

DANGER ASBESTOS IN

Asbestos in America's Schools



FAILING THE GRADE:

Asbestos in America's Schools

A report written by the staff of Senator Edward J. Markey (D-Mass.), Ranking Member of the Subcommittee on Superfund, Waste Management and Regulatory Oversight, using the responses to an investigation launched by Senator Markey and Senator Barbara Boxer (D-Calif), Ranking Member of the Environment and Public Works Committee



December 2015
www.markey.senate.gov
[FB.com/EdJMarkey](https://www.facebook.com/EdJMarkey)
[@SenMarkey](https://twitter.com/SenMarkey)

TABLE OF CONTENTS

2	Executive Summary
5	Recommendations
6	Introduction
9	Methodology
10	Findings
17	Appendix A
20	Endnotes

EXECUTIVE SUMMARY

Asbestos was recognized as a hazardous air pollutant in 1971, when the health dangers of inhaling or ingesting asbestos exposure became apparent. Asbestos are fibrous minerals occurring in nature, with six types that are used commercially, including extensive use in building materials between the 1930s and 1970s. Asbestos fibers can become lodged in the lungs and gastrointestinal tract and cause diseases with long latency periods, including lung cancer, asbestosis, and mesothelioma. Asbestos is now known to be a human carcinogen, whose negative health effects can continue even after the exposure has stopped. Asbestos is responsible for 12,000-15,000 deaths in the United States each year. No levels of asbestos exposure have been proven to be safe to humans. Although asbestos is banned in 54 countries, the Environmental Protection Agency (EPA) was unsuccessful when it attempted to ban asbestos under the Toxic Substances Control Act (TSCA) in 1989.

Because disturbing the materials may generate dust and increase amounts of asbestos fibers in the air, trying to remove asbestos from buildings may actually create a more dangerous situation than leaving the asbestos intact where it is found. In the early 1980s, concerns were raised that remedial actions were not being taken due to cost and scarcity of trained professionals and that asbestos was being removed from buildings hastily by untrained contractors in ways that could exacerbate asbestos exposure risks. In 1986, Congress passed the Asbestos Hazard Emergency Response Act (AHERA) to protect the health and safety of our nation's students, teachers, and other school employees from exposures to asbestos in school buildings and ensure that any attempts to remove asbestos would be performed carefully and by professionals. AHERA required local education agencies in each state to inspect schools for asbestos; develop operations plans to train employees; develop management plans to deal appropriately with asbestos in schools; conduct periodic inspections and surveillance of any asbestos-containing materials not removed from the schools; and ensure that any removal of asbestos is done only by trained professionals. The implementation of AHERA was left largely to each state, although the EPA was given authority to oversee compliance and take emergency action if necessary.

Nearly 30 years have passed since AHERA became law, yet the extent of asbestos remaining in schools is largely unknown. Despite popular misconceptions that asbestos is something relegated to our past, asbestos was never banned in the United States although it is banned in 54 other countries. As a result, asbestos-containing materials (not only those products intentionally containing asbestos but also products unintentionally contaminated with asbestos) continue to be imported and used in construction with little transparency or public awareness.

More than 53 million American children and six million American adults spend large portions of their days in school buildings. Concerns have been raised about asbestos exposures in schools, including reports in the

past year of potential student exposure during renovations at Ocean View School District in Orange County, California; worker exposures during cafeteria renovations at Chute Middle School in Evanston, Illinois; student and staff exposure at Dearborn Heights Schools District No. 7 in Dearborn, Michigan; crumbling plaster prompting early dismissal of students and staff at Hadley Elementary School in Swampscott, Massachusetts; and the closure of preschool at Trinity Episcopal Church's School of Early Learning in Arlington, Virginia.

On March 31, 2015, Senator Edward J. Markey (D-Mass.), Ranking Member of the Subcommittee on Superfund, Waste Management, and Regulatory Oversight, and Senator Barbara Boxer (D-Calif.), Ranking Member of the Committee on Environment and Public Works, launched an investigation into the management of asbestos hazards in school buildings, sending letters to the governors of all 50 states to inquire about the implementation and enforcement of AHERA in order to better understand the scope of asbestos remaining in schools and enable policymakers to determine whether reforms are necessary. Senators Markey and Boxer received responses from 20 states (40% total response rate) as shown in Figure 1 (page 11): Alabama, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Kentucky, Louisiana, Massachusetts, Montana, Nevada, New Hampshire, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, and West Virginia. This report is based on the responses to those questions, and finds the following:

#1: The scope of asbestos hazards in schools in the United States is likely widespread but remains difficult to ascertain. More than 30 years have elapsed since the last systematic study of the scope of asbestos hazards in schools conducted by the EPA in 1984. Based on the responses received by Senators Markey and Boxer, about two-thirds of local education agencies (69.5%, or 3,690 of the 5,309 local education agencies in the fifteen responding states) have schools that have been identified as harboring asbestos. Additionally, states have not fully abated the asbestos, suggesting asbestos-containing materials remain ubiquitous in our nation's aging schools.

#2: States do not appear to be systematically monitoring, investigating or addressing asbestos hazards in schools. Three decades of inaction have enabled oversight responsibilities for AHERA to become ambiguous and confusing. Even identifying the appropriate point of contact for AHERA enforcement in a particular state has proven challenging. Despite repeated attempts, thirty states did not respond to the inquiry, not even to provide the Senators with the appropriate office overseeing such issues in that state (non-responding states include Alaska, Arizona, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Wisconsin, and Wyoming). The responses from 20 states show a wide range of variation in information. The majority of states responding were unable even to tally complaints and tips of alleged AHERA violations filed since the law took effect.

