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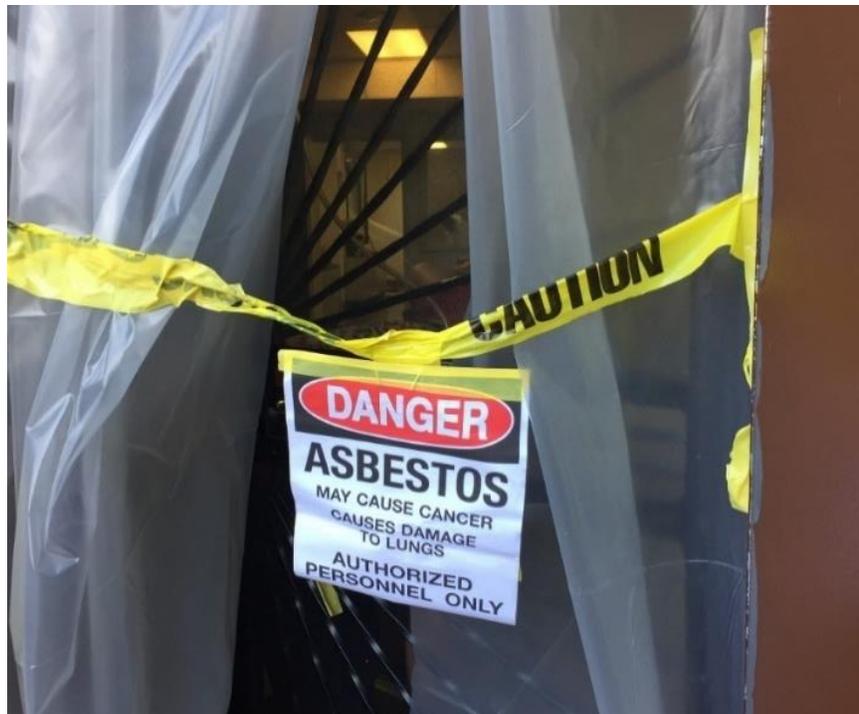
OFFICE OF INSPECTOR GENERAL

*Compliance with the law  
Partnering with states and other stakeholders*

# EPA Needs to Re-Evaluate Its Compliance Monitoring Priorities for Minimizing Asbestos Risks in Schools

Report No. 18-P-0270

September 17, 2018



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## Abbreviations

AHERA	Asbestos Hazard Emergency Response Act
CFR	Code of Federal Regulations
CMS	Compliance Monitoring Strategy
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
LEA	Local Educational Agency
NPMG	National Program Manager Guidance
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
TSCA	Toxic Substances Control Act
U.S.C.	United States Code

**Cover Photo:** Asbestos warning at a school entrance. (EPA OIG photo)

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# At a Glance

## Why We Did This Project

The Office of Inspector General conducted this audit to determine whether the U.S. Environmental Protection Agency (EPA) was performing sufficient compliance inspections of schools to reduce asbestos exposure.

The Asbestos Hazard Emergency Response Act (AHERA), which became law in 1986 and amends the Toxic Substances Control Act (TSCA), requires local educational agencies to inspect their school buildings for asbestos-containing material, prepare asbestos management plans, and perform asbestos response actions to prevent or reduce asbestos hazards. The law is meant to protect the more than 50 million students and 7 million teachers and staff who spend time in the nation's schools.

### This report addresses the following:

- *Compliance with the law.*
- *Partnering with states and other stakeholders.*

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## ***EPA Needs to Re-Evaluate Its Compliance Monitoring Priorities for Minimizing Asbestos Risks in Schools***

### What We Found

Even though the EPA was responsible for conducting AHERA compliance inspections for the majority of states, it conducted fewer inspections overall than the states responsible for their own inspections. Specifically, from fiscal years 2011 through 2015, the EPA conducted 13 percent of AHERA inspections, whereas states with jurisdiction over their own inspections performed 87 percent.

**Asbestos exposure risk is higher in children because they are more active, breathe at higher rates and through the mouth, and spend more time closer to the floor where asbestos fibers can accumulate.**

We also found that only one region has a strategy for its TSCA compliance monitoring efforts, as recommended by the TSCA Compliance Monitoring Strategy. Furthermore, EPA regions have either significantly reduced or eliminated resources for their asbestos program. Of the agency's 10 regions, five only inspect for asbestos in schools when they receive asbestos-related tips or complaints. Without compliance inspections, the EPA cannot know whether schools pose an actual risk of asbestos exposure to students and personnel.

We interviewed eight local educational agencies in the Atlanta (Region 4) and Chicago (Region 5) areas and found that the agencies generally appeared to be implementing AHERA. However, staff from the states and responsible EPA regions indicated that asbestos in schools might still be a significant problem. In addition, although required by AHERA, not all of the schools we reviewed maintained an asbestos management plan. This was the case if the school obtained an "exclusion statement" indicating that, to the best of the responsible parties' knowledge, asbestos was not used in construction. Without sufficient oversight, the EPA cannot verify that local educational agencies are identifying and properly managing asbestos in schools.

### Recommendations and Planned Agency Corrective Actions

We recommend that the Office of Enforcement and Compliance Assurance (1) require regions to incorporate asbestos strategies into their TSCA compliance monitoring efforts and (2) inform local educational agencies, in coordination with the regions, that they must develop and maintain an asbestos management plan, regardless of the presence of an exclusion statement, and monitor compliance.

In response to our draft report, the EPA stated that disinvestment from the asbestos program has been due, in large part, to increasing resource limitations and competing priorities. Based on the agency's response, we modified the initial recommendations. The agency agreed and provided acceptable corrective actions and completion dates that meet the intent of the revised recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 17, 2018

**MEMORANDUM**

**SUBJECT:** EPA Needs to Re-Evaluate Its Compliance Monitoring Priorities  
for Minimizing Asbestos Risks in Schools  
Report No. 18-P-0270

**FROM:** Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

**TO:** Susan Bodine, Assistant Administrator  
Office of Enforcement and Compliance Assurance

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OPE-FY17-0012. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

The Office of Compliance and Office of Civil Enforcement, both within the Office of Enforcement and Compliance Assurance, are responsible for the issues addressed in this report.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The Office of Inspector General (OIG) conducted an audit on the U.S. Environmental Protection Agency's (EPA's) efforts to protect children's health from asbestos exposure in schools. Our objective was to determine whether the EPA was performing sufficient compliance inspections of schools to reduce asbestos exposure.

