

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 568)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on December 6, 2017, from Pamela Murcell on behalf of the NOA Regulations Task Group (Petitioners). The Petitioners request the Board to amend Title 8, California Code of Regulations, Construction Safety Orders, Section 1529 to better address the hazards faced by workers involved with projects where there is potential exposure to asbestos as a natural constituent (i.e. naturally-occurring asbestos, NOA).

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

**SUMMARY**

The Petitioners request the Board amend Section 1529 “to address the unique hazards and controls needed for workers involved with projects which may involve exposure to [NOA].” They assert that amendments can be made within the framework of the existing regulation, which will greatly improve worker safety, and request to participate in advisory committee meetings to discuss such amendments.

Asbestos is a naturally occurring component of mineral deposits widely distributed throughout California. NOA is commonly encountered during many different construction activities that involve work with or around earth. Overexposure to asbestos may result in several serious diseases, including, but not limited to, lung cancer, ovarian cancer, laryngeal cancer, mesothelioma, asbestosis and several other lung diseases.

The Petitioners state that “although asbestos as a natural constituent is included in the scope and application of Section 1529, the current regulation focuses almost exclusively on disturbance and removal of asbestos contained in manufactured building materials.” Furthermore, Petitioners state that some of the challenges for NOA projects in Section 1529 are found in the provisions for classification of work, methods of compliance, hygiene facilities and practices, training, and competent person requirements.

## DISCUSSION

The Petitioners list five specific areas of concern, though they point out that the list is partial:

- 1) Classification of work. Asbestos work is separated into four classes, I-IV, with Class I being the most hazardous, and Class IV the least. The excavation of NOA falls into the definition for Class II work:

“Class II asbestos work” means activities involving the removal of [asbestos containing material] which is not thermal system insulation or surfacing material. This includes, but is not limited to, the removal of asbestos-containing wallboard, floor tile and sheeting, roofing and siding shingles, and construction mastics.

Although NOA is defined as Class II work, the definition focuses on building materials, which could confuse an employer into thinking that NOA work is not covered under this definition.

The Petitioners propose amending some of the definitions in the section to more fully address processes that disturb NOA. They also suggest using newly-created classifications of work (Class A, B, or C) to describe the risks and potential exposure of various processes that disturb NOA.

- 2) Methods of Compliance. The methods of compliance subsections in Section 1529 focus on engineering and work practices for controlling asbestos exposure; however, they focus primarily on indoor scenarios.

For example, the subsection requires that employers “[enclose or isolate] the processes producing asbestos dust.” Further, it requires “ventilation of the regulated area to move contaminated air away from the breathing zone of employees...” Clearly, enclosing and ventilating a NOA worksite, such as a new soccer field or dam construction project, as required by the current regulation, is infeasible for controlling NOA exposures.

- 3) Hygiene Facilities and Practices. Class II work requires the employer to:

Establish an equipment room or area that is adjacent to the regulated area for the decontamination of employees and their equipment which is contaminated with asbestos which shall consist of an area covered by [an] impermeable drop cloth on the floor or horizontal working surface.

The area must be of sufficient size as to accommodate cleaning of equipment and removing personal protective equipment without spreading contamination beyond the area (as determined by visible accumulations).

The equipment room is part of the decontamination area, which is defined in the standard as:

“Decontamination area” means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment that are contaminated with asbestos.

The Petitioners point out that some of the requirements in the subsection, such as using HEPA-filtered vacuums to remove dust contamination, make sense, while other requirements, like the ones for showers and clean rooms, do not.

Considering that some of the equipment used in outdoor excavation projects involves large earth moving equipment, requiring employers to build a facility large enough to contain such equipment for cleaning may be impractical. Options for removing contamination, however, such as drive-through tire washes, are helpful to reduce the spread of asbestos dust into uncontrolled areas, and should be discussed as a means for controlling asbestos exposures on NOA sites.

- 4) Training Requirements. Training requirements for Class II asbestos work are found in the hazard communication subsection of the regulation, but do not contain requirements that specifically address NOA.

The Petitioners assert that the training requirements are “open for interpretation as to [their] applicability to NOA projects, and as a result there is currently no consistency in training of workers for NOA projects, and often, no training at all.”

- 5) Competent Person Requirements. As with other parts of the regulation, the requirements for a competent person are almost solely applicable to employees working on projects involving building materials. One of the training requirements of a competent person involves the use of the EPA’s Model Accreditation Plan, but the federal plan does not address NOA and would not of itself properly prepare someone to fill this role.

The Petitioners do not propose specific language to be used to address the training deficiencies in items 4 and 5 above, but do suggest that an advisory committee be convened to discuss needed improvements.

The Petitioners submitted supplemental information in support of their petition, dated January 26, 2018. The additional information is based on findings from the Calaveras Dam Replacement Project, which they state is the largest construction project involving NOA ever undertaken in the United States.

In the document, they repeat their assertion that due to the focus of Section 1529 on building materials and indoor construction, many consultants and contractors are confused about the current requirements for working with NOA—to the point of sometimes rejecting the standard completely as far as application to NOA sites.

The supplemental information provides information regarding the prevalence of NOA in California soils, air monitoring results from the Dam project, and several pictures comparing processes involved with disturbing asbestos in buildings to outdoor NOA work.

#### DIVISION'S EVALUATION

The Division report, dated April 5, 2018, recommends granting the petition to the extent that the Board request the Division “to convene an advisory committee representing all stakeholders to consider and discuss the suggestions and requests provided in Petition No. 568.” In addition to the concerns of the Petitioners, the Division also describes issues it has found while enforcing the regulation at NOA sites, including employer confusion in understanding the regulation, lack of control measures, and impracticality of requirements for NOA work.

#### STAFF'S EVALUATION

Board staff sees merit in the Petitioners concerns that aspects of the current asbestos regulations found in Section 1529 are insufficient to adequately address the hazards associated with NOA on construction sites. Board staff further sees value in discussions taking place amongst stakeholders to address deficiencies in the regulation, pertaining to controlling employee exposure to NOA. The advisory committee process is best suited to consider and recommend the necessary amendments to the existing standard.

#### CONCLUSION AND ORDER

Having considered Petition 568, and evaluations by Board staff and the Division, the Board hereby GRANTS the request of the NOA Regulations Task Group to the extent that the Division is asked by the Board to convene an advisory committee of stakeholders, inclusive of Petitioner. The committee shall consider potential revision of Title 8 Construction Safety Orders to better protect employees working on construction projects from hazards of exposure to asbestos as a natural constituent, also known as naturally occurring asbestos.