#3 : States do not report conducting regular inspections of local education agencies to detect asbestos hazards and enforce compliance.

A majority of responding states (eight of fifteen) were unable to articulate a clear schedule used to inspect or audit each local education agency to detect asbestos hazards. Only three of the 15 responding states (Kentucky, Montana, and Utah) indicated that each local education agency is audited or inspected for AHERA compliance periodically. Of the 3,690 local education agencies that include schools containing asbestos, only 288 (7.8%) are reported to be subject to periodic inspections. One state (Massachusetts) conducts 40 inspections per year, a rate that would require 26.5 years for the state to inspect each of the 1,061 local education agencies just one time. Few enforcement actions (audits, inspections, issuance of penalties, or emergency actions) have been taken in the states responding to this oversight inquiry. Enforcement actions taken generally seem to be reactive to complaints lodged by parents and school employees and not part of a proactive, regular oversight strategy or scheduled enforcement or inspection scheme.

#4 : States do not report record-keeping activities intended to keep track of asbestos hazard information or remediation activities in schools.

There are few data reporting requirements to ensure compliance with AHERA. Local education agencies are simply trusted to maintain the required documentation of operations plans, inspection reports, and management plans, annual notifications and take appropriate management actions. A majority of states responding were unable to provide data on the frequency with which local education agencies report information to the state (73%), the number of local education agencies that have conducted the periodic inspections (53%), or the number of local education agencies that have provided annual notifications to parents, teachers, and staff within the last five years (93.3%). Only one state (Delaware) was able to report the number of local education agencies that had provided the annual notification letters to parents, teachers, and staff each year since 2010. Moreover, nearly one third of the states responding to the question (five of 16) reported there is no information reported by the state to the EPA or that there are no requirements for the state to communicate with the EPA on implementation and enforcement of AHERA.

RECOMMENDATIONS

Non-response from 30 states and item non-response or ambiguity from those states that attempted to respond to Senators Markey and Boxer's inquiry may be indicative that oversight of the Asbestos Hazard Emergency Response Act is insufficient. Asbestos in schools, as it is known, remains a large problem in the United States. The simplest questions, including how many schools continue to harbor asbestos-containing materials, remain unanswered by many states. In addition to raising awareness among students, parents, teachers, and other employees about persistent asbestos hazards in school buildings, it is in the public's best interest to strengthen AHERA oversight through the establishment of commonsense periodic reporting requirements and provision of additional funding for enforcement actions (such as inspections and audits).

The public deserves access to information about where asbestos can be found in products, school buildings, and elsewhere to empower the public to avoid preventable asbestos exposures. The Asbestos Information Act of 1988,⁴⁷ which required a one-time publication of asbestos-containing products, needs to be amended to provide consumers with access to current information about asbestos-containing products.⁴⁸ AHERA must also be strengthened to require the EPA to evaluate states' AHERA programs every ten years; require the states to communicate information to the EPA on their progress with implementation; and increase funds available for AHERA enforcement. Continued research and outreach is needed to improve public awareness of the danger of asbestos exposure.

INTRODUCTION

Asbestos and Its Health Impacts

Asbestos¹ are fibrous minerals occurring in nature, including six types that were historically used commercially: the serpentine mineral chrysotile and the amphibole minerals cummingtonite-grunerite asbestos (amosite), riebeckite asbestos (crocidolite), actinolite asbestos, anthophyllite asbestos, and tremolite asbestos.² Asbestos was used extensively in building materials between the 1930s and 1970s. Asbestos consumption peaked in 1973.³ Although asbestos is banned in 54 countries, when the Environmental Protection Agency (EPA) attempted to ban asbestos under the Toxic Substances Control Act in 1989⁴, industry challenged the EPA's rule and a 1991 court ruling vacated much of the ban, finding that the EPA had not adequately considered other less burdensome regulatory options.⁵ The EPA ultimately re-issued only a limited ban in 1993 prohibiting new uses of asbestos.⁶ As a result, numerous construction materials that EPA proposed to be banned in 1989 (such as vinyl asbestos tiles, roof shingles and coatings, and asbestos concrete pipes and sheets) were allowed to continue to be used.⁷ While asbestos mining in the United States stopped in 2002, the United States still imports and consumes asbestos and asbestos-containing products, including in some building materials.⁸ The specific types, quantity, and location of asbestos-containing products in the United States are not readily available.⁹

Asbestos was listed as a hazardous air pollutant in 1971,¹⁰ when the health dangers of inhaling or ingesting asbestos exposure became apparent.¹¹ Asbestos fibers can become lodged in the lungs and gastrointestinal tract¹² and cause diseases with long latency periods (as much as 40 years after exposure¹³), including lung cancer, asbestosis, and mesothelioma.¹⁴ Asbestos is now known to be a human carcinogen.¹⁵ Moreover, the negative health effects may continue even after the exposure to asbestos has stopped. Reports estimate asbestos is responsible for 12,000-15,000 deaths in the United States each year.¹⁶ While asbestosis deaths have plateaued since 2000, annual death rates for malignant mesothelioma increased 9% from 1999 to 2005.¹⁷ No levels of asbestos exposure have been proven to be safe to humans. Because disturbing the materials may generate dust and increase levels of asbestos fibers in the air, trying to remove asbestos from buildings, especially if it is done improperly, may actually create a more dangerous situation than leaving the asbestos intact where it is found.

