



NEW YORK CITY COMPTROLLER
BRAD LANDER

Maura Hayes-Chaffe
Deputy Comptroller for Audit

Audit Report on the New York City Department of Education/School Construction Authority's Asbestos Management Program

SE23-103A | April 9, 2025





THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

April 9, 2025

To the Residents of the City of New York:

My office has audited the New York City Department of Education (DOE) and the School Construction Authority (SCA) to determine if they are regularly inspecting every public school building for asbestos hazards, as required by the Asbestos Hazard Emergency Response Act of 1986, and whether asbestos locations found during inspections are documented and asbestos management plans are developed as mandated. The Office of the New York City Comptroller conducts audits of City agencies such as this to improve accountability and ensure that City resources are used effectively and efficiently.

DOE is responsible for school operations and maintenance to ensure safety from asbestos under AHERA, in collaboration with the SCA. However, the audit uncovered issues with DOE's compliance with AHERA. Since AHERA was enacted 38 years ago, an average of just 11% of all schools known to contain asbestos have undergone all the mandated inspections.

DOE acknowledged early on that it has not ensured that either triennial or periodic inspections mandated by AHERA were conducted, and further, that it did not begin tracking periodic inspections until March 2023. Before then, DOE primarily relied on outdated management plans. DOE's widespread non-compliance violates federal regulations, undermines the integrity of asbestos management efforts, and leaves school occupants at risk of exposure to asbestos.

The results of the audit have been discussed with DOE and SCA officials and their comments have been considered in preparing this report. DOE's and SCA's complete written responses are attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Brad Lander
New York City Comptroller

Table of Contents

Audit Impact	1
Summary of Findings	1
Intended Benefits	1
Introduction	2
Background	2
Asbestos In Schools	2
AHERA Compliance	3
Non-Compliance	5
DOE's and SCA's Responsibilities	6
Objectives	8
Discussion of Audit Results with DOE and SCA	8
Detailed Findings	9
DOE Does Not Comply with Federal Asbestos Management Regulations	9
Only 18% of Schools Have Had Recent Triennial Inspections	9
Only 22% of Schools Have Had Surveillance (Periodic) Inspections	12
Inadequate or Missing Evidence that Mandatory Asbestos Training Was Conducted or that Appropriate Notification was Sent to Parents, Teachers, and Other Employee Organizations.....	15
Delays in Issuing Non-ACM Letters May Result in Unnecessary Asbestos Inspections.....	16
Recommendations	18
Recommendations Follow-up.....	19
Scope and Methodology	20
ADDENDUM	

Audit Impact

Summary of Findings

The audit found that DOE is not in compliance with Asbestos Hazard Emergency Response Act (AHERA) regulations and has not been for many years. Since AHERA was enacted 38 years ago, an average of just 11% of all schools known to contain asbestos have undergone all of the inspections mandated by AHERA. During the three-year scope period of the audit, from 2021 to 2024, only 18% of all schools containing ACM had triennial inspections. Between May 2023 and April 2024, only 22% had all required periodic six-month inspections.

Although DOE recently began manually tracking inspections for all schools, DOE maintains no centralized recordkeeping system with reporting features to support compliance with AHERA. There are significant gaps in oversight of the inspection program, increasing the risk that students, teachers, and other staff could be exposed to asbestos in schools. After the audit started in July 2023, DOE acknowledged early on that it has not ensured that either triennial or periodic inspections mandated by AHERA were conducted, and further, that it did not begin tracking periodic inspections until March 2023. Before then, DOE primarily relied on outdated management plans, and in some schools, custodians who lacked the training required to comply with AHERA conducted reviews.

The purpose of AHERA is to ensure that identified asbestos containing materials are regularly inspected. Unless this occurs, DOE is unable to ensure that asbestos remains in a safe condition.

To close compliance gaps and prevent further risks, DOE must immediately allocate resources, expand inspection capacity, and implement policies and procedures and a comprehensive recordkeeping system to safeguard the health and safety of school occupants.

Intended Benefits

The audit identified the need to improve triennial and periodic inspections crucial for ensuring the health and safety of students and staff. Allocating resources for more inspections, training, and a robust asbestos management system would reduce exposure and fiscal risks.

Introduction

Background

Asbestos is a naturally occurring mineral composed of flexible, heat-resistant fibers. These properties led asbestos to be used in construction materials, insulation, roofing, cement, and other products for fireproofing.

Asbestos poses a severe danger when its fibers fray and become airborne. These tiny, needle-like fibers are easily inhaled and ingested, and the body cannot break them down or expel them. Over time, they accumulate in the lungs and other tissues, causing inflammation, scarring, and severe health conditions, including asbestosis, lung cancer, mesothelioma, and other respiratory issues. Because of its widespread use in construction throughout the twentieth century, many older buildings still contain at least some asbestos.

In 1986, the United States enacted AHERA to protect students, teachers, and school staff from asbestos exposure. The United States Environmental Protection Agency (EPA) acts as the federal oversight body for AHERA and requires schools to proactively manage asbestos risks. While asbestos use is limited in the United States, it is not entirely banned. EPA has taken significant steps to regulate its use and protect the public from exposure.¹ This regulatory context means that older buildings—including schools—may still contain asbestos, and new construction cannot always be assumed to be asbestos-free.

Asbestos In Schools

When referring to school buildings, any material or product that contains more than 1% asbestos is referred to as Asbestos Containing Materials (ACM). Asbestos Containing Building Material (ACBM) is any surfacing ACM, thermal insulation ACM, or miscellaneous ACM found in interior structural members or building parts. For simplicity, this report refers to all asbestos in school buildings as ACM.

AHERA requires public and non-profit private schools—collectively called local education agencies (LEA)—to take specific actions to manage asbestos and protect students and staff from exposure. This includes regular inspections, maintaining updated asbestos management plans, conducting surveillance of ACM, and training custodial and maintenance staff to monitor ACM.

¹ <https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos>

Examples of ACM commonly found in schools include flooring, vinyl base, mastic, roofing materials, gaskets in heating and air-conditioning equipment, ceiling panels and tiles, wallboard, joint compound, plaster, pipe and boiler insulation, duct-wrap insulation, duct joint tape, duct vibration dampening cloth, fireproofing on structural members, fire brick for boilers, fire doors, acoustical spray-on, cement pipes, and panels.²

The presence of asbestos alone does not automatically pose a safety risk, but the condition of ACM is critical. Friable ACM—which can easily release fibers into the air—poses a greater hazard than nonfriable ACM.³ However, nonfriable materials can become friable if damaged, as they may be crumbled or reduced to powder by hand when dry. EPA advises that even undamaged nonfriable ACM should be treated as friable.

Fibers in asbestos cement, asphalt, and vinyl materials are usually firmly bound with materials in good condition and typically will be released only if the material is damaged mechanically—for example, through drilling, cutting, grinding, and sanding. In addition, asbestos in roofing shingles and siding exposed to weather may slowly deteriorate and could release fibers over time. In certain circumstances, intense heat and mechanical agitation can cause the release of fibers.

