State of California
AIR RESOURCES BOARD

Resolution 01-28

July 27, 2001

Agenda Item No.: 01-6-7

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, on March 27, 1986, the Board identified asbestos (in the following forms: asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), tremolite, actinolite, and anthophyllite) as a toxic air contaminant pursuant to Article 3 (commencing with section 39660), Chapter 3.5, part 2, Division 26 of the Health and Safety Code;

WHEREAS, the Board determined that there is not sufficient available scientific evidence to support identification of a threshold exposure level for asbestos below which no significant adverse health effects are anticipated (see title 17, California Code of Regulations (CCR), section 93000);

WHEREAS, sections 39658 and 39666 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCMs) for substances identified as toxic air contaminants in accordance with specified criteria;

WHEREAS, for toxic air contaminants for which the Board has not specified a threshold exposure level, section 39666 of the Health and Safety Code requires ATCMs to be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, considering factors specified in section 39665, unless the Board determines, based on assessment of risk, that an alternative level of emissions reduction is adequate or necessary to prevent an endangerment to public health;

WHEREAS, monitoring studies in California and Virginia have demonstrated that elevated levels of airborne asbestos are found near grading, construction, quarrying and surface mining operations where naturally-occurring asbestos is known to be present;

WHEREAS, staff from the Department of Conservation, Division of Mines and Geology, has indicated that naturally-occurring asbestos is likely to be found in ultramafic (also called ultrabasic) rock formations located in various areas in California;

WHEREAS, based upon the evidence of the risk to public health (from air modeling and estimates of emissions using published emission factors) due to potential asbestos emissions from construction, grading, quarrying, and surface mining, ARB staff has proposed an Asbestos ATCM for construction, grading, quarrying and surface mining operations;

WHEREAS, the proposed Asbestos ATCM would require the use of best management practices for the reduction of dust emissions for construction, grading, quarrying, and surface mining operations in areas likely to have naturally-occurring asbestos;

WHEREAS, staff has worked closely with the air pollution control districts and air quality management districts (districts), the affected industry, and the public, as required by Health and Safety Code section 39665, to prepare a report identifying the need for, and appropriate degree of control of these toxic air contaminants;

WHEREAS, ARB staff has prepared a staff report entitled *Initial Statement of Reasons for the Proposed Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations* (Initial Statement of Reasons) which provides estimates of emissions and potential cancer risk due to airborne asbestos fibers near grading and construction projects, quarries and surface mines, discusses feasible control options, and identifies the potential cost impacts to the affected industry, local districts, and local and state government for implementation and compliance with the proposed ATCM;

WHEREAS, the Initial Statement of Reasons constitutes the report on the need and appropriate degree of regulation for asbestos required by Health and Safety Code section 39665;

WHEREAS, in accordance with Health and Safety Code section 39665(c), the report and any relevant comments received during public consultation with the districts, affected sources, and the public were made available for public review and comment 45 days prior to the public hearing to consider the proposed ATCM;

WHEREAS, the report discusses, to the extent data could reasonably be made available, the factors specified in Health and Safety Code section 39665(b);

WHEREAS, the proposed ATCM would substantially reduce asbestos emissions resulting from construction, grading, quarrying and surface mining operations where naturally-occurring asbestos is likely to be found in the dirt and rock being disturbed;

WHEREAS, in accordance with Health and Safety Code section 39666(c), the requirements of the ATCM have been designed, in consideration of the factors specified in Health and Safety Code section 39665(b), to reduce emissions of asbestos to the lowest levels achievable through application of BACT;

WHEREAS, based on comments received during the 45-day comment period prior to the public hearing, staff has proposed modifications to the original proposal; these modifications are set forth in Attachment B to this resolution;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the proposed ATCM was made available to the public for review and comment, and concepts and drafts of the ATCM were discussed at public consultation meetings on November 16, 1999, February 4, 2000, November 28, 2000, March 12, 2001, and May 15, 2001;

WHEREAS, in consideration of the staff report, written comments, and public testimony it has received, the Board finds that:

> Existing federal, State, and local regulations do not sufficiently protect the public health from sources of naturally-occurring asbestos;
>
> Construction, grading, quarrying, and surface mining operations where naturally-occurring asbestos is present may result in potentially harmful concentrations of asbestos fibers being entrained in the air, and these asbestos fiber concentrations may pose a significant health risk to exposed members of the public;
>
> The proposed ATCM would substantially reduce asbestos emissions from the disturbance of naturally-occurring asbestos-containing material during construction, grading, quarrying, and surface mining operations;
>
> The proposed ATCM complies with the requirements of the State law for control of sources of toxic air contaminants identified by the Board;
>
> The provisions of the proposed ATCM constitute the best available control technology, as required by Health and Safety Code section 39666(c) and, also constitute a pollution prevention measure;

The economic impacts of the proposed ATCM (as well as the cumulative economic impacts of the proposed ATCM and the July 2000 Asbestos ATCM for Surfacing Applications) have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The cost of the regulatory requirements is justified by the benefit to human health, public safety, public welfare, or the environment;

The reporting requirements of the ATCM which apply to businesses are necessary for the health, safety, and welfare of the people of the State;

No reasonable alternative considered or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the ATCM is proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed ATCM; and

The proposed ATCM will result in reduced exposures to potential asbestos emissions for communities and individuals in geographic areas within ultramafic rock units, with associated lower potential health risks.