*Asbestos in Schools and the Asbestos Hazard Emergency Response Act of 1986 (AHERA)*¹⁸

The EPA first identified asbestos as a health threat to school children in 1978.¹⁹ The last known systematic survey of asbestos in schools conducted by the EPA was completed in 1984. It surveyed 2,600 public and private local education agencies and found that more than one-third of schools (35%, or 31,000 schools) contained asbestos-containing friable material and more than one-third of American students (34%) were enrolled in a school with asbestos-containing friable material.²⁰ Roughly 15 million students and 1.4 million school employees were thus potentially exposed to asbestos in schools.²¹ Moreover, these exposures were only expected to increase as asbestos fibers were released into the air as part of the normal wear and tear of aging buildings. Elevated mesothelioma rates have been reported for teachers,²² and some reports indicate teachers are more than twice as likely to die from mesothelioma than the general U.S. population.²³

The initial congressional response intended to address the risk of asbestos in schools was the 1980 Asbestos School Hazard Detection and Control Act.²⁴ In 1982 the EPA began requiring school districts to conduct initial inspections of buildings to identify the presence of asbestos-containing materials—regulation that spurred extensive product liability litigation as school districts sought relief from manufacturers to cover their looming costs of asbestos abatement in schools.²⁵ The Asbestos School Hazard Abatement Act in 1984 (ASHAA) provided additional federal funding to assist in the efforts to reduce the threat that asbestos in schools posed to children and others.²⁶ Congress later passed the Asbestos Hazard Emergency Response Act of 1986 (AHERA) to address concerns that “the danger of exposure to asbestos continues to exist in schools, and some exposure actually may have increased due to the lack of Federal standards and improper response action.” The legislation was the most comprehensive to date and required local education agencies in each state to:

- inspect elementary and secondary schools to identify the presence of asbestos materials;
- develop plans to train and protect employees in building operations;
- develop management plans to deal appropriately with asbestos in schools, including the proper maintenance, repairs, encapsulation, enclosure, or removal of the asbestos-containing materials;
- monitor through periodic inspection every three years and surveillance every six months after a management plan is in effect; and
- ensure that asbestos hazards were addressed only by trained professionals.²⁷

AHERA requirements applied to “local education agencies,” a general term encompassing public school districts as well as non-profit private schools and those with religious affiliations.²⁸ Local education agencies were required to submit asbestos management plans to the governor.²⁹ AHERA also provides for citizen complaints and citizen petitions to ensure the goals of AHERA are accomplished.³⁰ The implementation of AHERA was left largely to each state, although the EPA was given statutory authority to oversee compliance and take emergency action if necessary.³¹ AHERA regulations allow the EPA to delegate enforcement authority to states through waivers if the state has requirements meeting or exceeding the federal regulations.³² There are twelve waiver states that oversee AHERA through their own state regulations: Colorado, Connecticut, Illinois, Kentucky, Louisiana, Maine, Massachusetts, New Hampshire, Oklahoma, Rhode Island, Texas, and Utah.³³ In the 38 non-waiver states, EPA retains primary enforcement responsibility.³⁴ Scholars warned in the

1980s that “[l]ack of adequate funding may ultimately spell defeat for AHERA”³⁵ and that inaction has made “asbestos in schools a national tragedy.”³⁶

More than 53 million American children and six million American adults spend large portions of their days in school buildings.³⁷ Concerns have been raised on multiple occasions about asbestos exposures in schools, including reports of potential student exposure during renovations at Ocean View School District in Orange County, California;³⁸ worker exposures during cafeteria renovations at Chute Middle School in Evanston, Illinois;³⁹ student and staff exposure at Dearborn Heights Schools District No. 7 in Dearborn, Michigan;⁴⁰ crumbling plaster prompting early dismissal of students and staff at Hadley Elementary School in Swampscott, Massachusetts;⁴¹ and the closure of a preschool at Trinity Episcopal Church’s School of Early Learning in Arlington, VA.⁴² The condition of school infrastructure in the United States is “extremely limited” and “there is no ongoing federal collection of data on, or assessment of, the conditions of schools.”⁴³ However, recent estimates show the average age of main instructional buildings is 44 years,⁴⁴ indicating the ongoing relevance of AHERA compliance. According to a Government Accountability Office report issued in 1995,⁴⁵ more than \$2.3 billion dollars was needed for corrective actions and management of asbestos in schools for just the proximate three years (1995-1997).⁴⁶

METHODOLOGY

Letters were sent to governors of all 50 states. Appendix A provides a sample of the letter that was sent. The letters asked for responses to 20 questions focused on six themes: (1) the scope of asbestos in schools; (2) awareness and monitoring of asbestos hazards in schools; (3) the status of asbestos abatement; (4) accreditation, training, and licensure requirements; (5) school notifications; and (6) reporting to the EPA. Governors were asked to submit responses within 45 days. All 50 states confirmed receipt of the letter. As the deadline approached and passed, staff emailed courtesy reminders to the governor’s liaison to encourage responses. States that responded to the letters but did not answer any of the specific questions posed by Senators Markey and Boxer were recorded as non-responses. In instances when states responded to a question but did not provide the specific information requested, staffers coded the responses to that question as incomplete or unclear.