Prolonged exposure to asbestos can lead to severe health issues, including mesothelioma and asbestosis. These diseases usually take decades to develop and lack early warning signs, making them difficult to diagnose until many years after exposure.

AHERA Compliance

AHERA mandates that school buildings previously identified as containing ACM undergo reinspection every three years (triennial inspection) to reassess the condition of ACM, with additional surveillance inspections every six months (periodic surveillance inspection) to monitor any changes. Furthermore, the asbestos management plans must be updated accordingly after both types of inspection. This proactive approach ensures that potential risks are identified and mitigated before they escalate, prioritizing the safety of building occupants.

To comply with AHERA, a triennial inspection must be conducted by individuals who hold accreditation as Asbestos Inspectors. Inspectors attend a three-day EPA-approved state-accredited training program that includes lectures, demonstrations, four hours of hands-on

² *How to Manage Asbestos in School Buildings: The AHERA Designated Person's Self Study Guide* (1996) (<https://www.epa.gov/asbestos/how-manage-asbestos-school-buildings-ahera-designated-persons-self-study-guide-0>)

³ “Friable,” when referring to material in a school building, means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after it has been damaged. “Nonfriable” means material in a school building that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

training, individual respirator fit testing, course review, and written examinations. The inspector training addresses asbestos uses, health risks, inspection process, legal liabilities and defenses, understanding building systems, notifications, planning, assessing friable and nonfriable ACM, bulk sampling, respiratory protection, recordkeeping, and review of state and federal regulations regarding emission standards, worker protections, respirator requirements, and Asbestos-Containing Materials in Schools (40 CFR part 763, subpart E, or AHERA).

After a management plan is in effect, a reinspection of all friable and nonfriable known or assumed ACM is required once every three years. The reinspection includes a visual inspection and re-assessment of all friable ACM, as well as previously nonfriable ACM to determine if it has become friable. Bulk samples are to be collected and tested from newly friable ACM.

After a management plan is in place, AHERA also requires that a periodic inspection be performed every six months to visually inspect all areas identified in the management plan as ACM or assumed ACM. Periodic inspections need not be performed by an accredited inspector, but the individual designated by the LEA must have received training providing basic knowledge of the health effects of asbestos, detection, identification and assessment of ACM, options for controlling ACM, asbestos management programs, and relevant state and federal regulations.⁴ Each inspection is documented with the name of the inspector, the date of surveillance, and any changes in the condition of the ACM noted in the report. The periodic surveillance report must be submitted to the LEA-designated person and included in the management plan.

AHERA inspection requirements and stipulations are summarized below in Table I.

Table I: AHERA Inspection Requirements

	Triennial Inspection	Periodic Surveillance Inspection
Timeframe	Once every three years	Once every six months
Designated Inspector	Accredited inspector	Appropriately trained person ⁵
Inspection Procedures	1. Visually inspect and reassess all known or assumed friable ACM.	1. Visually check all areas identified in the management plan as ACM or assumed ACM to determine if there has been any change in condition.

⁴ The current LEA-designated person has certificates for 2 Hour Asbestos Awareness Training, Asbestos Site Inspector, Asbestos Project Monitor, and Asbestos Management Planner.

⁵ According to AHERA, the surveillance does not have to be conducted by an accredited person, but it should be conducted either by an LEA-designated person if they are trained, or by someone who is appropriately trained on asbestos, such as a maintenance person.

	Triennial Inspection	Periodic Surveillance Inspection
	<ol style="list-style-type: none"> 2. Check nonfriable ACM to see if it has become friable. 3. Identify new areas of friable material. 4. Collect samples of newly friable material for analysis. 5. Assess the condition of both newly friable and previously identified friable materials. 6. Record and submit the following for inclusion in the management plan within 30 days: <ol style="list-style-type: none"> a. Date, inspector's name and signature, accreditation info, and any condition changes in ACM. b. Locations and descriptions of sampling, along with inspector details. c. Results of assessments for friable materials, including inspector information. <p>An accredited management planner must review the reinspection report to identify any new hazard potential and revise the management plan to address newly identified hazards. Based on the updated data, new response actions to address these hazards must be selected, and these actions must be carried out in a timely manner.</p>	<ol style="list-style-type: none"> 2. Record the date, his/her name, and any changes in the condition of the materials. 3. Submit this record to the LEA-designated person for inclusion in the management plan. <p>The periodic surveillance inspection report must be kept in the management plan.</p>

Non-Compliance

EPA issued an Interim Final Enforcement Response Policy for AHERA in January 1989 (later updated in January 1992) setting out potential penalties for AHERA non-compliance. The Enforcement Response Policy provides for the issuance of Notices of Noncompliance, civil complaints leading to the imposition of penalties, and the issuance of criminal sanctions to LEAs and other persons who do not comply with AHERA.

Notices of Noncompliance are issued to LEAs for violations of AHERA that are not covered by other enforcement mechanisms (Administrative Civil Penalties, Injunctive Action, Criminal Sanctions). This includes all management plan violations. Civil complaints can be issued for more serious second violations.

Penalties can be eliminated or waived based on circumstances set forth in the regulations. For example, the culpability of the LEA may be taken into consideration, and penalties may be reduced by 25% when the LEA does not have control over the violation charged. Further, civil action may be eliminated completely if the LEA can demonstrate that reasonable efforts to assure compliance were taken.

Under Section 207 of AHERA, all civil penalties are paid to the LEA to facilitate compliance with the requirements of AHERA, and any unspent portion of the civil penalty, once compliance is assured by the LEA, is deposited in EPA's Asbestos Trust Fund. Regardless of this provision, LEAs may raise the ability to pay as an issue. If this issue is raised by the LEA, the determination of what the LEA can be expected to pay is made on a case-by-case basis after the civil complaint has been issued.

DOE's and SCA's Responsibilities

DOE is the designated LEA for over 1,700 schools in the New York City school system, serving more than 900,000 students each year.⁶ When AHERA was introduced, all existing New York City schools should have been initially inspected for the presence of ACM before October 1988, as stipulated in AHERA, to develop asbestos management plans. However, DOE cannot confirm whether these inspections occurred. When asked to explain this, DOE did not respond. All inspection records provided by DOE begin in 1997; DOE did not provide any inspection records for any period prior to 1997.

As of March 2024, approximately 1,431—or 80%—of New York City schools were identified as having ACM and are therefore subject to continued management procedures in compliance with AHERA. DOE is responsible for ensuring that all AHERA mandates are met for all 1,431 schools. This includes ensuring all schools are inspected triennially by an accredited inspector and every six months by an individual with appropriate training.

DOE is also responsible for school operations and maintenance to ensure safety from asbestos under AHERA. In practice, this means using the management plans ("the AHERA book") to identify ACM. School custodians are expected to walk the building daily and note any conditions

⁶ DOE must perform Triennial and Periodic Surveillance Inspections of ACM or assumed ACM in NYC Schools to be in compliance with AHERA.

needing repair.⁷ If custodians identify needed repairs, or if a contractor is on-site to perform work, the custodian is expected to check the AHERA book to identify the space ID of the room or hallway and the presence of ACM materials, where the work is to be performed.