WHEREAS, the Board further finds, in accordance with the Health and Safety Code, section 39650(e), that:

While absolute and undisputed scientific evidence may not be available to determine the exact extent of risk from emissions of asbestos from sources disturbing areas where naturally-occurring asbestos is found or is likely to be found, it is necessary to take action to protect public health; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

No significant adverse environmental impacts should occur from the proposed ATCM, with the exception that there may be very small increases in emissions of diesel particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons from heavy-duty diesel vehicles;

These emission increases may occur due to the use of water trucks to apply water to minimize dust emissions from affected sources, resulting in statewide emission increases per year of approximately 500 pounds of diesel particulate matter, 3,700 pounds of carbon monoxide, 9,800 pounds of nitrogen oxides, and 6,100 pounds of hydrocarbons;

The ARB has considered the combined cumulative environmental impacts of the proposed ATCM and the July 2000 Asbestos ATCM for Surfacing Applications, and has determined that the cumulative adverse impacts that will result from the two ATCMs are statewide emission increases per year of approximately 591 to 691 pounds of diesel particulate matter, 3,900 to 4,100 pounds of carbon monoxide, 11,800 to 13,800 pounds of nitrogen oxides, and 6,300 to 6,500 pounds of hydrocarbons;

Except for the cumulative emissions impacts described above, there are no significant cumulative adverse environmental impacts that will occur from the two ATCMs identified above;

The emission increases described above are extremely small, but could nevertheless constitute an adverse environmental impact;

The proposed ATCM is necessary in order to protect public health by reducing asbestos emissions from the disturbance of naturally-occurring asbestos during construction, grading, quarrying, and surface mining operations;

The considerations identified above override any adverse environmental impacts that may occur from an increase in heavy-duty vehicle emissions; and

There are no feasible mitigation measures or alternatives that would reduce the potential adverse environmental impacts, while at the same time ensuring that the positive environmental impacts (i.e., a reduction in asbestos emissions) would be achieved.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed section 93105, title 17, CCR, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the ATCM set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with the Department of Conservation, to assist the air pollution control districts and air quality management districts to:

1. Evaluate existing quarrying and other surface mining operations located in geographic ultramafic rock units for the presence of ultramafic rock and other asbestos-containing materials; and

2. Develop digitized geologic maps indicating the locations where asbestos is more likely to be found for the air pollution control districts and air quality management districts where asbestos is known to occur.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to develop appropriate informational material for distribution to individuals who are disturbing ultramafic rock at their own residences.

BE IT FURTHER RESOLVED that, pursuant to sections 39515, 39516, 39600, and 39601 of the Health and Safety Code, the Board expressly delegates to the Executive Officer the authority to adopt regulatory amendments to the Asbestos ATCM to reflect updates in the availability of the geologic maps identified in Appendix A to section 93105, title 17, CCR, indicating locations more likely to contain asbestos, and to conduct public hearings and take other appropriate actions to make such amendments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with affected governmental agencies, regulated parties, and the California Air Pollution Control Officers Association, to develop appropriate non-binding implementation guidance that will allow for expeditious permitting of affected activities.

BE IT FURTHER RESOLVED that if a method is developed to determine that there is no asbestos in an area subject to the ATCM, the Board directs the Executive Officer to evaluate the method in consultation with the Department of Conservation and other affected parties; if the Executive Officer concludes that the method can accurately demonstrate that an area has no asbestos, the Executive Officer shall return to the Board with a regulatory amendment allowing the method to be utilized, as appropriate, to obtain an exemption from the ATCM requirements.

I hereby certify that the above is a true and correct copy of Resolution 01-28, as adopted by the Air Resources Board.

Marie Kavan

Marie Kavan, Clerk of the Board

Recv'd By
Office of the Secretary

JUN - 7 2002

Resources Agency of California

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and
Response to Significant Environmental Issues

Item:	Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations
Approved By:	Resolution 01-28
Adopted by:	Executive Order G-02-026
Agenda Item:	01-6-7
Public Hearing Date:	July 27, 2001
Issuing Authority:	Air Resources Board
Comment:	The Air Resources Board (Board) received a number of comments asserting that adverse environmental impacts may result from this item. These comments are summarized and responded to in the Final Statement of Reasons for this regulatory item, which is incorporated by reference herein. Resolution 01-28 (attached) is also incorporated by reference herein. In the Resolution, the Board made various findings pertaining to the potential environmental impacts of the proposed amendments to the Asbestos Airborne Toxic Control Measure. The Board found that no significant adverse environmental impacts should occur from the proposed amendments, with the exception that there may be very small increases in emissions of diesel particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons from heavy-duty diesel vehicles. The Board further found that although these emission increases are extremely small, they could nevertheless constitute an adverse environmental impact. The Resolution identified considerations that override any such adverse impacts.
Response:	See above
Certified:	Artavia M. Edwards, Manager Board Administration & Regulatory Coordination Unit
Date:	7 June 2002

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Identification of Attachments to the Board Resolution

Attachment A: Proposed Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations (section 93105, title17, California Code of Regulations), as set forth in Appendix A to the Initial Statement of Reasons, released June 8, 2001.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on July 27, 2001).