

**ENFORCEMENT RESPONSE POLICY**  
**for the ASBESTOS MODEL ACCREDITATION PLAN (MAP)**

**ADDENDUM TO THE AHERA ERP**

**March 9, 1998**  
**Toxics & Pesticides**  
**Enforcement Division**  
**Office of Regulatory Enforcement**

SUMMARY OF MAP  
ENFORCEMENT RESPONSES

Information Request  
TSCA Subpoena  
Advisory Letter (Notify Trainees)  
Notice of Noncompliance  
Approval Lapses (Must Re-Apply)  
Withdrawal  
Suspension  
Civil Penalty  
Criminal Referral  
Region Notify States, OPPT

IV. TCP Violations

1. Failure to Self-Certify by 10/4/94 but course meets MAP (previously approved under AHERA).	X	X	X		X						X
2. Failure to Self-Certify; Course Does Not Meet MAP.	X	X	X		X						X
3. Self-Certified, But Course Does Not Meet MAP Minor Deviations from MAP = x Major Deviations from MAP = X	x X	x X	x X				X	X			x X
4. Failure to Maintain Records Refusal, After Warning				X			X	X	3 1		
5. Improper Exam First Offense Subsequent Offense Major or Repeated Offense				X					4/5 3 1		
6. Incomplete Certificates Omits only Phone no. / Date Omits other items More than 3 missing				X			X	X	4-6 3		
7. Fails to issue certificate				X					1-4		
8. Instructor Previously Violated NESHAP							X	X			
9. Unapproved TCP Offers Training And Accreditation	X	X	X								X X
10. TCP Falsifies Self-Certification, accreditation records, etc.							X				X X
11. Misrepresents State or EPA Approval							X				X X
12. Issues Certificates to Persons Not Entitled							X				X X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

MAR 9 1998

MEMORANDUM

SUBJECT: Asbestos Model Accreditation Plan (MAP) Enforcement Response Policy

FROM: Jesse Baskerville, Director Toxics and Pesticides Enforcement Division *James Ball*

TO: Addressees

I am pleased to provide for your use the Enforcement Response Policy (ERP) for the Asbestos Model Accreditation Plan (MAP) for asbestos training course providers. The MAP (40 CFR 763 Subpart E Appendix C) mandates safety training for those who do asbestos removal work, and implements the additional training requirements mandated by Congress in ASHARA (the Asbestos School Hazard Re-authorization Act of 1990) as well as its requirements for training of asbestos workers in public and commercial buildings.

This ERP is the result of the efforts and consensus of the Asbestos MAP interpretive guidance workgroup which includes representatives of the Regions, OPPT, OGC and TPED). The ERP is an addendum to the existing AHERA ERP, issued in January 1989 which covers violations relating to schools.

We expect this ERP to form the basis for EPA Regions and Headquarters to aggressively develop and successfully prosecute cases involving violations of the MAP requirements as part of and the states' continuing efforts to mitigate the hazards of asbestos and to deter those who would circumvent the safety requirements necessary to protect public health. (The Regions are encouraged to distribute this ERP to the states as guidance, recognizing that state programs may differ somewhat from the federal program.)

Along with the ERP, we are also enclosing a chart for your reference which summarizes enforcement responses for MAP violations. You may direct questions to either James Handley at 202/564-4171 or to Rebecca Woods at 202/564-4179.

Attachments

Received JUN - 9 1998 Enforcement & Compliance Docket & Information Center

Internet Address (URL) • http://www.epa.gov

V. Violations by Contractor,  
Designer, Inspector, Supervisor

	Confiscate Invalid (	NON	Civil Penalty	Withdrawal	Notify Oppt, Regions States	Suspension	Criminal Referral	Notify Building Owne
1. Un-accredited Person Designs or Supervises Response Action	X	*	1					
1.A. Un-accredited Person Conducts Response Action	X	*	1					
2. Un-accredited Inspector	X	*	1					
3. Contractor Conducting Response Action Is Not Accredited	X	*	1					
3.A. Contractor Employs Un-Accredited Person to Conduct Response Action	X	*	1					
4. Contractor Employs Un-accredited Inspector	X	*	1					
5. Person Allows Another To Use Or Duplicate Certificate	X		1	X	X			
6. Asbestos Work Without Possession of Certificate First Time Subsequent		X	6	X		X		
7. Person Conducts Response but Took Un-approved Course Without Knowledge	X	X						
8. Person Conducts Response and <u>Knew</u> or Should Have Known Course was Un-approved.	X		1				X	X
9. Obtained Accreditation Without Taking Course	X		1				X	X
10. Accredited Person Subject to Final Order - TSCA, NESHAPs, etc.				X		X		
11. Contractor Fails to Assure Accredited Supervisor Present: If Available If Absent and Not Available		X	1					
* = Enforcement Discretion Based Upon Compliance with OSHA Requirements, e.g., small scale short duration or certified industrial hygienist.								

