

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report

Proposed Amendments to:

Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities

~~October 31, 2018~~ January 2, 2019

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY	ES-1
-------------------------	----------------------

CHAPTER 1: BACKGROUND ON PROPOSED AMENDED RULE 1403

REGULATORY BACKGROUND	1-1
PURPOSE AND APPLICABILITY	1-1
AFFECTED FACILITIES	1-1
LEGAL AUTHORITY	1-3

CHAPTER 2: SUMMARY OF PROPOSED AMENDED RULE 1403

OVERVIEW: PROPOSED AMENDMENTS TO RULE 1403	2-1
PROPOSED REVISIONS TO EXISTING RULE LANGUAGE	2-1
SUBDIVISION (a) – PURPOSE	2-1
SUBDIVISION (b) – APPLICABILITY	2-1
SUBDIVISION (c) – DEFINITIONS	2-2
SUBDIVISION (d) – REQUIREMENTS	2-12
SUBDIVISION (e) – WARNING LABELS, SIGNS, AND MARKINGS	2-25 26
SUBDIVISION (g) – RECORDKEEPING	2-27 28
SUBDIVISION (h) – SAMPLING PROTOCOLS AND TEST METHODS	2-28 28
SUBDIVISION (i) – TRAINING REQUIRMENTS	2-38 37
SUBDIVISION (j) – EXEMPTIONS	2-38

CHAPTER 3: KEY ISSUES OF PROPOSED AMENDED RULE 1403

SUMMARY OF KEY ISSUES	3-1
-----------------------------	---------------------

CHAPTER 4: IMPACT ASSESSMENT OF PROPOSED AMENDED RULE 1403

EMISSION IMPACT ASSESSMENT	4-1
COST ANALYSIS	4-1
INCREMENTAL COST-EFFECTIVENESS	4-1
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	4-1
SOCIOECONOMIC IMPACT ASSESSMENT	4-1 2

COMPARATIVE ANALYSIS [4-2](#)
DRAFT CONCLUSIONS AND RECOMMENDATIONS [4-23](#)

CHAPTER 5: PUBLIC COMMENTS

COMMENTS AND RESPONSES [5-1](#)

APPENDIX: REFERENCES AND ATTACHMENTS

- Appendix J TO § 1910.1001 - Polarized Light Microscopy of Asbestos [A-1](#)
- Asbestos NESHAP - 40 CFR Subpart M..... [A-2](#)
- Asbestos-Containing Materials in Schools (AHERA) - 40 CFR Part 763, Subpart E..... [A-3](#)
- Attachment H from the 1989 Rule 1403 Staff Report: Referencing 40 CFR section 768.107 for sampling protocol..... [A-4](#)
- EPA Test Method EPA/600/R-93/116: Method for the Determination of Asbestos in Bulk Building Materials [A-5](#)
- Federal Register Document 95–30797: Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems [A-6](#)
- Interim Method of the Determination of Asbestos in Bulk Insulation Samples - 40 CFR Appendix E to Subpart E of Part 763..... [A-7](#)
- OSHA Standards Interpretation 1926.1101: Potential for Legal/Compliance Problems with OSHA’s Asbestos Standards dated November 5, 1996..... [A-8](#)
- Texas Department of State Health Services: Analysis of Joint Compound for Asbestos Content [A-9](#)
- US-EPA Applicability Determination Index Control No. C-112: Point Counting dated May 8, 1991 [A-10](#)
- US-EPA: Report No. 15-P-0168: EPA Should Update Guidance to Address the Release of Potentially Harmful Quantities of Asbestos That Can Occur Under EPA’s Asbestos Demolition Standard [A-11](#)

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

The proposed amendments to Rule (PAR) 1403 – Asbestos Emissions from Demolition/Renovation Activities, are meant to enhance the rule’s objective, provide better understanding, improve the enforcement of rule requirements, and increase the overall rule effectiveness. The proposed changes will facilitate compliance for facility owners, general contractors, contractors, subcontractors, consultants and others who work with asbestos.

The proposed amendments will not change the economic impacts of the rule and no socioeconomic assessment was performed. In addition, the amendments are not expected to significantly affect either emission limitations or air quality. Staff has reviewed the proposed amendments and determined that the project is exempt from the requirements of the California Environmental Quality Act (CEQA).

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

CHAPTER 1: BACKGROUND ON PROPOSED AMENDED RULE 1403

- REGULATORY BACKGROUND
- PURPOSE AND APPLICABILITY
- AFFECTED FACILITIES
- LEGAL AUTHORITY

REGULATORY BACKGROUND

Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities, was adopted by the South Coast Air Quality Management District (SCAQMD) Governing Board on October 6, 1989, to limit asbestos emissions from building demolition and renovation activities, including the removal and associated disturbance of asbestos-containing materials, as well as the storage and disposal of asbestos-containing waste material (ACWM) generated or handled by these activities. The Environmental Protection Agency (EPA) promulgated emission requirements for asbestos on April 5, 1984 (49 FR 13661) as part of the National Emission Standards for Hazardous Air Pollutants (NESHAP) program ([40 Code of Federal Regulation \(CFR\), Part 61, Subpart M](#)) under section 112 of the Clean Air Act (CAA). The SCAQMD has been delegated authority by the EPA to implement Part 61 which is accomplished through the adoption of and periodic amendments to Regulation X – NESHAP. Delegated authorities have the option of adopting and enforcing stricter regulations alongside their implementation and enforcement of the NESHAP.

EPA revised the NESHAP for asbestos on November 20, 1990 (55 FR 48406). Rule 1403 was amended April 8, 1994 to make it consistent with the revised NESHAP for asbestos, which was adopted by reference into Regulation X on October 4, 1991. Rule 1403 was also amended in November 2006 and October 2007 with administrative changes to add clarifying language and improve enforceability of the rule.