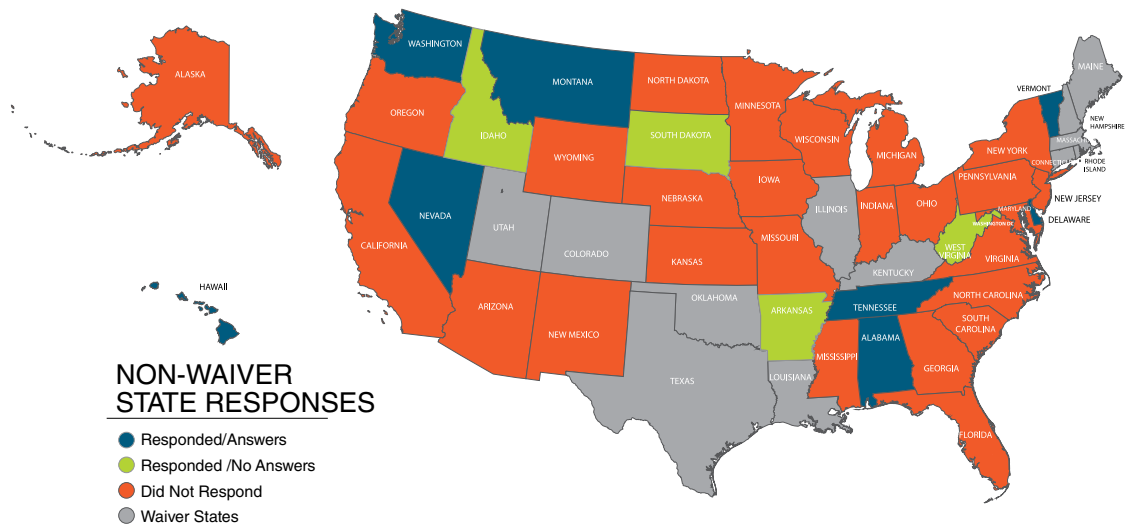
Limitations on Analysis

This report’s findings are subject to some limitations. Letters were sent to all states regardless of whether the state had an EPA waiver to enforce AHERA. It was anticipated that waiver states, due to their delegation of enforcement authority and enforcement of AHERA compliance directly through state regulations, would have ready access to compliance data and could provide more thorough answers to the Senators’ questions. It was also anticipated, because the EPA retains primary enforcement authority for the non-waiver states (and the states, therefore, do not ensure compliance through their own state regulations), that non-waiver states might have difficulty responding and would either (1) not respond or (2) simply direct the Senators’ offices to the appropriate point of contact at the regional EPA office overseeing AHERA compliance for that state.

Regardless of waiver status, the particular states responding may further introduce response bias, limiting the generalizability of the results. Schools are not evenly distributed among the states and continued use of aging schools may be more prevalent in some than others. Additionally, unique events such as a particularly problematic and publicly known case of asbestos contamination in a school, may have led some states to provide heightened attention to the problem of asbestos in schools or may at a minimum influence atypical responses to the questions (such as how many local education agencies are have fully abated and whether any school building could be considered free from asbestos).

While questions were phrased carefully to elicit consistent and reliable data, response heterogeneity—particularly when data are not maintained in the regular course of business—could introduce interpretative errors and skew results. For example, Question 8 was designed to understand the oversight of any particular local education agency and the frequency with which each local education agency is inspected or audited; however, states may be reluctant to be forthcoming with direct responses. Given known resource limitations (funds, personnel, etc.), it is possible that some local education agencies have never been subjected to targeted oversight simply because of the number of local education agencies in the state, the scheduled number of inspections and audits to be performed each year, and the prioritization scheme used.

Figure 2b. Responses from Non-Waiver States



Note: Red indicates the state did not respond. Green indicates the state responded but did not answer the questions. Blue indicates the state responded and answered the questions. Grey indicates a waiver state.

KEY FINDING #1

The scope of asbestos hazards in schools in the United States is likely widespread but remains difficult to ascertain. More than 30 years have elapsed since the last systematic study of the scope of asbestos hazards in schools conducted by the EPA in 1984. Based on the responses received by Senators Markey and Boxer, about two-thirds of local education agencies (69.5%, or 3,690 of the 5,309 local education agencies in the fifteen responding states) have schools that have been identified as harboring asbestos. Additionally, states have not fully abated asbestos in schools, as can be seen in the table below, which summarizes the extent of asbestos abatement activities in the states that responded to that question. These findings suggest that asbestos-containing materials remain ubiquitous in our nation's aging schools.

Table 1. *Status of Asbestos Abatement in States*

State	# of local education agencies (LEAs) where asbestos has been fully abated	# of local education agencies (LEAs) where asbestos has not been fully abated
Alabama	99% of LEAs*	1% of LEAs
Colorado	50 LEAs	330 LEAs
Delaware	4 LEAs	18 LEAs
Hawaii	0 LEAs	58 LEAs
Montana	0 LEAs	All LEAs
Rhode Island	0 LEAs	**
Tennessee	32 LEAs	809 LEAs
Utah	1 LEAs	68 LEAs
Vermont	0 LEAs	197 LEAs

** reflects state-reported percentage of LEAs rather than number of LEAs. ** reflects non-response.*

Note: Data not available, not monitored, or otherwise not reported by Connecticut, Kentucky, Massachusetts, Nevada, New Hampshire, and Washington.

KEY FINDING #2

The States do not appear to be systematically monitoring, investigating or addressing asbestos hazards in schools.

Three decades of inaction have enabled oversight responsibilities for AHERA to become ambiguous and confusing. Even identifying the appropriate point of contact for AHERA enforcement in a particular state has proven to be a challenge. Thirty states did not respond to the Senators' inquiry, not even to provide the Senators with the appropriate office overseeing such issues in that state (non-responding states include Alaska, Arizona, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Wisconsin, and Wyoming). The responses from 20 states show a wide range of variation in information.

While states were generally able to provide information regarding asbestos accreditation and efforts to ensure that those who handle asbestos inspections and remedial activities are properly trained, states have only limited information about the status of asbestos in schools and status of asbestos abatement efforts. While contributing factors are outside the scope of this report, implementation and enforcement has apparently not been a priority. The majority of states responding (57.1%) were unable to provide a tally of complaints and informant tips of alleged AHERA violations received since the law took effect. Six states, however, reported receipt of 228 complaints since 2010 (an average of 33 complaints per state).

