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December 1, 2017

Ms. Marley Hart
Executive Officer

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

California Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

**Subject: Petition for Amendments to Title 8 California Code of Regulations
Section 1529**

Dear Ms. Hart:

This petition is submitted in accordance with the Administrative Procedure Act, California Government Code, Section 11340.6, et. seq. and in conformance with petition procedures set forth by the Occupational Safety and Health Standards Board (OSHSB). On behalf of all stakeholders and interested parties, please accept this petition for the OSHSB to amend Title 8 California Code of Regulations Section 1529 (8 CCR 1529) to address the unique hazards and controls needed for workers involved with projects which may involve exposure to asbestos as a natural constituent (i.e., naturally-occurring asbestos, NOA).

Based on our collective experience, we are aware of many challenges in applying the current 8 CCR 1529 to projects involving asbestos as a natural constituent. We respectfully request an amended regulation that addresses these challenges. Some of the challenges that have been identified when applying the regulation to NOA projects include, but are not limited to:

- Classification of work
- Methods of compliance
- Hygiene facilities and practices
- Training requirements
- Competent person requirements

This petition addresses key challenges faced by the regulated community to effectively implement the requirements of the current 8 CCR 1529 relative to projects which may involve exposure to asbestos as a natural constituent. Although asbestos as a natural constituent is included in the scope and application of 8 CCR 1529, the current regulation focuses almost exclusively on disturbance and removal of asbestos contained in manufactured building materials. Several other State regulatory agencies, such as the Department of Toxic Substances Control (DTSC) and the California Air Resources Board (CARB), have implemented protocols for sites where asbestos as a natural constituent is present, including investigation, testing, and dust control measures. However, the current 8 CCR 1529 does not adequately address how employers can control worker exposures during tasks involving NOA.

We have attached an annotated outline of 8 CCR 1529 (Attachment A) showing our comments and recommendations for an amended regulation. Based on our evaluation of the current regulation, we recommend adding a subsection (s), "Projects Involving Asbestos as a Natural Constituent", to 8 CCR 1529. We are proposing to adapt the existing regulatory requirements to the particular circumstances that exist when working with asbestos as a natural constituent.

The stakeholders include public and private sector employers and workers, and project experience ranges from small one-day jobs to multi-million dollar infrastructure improvements. There are thousands of workers employed at sites in California where NOA is present. The petitioners understand the unique hazards and health and safety issues these workers face during assignments at NOA project sites.

Please grant this petition and commence the process for amending 8 CCR 1529 to clarify the standard as a means to improve compliance and worker protection at NOA project sites. The petitioners request to be fully engaged and participate in any advisory committees that are convened to amend the standard as well as participate in any hearings on the matter. The petitioners would be pleased to provide additional testimony and evidence as needed. The petitioners look forward to working with the Board and staff to assist in the development of NOA-related amendments for 8 CCR 1529.

On behalf of the task group, please contact Pamela Murcell, as needed, by telephone at (916)712-4547, by email at kwa-sacramento@att.net, or by mail at P.O. Box 5573, El Dorado Hills, CA 95762. Thank you for your consideration.

Sincerely,
NOA Regulations Task Group
(Please see member list next page)

Attachment A: Annotated outline of 8 CCR 1529
Attachment B: Petition Supporters

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ATTACHMENT A
ANNOTATED OUTLINE OF 8 CCR 1529

Current Regulation

(a) Scope and Application.

Replace the current (a)(1)(G) with a new (a)(1)(G). The scope and application should be specific to disturbance of rock, soil, sediment and alluvium, and other geologic or non-manufactured materials, and be comprehensive regarding the activities that are regulated. Activities include, but are not limited to, drilling, blasting, rock shaping and sizing, screening, grading, excavation, loading, hauling, dumping, spreading, compaction, trenching, and blading. Activities might also include driving on NOA materials.

Recommendation: A new (a)(1)(G) that reads "Disturbance of asbestos as a natural constituent. Refer to subsection (s) for requirements."

(b) Definitions.

The definitions cited in this subsection are largely related to building materials, and have limited relevance to NOA.

Recommendation: Subsection (s)(1), Definitions, specific to projects involving asbestos as a natural constituent.