### Background

#### *Asbestos in Schools*

Although it is now a known human carcinogen, asbestos has been widely used in a variety of building construction materials for insulation and as a fire retardant due to its fiber strength and heat resistance. Substantial amounts of asbestos, particularly in sprayed form, have been used in school buildings, especially from 1946 through 1972. More than 50 million students from kindergarten through 12th grade attend more than 131,000 public and private school facilities in the United States, and more than 7 million teachers and others work in those schools. Schools built before the 1980s in particular have a significant number of asbestos components that could become friable during maintenance work.<sup>1</sup> Asbestos in older schools can be commonly found in vinyl floor tiles, vinyl sheet flooring and adhesives; textured paint and patching compounds used on walls and ceilings; and hot water and steam pipes.

Asbestos fibers may be released into the air by the disturbance of asbestos-containing materials during product use, demolition work, building maintenance, and repair and remodeling. Exposure may occur only when the material is disturbed or damaged in some way to release particles and fibers into the air. When maintenance work disturbs these materials or they start to deteriorate over time, asbestos dust can enter the air and be inhaled. Current policy is to manage



*Top:* Asbestos warning label on piping in a school's boiler room. *Bottom:* Floor tile replacement in a school kitchen. (EPA OIG photos)

<sup>1</sup> Friable asbestos-containing material is any material containing more than 1 percent asbestos which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.

asbestos materials in place<sup>2</sup> rather than remove the materials; consequently, the potential for harmful exposures will likely persist for years.

Although asbestos has been banned in over 50 other countries, it has not been banned in the United States. As a result, asbestos-containing products continue to be manufactured, imported, processed and distributed.<sup>3</sup> Therefore, it is possible that newer or renovated schools may contain building materials with asbestos.

### **Asbestos Health Impacts**

Asbestos exposure is related to a number of diseases, both fatal and nonfatal. There is no safe level of exposure to asbestos. Table 1 provides an outline of asbestos-related diseases and their conditions.

**Table 1: Asbestos-related health impacts**

Disease	Conditions	Latency period
<b>Fatal</b>		
<b>Asbestosis</b>	<ul style="list-style-type: none"> <li>• Scarring of lung tissue that progresses slowly.</li> <li>• Symptoms include shortness of breath and dry cough.</li> </ul>	20–30 years
<b>Lung cancer</b>	<ul style="list-style-type: none"> <li>• Cancer occurring in the air passages that bring oxygen to the lungs.</li> <li>• Symptoms in advanced disease include chest pains and coughing.</li> </ul>	10–20 years
<b>Mesothelioma</b>	<ul style="list-style-type: none"> <li>• Cancer starting in the cells lining the chest and abdominal organs.</li> <li>• Can develop after relatively low exposures.</li> </ul>	30–50 years
<b>Nonfatal</b>		
<b>Pleural thickening<sup>a</sup></b>	<ul style="list-style-type: none"> <li>• Scarring along the lining of the lungs.</li> <li>• Results in less efficient lung function.</li> </ul>	As soon as 1 year, but often 15–20 years for diagnosis
<b>Pleural plaque</b>	<ul style="list-style-type: none"> <li>• Thickening of the lining of lungs.</li> </ul>	20–30 years
<b>Pleural effusions</b>	<ul style="list-style-type: none"> <li>• Excess fluid buildup between lungs and chest.</li> </ul>	10–20 years
<b>Asbestos warts/corns</b>	<ul style="list-style-type: none"> <li>• Growths formed over asbestos fibers that are stuck under the skin.</li> <li>• Typically itchy.</li> </ul>	10 days

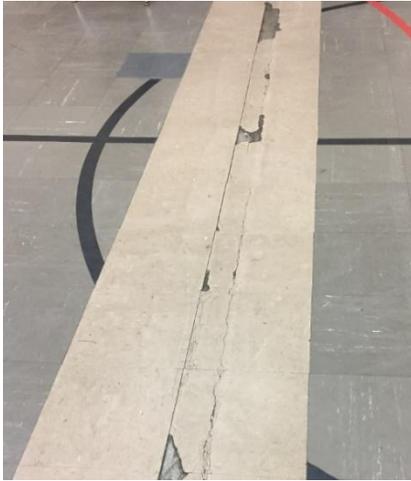
Source: OIG-prepared table based on various sources.

<sup>a</sup> In very rare cases, asbestos-related pleural thickening may cause death.

Students and school employees may face significant health risks from asbestos in schools across the United States. When asbestos is inhaled, the fibers can get trapped in the lungs. Over a long period of time, these fibers can cause tissue inflammation and scarring, which can affect breathing and lead to serious health problems. Determining the risk of asbestos-related diseases is complicated by the fact that symptoms can take 10 to 50 years to appear, making causation difficult

<sup>2</sup> Removal of asbestos is not usually necessary unless the material is severely damaged or will be disturbed by a building demolition or renovation project.

<sup>3</sup> Examples of asbestos-containing products still allowed in the United States include clothing, vinyl floor tiles, pipeline wraps, automatic transmission components, disk brake pads and roof coatings.



School gymnasium tile floor replacement. (EPA OIG photo)

to determine. The risk of disease depends on exposure dose, duration and source, preexisting lung or breathing conditions, and smoking or exposure to second hand smoke. Asbestos fiber characteristics—such as size, shape and chemical makeup—also have an impact.

Asbestos-related cancers and asbestosis are rare in children. However, mesothelioma risk, for instance, increases as time from first exposure increases. Therefore, early childhood exposure greatly increases risk because it allows for a longer period of latency. Further, the risk of exposure is higher for children because they are more active, breathe at higher rates and through the mouth, and spend more time closer to the floor where fibers can accumulate. Children are also more likely to come into contact with deteriorating surfaces because of their curiosity.

