



Winston H. Hickox  
Agency Secretary

# Air Resources Board

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Alan C. Lloyd, Ph.D.  
Chairman

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Gray Davis  
Governor

## MEMORANDUM

TO: Craig Tarpenning  
Senior Staff Counsel  
Office of Administrative Law  
555 Capitol Mall, Suite 1290  
Sacramento, CA 95814-4602

FROM: Robert Jenne  
Senior Staff Counsel

DATE: July 13, 2001

SUBJECT: ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR  
SURFACING APPLICATIONS

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The following material addresses the issues you raised in our telephone conversations on July 10, 2001.

(1) I am enclosing a Supplement to the Final Statement of Reasons (Supplement), which explains in more detail the ARB's purpose and rationale for the necessity of a number of subsections of the Asbestos Airborne Toxic Control Measure for Surfacing Applications (the "Asbestos ATCM;" section 93106, title 17, California Code of Regulations). The Supplement also addresses the concern you expressed about the lack of explicit criteria in section 93106(g) for the Air Pollution Control Officer (APCO) or the ARB Executive Officer to make a decision to require a geologic evaluation or testing. As you suggested in our phone conversation, we will add the phrase "Pursuant to the requirements of Health and Safety Code section 41511" to the beginning of the first sentence in subsection (g). We regard this modification as a nonsubstantial clarification that references the statutory authority authorizing the APCO and the ARB Executive Officer to require a geologic evaluation or testing, and clarifies, consistent with Health and Safety Code section 41511, that the determination to require these actions must be "reasonable" under the circumstances. Finally, the Supplement contains the "local mandate" determination required by Government Code section 11346.9(a)(2), and the determination required by Government Code section 11346.9(a)(4). These two items were inadvertently omitted from the Final Statement of Reasons that we sent you earlier as part of the rulemaking file.

*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 Website: <http://www.arb.ca.gov>.*

California Environmental Protection Agency

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(2) The Air Resources Board authorizes the Office of Administrative Law (OAL) to make the nonsubstantial changes listed below to the text of section 93106. For your convenience, I have enclosed seven copies of the revised Final Regulation Order, in underline and strikeout and seven copies of the revised "clean version" of the Final Regulation Order, in which these changes have been made to the regulatory text.

(i) In subsection 93106(a), replace the phrase "...120 days after the approval of this section by the Office of Administrative Law" with an actual date (i.e., the date of OAL approval plus 120 days). In the revised Final Regulation Order, this phrase has been put in brackets so that OAL can remove it and replace it with the correct date, when this date is known;

(ii) In subsection 93106(e)(2), delete the unnecessary phrase "or Apply" in the heading of this subsection;

(iii) In the underline/strikeout version of the Final Regulation Order, underline the phrase "that are" in subsection 93106 (f)(2);

(iv) In the underline/strikeout version of the Final Regulation Order, relabel paragraphs "(E)" and "(F)" in subsection 93106(f)(7) as "(D)" and "(E)" respectively. (The "clean" version of the Final Regulation Order is unchanged because these paragraphs were correctly labeled as "(D)" and "(E)" in this version.)

(v) In subsection (g), add the phrase "Pursuant to the requirements of Health and Safety Code section 41511" to the beginning of the first sentence in subsection (g).

(vi) In Appendix A to section 93106, delete the reference at the bottom of page A-2 to:  
GEOLOGIC MAP OF THE CHICO QUADRANGLE  
(set of five sheets)

By Saucedo, G.J. and Wagner, D.L., 1992

(The reference to this map was accidentally listed in the Final Regulation Order, but it should not have been because it was not listed in the regulatory text that was included with the 15-day notice for this regulatory item.

(3) As you requested, I am enclosing a revised Table of Contents and a revised Closing Certification document.

(4) I am enclosing copies of the five documents that were added to the rulemaking record in the 15-day notice. We forgot to include these documents in the rulemaking file that we sent you earlier.

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(5) In response to your inquiry, I would like to confirm that copies of all the maps listed in Appendix A to the Asbestos ATCM are kept at the offices of the ARB, together with the rulemaking file for this regulatory action, and are available to the public upon request.

(6) Finally, please discard your copy of the February 1990 Staff Report for the Proposed Control Measure for Asbestos-Containing Serpentine Rock in Surfacing Applications. This 1990 Staff Report is not part of the rulemaking record, but we erroneously included in the rulemaking file that we sent you earlier.

Thank you for your assistance on this matter. If you have any further questions, please feel free to call me at (916) 322-3762.

Enclosures