(c) Permissible exposure limits (PELS).

No changes relative to projects involving asbestos as a natural constituent.

Recommendation: Reiterate the current PELs in subsection (s)(2) in order for all requirements that apply to projects involving asbestos as a natural constituent are in one place in the regulation.

(d) Multi-employer worksites.

This subsection has relevance for projects involving asbestos as a natural constituent.

Recommendation: Modify for applicability in subsection (s)(3).

(e) Regulated areas.

This subsection has relevance for projects involving asbestos as a natural constituent; however, needs to be modified for applicability.

Recommendation: Subsection (s)(4), Controlled access areas, specific to outdoor work and projects involving asbestos as a natural constituent.

(f) Exposure assessments and monitoring.

This subsection has relevance for projects involving asbestos as a natural constituent; however, needs to be modified for applicability.

Recommendation: Subsection (s)(5) specific to outdoor work and projects involving asbestos as a natural constituent, and to address initial, ongoing, and negative exposure assessments.

(g) Methods of compliance.

This subsection has relevance for projects involving asbestos as a natural constituent; however, needs to be modified for applicability.

Recommendation: Subsection (s)(6) specific to outdoor work and projects involving asbestos as a natural constituent.

(h) Respiratory protection.

Most of this section is directly transferable to projects involving asbestos as a natural constituent.

Recommendation: Review and adjust language as needed in subsection (s)(7).

(i) Protective clothing.

Some of this section is directly applicable to NOA projects.

Recommendation: Review and adjust language as needed in subsection (s)(8).

(j) Hygiene facilities and practices for employees.

The hygiene practices described in this section envision work conducted in buildings. Hygiene and decontamination facilities on NOA project sites need to be practical for the project setting, and will be protective for the workers. Some of the practices called out in this subsection are applicable (for example, removing contamination using HEPA-filtered vacuums), while others are not (for example, 3-stage decontamination chamber).

Recommendation: Develop procedures and practices for NOA projects that are similar to those at a HAZWOPER site, and present in subsection (s)(9).

(k) Communication of hazards.

As written, this subsection is open for interpretation as to 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.

Recommendation: Develop subsection (s)(10) that addresses the hazards of NOA, and training requirements that are applicable to an outdoor working environment where NOA may be encountered.

(l) Housekeeping.

Some of this section is directly applicable to NOA sites, but most of it refers to building materials.

Recommendation: Develop subsection (s)(11) as needed to be relevant to NOA project sites.

(m) Medical surveillance.

There needs to be a medical surveillance requirement for NOA exposure, and some of the existing language is directly applicable to NOA project-related medical surveillance.

Recommendation: Develop subsection (s)(12) that will be relevant to NOA exposure.

(n) Recordkeeping.

With some recommended edits, recordkeeping is an item that is directly applicable to NOA-related projects.

Recommendation: Develop subsection (s)(13) that will be relevant to NOA-related projects.

(o) Competent Person.

There is agreement with requiring a competent person for an NOA-related project. However, the curriculum in the EPA's Model Accreditation Plan does not address asbestos as a natural constituent and does not adequately prepare someone for this role.

Recommendation: Develop subsection (s)(14) that is relevant to the role of and training requirements for the Competent Person that works at an NOA-related project site.

(p) Appendices.

Appendices could be applicable to NOA.

Recommendation: Appendices should be referenced as applicable to NOA, or potentially new appendices added.

(q) Certified Asbestos Consultants and Certified Site Surveillance Technicians.

The certifications required in this subsection are not applicable to NOA because 1) NOA is not ACCM, and 2) the Model Accreditation Plan was designed for buildings, building materials, and building material removal.

Recommendation: Address NOA project staff and worker training requirements in subsection (s)(10). Cal/OSHA should develop training requirements that are specific to NOA and the context in which it may be encountered.

(r) Report of Use and Asbestos-related Work Registration.

This section is not applicable to NOA projects because NOA is not included in the definition as ACCM.

Proposed Amendment for NOA – Subsection (s)

(s) [Projects involving asbestos as a natural constituent.