### ***Asbestos Hazard Emergency Response Act and Implementing Regulations***

The Asbestos Hazard Emergency Response Act (AHERA) became law in 1986. It amended the Toxic Substances Control Act (TSCA) and required the EPA to promulgate regulations addressing the inspection of, management of and response to asbestos-containing material found in elementary or secondary schools (see 15 U.S.C. § 2643). The EPA’s AHERA regulations are found in 40 CFR Part 763, Subpart E (the Asbestos-Containing Materials in Schools Rule), and require local educational agencies<sup>4</sup> (LEAs) to inspect their school buildings for asbestos-containing material, prepare asbestos management plans, and perform asbestos response actions to prevent or reduce asbestos hazards. AHERA regulations apply to all public<sup>5</sup> and private nonprofit schools offering kindergarten through 12th grade classes—about 30,000 LEAs—but private for-profit schools are excluded from AHERA. AHERA regulations require public school districts and nonprofit private schools to:

- Perform an original inspection to determine whether asbestos-containing material is present and then reinspect the material in each school every 3 years.

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<sup>4</sup> AHERA defines “local educational agency” as (a) any local educational agency defined in 20 U.S.C. § 7801; (b) the owner of any private, nonprofit elementary or secondary school building; and (c) the governing authority of any school operated by the U.S. Department of Defense. See 15 U.S.C. § 2642(7) and 40 CFR § 763.83. Also, 20 U.S.C. § 7801 defines the “local educational agency” as “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.”

<sup>5</sup> While AHERA is silent on tribal schools, the EPA’s 2016 TSCA Compliance Monitoring Strategy, which provides guidance on implementation and administration of TSCA, discusses tribal schools in detail with respect to AHERA.

- Develop, maintain and update an asbestos management plan and keep a copy at the school.
- Provide yearly notifications to parent, teacher and employee organizations on the availability of the school’s asbestos management plan and any asbestos-related actions taken or planned in the school.
- Designate a contact person to ensure the responsibilities of the public school district or the nonprofit private school are properly implemented.
- Perform periodic surveillance of known or suspected asbestos-containing building material.
- Ensure that trained and licensed professionals perform inspections and take response actions.
- Provide custodial staff with asbestos-awareness training.

The EPA recommends that asbestos be managed in place, which includes (1) periodic inspection and surveillance of the condition of the asbestos-containing material and (2) various abatement actions—such as enclosure, encapsulation or removal—if the asbestos is damaged or deteriorates over time. According to the EPA, the mere existence of asbestos does not make it a high-priority concern or increase the risk of asbestos exposure, as the asbestos may be properly maintained.

For new school buildings built after October 12, 1988, 40 CFR § 763.99(a)(7) allows LEAs to avoid otherwise required inspections if the architect or project engineer responsible for the newly constructed building or an accredited inspector signs a statement that states, “to the best of his or her knowledge, no ACBM [asbestos-containing building material] was used as a building material in the building.” This is sometimes known as an “exclusion statement.” The LEA, then, is responsible for submitting a copy of this exclusion statement to the EPA regional office, as well as for including the statement in the asbestos management plan for that school.



Asbestos warning on garbage dumpster. (EPA OIG photo)

### ***Other EPA Policy and Guidance***

The EPA Office of Enforcement and Compliance Assurance’s (OECA’s) primary policy documents applicable to asbestos in schools are the National Program

Manager Guidance (NPMG) and TSCA Compliance Monitoring Strategy (CMS).<sup>6</sup> The documents work conjointly: the NPMG outlines 2-year compliance and enforcement priorities and inspection expectations, while the CMS provides guidance for developing and implementing EPA regional TSCA compliance monitoring programs. The NPMG:

identifies the national compliance and enforcement priorities, discusses national direction for all compliance assurance programs, identifies activities to be carried out by authorized programs, and describes how the EPA should work with states and tribes to ensure compliance with environmental laws.<sup>7</sup>

The NPMG directs the EPA regions and authorized states and tribes to implement the CMS for four major TSCA programs,<sup>8</sup> including the asbestos program. The CMS uses a “One-TSCA” approach for EPA regional compliance monitoring programs that allows for flexibility depending on regional needs. It states that regions “should have an overall annual strategy for [their] TSCA compliance monitoring efforts.” The CMS also notes that it is important for the EPA regions to be knowledgeable about all aspects of their programs, including the number of schools, compliance levels, and effectiveness of state and tribal programs.

For fiscal years (FYs) 2016–2017, the NPMG encouraged EPA regions to “develop a plan for their inspections and other compliance activities” based on available resources, including how they will provide state oversight.<sup>9</sup> However, an inspection plan was not explicitly required by the NPMG. Also for FYs 2016–2017, the NPMG instructed that 90 percent of a region’s TSCA resources should focus on the lead compliance assurance program.<sup>10</sup> To perform asbestos inspections, regions are expected to “maintain inspector expertise and capacity ... to respond appropriately to tips.”<sup>11</sup> For FYs 2018–2019, the NPMG no longer stipulates how TSCA resources should be distributed or explicitly encourages regions to develop inspection and compliance plans, but it does still direct regions and states to adhere to the CMS.

The majority of TSCA asbestos activities involve AHERA implementation. Under the CMS, EPA regions are expected to conduct inspections in federal implementation jurisdictions (see below for discussion of federal and state implementation jurisdictions), respond appropriately to tips, and ensure that authorized states have effective compliance monitoring programs. The CMS encourages regions to use inspections to identify noncompliance. When identifying

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<sup>6</sup> The latest CMS was issued in 2016.

<sup>7</sup> Section II of the fiscal years 2016–2017 NPMG.

<sup>8</sup> The four major TSCA programs are (1) new and existing chemicals, (2) polychlorinated biphenyls, (3) asbestos and (4) lead-based paint.

<sup>9</sup> Section IV, Part 12, of the FYs 2016–2017 NPMG.

<sup>10</sup> TSCA funding was \$4.9 million annually in FYs 2017–2015, \$5.1 million in FY 2014 and \$5.2 million annually in FYs 2013–2012.

<sup>11</sup> Section II.B of the 2016 TSCA CMS.

schools for inspection, the CMS includes several factors to consider: the age and condition of buildings, inspection frequency, LEA compliance history, LEA size, economic targeting, nonpublic schools, and public and commercial buildings.

