



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

MAR 24 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roger Werholtz
Secretary of Corrections
Kansas Department of Corrections
900 SW Jackson Street – 4th Floor
Topeka, KS 66612

RE: Notice of Noncompliance
EPA ID#: 1800044588

Dear Mr. Werholtz:

The United States Environmental Protection Agency (EPA) hereby serves the Kansas Department of Corrections (KDOC) with this Notice of Noncompliance for violations of the Asbestos Worker Protection Rule (WPR) which is codified at 40 C.F.R. Part 763, Subpart G.

The WPR, promulgated pursuant to Title 1, Section 6(a) of the Toxic Substances Control Act (TSCA), extends the Asbestos Standards of the Occupational Safety and Health Administration (OSHA) to employees of state and local governments not covered by an OSHA-approved state asbestos standard. The OSHA standards are codified at 29 C.F.R. 1910.1001 and 29 C.F.R. 1926.1101. Failure to comply with the WPR requirements is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and subjects violators to potential civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

On February 4, 2010, an EPA Region 7 Asbestos Inspector conducted a compliance inspection of the Topeka Correctional Facility (TCF) to determine KDOC's level of compliance with the WPR. The inspector determined that KDOC initiated an asbestos abatement project at the TCF, E-Dorm facility, beginning on or about April of 2005, which continued for approximately 18 months. EPA's review of the inspection report indicates that KDOC failed to comply with the WPR as follows.

1. Failed to conduct all Class I, II, and III asbestos work within regulated areas, as required by 29 C.F.R. Section 1926.1101(e)(1).
2. Failed to ensure that all asbestos work performed within regulated areas is supervised by a competent person, as required by 29 C.F.R. Section 1926.1101(e)(6).

3. Failed to perform exposure assessments and monitoring to determine accurately the airborne concentrations of asbestos to which employees may be exposed, as required by 29 C.F.R. Section 1926.1101(f)(1).
4. Failed to provide appropriate respiratory protection for the employees, as required by 29 C.F.R. Section 1926.1101(h)(1).
5. Failed to provide a communication of hazards to employees and to identify asbestos-containing material or presumed asbestos-containing material, unless determined that such material is not asbestos-containing, as required by 29 C.F.R. Section 1926.1101(k)(1).
6. Failed to institute a training program for employees who perform Class I through Class IV asbestos operations, as required by 29 C.F.R. Section 1926.1101(k)(9).

This Notice of Noncompliance is issued to you for the violations listed in this document. Although you are not required to respond to this Notice, you should make the necessary changes to your practices to ensure that all future asbestos abatement projects are conducted in strict accordance with the applicable federal requirements. Each violation of the WPR is a prohibited act under TSCA § 15 which can result in civil penalties under TSCA § 16 of up to \$37,500 per violation.

If you have any questions regarding this letter, please contact me at (913) 551-7602, or hacker.larry@epa.gov.

Sincerely,

Larry A. Hacker

Larry A. Hacker
Regional Asbestos Coordinator
Toxics and Pesticides Branch

cc: Ms. Keven Pellant, Acting Warden
Topeka Correctional Facility
815 SE Rice Road
Topeka, KS 66607