

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR CONSTRUCTION, GRADING, QUARRYING, AND SURFACE MINING OPERATIONS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to reduce the public exposure to asbestos emitted from constructing, grading, quarrying, and surface mining operations that occur in areas where asbestos is found or is likely to be found.

DATE: July 26, 2001

TIME: 9:00 a.m.

PLACE: Ramada Plaza Hotel
Whitcomb Ballroom
1231 Market Street
San Francisco, California 94103

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m. on Thursday, July 26, 2001, and may continue at 8:30 a.m., Friday, July 27, 2001. This item may not be considered until July 27, 2001. Please consult the agenda for the meeting, which will be available at least ten days before July 26, 2001, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board by July 12, 2001, at (916) 322-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of section 93105, title 17, California Code of Regulations (CCR).

Background

The California Toxic Air Contaminant Identification and Control Program (Program), established under California law by Assembly Bill 1807 (chapter 1047, statutes of 1983) and set forth in Health and Safety Code (HSC) sections 39650–39675, requires the ARB to identify and control air toxics in California. The Board identified asbestos as a toxic air contaminant (TAC) in 1986. Asbestos was identified without a Board-specified threshold exposure level.

Following the identification of a substance as a TAC, HSC section 39665 requires the ARB, with participation of the air pollution control and air quality management districts (districts), and in consultation with affected sources and interested parties, to prepare a report on the need and appropriate degree of regulation for that substance.

HSC section 39666(b) requires that this “needs assessment” address, among other things, the technological feasibility of proposed airborne toxic control measures (ATCMs) and the availability, suitability, and relative efficacy of substitute products or processes of a less hazardous nature. A needs assessment for asbestos was conducted between 1989 and 1990 as part of the ARB’s development of the Asbestos ATCM for Asbestos-Containing Serpentine (“Asbestos ATCM”; title 17, California Code of Regulations, section 93106). ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations that, together with the 1990 needs assessment, serves as the report on the need and appropriate degree of regulation for the proposed ATCM.

Once the ARB has evaluated the need and appropriate degree of regulation for a TAC, HSC section 39666 requires the ARB to adopt regulations (ATCMs) to reduce emissions of the TAC to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, in consideration of cost, risk, environmental impacts, and other specified factors. In developing the proposed ATCM, State law also requires assessment of the appropriateness of substitute products or processes.

In 1990, an Asbestos ATCM was adopted by the Board imposing an asbestos limit of five percent for serpentine material for surfacing applications. At the time of the adoption, the Board directed the staff (Resolution 90-27, 1990) to return to the Board at such time that it be deemed necessary to further control emissions of asbestos from existing sources. Since the 1990 adoption of the Asbestos ATCM, additional information from monitoring and modeling studies has been developed. This information shows a potential for significant exposures and risks for individuals living near unpaved roads surfaced with serpentine material meeting the current five percent asbestos limit. In order to address this issue, an amended Asbestos ATCM was approved by the Board in July 2000 restricting asbestos content of surfacing materials to less than 0.25 percent asbestos.

The air monitoring studies, including those conducted in California and Virginia, have also indicated that activities associated with construction, grading, quarrying, and surface mining in areas known to have naturally-occurring asbestos can result in asbestos concentrations in the air that represent a potential public health hazard. Potential asbestos emissions from these activities have also been a source of public concern. Field observations and air monitoring has also demonstrated that actions taken to control dust emissions from these activities are effective in reducing asbestos emissions. Accordingly, staff is proposing a new asbestos ATCM to protect public health by minimizing emissions from construction, grading, quarrying, and surface mining operations.

Description of the Proposed Regulatory Action

The proposed ATCM is designed to minimize the public's exposure to asbestos by requiring work practices that will minimize dust emissions from activities associated with construction, grading, quarrying and surface mining. Three industry sectors are covered by the proposed ATCM: construction, road construction and maintenance, and quarrying and surface mining. The requirements would apply to projects where the area to be disturbed is in an area specified on maps published by the Department of Conservation's (DOC) Division of Mines and Geology showing ultramafic rock units or where ultramafic rock, serpentine, or naturally-occurring asbestos is known to occur, even if not shown on the maps.

The requirements for construction and grading projects are divided into provisions for projects that disturb one acre or less (small construction projects), and those that disturb more than one acre (large construction projects). The requirements for small construction projects include wetting the soil area to be disturbed; wetting, covering, or stabilizing storage piles; limiting vehicle speeds; cleaning equipment before moving it off-site; and cleaning up visible trackout on the paved public road.

Large construction projects are required to obtain an approved dust mitigation plan from the district. The plan must specify measures that will be taken to ensure that no visible dust crosses the property line and must address specific topics. The topics that must be addressed are dust mitigation measures for the following: track-out prevention and removal, disturbed surface areas and storage piles that will be inactive more than seven days, on-site vehicle traffic, active storage piles, earthmoving activities, off-site transport, post construction stabilization, and air monitoring (if required by the district).

