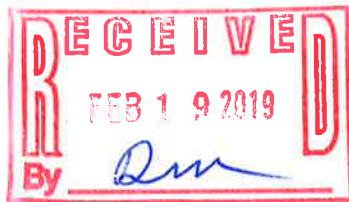




THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF LABOR STANDARDS

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DIRECTOR

February 15, 2019

Docket No: AB-19-0099

City of Maynard  
Department of Public Works  
195 Main Street  
Maynard, MA 01754  
Attn: Aaron Miklosko, Director

RE: Green Meadow School, 5 Tiger Drive, Maynard

**CIVIL CITATION WITH CIVIL PENALTY**

Pursuant to 453 CMR 6.00 and 454 CMR 29.04, the Department of Labor Standards ("DLS") hereby issues a Civil Citation with Civil Penalty to the City of Gloucester, Department of Public Works and Mr. Aaron Miklowski, whose principal location is 195 Main Street, Maynard, MA 01754 (hereinafter the "Respondent"), for the following reasons:

Under authority delegated by the United States Environmental Protection Agency ("EPA"), the Massachusetts Department of Labor Standards administers and enforces the Asbestos-Containing Materials in Schools Rule, 40 CFR 763, Subpart E, commonly known as the Asbestos Hazard Emergency Response Act ("AHERA"). AHERA requires that local education agencies ("LEA") appoint a Designated Person who is responsible for implementing the AHERA responsibilities, including but not limited to, inspecting school buildings that they own, lease or rent for asbestos-containing building materials ("ACBMs"), creating and executing written plans for managing ACBMs in a manner that minimizes asbestos exposure hazards, abating asbestos hazards that cannot be controlled through operations and maintenance ("O&M") procedures, and carrying out certain recordkeeping and notification functions. The regulation further specifies the mandatory elements that are to be included as part of a school's management plan.

The Maynard Department of Public Works ("DPW") was responsible for performing maintenance activities in the Maynard Public Schools. The Facilities Manager, Mr. Tim Goulding, was designated by the DPW as the person responsible ("Designated Person") to ensure that all AHERA requirements were properly implemented. Some of the violations of AHERA that were issued to the Maynard Public Schools are attributable to the Respondent for failure to

properly implement the AHERA requirements, and to follow the state regulations for the safe handling of asbestos materials.

### **STATEMENT OF FACTS**

On February 12, 2019, DLS conducted an AHERA inspection at the Green Meadow School in response to a complaint alleging that damaged asbestos containing ceiling tiles were present in the school. As part of the complaint, DLS received photographs of damaged ceiling tiles within the Kindergarten wing of the school. Some of those photographs depicted buckets resting on top of the ceiling tiles in addition to water stained tiles, dislodged or missing tiles, cracked tiles and various types of replacement tiles.

The school released an indoor air quality report in September 2018, which identified that mold was present in the school. Subsequent to the mold report, the school began replacing water damaged ceiling tiles, and installing ceiling tiles that were missing. It was reported to DLS that work on the ceiling tiles has been ongoing intermittently over the last two years. Personnel performing the replacement of ceiling tiles were not provided with the proper training and equipment to disturb asbestos containing materials.

DLS was informed that school custodians were not involved in the removal/repair of ceiling tiles. All work within the last two years was performed by the Designated Person and one other town employee. However, no records were maintained to document the dates, locations, and work practices used during the disturbance of ceiling tiles.

According to documentation provided by the LEA, a piece of ceiling tile approximately one square inch fell into an easel in Room 7D. The AHERA Designated Person performed the cleanup of the material, and containerized the waste. The Designated Person did not have the proper training or equipment to clean up asbestos contaminated waste, and was not trained in the proper procedures for waste disposal.

### **OBSERVATIONS**

During the inspection on February 12, 2019, it appeared to DLS that repairs to the ceiling tiles had been ongoing for an extended period of time, based on the non-homogeneous nature of the ceiling tile texture and color. There was no documentation to indicate who performed any of the work, and what protective measures had been implemented to prevent asbestos fibers from being released into the occupied spaces. Each time that repairs were performed or replacement tiles were installed, there was a high probability that an inevitable disturbance to the periphery of the adjacent asbestos ceiling tiles occurred.

