. AHERA requires EPA to assess the presence and condition of asbestos in public and commercial buildings, evaluate existing regulations on asbestos, and make recommendations about the need for further action. The study directs EPA to advise Congress and the nation about a major public policy question -- what, if anything, should be done about the estimated 733,000 buildings which contain asbestos?

The Agency is giving very careful attention to this study and, quite simply, more time is necessary to produce a report that will contribute to a responsible public discussion of this question. The report is currently undergoing internal review by various EPA offices. We expect to issue the report in a few weeks.

Q. What were the major changes in the final rule compared to the April proposal?

A. Most of the changes were for clarification, others to enhance public notification or enforcement.

- changed response action section to emphasize that response actions must protect human health and environment -- then least burdensome method can be selected from among response actions which protect human health and environment

- expanded definitions of damage and significant damage by adding more description of characteristics which indicate damage

- changed notification of parent and employee organizations to require written notification

- added requirement for management planner to make a recommendation to LEA about the need for additional cleaning

Q. Has EPA appointed an asbestos ombudsman?

A. EPA plans to appoint an ombudsman by the time the AHERA regulations go into effect in late November. An interim ombudsman is available to respond to public inquiries. The interim ombudsman can be reached at (202) 544-1404.

Q. Will EPA issue civil penalties for first-time violations of AHERA, or will notices of Noncompliance (NON's) be issued for first-time violations as was done under AIS?

A. EPA plans to issue civil penalties for violations of AHERA. Congress set the compliance deadlines in the AHERA legislation, and EPA believes Congress intended these dates to be fully enforced.

Q. Has the Agency adopted an air monitoring standard to guide schools in assessing the asbestos hazard in their buildings?

A. EPA continues to believe that an air monitoring standard is not viable as the method for assessing asbestos hazards. There are several reasons for this. First, there is no agreed-upon level of airborne asbestos concentration which can be considered safe. Second, air measurements provide only a "snap shot" of the fiber levels in a building and cannot account for peak exposures that occur when material is disturbed. Third, even if a safe level could be established, a rigorous and lengthy air monitoring program would be required in order to produce meaningful, representative data. In short, air monitoring which detects low levels of fibers cannot be viewed as definitive evidence that no hazard exists in a building with ACM.

or recreational activities for an academic course in physical education.

(3) Any other facility used for the instruction or housing of students or for the administration of educational research programs.

(4) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building" under paragraphs (1), (2), or (3).

(5) Any portico or covered exterior hallway or walkway.

(6) Any exterior portion of a mechanical system used to condition interior space.

"Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

"Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"Surfacing ACM" means surfacing material that is ACM.

"Surfacing material" means material in a school building that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

"Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

"Thermal system insulation ACM" means thermal system insulation that is ACM.

"Vibration" means [illegible] motion of friable ACM [illegible] result in the release [illegible]

§ 763.84 General local education agency responsibilities.

Each local education agency shall:

(a) Ensure that the activities of any persons who perform inspections, reinspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with Subpart E of this part.

(b) Ensure that all custodial and maintenance employees are properly trained as required by this Subpart E and other applicable Federal and/or State regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, the EPA worker protection rule, or applicable State regulations).

(c) Ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

(d) Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are provided information regarding the locations of ACBM and suspected ACBM assumed to be ACM.

(e) Ensure that warning labels are posted in accordance with § 763.95.

(f) Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan under § 763.93(g).

(g)(1) Designate a person to ensure that requirements under this section are properly implemented.

(2) Ensure that the designated person receives adequate training to perform duties assigned under this section. Such training shall provide, as necessary, basic knowledge of:

(i) Health effects of asbestos.

(ii) Detection, identification, and assessment of ACM.

(iii) Options for controlling ACBM.

(iv) Asbestos management programs.

(v) Relevant Federal and State regulations concerning asbestos, including those in this Subpart E and those of the Occupational Safety and Health Administration, U.S. Department of Labor, the U.S. Department of Transportation and the U.S. Environmental Protection Agency.

