

State of California
AIR RESOURCES BOARD

Resolution 00-27

July 20, 2000

Agenda Item No.: 00-7-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, on March 27, 1986, the Board identified asbestos (in the following forms: asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), tremolite, actinolite, and anthophyllite) as a toxic air contaminant pursuant to article 3 (commencing with section 39660), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, the Board determined that there is not sufficient available scientific evidence to support identification of a threshold exposure level for asbestos below which no significant adverse health effects are anticipated (see title 17, California Code of Regulations (CCR), section 93000);

WHEREAS, sections 39658 and 39666 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCMs) for substances identified as toxic air contaminants in accordance with specified criteria;

WHEREAS, for toxic air contaminants for which the Board has not specified a threshold exposure level, section 39666 of the Health and Safety Code requires ATCMs to be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, considering factors specified in section 39665, unless the Board determines, based on assessment of risk, that an alternative level of emissions reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, on April 12, 1990, pursuant to section 39666 of the Health and Safety Code, the Board approved the Asbestos Airborne Toxic Control Measure – Asbestos-Containing Serpentine, title 17, CCR, section 93106 (Asbestos ATCM), which prohibits the sale, supply, and use for surfacing applications of serpentine material with an asbestos content greater than five percent;

WHEREAS, modeling and monitoring studies conducted since 1990 have shown continued exposures to elevated levels of asbestos near unpaved surfaces covered with naturally-occurring asbestos-containing materials, even when the asbestos content of the material was less than five percent;

WHEREAS, ARB staff has identified quarries, construction, and grading activities operating in ultramafic rock formations as potential sources of asbestos-containing dust emissions from disturbances at these facilities;

WHEREAS, ARB staff participated in a multi-agency task force to address issues related to naturally-occurring asbestos in El Dorado County; the Task Force issued a *White Paper* and *Findings and Recommendations* regarding the asbestos issues; one of the findings of the Task Force recommended that El Dorado County consider lowering the five percent asbestos content limit;

WHEREAS, staff from the Department of Conservation, Division of Mines and Geology, has indicated that naturally-occurring asbestos is more likely to be found in ultramafic (also called ultrabasic) rock formations located in various areas in California;

WHEREAS, based upon the Task Force's *Findings and Recommendations*, information from the Department of Conservation, Division of Mines and Geology, and the result of several monitoring and modeling studies, ARB staff has proposed to amend the Asbestos ATCM;

WHEREAS, the proposed amendments to the Asbestos ATCM would prohibit the sale, supply, and use for surfacing applications of ultramafic rock with an asbestos content of 0.25 percent or greater, and would also impose notice, recordkeeping, and reporting requirements;

WHEREAS, staff has worked closely with the air pollution control districts and air quality management districts (districts), the affected industry, and the public, as required by Health and Safety Code section 39665, to prepare a report identifying the need for, and appropriate degree of control of these toxic air contaminants;

WHEREAS, ARB staff has prepared a staff report entitled *Initial Statement of Reasons for the Proposed Amendments to the Asbestos Airborne Toxic Control Measure for Surfacing Applications* and appendices (Initial Statement of Reasons) which provides estimates of potential cancer risk due to airborne asbestos fibers near unpaved roads, discusses possible technologically feasible control alternatives, and discusses the potential cost impacts to the affected industry, local districts, and local and state government for implementation and compliance with the proposed amendments;

WHEREAS, to support the 1990 Asbestos ATCM, ARB staff prepared a staff report entitled *Initial Statement of Reasons for the Proposed Control Measure for Asbestos-Containing Serpentine Rock in Surfacing Applications* (1990 Staff Report) which contains estimates of potential risk to people living near roads surfaced with asbestos-containing material, presents technologically feasible control alternatives, and discusses the potential cost impacts to affected parties to comply with the Asbestos ATCM;

WHEREAS, the Initial Statement of Reasons and the 1990 Staff Report constitute the report on the need and appropriate degree of regulation for asbestos required by Health and Safety Code section 39665;

WHEREAS, in accordance with Health and Safety Code section 39665(c), the report and any relevant comments received during public consultation with the districts, affected sources, and the public were made available for public review and comment 45 days prior to the public hearing to consider the proposed amendments;

WHEREAS, the report discusses, to the extent data could reasonably be made available, the factors specified in Health and Safety Code section 39665(b);

WHEREAS, the proposed amendments to the Asbestos ATCM would substantially reduce asbestos emissions resulting from the use of naturally-occurring asbestos-containing materials for surfacing;

WHEREAS, in accordance with Health and Safety Code section 39666(c), the amendments have been designed, in consideration of the factors specified in Health and Safety Code section 39665(b), to reduce emissions of asbestos to the lowest levels achievable through application of best available control technology (BACT);

WHEREAS, based on comments received during the 45-day comment period prior to the public hearing, staff has proposed modifications to the original proposal; these modifications are set forth in Attachment B to this resolution;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the proposed amendments to the Asbestos ATCM were made available to the public for review and comment, and concepts and drafts of the amendments were discussed at public consultation meetings on November 16, 1999, February 4, 2000, and May 23, 2000;