It appears that the Operations & Maintenance Program ("O&M") in the AHERA management plan had not been consulted when the DPW sent public employees to perform work on asbestos containing materials. The O&M Program specifically details the protective measures needed, as well as necessary training and equipment, when disturbing up to three linear or square feet of

ACM. Based on the amount of repairs/replacements observed, the work exceeded the de minimus amount currently allowed under Operations & Maintenance activities provisions as set forth in 453 CMR 6.00 and 453 CMR 763, Appendix B to Subpart E (52 FR 41894, Oct. 30, 1987) Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving ACM.

Multiple penetrations through the ceiling tiles were also observed, such as fire alarms, sprinkler heads, and IT equipment. DLS also observed that teachers had been hanging school projects and decorations directly on the ceiling tiles, and on the grid between the tiles. It cannot be determined whether the Indoor Air Quality testing for mold involved the disturbance of ceiling tiles; however photographs depicting the space above the ceiling may have also disturbed the ceiling tiles.

It appears that the disturbance to asbestos ceiling tiles has been occurring over a period of time. The management plan does not contain documentation that the work was performed using safe work practices and protective measures. Respondent could not provide any documentation that the work was performed in accordance with 453 CMR 6.00, 310 CMR 7.00, 453 CFR 763, and 29 CFR 1910. There were also no special cleaning methods used following the repairs, or routinely in areas where the damaged asbestos ceiling tiles were present.

## **CIVIL CITATION AND ORDER TO CORRECT VIOLATIONS**

### **VIOLATIONS OF 453 CMR 6.00**

Pursuant to 453 CMR 6.00 and 454 CMR 29.04(1), the Department of Labor Standards (“DLS”) hereby issues a Civil Citation with Civil Penalty to the City of Maynard, Department of Public Works and Mr. Aaron Miklosko, whose principal location is 195 Main Street, Maynard, MA 01754, for the following reasons:

#### **Item 001**

**Due Date: March 15, 2019**

**Violation:** Respondent failed to provide 16 hours of training to any public employee assigned to conduct work that disturbed up to three linear or square feet of asbestos containing materials.

**Regulation:** 453 CMR 6.02, 6.03(10)(a), 6.10(4)(h) and 40 CFR 763 Appendix B to Subpart E.

**Effect on Building Occupants:** Proper training provides assurance to building occupants that the maintenance personnel are aware of the safe handling procedures and protective measures needed when disturbing ACM during a maintenance activity.

#### **Corrective Action:**

- Respondent will **immediately cease and desist** from assigning any public employee to perform work that disturbs up to three linear or square feet of ACM without 16 hours of training, and all the protective equipment needed to perform the work safely.

- For any employees assigned to perform O&M activities, Respondent will provide DLS with proof of 16 hour training, a copy of the written Respirator Program, and proof of employee participation in a Medical Monitoring Program.
- Respondent will provide DLS with documentation that HEPA vacuums have been provided for cleanup after O&M activities, and for cleanup of asbestos contaminated debris and waste.
- The equipment and materials needed for O&M activities can be found in the school's management plan. Alternatively, Respondent will provide written confirmation to DLS that all O&M activities that disturb ACM will no longer be conducted by public employees.

Based upon the fact that Respondent has been repeatedly disturbing ACM over an extended period of time, without regard for applicable regulatory requirements, and the number of people impacted as a result of the Respondent's actions, a determination has been made that the actions committed by the Respondent were performed with "specific intent" as defined by 454 CMR 29.02. The penalty amounts were calculated using a 5 times multiplier of the base penalty (\$1,000.00) for this violation as permitted under 454 CMR 29.04(2)(b).

For the above listed violation, DLS is assessing a Civil Penalty in the sum of **Five Thousand Dollars (\$5,000)**, pursuant to 454 CMR 9.04.

**Item 002**

**Due Date: March 15, 2019**

**Violation:** Respondent assigned untrained and unlicensed personnel to perform asbestos related work that exceeded the de minimus amount of 3 linear or square feet of ACM for O&M activities. The extent of the ceiling tile replacement work required the use of a trained and licensed asbestos contractor, and the notification and work practice requirements of 453 CMR 6.00 and 310 CMR 7.00

**Regulation:** 453 CMR 6.02, 6.03(3), 6.03(13), 6.10(4)(b), and 6.14(4)

**Effect on Building Occupants:** The specific training and licensure required for all asbestos related work other than O&M activities provides assurance to building occupants that asbestos materials are handled safely, and the space has been cleared for re-occupancy.