(h) Consider whether any conflict of interest may arise from the interrelationship among accredited personnel and whether that should influence the selection of accredited personnel to perform activities under this subpart.

§ 763.85 Inspection and reinspections.

(a) *Inspection.* (1) Except as provided in paragraph (a)(2) of this section, before [illegible] local education agencies shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACBM.

(2) Any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a) (3) and (4) of this section prior to use as a school building. In the event that emergency use of an uninspected building as a school building is necessitated, such buildings shall be inspected within 30 days after commencement of such use.

(3) Each inspection shall be made by an accredited inspector.

(4) For each area of a school building, except as excluded under § 763.99, each person performing an inspection shall:

(i) Visually inspect the area to identify the locations of all suspected ACBM.

(ii) Touch all suspected ACBM to determine whether they are friable.

(iii) Identify all homogeneous areas of friable suspected ACBM and all homogeneous areas of nonfriable suspected ACBM.

(iv) Assume that some or all of the homogeneous areas are ACM, and, for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples under §§ 763.86 and 763.87.

(v) Assess, under § 763.88, friable material in areas where samples are collected, friable material in areas that are assumed to be ACBM, and friable ACBM identified during a previous inspection.

(vi) Record the following and submit to the person designated under § 763.84 a copy of such record for inclusion in the management plan within 30 days of the inspection:

(A) An inspection report with the date of the inspection signed by each accredited person making the inspection, State of accreditation, and if applicable, his or her accreditation number.

(B) An inventory of the locations of the homogeneous areas where samples are collected, exact location where each bulk sample is collected, dates that samples are collected, homogeneous areas where friable suspected ACBM is assumed to be ACM, and homogeneous areas where nonfriable suspected ACBM is assumed to be ACM.

(C) A description of the manner used to determine sampling locations, the name and signature of each accredited inspector who collected the samples, State of accreditation, and, if applicable, his or her accreditation number.

(D) A list of whether the homogeneous areas identified under paragraph (a)(4)(vi)(B) of this section are surfacing material, thermal system insulation, or miscellaneous material.

(E) Assessments made of friable material, the name and signature of each accredited inspector making the

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

February 4, 1988

The Honorable Mark Boyer
House of Representatives
P. O. Box V (Mail Stop 3100)
Juneau, AK 99811

Dear Representative Boyer:

The Fairbanks North Star Borough has approximately 2,000,000 square feet of school buildings. Cost for detailed inspection as outlined in the federal register (see attached) has been $0.25 to $0.50 per square foot depending on age and complexity of tha building. We have estimated $0.30 to arrive at a total of $600,000.

Please let me know if further information is desired.

Sincerely,

Neil Kersten, AIA
Director
Department of Public Works

NK5-4/ij

Attachments

cc: Juanita Helms, Borough Mayor
Cindy Marquatte, Special Assistant to the Mayor

File: 1988 CIP

EF/original

ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

February 25, 1988

Representative Mark Boyer
Pouch V
Juneau, Alaska 99811

Attention: Mr. Ed Flannigan

Re: AHERA

Dear Sir:

As we discussed over the phone on Wednesday, one of the provisions of the Asbestos Hazardous Emergency Response Act, requires that Local Education Agencies (LEA's) develop management plans to deal with the problem of asbestos containing materials in public facilities.

It is reassuring to learn that our legislators are aware of the cost impact to comply with the law.

While the 30 cents a square foot, being utilized elsewhere in the state, seems artificially high, it may be useful in developing rough order of magnitude cost estimates for completing the plans that must be forwarded to the Governor's office by mid-October of this year.

Attached is a summary comparison of what we believe to be the cost to complete our management plan and the rule of thumb estimate of 30 cents/square foot. Please note the modest projected costs reflect the existence of base line data.