### **AHERA Implementation**

State implementation jurisdictions fall into two categories—“waiver” and “non-waiver”:

- Waiver states have been issued a waiver from federal requirements because they have established and are implementing their own asbestos program at least as stringent as the federal regulation. The state agency is responsible for implementing both compliance assurance (i.e., inspections) and enforcement activities, but the EPA retains oversight authority.
- Non-waiver states conduct inspections and then refer cases to the EPA for enforcement.

Both waiver and non-waiver states receive grants from the EPA. TSCA grants require applicants to match 25 percent of the funding provided by the grant. The grant program is intended to strengthen a state’s ability to address environmental and public health threats from asbestos.

In federal implementation jurisdictions, the EPA is directly responsible for AHERA implementation, including all compliance monitoring and enforcement activities (Table 2).

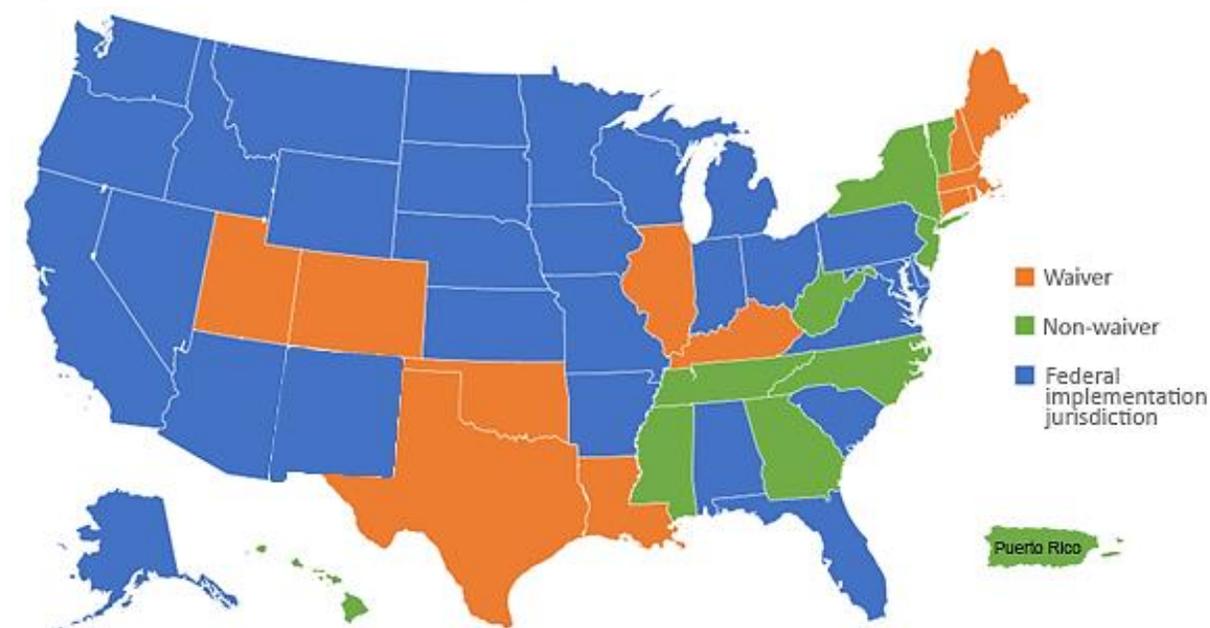
**Table 2: EPA and state AHERA responsibilities**

Responsible agency	State implementation jurisdictions		Federal implementation jurisdictions
	Waiver states	Non-waiver states	
<b>EPA</b>	<ul style="list-style-type: none"> <li>• Oversight of state programs</li> </ul>	<ul style="list-style-type: none"> <li>• Oversight of state programs</li> <li>• Enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Inspections</li> <li>• Enforcement</li> </ul>
<b>State</b>	<ul style="list-style-type: none"> <li>• Inspections</li> <li>• Enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Inspections</li> </ul>	N/A

Source: OIG analysis.

There are 12 waiver states that implement their own AHERA-like programs, through which they conduct both compliance monitoring and enforcement. There are nine non-waiver states (plus Puerto Rico) that receive grants to conduct compliance monitoring but refer enforcement cases to the EPA. The EPA conducts compliance monitoring and enforcement in the other 29 states, as well as the District of Columbia and the other U.S. territories. Figure 1 shows waiver states, non-waiver states and federal implementation jurisdictions as of FY 2017.

**Figure 1: Map of federal implementation jurisdictions, waiver states and non-waiver states**



Source: OIG analysis.

## Responsible Offices

The responsibility for enforcing AHERA lies within OECA’s Office of Compliance and Office of Civil Enforcement. The Office of Compliance manages the inspections and is the office responsible for credentialing inspectors. The Office of Civil Enforcement handles enforcement and develops and prosecutes administrative civil and judicial cases. Implementation of AHERA falls to the EPA regional offices.

## Scope and Methodology

We conducted this performance audit from April 2017 through May 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objective.

To obtain an understanding of the agency’s AHERA program, we reviewed federal laws, regulations, and EPA policy and guidance documents, including:

- Asbestos Hazard Emergency Response Act of 1986 ([AHERA](#)), Public Law No. 99-519.
- Asbestos-Containing Materials in Schools Rule ([AHERA Rule](#)), 40 CFR Part 763, Subpart E.

- Asbestos School Hazard Abatement Reauthorization Act of 1990 ([ASHARA](#)), Public Law No. 101-637.
- Federal Records Act ([FRA](#)), 44 U.S.C. Chapter 31.
- EPA Records Management Policy, CIO 2155.3, February 10, 2015.

We interviewed staff from OECA’s Office of Compliance, OECA’s Office of Civil Enforcement, and EPA’s Office of Chemical Safety and Pollution Prevention. We also visited two EPA regions. Specifically:

- We visited EPA’s Region 4, headquartered in Atlanta, Georgia, and interviewed staff in the Air, Pesticides and Toxics Management Division. Further, we conducted interviews with the following LEAs: Atlanta Public Schools, Fulton County School District and DeKalb County School District.
- We visited EPA’s Region 5, headquartered in Chicago, Illinois, and interviewed staff in the Land and Chemicals Division. Further, we conducted interviews with the following LEAs: Chicago Public Schools, Evanston Central Consolidated 65, Evanston Township High 202, West Harvey-Dixmoor 147 and Harvey School District 152.