**Corrective Action:**

- Respondent will **immediately cease and desist** from assigning any public employees to perform work that disturbs quantities of ACM greater than 3 linear or square feet. This quantity of work requires training and licensure as an Asbestos Worker who is under the direct supervision of the Asbestos Supervisor/Contractor.
- Respondent will provide written confirmation to DLS that any work which disturbs greater than 3 linear or square feet will no longer be performed by public employees.
- Respondent will provide a notification to the MassDEP (ANF-001) and DLS prior to the disturbance of any ACM in the school building.
- Respondent will provide response action records to DLS, including the project design, the contractor sign in logs, the project monitor logs, the final air clearance report, and the waste manifest.

Based upon the fact that Respondent has been repeatedly disturbing ACM over an extended period of time, without regard for applicable regulatory requirements, and the number of people impacted as a result of the Respondent's actions, a determination has been made that the actions committed by the Respondent were performed with "specific intent" as defined by 454 CMR 29.02. The penalty amounts were calculated using a 5 times multiplier of the base penalty (\$1,000.00) for this violation as permitted under 454 CMR 29.04(2)(b).

For the above listed violation, DLS is assessing a Civil Penalty in the sum of **Five Thousand Dollars (\$5,000)**, pursuant to 454 CMR 9.04.

**Item 003**

**Due Date: March 15, 2019**

**Violation:** During Operations & Maintenance ("O&M") activities, in particular the clean up of asbestos contaminated waste, Respondent failed to implement safe work practices, including isolating the work area, cleaning to the no visible debris criteria, and failing to provide personal protective equipment in accordance with 453 CMR 6.03(12).

**Regulation:** 453 CMR 6.03(10) and 6.13(1) b,c

**Effect on Building Occupants:** The specific training and protective equipment required for all O&M activities provides assurance to building occupants that asbestos materials are handled safely, and the space can be reoccupied.

**Corrective Action:**

- Respondent will **immediately cease and desist** from assigning any public employees to perform work that disturbs quantities of ACM less than 3 linear or square feet until such employees have received the 16 hour training, are provided appropriate personal protective equipment, and are medically cleared and fit tested for respiratory protection.
- Respondent will provide written confirmation to DLS that any work which disturbs less than 3 linear or square feet will only be performed to facilitate an outside contractor to conduct work unrelated to asbestos. Disturbing small amounts of friable ACM in multiple locations over a long period of time is contrary to the intent of 453 CMR 6.13.
- Respondent will provide a notification to the MassDEP (ANF-001) and DLS prior to the disturbance of any ACM in the school building.
- Respondent will provide any O&M records to DLS, including the location of the work, the amount of ACM disturbed, the date of the work, the name of the person(s) performing the work, the protective measures used, cleanup procedure used, disposition of any waste (including cleaning materials), and documentation that no visible debris remained.

Based upon the fact that Respondent has been repeatedly disturbing ACM over an extended period of time, without regard for applicable regulatory requirements, and the number of people impacted as a result of the Respondent's actions, a determination has been made that the actions committed by the Respondent were performed with "specific intent" as defined by 454 CMR 29.02. The penalty amounts were calculated using a 5 times multiplier of the base penalty (\$1,000.00) for this violation as permitted under 454 CMR 29.04(2)(b).

For the above listed violation, DLS is assessing a Civil Penalty in the sum of **Five Thousand Dollars (\$5,000)**, pursuant to 454 CMR 9.04.

**Item 004**

**Due Date: March 15, 2019**

**Violation:** Respondent failed to ensure that workers who perform asbestos related work were enrolled in a medical monitoring program, including personal exposure monitoring, respirator fit testing, and medical examinations.

**Regulation:** 453 CMR 6.03(12)

**Corrective Action:**

- Respondent will **immediately cease and desist** from assigning any public employees to perform work that disturbs ACM until such employees are provided appropriate personal protective equipment, are enrolled in a medical monitoring program and are medically cleared and fit tested for respiratory protection.
- Respondent will provide DLS with a copy of the written Respirator Program and written Medical Monitoring Program, and ensure that all affected employees comply with these programs.

Based upon the fact that Respondent has been repeatedly disturbing ACM over an extended period of time, without regard for applicable regulatory requirements, and the number of people impacted as a result of the Respondent's actions, a determination has been made that the actions committed by the Respondent were performed with "specific intent" as defined by 454 CMR 29.02. The penalty amounts were calculated using a 5 times multiplier of the base penalty (\$1,000.00) for this violation as permitted under 454 CMR 29.04(2)(b).

