

Asbestos and School Buildings

Information to Help Your Community Breathe Easy

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Asbestos exposure is a well-documented and recognized health concern that has been highly regulated for years by agencies like the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA). According to the National Cancer Institute, "Asbestos is a name given to a group of minerals that occur naturally in the environments as bundles of fibers that can be separated into thin durable threads." Because the fibers are resistant to heat, fire and chemicals and do not conduct electricity, they were a very useful building material and, thus, used widely for many years. However, studies have discovered a link between asbestos exposure and increased disease risk such as lung cancer, mesothelioma and asbestosis, leading authorities to regulate asbestos use in many industries including education.



The state of Colorado specifically regulates asbestos containing material (ACM) use for all public and non-profit private schools to protect students and school employees from asbestos exposure. Schools that have been identified as having asbestos must follow Colorado's Regulation No. 8 Part B (Asbestos Control). The enforcement of this regulation is overseen by the Colorado Department of Public Health and Environment (CDPHE). Regulation No. 8 was enacted to identify, manage, and reduce exposures of asbestos in schools.

Claims History

In one claim, high school students were authorized by the shop teacher to remove and replace damaged cinder blocks in a small storage closet attached to the shop class at the high school. Initially, the students used chisels and hammers but then switched to a grinder brought in from home. The grinder created enough dust to trigger the school's fire alarm. After it was determined that no smoke or fire event had occurred, the Member realized the wall students were doing work on could contain ACM. The response shut down the school for several days and required an engineer, a contractor to establish containment of the affected area and provide cleanup services, and an industrial hygienist to assist with set up of critical barriers so air samples could be taken, which indicated that ACM was released. After proper cleaning of the area the wall was repaired and re-encapsulated. Member staff also met with families of students who were potentially exposed to the ACM. The total cost of the claim exceeded \$50,000.

In another incident, a building caught on fire due to spontaneous combustion caused by improper disposal of oil-soaked rags. The local fire department responded to the fire. In their fire suppression efforts, they unknowingly spread damage and moved ACM throughout the fire scene. Upon later investigation and assessment of the fire damage, it was determined that there was ACM in the debris. The site was deemed a spill (the release of asbestos fibers due to any cause other than asbestos abatement) and a full abatement removal process was implemented. The fire was the determined cause of loss. Losses of approximately \$238,000 were incurred with approximately \$130,000 being related to asbestos abatement, removal, and cleanup.

CSDSIP Coverage

Depending on the type of loss, there are multiple coverage forms that may respond to asbestos related claims. We strongly encourage you to report, as soon as possible, any loss, damage, or liability allegation so that we can work with you to determine the appropriate coverage that would apply in your claim scenario. Coverage is subject to policy terms, limits, and exclusions. All claims are reviewed on case-by-case basis.

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Our Property Coverage Form provides coverage for damage caused by covered causes of loss to buildings and contents subject to the Member's Per Occurrence Property Deductible. As asbestos is a pollutant, coverage is subject to exclusion E. Pollution. The exclusion grants sub-limited coverage back if the loss or damage is directly caused by a covered cause of loss. Under this exclusion, the most the Pool will pay to extract "pollutants" from land or water at the "Member's premises" is \$100,000 Per Occurrence and Annual Aggregate Limit.

Under our School Entity Liability Coverage form, asbestos is considered a pollutant and as such, claims will be subject to exclusion 29, Pollution. Under this pollution exclusion, very limited defense and indemnity coverage is provided for claims that meet the exceptions listed in the policy. The exceptions include claims arising out of short-term pollution events and hostile fires. Under this Pollution exclusion, there is sub-limited defense coverage of \$25,000 Per Occurrence and Annual Aggregate to defend claims against an AHERA employee while acting within their duties pursuant to 15 U.S.C. 2641, et seq., C.R.S. 25-7-501, et seq., and any related regulations involving asbestos.

