



The Commonwealth of Massachusetts
Department of Labor and Workforce Development
Division of Occupational Safety

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Director

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Deputy Director

January 24, 2001

CERTIFIED MAIL 7000 060 0026 1145 2820

TOXIC SUBSTANCE CONTROL ACT NOTICE OF NONCOMPLIANCE
Case No. 01A-4095

Haverhill Public Schools
4 Summer Street
Haverhill, MA 01830-5877

IN THE MATTER OF: Consentino Middle School

Attention: Mr. Ed Dufresne

A. INTRODUCTION

This Notice of Noncompliance is issued by the Department of Labor and Workforce Development pursuant to a cooperative agreement between the Department of Labor and Workforce Development (DLWD) and the United States Environmental Protection Agency (EPA). Under this agreement the Division of Occupational Safety (DOS) inspects schools on behalf of EPA for violations of rules promulgated under the authority of the Asbestos Hazard Emergency Response Act (AHERA). DOS advises your LEA to comply with the recommendations identified in Part E of this Notice. Failure to comply with these provisions may result in subsequent enforcement action by the EPA. Compliance with these provisions does not preclude EPA from taking further enforcement action. If you have questions regarding this matter, you may contact the Division of Occupational Safety at 617-969-7177.

B. PARTIES

The Division of Occupational Safety within the Department of Labor and Workforce Development is a duly constituted administrative agency of the Commonwealth of Massachusetts, having its offices at 1001 Watertown Street, West Newton, Massachusetts 02465.

2. Respondent is the **Haverhill Public Schools** whose principal location is 4 Summer Street, Haverhill, MA 01830-5877.

C. STATEMENT OF FACTS

1. On January 4, 2001, a duly designated representative of DOS and the EPA, acting pursuant to the aforementioned cooperative agreement, reviewed the records of the **Consentino Middle School** to ensure compliance and implementation of 40 Code of Federal Regulations (CFR) Part 763 Subpart E - Asbestos Containing Materials in Schools.

2. During the above referenced inspection, the duly designated representative of DOS conducted an opening conference with school management. Areas of discussion included the objectives and scope of the inspection, and providing information about AHERA.

3. During the AHERA enforcement inspection, basic inspection activities included reviewing facility records, a walk through of the school building, and preparing documentation of inspection activities.

4. The inspection process was completed with a closing conference with school officials, preparation of appropriate receipts, presenting EPA form 7740-3 "Notice of Inspection", answering of questions and discussion of inspectional findings.

D. OBSERVED VIOLATIONS

1. Although there was a policy for notification of outside contractors, the LEA did not ensure that short term workers who may come in contact with asbestos in a school were provided with information regarding the locations of asbestos containing building materials (ACBM) and suspected ACBM assumed to be ACM, 40 CFR §763.84(d).

2. The LEA did not maintain and update the management plan to keep it current with on-going operations and maintenance, periodic surveillance, reinspections and response action activities between 1989 and 2000, 40 CFR §763.93(d).

3. Although the majority of the custodial and maintenance staff have been trained, the LEA did not ensure that all members of the maintenance and

custodial staff who work in a building that contains ACBM receive awareness training of at least 2 hours, 40 CFR §763.92(a)(1) & §763.84(b).

4. The LEA did not conduct periodic surveillance in each school building at least once every 6 months, 40 CFR §763.92(b)(1). Since the most recent reinspection was performed in March of 2000, periodic surveillance should have been performed at least once in the fall of 2000.
5. The management plan did not contain the course name, and dates and hours of training taken by the person designated by the LEA to carry out the duties of the AHERA designated person, 40 CFR §763.93(e)(4)
6. The LEA did not attach warning labels immediately adjacent to any friable and non friable ACM located in routine maintenance areas, 40 CFR §763.95(a),(b),(c)

E. CORRECTIVE ACTIONS NEEDED

Based on the findings, the Division of Occupational Safety hereby advises Haverhill Public Schools to take the following corrective actions within thirty (30) calendar days of the receipt of this notice:

1. Ensure that short term workers who may come in contact with asbestos in a school are provided with information regarding the locations of ACBM and suspected ACBM assumed to be ACM. This will require implementation and enforcement of the existing Operation & Maintenance Program policy which is now in the management plan. This can be done by posting notices, work order permit systems, including the policy with RFRs, or any other practice which will effect the notification requirement.
2. Assure DOS that the LEA will continue to update all copies of the management plans with response action records, periodic surveillance, annual notifications, reinspections, etc. Since no updates were done for the past 11 years, it is especially important that the LEA establish a record of compliance with the AHERA regulation. The management plan must be kept current with any changes in designated person, training of new personnel, operations and maintenance activities, etc.

3. Complete the awareness training for all school maintenance and custodial personnel whose names were on the list provided at the time of the inspection. Advise DOS when this training will be conducted. Provide documentation to DOS verifying the names of employees trained, date of training, and person conducting the training.
4. Provide documentation to DOS that the management plan has been updated to include a description of the steps taken to inform workers and buildings occupants, or their legal guardians, about reinspections, response actions, and periodic surveillance activities that are planned or in progress. Sample letters are enclosed with this report.
5. Perform a 6 month periodic surveillance as soon as possible. Send documentation to DOS indicating that this has been done, complete with date and signature of person performing the surveillance.
6. Attach warning labels immediately adjacent to any friable or non friable ACM in routine maintenance areas, including the boiler room, janitor's closets, crawl spaces, etc. The signs must be prominently displayed in readily visible locations, and be of large size, bright color, and read as follows:

**CAUTION: ASBESTOS
HAZARDOUS
DO NOT DISTURB WITHOUT PROPER
TRAINING AND EQUIPMENT**

EFFECTIVE DATE

This notice shall become effective immediately upon receipt. Please address all correspondence to:

Department of Labor and Workforce Development
Division of Occupational Safety
1001 Watertown Street
West Newton, MA 02465
Attention: Ms. Janet McKenna

1/24/01
Date

Robert Kramarz
Frank Kramarz, Supervisor
Division of Occupational Safety