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Air & Radiation
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A sbestos 101

This newsletter is on the MDE web site: <http://www.mde.state.md.us/asbestos>

EDITOR'S NOTES ...

Just prior to the May 2006 Asbestos Accreditation & School Assistance Division workshops, the use of Material Safety Data (MSDS) to determine asbestos content of suspect materials came up. It seems that when the Local Education Agencies (LEA *aka schools*) were buying replacement materials such as ceiling tiles, etc, the LEAs had in many instances relied on MSDS to determine that the replacement or new materials did not contain asbestos. When this use of MSDS was brought to the attention of the EPA, the EPA made a determination that Asbestos Hazard Emergency Response Act (AHERA) and EPA regulations do not allow this use of MSDS. Needless to say, we had very lively workshops.

(NOTE. As a carcinogen, asbestos is required to be listed on a MSDS when it is present in quantities greater than 0.1% (See 29 CFR 1910.1200.)

Region III EPA issued this letter of determination on September 5, 2006. It has not been mailed to the LEAs yet, but will probably go out after October 1st. It is scanned and available as a .PDF document you can read with the free Adobe® Reader® (go to www.adobe.com). We can mail or email you copies or get it from the MDE website by the middle of October. The mailing address and Mardel Knight's email address are on the masthead.

The following is a copy of the 2nd-4th paragraphs of the September 5, 2006 letter... *Recently, EPA Region III became aware that many LEAs in the states of Maryland and West Virginia have been using information included in Occupational Safety and Health Administration (OSHA) Material Safety Data Sheets (MSDS) to determine whether school building material is regulated as asbestos-containing material. According to 40 C.F.R. §763.85, LEAs are required to visually inspect school buildings to identify the locations of all suspect ACM. These regulations further require LEAs to either assume suspect building material to be regulated as ACM or sample and analyze such material in accordance with 40 C.F.R. §§763.86 and 763.87. As described at 40 C.F.R. §763.93, school management plans must include not only the location, quantity, and condition of all ACM but also descriptions of sampling protocols and results of laboratory analyses.*

Neither AHERA nor EPA's regulations specify OSHA MSDS as a method to determine whether school building material is regulated as ACM. If you have used MSDS to de

termine whether school building material is ACBM in any school under your jurisdiction, you are in violation of federal requirements and must come into compliance immediately. EPA expects to begin reviewing compliance by LEAs with fifty (50) or fewer schools six months after receipt of this letter. EPA expects to begin reviewing compliance by LEAs with fifty-one (51) or more schools one year after receipt of this letter.

Failure to remedy the violations expeditiously may be viewed as a knowing or willful violation, and may subject you to additional enforcement actions including civil and criminal penalties and injunctive relief... Harry T. Daw, Chief, Pesticides/Asbestos Programs & Enforcement (Region III EPA) signed the letter. (EDITOR: ACBM means asbestos-containing building material.)

WHAT DOES THIS MEAN?? It means that any new materials or replacement materials that are subject to AHERA must be either sampled or assumed to be positive for asbestos. If an inspection is conducted at an LEA of 50 or fewer schools six months after receipt of this letter, the inspector will be checking to see if MSDS were used to determine the status of suspect materials. The same is true of the larger LEAs, except their time frame is one year after receipt of the letter. In either case the inspector may go back to the last reinspection checking for the use of MSDS.

There may be instances where an MSDS sheet was used or may be used in the future. The LEA will need the following: (1) show in writing procurement documents specifying the item be asbestos-free, (2) has received from the supplier an invoice that states the supplier has to the best of his ability supplied asbestos-free items, and (3) has received an MSDS provided by the supplier. This may be an appropriate action for fire doors where it is not prudent to drill holes in the doors.

This means that you need to order asbestos-free and/or sample materials in a lot or just assume that these items contain asbestos. Or if you must use an MSDS, do so within the constraints listed in the prior paragraph. Enforcement starts either six months or one year after receipt of the letter depending on size of LEA.

The issue of replacement materials never really came up at training. It was assumed that one would not install asbestos-containing materials after removing ACBM. Many LEAs have gone the MSDS route over the years without considering the consequences. After nineteen years of AHERA regulations this is the first time that the use of the MSDS has become an issue. Even though this letter is only going to MD and WV schools, the use of MSDS is a practice used in other states, and since it was raised in Region III, we have to abide by the determination.

You may have noticed that the LEAs that have exclusion letters are not mentioned here. Exactly how their situation will be addressed is tabled for now. It may get tricky because these LEAs thought they had already complied with AHERA except for keeping a designated person and sending out their annual notifications! Stay tuned.

CHARTER SCHOOLS. Charter schools in Maryland are considered part of the LEA where they are located. The inspectors do not examine the charter agreements when doing the inspections, but they will ask for a copy of the charter agreement to include in their inspection report. Regardless of whether the charter school uses an existing school building or leases space in a building not owned by the LEA, it's the LEA's responsibility to ensure that the charter school is in compliance with the AHERA regulations. Some questions have come up about which entity performs the inspection, pays for it, etc. It is not a concern of MDE nor EPA how this is done, but it must be done.