The team identified the LEAs to interview based on their proximity to EPA Regions 4 and 5 headquarters. During our interviews, our questions were directed at specific schools within these LEAs.

We also conducted interviews with the following external stakeholders: the Environmental Working Group (a national nonprofit organization headquartered in Washington, D.C.), the Chicago Teacher’s Union, the Georgia Environmental Protection Division and the Illinois Department of Public Health.

The team also sent a survey and follow-up questions to all 10 EPA regions to inquire about AHERA compliance inspections and funding in the respective regions.

## Prior Report

**Report No. [13-P-0201](#), *The EPA Needs to Improve Management of Its School Environmental Health Efforts*, March 27, 2013.** The OIG conducted this audit to determine how effectively the EPA ensures the environment in schools is healthy for children. The audit looked at how the EPA implements its school environmental health programs to protect children’s health. Among the OIG findings was that the EPA needed to improve program implementation planning, management and oversight to advance its efforts to reduce environmental health risks in schools. The report also noted that the EPA needed to consider the impacts of the decrease in priority of asbestos inspections. The EPA reported that it had completed the corrective actions in response to the report’s four recommendations.

## Chapter 2

### Improvements Can Be Made to Minimize Asbestos Risks in Schools

Even though the EPA was responsible for conducting AHERA compliance inspections for the majority of states, it conducted fewer inspections overall than the states responsible for their own inspections. From FYs 2011 to 2015, the EPA conducted 13 percent of AHERA inspections, whereas the states with jurisdiction conducted 87 percent. Further, there has been a reduction in AHERA funding and, therefore, a corresponding reduction in the number of asbestos inspections performed in schools. Half of the EPA’s 10 regions (five) inspect only when they receive asbestos-related tips or complaints. Without compliance inspections, the EPA cannot determine whether schools pose an actual risk of asbestos exposure, even as the agency employs other compliance assurance tools and activities (i.e., compliance assistance, informal enforcement and outreach).

#### EPA Puts Limited Emphasis on AHERA Inspections

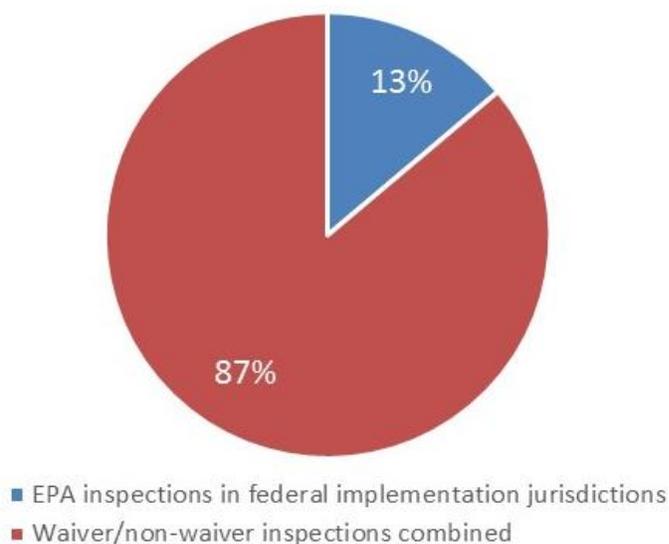
Inspection numbers in waiver and non-waiver states, while decreasing over time, are significantly higher than in federal implementation jurisdictions. The significant discrepancy in AHERA inspections—between states with jurisdiction versus states under federal jurisdiction—results in uneven oversight between states. The waiver and non-waiver states conducted 87 percent of the total inspections from FYs 2011 to 2015, while the EPA conducted 13 percent of the total inspections in the federal implementation jurisdictions. Table 3 and Figure 2 below provide details.

**Table 3: Number of inspections conducted by states and EPA**

	FY					Totals	% of total inspections conducted
	2011	2012	2013	2014	2015		
<b>Waiver states</b>	1,038	824	649	803	751	4,065	64%
<b>Non-waiver states</b>	362	162	360	390	172	1,446	23%
<b>EPA (federal implementation jurisdictions)</b>	343	182	224	66	33	848	13%
<b>Totals</b>	<b>1,743</b>	<b>1,168</b>	<b>1,233</b>	<b>1,259</b>	<b>956</b>	<b>6,359</b>	<b>100%</b>

Source: OIG analysis based on information from OECA’s Office of Compliance.

**Figure 2: AHERA inspections conducted FY 2011–2015**



Source: OIG analysis based on information from OECA’s Office of Compliance.

Notably, from FYs 2012 through 2016, Region 6 conducted zero inspections and Region 7 conducted only six. From FYs 2011 through 2015, Region 3 conducted the highest average number of inspections at 71. Most of the inspections were conducted from FYs 2011 through 2013, followed by a steep decline in inspections during FY 2014.

We also found that Region 8 implemented its own AHERA compliance monitoring strategy in 2013 that included significant efforts to determine compliance levels among the LEAs in its region and conduct inspections. The region prioritized the schools that needed to be targeted in its efforts and, since 2006, has used a database to track LEA compliance. Region 8 is the only region to have a specific AHERA compliance monitoring strategy despite the CMS recommending that each region have an “overall annual strategy for its TSCA compliance monitoring efforts.”

Our survey results indicated that regional AHERA programs are not well-funded and inspection numbers in waiver and non-waiver states significantly outnumber those in federal implementation jurisdictions. This results in states having varying degrees of oversight to none at all. Without knowing whether LEAs are complying with AHERA and identifying and properly managing asbestos in schools, there is an increased risk that asbestos in schools may go unnoticed, potentially resulting in asbestos exposure.

## **Asbestos in Schools Not a Top Priority for EPA**

According to OECA, AHERA is a “mature” program. The program is over 30 years old and, as schools have become more aware of asbestos hazards and the need to manage these hazards appropriately, a significant inspection/enforcement

presence is not considered to be as critical as when AHERA was initially implemented. The EPA has not documented that the risk of asbestos exposure in schools has diminished significantly under AHERA. Nonetheless, the EPA has been disinvesting in AHERA while prioritizing other TSCA programs.

