



Department of Toxic Substances Control



Winston H. Hickox
Secretary for
Environmental
Protection

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10151 Croydon Way, Suite 3
Sacramento, California 95827-2106

Gray Davis
Governor

January 20, 2000

Mr. Jon A. Morgan, Director
Environmental Management Department
County of El Dorado
2850 Fairlane Court, Building C
Placerville, California 95667

NATURALLY OCCURRING ASBESTOS

Dear Mr. Morgan:

This letter responds to your November 30, 1999, letter requesting that the Department of Toxic Substances Control (DTSC) clarify the applicability of our laws regarding hazardous substances and hazardous wastes to land development or construction in areas with naturally occurring asbestos. Land development construction often involves the excavation, movement, transportation, reuse, and/or disposal of soil, rock, or other earthen materials, which, in certain areas, may contain naturally occurring asbestos. As you know, DTSC is actively working with other State and federal agencies regarding the various issues that have developed regarding naturally occurring asbestos in El Dorado County and other areas of the State.

Asbestos, including that which may occur naturally in earthen materials, is a hazardous substance under the Hazardous Substance Account Act (HSAA), Chapter 6.8 of the California Health and Safety Code (H&SC), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (United States Code: Title 42, Chapter 103). Therefore, DTSC under HSAA authority or U.S. Environmental Protection Agency (U.S. EPA) under CERCLA authority may require response actions when construction activities release naturally occurring asbestos to the environment, including to air, water, or soil. Using HSAA and other authorities, DTSC may issue orders to responsible parties requiring the investigation and cleanup of hazardous substance release sites. Responsible parties may include property owners and those that manage (handle, move, dispose, release, etc.) hazardous substances. DTSC and U.S. EPA both follow the National Contingency Plan (NCP) (Code of Federal Regulations [CFR]: Title 40, Part 300 or 40 CFR 300) when response actions are required. The NCP identifies a process for investigation and remediation of hazardous substance release sites.

DTSC also regulates the management of hazardous wastes under the Hazardous Waste Control Act (HWCA) (H&SC Chapter 6.5) and is the delegated State agency

California Environmental Protection Agency
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for the federal Resource Conservation and Recovery Act (RCRA) program. Wastes containing asbestos are in some circumstances considered hazardous wastes under HWCA, such as when they are from industrial waste streams or are discarded asbestos containing products. However, naturally occurring asbestos in earthen materials such as soil or waste rock that are removed, unearthed, or otherwise displaced as a result of excavating or recovering an ore or a mineral is exempt as a hazardous waste. Therefore, the HWCA does not apply to the movement of earthen materials during land development and construction activities.

In your letter, you mention two specific development situations of concern. First, the excavation and transport of soil containing naturally occurring asbestos from the construction of a house and, second, the erosion of asbestos from land containing naturally occurring asbestos into an adjacent surface water. In both cases, DTSC could issue an order requiring removal or remedial action under HSAA authority if there was a release or threatened release that threatened public health or the environment. Also, in both cases, the HWCA would not apply.

Other agencies implement additional laws that pertain to the management of earthen materials containing asbestos during construction activities. The California Air Resources Board and El Dorado County Air Pollution Control District have authority to control releases of naturally occurring asbestos to the air. The Regional Water Quality Control Board (RWQCB) regulates the discharge of pollutants including asbestos to surface waters. The RWQCB utilizes a General Permit for Stormwater Discharges Associated with Construction Activity that applies to the release of asbestos from construction sites due to stormwater runoff.

California Occupational Safety and Health Administration (Cal-OSHA) requirements for worker safety and training also apply to naturally occurring asbestos. California Code of Regulations (CCR), Title 8, section 1592 addresses asbestos and construction activities. The transportation of asbestos containing materials is regulated by federal transportation laws, including 49 CFR Parts 171-173, which address the transportation of hazardous materials. Landfills operate under various State and local permits. If earthen materials containing naturally occurring asbestos are to be disposed to a landfill, the landfill should be contacted to determine if it will accept the waste, and to identify the landfill's sampling and analysis requirements for the material to be disposed.

Mr. Jon A. Morgan

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I hope that this general information on the applicability of DTSC laws and additional requirements is helpful. If you have any further questions, please contact me at (916) 255-3773 or Mr. Dan Ziarkowski at (916) 255-3689.

Sincerely,



James L. Tjosvold, Chief
Northern California-Central Cleanup Operations Branch

cc: Mr. Ray Oliva
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cc: Mr. Richard Thalhammer
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Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

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Arnold Schwarzenegger
Governor

November 7, 2007

Mr. Daniel L. Wade, P.E., G.E.
Project Manager - Calaveras Dam Replacement
San Francisco Public Utilities Commission
1145 Market Street, 3rd Floor
San Francisco, California 94103

Dear Mr. Wade:

Thank you for your e-mail dated October 30, 2007 requesting DTSC summarize its position regarding the regulatory status of earthen materials containing greater than one percent friable asbestos that will be excavated and relocated during construction of the Calaveras Dam Replacement Project (CDRP).

In response to your request, DTSC has reviewed the information you submitted as well as its past correspondence regarding this matter. DTSC has determined that naturally-occurring, asbestos-containing soil and rock that are unearthed and relocated or otherwise displaced as a result of excavating any naturally occurring chemical element or compound, or groups of elements or compounds, formed from inorganic processes or organic substances during land development and construction are not regulated as hazardous wastes. Therefore, DTSC will not regulate the earthen materials that are relocated as part of the CDRP provided they do not exhibit a hazardous waste characteristic by any other criterion. I have attached a copy of DTSC's letter dated January 20, 2000 that discusses the application of hazardous waste laws to naturally-occurring asbestos.

If you have any questions about this letter, please contact Charles Corcoran of my staff at (916) 327-4499.

Sincerely,

Karl Palmer, Chief
Regulatory and Program Development Branch

Attachment