If the material is identified as non-ACM, then the repair can be performed using DOE contractors or DOE in-house staff as needed. If the material is ACM or assumed ACM, then a work order is entered in Passport/Portal J—the Division of School Facilities’ work order system. Once DOE Environmental Health and Safety receives the work order request, an asbestos consultant is assigned to test the material. If the material tests positive, then DOE determines if the work will be done in-house or by SCA. If the work is assigned to SCA, the agency creates a project referred to as a Plant Operation 18 (PO18) request.⁸

Minor abatement projects consisting of less than 25 linear feet or 10 square feet of ACM removal are performed by a DOE contractor or in-house staff. SCA generally performs small (greater than 25 linear feet or 10 square feet) and large (greater than 260 linear feet or 160 square feet) projects, but may perform projects of any size. SCA performs 98% of all asbestos removal.

Once a project is created, SCA’s Industrial Hygienists assign an environmental consultant on a rotational basis to survey and sample the assumed ACM.⁹ If ACM is present based on the survey and testing performed by the consultant, then SCA obtains estimates from their abatement contractors. SCA can approve work orders less than \$50,000. Work orders greater than \$50,000 require approval by DOE. Most projects are carried out under service contracts that include pre-established unit prices. Any work items not covered by these unit prices are charged on a time-and-materials basis.

Most abatement is done at night or on weekends. A third-party air monitoring company continuously measures air quality in the work area. If no asbestos fibers are detected in the air, a re-occupancy letter is issued.

SCA does not conduct triennial or periodic inspections or update asbestos management plans as required by AHERA; instead, DOE is responsible for these tasks. SCA informs DOE about non-ACM status by providing an architect’s exclusionary asbestos statement for a building after SCA constructs or provides transportable units for temporary classrooms. SCA assumed responsibility for determining non-ACM status in 1990.

⁷ This does not satisfy the periodic surveillance inspection requirement unless staff walking the floors have received appropriate training, visually inspect all areas that are identified as containing ACM or Assumed ACM, record the date of surveillance and changes in condition of materials, and submit it to the LEA.

⁸ The term “PO18” refers to the old Plant Operation 18 forms. Currently, PO18 requests are sent through Passport Portal J.

⁹ DOE can request testing from the SCA, or if their consultant identifies ACM, DOE can request a SCA contractor to perform the work.

SCA oversees asbestos abatement as part of their capital projects. SCA reported that from FY2020 to FY2024, expenditures on PO18 projects (repair or abatement projects) were approximately \$201 million, and approximately \$23 million was spent on asbestos remediation for capital projects.

Objectives

The objectives of this audit were to determine whether DOE/SCA are inspecting every public school building for asbestos hazards once every three years and every six months as required by the Asbestos Hazard Emergency Response Act of 1986, and whether asbestos locations found during inspections are documented and asbestos management plans are developed as mandated.

Discussion of Audit Results with DOE and SCA

The matters covered in this report were discussed with DOE and SCA officials during and at the conclusion of this audit. An Exit Conference Summary was sent to DOE and SCA on December 6, 2024, and discussed with DOE and SCA officials at an exit conference held on December 20, 2024. On January 27, 2025, we submitted a Draft Report to DOE and SCA with a request for written comments. We received a written response from DOE and SCA on February 10, 2025. In their responses, both DOE and SCA agreed with every recommendation made in the audit.

DOE's and SCA's written responses have been fully considered and, where relevant, changes and comments have been added to the report.

The full text of DOE's and SCA's responses are included as an addendum to this report.

Detailed Findings

DOE Does Not Comply with Federal Asbestos Management Regulations

DOE failed to inspect about 80% of New York City school buildings with ACM for asbestos hazards, as required by the asbestos management regulations. Historically, over the past nine cycles, DOE achieved a compliance rate of approximately 11%.

Only 18% of Schools Have Had Recent Triennial Inspections

Although DOE followed AHERA inspection protocols during its inspections, the audit found that in the three years from March 2021 to March 2024, only 257 of the 1,431 buildings (18%) with identified ACM received the triennial inspection required by AHERA. This means that 1,175 school buildings containing asbestos—or 82%—have not been reinspected within the required timeframe.¹⁰

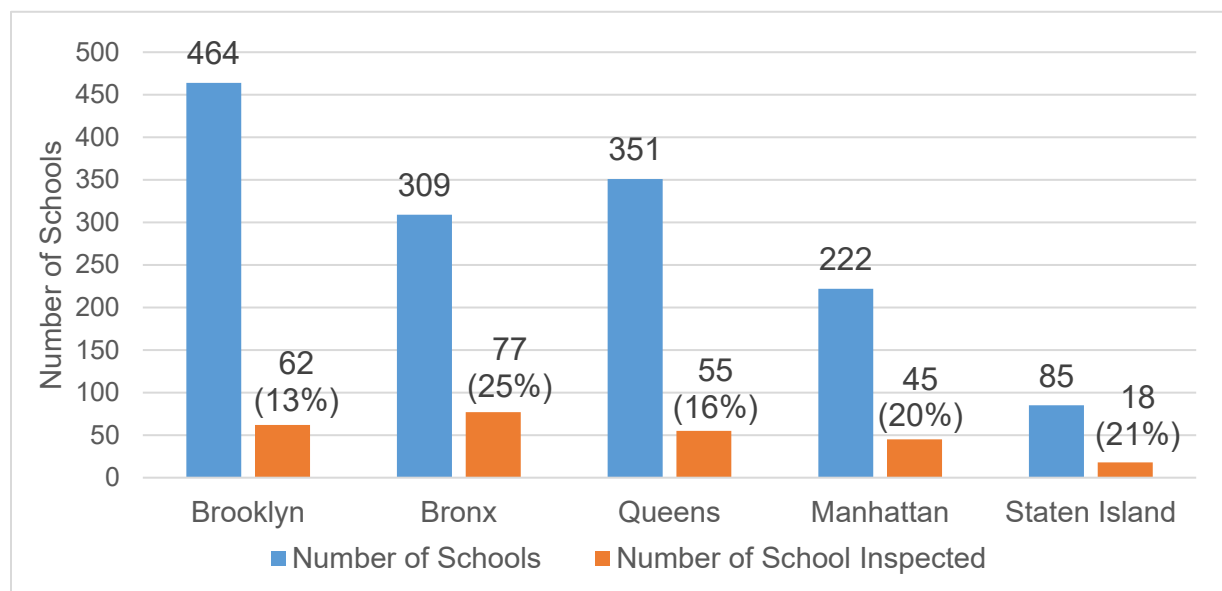
The auditors analyzed triennial inspection data by borough for this period, as shown in Chart I below. Brooklyn stands out as having the highest number of schools with ACM and the lowest rate of compliance, with 464 ACM school buildings and a compliance rate of just 13%. Only 62 of the 464 ACM containing school buildings had triennial inspections in the three-year period from March 2021 to March 2024.