ASHARA, EPA published the Interim Final MAP,<sup>4</sup> that became effective on April 4, 1994, making the following regulatory changes:

- Definitions clarifying the scope and applicability of the MAP, (Unit I.A.);
- Clarifies who must be accredited to perform asbestos-related work in schools and public or commercial buildings, (Unit I.B.);
- Increases the minimum number of training hours for workers and contractors/supervisors, adding more "hands-on" health and safety training, (Units I.B.1. and I.B.2.);
- Establishes curriculum changes for Project Design courses, (Unit I.B.5.);
- Specifies new record-keeping requirements for Training Course Providers (TCPs), (Unit I.F.);
- Requires additional information on accreditation certificates issued by approved TCPs, (Unit I.C.);
- Specifies deadlines for States to upgrade their accreditation programs to be at least as stringent as the MAP, (Unit V.A.);
- Specifies deadlines for approved TCPs to certify to EPA and all approving States that initial and refresher training courses comply with the MAP, (Unit V.B.);
- Specifies deadlines for accredited persons and persons seeking accreditation to comply with the MAP requirements, (Units V.C. and V.D.);
- Establishes the requirement that to receive approval under TSCA § 206(a), training courses must meet the standards of the MAP, (Unit III. (Introduction) and Units III.A. and III.B.);
- Establishes criteria for State and Federal de-accreditation of persons in violation of MAP requirements, (Unit I.G.); and
- Establishes criteria and Federal procedures for withdrawing approval of accredited persons and approved training programs, (Unit III.C. and Unit IV.);

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<sup>4</sup> Interim Final Rule, 59 Fed.Reg. 5236-5260 (February 3, 1994), 40 C.F.R. part 763, appendix C to subpart E.

Addressees:

Regional Air and Toxics Division Directors  
Regions I - X

Regional Counsels  
Regions I - X

Regional Asbestos Coordinators  
Regions I - X

Regional NESHAPS Coordinators  
Regions I - X

James C. Nelson, Associate General Counsel  
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Chemical Management Division  
Office of Prevention, Pesticides and Toxic Substances

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Environmental Assistance Division  
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John Rasnic, Director  
Manufacturing, Energy and Transportation Division  
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Bruce Buckheit, Director  
Air Enforcement Division  
Office of Regulatory Enforcement

Craig Hooks, Acting Director  
Federal Facilities Enforcement Office

## II. Relationship to AHERA ERP

This Enforcement Response Policy (ERP) for the MAP is an Addendum to the "Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (As Amended)" ("AHERA ERP") and has the same force and effect as the January 1989 AHERA ERP. The following portions of the AHERA ERP are incorporated into this Addendum by reference and should be referred to when appropriate: Use of Injunctive Relief under Section 17 of TSCA, Criminal Penalties, Press Releases, Assessing Administrative Civil Penalties Against Persons Other Than the LEA (pp. 16-20, for Training Course Provider violations), Table A (p.11, which is adopted in this Addendum to apply to Contractor Violations) and Table B (p.17, which is adopted in this Addendum to apply to Training Course Provider Violations). (Copies of Tables A and B of the AHERA ERP are attached hereto for ease of reference.)

This Addendum applies to violations of the MAP relating to public or commercial buildings (or schools where the AHERA ERP does not address such violations) and is consistent with recommended enforcement responses in the AHERA ERP. This Addendum is also consistent with the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy", 45 Fed. Reg. 59,770 (September 10, 1980).

## III. Effect of Related Standards

### **Relationship To OSHA Requirements**

EPA is aware of concerns that regulations issued by the EPA may overlap with regulations issued by the Occupational Safety and Health Administration (OSHA). Where a violation of an AHERA or MAP regulatory provision arguably overlaps with a regulation issued by OSHA, the ERP Addendum recommends an enforcement response that is protective of human health and the environment, so as to meet the standard set forth in TSCA section 203(a), and considers compliance with OSHA regulations as a factor in determining the appropriate enforcement response. Enforcement responses involving OSHA issues are "nationally significant" and subject to the procedures for consultation with the Toxics and Pesticides Enforcement Division (TPED) of the Office of Regulatory Enforcement, as established by the 1994 Re-delegations and outlined in the November 1, 1994 memorandum from the Director of TPED. In situations where a notice of noncompliance (NON) is recommended by the ERP, this consultation with Headquarters may be informal, e.g., by telephone call.

