

UPDATED INFORMATIVE DIGEST AND PLAIN ENGLISH POLICY STATEMENT **OVERVIEW**

PUBLIC HEARING TO CONSIDER THE AMENDMENTS TO THE ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR SURFACING APPLICATIONS

Sections Affected: 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 Air Resources Board (ARB or Board) 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 the 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 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 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 amendments, State law also requires assessment of the appropriateness of substitute products or processes.

The Asbestos ATCM, adopted by the Board in 1990, imposed an asbestos limit of five percent for serpentine material used 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. Since the 1990 adoption of the Asbestos ATCM, additional information from monitoring and

modeling studies near sources of naturally-occurring asbestos 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 five percent asbestos limit. Furthermore, two air districts (Lake County Air Pollution Control District and North Coast Unified Air Quality Management District) have adopted asbestos regulations that are more health protective than the 1990 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 of Supervisors stated that this is a statewide issue best dealt with by the ARB. Accordingly, the ARB has amended the current Asbestos ATCM to protect public health by further reducing asbestos emissions from surfacing applications.

Description of the Regulatory Action

The amendments to the Asbestos ATCM limit the use or application of “restricted material” for unpaved surfacing. Restricted material is aggregate material that 1) originates from within a geographic area designated on geologic maps referenced by the amended ATCM as ultramafic rock units; 2) has been determined to be ultramafic or serpentine rock; or 3) has been tested and found to have an asbestos content of 0.25 percent or greater. These amendments prohibit any new use or application of restricted material on unpaved roads and other surfaces, such as alleys, parking lots, playgrounds, and trails, including the use of these materials for decorative purposes, unless it has been tested and determined to contain less than 0.25 percent asbestos.

In addition to the restrictions described above, the amendments impose requirements on persons who sell, supply, or offer for sale serpentine, serpentine material, ultramafic rock, or asbestos-containing material (material with an asbestos content of 0.25 percent or greater). These requirements 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 amendments require persons who sell such materials to provide written notice to purchasers. The contents of the required notice 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 amendments also impose recordkeeping requirements. Sellers of serpentine, serpentine material, and ultramafic rock are 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 amendments also provide eleven exemptions. Six of these exemptions are new, and five exist in the current Asbestos ATCM. There are 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 six new exemptions are: (1) an exemption from certain ATCM requirements for maintenance operations on any existing road surface, if no additional restricted material is applied to the road surface; (2) an exemption from certain ATCM requirements for aggregate produced on property where a registered geologist has conducted a geologic evaluation and determined that serpentine or ultramafic rock is not likely to be found on the property; (3) an exemption for the use of asbestos-containing aggregate on limited access surfaces (such as exposed hillsides); (4) an exemption from certain ATCM requirements for surfacing applications in remote locations; (5) an exemption from certain ATCM requirements for temporary road surfaces located at on-going construction sites where vehicle traffic is limited to construction personnel and equipment; and (6) an exemption for restricted material used for riprap.

Finally, the amendments specify that the ultramafic rock composition of any material shall be determined using a standard analysis technique including, but not limited to, color index assessment, microscopic examination, petrographic analysis or rock thin sections, or chemical analysis techniques, such as X-ray fluorescence spectrometry or inductively coupled plasma analysis. The amendments also specify that any testing to determine asbestos content must use ARB Test Method 435, or an alternative asbestos bulk 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 that is sold or used for surfacing.

Comparable Federal Regulations

There are no comparable federal regulations that apply to asbestos emissions from the use of serpentine or ultramafic rock that may contain naturally-occurring 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; 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 amendments do not duplicate or conflict with these federal regulations.