The compliance rate is not much better in the other boroughs: only 77 of 309 ACM school buildings were inspected in the Bronx (25%); 55 of 351 schools were inspected in Queens (16%); 45 of 222 schools were inspected in Manhattan (20%); and 18 of 85 schools were inspected in Staten Island (21%).

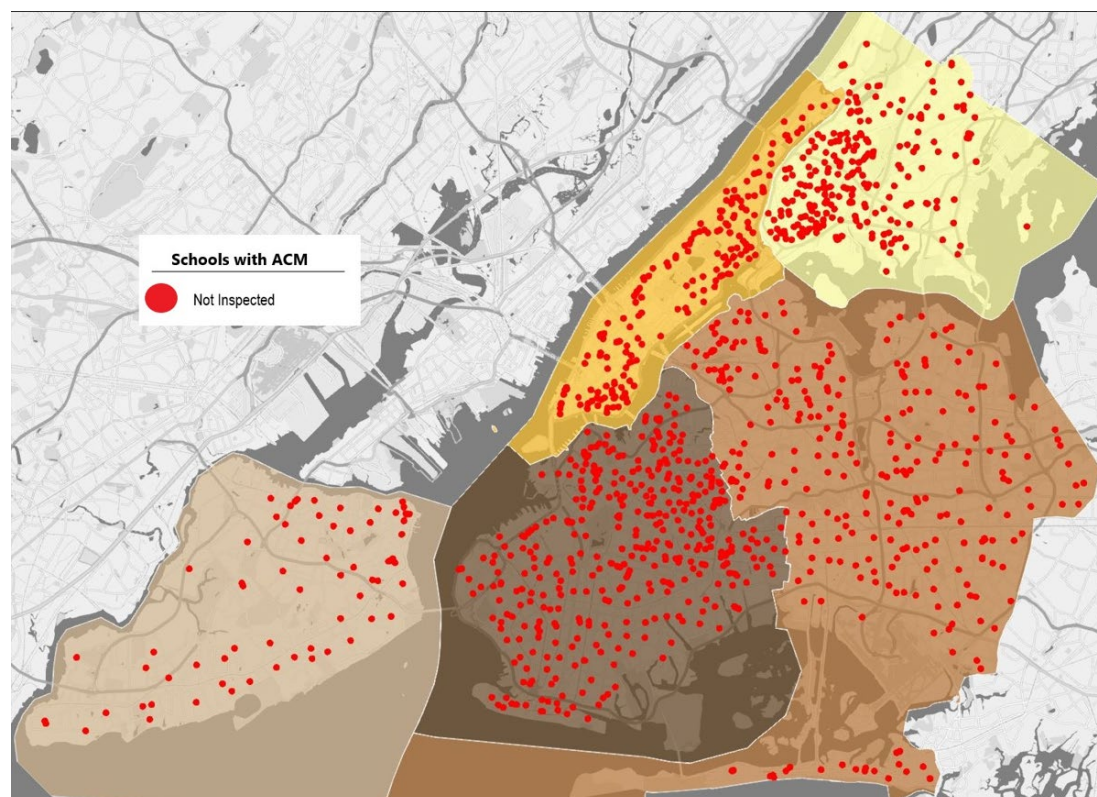
In other words, on a City-wide basis, DOE failed to perform 82% of the required triennial inspections during the three-year period between March 2021 to March 2024. As a result, DOE has not assessed the potential asbestos hazard for 82% of its ACM school buildings. Map I below shows the locations of schools that did not undergo a mandated triennial inspection during this period.

¹⁰ Thirteen school buildings do not have management plans available. DOE stated that triennial inspections are either being scheduled, in progress, or the AHERA management plan is under review. However, DOE could not specify whether these buildings were newly constructed or renovated; the auditors, therefore, cannot determine the reason for the lack of inspections.

**Chart I: AHERA Triennial Inspection Compliance Across Boroughs
(March 2021 to March 2024)**



**Map I: Schools Without AHERA Triennial Inspection by Borough
(March 2021 to March 2024)**



Additionally, an audit analysis of DOE's historical inspection data revealed that, since 1997, the agency has conducted an average of only 11% of the required inspections.¹¹ The auditors reviewed data for nine triennial inspection cycles and found that compliance rates per cycle ranged from 0% (Cycle #8) to 19% (Cycle #3). See Table II below for triennial inspection performance rates during the nine auditor-selected inspection cycles.

Table II: Triennial Inspection Performance Rates

Inspection Cycle #	Triennial Inspection Period (Date Range)	Buildings Inspected (#)	Inspection Conducted (% of Total)
1	3/8/2024 to 3/9/2021	257	18%
2	3/8/2021 to 3/9/2018	187	13%
3	3/8/2018 to 3/9/2015	266	19%
4	3/8/2015 to 3/9/2012	205	14%
5	3/8/2012 to 3/9/2009	231	16%
6	3/8/2009 to 3/9/2006	211	15%
7	3/8/2006 to 3/9/2003	46	3%
8	3/8/2003 to 3/9/2000	0	0%
9	3/8/2000 to 3/9/1997	15	1%
	Without Inspections	13	
	Total	1,431	
	Average		11%

DOE's widespread non-compliance violates federal regulations, undermines the integrity of asbestos management efforts, and leaves school occupants at risk of exposure to ACM. Triennial

¹¹ DOE provided inspection data did not include any inspections before 1997.

inspections are critical components of a comprehensive asbestos management program. They are required to reassess the conditions of both friable and nonfriable ACM, update asbestos management plans, and maintain compliance with federal regulations. If these triennial inspections are not performed, DOE's asbestos management program is rendered ineffective, and the risks of harmful asbestos exposure and potential legal liabilities are heightened.

DOE cited insufficient consultant contracts as the reason for its failure to conduct timely triennial inspections. The auditors acknowledge this difficulty; however, the problem has persisted for many years, pointing to systemic failures and poor planning.

The audit found that DOE typically conducts 200 to 250 inspections every three years but needs to conduct approximately 480 inspections per year to remain compliant with AHERA. This pattern has been evident for many years, and DOE has failed to take the necessary steps to increase its resources.

However, in its response to the findings, DOE indicated that it is preparing requests for proposals (RFP) for additional consultants. This is a positive step forward. The auditors also found that DOE made progress in conducting triennial inspections during the audit period. Specifically, between March 2024 and September 2024, DOE performed an additional 100 triennial inspections—about 14 per month. This represents a significant increase from the rate of seven per month (during March 2021 to March 2024) under the previous LEA-designated person. While this rate remains far short of the 40 inspections per month required to bring DOE into compliance with AHERA, it suggests an intention to improve.

Only 22% of Schools Have Had Surveillance (Periodic) Inspections

In addition to triennial inspections, AHERA mandates that every school building with an asbestos management plan undergo a periodic surveillance inspection at least every six months. These inspections are necessary to assess and monitor the condition of known and assumed ACM, to identify disturbed or deteriorating asbestos, and to document and implement response actions to mitigate potential risks.

