

#18

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of January 22, 2015

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Executive Director/Air Pollution Control Officer

Subject: Adopt a Resolution Approving Amendments to Rule 902, Asbestos

Recommendations

1. Conduct a public hearing; and
 2. Adopt the attached resolution approving the amendments to Rule 902.
-

Executive Summary

Asbestos is a naturally occurring mineral fiber used in building materials such as roofing shingles, floor tiles, and pipe insulation. Destruction of asbestos-containing materials during building demolition and renovation activities can release asbestos fibers. Inhalation of asbestos fibers can scar lungs and cause serious health problems including a chronic lung disease, asbestosis; lung cancer; and a rare cancer of the lining of the lung, chest, abdomen and heart that is only associated with asbestos exposure, known as mesothelioma.

Rule 902, Asbestos, effects federal and state regulations requiring containment of asbestos fibers released during demolition and renovation activities. Staff proposes to revise Rule 902 to enhance awareness and enforceability of several of the District's longstanding asbestos demolition and renovation enforcement policies, and to improve consistency with federal requirements. Staff proposes to make explicit which demolition and renovation requirements apply to asbestos consultants and asbestos abatement contractors. The amendments specify acceptable techniques for removing regulated asbestos containing material (RACM) when standard containment procedures cannot be applied. The acceptable techniques are commonly used in the asbestos removal industry. Staff is also proposing to include sampling provisions that are consistent with the District's current survey form.

Rule 902 already requires notifying the District of renovation and demolition project schedule changes, but does not specify that the notification must be received before completion of the work. Since this has resulted in relatively ineffective inspections occurring after work is complete, proposed amendments will require that the District be notified of schedule changes before the project is completed.

The amendments are consistent with the District's current implementation and enforcement practices and do not impose new requirements.

Attachments

The following table identifies the attachments to this memo.

Item	Attachment	Page Number
Board Resolution	A	8
Proposed Rule 902	B	12
Staff Report	C	41
Written Comments	D	86
Evidence of Public Notice	E	90

Background

Human exposure to asbestos through inhalation presents a serious health risk and may lead to diseases of the lung and other parts of the body¹. Asbestos fibers can scar the lungs and cause a chronic, progressive disease known as asbestosis, which is characterized by shortness of breath, coughing, and impaired respiratory function. Asbestos can also cause lung cancer as well as mesothelioma, a rare form of cancer found in the thin lining of the lung, chest, abdomen, and heart. Almost all cases of mesothelioma are linked to asbestos exposure.

District Rule 902, Asbestos, was adopted on June 2, 1975, to limit the emission of asbestos to the atmosphere from asbestos related activities, including the removal and associated disturbance of asbestos-containing materials, as well as the storage and disposal of asbestos-containing waste material generated or handled by these activities.

The U.S. Environmental Protection Agency regulates asbestos under the National Emission Standards for Hazardous Air Pollutants (NESHAPs) program. EPA has delegated to the District the authority to implement and enforce the asbestos NESHAP² through Rule 902. Under state law, a federal NESHAP automatically becomes a state Airborne Toxic Control Measure, which districts are authorized to enforce.

2012 Board Hearings

In 2012, the District's Board held public hearings to consider revisions to Rule 902, Asbestos. During the week leading up to the first hearing, Staff received five comment letters from asbestos consultants that raised new issues and concerns with the proposed amendments.

The public comments primarily focused on the proposal to include "consultant" in the definition of "owner or operator of a demolition or renovation." Although some commenters expressed concern about consultants being included in Rule 902 in any way, others were concerned about confusion arising from defining a consultant as an "owner..." and instead requested that Rule 902: 1) explicitly include the term "asbestos consultant," and 2) specify which sections of the rule

¹ U.S. EPA, Asbestos Health Effects, <http://www.epa.gov/asbestos/pubs/help.html#health>, (accessed November 22, 2011).

² "National Emission Standard for Asbestos," 40 CFR Part 61, Subpart M.

apply to asbestos consultants. Staff agreed with these requests and the Board deferred rulemaking action until additional Staff work and a public workshop were completed.

Summary of Proposed Rule Amendments

The main amendments for Rule 902 are summarized below. Please refer to Appendix A of the Staff Report (Attachment C to this Board letter) for a detailed description of changes.