For Members who have our Supplementary Coverage for Environment Protect Premises, this insurance policy provides coverage for first party and third-party coverage for claims, remediation costs and associated legal defense expenses arising out of new pollution conditions on, at, under or migrating from your covered location that is reported during the policy period. Loss is subject to your Environment Protect Premises Deductible as well your Each Incident Limit of \$1,000,000 and your \$1,000,000 Aggregate during the policy period. Losses arising from asbestos, or any ACM are excluded under exclusion A. Asbestos and Lead-Based Paint. However, this exclusion does not apply to claims for bodily injury or property damage, or clean-up costs for the remediation of soil, surface water, or groundwater, or cleanup costs that arise out of the inadvertent disturbance of asbestos or ACM.

Regulation Number 8 Part B – Asbestos Control

Section IV: School Requirements

Synopsis

Regulation No. 8 Part B requires "Local Educational Agencies" (LEAs) to inspect their school buildings for asbestos-containing building material, prepare and maintain asbestos management plans, and perform asbestos response actions to prevent or reduce asbestos hazards. An LEA is defined to include public schools, nonprofit private schools, and schools operated by the Department of Defense. Often the responsibility of complying with Regulation No. 8 Part B and AHERA becomes part of the superintendent or maintenance staff responsibilities, but some schools or districts may have a specific job position taking the authority. If a school or district has asbestos, they must meet the requirements. The LEA may contractually delegate its duties but is still ultimately responsible for compliance. Local education agencies are encouraged to consult with the EPA Regional Asbestos Coordinator or the Division for assistance in complying with this rule.

Training and Accreditation Requirements

AHERA requires that LEAs employ accredited persons to perform most of the activities associated with asbestos management. Building inspectors, management planners, project designers, contractors/supervisors and asbestos workers must all complete Colorado approved courses that result in accreditation. The AHERA Rule also details specific training requirements for LEA Designated Persons and maintenance and custodial workers, although these individuals are not required to receive accreditation.

Designated Person (DP)

Regulation No. 8 Part B requires public schools and private non-profit schools to appoint an asbestos management coordinator who is called the "AHERA Designated Person." This person is responsible for a number of asbestos-related activities, including the implementation of the plan for managing asbestos-containing building materials in school buildings and compliance with state and federal asbestos regulations. AHERA requires that the DP receive

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adequate training to perform duties. Due to the differing needs of school districts based on the size of the district and the amount and condition of the ACBM, AHERA does not list a specific training course or specific number of hours of training for the DP. Such training shall provide, as necessary, basic knowledge of:

- Asbestos health effects
- Detection
- Identification and assessment of ACM
- Options for controlling ACM
- Asbestos management programs; and relevant Federal, and or State regulations concerning asbestos

The training completed by the designated person must be documented by course name, dates, and hours of training. The LEA is responsible for verifying that the Designated Person has received the proper training. Additionally, the LEA must have a true and correct statement signed by the designated person certifying that the general responsibilities of the LEA have been or will be met. These documents must be kept as a permanent part of the management plan (AMP).

Communication Requirements

LEAs are required to ensure all building occupants (including staff and students or parents/legal guardians) are notified, at a minimum, annually about activities relating to asbestos containing materials in their building. Any short-term workers who may come in contact with asbestos in a school must be provided the locations of ACM and suspected ACM. Additionally, LEAs must ensure warning labels are properly posted.

Maintenance and Custodial Staff

The LEA must ensure that all maintenance and custodial staff who work in a building that contains ACBM receive a minimum of two hours awareness training, whether they are required to work with ACBM. New custodial and maintenance employees must be trained within 60 days after the commencement of employment. Annual refresher training shall be provided and documented in the management plan for the school. Training shall include, but not be limited to:

- Information regarding asbestos and its various uses and forms
- Information on the health effects associated with asbestos exposure
- Locations of ACBM identified throughout each school building in which they work
- Information on how to recognize damaged, deteriorated, and delaminated ACBM
- The name and telephone number of the LEA designated person
- Information on the availability and location of the management plan

The LEA shall ensure that all members of its maintenance and custodial staff who conduct any activities that will result in the disturbance of ACBM shall receive training described in Regulation 8. Part B: Section IV.I.1.a and 14 hours of additional training. Annual refresher training shall be provided and documented in the management plan for the school.