The auditors found that only 245 of 1,431 required periodic surveillance inspections (17%) were conducted during the six-month period from May 1, 2023 to October 31, 2023. In the subsequent six-month period from November 1, 2023 to April 30, 2024, 375 of 1,431 required inspections (26%) were completed. However, during the one-year period from May 1, 2023 to April 30, 2024,

a total of 620 of the required 2,862 periodic surveillance inspections were performed. This represents an average completion rate of just 22%.¹²

Auditors analyzed the number of periodic inspections that should have occurred during this period and assessed degrees of compliance by borough, as shown below in Chart II. Brooklyn's compliance rate is the lowest—only 19% of required inspections were performed—but all boroughs experienced similarly poor rates of compliance: 20% in the Bronx, 23% in Queens, 24% in Manhattan, and 28% in Staten Island.

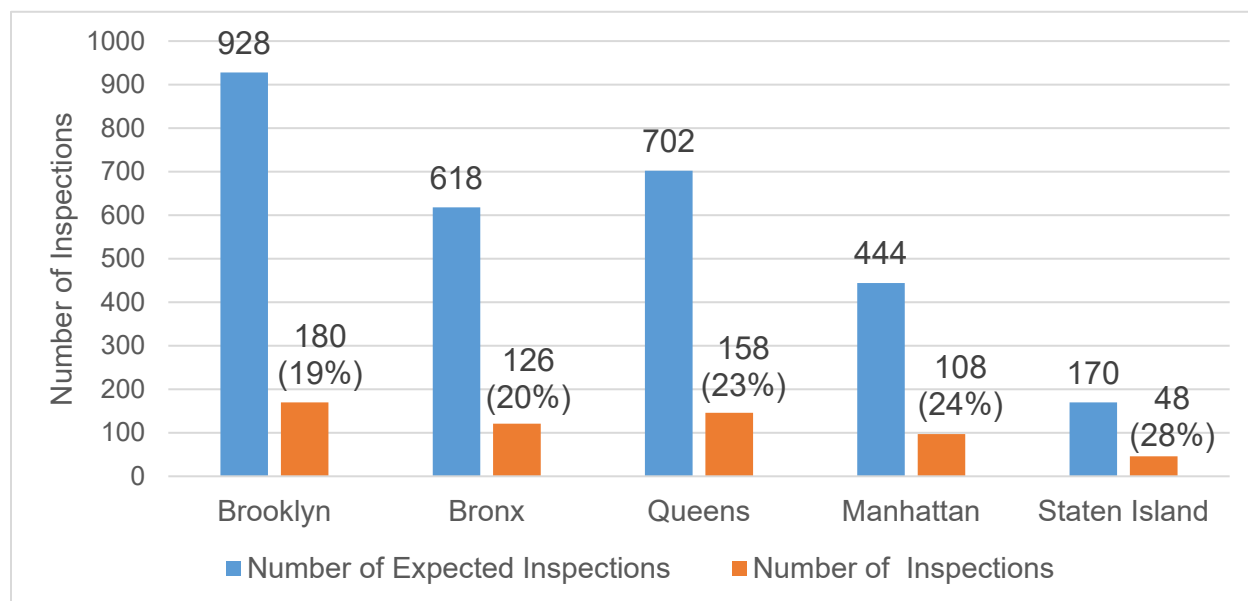
DOE mainly attributes its failure to complete the required inspections to recordkeeping issues under the previous LEA-designated person. DOE officials were unable to provide the auditors with information on inspections conducted before March 2023, making it impossible to verify whether DOE was historically compliant. Prior to this period, DOE also lacks documentation showing that individuals responsible for conducting inspections received the necessary training to comply with AHERA. Without documentation, compliance cannot be established.

In March 2023, a new LEA-designated person was appointed to oversee DOE's asbestos compliance. The new LEA-designated person has started tracking periodic inspections on an Excel spreadsheet and is also training custodians to perform periodic surveillance inspections instead of using external consultants.

While training and recordkeeping may have improved, the rate of inspections still falls well short of what is needed to bring DOE into compliance. Between May 2024 and October 2024, DOE performed an additional 234 periodic inspections, amounting to approximately 39 per month. This represents a reduction in the prior period, from May 1, 2023 to April 30, 2024, during which DOE conducted approximately 52 periodic inspections per month. To achieve full compliance, DOE must ensure that 240 inspections per month are conducted by individuals with the necessary training.

¹² Periodic surveillance inspections are to be conducted twice a year at the 1,431 school buildings with ACM, totaling 2,862 inspections annually. During the exit conference, DOE officials stated that since a triennial inspection is more comprehensive than a periodic inspection, they consider a triennial inspection performed at the beginning or end of a periodic inspection cycle as one of the required periodic inspections. Therefore, 620 periodic inspections include 40 triennial inspections conducted between May 1, 2023 and April 30, 2024, as identified and counted by the auditors as periodic inspections.

Chart II: AHERA Periodic Surveillance Inspection Compliance Across Boroughs (May 2023 to April 2024)



Periodic surveillance inspections play a crucial role in maintaining ongoing safety by enabling the early detection of ACM deterioration, facilitating timely response actions, and ensuring the effectiveness of the Operations and Maintenance program. Neglecting these inspections can increase the risk of asbestos exposure for students and staff. The AHERA management plan directs custodians to consult the AHERA book to confirm the presence of ACM or assumed ACM in areas they service. If custodians follow the management plan correctly, response actions should be minimal because known ACM would have been previously remediated or confirmed through testing. However, if periodic surveillance inspections are not conducted regularly, DOE may be forced to perform unplanned asbestos remediation activities, leading to unnecessary testing and operational delays. Additionally, non-compliance exposes DOE to potential enforcement actions from EPA.

During the exit conference, DOE officials did not dispute the reported low triennial and periodic surveillance inspection compliance rates. DOE also presented an alternative analysis of compliance rates for AHERA inspections and subsequently provided their analyses.¹³ Even if

¹³ The analyses and data provided after the exit conference covered the period from January 2022 to November 2024, differing from the periods used in the preliminary findings of the audit report. The compliance rate for triennial inspections was 18%, the same as derived by the auditors for a different period. DOE presented a 33% compliance rate for periodic inspections that covered another period, from November 2023 to April 2024. The reliability of the new data could not be ascertained at this time in the audit; therefore, these data sets were excluded from reporting.

accepted, however, the DOE analysis at best shows a 33% compliance rate for periodic inspections, still far below what is required by law.

DOE officials asserted that there was and is no risk that occupants were or could be exposed to asbestos in schools based on their abatement practices. The auditors disagree. EPA's mandated program of inspections is designed to provide crucial information to develop a safe and effective abatement plan to manage asbestos risks properly. Without them, outdated asbestos management plans can lead to a failure in properly identifying the presence, location, and condition of ACM or assumed ACM within a building. Work performed without the current information risks inadvertently releasing harmful asbestos fibers into the air during repairs or abatement, potentially exposing workers and building occupants to serious health hazards.

Inadequate or Missing Evidence that Mandatory Asbestos Training Was Conducted or that Appropriate Notification was Sent to Parents, Teachers, and Other Employee Organizations

AHERA requires that DOE designate and train a LEA-designated person to oversee asbestos-related activities. This person is responsible for ensuring that custodial staff receive an annual two-hour asbestos awareness training, and that asbestos handlers receive an additional 14 hours of training on asbestos repairs.

