Appendix A

Copy of the Proposed Revisions to the Asbestos Airborne Toxic Control Measure

PROPOSED REGULATION ORDER

ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR SURFACING APPLICATIONS

[Note: The proposed amendments to Section 93106 are shown in ~~strike out~~ to indicated proposed deletions and underline to indicate proposed additions.]

Section 93106. Asbestos Airborne Toxic Control Measure ~~—Asbestos-Containing Serpentine~~ for Surfacing Applications.

(a) Definitions. For the purposes of this section, the following definitions shall apply:

(1) "Aggregate" means a mixture of mineral fragments, sand, gravel, rocks, or similar minerals.

(2) "Alluvial deposit" means any deposit of sediments laid down by running water including but not limited to streams and rivers.

(3) "Approved asbestos bulk test method" means ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board.

(4) "ARB" means the California Air Resources Board.

~~(3)~~(5) "ARB Test Method 435" means the test method specified in Title 17, California Code of Regulations, section 94147.

~~(4)~~(6) "Asbestos" means asbestiforms of the following hydrated minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite--grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.

(7) "Asbestos-containing material" means any material that has an asbestos content of 0.25 percent or more as determined by an approved asbestos bulk test method

~~(5) "Asbestos-containing serpentine material" means serpentine material that has an asbestos content greater than five percent (5.0%) as determined by ARB Test Method 435.~~

(8) "Asbestos geologic assessment" means a geologic evaluation of a property conducted by a registered geologist to determine the presence of asbestos, asbestos-containing material, or ultramafic rock.

(9) "District" means any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.

(10) "Executive Officer" means the Executive Officer of the ARB, the executive officer or air pollution control officer of any district, or designee thereof.

(11) "Non-wearing surface" means any non-road surface that has an incline greater than twenty (20) percent, including, but not limited to, the use of riprap, road cuts, or soil stabilization.

(12) "Owner/operator" or "person" includes, but is not limited to, an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including, but not limited to, a government corporation. "Owner/operator" or "person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law. "Owner/operator" or "person" also includes a project proponent and any of its contractors and subcontractors.

(13) "Producer" means any person that extracts and processes aggregate material from the ground.

~~(6)~~(14) "Receipt" means any written acknowledgement that a specified amount of serpentine, serpentine material, or ultramafic rock was received, delivered, or purchased. Receipts include, but are not limited to, bills of sale, bills of lading, and notices of transfer.

(15) "Registered geologist" means an individual that is currently licensed with the State of California, Department of Consumer Affairs, Board of Geology and Geophysicists as a geologist.

(16) "Remote location" means any location that is at least one (1.0) mile from the location of a receptor, which includes, but is not limited to, hospitals, schools, day care centers, work sites, businesses, residences, and permanent campgrounds. The distance of one (1.0) mile is to be measured from the outer most limit of the area to be disturbed or road surface, whichever is further.

~~(7)~~(17) "Road surface" means the traveled way of a road and any shoulder which may extend~~s~~ up ten (10) feet from the edge of the traveled way.

~~(8)~~(18) "Sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.

~~(9)~~(19) "Serpentine" means any form of hydrous magnesium silicate minerals – including, but not limited to, antigorite, lizardite, and chrysotile.

~~(10)~~(20) "Serpentine material" ~~is~~ means any material that contains at least ten percent (10%) serpentine as determined by a registered geologist. The registered geologist must document precisely how the serpentine content of the material in question was determined.

(21) "Serpentinite" means a rock consisting almost entirely of serpentine, although small amounts of other minerals such as magnetite, chromite, talc, brucite, and tremolite-actinolite may also be present.

~~(11)~~(22) "Surfacing" means the act of covering any surface used for pedestrian, vehicular, or non-vehicular travel; or decoration, including, but not limited to, roads, road shoulders, streets, access roads, alleys, lanes, driveways, parking lots, playgrounds, trails, squares, plazas, and fairgrounds.

(23) "Ultramafic rock" means an igneous rock composed chiefly of one or more iron/magnesium-rich, dark-colored minerals such as pyroxene, amphibole, and olivine; includes, but is not limited to serpentinite, dunite, peridotite, and pyroxenite.