KEY FINDING #3:

States do not report conducting regular inspections of local education agencies to detect asbestos hazards and enforce compliance.

According to states' responses, there have been few instances of local education agencies being held accountable for AHERA noncompliance, as shown in Table 2. Enforcement actions taken generally are reactive to complaints lodged by parents and school employees and not part of a regular oversight strategy or scheduled enforcement or inspection scheme.

A majority of the responding states (eight of fifteen) were unable to articulate a clear schedule used to inspect or audit each local education agency to detect asbestos hazards. In fact, only three of the fifteen responding states (Kentucky, Montana, and Utah) indicated that each local education agency is audited or inspected for AHERA compliance on a regular interval (ranging from once every three years to once every five years). Of the 3,690 local education agencies that include schools containing asbestos, only 288 (7.8%) are reported to be subject to periodic inspections.

In other states, AHERA inspections or audits may be performed at a rate specified in a memorandum of understanding with the EPA. These rates are so low relative to the absolute number of local education agencies in the state that it is possible for a local education agency not to be subjected to oversight for decades. For example, Massachusetts has 1,061 local education agencies subject to AHERA. As a waiver state conducting AHERA compliance inspections and audits on behalf of the EPA pursuant to a memorandum of cooperation, Massachusetts conducts 40 inspections per year with local education agencies selected randomly or prioritized if it is the focus of a hotline complaint. At this rate of regular inspection, it would take 26.5 years to inspect each local education agency just one time.

Table 2. *State AHERA Noncompliance Penalties and Emergency Enforcement Action*

		Yes (# States)	No (# States)	No Data, Not Monitored, Unknown (# States)	Sample Size
Q10	Issuance of penalties against any LEA for AHERA noncompliance	7	5	3	N=15
Q11	Emergency action taken by the state against any LEA for AHERA noncompliance	1	12	1	N=14

KEY FINDING #4:

States do not report record-keeping activities intended to keep track of asbestos hazard information or remediation activities in schools. There are few data reporting requirements to ensure compliance with AHERA. Local education agencies are simply trusted to maintain the required documentation of operations plans, inspection reports, and management plans, annual notifications and take appropriate management actions. Few enforcement actions (audits, inspections, issuance of penalties, or emergency actions) have been taken in the states responding to this oversight inquiry.

AHERA requires local education agencies to notify occupants (students, parents, employees) of AHERA related actions and plans at least annually (40 C.F.R. §763.84(c)), prepare and submit operations and management plans (40 C.F.R. §763.91), prepare and submit asbestos management plans (40 C.F.R. §763.93), conduct periodic inspections at least once every three years (40 C.F.R. §763.85), and keep records related to AHERA compliance (40 C.F.R. §763.94). Based on the states' responses, they have only limited information pertaining to local education agencies' compliance with these AHERA requirements, as detailed in Tables 3 and 4 below.

Only one state (Delaware) was able to report the number of local education agencies that had provided the annual notification letters to parents, teachers, and staff each year since 2010. Moreover, nearly one-third of the states responding to the question (five of sixteen) reported there is no information reported by the state to the EPA or that there are no requirements for the state to communicate with the EPA on implementation and enforcement of AHERA.

Table 3. *State Actions Related to Public Awareness, Monitoring, and Notifications*

		Predominant Response	# of states	Sample Size
Q4	Frequency of LEA reporting to the state on AHERA compliance	NA/No Data/ None Required	11	N=15
Q7	Number of LEAs that have conducted periodic inspections as required by AHERA	No Data/ Not Monitored	8	N=15
Q18	Number of LEAs that provided the annual notification letter to parents, teachers, and staff each year since 2010	No Data/ Not Monitored/ Unknown	14	N=15

Table 4. *States' Data Regarding AHERA Compliance by Local Education Agencies*

		Number of local education agencies	Sample Size
Q5	Prepared and submitted operations and management (O&M) plans as required by AHERA	1,541 (41.8% of LEAs with asbestos)	N=13
Q6	Prepared and submitted asbestos management plans as required by AHERA	2,513 (68.1% of LEAs with asbestos)	N=13
Q7	Conducted periodic inspections as required by AHERA	288 (7.8% of LEAs with asbestos)	N=15

Nearly three-quarters of the states responding (73%) indicated that they did not have data or that such data were not monitored when asked how frequently compliance information is reported by the local education agencies to the State. A majority of responding states (53%) indicated they did not have data or that such data were not monitored when asked how many of the local education agencies have conducted the required periodic inspections. Only one state (Delaware) was able to report the number of local education agencies that had provided the annual notification letters to parents, teachers, and staff each year since 2010. Moreover, states report limited information on whether local education agencies have prepared operations and management plans, prepared asbestos management plans, and conducted the required periodic inspections. Qualitative data indicate the states generally do not follow up with the local education agencies but, rather, assume the local education agencies are complying unless there is reason (such as hotline complaints) to suggest otherwise.

Finally, responses submitted from the states indicate little information is shared between the states and EPA. Nearly one-third of the states responding (five of sixteen) reported there is no information reported by the state to the EPA or that there are no requirements for the state to communicate with the EPA on implementation and enforcement of AHERA. The other states indicated information is shared but only on the frequency required for receipt of Toxic Substances Control Act enforcement funds (with eight states reporting some information quarterly, and three states providing information semi-annually). This lack of information sharing between the states and EPA sheds light on a significant gap in AHERA oversight.