The auditors' assessment of records submitted by DOE for 30 sampled schools revealed that DOE did not maintain training records during most of the period from 2020 to 2023, and while complete records exist for 2024, DOE lacked training certificates for all custodians in the previous years. After the exit conference, DOE provided a spreadsheet detailing the training records for custodians employed at various schools during the years 2020 and 2024, including the dates of training received in each year. According to DOE, due to the COVID-19 pandemic, the 2021 in-person training cycle was disrupted. However, training gaps still exist in other remaining years, posing risks that staff may not be adequately trained as required by AHERA.

AHERA also requires DOE to notify parents, teachers, and employee organizations annually about asbestos inspections, the management plan's availability, and any asbestos-related actions taken or planned in the school. As evidence, DOE provided a standard email informing stakeholders, which included recipients' email addresses. However, the auditors found that the notification was sent only to DOE email addresses.

During the exit conference, DOE officials stated that all stakeholders were notified through their DOE emails. However, DOE did not share any additional information. As a result, the auditors cannot distinguish or verify whether the email addresses used for notifications included all

stakeholder organizations. AHERA notifications are essential for transparency and safety, keeping parents, teachers, and employees informed to protect school communities.

These gaps highlight the opportunities for DOE to improve its commitment to AHERA compliance.

Delays in Issuing Non-ACM Letters May Result in Unnecessary Asbestos Inspections

According to AHERA, triennial and periodic inspections are not required if an architect or engineer provides a Non-ACM Letter (also known as an architect's asbestos statement) certifying that no ACMs were used in construction. The prompt issuance of these letters prevents unnecessary inspections and ensures compliance.

DOE has 57 school buildings whose asbestos statuses are listed as "To Be Determined." Only one of these buildings remains under construction, while 56—including 17 constructed over 40 years ago—have not been issued Non-ACM Letters to date. Thirty of these buildings are currently occupied. Due to the missing Non-ACM Letters, DOE may be allocating agency resources toward unnecessary asbestos inspections.

At the exit conference, SCA explained their role in obtaining Non-ACM Letters and the subsequent analysis and reconciliation for the 57 schools. According to SCA, all schools constructed before 1990 are ineligible for a Non-ACM Letter, as this responsibility only began with SCA's formation around that year. Twenty-nine of these school buildings were constructed before 1990 and are therefore ineligible for Non-ACM Letters from SCA, and there is no construction record for one school in the SCA database.¹⁴ Additionally, one school building is permanently closed. Of the remaining 26, Non-ACM letters have been obtained for 21 school buildings, leaving five school buildings still with outstanding Non-ACM Letters. These five school buildings were constructed between 11 and 28 years ago.

For example, David N. Dinkins School (#Q276) in Queens received its Non-ACM Letter in March 2024—13 years after the school opened for students in 2011. In April 2022, DOE spent about \$31,000 on one triennial and one periodic inspection because the ACM status had not been determined for over 10 years. DOE did not disclose additional information regarding inspections conducted before April 2022 or the associated costs.

Delays in issuing Non-ACM Letters and addressing unresolved ACM statuses are caused by poor coordination between DOE and SCA. In at least one instance, this ineffective coordination led to

¹⁴ It is questionable whether the asbestos statuses of these 30 schools should have been classified as "To Be Determined."

resources being allocated to unnecessary inspections. This waste of resources is especially concerning given DOE's backlog of inspections in school that are known to contain ACM.

The lack of timely Non-ACM Letters may lead to operational inefficiencies and avoidable costs. By improving coordination, tracking Non-ACM Letter status, and reviewing past inspection costs, DOE can optimize asbestos management.

Recommendations

To address the abovementioned findings, the auditors propose that DOE:

1. Improve the awareness and understanding of AHERA compliance for school officials and the LEA-designated person.

DOE Response: DOE agreed with this recommendation.

2. Develop and adopt comprehensive policies and procedures for asbestos management in schools, including internal reporting and review mechanisms to ensure full compliance with AHERA requirements.

DOE Response: DOE agreed with this recommendation.

3. Develop a plan with specific milestones to ensure that the triennial and periodic inspections are brought up to date, and maintain timely completion of the required inspections. Specifically, DOE should:

- a. Conduct a historical review and reconciliation of Triennial and Periodic Inspections to ensure accurate data exists.
- b. Develop a phased inspection plan, prioritizing buildings with the longest gaps in triennial and periodic inspections and those at higher risk of ACM deterioration.
- c. Evaluate and allocate resources to meet inspection demands, including securing additional inspection consultants and expanding internal capacity.
- d. Develop a detailed inspection schedule to ensure that all 1,431 buildings receive the required triennial and periodic inspections moving forward.

DOE Response: DOE agreed with this recommendation.

4. Implement a recordkeeping system with reporting features to ensure accountability and compliance with AHERA regulations.

DOE Response: DOE agreed with this recommendation.

5. Demonstrate compliance efforts by documenting ongoing efforts to conduct inspections, update management plans to minimize potential penalties, and demonstrate good-faith efforts to comply with AHERA requirements.

DOE Response: DOE agreed with this recommendation.

6. Ensure that all custodians and asbestos handlers have adequate training to carry out their duties safely; maintain adequate evidence of this training.

DOE Response: DOE agreed with this recommendation.

7. Ensure that all stakeholders are adequately notified of asbestos-related activities.

DOE Response: DOE agreed with this recommendation.

8. Develop a standard procedure for timely determination of a school's asbestos status, and where applicable, timely receipts of Non-ACM Letters from SCA and close monitoring of the status of these letters.

DOE Response: DOE agreed with this recommendation.

To address the abovementioned findings, the auditors propose that SCA should:

1. Ensure that the ACM statuses of all new school buildings and additions are current. Also, investigate and address delays in promptly providing Non-ACM Letters to DOE

SCA Response: SCA agreed with this recommendation.

Recommendations Follow-up

Follow-up will be conducted periodically to determine the implementation status of each recommendation contained in this report. Agency reported status updates are included in the Audit Recommendations Tracker available here: <https://comptroller.nyc.gov/services/for-the-public/audit/audit-recommendations-tracker/>

Scope and Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). GAGAS requires 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions within the context of our audit objective(s). This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was Fiscal Years 2020 through 2024.

Auditors researched relevant websites and identified and reviewed external reports and prior audits by the Comptroller's Office to gather information about DOE and school buildings under their jurisdiction. The auditors also reviewed potential asbestos abatement/maintenance requirements and risks.