### **Relationship To Other Penalty Policies**

EPA's "Voluntary Environmental Self-Policing and Self-Disclosure

Interim Policy Statement" (Audit Policy)<sup>5</sup>, effective on January 22, 1996, provides incentives for regulated entities that conduct voluntary compliance evaluations and also disclose and correct the identified violations. The Audit Policy applies to violations under all of the federal environmental statutes that EPA administers and supersedes (unless otherwise noted) any conflicting or inconsistent provisions in the media-specific penalty or enforcement response policies and EPA's 1986 Environmental Auditing Policy Statement.<sup>6</sup> Existing enforcement policies will continue to apply in conjunction with this interim policy, except where inconsistent with this policy. In addition, where appropriate, EPA's Supplemental Environmental Project Policy (issued May 24, 1995 and currently under revision) may, at EPA's discretion, be applied in conjunction with this policy.

On June 3, 1996, EPA issued the "Final Policy on Compliance Incentives for Small Businesses"<sup>7</sup>, implementing in part the Executive Memorandum on Regulatory Reform.<sup>8</sup> The Small Business Policy provides incentives for small businesses "...to identify and correct environmental violations by requesting compliance assistance from the government" as well as penalty mitigation for good faith efforts by small businesses to comply with environmental requirements where there is no criminal behavior and no significant health, safety or environmental threat. The Policy supersedes applicable enforcement response policies under media-specific programs to the extent they conflict.

#### **Relationship to Administrative Procedure Act**

This ERP for the MAP provides for suspension, withdrawal and revocation of training course approval and individual accreditation. Both course approvals and individual accreditation constitute "licenses" governed by § 558(c) of the Administrative Procedure Act.<sup>9</sup> Suspension, withdrawal or revocation proceedings initiated pursuant to this ERP should be done in accordance with that section, which provides in relevant part:

Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the

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<sup>5</sup> 59 Fed. Reg. 66706-66712 (December 22, 1995).

<sup>6</sup> 51 Fed. Reg. 25004 (1986).

<sup>7</sup> 61 Fed. Reg. 27984 (1996).

<sup>8</sup> 60 Fed. Reg. 20621 (1995).

<sup>9</sup> 5 U.S.C. § 558(c).



withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given-

\* \* \* \*

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

This provision authorizes EPA to withdraw, suspend, revoke, or annul a license without affording the licensee an opportunity to demonstrate or achieve compliance if the violation is willful, or if the regulatory action is required to protect public health, interest or safety. Unit IV of the MAP provides detailed procedures for revocation or suspension of training course approval. Unit I.G. of the MAP provides criteria and procedures for de-accreditation of persons accredited as workers, contractor/supervisors, inspectors, management planners, and project designers.

#### **Relationship to EPA Civil Penalty Policy: Recovery of Economic Benefit**

EPA's Policy on Civil Penalties,<sup>10</sup> provides that deterrence is the first goal of penalty assessment. To deter both the specific violator and others making decisions about whether to comply, the policy states that EPA is to assess civil penalties sufficient to place the violator in a worse position than those who have complied in a timely manner. Therefore, penalties should recover the economic benefit of non-compliance plus an additional penalty based on the seriousness ("gravity") of the violation. The elements of economic benefit<sup>11</sup> are:

1) The benefit of delayed expenditure, for example, delaying the purchase of equipment or delaying clean-up. This is based on the time value of money: until compliance is achieved, a violator obtains the use of the money for other potentially profit-making purposes in the meantime. In a sense, the "principal" will ultimately be paid, but the violator keeps the "interest" if we do not recapture the benefit.

2) Avoided costs, for example, costs of purchasing, maintaining

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<sup>10</sup> Policy on Civil Penalties, EPA General Enforcement Policy GM-21, (February 16, 1984) and A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties, EPA General Enforcement Policy GM-22 (February 16, 1984).

<sup>11</sup> See Chesapeake Bay Foundation v. Gwaltney of Smithfield, 611 F.Supp. 1542 (D.Va 1985).

and operating capital equipment, failure to conduct necessary training or testing or failure to hire and pay the wages of qualified personnel (e.g., asbestos workers or course instructors). This too, is based on the time value of money. The difference between these costs and the delayed costs is that the avoided ones will never have to be spent. In comparison with the delayed costs, the violator gets to keep the principal and the interest if EPA does not recapture the economic benefit.

3) Competitive Advantage gained by non-compliance. In some situations non-compliance allows the violator to provide goods or services that would not be available elsewhere or are more attractive to the consumer. For example, using un-accredited workers, a contractor may be able to successfully bid for projects that it would otherwise not be chosen to perform. In such cases, the economic benefit may be the profit for the entire project or projects involved, which may be greater than the avoided costs.