During FY 2017, OECA provided TSCA grants to 21 waiver and non-waiver states. The TSCA grant funding budget, which includes money for asbestos, was about \$4.9 million in FY 2017, an amount that has decreased over the years from \$5.2 million in FY 2012. According to the EPA, the grant money is shared among several TSCA programs, including AHERA, polychlorinated biphenyls and lead-based paint. The NPMG for FYs 2016–2017 instructed EPA regions to devote 90 percent of their TSCA resources to the lead program, but it provided flexibility with 20 percent of that funding. The NPMG for FYs 2018–2019 instructs regions to adhere to the TSCA CMS, which provides guidance to the regions on strategic use of resources and TSCA program elements.

The grant funds are allocated from headquarters to the EPA regions and then to the waiver and non-waiver states. OECA stated that it relies heavily on the regions for oversight and implementation, but it depends on state partners to carry out these programs. OECA would like more states to become waiver states, as this would shift the inspections and enforcement responsibilities to the states. The Georgia Environmental Protection Division indicated that it would be interested in having Georgia become a waiver state if funding were available.

## **Atlanta and Chicago Area School Districts Visited Appeared to Be Implementing Asbestos Programs, but Problems Were Noted**

Our meetings with three LEAs from the greater Atlanta area showed that schools within these LEAs appeared to be implementing the AHERA program. DeKalb County stated that the average age of its schools is about 41 or 42 years. All three LEAs benefit from a one-penny sales tax that has provided Atlanta, Fulton County and DeKalb County LEAs with a dedicated funding stream for capital expenses, such as new construction and major renovations.<sup>12</sup> In Fulton County, administrators started using the money to fund new school construction. Many of its new school buildings have asbestos-exclusion statements in lieu of asbestos management plans. However, staff from the Georgia Environmental Protection Division noted that asbestos is still being used in building materials, so even if school officials do not think that there is asbestos, the schools should be inspected to make sure.

The LEAs we visited in the Atlanta area handled exclusion statements differently. One LEA maintained asbestos management plan binders for every school, while one LEA did not require any school that obtained an exclusion statement to

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<sup>12</sup> The Education Special Purpose Local Option Sales Tax is a one-penny sales tax that may be used by school systems to build new facilities; renovate existing structures; improve school bus fleets; upgrade heating, ventilation and air conditioning systems; and pay debt from previous projects.

maintain an asbestos management plan. Regardless of the presence of an exclusion statement, each LEA is required to develop a management plan for each school, pursuant to 40 CFR § 763.93. Failure to develop a management plan is unlawful, pursuant to 40 CFR § 763.97(a)(iii).

In the Chicago area, we found that four of the five LEAs we interviewed appeared to be implementing AHERA. One LEA in a relatively low-income area did not have an updated management plan and was not up-to-date in training requirements for its designated person and custodial and maintenance staff. However, this LEA was in the process of developing a new management plan, had taken steps to address asbestos, and provided notice about asbestos-related activity during several recent projects within its schools.

## **EPA Regions 4 and 5 Found Violations During School Inspections**

Region 4 reported that as many as 75 percent of the schools being inspected by the states in that region are being issued notices of noncompliance. The region stated that it does not categorize reasons for noncompliance but does review violations that are identified. According to the Georgia Environmental Protection Division, most of the noncompliance violations identified in the past decade were due to the lack of an asbestos management plan (or updated plan), inspections, periodic surveillances, annual notifications and training for maintenance staff. One LEA we visited said that it did not receive any notices of noncompliance, while another said that it could not recall Region 4 taking any enforcement actions against those schools that received notices of noncompliance. This lack of enforcement action is reflective of Region 4's decision to not penalize schools for noncompliance. Region 4 explained that it did not want to take money away from schools when that money could instead be used to educate students.

Region 5 stated that a violation can almost always be found during inspections. For example, an LEA may not be able to locate the asbestos management plan, an asbestos management plan may not be updated, or LEAs may not be conducting the required 6-month surveillances or 2-hour awareness trainings. In addition, the schools may not be informing the parents of the asbestos management plan or asbestos-related work being done at the school. According to Region 5, this is often due to a lack of awareness of AHERA requirements, compounded by the fact that there is a high level of turnover, especially among maintenance staff, which makes AHERA expertise rare. Also, Region 5 suggested that charter schools are a growing concern because they are becoming more abundant and are being housed in old buildings.

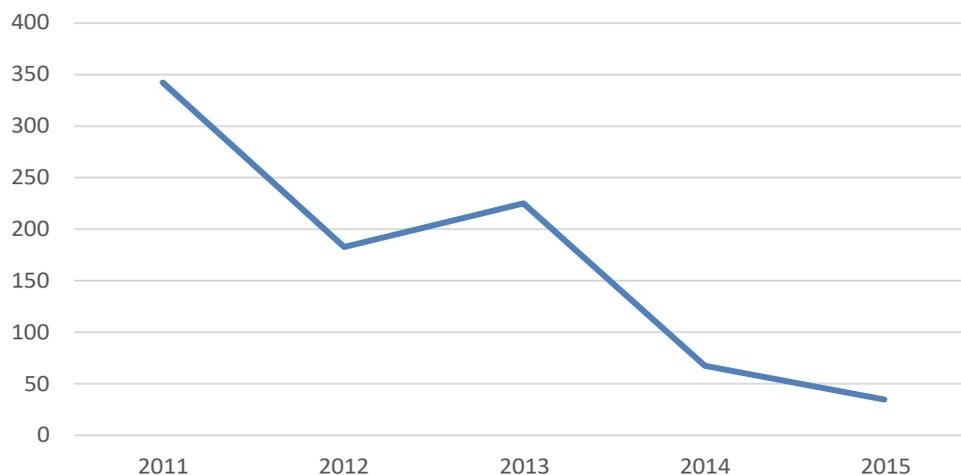
Region 5 staff indicated that asbestos is still a problem in the region and that the EPA's "lack of an enforcement presence has led to the LEAs not identifying ACBMs [asbestos-containing building materials] in their school buildings and not complying with the general responsibilities of AHERA." Region 5 staff said that AHERA is undervalued because of the perception that AHERA addresses

paperwork violations rather than actual releases into the air. However, AHERA is important to discovering disturbed asbestos or potential asbestos problems. Region 5 is also concerned that LEAs may be operating under the false impression that schools are in compliance.