EPA's directive to MDE for selecting schools for inspection is that charter schools are one of our priority inspection targets. Last year we inspected all of Baltimore City's open charter schools. This year (10/1/06-9/30/07) MDE will inspect all charter schools that are open in any LEA. Remember that the management plans must be in place before the school opens

NON CHARTER SCHOOLS Regarding leasing agreements between owners of nonpublic school buildings and the nonpublic schools, the owner and the school are both responsible for compliance with the AHERA regulations. MDE and the EPA do not examine lease agreements between two entities when doing inspections, and the agreement for compliance is up to the two parties.

Does a school that is leasing or using space in a building that already has a management plan in place need to obtain its own management plan covering only the spaces it leases? The answer is no, however, the LEA or building owner may use the management plan for the whole building, but it must be located where parents, teachers, and staff from the school leasing space can access it easily during regular business hours. The affected parties will not be expected to travel between buildings, go to a headquarters location, or have their access restricted in any manner. The school leasing space must include information on the location of the management plan, contact person, phone number, etc. in the annual notification that it makes to parents, staff, and teachers. The schools in leased space must keep notifications in their files, not in the files for the main building.

The party responsible for the management plan for the building should mark the parts of the management plan that are pertinent to the leased space or provide a list of the pages that pertain to the leased space in the management plan. The goal is to make access easy for the interested parties and make the information rel-

evant to their space easy to find. Remember that those who are not AHERA inspectors and management planners will not be familiar with the layout of and information in a management plan.

The school in the leased space must of course have a designated person with asbestos training. This person also must make sure that the management plan is available, keep copies of annual notifications, check to see that the reinspection, periodic surveillance, etc. activities are completed on time **EVEN** if the school in the leased space is, itself, not doing these things.

CONTRACTORS' CORNER . . .

Contractors mark your calendars. On Wednesday, **December 6, 2006**, MDE's Asbestos Division will be sponsoring an all day workshop for the asbestos abatement contractors at MDE. The training providers are invited, too.

TRAINING PROVIDERS . . .

Our next training providers' meeting is scheduled for **Thursday, March 8, 2007** here at MDE. It is in the same room and will be from 9:30 A.M. until noon.

Please keep track of the expiration dates of your courses (certificate to conduct asbestos training). MDE does notify you about 3 months before the course approvals expire that you need to submit renewal applications. This notification is a courtesy. Should you not receive the notification, it is still your responsibility to submit applications on time. ***All applications must be submitted on time, and you may not teach that course until the application is approved!***

For those of you teaching the inspector and management planner courses, make sure the issue of MSDS is discussed and provide a copy of the letter to the students.

The audit forms that were emailed to you on September 19, 2006 are due by COB on September 29, 2006. You may respond by mail, fax, or email. (Email is preferred.)

EMAIL NOTIFICATION OF CANCELLED CLASSES. If classes are cancelled, we must be notified as soon as possible. Email notification is the easiest method for us. When you use an email cancellation notice you will receive an email response verification. The O&M classes must be notified and cancelled in the same manner as the AHERA classes. The MDE 265 form must be used for the O&M classes and submitted 10 days after completion of the class.

Class submittals via email work well. You will receive an email response from us indicating that we have it and you'll be notified of any errors in our reply. Remember, classes are not officially submitted until errors are corrected!

ASBESTOS FOR ALL . . .

For those who have automotive repair shops as part of their operation, please see EPA's website (www.epa.gov/asbestos) and OSHA's website (www.osha.gov) in the "What's New" section. EPA has published its long-awaited best practices guidance for preventing asbestos exposure among brake and clutch repair workers. OSHA published a Safety and Health Information Bulletin titled "Asbestos Automotive Brake and Clutch Repair Work on July 26, 2006. Neither are standards OSHA does have regulations on this at 29 CFR 1910.1001(f)(3) and Appendix F.

The OSHA published the last revision in the reserve section of 29CFR 1910.134 on August 24,

2006 (FR 7150121-50192) and the revisions will take effect on November 22, 2006). These are new assigned protection factors (APFs) for respirators. This revision adds the definitions and requirements for the APFs. The APFs are numbers that give the level of protection that a particular type or class of respirator provides to the respirator users in conjunction with an effective respiratory protection program.

The selection table in this revision supersedes all of the selection tables in the substance specific standards (except for the 1,3-Butadiene Standard). This means that this table replaces the current selection tables in the asbestos standards including 29 CFR 1910.1001 and 29 CFR 1926.1101. Pay particular attention to the notes below the table that describe how the level of protection may change for a respirator if the manufacturer can provide data from studies to show the respirator can be used at higher exposure levels.

STATESIDE . . .

Management plans for state facilities are due by the end of September 2006. If you facility wants to apply of Asbestos Oversight Committee money, you must have an approved management plan on at file at MDE

STATE EMPLOYEES' TRAINING CALENDAR

<p>OCTOBER 2006</p> <p>3 WORKER R - MDE 17 AUTO WORKER - ROSEWOOD 31 IMPR - MDE</p>	<p>NOVEMBER 2006</p> <p>28 SUPERVISOR R - MDE</p>
<p>DECEMBER 2006</p> <p>5 WORKER R - MDE</p>	<p>If you must cancel, please call Sharon Manger at 800-633-6101, -3200 or email smanger@mde.state.md.us</p>