#### **Application of the Benefit Recapture Approach to Typical MAP Cases**

In the context of training course providers and contractors governed by the MAP, avoided costs are likely to be the most prevalent and easily determined. By taking short-cuts, training course providers may avoid costs associated with a proper and complete training course. But in the most extreme instances where sham training course providers provide false certification without any training, they should be penalized enough to recover their entire gross revenue for the "phony" courses plus a significant gravity-based penalty as indicated in the applicable penalty matrix. Where training course providers cut corners, for instance by failing to obtain EPA or state approval or by leaving out required subjects or by using unapproved instructors, avoided costs may be less obvious or non-existent, but penalties should be high enough to recapture the difference in cost between the defective course and a proper one, if these can be reasonably estimated, plus a significant gravity-based penalty as indicated in the applicable penalty matrix.

Contractors who hire workers, inspectors and project designers who are not accredited may avoid the higher wages that accredited persons would be expected to command. If a reasonable estimate of the difference in costs can be made for the locale and the period of the contractor's non-compliance, the penalty should reflect this avoided cost plus a gravity-based penalty as indicated in the appropriate penalty matrix. Keep in mind that this benefit accrues regardless of whether the respondent was aware of the difference in wages for properly accredited personnel.

In no case should the final penalty imposed be less than the economic benefit. In cases where the initial penalty is less than the economic benefit derived from non-compliance, EPA reserves the right to impose per-day penalties to assure that the penalty is not less than the economic benefit. The determination of economic benefit will not require an elaborate or burdensome evidentiary showing; reasonable approximations of economic benefit will suffice.<sup>12</sup>

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<sup>12</sup> See PIRG v. Powell Duffryn Terminals Inc., 913 F.2d at 80 (3d Cir. 1990), holding that estimates of economic benefit were sufficient under the Clean Water Act. While the case was decided under the Clean Water Act, proving economic benefit for any statute requires the same effort. Thus, this reasoning should apply to penalty determinations under AHERA.

IV. OTHER PERSON (i.e., TRAINING COURSE PROVIDER) VIOLATIONS  
(Extent Level = Major. Because of the potential of TCP  
violations to affect numerous students, each of whom may perform  
numerous projects, all TCP violations are being treated as MAJOR  
extent for purposes of the civil penalty matrix in table B, at  
page 17 of the AHERA MAP.)

[NOTE: Federal enforcement actions addressing training course provider violations should be taken:

1) for violations of the MAP requirements by providers that are approved by EPA,

2) where providers are approved by a State that has an accreditation program at least as stringent as the MAP and the State does not take appropriate action, or

3) against unapproved providers for fraudulent representation of their approval status, including issuance of certificates that falsely indicate EPA or State approval.]

Table B at page 17 of the AHERA ERP should be used to calculate civil penalties for TCP violations.<sup>13</sup> (See section II, above.)

Note that in the following outline, the violation is explained, followed by a description of the recommended enforcement response actions. (This policy describes the particular use of information requests and advisory letters for specific violations, but users of this policy should recognize that these options are available and may be appropriate for other types of violations.)

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<sup>13</sup> Note that TSCA's statutory \$25,000 maximum penalty was increased by 10% by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as implemented by 61 FR 69360 (December 31, 1996). See memo entitled "Penalty Policy supplements pursuant to the Civil Penalty Inflation Adjustment Rule," from Jesse Baskerville, Director, Toxics and Pesticides Enforcement Division, to Regional Toxics and Pesticides Division Directors, dated April 18, 1997, that increases each of the amounts in the AHERA penalty matrix by 10%.

1) Training Course Provider (previously approved under AHERA) provides a training course after 10/4/94 without having self-certified but training course (otherwise) meets MAP requirements. (See MAP Unit V.B., requiring self-certification.)

LETTER REQUESTING INFORMATION (to determine whether the content of the course complies with substantive requirements of MAP), and requesting that the TCP stop issuing certificates for 120 days to provide time for EPA to determine its approval status.

TSCA SUBPOENA (to determine whether the content of the course complies with substantive requirements of MAP.) A subpoena should only be issued if the TCP refuses to submit documents pursuant to the Letter Requesting Information. Regions must consult with OECA before issuing subpoenas to TCPs. OECA will coordinate with other Headquarters offices including OPPT and OGC, as appropriate.

ADVISORY LETTER (upon finding that the TCP has complied with the substantive requirements of the MAP) requiring that the TCP notify trainees that the training was not approved by the State or EPA but that the course meets the MAP requirements and that EPA will honor the certificates.

ADVISE TCP TO RE-APPLY FOR APPROVAL.

IF TCP REFUSES TO RE-APPLY FOR APPROVAL, responsible Regions must notify OPPT, States and other Regions that TCP has not self-certified, and is therefore unapproved.

2) TCP (previously approved under AHERA) provides a course after 10/4/94 that has not been properly self-certified to EPA and/or all State approving offices as of 10/4/94 and course does not meet the requirements of the MAP or the State accreditation program, as appropriate. (E.g., course too short, hands-on training missing or insufficient, course did not cover or adequately cover all required elements, etc.) (See MAP Unit V.B., requiring self-certification and Unit III requiring course to meet MAP requirements to receive approval.)