## EPA Regions See Need for Additional Resources

All EPA regions have either completely disinvested from or significantly reduced resources to the AHERA program due to a combination of reduced funding and guidance from EPA headquarters to focus on what were considered to be higher priorities. Despite having the responsibility of implementing AHERA in a majority of states and territories, each EPA region currently commits less than one full-time equivalent to AHERA implementation. As a result, there has been a significant decline in the number of inspections conducted by the EPA from FYs 2011 through 2015. Figure 3 shows the number of inspections conducted during those years.

**Figure 3: Number of inspections conducted by EPA, FYs 2011–2015**



Source: OIG analysis based on information from OECA's Office of Compliance.

Seven out of 10 EPA regions indicated that funding is insufficient or that it is sufficient so long as they are not expected to conduct more frequent AHERA inspections. Half of the regions (five) inspect only when there are tips and complaints—the bare minimum requirement for when inspections must be performed, per the CMS—but eight regions said that they see a need to perform more inspections. Eight regions, as well as other stakeholders, believe there is reason to support a stronger AHERA compliance monitoring and enforcement program. The regions point to notices of noncompliance routinely issued by states and the EPA as evidence of the need for a stronger AHERA program. A sample of regional responses to a survey question on funding are shown in Table 4.

**Table 4: Sample of regional responses to OIG survey on AHERA**

Region	<i>OIG survey question: Does the region feel sufficient funds are being allocated to the AHERA program?</i>
2	"No. The states have consistently asked for more funds to support the program than we provide. The states would more than double the number of inspections if additional funds were provided."
3	"No... There are no [Environmental Program and Management] funds dedicated to the AHERA Program. This impacts our ability to conduct outreach, education and compliance assistance activities. At the regional level, less than one [full-time equivalent] is allocated to this program, consequently regional compliance monitoring has been reduced"
7	"If there were an expectation that Regions conduct routine inspections in meaningful numbers in each state, more resources would be required. AHERA is considered an underfunded program by OECA and Regions. ..."
10	"The region has to make difficult funding decisions based on provided resources, human health implications, and regional, human health and Headquarters priorities. The region would welcome AHERA funding if it became available."

Source: OIG survey.

## Conclusion

The EPA characterizes the AHERA program as “mature,” meaning that as the program is over 30 years old and schools have become more aware of asbestos hazards and the need to manage these hazards appropriately, a significant inspection/enforcement presence is not considered to be as critical as when AHERA was initially implemented. As a result, some EPA regions have completely disinvested from the program. In addition, one LEA we visited did not require schools to maintain an asbestos management plan if they obtained an exclusion statement. The LEA was unaware that, regardless of the presence of exclusion statements, it is unlawful for any LEA to fail to develop and maintain a management plan.

Per the NPMG, the agency should comply with the TSCA CMS, which states that regions should have an annual strategy for their TSCA compliance monitoring efforts. However, Region 8 is the only region to have a region-specific AHERA compliance monitoring strategy. In addition, in the current resource-constrained environment, five EPA regions conduct AHERA inspections only when they receive asbestos-related tips or complaints.

For the period audited, waiver and non-waiver states conducted significantly more AHERA inspections than the EPA conducted in states for which it had federal implementation jurisdiction. Due to diminished resources and competing priorities, the EPA is challenged in providing full oversight, enforcement and inspections support for the AHERA program. This creates the risk that asbestos exposures in schools could occur and go undetected, unenforced or not properly remedied.

Though Recommendation 2 below involves LEAs, the OIG is directing the recommendation to OECA following discussions with regional and OECA staff. The regional and OECA staff are in agreement that OECA, through its Office of

Compliance, should be the recommendation's action official. While our findings are limited to Region 4 and Region 5, OECA is not precluded from adopting nationwide corrective actions.

## Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Require the EPA regions, through the National Program Manager Guidance, to incorporate asbestos strategies in their Toxic Substances Control Act compliance monitoring efforts.
2. Inform local educational agencies, in coordination with the EPA regions, that they must comply with the requirements of the Asbestos-Containing Materials in Schools Rule, 40 CFR § 763.93, to develop and maintain an asbestos management plan, regardless of the presence of an exclusion statement, and monitor compliance.

## Agency Response and OIG Evaluation

In its response to our draft report (Appendix A), the EPA did not comment on our findings but did disagree with our recommendations. The agency reiterated that disinvestment from the asbestos program has been due, in large part, to increasing resource limitations and competing TSCA priorities. For example, the lead program has been a priority for the TSCA program due to the risk-based impacts of lead exposure to sensitive and vulnerable populations. The agency also provided technical comments. We revised the report to address the agency's technical comments where appropriate.

As a result of the agency's feedback to the draft report, we modified Recommendation 1 and combined Recommendations 2 and 3 into one recommendation. The modified recommendations were shared with the agency for concurrence. On August 6, 2018, the agency did not object to the modified recommendations and provided acceptable corrective actions and estimated completion dates. In response to the modified Recommendation 1, OECA stated that it would "[r]equire the EPA Regions to document asbestos strategies to OECA as part of the TSCA compliance monitoring efforts." In response to the modified Recommendation 2, OECA stated that it would "[w]ork with the regions to develop wholesale compliance assistance materials ... on the requirements of the Asbestos-Containing Materials in Schools Rule, 40 CFR § 763.93, to develop and maintain an asbestos management plan, regardless of the presence of an exclusion statement." OECA said that these materials "will be distributed (e.g., posted to the EPA public website) to local educational agencies" and that it will "monitor compliance." The OECA response satisfies the intent of our modified recommendations. Both recommendations are resolved with corrective actions pending.

# **Status of Recommendations and Potential Monetary Benefits**

## RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	15	Require the EPA regions, through the National Program Manager Guidance, to incorporate asbestos strategies in their Toxic Substances Control Act compliance monitoring efforts.	R	Assistant Administrator for Enforcement and Compliance Assurance	9/30/19	
2	15	Inform local educational agencies, in coordination with the EPA regions, that they must comply with the requirements of the Asbestos-Containing Materials in Schools Rule, 40 CFR § 763.93, to develop and maintain an asbestos management plan, regardless of the presence of an exclusion statement, and monitor compliance.	R	Assistant Administrator for Enforcement and Compliance Assurance	6/30/19	

<sup>1</sup> C = Corrective action completed.  
 R = Recommendation resolved with corrective action pending.  
 U = Recommendation unresolved with resolution efforts in progress.