Sincerely,

E. Louis Overstreet, P. E.
Executive Director
Facilities, Maintenance, & Operations

gl
CP5.148
Attachment

cc: William Coats, Superintendent
Richard Arndt, Director of Facilities
Bill Tanner, Director of Maintenance
Sue Miller, Dept. of Education

ANCHORAGE SCHOOL DISTRICT

AHERA INSPECTION AND MANAGEMENT REPORT
COST PROJECTIONS

A. Rule of Thumb Estimate:

82 facilities totaling approximately 5,900,000 square feet

30¢/sq.ft. x 5,900,000 sq. ft. = $1,770,000

B. Line Item Estimate:

Staff Training	
Technical	$25,000
Maintenance	$30,000
Staff Salaries*	
3 Technical Persons (F.T.)	$125,000
5 Technical Persons (P.T.)	$ 85,000
1 Clerical person (F.T.)	$ 25,000
Consultants (testing laboratories, cost estimators, designers, etc.)	$150,000
Equipment & Supplies	$ 50,000
Reproduction	$ 10,000
	$500,000

* Projected at 7 months, includes payroll burdens.

Note: The work to be performed by staff could be performed by consultants, however, this cost would be 25 - 50 percent higher. Existing staff is familiar with the facilities, planning resources available, and future plans to modify the facilities. Additionally the cost would be recurring as the plan requires updating and monitoring. Also, the District would not be in a position to utilize institutional knowledge if the knowledge existed external to the District.

PROJECT TITLE: AHERA ASBESTOS COMPLIANCE GRANTS

LOCATION: | COMPLETION DATE: | ELECTION DISTRICT:

APPROPRIATION TO: Educational Finance and Support Services | PROGRAM:

	FUNDING:	CAPITAL REQUEST	OPERATING COSTS	NEW POSITIONS (PFT):
1002	FEDERAL RECEIPTS			
1003	GENERAL FUND MATCH			
1004	GENERAL FUND	1,000.0		
1006	INTER-AGENCY RECEIPTS			
	TOTALS:	1,000.0		

PROJECT DESCRIPTION AND JUSTIFICATION:

On October 22,1986 President Reagan signed into law the Asbestos Hazard Emergency Response Act (AHERA). EPA was required to promulgate regulations by October 1987. This law required that all schools, both public and private be inspected for both friable and non friable asbestos containing building materials (ACBM). This inspection must be performed by an AHERA accredited inspector. The law also requires that if any ACBM is found than an AHERA accredited management planner must write a management plan detailing the location of the ACBM as well as the appropriate response action for that asbestos. There are a number of different response actions. They are stipulated in the EPA regulations and are dependent on the type of ACBM and the extent of damage or the potential for damage of that material. All public and private schools are required to submit copies of their management plans to state governors on or before October 17, 1988. On October 1, 1987 Governor Cowper designated the Department of Education as the agency that would review management plans for the state of Alaska. Failure to submit management plans could result in fines to the schools or school districts of up to $5000 per day per building.

CP1 CAPITAL PROJECTS DESCRIPTION

PRIORITY 1 OF 3

AGENCY Education-EFSS

Page 1 of 2

Revised Date:

FY 89

0001065

(6/86)-cp1

Introduced: 2/11/88
Referred: Health, Education & Social Services and Finance

5-1856A

Funding Information
General Fund $2,525,000
Other Funds -0-
$2,525,000

IN THE HOUSE

BY BOYER, FRANK, DAVIS, KOPONEN, MILLER AND NAVARRE

HOUSE BILL NO. 463

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Education for grants to school districts and regional educational attendance areas for asbestos management plans; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The sum of $2,525,000 is appropriated from the general fund to the Department of Education for the fiscal year ending June 30, 1989, for grants under AS 14.11.105 - 14.11.132 to assist school districts and regional educational attendance areas to comply with federal regulations adopted under the Asbestos Hazards Emergency Response Act of 1986 (Public Law 99-519) requiring inspection, inventory, and development of management plans for asbestos-containing materials in schools.

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1989.

* Sec. 3. This Act takes effect July 1, 1988.