(1) Definitions

It is possible to create a new set of terms/definitions that correlate with existing terms. For example, the definition of Aggressive Method could be modified as follows: "Aggressive-method" means removal, disposition or disturbance of rock, soil, sediment, and other naturally-occurring materials by excavation, grading, drilling, blasting, trenching, loading, hauling, spreading, compaction, and blading or other method that breaks, fractures, pulverizes, crumbles, or disintegrates intact NOA.

Disturbance of NOA can be classified by activities and potential risk of exposure in a similar manner as currently used to define Class I-IV work.

"Class A work" means activities involving potentially highest risk of exposure. Class A could include activities that fracture, crush, pulverize, or otherwise disturb soil or rock materials that contain NOA; for example, drilling, blasting, bull dozing, trenching, grading, excavation, loading, hauling, dumping, spreading, or compacting.

“Class B work” means repair and maintenance activities, where NOA is likely to be disturbed, but presents a potentially lower risk of exposure. For example, blading and trimming unpaved roads for routine maintenance, repair of washouts following storm, road repair from small slides following storms, repair/maintenance of SWPPP BMPs, or weed control for fire prevention.

“Class C work” means other activities during which workers contact but do not disturb NOA, and potential risk of exposure is minimal. For example, engineering surveys, above grade construction, or other activities where workers are on site only occasionally for a specific limited task.

(2) PELs

No changes relative to projects involving asbestos as a natural constituent. Current PELs are relevant and directly applicable.

(3) Multi-employer worksites

New subsection modified for applicability to projects involving asbestos as a natural constituent. Recommend language that focuses on excavation and grading, rather than asbestos removal in buildings, PACM, and enclosures.

(4) Controlled access areas

New subsection modified for applicability to projects involving asbestos as a natural constituent. Recommend this terminology to differentiate from regulated areas that may be required for Class 1-3 work.

(5) Exposure assessments

New subsection written to address exposure assessment requirements that are applicable to projects involving asbestos as a natural constituent and organized by classes of work (i.e., Class A, B, or C).

(6) Exposure control methods

New subsection modified for applicability to projects involving asbestos as a natural constituent, and organized by classes of work (i.e., Class A, B, or C) and the traditional hierarchy of control methods. Consider incorporating a table, similar to the approach taken in 8 CCR 1532.3, Occupational Exposures to Respirable Crystalline Silica, Table 1.

(7) Respiratory protection

New subsection modified for applicability to projects involving asbestos as a natural constituent, and organized by classes of work (i.e., Class A, B, or C).

(8) Protective clothing

New subsection modified for applicability to projects involving asbestos as a natural constituent, and organized by classes of work (i.e., Class A, B, or C) and air concentrations. Also, need to consider heat stress due to outdoor field activities.

(9) Personal hygiene and decontamination

New subsection modified for applicability to projects involving asbestos as a natural constituent, and based on classes of work (i.e., Class A, B, or C), to assure personal safe work practices are implemented to minimize exposure.

(10) General worker training and communication of hazards

New subsection developed to address the hazards of NOA, and training requirements that are applicable to an outdoor working environment where NOA may be encountered.

(11) Site housekeeping

New subsection to be relevant to NOA project sites. For example, address track out, vehicle cleaning, heavy equipment decontamination, site speed limit, stock pile maintenance.

(12) Medical surveillance

Similar language to existing subsection (m) regarding the actual medical surveillance examinations and number of days of exposure that would trigger exams would be appropriate. However, exposure trigger should also include above the PEL and be referenced to NOA classes of work.

(13) Recordkeeping

The existing information, in subsection (n), regarding Objective Data refers to products, and rock and soil are not products. Further in subsection (n), there is a reference to PACM, which is not applicable to NOA. The new subsection should not include references to building materials, and language added to clearly relate the requirements to natural materials such as rock and soil.

(14) Competent Person

Much of the existing information in subsection (o) is not relevant to NOA-related projects. The new subsection should include a description, or specification, as to who would be qualified to act as a competent person for such projects, and include relevant list of responsibilities and training requirements.

(15) Appendices

Appendices should be referenced as applicable to NOA, or potentially new appendices added.

**PETITION for Amendments to Title 8 California Code of Regulations Section 1529
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