## ***Agency Response to Draft Report***



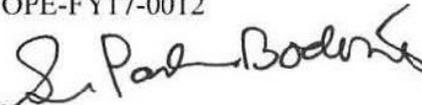
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C., 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

JUN 20 2018

### **MEMORANDUM**

**SUBJECT:** Response to the Office of Inspector General Draft Report: "EPA Needs to Re-Evaluate Its Compliance Monitoring and Enforcement Priorities for Minimizing Asbestos Risks in Schools," Project No. OPE-FY17-0012

**FROM:** Susan Parker Bodine   
Assistant Administrator

**TO:** Eric Lewis  
Director, Special Programs Directorate  
Office of Audit and Evaluation  
Office of the Inspector General

Thank you for the opportunity to respond to the draft findings and recommendations presented in the Office of Inspector General (OIG) Draft Report, "EPA Needs to Re-Evaluate Its Compliance Monitoring and Enforcement Priorities for Minimizing Asbestos Risks in Schools." OECA has reviewed the OIG Draft Report and has met several times with OIG representatives to discuss the AHERA program and the OIG recommendations. OECA is requesting that the OIG modify the report and recommendations as we discussed on June 11, 2018, and set forth here.

### **Background and Summary Comments**

In developing its first recommendation, the OIG Report does not recognize that the FY 2018-2019 National Program Managers Guidance (NPMG) identifies key programmatic activities for addressing the most serious non-compliance concerns in communities. With respect to the TSCA compliance assurance program, the NPMG established national expectations for regions and states to implement the TSCA Compliance Monitoring Strategy (CMS). The TSCA CMS presents a strategic "One-TSCA Approach" to monitoring compliance for all the TSCA programs. This approach allows the regions to use their available compliance monitoring resources to focus on stated agency priorities and on significant regional environmental problems. The TSCA CMS uses the Annual Commitment System (ACS) process as the tool the

regions use to identify how they are directing their resources. Specifically, the ACS for TSCA require regions to include a program breakdown when providing projections for TSCA inspections and other compliance monitoring activities, if any. OECA believes that this practice is adequate to capture regional strategies for asbestos and the other TSCA programs. However, as part of a continual improvement process, OECA will commit to issue a reminder to the regions for FY2019 ACS to provide the detailed TSCA program information. Thus, this in combination with the NPMG and the TSCA CMS will constitute the regional strategies for asbestos that the OIG is asking for in its Recommendation 1.

With regards to the OIG’s Recommendation 2, subject to available resources and competing priorities, the regions conduct inspections at local educational agencies (LEAs) to monitor compliance with the asbestos-containing materials in schools’ regulations, 40 CFR Part 763, Subpart E, including 40 CFR Section 763.93. Therefore, OECA does not agree with the OIG’s recommendation that a new or revised regulation is necessary to “require local educational agencies in Regions 4 and 5” to maintain an asbestos management plan regardless of the presence of an exclusion statement. A regulation already exists with that requirement and OECA does not see the need for a rule specific to LEAs in Regions 4 and 5. Further, the promulgation or amendment of AHERA regulations is not within the purview of OECA.

With regards to OIG’s Recommendation 3, OECA does not believe that a new and separate effort is necessary or practical to verify local educational agencies in all regions are maintaining an asbestos management plan (40 CFR 763.93). Specifically verifying compliance that each school is maintaining an asbestos management plan is not practical without a huge increase in appropriated resources from Congress. Instead, EPA uses a strategic approach to monitor compliance through the existing compliance monitoring program. However, OECA will commit to the development of additional compliance assistance materials to help schools understand and comply with the regulations. The compliance assistance material will emphasize the importance of schools maintaining an asbestos management plan.

For the reasons set forth above, OECA will agree with the OIG recommendations with our revisions as set forth below:

No.	Recommendation	OECA Explanation/Response	Proposed Completion Date
1	Require the EPA regions to develop and submit region-specific asbestos strategies for the Toxic Substances Control Act compliance monitoring efforts, to include but not be limited to how Toxic Substances Control Act programs will be prioritized and why.	<u>Recommended Revision:</u> Consistent with the NPMG, the TSCA CMS and the FY2019 ACS process, OECA will issue a reminder and clarification to the regions that (1) ACS Measure “TSCA 01 OC” requires a program breakdown of projected	December, 2018

		inspections, (2) ACS Measure “TSCA 02 OC” requires a program breakdown for other compliance	
2	Require local educational agencies in Regions 4 and 5 to verify in writing that all their schools are maintaining an asbestos management plan in accordance with the Asbestos-Containing Materials in Schools Rule, 40 CFR Section 763.93, regardless of the presence of an exclusion statement.	<u>Recommended Revision is to merge Recommendations 2 and 3</u> OECA will develop compliance assistance material specifically focused on compliance with schools maintaining an asbestos management plan (40 CFR 763.93).	June, 2019
3	Verify that local education agencies in all regions are complying with the requirements of the Asbestos-Containing materials in Schools Rule, 40 CFR Section 763.93, to develop and maintain an asbestos management plan.		

**OIG Response:** We held discussions with OECA and modified the recommendations. In August 2018, OECA provided acceptable alternative corrective actions and estimated completion dates that meet the intent of the modified recommendations.

OECA Corrective Action for Modified Recommendation 1/Estimated Completion Date: Require the EPA regions to document asbestos strategies to OECA as part of their Toxic Substances Control Act compliance monitoring planning efforts. Expected completion date: September 2019.

OECA Corrective Action for Modified Recommendation 2/Estimated Completion Date: Work with the regions to develop wholesale compliance assistance materials that will be distributed (e.g., posted to the EPA public website) to local educational agencies on the requirements of the Asbestos-Containing Materials in Schools Rule, 40 CFR § 763.93, to develop and maintain an asbestos management plan, regardless of the presence of an exclusion statement, and monitor compliance. Expected completion date: June 2019.

If you have any questions or concerns regarding this response, please contact the OECA Audit Liaison, Gwendolyn Spriggs, at (202) 564-2439.

Attachment

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