LETTER REQUESTING INFORMATION (to determine whether the content of the course complies with substantive requirements of MAP) and requesting that the TCP stop issuing certificates for 120 days to provide time for EPA to determine its approval status.

TSCA SUBPOENA (to determine whether the content of the course complies with substantive requirements of MAP.) A subpoena should only be issued if the TCP refuses to submit documents pursuant to the Letter Requesting Information.

Regions must consult with OECA before issuing subpoenas to TCPs. OECA will coordinate with other Headquarters offices including OPPT and OGC, as appropriate.

ADVISORY LETTER TO TCP describing course non-conformity with MAP, informing TCP of MAP requirements and means of compliance and requesting that TCP notify trainees that the training was not approved, that EPA will not honor their certificates and that TCP provide proper training to students at no charge. Letter must also advise TCP to re-apply for approval.

If TCP refuses to obtain approval under the MAP, responsible Region(s) must notify OPPT, States and other Regions that the TCP is unapproved and has offered non-complying training courses.

3) TCP self-certifies as of 10/4/94 and receives approval. TCP provides course after 10/4/94 that does not meet the requirements of the MAP or the State accreditation program, as appropriate. (E.g., course too short, hands-on training missing or insufficient, course did not cover or adequately cover all required elements, TCP failed to notify EPA or the State as appropriate before using new instructor, etc.) (MAP Unit I.B for course requirements for each discipline, Unit I.F.2 requiring TCPs to provide notice before changing instructors, and Unit III.C.5 authorizing suspension or withdrawal of TCP approval for failure to adhere to MAP training standards.)

For MINOR deviations from the MAP (Course materials, hands-on training meet 90% or more of the MAP requirements, or unapproved instructor.)

LETTER REQUESTING INFORMATION (to determine whether content of course complies with substantive requirements of the MAP).

TSCA SUBPOENA (to determine whether the content of the course complies with substantive requirements of MAP.) A subpoena should only be issued if the TCP refuses to submit documents pursuant to the Letter Requesting Information. Regions must consult with OECA before issuing subpoenas to TCPs. OECA will coordinate with other Headquarters offices including OPPT and OGC, as appropriate.

ADVISORY LETTER TO TCP describing course non-conformity with MAP, informing TCP of MAP requirements and means of compliance.

RESPONSIBLE REGIONS MUST NOTIFY OPPT, States and other

Regions that TCP has improperly self-certified, and is therefore unapproved and has offered non-complying training courses.

For MAJOR deviations from the MAP (involving more than 10% of course materials, hands-on training) or REPEATED MINOR deviations:

SUSPENSION of affected training course approval.  
(Recommend suspension of at least 90 days.)

For REPEATED MAJOR deviations from the MAP:

Permanent WITHDRAWAL of affected training course approvals.

CRIMINAL REFERRAL if evidence of intent (i.e., fraud) exists.

EPA should request that the TCP notify the students it trained that their certificates are invalid and as a condition of reinstatement, EPA should request that TCPs provide the proper training to students at no charge.

4) TCP fails to maintain or provide access to requisite records or to update instructor information provided to EPA or State: (MAP Unit I.F.6(a) requires retention of records for three years and I.F.6(b) requires TCPs to allow States and EPA access to those records. Unit I.F.2 requires TCP records to accurately identify instructors that taught each particular course for each date that a course was offered.)

Records or information are incomplete but TCP has not completely failed to keep required records or provide required information:

First Offense: NOTICE OF NONCOMPLIANCE (NON)

Subsequent Offenses: CIVIL PENALTY -- level 3 violation

Complete failure to keep records or provide required information:

CIVIL PENALTY -- level 3 violation

Refusal (after previous NON or penalty action) to keep records or provide required information:

CIVIL PENALTY: Level 1, AND

Notice of Intent to Suspend or Withdraw, OR

SUSPENSION (Recommend at least 90 days) or WITHDRAWAL of approval of the affected training course.

5) TCP does not properly administer the final exam (e.g., not enough questions, exam not administered as closed-book, or not all instruction areas covered) (See MAP Unit I.C., describing examination requirements.)

First or Minor Offense: (e.g., exam is lacking less than 20% of the questions, but covers the required topics and is administered closed book and without other aids or reference materials.)

CIVIL PENALTY: Level 4 or Level 5

Subsequent or Major Offense: (e.g., exam is lacking more than 20% of the questions), fails to cover all required subjects, students given improper assistance including use of course materials or other references during examination.)

CIVIL PENALTY: Level 3

Repeated Major Offenses:

CIVIL PENALTY: Level 1, AND

Notice of Intent to Suspend or Withdraw, OR

SUSPENSION (Recommend at least 90 days) or WITHDRAWAL of approval of the affected training course.