Contractor and Consultant Changes

The current rule describes requirements for "operators." The amendments propose to add more common terms in the industry – asbestos abatement contractors and asbestos consultants – and be more specific about which rule requirements apply to each function. Under the revision:

- Asbestos abatement contractors must comply with sections that pertain to the asbestos removal process including:
 - Work environments
 - Wetting
 - Posting of warning signs
 - Waste handling
 - Reports
 - Notifications
- Asbestos consultants must comply with sections pertaining to identifying asbestos and related notifications, including:
 - Asbestos surveys
 - Reports
 - Notifications
- The applicability of requirements is based on the definitions of asbestos abatement contractors and asbestos consultants that specify the functions being performed on the project, rather than the individual or company licenses. In this way, companies without a license or working outside a traditional role, such as an asbestos consultant directing on-site asbestos removal activities, clearly are subject to the rule requirements pertaining to that job function. In addition, when an asbestos consultant has been engaged by the owner or operator to provide guidance on the requirements for specific activities or to supervise or direct those activities, the asbestos consultant shares responsibility for compliance with those requirements.

Other Changes – Several other changes were made to clarify requirements and incorporate enforcement and industry practices. The revisions:

- Specify that single family units that are intentionally burned for purposes of firefighting training are subject to the rule requirements.
- Clarify that mixed use buildings that combine residences with commercial/industrial functions are not exempt, even when there are four or fewer dwelling units, because the entire building is treated as commercial/industrial.
- Add and clarify requirements for standard industry asbestos abatement techniques: glove bag, wrap and cut/chop, and open air abatement (typically for roofing projects).
- Modify the definition of "visible emissions" to include RACM debris found outside of the regulated area. Such debris is evidence that the asbestos abatement is not proceeding properly and may constitute a violation.

- Require that surveys conducted to determine the presence or absence of asbestos include the specified minimum number of samples from surfacing materials (plaster, stucco, etc.), consistent with the District's current survey form.
- Require that demolition and renovation projects notify the District of their completion date. The amendments will now require that the District be notified of a change in the completion date of a project "no later than one working day prior to the actual project completion date." This will help the District avoid scheduling ineffective inspections occurring after work is complete.
- Make minor changes to the requirements pertaining to manufacturing, fabricating, spraying, insulating, asbestos mills, and waste disposal sites to be consistent with the NESHAP. There are currently no known sources in the District subject to these requirements.

Impact on Businesses

The amendments are consistent with the NESHAP and current enforcement practices, and do not impose new requirements or additional compliance costs on businesses.

District Impacts

The proposed amendments to the rule will not result in additional costs to the District.

Emission Impacts

The proposed changes will facilitate compliance for those responsible for asbestos abatement and others who work with asbestos and will simplify enforcement. There may be a small but unquantifiable decrease in emissions due to improved compliance.

Environmental Review and Compliance

California Public Resources Code Section 21159 requires an environmental analysis of the reasonably foreseeable methods of compliance. The proposed amendments to Rule 902 do not establish new provisions that would require any affected owner or operator to modify operations to comply with the rule. The amendments are intended to clarify existing provisions and facilitate compliance with the rule. There may be a small but unquantifiable decrease in emissions of asbestos due to improved compliance.

Staff recommends that the Board find that the proposed rule is exempt from the California Environmental Quality Act on two grounds: (i) that it is an action by a regulatory agency for protection of the environment³ and (ii) that it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment⁴.

³ State CEQA Guidelines, Section 15308, Class 8 Categorical Exemption.

⁴ State CEQA Guidelines, Section 15061(b)(3).

Public Outreach and Comments

On November 18th, 2014, Staff held a public workshop to discuss the proposed amendments. Today's proposed rule revisions and staff report were made available for public review on December 19, 2014. The noticing for the workshop and today's hearing included:

- A display ad of the public notice in the Our Region section of the Sacramento Bee for the public workshop;
- A notice published in the legal section of the Sacramento Bee for the hearing;
- Notices posted on the District's website;
- Approximately 3,700 U.S. Mail or e-mail notices to:
 - Businesses, including building owners, contractors, and consultants who have had previous contact with the District through asbestos notifications;
 - Contractors registered with Cal/OSHA's Asbestos Contractors' Registration Unit;
 - Consultants and site surveillance technicians certified by Cal/OSHA; and
 - Persons who have requested to receive District rulemaking notices.