APPENDIX A

Sample Letter sent to Governors



March 31, 2015

The Honorable Governor Robert Bentley
600 Dexter Avenue
Montgomery, AL 36130

Dear Governor Bentley,

In 1986 Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) to protect students, teachers, and other employees from the dangers of asbestos hazards in school buildings. As implementation of this law approaches the thirty year mark, the extent of asbestos hazards remaining in schools across the nation is largely unknown. We think it is an appropriate time to assess how the law is being implemented in each state and whether any legislative or other reforms are needed.

Please answer the following questions by May 15, 2015 as they relate to AHERA implementation in Alabama.

Scope of Asbestos Hazards in Schools

1. How many local education agencies in your state are subject to AHERA? Please provide a list of the local education agencies subject to AHERA and identify the number of school buildings in each.
2. How many local education agencies in your state have conducted an initial asbestos inspection of all buildings owned, leased, or used as school buildings as required by AHERA?
3. How many local education agencies in your state have been identified as having school buildings that harbor asbestos-containing materials? Please provide a list of those local education agencies and provide the number of school buildings in each that have been identified as harboring asbestos-containing building materials.

Awareness and Monitoring of Asbestos Hazards in Schools

4. How frequently do local education agencies report AHERA compliance information to the State?
5. How many local education agencies in your state have prepared and submitted asbestos operation and management (O&M) plans as required by AHERA regulations (40 C.F.R. §763.91)?
6. How many local education agencies in your state have prepared and submitted asbestos management plans as required by AHERA regulations (40 C.F.R. §763.93)?
7. How many local education agencies in your state have conducted the periodic inspections as required by AHERA regulations? Please provide a list of those local education agencies and the number of school buildings in each for which periodic inspections have not been conducted.
8. How often does your State conduct inspections and/or audits of each local education agency for their compliance with AHERA? Please provide the dates of state inspections and/or audits since 2010.
9. For each of the past five (5) years, what were the annual costs of your State's implementation and enforcement of AHERA?

10. Have any local education agencies in your state been issued penalties for noncompliance with AHERA? If so, please describe these occasions.
11. Has your State ever taken an emergency action against any local education agencies for noncompliance with AHERA? If so, please describe these occasions and their outcomes.
12. How many complaints or informant tips about alleged AHERA violations has your state received from parents, teachers, students, janitorial staff, etc. each year since AHERA became law in 1986?

Asbestos Abatement Status

13. Of the local education agencies known to have or have had buildings with asbestos-containing material, how many local education agencies have completed full abatement of the asbestos hazards? By "full abatement" we mean full removal of the asbestos hazards and not management in place through encapsulation, enclosure, or other means.
 - a. Please provide a list of the local education agencies that have completed full abatement and the date upon which the abatement was completed.
 - b. Please provide a list of those local education agencies that have *not* fully abated known asbestos hazards and the number of school buildings in each that continue to harbor asbestos-containing materials.

Asbestos Accreditation, Training, and Licensure

14. Did your State adopt the EPA's Model Accreditation Plan (*i.e.*, the EPA's template establishing definitions, training, examinations, continuing education, qualifications, recordkeeping, deaccreditation, reciprocity, and electronic reporting as set forth in 40 C.F.R. Pt. 763, SubPt. E, App. C) to ensure contractors, inspectors, and other professionals are adequately trained to handle asbestos-containing materials safely? If not, please describe the differences of your State's accreditation plan as compared with EPA's.
15. How does your State verify that professionals conducting asbestos-related work (such as building inspections, abatement projects, etc.) are properly accredited?
16. In addition to AHERA requirements for accreditation of contractors and laboratories, does your State require any professionals to be licensed to perform asbestos-related work? If so, please describe the requirements for licensure, penalties for doing asbestos-related work without a license, and disciplinary procedures for not performing asbestos-related work in conformity with professional standards in your State. Provide appropriate citations to State statutes when applicable.

Asbestos Notifications to Parents, Teachers, and Staff

17. Does your State have a template notification letter for use by local education agencies to provide parents, teachers, and staff annual notifications about asbestos management plans? If so, please provide a copy.
18. How many local education agencies have provided annual notification letters to parents, teachers, and staff each year since 2010?
 - a. Please provide a list of the local education agencies that have provided annual notification letters to parents, teachers, and staff each year since 2010.
 - b. Please provide a list of the local education agencies that have *not* provided annual notification letters to parents, teachers, and staff each year since 2010.

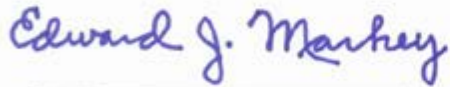
Reporting to EPA

19. What information related to AHERA and asbestos hazards in schools does your State report to the EPA? How frequently does this reporting occur?

20. Does your State receive grant funding to assist in the enforcement of AHERA (e.g., funding to conduct inspections)? If so, please describe the funding amount, funding period, and reporting requirements.

Thank you very much for your consideration of this matter. If you have any questions, please contact Dr. Jennifer Wagner or Dr. Michal Freedhoff at 202-224-2742.