EPA should request that the TCP notify the students it trained that their certificates are invalid and as a condition of reinstatement, EPA should request that TCPs provide the proper training to students at no charge.



6) TCP issues accreditation certificate that omits some or all of the information required by the MAP (e.g., TCP name, TSCA Title II statement, or exam date) (See MAP Unit I.C. describing required information for certificates.)

The following 10 items must be in a certificate:

1. Name of accredited person
2. Discipline of training course completed
3. Dates of training course
4. Name of training provider
5. Address of training provider
6. TSCA Title II training statement
7. Unique certificate number
8. Telephone number of provider
9. Exam date
10. Expiration date (one year after successful completion of course and exam)

Omission of only telephone number or exam date: (All other items correct.)

NON: Written notice of deviation from the MAP and require TCP to correct certificates within 30 days.

Omission of any other item or items:

CIVIL PENALTY: Level 6 for one item missing, Level 5 for two items missing, Level 4 for three. Require TCP to correct certificates within 30 days.

Subsequent Offenses or More than Three Items Missing:

CIVIL PENALTY: Level 3 and require TCP to correct certificates within 30 days, AND

Notice of Intent to Suspend or Withdraw, OR

SUSPENSION (Recommend at least 90 days) or WITHDRAWAL of the deficient training course.

7) TCP fails to issue accreditation certificate to person who completes a training course, passes the required examination, and fulfills all other relevant requirements (MAP Unit I.C. states that "each person who completes a training course, passes the required examination and fulfills whatever other requirements the State imposes must receive an accreditation certificate in a specific discipline.")

First Offense - NON and TCP must issue certificates within ten days.

- Second Offense - Civil Penalty: Level 4 per individual certificate, and TCP must issue certificates within ten days.
- Third Offense - Civil Penalty: Level 3 per individual certificate, with Notice of Intent to Suspend or Withdraw. (TCP must issue certificates within ten days.)
- Subsequent Offenses - Civil Penalty: Level 1 per individual certificate, AND Suspension or Withdrawal of Approval of all training courses. (TCP must issue certificates within ten days.)

8) TCP offers a course supervised or taught by an individual who has failed to obtain approval from either EPA or a State, as appropriate, or who has been found to be in violation of EPA's asbestos NESHAP or any other EPA asbestos regulations in the past two years. (An Administrative or judicial finding of violation, or execution of a consent agreement and order under 40 CFR 22.18 constitutes evidence of a failure to comply with relevant statutes or regulations.) (See MAP Unit I.F.2 and MAP Unit III.C.)

- 1st Offense - Suspension for 180 days of affected course approval and instructor approval.
- 2nd Offense - Withdrawal (2 years) of affected course approval and Revocation (2 years) of instructor approval.
- 3rd Offense - Permanent Withdrawal of affected course approval and instructor approval.

9) Unapproved TCP (i.e., TCP not approved by EPA or a State with a program at least as stringent as the MAP) provides TSCA (ASHARA) accreditation training and/or issues TSCA (ASHARA) accreditation certificates (See MAP Unit III.)

LETTER REQUESTING INFORMATION (to determine whether the content of course complies with substantive requirements of the MAP) and requesting that the TCP stop issuing certificates for 120 days to provide time for EPA to determine its approval status.

TSCA SUBPOENA (to determine whether the content of the course complies with substantive requirements of MAP.) A subpoena should only be issued if the TCP refuses to submit

documents pursuant to the Letter Requesting Information. Regions must consult with OECA before issuing subpoenas to TCPs. OECA will coordinate with other Headquarters offices including OPPT and OGC, as appropriate.

ADVISORY LETTER (upon finding that the TCP has complied with the substantive requirements of the MAP) requiring that the TCP notify trainees that the training was not approved by the State or EPA but that the course meets the MAP requirements and that EPA will honor the certificates. Letter must also advise TCP to apply for approval.

NOTICE to Regions, OPPT, States and Trainees (upon finding that the course does not meet the requirements of the MAP). Trainees should be advised that their certificates are invalid.

CRIMINAL REFERRAL if evidence of intent to defraud can be developed. (See 18 U.S.C. 1001 (false statements to agency or United States), 18 U.S.C. 1341 (mail fraud), and 18 U.S.C. 1961 (racketeering activities)).

**10) TCP falsifies self-certification, accreditation records, accreditation certificates, instructor qualifications or other accreditation information (See MAP Unit III.C.4.)**

Permanent WITHDRAWAL of all training course approvals AND/OR CRIMINAL REFERRAL if evidence of intent to defraud exists.

NOTICE to Regions, OPPT, States and Trainees. (Trainees should be advised that their certificates are invalid.)

**11) TCP misrepresents extent of a training course's State or EPA approval (for example, by representing that a course is EPA approved or AHERA accredited when it is not.) (See MAP Unit III.C.1.)**

Permanent WITHDRAWAL of all training course approvals AND/OR CRIMINAL REFERRAL if evidence of intent to defraud exists.

