California Environmental Protection Agency

Air Resources Board

Advisory

Abrasive Blasting – Legal Opinion

Number 164 November 16, 1998

Abrasive Blasting Program
Time Period of Legal Use of Certified Abrasive

The purpose of this advisory is to clarify the time period that an abrasive certified for permissible dry outdoor use under Title 17 of the California Code of Regulations may be used. An abrasive which is sold by it's producer or vendor during the certified period is certified for use until it is gone. It is not required that the abrasive be used only during the period it is certified. A recent legal opinion on this issue is enclosed.

Section 92530 (e) of Title 17 of the California Code of Regulations requires that manufacturers and suppliers of certified abrasives permanently and legibly label invoices, bills of lading, and abrasive packages or containers with the manufacturer's name or identification trade name, the grade, weight proportion of components in abrasive blends, brand name of the abrasive or brand names and grades of components of abrasive blends and the statement "ARB certified for permissible dry outdoor blasting". These labeling requirements may be used by customers and inspectors to ensure that the abrasives being acquired and used are certified. Should an abrasive be mislabeled, the violation would be upon the party that did the mislabeling.

If you have any questions, please call Ms. Kathryn Gugeler at (916) 327-1521 or you may E-mail her at kgugeler@arb.ca.gov. All correspondence should be addressed to me at the post office box below.

Enclosure

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MEMORANDUM

TO: Kathleen Walsh, General Counsel

FROM: aw Alex Wang, Staff Counsel

DATE: October 8, 1998

SUBJECT: Legal Opinion Regarding Interpretation of Abrasive Blasting Regulations

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Question Presented

Must an abrasive that has been certified by the ARB be used within its certification period in order to comply with the requirement that only ARB certified abrasives be used for dry outdoor blasting?

Answer

No. Certified abrasives need not be used within their certification period in order to comply with ARB's abrasive blasting regulations.

Background

ARB's abrasive blasting regulations (17 CCR sections 92000 *et seq.*) require all abrasive blasting operations conducted outside of permanent buildings and that do not exclusively use steel or iron shot/grit to use either wet abrasive blasting, hydroblasting, vacuum blasting or abrasives certified for permissible dry outdoor blasting.

The ARB certifies dry outdoor blasting abrasives only if such abrasives comply with performance standards set out in 17 CCR section 92530(b). Certification is valid for a period not to exceed two years, and manufacturers and suppliers of certified abrasives must comply with labelling requirements intended to enable an inspector in the field to verify that a particular abrasive is certified for dry outdoor blasting. The purpose of the certification procedure is to "restrict the abrasives selected for use in dry unconfined blasting operations in order to reduce the generation of fine particles, which are inhalable and contribute to reduced visibility." (p.2, 1984 Staff Report, "Public Hearing to Consider Amendments to Sections 92000-92520 and the Adoption of Sections 92530 and 92540, Title 17, California Administrative Code, Regarding Abrasive Blasting," "1984 Staff Report").

Recently, district air pollution inspectors have been issuing citations to persons using abrasives; the following incident is illustrative. A manufacturer obtained certification of an abrasive, which certification expired on August 31, 1998. On August 27, the manufacturer sold

some of the abrasive to a customer, who used it on September 4, 1998. An air quality inspector observed the customer conducting abrasive blasting, noted that the abrasive's certification expired on August 31, 1998, and cited the customer for conducting dry outdoor blasting without using a certified abrasive. The manufacturer had already submitted an application to renew the certification for the abrasive material at issue, but had not received a certification at the time the citation was issued.

Analysis

The abrasive blasting regulations provide that the certification of an abrasive is effective for no more than two years, but do not address at which point in the manufacturing/sales/usage stream an abrasive must be certified. That is, they do not specify whether an abrasive must only be certified prior to sale by the manufacturer or whether the abrasive must both be certified by the manufacturer and remain certified at the time it is applied by the customer. For the reasons set forth below, I concur with the Compliance Division's (CD's) position that certification is only required prior to the sale of an abrasive.

First, CD's position is consistent with the abrasive blasting regulations because it requires manufacturers to obtain certification for their abrasives before they can sell such abrasives. Moreover, there are no emissions consequences between CD's policy and the policy requiring sale and usage of an abrasive within its certification period. Ostensibly the latter policy would produce greater emissions benefits, because it would require more frequent certification of abrasives than CD's policy. However, applicable standards have not substantively changed since 1991, so that any emissions differences between the two policies will be inconsequential. That is, no emissions differences are expected unless the regulations are amended to incorporate more stringent standards. However, the abrasive blasting standards may only be amended by the ARB upon the recommendation of the abrasive blasting advisory committee (HSC sections 41900, 41903, 41904). Therefore, unless and until the abrasive blasting committee reconvenes and recommends the adoption of more stringent standards, the ARB may not amend the existing abrasive blasting standards, and there would be no emissions differences justifying a departure from CD's policy.

Second, customers arguably rely on the certification information included with certified abrasives. The regulations require manufacturers and suppliers of certified abrasives to label invoices, bills of lading, and abrasive packages or containers with detailed information identifying the abrasives as ARB certified abrasives. 17 CCR 92530(e). Although these labelling requirements were primarily intended to enable an inspector in the field to confirm that a particular abrasive is actually ARB certified (pp. 19-20, 1984 Staff Report), they are also arguably relied upon by customers in purchasing abrasives that are represented as being ARB certified. Therefore, a customer who purchases a certified and properly labelled abrasive should be considered using a certified abrasive provided he or she uses the abrasive within a reasonable period of time following the purchase (i.e., customers should not be allowed to knowingly "stockpile" excessive amounts of abrasives in order to avoid purchasing abrasives that must comply with future, more stringent standards). Where appropriate, ARB could consider setting a "sell-through" date when new standards are established to ensure this result.

Third, it would unfairly burden manufacturers if an abrasive had to be sold and used within the two year certification period; this would require manufacturers to know each customer's schedule prior to selling any abrasive, and would effectively hold manufacturers liable for the usage of abrasives long after they had left the manufacturers' control. For example, a customer could order some abrasive for a project, have some surplus, then use the surplus on another project after the abrasive's certification had expired. The "sale and use" policy would therefore have the undesirable consequence of requiring manufacturers to account for their customers' project schedules prior to selling abrasives, and would additionally act to effectively reduce the certification period of abrasives.

The abrasive blasting regulations do not explicitly address the issue, but for the reasons set forth above, it is apparent that a certified abrasive need not be used within its certification period to comply with the requirement that only ARB certified abrasives be used for dry outdoor blasting.