~~(b) Requirements for use or sale of asbestos containing serpentine material.~~

~~(1) No person shall use or apply serpentine material for surfacing in California unless the material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. A written receipt or other record documenting the asbestos content shall be retained by any person who uses or applies serpentine material, for a period of at least seven years from the date of use or application, and shall be provided to the Air Pollution Control Officer or his designee for review upon request.~~

~~(2) Any person who sells, supplies, or offers for sale serpentine material in California shall provide with each sale or supply a written receipt containing the following statement: "Serpentine material may have an asbestos content greater than five percent (5.0%). It is unlawful to use serpentine material for surfacing unless the material has been tested and found to contain less than or equal to five percent (5.0%) asbestos. All tests for asbestos content must use California Air Resources Board Test Method 435, and a written record documenting the test results must be retained for at least seven years if the material is used for surfacing.~~

~~(3) No person shall sell, supply, or offer for sale serpentine material for surfacing in California unless the serpentine material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. Any person who sells, supplies, or offers for sale serpentine material that he or she represents, either orally or in writing, to be suitable for surfacing or to have an asbestos content that is five percent (5.0%) or less, shall provide to each purchaser or person receiving the serpentine material a written receipt which specifies the following information: the amount of serpentine material sold or supplied; the dates that the serpentine material was produced, sampled, tested, and supplied or sold; and the asbestos content of the serpentine material as measured by ARB Test Method 435. A copy of the receipt must, at all times, remain with the serpentine material during transit and surfacing.~~

~~(4) Any person who sells, supplies, or offers for sale serpentine material, shall retain for a period of at least seven years from the date of sale or supply, copies of all receipts and copies of any analytical test results from asbestos testing of the serpentine material. All receipts and test results shall be provided to the Air Pollution Control Officer or his designee for review upon request.~~

[Note: The existing language in subsection 93106(b) has been reorganized and amended. Some of the language shown below in new subsections (b), (c), and (d) is new language, and some is language that currently appears in the existing subsection 93106(b)(1) through (b)(4). To improve the readability of the proposed amendments, however, the entire text of the existing subsection 93106(b)(1) through (b)(4) has been struck out, and all of the language in new subsections (b), (c), and (d) is shown in underline format.]

(b) Prohibitions on the Use or Sale of Certain Materials for Surfacing

(1) The Executive Officer may require testing for the asbestos content of any material represented as being suitable or used for surfacing.

(2) No person shall use, apply, sell, supply, or offer for sale or supply any of the following materials for surfacing, unless one of the exemptions listed in subsections (f) or (b)(3) applies:

(A) Serpentine or serpentine material,

(B) Ultramafic rock, or

(C) Any material that has been tested and found to have an asbestos content of 0.25 percent or more.

(3) *Exemption for Ultramafic Rock that Has Been Tested:* Ultramafic rock may be used, applied, offered for sale or supply, sold, or supplied for surfacing, if the rock has been tested using an approved asbestos bulk test method, and has been determined to contain less than 0.25 percent asbestos.

(4) *Nonsurfacing Applications:* All of the materials listed above in (b)(2) may be used, applied, offered for sale or supply, sold, or supplied for nonsurfacing applications. However, the noticing requirements specified in section (c)(3) must be complied with, as well as the recordkeeping and reporting requirements specified in subsection (d)(3).

(c) Noticing Requirements

(1) *Noticing Requirements for Producers of Ultramafic Rock for Surfacing.* A producer is any person that extracts and processes aggregate material from the ground. Any producer who sells, supplies, or offers for sale or supply ultramafic rock that the person represents, either orally or in writing, as being suitable for surfacing, must provide to the recipient of the ultramafic rock a written receipt that displays all of the following information:

(A) The amount of ultramafic rock sold or supplied;

(B) The dates that the ultramafic rock was sampled and tested, or a statement that the material is exempt pursuant to subsection (f)(6);

(C) The asbestos content of the ultramafic rock, if tested; and

(D) The dates that the ultramafic rock was supplied or sold.

(2) *Noticing Requirements for Persons, Other than Producers, Who Sell Ultramafic Rock for Surfacing.* Any person, other than a producer, who sells, supplies, or offers for sale or supply ultramafic rock that the person represents, either orally or in writing, as being suitable for surfacing, must provide to the recipient of the ultramafic rock a written receipt that displays all of the following information:

(A) The amount of ultramafic rock sold or supplied;

(B) The dates that the ultramafic rock was sold or supplied; and

(C) Verification that the asbestos content of the ultramafic rock is less than 0.25 percent.

(3) *Noticing Requirements for Persons Who Sell Material for Nonsurfacing Applications.* Any person who sells, supplies, or offers for sale or supply any of the following materials:

(A) Serpentine or serpentine material,

(B) Ultramafic rock that has not been tested,

(C) Ultramafic rock that has been tested and found to have an asbestos content of 0.25 percent or greater; or

(D) Any material that has been tested and found to have an asbestos content of 0.25 percent or greater,

must provide with each sale or supply a written receipt that displays the following statement:

"WARNING!
This material may contain asbestos.

It is unlawful to use this material for surfacing or any application in which it would remain exposed and subject to possible disturbances.

Extreme care should be taken when handling this material to minimize the generation of dust."

(4) All of the written notices and statements required by this section must be displayed in such a manner that they are readily observable and clearly legible.

(d) Recordkeeping and Reporting Requirements

(1) *Recordkeeping Requirements for Persons who Use or Apply Ultramafic Rock for Surfacing:* Any person who uses or applies ultramafic rock (other than serpentine) for surfacing must retain any written receipt or other record verifying that the material is suitable for surfacing for a minimum of seven years from the date the material is used or applied. In addition, the person must have a copy of any receipt or record at all times during the actual application of the ultramafic rock for surfacing.

