



## School Air Quality Becoming a National Concern and Priority

by Amy J. Borman and David W. Nunn

School administrators have for some time confronted growing challenges and mandates for providing safe air quality in school buildings. The impetus is clear – our children must be provided with a school environment that is protective of their health and conducive to their learning. Because children breathe more air per pound than adults do, and because their bodies are still developing, children are more susceptible to illnesses and ailments from exposure to toxic chemicals. This heightened susceptibility has led to national studies on school air quality and effects on student health and performance. It has spurred new initiatives to improve ventilation in school buildings and eliminate sources of potentially toxic air emissions such as asbestos-containing materials; carpeting, adhesives, and other building materials; and toxic materials used in art, science and industrial arts classes. It also has caused school districts to expend growing resources on studying or improving air quality, sometimes under the gun of statutory mandates, required safety audits or threatened or actual litigation.

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Concerns over air quality in our schools intensified recently following *USA Today's* serial investigative report on the threat posed by industrial pollution sources to school campuses. *U.S.A. Today* conducted a study alongside researchers from the University of Massachusetts-Amherst and John Hopkins University to examine the quality of air being breathed by school children. Using a model to estimate air pollution, the study broke down potentially harmful chemicals, both carcinogenic and non-carcinogenic, that might be found in the air around schools. Based on this model, the researchers estimated that, while the air around many of the nation's schools appears to be safe, dangerous concentrations of chemicals were estimated to be present around a number of schools.

Spurred on by *U.S.A. Today's* report, the U.S. EPA announced in March of this year a new and unprecedented program to measure toxic air pollution near schools across the country. The program is going to be prioritized, starting with 62 schools in 22 states, including six in Ohio. Results are only starting to become available, and it is uncertain what steps the U.S. EPA, state or local agencies will take after assessing the data it is collecting. However, the agency will be making projections about the long-term health effects to students exposed to air toxics, which, if unfavorable, could precipitate more publicity, scrutiny and a call for aggressive follow up actions.

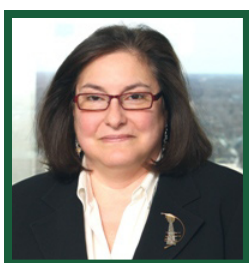
What does this mean to school boards and administrators? First, U.S. EPA's school air quality initiative and the publicity surrounding *U.S.A. Today's* exposé will shine a stronger light on the overall issues of school air quality, potential health risks to students and staff, and options and resources for assessing school campuses of concern. Eventually, it could result in greater regulation of air quality on school properties similar to existing health and safety initiatives which address asbestos-containing materials, hazardous material management, campus security, etc. Ultimately, air quality concerns, whether real or speculative, will materialize at some schools. This will compel school districts to make their own scientific and technical assessments of available information; engage in dialog over the severity, cause and effect of alleged harmful air quality; and make judgments and decisions about what actions to take or not take as the persons entrusted to protect their district's school children.

Our experience at Eastman & Smith is that environmental issues in the school setting, including concerns over air quality, can be technically and legally complex, difficult to evaluate and address, potentially high in cost to abate and emotionally charged. Numerous stakeholders aside from school boards and administrators may become involved when a problem surfaces, including parents of students, environmental or health agencies, engineers, architects, contractors, consultants, lawyers and parties accused of contributing to the problem. Interests and opinions can be expected to be divergent, often leading to disputes, controversy and even litigation.

Therefore, it is essential that school administrators confront air quality concerns head on and with the necessary resources and team to complete a proper evaluation which allows for thoughtful and defensible actions to be taken. By way of example, we recently assisted a school district whose high school campus was being contaminated by an adjacent industrial property, resulting in actual and

threatened air emissions. Through a full technical and legal review, and the combined pursuit of state grant funds and claims against the property owner, the school district obtained over \$18 million to construct a new school building at an alternate site. The new school opened this past year. If you would like more information about our experience in the area of school air quality, please feel free to contact the authors of this article.

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*Ms. Borman and Mr. Nunn are members of the Firm. Ms. Borman has significant experience in advising clients on compliance with emerging legislative and statutory issues in the areas of education and business law. Mr. Nunn's practice encompasses a number of environmental issues including CERCLA, brownfield redevelopment and transactional due diligence. Ms. Borman can be reached at either our Toledo or Columbus office. Mr. Nunn is in our Toledo office (Toledo: 419-241-6000; Columbus: 614-280-1770).*



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