NOTICE to Regions, OPPT, States, and Trainees. (Trainees should be advised that their certificates are invalid.)

12) TCP issues accreditation certificates to persons not entitled to accreditation (e.g., certificates given to persons who did not take course, did not pass exam, or do not have proper qualifications) (See MAP Unit III.C.5. providing for suspension or withdrawal for failure to adhere to the State or EPA training standards.)

Permanent WITHDRAWAL of all training course approvals AND/OR CRIMINAL REFERRAL if evidence of intent to defraud exists. Referral should suggest including trainee as defendant in fraud conspiracy.

NOTICE to Regions, OPPT, States, and Trainees. (Trainees should be advised that their certificates are invalid.)

#### V. VIOLATIONS BY CONTRACTORS, PROJECT DESIGNERS, INSPECTORS, SUPERVISORS AND PERSONS CONDUCTING ABATEMENT ACTIONS

Table A at page 11 of the AHERA ERP should be used to calculate civil penalties for these violations. See Section II of ERP.<sup>14</sup> Note that in instances where the ERP recommends assessment of penalties for only one day of the violation, this may need to be increased in order to recover economic benefit of non-compliance, as discussed above in Section III. Information about contractors who are misrepresenting their accreditation status should be provided by the Region to OPPT to be circulated to States and EPA Regional offices. (This policy describes the particular use of information requests and advisory letters for specific violations, but users of this policy should recognize that these options are available and may be appropriate for other types of violations.)

1) Person supervising or designing a response action in a school or public or commercial building without accreditation for that activity under TSCA §206. (See MAP Units I.B.2 (Contractor/Supervisors) and I.B.5. (Project Designers).)

CC (Civil Complaint) Level 1: \$5,500 per project. (\$5,500 per day for repeat offenders.)

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<sup>14</sup> Although Table A is entitled "Base Penalties for LEA" it is the correct table for penalty calculation in this portion of the ERP since it is based on the \$5,500 maximum penalty stated in TSCA §207(g) (15 U.S.C. §2647(g)) for contractors. (The statutory \$5,000 maximum was increased by 10% by the Debt Collection Improvement Act of 1996, supra, note 10.) (See Baskerville memo, supra, note 10, that increases each of the amounts in the AHERA penalty matrix by 10%.)

Confiscation of invalid certificates, if any.

1A) Person conducting a response action in a school or public or commercial building without accreditation for that activity under TSCA §206. (See MAP Unit I.B.1.)

CC/Level 1      \$5,500 per project. (\$5,500 per day for repeat offenders.)

Confiscation of invalid certificates, if any.

2) Person conducting an inspection in a school or public or commercial building without having been accredited for that activity under TSCA §206. (See MAP Unit I.B.3.)

CC/Level 1      \$5,500 per project. (\$5,500 per day for repeat offenders.)

Confiscation of invalid certificates, if any.

3) Contractor performing a response action in a school or public or commercial building employs persons not accredited under TSCA §206 to design or supervise the response action. (See TSCA §207(g).)

CC/Level 1      \$5,500 per project. (\$5,500 per day for repeat offenders.)

Confiscation of invalid certificates, if any.

3A) Contractor performing a response action in a school or public or commercial building employs persons not accredited under TSCA §206 to conduct the response action. (See TSCA §207(g)(3).)

CC/Level 1      \$5,500 per project. (\$5,500 per day for repeat offenders.)

Confiscation of invalid certificates, if any.

4) Contractor performing an inspection in a school or public or commercial building employs persons not accredited under TSCA §206 to conduct the inspection. (See TSCA §207(g).)

CC/Level 1      \$5,500 per project. (\$5,500 per day for repeat offenders.)

Confiscation of invalid certificates, if any.

5) Person permits others to duplicate and/or use another's accreditation certificate(s). (See MAP Unit I.G.1(b).)

CC/Level 1 (per occurrence) AND permanent withdrawal of accreditation

Region(s) shall provide names of persons involved to OPPT for circulation to regions and States.

6) Accredited person conducting an inspection or designing, conducting, or supervising a response action in a school or public or commercial building without having their initial and current accreditation certificates at the location where they are conducting work. (See MAP Unit I.G.1(a).)

1st Offense - NON (if person can show that he or she is accredited, but did not have required credentials on site).

2nd Offense - CC/Level 6 (one-day) AND Suspension.

Subsequent Offenses - Withdrawal of accreditation.

7) Person conducts activities requiring accreditation in a particular discipline and person is under the impression that he/she has obtained accreditation by taking a course that is not approved by a State or by EPA, where the person had no knowledge or reason to know that the course was not approved.