(2) *Recordkeeping Requirements for Persons who Transport Utramafic Rock for Surfacing:* Any person who transports ultramafic rock for surfacing must maintain a copy of any receipt or record required by subsection (c) with the ultramafic rock at all times during transport.

(3) *Recordkeeping Requirements for Persons who Sell or Supply Serpentine, Serpentine Material, or Ultramafic Rock:* Any person who sells, supplies, or offers for sale or supply serpentine, serpentine material or ultramafic rock must retain copies of all receipts, and any analytical test results from asbestos testing of the rock, for a minimum of seven years from the date of sale or supply.

(4) *Reporting Requirements:* Any receipts, records, or test results referred to in this section shall be provided to the Executive Officer for review upon request.

(e) Test Methods

(1) ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board shall be used to determine compliance with this section. For the purposes of determining compliance with this section, references in ARB Test Method 435 to "serpentine aggregate" shall mean "aggregate material."

~~(5)~~(2) If ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board has been used to perform two or more tests on any one volume of ~~serpentine~~ material, whether by the same or a different person, ~~the arithmetic average of these test results shall be used to determine the asbestos content of the serpentine~~ the test results indicating the greater amount of asbestos shall be used to determine the presence of asbestos in the material.

~~(c)~~(f) Exemptions.

(1) *Sand and Gravel Operations*: The provision of subdivisions (b)(2)(A), (b)(2)(B), (c) and (d) ~~through (b)(5)~~ shall not apply to aggregate extracted from sand and gravel operations.

(2) *Roads located at Surface Mining Operations*: The provisions of subdivision (b)~~(1)~~ shall not apply to roads located at ~~serpentine quarries, asbestos mines,~~ quarries or mines ~~located in serpentine deposits~~ that are in ultramafic rock units ~~or asbestos mines,~~ provided the material was obtained on site from the quarry or mine property.

~~(3) *Maintenance Operations on Existing Roads:* The provisions of subdivision (b)(1) shall not apply to maintenance operations on any existing road surfaces, or to the construction of new roads in serpentine deposits, as long as no additional asbestos-containing serpentine material is applied to the road surface.~~

(3) *Emergency Road Repairs*: The ~~air pollution control officer~~ Executive Officer may issue a temporary exemption from the requirements of subdivision (b)~~(1)~~ to an applicant who demonstrates that a road repair is necessary due to a landslide, flood, or other emergency and that the use of material other than serpentine or ultramafic rock is not feasible for this repair. The ~~air pollution control officer~~ Executive Officer shall specify the time during which such exemption shall be effective, provided that no exemption shall remain in effect longer than ~~six (6) months~~ 90 days.

(4) *Bituminous and Concrete Materials*: The provisions of subdivision (b)~~(1)~~, (c) and (d) shall not apply to serpentine, serpentine material, or ultramafic rock that is an integral part of the production of bituminous concrete, portland cement concrete, or construction of a bituminous surface, or other similar cemented materials.

(5) *Landfill Operations*: The provisions of subdivision (b)~~(1)~~ shall not apply to landfill operations other than the surfacing of public-access roads dedicated to use by vehicular traffic.

(6) *Geologic Assessment:* The Executive Officer may provide an exemption from subdivisions (b)(2)(B) and (c)(3) for aggregate composed of ultramafic rock other than serpentine provided a registered geologist has conducted an asbestos geologic assessment of the property from which the aggregate was obtained and determined that asbestos is not likely to be found in any of the ultramafic rock located on the property. The owner/operator shall provide a written copy of the asbestos geologic assessment to the Executive Officer for his consideration when providing this exemption.

(7) *Non-wearing surfaces*: The Executive Officer may provide an exemption from the provisions of subdivision (b) for the use of aggregate on non-wearing surfaces provided that the owner/operator can demonstrate that:

(A) There are no reasonably alternative aggregate available; and

(B) The surface is not located in an area zoned or identified in a land use plan for civic, residential, or commercial use;

(8) *Remote locations:* The Executive Officer may provide an exemption from the provisions of subdivision (b) for the use of aggregate on unpaved provided that:

(A) The own/operator can demonstrate that:

1. The surface is located in a remote location; and

2. There are no reasonably available alternative aggregate.

(B) In providing this exemption, the Executive Officer shall:

1. Consider the following information: county land use plans, the current use of the surrounding land, and the current and anticipated zoning designations;

2. Provide public notice and solicit comments for a 30-day period before providing this exemption; and

3. Require that any surface exempted pursuant to this subdivision be posted with a permanent sign alerting the public to potential asbestos exposures.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511, Health and Safety code. Reference: Sections 39650, 39658, 39659, 39666, and 41511, Health and Safety Code..