To obtain an understanding of the laws, policies, and procedures that govern the management of asbestos in public schools, auditors reviewed and, where applicable, used the following documents as criteria:

- Legal and regulatory framework:
 - USC Title 15, Chapter 53, Subchapter II, Asbestos Hazard Emergency Response
 - 40 CFR Part 763 – Asbestos
 - EPA Enforcement Response Policy for AHERA (January 1992)
- SCA and DOE policies and circulars:
 - SCA – Industrial & Environmental Hygiene (IEH) Policies Procedures
 - DOE – Plant Operations Circular No. 17 (03.26.1991) - Asbestos Removal
 - DOE – Plant Operations Circular No. 6 (11.01.1996) - Asbestos Training Program
 - DOE – Plant Operations Circular No. 24 (04.28.1997) - Quality Control for Asbestos

To understand DOE's processes and internal controls regarding its asbestos management of school buildings and coordination with SCA, the auditors conducted walkthrough meetings with the agency officials. Auditors documented their understanding of processes through memos and flowcharts and obtained confirmations from the agencies.

To determine the accuracy and completeness of the school building inventory, auditors compared the list of 1,771 buildings with the school data available on various websites:¹⁵

- Browse Schools - NYC MySchools
- <https://www.schools.nyc.gov/>
- <https://www.myschools.nyc/en/schools/>
- Google Street View

Direct tests confirmed the reliability of DOE's information regarding the list of school buildings. This list was used for sampling and testing the adequacy of DOE's asbestos management.

Auditors obtained an inventory of DOE buildings that showed ACM status and the date of the last triennial inspections. The auditors also obtained DOE's listing of periodic surveillance inspections. The auditors analyzed the data to determine DOE's compliance rates during various periods.

To obtain an understanding of DOE's processes, internal controls, and risks associated with the management of asbestos in school buildings, the auditors conducted walkthrough meetings with the Chief Executive Officer of DOE's Division of School Facilities (DSF) and the Deputy Director of Environmental Health and Safety (EHS). Auditors followed up with DOE and SCA for clarification or additional information when required.

Auditors visited selected eight school buildings to validate the process described by DOE representatives. The auditors independently reviewed the AHERA books and training certificates at each school. The custodians were also interviewed to test the accuracy of the processes described during walkthroughs.

To assess equity in inspections, the auditors performed an income-based distribution analysis. The auditors obtained community district median income information from the U.S. Census Bureau. The distribution of triennial and periodic inspections was compared to the median income distribution by community district to determine if income-based bias existed in the inspections. The results indicated that no income-based bias was present.

Auditors:

- Evaluated and analyzed compliance rates of DOE's triennial inspections and periodic inspections, including the ACM status of each school building.
- Assessed the reliability of AHERA inspection data provided by DOE. A random sample of 30 DOE buildings was selected from the population of 257 buildings where both triennial inspections and periodic inspections were conducted in the last three years. The reported

¹⁵ As per DOE, of the 1,771 school buildings, 1431 contained ACM, 283 were non-ACM, and the remaining 57 had ACM status classified as "To Be Determined."

triennial and periodic surveillance inspection dates were compared to those in the actual AHERA management plans and periodic surveillance reports.

- Reviewed training records for the LEA-designated person, as well as for custodians and asbestos handlers assigned at each of the randomly selected 30 school buildings.
- Evaluated evidence of DOE's notifications to stakeholders.

The results of the above procedures and tests, although not projectable to their respective populations, provided a reasonable basis for the auditors to evaluate and support audit findings and conclusions regarding DOE's AHERA inspections of public school buildings in coordination with SCA.

February 10, 2025

Maura Hayes-Chaffe
Deputy Comptroller for Audit
The City of New York
Office of the Comptroller
One Centre Street
New York, NY 10007-2341

**RE: Audit Report on the New York City
Department of Education/School
Construction Authority's Asbestos
Management Program (SE23-103A)**

Dear Ms. Hayes-Chaffe:

This letter constitutes the New York City Public School's (NYCPS and referred to in the Report as DOE) formal response to the New York City Comptroller's (Comptroller) draft audit report on the New York City Department of Education and School Construction Authority's (SCA) Asbestos Management Program (Report).

Protecting the health and safety of building occupants is a top priority for the New York City Public Schools (NYCPS). Under the Asbestos Hazard Emergency Response Act (AHERA), schools are mandated to perform surveillance of Asbestos-Containing Materials (ACM) every six months. This periodic surveillance provides updates on the condition of ACM, which are dangerous only when friable or disturbed. Periodic surveillance bridges the gap between more comprehensive triennial inspections and identifies any changes or deterioration that may require attention.

NYCPS maintenance staff, including Custodian Engineers (CEs) are trained about ACM and conduct daily walkthroughs of their buildings, observing the condition of all components, including those which contained or are presumed to contain ACM. While these daily checks are not the same as the periodic surveillance required by AHERA, they align closely with the law's intent: safeguarding building occupants by proactively and routinely identifying and addressing potential risks.

Before any maintenance, repair, or construction work begins, the involved components are cross-referenced against the AHERA management plan for the building, which details known or assumed ACM within the building. In cases where uncertainty exists regarding a component's composition, asbestos testing is conducted to determine whether the material is ACM. If asbestos is identified or assumed, it is important to highlight that all work involving confirmed or assumed asbestos is handled by certified experts who adhere to the Asbestos Control Program Rules and Regulations during all asbestos abatement. By implementing these measures, the NYCPS minimizes exposure to asbestos, maintaining a safe and healthy environment for all who use its facilities.

We also highlight several changes at NYCPS designed to strengthen the agency's Asbestos management program. To date, we

- are staffing a new senior position, the Executive Director of Health and Safety, to oversee all aspects of building safety, including compliance with AHERA.
- created five borough-based Deputy Directors of Health & Safety, to provide local support and guidance to school staff and custodian engineers.
- are digitizing our AHERA management plans, allowing easier and greater access for individuals who need to consult them.
- developed a new solicitation ("Requirements Contract for Asbestos Hazard Emergency Response Act [AHERA] Management Plan and Laboratory Services for Asbestos Bulk Sampling and Analysis") to procure additional contractors to perform testing and update our AHERA management plans.

We are pleased that the audit acknowledges the progress NYCPS has made in its Asbestos Management Program. As the draft report notes, starting in March 2023 NYCPS instituted an enhanced process to track both the six-month periodic surveillance and triennial inspections. Further, as outlined above, there are additional monitoring procedures that are in place to keep our school communities safe. These, along with many other changes to our facilities management program, are the result of ongoing work to continuously improve the safety of our school buildings in New York City.

Response to Recommendations

Recommendation 1. *Improve the awareness and understanding of AHERA compliance for school officials and the LEA-designated person.*

Response. NYCPS agrees with this recommendation in that it is consistent with current practices and policies. Every year, all custodian engineers are required to receive a two-hour asbestos awareness training. The LEA-designee has received comprehensive training to effectively fulfill her responsibilities, as demonstrated to the audit team through the provision of asbestos training certificates and licenses provided during the course of the audit.

Recommendation 2. *Develop and adopt comprehensive policies and procedures for asbestos management in schools, including internal reporting and review mechanisms to ensure full compliance with AHERA requirements.*

Response. NYCPS agrees with this recommendation in that it is consistent with current practices and policies. Our policies and procedures are being updated with respect to AHERA and Periodic Surveillance inspections, and an electronic tracking system is now in development to capture and report on the periodic surveillance inspections.