At the public workshop, Staff was asked clarifying questions about the requirements and responsibilities of consultants and contractors as well as how the District would apply the rule to specific situations. Some of the questions regarding specific situations included:

- What is a mixed use building?
- How do you isolate RACM if discovered in a demolition?
- What are some examples of non-porous material?
- If a roof tests positive for RACM and is damaged by fire, is the whole building considered asbestos-containing waste material?

For more questions and Staff responses, refer to page 42 of the staff report.

One written comment received stated that the definitions for "asbestos abatement contractor" and "asbestos consultant" seemed to legitimize asbestos abatement contractors conducting asbestos surveys, which would conflict with the California Business and Professions Code. Staff worded the definitions and responsibilities in the rule to allow the District to enforce the rule requirements regardless of whether any party may be operating outside their qualifications.

Another written comment received made the following two comments.

- 1) Comment - Staff's interpretation (Staff Report, Appendix C) of the federal regulations pertaining to asbestos in schools, the Asbestos Hazard Emergency Response Act (AHERA), related to the sampling protocol for plaster, wall texture, and stucco is incorrect.

Response - Appendix C is required by state law⁵ to compare Rule 902's requirements to other federal requirements. The pertinent section compares sampling required for Staff's current list of suspect materials to the comparable requirements of AHERA. Staff agrees with the comment and shows the modified text in the table below. The difference⁶ between Rule 902 sampling requirements and AHERA sampling requirements does not change Staff's

⁵ California Health and Safety Code Section 40727(b)(6)

⁶ AHERA (40CFR763.86(d)) requires sampling "sufficient to determine" whether it contains asbestos, which may be fewer samples than the minimum sampling requirements specified in Rule 902, Section 401.1(b).

recommendation because the sampling is being conducted for different reasons, as discussed in more detail below.

	Proposed Rule 902	AHERA⁷
RACM	Interior - Exterior	Interior
Plaster	Thoroughly (3,5,7 minimum) ⁸	3,5,7 Sufficient to determine
Wall Texture	Thoroughly (3,5,7 minimum) ⁸	3,5,7 Sufficient to determine
Category II		
Stucco	Thoroughly (3,5,7 minimum) ⁸	3,5,7 Sufficient to determine

- 2) Comment – Commentor does not recommend requiring the sampling of stucco because it damages the stucco surface.

Response - Staff does not recommend excluding stucco from the sampling requirements. Stucco has the potential to contain asbestos, as confirmed by survey reports received by the District. Rule 902 does not exclude stucco because demolition and renovation activities are likely to render it friable or release asbestos fibers. It makes sense not to sample stucco for AHERA because that federal regulation is intended to identify the presence of asbestos in school buildings that are not being renovated or demolished. Rule 902, on the other hand, only requires samples from stucco areas that will be damaged or destroyed by renovation or demolition activities.

All comment letters can be found in Attachment D of the Board package. No changes were made in response to any of the questions or the comments received.

⁷ U.S. Environmental Protection Agency. 40 CFR 763, Subpart E, Asbestos-Containing Materials in Schools.

⁸ Minimum of 3 samples for sampling area of less than 1,000 ft², 5 samples for areas between 1,000 and 5,000 ft², 7 samples for areas greater than 5,000 ft². More than 3, 5, or 7 samples may be necessary to adequately test for the presence of asbestos.

Conclusion

The proposed amendments to Rule 902 will specify which demolition and renovation requirements apply to asbestos consultants and asbestos abatement contractors. Also, consistent with current practices, the amendments specify acceptable techniques for removing regulated asbestos containing material (RACM) when standard containment procedures cannot be applied. The proposed amendments also include sampling provisions that are consistent with the Districts survey forms. There are several proposed amendments that will restructure some of the rule language to clarify the requirements and make them consistent with federal requirements. These amendments are not expected to incur any additional cost to businesses or the District.


Staff recommends that the Board adopt the attached resolution approving the amendments to Rule 902.

Respectfully submitted,

Approved as to form:



Larry Greene
Executive Director/Air Pollution Control Officer



Kathrine Pittard
District Counsel

Attachments