For the above listed violation, DLS is assessing a Civil Penalty in the sum of **Five Thousand Dollars (\$5,000)**, pursuant to 454 CMR 9.04.

**CIVIL PENALTY**

For the violations identified above, the Respondent shall pay to the Commonwealth a Civil Penalty in the sum of **Twenty Thousand Dollars (\$20,000.00)**. Payment of the Civil Penalty shall be made by certified check, cashier's check, or money order **payable to the order of the Commonwealth of Massachusetts**. No other form of payment shall be accepted.

The payment of the Civil Penalty shall be made within 21 days of the date of issuance of this Civil Citation (**by March 8, 2019**) or, if the Civil Citation is appealed, within 21 days of settlement or final administrative or judicial adjudication of the appeal, whichever is later. Payment shall be sent to the Department of Labor Standards, 19 Staniford Street, 2<sup>nd</sup> Floor, Boston, MA 02114, Attention: Licensing Unit. Please include the docket number and your company name on the payment.

Failure to pay a Civil Penalty or otherwise fail to comply with the requirements set forth in a Civil Citation may result in the issuance of an order for the cessation of all relevant activities of the person, firm, corporation or entity to whom the Civil Citation is issued, the proposed suspension or revocation of any license issued by DLS to the person, firm, corporation or entity to whom the Civil Citation is issued, and may result in referral of this action to a debt collection agency and/or submission of this debt to the Attorney General's Office for further action and other sanctions provided by 454 CMR 29.04(5). Furthermore, deductions may be made from other monies you may receive from the Commonwealth to cover any amount due to DLS.

## **ORDER TO CORRECT VIOLATIONS**

### **ACTIONS TO BE TAKEN AND DEADLINES FOR TAKING SUCH ACTIONS**

A Corrective Due Date has been established for each item listed in this Civil Citation and Order to Correct in which a corrective action is required. **The Corrective Action Due Date is March 15, 2019.** The Respondent must notify DLS in writing that appropriate corrective action has been completed within the time frame set forth on the citation(s). Send supporting documentation to Janet McKenna, Department of Labor Standards, 1 Federal Street, Bldg. 101-3, Springfield, MA 01105.

An extension of a Corrective Action Due Date for a particular item may be requested in writing if the Respondent can demonstrate correction of the remaining items, demonstrate progress toward correction of the item, and give assurance that interim safeguards are implemented to protect school employees, contractors and occupants. Requests can be made to Janet McKenna, Department of Labor Standards, 1 Federal Street, Bldg. 101-3, Springfield, MA 01105.

## **RIGHT TO APPEAL**

Respondent has the right to appeal this Civil Citation and Civil Penalty and to obtain a hearing in accordance with the provisions of Massachusetts General Laws Chapter 30A. If held, such a hearing shall be conducted under the Formal Rules set forth in 801 CMR 1.01 of the Standard Rules of Adjudicatory Practice and Procedure. In order to exercise this right, the Respondent must request a hearing in writing within ten (10) calendar days of his receipt of this Citation. This Citation is deemed to be received by Respondent not later than the third business day after mailing, which is the date of this Citation. See 454 CMR 29.06(b). **Accordingly, your appeal must be received by the Department no later than March 2, 2019.** Pursuant to 801 CMR 1.01(6)(c), Respondent shall clearly and concisely state the facts upon which Respondent's appeal is based and also state any relief sought.

Respondent's request for a hearing on the Civil Citation shall be addressed to John Ronan, General Counsel, Department of Labor Standards, 19 Staniford St., 2<sup>nd</sup> Floor, Boston, MA, 02114.

Any questions regarding this Civil Citation and Civil Penalty should be directed to Janet McKenna, Environmental Engineer, Department of Labor Standards, 1 Federal Street, Bldg. 101-3, Springfield, MA, 01105, telephone (617) 626-5673.

  
Janet McKenna, Environmental Engineer III  
MA Department of Labor Standards

DATE: 2/15/19

cc:

John Ronan  
Michael Flanagan  
Robert Gerardi

General Counsel, Department of Labor Standards  
Chief, Safety & Health Programs, Department of Labor Standards  
Superintendent, Maynard Public Schools