Recommendation 3. *Develop a plan with specific milestones to ensure that the triennial and periodic inspections are brought up to date and maintain timely completion of the required inspections. Specifically, DOE should:*

- a. Conduct a historical review and reconciliation of Triennial and Periodic Inspections to ensure accurate data exists*
- b. Develop a phased inspection plan, prioritizing buildings with the longest gaps in triennial and periodic inspections and those at higher risk of ACM deterioration.*
- c. Evaluate and allocate resources to meet inspection demands, including securing additional inspection consultants and expanding internal capacity.*
- d. Develop a detailed inspection schedule to ensure that all 1,431 buildings receive the required triennial and periodic inspections moving forward.*

Response. NYCPS agrees with this recommendation. We have developed a plan which includes an updated tracker to help identify school buildings that need to be prioritized for triennial and periodic surveillance inspections. As part of prioritizing which Triennial inspections should be conducted first, DOE reviews previous AHERA management plans, asbestos reports, and SCA's asbestos survey and sampling reports. Further, we are procuring additional contractors to conduct inspections through our upcoming solicitation titled, "Requirements Contract for Asbestos Hazard Emergency Response Act [AHERA] Management Plan and Laboratory Services for Asbestos Bulk Sampling and Analysis." This will provide the necessary resources to address this recommendation.

Recommendation 4. *Implement a recordkeeping system with reporting feature to ensure accountability and compliance with AHERA regulations.*

Response. NYCPS agrees with this recommendation and the system in development will address this recommendation.

Recommendation 5. *Demonstrate compliance efforts by documenting ongoing efforts to conduct inspections, update management plans to minimize potential penalties, and demonstrate good-faith efforts to comply with AHERA requirements.*

Response. NYCPS agrees with this recommendation, and we are developing the processes highlighted in our responses to Recommendations 3 and 4 which address this recommendation.

Recommendation 6. *Ensure that all custodians and asbestos handlers have adequate training to carry out their duties safely; maintain adequate evidence of this training.*

Response. NYCPS agrees with this recommendation in that it is consistent with current practices and policies. Every year, all custodian engineers are required to receive a two-hour asbestos awareness training. Asbestos handlers are required to attend refresher classes annually by the New

York State Department of Labor and biannually by the New York City Department of Environmental Protection as a prerequisite to maintain their certificates.

Recommendation 7. *Ensure that all stakeholders are adequately notified of asbestos-related activities.*

Response. NYCPS agrees with this recommendation inasmuch as it is consistent with current practices and policies. The relevant stakeholders—parents, teachers and employees' organizations—receive notice of the availability of their schools' Asbestos Management plan.

Recommendation 8. *Develop a standard procedure for timely determination of school's asbestos status, and where applicable, timely receipts of non-ACM letters from SCA and close monitoring of status of these letters.*

Response. NYCPS agrees with this recommendation, which aligns with our dedication to continuous collaboration with SCA in enhancing the effective management of asbestos risks, efficient use of resources, and streamlining processes and sharing of records.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'E' followed by a long horizontal line that curves slightly upwards at the end.

Emma Vadehra
Chief Operating Officer
Deputy Chancellor for Operations and Finance



February 10, 2025

Nina Kubota
President & CEO
nkubota@nycsca.org
(718) 472-8003

By Electronic Mail

Maura Hayes-Chaffee
Deputy Comptroller for Audit
Office of New York City Comptroller Brad Lander
David N. Dinkins Municipal Building
One Centre Street
New York, New York 10007

Re: Audit Report on the New York City Department of Education/School Construction Authority's Asbestos Management Program, SE23-103A

Dear Ms. Hayes-Chaffee:

This letter serves as the formal written comment of the New York City School Construction Authority (SCA) in response to the above-titled draft audit report. I would like to start by thanking the Office of City Comptroller's audit team for its professionalism and courtesy in the execution of the audit and drafting of the audit report.

Before addressing the one finding and recommendation in this audit report directed to the SCA, we wish to reaffirm our commitment to ongoing collaboration with the New York City Department of Education in the execution of our mutual programs for the management of asbestos risk. We note that in the course of conducting the audit, the Comptroller's audit team conducted inquiries into SCA's policies and procedures, resource allocations and expenditures, and timelines from referral to initiation to completion of asbestos abatement projects across its project sample. Upon completing its audit procedures, the Comptroller's Office reports no findings and has issued no recommendations to indicate any concern with the efficiency or effectiveness of any of the asbestos abatement activities performed by the SCA.

The one finding and recommendation directed to the SCA relates not to asbestos abatement activities or to any instances of asbestos exposure risk to staff or students, but rather to delays in the issuance of Non-Asbestos-Containing-Material (Non-ACM) Letters, wherein the architect or engineer for a new school building or addition delivered by the SCA provides a certification that no asbestos-containing materials were specified in the building's design or approved in the course of the building's construction. As noted in the draft audit report, the prompt issuance of Non-ACM Letters helps the DOE by allowing it to remove those school buildings or additions from their master list of buildings requiring AHERA inspections.



The concern regarding delayed issuance of Non-ACM Letters was not the subject of any interview questions, document or data requests posed to the SCA during audit fieldwork, but was brought to the SCA's attention with the issuance of the preliminary draft audit report. Upon receipt of the preliminary draft report, the SCA reviewed the list of 57 schools reported by the DOE with an asbestos status of "to be determined," and, as noted in the Comptroller's draft audit report, identified that 26 of those 57 schools should have been eligible for a Non-ACM Letter. Following the exit conference, the SCA was able to confirm to the DOE and the Comptroller's Office that Non-ACM Letters had been obtained for 20 of those 26 schools. While the draft report footnotes that copies of the Non-ACM Letters for those 20 schools were not provided, we want to clarify that they were not requested by the audit team. As of this writing, we have now obtained Non-ACM Letters for 21 of the 26 schools and have provided copies of those letters to the auditors.

Recommendation 1: SCA should ensure that the ACM statuses of all new school buildings and additions are current. Also, investigate and address delays in promptly providing Non-ACM Letters to DOE.

SCA Response: Agree. For the five remaining active school buildings eligible for a Non-ACM Letter for which a Non-ACM Letter has not yet been obtained from the architect or engineer of record for the project, SCA will continue its efforts to obtain such letters. Going forward, the SCA will enhance and reinforce its policies, procedures, checklists and training to emphasize the need to obtain a Non-ACM Letter from the architect or engineer of record along with the delivery of the "as-built drawings" at the time of substantial completion of construction for a new building or addition. SCA will also coordinate with the DOE to enhance two-way reporting to best ensure that there is agreement on the projects for which Non-ACM Letters could be provided and for which Non-ACM Letters have or have not been provided to the DOE after substantial completion of construction.

Thank you again to the Office of the Comptroller for your professionalism and courtesy.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Kubota", written over a light blue horizontal line.

Nina Kubota
President and Chief Executive Officer

c: Frank Zanghi, Engineering Audit Supervisor
Pravin Gohel, Audit Manager





NEW YORK CITY COMPTROLLER
BRAD LANDER

1 Centre Street, New York, NY 10007

 @NYCComptroller

(212) 669-3916