Management Plans & Recordkeeping

Each LEA is required to maintain in its administrative office a complete, updated copy of a management plan for each school under its administrative control. The management plans shall be available during normal business hours, without cost or restriction, for inspection by representatives of EPA and the Division, the public, including teachers, other school personnel and their representatives, and parents. Additionally, each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. The school must make the plan available for inspection to those individuals listed above, as well as to workers before work begins in any area of the school building. It is the responsibility of the LEA Designated Person to ensure that complete and up-to-date records are maintained and included in the management plan. Recordkeeping shall include, but not limited to:

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- Training Information
- Periodic Surveillance Information
- Cleaning Information
- Small-Scale, Short-Duration O&M Activity Information
- Information on O&M Activities Other than Small-Scale, Short-Duration
- Information on Response Actions and Preventative Measures
- Air Sampling Information

Ultimately, the LEA is responsible to ensure that their Asbestos Management Plans for all buildings are complete, up-to-date and being implemented.

Often, we can forget about the importance of the protections that have been put into place regarding asbestos exposures. It is just as important now as it has been in the past to keep on track with this process. If you have asbestos in your school, you need to ensure that you are adhering to your AMP.

Resources

The information in this article is a summary of Colorado's Regulation No. 8 Part B Section IV.

For specific information and or questions regarding asbestos in Colorado schools contact CDPHE:

Asbestos Compliance Assistance Group

Phone: 303.692.3100

Toll Free: 1.800.886.7689

Email: cdphe.asbestos@state.co.us

Website: [CDPHE - Asbestos](#)

- [The Asbestos Hazard Emergency Response Act \(AHERA\)](#)
- [CDPHE 2 Hour Asbestos Awareness Training](#)
- [CDPHE Asbestos Inspection Flowchart](#)
- [CDPHE Asbestos Brochure](#)

Regulation Text

We have included the applicable portions of Regulation Number 8 Part B within this article for your convenience.

[Click here for entirety of Regulation Number 8 Part B-Section IV](#)

LEA Responsibilities

Each LEA shall:

- IV.B.1.** Ensure that the activities of any persons who perform inspections, re-inspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with Section IV. of this Regulation Number 8.
- IV.B.2.** Ensure that all custodial and maintenance employees are properly trained as required by this Section IV. and other applicable Federal and/or State regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, and the EPA Worker protection rule.)
- IV.B.3.** 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.
- IV.B.4.** 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

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of ACBM and suspected ACBM assumed to be ACM. Documentation of these notifications shall become part of the management plan.

- IV.B.5.** Ensure that warning labels are posted in accordance with Section IV.L. (Warning Labels).
- IV.B.6.** Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan under Section IV.J. (School Management Plans)
- IV.B.7.** Designated Person
 - IV.B.7.a.** Designate a person to ensure that requirements under this section are properly implemented.
 - IV.B.7.b.** Ensure that the designated person receives adequate training to perform duties assigned under Section IV.B. Such training shall provide, as necessary, basic knowledge of:
 - IV.B.7.b.(i)** Health effects of asbestos.
 - IV.B.7.b.(ii)** Detection, identification, and assessment of ACM.
 - IV.B.7.b.(iii)** Options for controlling ACM.
 - IV.B.7.b.(iv)** Asbestos management programs.
 - IV.B.7.b.(v)** Relevant Federal and State regulations concerning asbestos, including those in this Commission Regulation Number 8 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.
- IV.B.8.** Consider whether any conflict of interest may arise from the interrelationship among certified personnel and whether that should influence the selection of certified personnel to perform activities under this section.