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SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT

For Agenda of **February 26, 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

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Recommendations

1. Conduct a public hearing; and
2. Determine that the amendments to Rule 902 are exempt from the California Environmental Quality Act (CEQA); and
3. Adopt the attached resolution approving the amendments to Rule 902.

Discussion

On January 22, 2015, the Board conducted a public hearing[1] to consider proposed amendments to Rule 902, Asbestos. During the hearing, Mr. John Kimmel of PARC Specialty Contractors testified regarding the proposed amendments to Section 404.1(c) of the rule, which requires that the District be notified of a change in the project completion date no later than one working day prior to the actual project completion date. Mr. Kimmel stated that the proposed requirement could lead to unnecessary delay and additional costs if a project finished a day early because workers would have to delay completion for a day to meet the notification requirement.

The Board approved all amendments to Rule 902[2] with the exception of Section 404.1(c) and continued the public hearing on Section 404.1(c) until February 26, 2015. The Board directed Staff to work with Mr. Kimmel to resolve the issues raised in his testimony and revise the proposed section as appropriate.

Staff has revised the language in Section 404.1(c) and discussed the new proposal with Mr. Kimmel. Mr. Kimmel told Staff that the new proposal addresses his concerns satisfactorily. The proposal will also meet the needs of the District's enforcement staff.

The proposed amendments to Section 404.1(c) are described below:

- A provision was added that the Air Pollution Control Officer may approve, in writing, a notification period shorter than the standard one working day notice summarized below.

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[1] January 22, 2015 Board Meeting Agenda, Item #18, http://www.airquality.org/bod/agenda2015JanuaryFinal.shtml

[2] Rule 902, Amended January 22, 2015, http://www.airquality.org/rules/rule902.pdf

- To improve clarity, the standard notification requirements are specified separately for projects that will be delayed beyond the date specified in the plan and the requirements for projects that will be completed earlier than the date specified in the plan.
  - If a project's actual completion date will be earlier than specified in the plan, notification of the change must be received by the District at least one working day prior to the actual completion date.
  - If a project's actual completion date will be later than specified in the plan, notification of the change must be received by the District on or prior to the date specified in the plan.

The proposed amendments will allow time for Staff to conduct final inspections on projects while accommodating projects that require a shorter notification period. Staff recommends that the Board determine that the proposed amendments to Rule 902 are exempt from CEQA and approve the attached resolution adopting the amendments as proposed.

Background

District Rule 902, Asbestos, limits the emission of asbestos fibers 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 NESHAP[3] through Rule 902. Under state law, a federal NESHAP automatically becomes a state Airborne Toxic Control Measure, which districts are authorized to enforce.

The proposed amendments to Section 404.1(c) at the January 22, 2015 public hearing required that the District be notified of a change in the project completion date no later than one working day prior to the actual project completion date. This requirement was intended to give Staff time to inspect the asbestos removal work before a project is complete. In addition, the notification would prevent instances where Staff arrives at a site only to find that the work has already been completed.

Mr. John Kimmel of PARC Specialty Contractors testified that for some projects, the contractor may not know that a project is going will be completed until that same day. To comply with the notification requirement, as proposed, the contractor would need to delay the project completion unnecessarily until the following day, resulting in additional cost.

To address Mr. Kimmel's concerns, Staff drafted revisions to Section 404.1(c) that added a provision that the Air Pollution Control Officer may approve a shorter notification period. This provision allows requests to be evaluated on a case-by-case basis.

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[3] "National Emission Standard for Asbestos," 40 CFR Part 61, Subpart M.

Staff discussed the revised requirements with Mr. Kimmel. During the discussions, he asked for clarification about the criteria the District would use to decide whether to approve shorter notification periods. He also expressed concern that when he wants to request a shorter notification period, there may not be enforcement staff available to receive and discuss his request, including nights and weekends. As discussed with Mr. Kimmel:

- The District will take into consideration such factors as the complexity of the work, the availability of inspectors, and the compliance history of the owner, operator, and contractor.

- The enforcement staff establishes work schedules to ensure that there is always at least one enforcement supervisor on duty during regular business hours. In addition, the District will set up a procedure for the reception staff to contact an alternative supervisor in case an enforcement supervisor is not in the office when a call comes in.

- Staff is not available outside regular business hours. Consequently, contractors will not be able to contact enforcement staff at night or on weekends and holidays. Contractors should nonetheless submit their requests as soon as possible (fax and email are the most expedient means). The requests will be evaluated subsequently during normal business hours. If an early completion was justifiable, and Staff determines that a completion-day inspection is not necessary, Staff will approve the request retroactively. As with requests made during normal business hours, however, there is no guarantee that a shorter notification period will be approved.

- Generally, contractors can comply with the standard notification requirement without needing to request approval of a shorter notification period. If a contractor thinks work could be completed the following working day, the contractor can send a written notification to the District. If the work is not completed, the contractor can promptly send another written notification to the District to extend the completion date.

After the discussions, Mr. Kimmel told Staff that the new proposal addresses his concerns satisfactorily. His written comments are included in Attachment D.

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 environment[4] 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 environment[5].

Public Outreach

Notice of today's continued hearing, together with the proposed rule language, was posted on the District's website on February 12, 2015. Staff sent approximately 2,500 email notices to building owners and operators who have made previous notifications, registered asbestos contractors, certified asbestos consultants and site surveillance technicians, and others who have requested rulemaking notices.

Respectfully submitted,

Larry Greene
Executive Director/Air Pollution Control Officer

Approved as to form:

Kathrine Pittard
District Counsel

Attachment A – Resolution
Attachment B – Proposed Rule 902, Section 404.1(c)
Attachment C -- Analysis of Related Federal Requirements
Attachment D – Written Comments

[4] State CEQA Guidelines, Section 15308, Class 8 Categorical Exemption.
[5] State CEQA Guidelines, Section 15061(b)(3).