WHEREAS, in consideration of the staff report, written comments, and public testimony it has received, the Board finds that:

Existing federal, State, and local regulations do not sufficiently protect the public health from sources of naturally-occurring asbestos;

The use of naturally-occurring asbestos-containing material for surfacing may result in potentially harmful concentrations of asbestos fibers being entrained in the air, and these asbestos fiber concentrations may pose a significant health risk to exposed members of the public;

The proposed amendments to the Asbestos ATCM would substantially reduce asbestos emissions from the use of naturally-occurring asbestos-containing material for unpaved surfacing applications;

The proposed amendments to the Asbestos ATCM comply with the requirements of the State law for control of sources of toxic air contaminants identified by the Board;

The proposed amendments to the Asbestos ATCM constitute the best available control technology, as required by Health and Safety Code section 39666(c) and, also constitute a pollution prevention measure;

The economic impacts of the amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

Suitable alternative surfacing materials are available which do not contain detectable levels of asbestos;

The benefits to human health, public safety, public welfare, or the environment justify the costs of the regulatory amendments;

The reporting requirements of the amendments which apply to businesses are necessary for the health, safety, and welfare of the people of the State; and

No alternative considered would be more effective at carrying out the purpose for which the amendments are proposed, or be as effective and less burdensome to the affected private persons and businesses than the amendments.

WHEREAS, the Board further finds, in accordance with the Health and Safety Code, section 39650(e), that:

While absolute and undisputed scientific evidence may not be available to determine the exact extent of risk from emissions of asbestos from sources of naturally-occurring asbestos-containing materials, it is necessary to take action to protect public health; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

No significant adverse environmental impacts should occur from the proposed amendments, with the exception that there may be very small increases in emissions of diesel particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons from heavy-duty diesel vehicles;

These emission increases may occur because in some cases alternative sources of aggregate may be transported an additional 25 to 50 miles, resulting in statewide emission increases per year of approximately 100 to 200 pounds of diesel particulate matter, 200 to 400 pounds of carbon monoxide, 2,000 to 4,000 pounds of nitrogen oxides, and 200 to 400 pounds of hydrocarbons;

The emission increases described above are extremely small, but could nevertheless constitute an adverse environmental impact;

Because alternative aggregate material is generally more durable and will not need to be replaced as frequently, any emission increases are expected to be short-term ones that will diminish over time;

The proposed amendments are necessary in order to protect public health by reducing asbestos emissions from the use of naturally-occurring asbestos-containing material for surfacing applications;

The considerations identified above override any adverse environmental impacts that may occur from an increase in heavy-duty vehicle emissions; and

There are no feasible mitigation measures or alternatives that would reduce the potential adverse impacts of the proposed amendments, while at the same time ensuring that the positive environmental impacts (i.e., a reduction in asbestos emissions) would be achieved.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed amendments to section 93106, title 17, CCR, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue working with the Department of Conservation in its efforts to develop assessment methodologies and guidance documents that will assist in determining the likely presence of naturally-occurring asbestos-bearing materials on parcels of land.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with the Department of Conservation, to assist the air pollution control districts and air quality management districts to:

1. Evaluate existing quarrying and other surface mining operations located in geographic ultramafic rock units for the presence of ultramafic rock and other asbestos-containing materials; and
2. Develop digitized geologic maps indicating the locations where asbestos is more likely to be found for the air pollution control districts and air quality management districts where asbestos is known to occur.

BE IT FURTHER RESOLVED that, pursuant to sections 39515, 39516, 39600, and 39601 of the Health and Safety Code, the Board expressly delegates to the Executive Officer the authority to adopt regulatory amendments to the Asbestos ATCM to reflect updates in the availability of the geologic maps identified in Appendix A to section 93106, title 17, CCR, indicating locations more likely to contain asbestos, and to conduct public hearings and take other appropriate actions to make such amendments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with affected governmental agencies, regulated parties, and the California Air Pollution Control Officers Association, to develop appropriate implementation guidance that will allow for expeditious permitting of affected activities.

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BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with the regulated parties and the California Air Pollution Control Officers Association, to develop appropriate alternative sampling and testing procedures, including procedures to accommodate the in situ testing of ultramafic rock prior to excavation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the regulated parties and the California Air Pollution Control Officers Association to address the potential use of ultramafic rock on unpaved roads located in sparsely populated areas, in consideration of public health protection and future land use.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to explore options that would provide areas with incentives to pave existing roads surfaced with asbestos-containing material, while complying with the Asbestos ATCM.

I hereby certify that the above is a true and correct copy of Resolution 00-27, as adopted by the Air Resources Board.

Marie Kavan, Clerk of the Board

Resolution 00-27

July 20, 2000

Identification of Attachments to the Board Resolution

- Attachment A:** Proposed amendments to the Asbestos ATCM (section 93106, title 17, California Code of Regulations), as set forth in Attachment A to the Initial Statement of Reasons, released June 2, 2000.
- Attachment B:** Staff's Suggested Changes to the Original Proposal (distributed at the Board hearing on July 20, 2000).