OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Petition File No. 568

BOARD STAFF EVALUATION

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INTRODUCTION

Petition File No. 568 (Petition) was submitted by Pamela Murcell on behalf of the NOA Regulations Task Group (Petitioners) on December 6, 2017. The Petition seeks to amend Title 8, Construction Safety Orders, §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).

REQUESTED ACTION

The Petitioners request the Board amend §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.

PETITIONER ASSERTIONS

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

STAFF EVALUATION

Relevant Standards

Federal Standards: The federal OSHA 1926.1101 "Asbestos" standard is substantially similar to §1529, though California has expanded some worker protections. One such example is that in addition to requiring competent persons to be able to identify existing asbestos hazards, in California, they must also be able to identify predictable hazards.

Another example is when monitoring for asbestos takes place, both federal and state regulations require employee notification of the results. California, however, additionally requires employers to inform employees of corrective action being taken to prevent or reduce exposure.

Other California Asbestos Standards:

The Department of Toxic Substance Control (DTSC) and the California Air Resources Board (CARB), as well as some local air districts, enforce regulations addressing the identification, testing, dust control, and disposal of NOA.

The California DTSC regulates hazardous substances and wastes (including NOA) that are released into the environment through air, water, or soil. DTSC regulations are found in 22 CCR Division 4.5 and contain requirements for identifying, investigating, mitigating, and monitoring NOA-contaminated areas. The agency also publishes factsheets and guidance documents.

As part of its mandate to identify and control toxic air contaminants (including NOA), CARB enforces Asbestos Airborne Toxic Control Measures (ATCM). Two such ATCM are the Asbestos ATCM for Surfacing Applications (17 CCR §39106), to reduce public exposure to naturally occurring asbestos by limiting the asbestos content of surfacing materials, and the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations (17 CCR §39105).

Local air districts are required to be as least as effective as the requirements found in the CARB Asbestos ATCM, but may impose more protective regulations as well.

Position of Division

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.

Analysis

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 §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.

<u>Supplemental Information for Petition File Number 568</u>

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 §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.

Board staff sees merit in the Petitioners concerns that aspects of the current asbestos regulations found in §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.

STAFF RECOMMENDATION

Consistent with the foregoing discussion, Board staff believes that the Petitioner's request has merit and recommends that Petition File No. 568 be GRANTED to the extent the Division be asked to convene an advisory committee, inclusive of the Petitioners' group, to assist in developing a rulemaking proposal specifically addressing NOA hazards.