NON / Opportunity to Demonstrate Compliance if doubt exists about EPA or State approval of course. Otherwise,

Confiscation of invalid accreditation certificate that incorrectly shows EPA or State approval, OR

Where person holds valid certification in one discipline but is performing work requiring accreditation in a different discipline, confiscation of accreditation certificate in discipline for which he/she is accredited. (See MAP Unit I.G.1(d).), AND

CC/Level 3 (one day violation) if public health endangerment can be shown.

Person should be advised that he/she must obtain accreditation by an approved TCP before working on any other project requiring EPA accreditation. TCP must also be

notified and appropriate enforcement action taken. (See, e.g., violation IV (11), supra.)

EPA or State shall obtain a list of projects that the person has completed, notify the building owners, and review or audit for proper abatement procedures.

8) Person conducts activities requiring accreditation and person has obtained credentials by taking a course that is not approved by a State or by EPA, where the person knew or should have known that the course was not approved. (See MAP Unit I.G.2(b).)

Confiscation of Certificate, AND / OR

CC/Level 1 (per day of violation) AND / OR

Criminal Referral

EPA or State shall obtain list of projects that the person has completed, notify the building owners, and review or audit for proper abatement procedures.

9) Person conducts activities requiring accreditation and person has obtained accreditation from a TCP without actually attending the course and/or taking the final exam. (See MAP Unit I.B. requiring accreditation for the various activities, and MAP Unit I.G.2(b) concerning obtaining certification fraudulently.)

Confiscation of Accreditation Certificate if willfulness or public health endangerment can be demonstrated, AND/OR

CC/Level 1 (per day of violation) AND / OR

Criminal Referral

EPA or State shall obtain list of projects that the person has completed, notify the building owners, and review or audit for proper abatement procedures.

10) Accredited person was subject to a final order imposing a civil penalty or a conviction under the following statutory and regulatory provisions: TSCA section 16 or 207 (42 U.S.C. 2615 or 2647), or 40 C.F.R. part 763, or section 113 of the Clean Air Act (42 U.S.C. 7413), or 40 C.F.R. Part 61, subpart M. (See MAP Unit I.G.1.)

1st Offense - Suspension for 90 days (in addition to the penalty for the underlying violation).

2nd Offense - Withdrawal of accreditation (2 years)

3rd Offense.- Permanent withdrawal of accreditation

Regions shall submit name of person to OPPT for inclusion on a list of persons whose accreditation has been permanently withdrawn.

11) Contractor fails to ensure that at least one accredited supervisor is present at the work site at all times while response actions are being conducted. (See Map Unit I.B(2).)

CC/Level 1: \$5,500 per project. (\$5,500 per day for repeat offenders.)



TABLE A

**\*Gravity Based Penalty Matrices For Violations Which Occur After January 30, 1997  
for  
AHERA Interim Final ERP (1/31/89)**

**Base Penalty for LEA's**

<b>Circumstances (Levels)</b>	<b>Extent: LEVEL A MAJOR ( &gt; 3,000 sq.ft. or 1,000 linear ft.)</b>	<b>Extent: LEVEL B SIGNIFICANT ( &gt; 160 sq.ft. or 260 linear ft. but &lt; 3,000 sq.ft. or 1,000 linear ft.)</b>	<b>Extent: LEVEL C MINOR ( &lt; or = 160 sq.ft. or 260 linear ft.)</b>
<b>LEVEL 1</b>	\$5,500	\$3,740	\$1,100
<b>LEVEL 2</b>	\$4,400	\$2,640	\$ 660
<b>LEVEL 3</b>	\$3,300	\$2,200	\$ 330
<b>LEVEL 4</b>	\$2,200	\$1,320	\$ 220
<b>LEVEL 5</b>	\$1,100	\$ 660	\$ 110
<b>LEVEL 6</b>	\$ 440	\$ 286	\$ 44

**\*Gravity Based Penalty Matrix to supplement Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89) for violations that occur after January 30, 1997. Insert behind page 11 of Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89).**

TABLE B

**AHERA- "Other Persons -  
\*Gravity Based Penalty Matrix for Violations Which Occur After January 30, 1997**

Circumstances (Levels)	Extent LEVEL A MAJOR	Extent LEVEL B SIGNIFICANT	Extent LEVEL C MINOR
LEVEL 1	\$27,500	\$18,700	\$5,500
LEVEL 2	\$22,000	\$14,300	\$3,300
LEVEL 3	\$16,500	\$11,000	\$1,650
LEVEL 4	\$11,000	\$ 6,600	\$1,100
LEVEL 5	\$ 5,500	\$ 3,300	\$ 550
LEVEL 6	\$ 2,200	\$ 1,430	\$ 220

Note: >= greater than; <=less than.

\* Gravity Based Penalty Matrix to supplement Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89) for violations that occur after January 30, 1997. Insert behind page 17 of Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89).