

U.S. EPA Region 5 AHERA Exclusionary Statement Guidance for LEA Designated Persons and their Consultants (March, 2006)

Disclaimer: *This guidance is provided with the intent to assist LEA's and their AHERA consultants in complying with U.S. EPA regulatory requirements. Nothing herein should be construed to relieve an LEA or its consultants from complying with any other Federal, State, or local requirements that may otherwise be applicable.*

Pursuant to 40 CFR 763.99 of the Asbestos-Containing Materials in School's Final Rule (52 FR 41826) (October 30, 1987), local education agencies (LEA's) may exempt certain school buildings from the inspection and re-inspection requirements found at 763.85 by submitting an "exclusionary statement," in the proper form, to the appropriate U.S. EPA Regional Asbestos Coordinator (RAC). The purpose of such a statement is to declare, for the record, that the building is, or has become, "asbestos-free." Once such a statement has been properly executed, it must be incorporated and retained in the affected school's Asbestos Management Plan (AMP).

All exclusionary statements under the Asbestos Hazard Emergency Response Act (AHERA) must be submitted to the appropriate U.S. EPA Regional Office in order for the exclusion to be recognized (please note that LEA's in Illinois must submit their exclusionary statements to the Illinois Department of Public Health in lieu of the U.S. EPA under the terms of the AHERA Waiver granted to that State Agency). The original signed document is to be placed into the school's AMP, and a copy is to be sent (preferably mailed, but facsimile is acceptable) to U.S. EPA Region 5 at the following address;

Phil King
Regional Asbestos Coordinator (DT-8J)
Waste, Pesticides & Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Tel: (312) 353-9062
Fax: (312) 353-4788
e-mail: king.phillip@epa.gov

As required by the regulation, a copy of the signed statement must be submitted to the U.S. EPA directly by/from the LEA, and it should be accompanied by a cover transmittal letter printed on the LEA's letterhead, and signed by the LEA's Designated Person or other representative. The cover letter and/or the exclusionary statement should also clearly identify the name of the building(s), the specific street address(es) of the building(s) to which the statement applies, whether the relevant work was renovation or new construction, and the specific dates for when the work was completed.

For new school buildings constructed after October 12, 1988, the procedures and requirements of 40 CFR 763.99(a)(7) apply. Only a qualified person may sign the exclusionary statement (i.e., either a licensed architect or registered professional engineer who was personally responsible for the construction of the building, or an accredited asbestos inspector properly licensed by the State). The signed and dated document must include a statement that “no ACBM was specified as a building material in any construction document for the building, or, to the best of his or her knowledge, no ACBM was used as a building material in the building.”

For abatement or renovations that otherwise render a building asbestos-free, the procedures and requirements of 40 CFR 763.99(a)(3) apply. Only an accredited asbestos inspector properly licensed by the State may sign the exclusionary statement. The signed and dated document must include the inspector's State of accreditation and, if applicable, license number, and declare that “the homogeneous or sampling area determined not to be ACBM was sampled in substantial compliance with 40 CFR 763.85(a).” This refers to the fact that, based on sampling records and inspection records, the accredited/licensed asbestos inspector has determined that no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled, before December 14, 1987, in substantial compliance with 40 CFR 763.85(a). This statement should be promptly submitted by the inspector to the LEA, for the LEA must then complete two subsequent actions within 30 days of the inspector's determination; (a) submit a copy of this signed and dated statement to the U.S. EPA, and (b) place the original of the signed and dated document into the AMP.

Upon receipt of a complete exclusionary statement, in the proper form, U.S. EPA Region 5 will reply with an acknowledgement letter that can then be incorporated into the school's AMP. If an incomplete submission is received, U.S. EPA Region 5 will contact the submitter and notify them of any missing items, but no acknowledgement letter from the Agency will be issued.

LEA's are reminded that there are currently no statutory or regulatory bans or prohibitions in effect concerning the manufacture and sale of most asbestos-containing products and building materials. Schools are cautioned to be wary of the possibility of inadvertently installing new asbestos-containing building materials into their buildings following an abatement or renovation project. LEA's are further reminded that all schools covered by AHERA must develop, maintain and update the required AMP, even for those buildings that are otherwise “asbestos-free.” The exclusionary statement only exempts the affected school building(s) from the AHERA inspection and re-inspection requirements, not from the other requirements of the regulation. A valid exclusionary statement will, however, significantly reduce the scope of the AMP to the minimum requirements outlined in the attachment below.

If you have questions, or need assistance, please feel free to contact the U.S. EPA Region 5 RAC.

**REQUIRED CONTENT FOR AN (AHERA) ASBESTOS MANAGEMENT PLAN (AMP)
IN AN ASBESTOS-FREE SCHOOL (U.S. EPA Region 5 – March, 2006)**

- 1) The name and contact information for the AHERA Designated Person (763.93 (e)(4))
- 2) The training records for the AHERA Designated Person (763.93(e)(4))
- 3) The name, contact information, and accreditation information of the Management Planner who developed the AMP (763.93(e)(12))
- 4) A list of the name and address of each school building covered by the AMP (763.93(e)(1))
- 5) A dated copy of each year's annual notification of the AMP's availability to parents, teachers and employees, along with a description of the steps taken to effect the notification (763.93(g)(4))
- 6) A "True and Correct Statement" signed by the Designated Person (763.93(i)).
- 7) The "Exclusionary Statement" signed by the accredited inspector, or the architect or project engineer responsible for the construction of a new school building built after October 12, 1988 where no ACBM was specified as a building material (763.99(a)(7)).