The requirements for road construction and maintenance include notifying the district before starting the project, wetting the area to be disturbed, restricting traffic speed, and preventing visible trackout on the paved public roadway. Emergency road repair is exempted from the pre-notification requirement.

Quarries and surface mines must obtain district approval for an asbestos dust mitigation plan that ensures that equipment and processes meet the specified opacity requirements and that visible dust does not pass over the property line. In addition to processing controls, the plan must include air monitoring (if required by the district), trackout control, and control for on-site public roads.

Potentially affected sources can obtain an exemption from the proposed ATCM if a geologic evaluation determines that the area to be disturbed does not contain any ultramafic rock, serpentine, or naturally-occurring asbestos. Road construction and maintenance activities can obtain an exemption if the activity is more than a mile from any receptor. Agricultural operations and timber harvesting, except for road and building construction, are exempted from the proposed ATCM. Sand and gravel operations can obtain an exemption from the proposed ATCM for activities associated with the removal, processing, and storage of material extracted from alluvial deposits.

The proposed ATCM also contains recordkeeping and reporting requirements, test methods, timelines, and definitions. In accordance with Government Code sections 11345.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the recordkeeping and reporting requirements of the resolution are necessary for the health, safety, and welfare of the people of the State.

Comparable Federal Regulations

The U.S. EPA has promulgated an Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP); 40 C.F.R. part 61, subpart M, sections 61.140 et seq. The Asbestos NESHAP established standards that apply to asbestos mills, roadways constructed with asbestos mine tailings or asbestos-containing waste material, manufacturing operations using asbestos, demolition or renovation where asbestos may be present, spraying of asbestos-containing material, fabrication operations using asbestos, insulating material containing asbestos and disposal of waste from various sources. This regulation covers asbestos-containing manufactured products and waste containing asbestos and does not cover naturally-occurring asbestos material.

The U.S. EPA has promulgated a National Pollutant Discharge Elimination (NPDES) storm water program (Phase I); 40 C.F.R. Part 122, 123, 124 to address water discharges from Industrial, Municipal and Construction activities. Quarries and surface mines are covered under the Industrial section of the NPDES regulation. The Construction section covers construction sites that disturb five acres or more. NPDES provide that discharges of storm water to waters of the United States from Industrial, Municipal, and Construction projects are effectively prohibited unless the discharge is in compliance with a state issued NPDES permit. The NPDES permit requires all Industrial, Municipal and Construction dischargers to develop and implement a Storm Water Pollution Prevention Plan which specifies Best Management Practices (BMPs) that will prevent all pollutants (including soil) from contacting storm water with the intent of keeping all products of (wind and water) erosion from moving off site into receiving waters. Phase II of NPDES (40 C.F.R., part 122, subpart B, section 122.26 et seq) goes into affect March 10, 2003. Phase II reduces the size of the covered construction activity to one acre. Both Phases of NPDES require BMPs for fugitive dust emissions and trackout control. However, the BMPs do not require that no visible dust leave the property and they allow dry sweeping of trackout areas. The proposed Asbestos ATCM is more stringent in that it requires that no visible dust leave the property and does not allow dry sweeping in any situation.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, if any. The ISOR is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations."

Copies of the ISOR and the full text of the proposed regulatory language may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (July 26, 2001).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Richard Boyd, Manager of the Emissions Evaluation Section, Emissions Assessment Branch, Stationary Source Division at (916) 322-8285 and Carol McLaughlin, Air Pollution Specialist, Stationary Source Division at (916) 327-5636.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/asbesto2/asbesto2.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Executive Officer of the ARB concerning the cost or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The ARB's Executive Officer has determined that the proposed regulatory action will create costs, as defined in Government Code section 11346.5(a)(6), to state agencies. Any such costs should be minimal, and affected state agencies should be able to absorb these costs within existing budgets and resources. The Executive Officer has

also determined that the proposed regulatory action will not create costs or savings in federal funding to the State, costs or mandate to any school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or non-discretionary savings to state or local agencies.

The proposed regulatory action will also impose a mandate upon and create costs to local agencies (i.e., local air pollution control and air quality management districts; the "districts"). However, in this case, such administrative costs to the districts are recoverable by fees that are within the districts' authority to assess (see Health and Safety Code sections 42311 and 40510). Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially assessed that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed ATCM should have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed ATCM can be found in the ISOR.

The Board's Executive Officer has also determined that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the ARB must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, July 25, 2001**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: asbesto2@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, July 25, 2001**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, July 25, 2001**.

The Board requests but does not require 30 copies of any written submission. Also the ARB requests that written, facsimile, and e-mail statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY

This regulatory action is proposed under the authority granted to the ARB in the Health and Safety Code sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511. This action is proposed to implement, interpret, or make specific, Health and Safety Code sections 39650, 39658, 39659, 39666, and 41511.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the modifications are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, 1001 I Street, Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY
EXECUTIVE OFFICER

Date: May 29, 2001

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.arb.ca.gov."