Sincerely,



Edward J. Markey, Ranking Member
Subcommittee on Superfund, Waste
Management, and Regulatory Oversight



Barbara Boxer, Ranking Member
Committee on Environment and Public
Works

(ENDNOTES)

- 1 Asbestos. CDC Agency for Toxic Substances & Disease Registry. Available at http://www.atsdr.cdc.gov/asbestos/more_about_asbestos/what_is_asbestos/ Last accessed 7/20/2015
- 2 Department of Health and Human Services. Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research. Revised Edition. NIOSH Current Intelligence Bulletin 62. April 2011. Available at <http://www.cdc.gov/niosh/docs/2011-159/pdfs/2011-159.pdf> Last accessed 7/20/2015.
- 3 Department of Health and Human Services. Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research. Revised Edition. NIOSH Current Intelligence Bulletin 62. April 2011. Available at <http://www.cdc.gov/niosh/docs/2011-159/pdfs/2011-159.pdf> Last accessed 7/20/2015. Pp 9.
- 4 54 FR 29460 (Jul. 12, 1989)
- 5 *Corrosion Proof Fittings, et al., v. EPA*, 947 F.2d 1201 (5th Cir., 1991), opinion clarified (Nov. 15, 1991), rehearing denied (Nov. 27, 1991). See also, e.g., Warren E. Leary. Appeals Court Strikes Down Major Parts of Asbestos Ban. NYT. October 22, 1991. Available at <http://www.nytimes.com/1991/10/22/us/appeals-court-strikes-down-major-parts-of-federal-asbestos-ban.html>
- 6 58 FR 58964 (Nov. 5, 1993)
- 7 Schnapf, Lawrence P. Chapter 8: Regulation of Contaminants of Special Concern (Asbestos, PCBs, Lead-based-paint, mold) and Vapor intrusion. IN: Managing Environmental Liability. Juris Publishing. December 2010. Pp. 8-9 and 8-10. http://www.jurispub.com/cart.php?m=product_detail&p=8124
- 8 U.S. Geological Survey, Mineral Commodity Summaries, January 2015 Available at <http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2015-asbes.pdf> Last accessed 7/20/2015. See also Virta, Robert L. Asbestos. U.S. Geological Survey 2013 Minerals Yearbook. Available at <http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/myb1-2013-asbes.pdf> Last accessed 7/20/2015
- 9 The Asbestos Information Act of 1988, Pub. L. 100-577 (Oct. 31, 1988) was a one-time data reporting requirement, but did not require updates. See, 54 FR 15622-01 (Apr. 18, 1989), 54 FR 32430-01 (Aug. 7, 1989), 54 FR 38736-01 (Sep. 20, 1989), 55 FR 5144-01 (Feb. 12, 1990), and 55 FR 20522-02 (May 17, 1990).
- 10 36 FR 3031 (Mar 31, 1971).
- 11 But see Cristin Dale Mustillo. *Persistently Present, Inconsistently regulated: the story of asbestos and the case for a new approach toward the command and control regulation of toxics*. 2013 Mich St L Rev 257, 273 (2013) (noting asbestos exposure guidelines were first issued by the Public Health Service in the 1930s)
- 12 Schnapf, Lawrence P. Chapter 8: Regulation of Contaminants of Special Concern (Asbestos, PCBs, Lead-based-paint, mold) and Vapor intrusion. IN: Managing Environmental Liability. Juris Publishing. December 2010. http://www.jurispub.com/cart.php?m=product_detail&p=8124
- 13 EPA Asbestos Fact Book, February 1985
- 14 <http://www.cancer.gov/cancertopics/causes-prevention/risk-factors/cancer-causing-substances/asbestos/asbestos-fact-sheet> Last accessed 7/20/2015
- 15 EPA's Alternative Asbestos Control Method Experiments Lacked Effective Oversight and Threatened Human Health. Report No. 14-P-0359. September 25, 2014. Available at <http://www.epa.gov/oig/reports/2014/20140925-14-P-0359.pdf> Last accessed 7/20/2015. Pp1.
- 16 Lunder, Sonya. Asbestos kills 12,000-15,000 people per year in the U.S. Asbestos Nation. Available at <http://www.asbestosnation.org/facts/asbestos-kills-12000-15000-people-per-year-in-the-u-s/> Last accessed 7/20/2015
- 17 Department of Health and Human Services. Asbestos Fibers and Other Elongate Mineral Particles: State of

