

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE ASBESTOS AIRBORNE TOXIC CONTROL MEASURE – ASBESTOS-CONTAINING SERPENTINE

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to the Asbestos Airborne Toxic Control Measure—Asbestos-Containing Serpentine (title 17, California Code of Regulations, section 93106):

DATE: July 20, 2000

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m. on Thursday, July 20, 2000, and may continue at 8:30 a.m., Friday, July 21, 2000. This item may not be considered until July 21, 2000. Please consult the agenda for the meeting, which will be available at least ten days before July 20, 2000 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 6, 2000, 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 PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to section 93106, 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). The ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed amendments to the Asbestos ATCM that, together with the 1990 needs assessment, serves as the report on the need and appropriate degree of regulation for the proposed amendments.

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 amendments, State law also requires assessment of the appropriateness of substitute products or processes.

The Asbestos ATCM adopted by the Board imposed 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. Furthermore, since 1990 two air districts (Lake County Air Pollution Control District and North Coast Unified Air Quality Management District) adopted asbestos regulations that are more health protective than the current statewide ATCM. Also, in 1999 the El Dorado County Air Pollution Control District considered a district staff proposal to further protect the public by lowering the allowable asbestos content of surfacing materials. That staff proposal was not adopted and in making this decision the Chair of the El Dorado County Board stated that this is a statewide issue best dealt with by the ARB. Accordingly, staff is proposing to amend the current Asbestos ATCM to protect public health by further reducing asbestos emissions from surfacing applications.

Description of the Proposed Regulatory Action

The proposed amendments to the Asbestos ATCM would prohibit the use or application of serpentine, serpentine material, and asbestos-containing ultramafic rock for unpaved surfacing. These amendments would prohibit any new use or application of serpentine

and serpentine material on unpaved roads and other surfaces, such as alleys, parking lots, playgrounds, and trails, including the use of these materials for decorative purposes. The amendments would also prohibit the use of ultramafic rock for surfacing applications, unless it has been tested and determined to contain less than 0.25 percent asbestos. Staff is also proposing to prohibit the use for surfacing of any material which has been tested at the request of the Executive Officer and determined to have an asbestos content of 0.25 percent or more.

In addition to restrictions described above, the proposed amendments would impose requirements on persons who sell, supply, or offer for sale serpentine, serpentine material, ultramafic rock, or asbestos-containing material. These requirements would prohibit the sale for surfacing applications of serpentine, serpentine material, asbestos-containing ultramafic rock, or any other material which has been tested and determined to have an asbestos content of 0.25 percent or more. (These materials could still be sold for non-surfacing applications.) Furthermore, the proposed amendments would require persons who sell such materials to provide written notice to purchasers. The contents of the required notice would vary depending on the type of rock, the asbestos content of the rock, whether or not the person is the producer of the rock (e.g., the owner or operator of a rock quarry), and whether the seller represents that the rock is suitable for surfacing.

The proposed amendments would also impose recordkeeping requirements. Sellers of serpentine, serpentine material, and ultramafic rock would be required to retain for at least seven years copies of all sales receipts, and copies of any test results from asbestos testing. Persons who use or apply ultramafic rock for unpaved surfacing must also retain the receipt, or other record documenting the asbestos content of the material, for at least seven years. Such records must be provided to the ARB or a district upon request.

The proposed amendments also provide eight exemptions. Three of these exemptions are new, and five exist in the current Asbestos ATCM. Staff is proposing various modifications to the five existing exemptions. These five exemptions are: (1) an exemption from certain ATCM requirements for aggregate extracted from sand and gravel operations; (2) an exemption for roads located at quarries or mines (if the material was obtained on site from the quarry or mine); (3) an exemption for certain emergency road repairs; (4) an exemption for material used in concrete or asphalt production; and (5) an exemption for landfill operations (other than the surfacing of public access roads).

The proposed three new exemptions are: (1) an exemption from certain ATCM requirements for aggregate produced on property where a registered geologist has conducted a geologic assessment and determined that asbestos is not likely to be found on the property; (2) an exemption for the use of asbestos-containing aggregate on non-wearing surfaces (such as exposed hillsides); and (3) an exemption from certain ATCM requirements for remote locations.

Finally, the proposed amendments specify that any testing to determine asbestos content must use ARB Test Method 435, or an alternative bulk asbestos test method approved by the ARB Executive Officer. The ARB or the district is also authorized to require testing for the asbestos content of any material represented as being suitable or used for surfacing.

Comparable Federal Regulations

There are no comparable federal regulations that apply to asbestos emissions from the use of serpentine or other naturally-occurring rock that may contain asbestos. There exist federal regulations establishing asbestos 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, fabricating operations using asbestos, insulating material containing asbestos, and disposal of asbestos waste from various sources [see the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) ; 40 C.F.R. Part 61, Subpart M, sections 61.140 et seq.]. Staff reviewed the existing federal regulations on asbestos and determined that the proposed amendments do not duplicate or conflict with these federal regulations.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSON

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action which includes the full text of the proposed regulatory language, a summary of the environmental and economic impacts of the proposal, and supporting technical documentation. Copies of the ISOR may be obtained from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (July 20, 2000). To obtain the ISOR in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, 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 are being made available on the ARB Internet site for this rulemaking, <http://www.arb.ca.gov/regact/asbestos/asbestos.htm>.

The staff has also compiled a record that includes all information upon which the proposal is based. This material is available for inspection upon request to the agency contact person identified below.

The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the ISOR for this regulatory action.

Further inquiries regarding this matter should be directed to the agency contact person for this rulemaking, Mr. Todd Wong, Manager, Emissions Evaluation Section, Stationary Source Division, at (916) 322-8285.

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 not create costs or savings, as defined in Government Code section 11346.5(a)(6), 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 costs or savings to state or local agencies. The ARB's Executive Officer has also determined that the proposed regulatory action will create costs, as defined in Government Code section 11346.5(a)(6), to state agencies. Affected state agencies should be able to absorb their costs within existing budgets and resources.

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 accordance with Government Code section 11346.3(b)(1), the Executive Officer has determined that the proposed amendments 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 amendments can be found in the ISOR.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Executive Officer has determined that the proposed regulatory action may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

As explained in the ISOR, it is possible that a few individual businesses may be adversely affected by the proposed regulatory action. Therefore, the Executive Officer finds that the adoption of the proposed amendments may have a significant adverse impact on some businesses.

The businesses that may be adversely impacted by the proposed regulatory action are certain producers that extract or process aggregate material (e.g., quarries).

The projected reporting, recordkeeping, and other compliance requirements that would result from the proposed regulatory action are described in this notice under the "Description of the Proposed Regulatory Action."

The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business.

Finally, the Executive Officer has determined that there may be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action.

Before taking final action on the proposed regulatory action, the ARB must determine that no alternative considered by 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 ARB, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, or 2020 L Street, 4th Floor, Sacramento, CA 95814, no later than 12:00 noon, July 19, 2000, or received by the Clerk of the Board at the hearing. To be considered by the ARB, e-mail submissions must be addressed to asbestos@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon July 19, 2000.

The ARB requests, but does not require, that 30 copies of any written statement be submitted, and that all written and e-mail statements be filed at least ten 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 any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND REFERENCES

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, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY
EXECUTIVE OFFICER

Date: May 23, 2000