- the Science and Roadmap for Research. Revised Edition. NIOSH Current Intelligence Bulletin 62. April 2011. Available at <http://www.cdc.gov/niosh/docs/2011-159/pdfs/2011-159.pdf> Last accessed 7/20/2015. Pp 13.
- 18 Asbestos Hazard Emergency Response Act (AHERA), Pub. L. 99-160, 15 U.S.C. §§2641-2656
- 19 *E.g.*, James C. Stanley, *Asbestos in Schools: The Asbestos Hazard Emergency Response Act and School Asbestos Litigation*, 42 Vand. L. Rev. 1685 (1989) (citing H.R. Rep. No. 763, 99th Cong., 2d Sess. 15, *reprinted in* 1986 U.S. Code Cong. & Admin. News 5004, 5005; Advance Notice of Proposed Rulemaking for Asbestos in Schools, 44 Fed. Reg. 54,677 (Sept. 20, 1979).
- 20 Greenblatt, Janet. Evaluation of the Asbestos-in-Schools Identification and Notification Rule. Report No. EPA 560/5-84-005. October 1984. Pp xvi. Available at https://ia801409.us.archive.org/23/items/ERIC_ED250818/ERIC_ED250818.pdf .Last accessed 7/20/2015
- 21 Greenblatt, Janet. Evaluation of the Asbestos-in-Schools Identification and Notification Rule. Report No. EPA 560/5-84-005. October 1984. Pp xvi. Available at https://ia801409.us.archive.org/23/items/ERIC_ED250818/ERIC_ED250818.pdf .Last accessed 7/20/2015
- 22 Bang KM, Pinheiro GA, Wood JM, and Syamlal G. Malignant mesothelioma mortality in the United States, 1999-2001. *Int J Occup Environ Health*, 2006 Jan-Mar; 12(1): 9-15. See also Bang KM, Mazurek JM, Syamlal G, Wood JM. Asbestosis mortality surveillance in the United States, 1970-2004. *Int J Occup Environ Health*. 2008 Jul-Sep;14(3):161-9. There have been 57 known cases of mesothelioma involving MA school employees from 1987-2008. 2013 ADAO AAC: Dr. Charles Levenstein, “Lessons Learned from AHERA: Asbestos Management in Schools.” Available at <https://www.youtube.com/watch?v=dYsop4y6jk8> Last accessed February 26, 2015.
- 23 *See, e.g.*, Bill Walker. Asbestos remains widespread hazard in U.S. Schools. Asbestos Nation. Available at <http://www.asbestosnation.org/facts/asbestos-in-schools/> Last accessed August 10, 2015.
- 24 Pub. L. 96-270, June 14, 1980, 94 Stat. 487. See also 20 U.S.C. §§ 3601-3611 (1982 & Supp. V 1987).
- 25 *E.g.*, John P. Kincade, *Issues in School Asbestos Hazard Abatement Litigation*, 16 St. Mary’s L. J. 951 (1985)
- 26 Pub. L. 98-377, August 11, 1984, 98 Stat. 1287, see 20 U.S.C. §4011 et seq.
- 27 15 U.S.C. §2643
- 28 See EPA, Asbestos Laws and Regulations, Available at <http://www2.epa.gov/asbestos/asbestos-laws-and-regulations>. Last accessed August 7, 2015
- 29 15 U.S.C. §2645
- 30 15 U.S.C. §2647(d)-(f)
- 31 15 U.S.C. §2648
- 32 15 U.S.C. §2643(m); 40 C.F.R. §763.98
- 33 See EPA, State Asbestos Contacts, Available at <http://www2.epa.gov/asbestos/state-asbestos-contacts> Last accessed August 7, 2015.
- 34 There are 14 states that are considered “partial waiver” states wherein the state officials have the authority to inspect on behalf of the EPA but the EPA retains all other enforcement authority.
- 35 James C. Stanley, *Asbestos in Schools: The Asbestos Hazard Emergency Response Act and School Asbestos Litigation*, 42 Vand. L. Rev. 1685, 1700 (1989)
- 36 James C. Stanley, *Asbestos in Schools: The Asbestos Hazard Emergency Response Act and School Asbestos Litigation*, 42 Vand. L. Rev. 1685, 1709 (1989)

- 37 2013 ADAO AAC: Dr. Charles Levenstein, “Lessons Learned from AHERA: Asbestos Management in Schools.” Available at <https://www.youtube.com/watch?v=dYsop4y6jk8> Last accessed February 26, 2015.
- 38 Tory N. Parrish. Moon Area’s asbestos removal schedule stirs ire. TribLive. February 11, 2015. <http://triblive.com/neighborhoods/allegHENYneighborhoods/allegHENYneighborhoodsmore/7735105-74/asbestos-board-area#axzz3SgwYks98> Last accessed August 10, 2015. See also Bill Walker. Asbestos remains widespread hazard in U.S. Schools. Asbestos Nation. Available at <http://www.asbestosnation.org/facts/asbestos-in-schools/> Last accessed August 10, 2015.
- 39 Tribute wire reports. 6 firms cited for asbestos violations during work at Chute Middle School. Chicago Tribune. December 31, 2014. Available at <http://www.chicagotribune.com/suburbs/evanston/news/chi-sp-6-firms-cited-for-asbestos-violations-during-work-at-chute-middle-school-20150105-story.html> Last accessed August 10, 2015.
- 40 Paul Egan. Suit alleges asbestos cover-up at Dearborn schools. Detroit Free Press. December 1, 2014. Available at <http://www.freep.com/story/news/local/michigan/2014/11/26/suit-alleges-asbestos-coverup-dearborn-heights-schools/70115454/> Last accessed August 10, 2015
- 41 Robert Gates. Crumbling Plaster Forces Early Dismissal at Hadley. Swampscott Patch. September 12, 2014. <http://patch.com/massachusetts/swampscott/crumbling-plaster-forces-early-dismissal-hadley-0> Last accessed August 10, 2015
- 42 Ethan Rothstein. Asbestos Shuts Down Columbia Pike Preschool. March 26, 2015. <https://www.arlnow.com/2015/03/26/asbestos-shuts-down-columbia-pike-preschool/> Last accessed August 10, 2015.
- 43 Cassandra Dortch. School Construction and Renovation: A review of federal programs. CRS Report R41142. December 6, 2013. <https://www.fas.org/sgp/crs/misc/R41142.pdf> Last accessed August 10, 2015.
- 44 Debbie Alexander, Laurie Lewis, and John Ralph. Condition of America’s Public School Facilities: 2012-13. National Center for Education Statistics NCES 2014-022. March 2014. Table 10. Available at <http://nces.ed.gov/pubs2014/2014022.pdf>
- 45 Former Senator Tom Harkin had called for an updated GAO report on September 23, 2013. <http://www.usgbc.org/articles/senator-harkin-calls-gao-new-survey-condition-americas-schools>
- 46 Government Accountability Office. School Facilities: Condition of America’s Schools. GAO/HEHS-95-61. February 1995. Table V.1. Pg 63. Available at <http://www.gao.gov/products/HEHS-95-61>. Last accessed August 10, 2015
- 47 Asbestos Information Act of 1988, Pub. L. 100-577
- 48 As proposed by the Reducing Exposure to Asbestos Database Act of 2015 or “READ” Act (S.700)