PURPOSE AND APPLICABILITY

The purpose of this rule amendment is to clarify language and assist with implementation of the rule. Rule 1403 specifies work practice requirements for building demolition and renovation activities in order to limit emissions of asbestos, a toxic air contaminant. The SCAQMD, a delegated authority, has a more stringent rule than either the NESHAP or the requirements of the Asbestos Hazard Emergency Response Act (AHERA) as implemented by the [40 CFR Part 763, Subpart E](#). This difference has caused misunderstanding within the regulated community. With this rule amendment, staff's goal is to improve both comprehension and enforceability of Rule 1403.

AFFECTED INDUSTRY

The rule covers demolition or renovation activities and the associated disturbance of asbestos-containing material at buildings or facilities, asbestos storage facilities, and any active waste disposal sites. This rule, in whole or in part, is applicable to owners and operators; including, but not limited to, property owners, property lessors, asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and asbestos consultants. The rule

does not apply to a residential single-unit dwelling, as defined in the rule, when the owner-occupant personally and solely conducts the renovation activity at the dwelling.

Staff met with multiple contractors, consultants, facility operators, and laboratory personnel who are subject to Rule 1403, to gather information on the types of work they perform and how they comply with Rule 1403, as well as, the NESHAP, AHERA, and Cal-OSHA regulations. Table 1-1 shows the facilities that were visited by SCAQMD staff. Table 1-2 shows the meetings held at SCAQMD headquarters

TABLE 1-1: FACILITIES VISITED BY SCAQMD STAFF

FACILITY	CITY	COUNTY
Andeavor Refinery	Carson	Los Angeles
Exide Battery	Paramount	Los Angeles
NBC Universal	Universal City	Los Angeles
Los Angeles Unified School District (L.A.U.S.D.)	Los Angeles	Los Angeles
L.A.U.S.D. Laboratory (NVLAP certified lab)	Los Angeles	Los Angeles
Disneyland	Anaheim	Orange
Patriot Environmental Laboratory (NVLAP certified lab)	Fullerton	Orange
Envirocheck (NVLAP certified lab)	Orange	Orange

TABLE 1-2: MEETINGS WITH STAKEHOLDERS AT SCAQMD HEADQUARTERS

COMPANY
Southern California Gas Company
Southern California Edison
Los Angeles Department of Water & Power
Los Angeles Unified School District
California Council for Environmental & Economic Balance
Masek Consulting Services, Inc.

The most common areas of stakeholder misunderstanding related to facility surveys, asbestos sample collection, composite sample analysis, the SCAQMD Web Application (Web App) notification system, emergency notifications, issues related to underground Transite pipe, approved-alternative clean-up procedures, and test methods. The goal of these amendments is to provide clarity in the rule language and address these issues directly where possible. Staff are also committing to improve and expand upon internal guidance documents to answer many of the questions concerning rule implementation.

Additionally, throughout the rule development process, staff accompanied SCAQMD Inspectors during field operations to see first-hand the problems encountered during routine inspections, and the inability to conduct those vital inspections to ensure compliance with all applicable regulations.

LEGAL AUTHORITY

The AQMD obtains authority to adopt, amend, or repeal rules and regulations from Health and Safety Code §§39002, 39650 et seq., 39666, 40000, 40001, 40440, 40725 through 40728, and 41508.

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

CHAPTER 2: SUMMARY OF PROPOSED AMENDED RULE 1403

- OVERVIEW: PROPOSED RULE AMENDMENTS
- PROPOSE AMENDMENTS

OVERVIEW: PROPOSED RULE AMENDMENTS

The proposed amendments to Rule 1403 clarify language to assist owners and operators in understanding and complying with the rule's requirements. Staff proposes revisions to the applicability subdivision, amending and adding new definitions to the definition subdivision, and adding language to the requirements subdivision to clear up any misconceptions about Surveys and Notifications. Staff has also proposed to add new language to the Sampling Protocol and Test Methods subdivision to be consistent with current EPA guidance. With the advent of the Rule 1403 Notification Web App, staff proposes to remove obsolete language within the Notification subparagraph. Other changes include clarifications and editorial corrections to subdivisions throughout the rule.

PROPOSED REVISIONS TO EXISTING RULE LANGUAGE

Subdivision (a) Purpose

Staff proposes to include the additional words “and facility” to the current rule language to clarify that the purpose of the rule is to limit asbestos emissions from facility demolition and renovation activities with buildings being the most common and notable example of a facility. The existing definition in Rule 1403 defines facility to also include underground pipelines, ships, and waste disposal sites. In addition, staff also proposes to capitalize the words “Asbestos-Containing Materials” and “Asbestos-Containing Waste Materials” to coincide with the acronyms ACM and ACWM. These revisions are shown in strikeout/underline rule language and the new rule language in subdivision (a) will read as follows:

- (a) *The purpose of this rule is to specify work practice requirements to limit asbestos emissions from building and facility demolition and renovation activities, including the removal and associated disturbance of ~~asbestos-containing materials~~Asbestos-Containing Materials (ACM). The requirements for demolition and renovation activities include asbestos surveying, notification, ACM removal procedures and time schedules, ACM handling and clean-up procedures, and storage, disposal, and landfilling requirements for ~~asbestos-containing waste materials~~Asbestos-Containing Waste Materials (ACWM). All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.*

Subdivision (b) Applicability

Staff proposes to include the additional words “property owners, property lessors, asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and

asbestos consultants” to the current rule language to clarify that the rule considers all of these persons or entities are subject to rule requirements and may be an owner or operator of a renovation or demolition project. These revisions are shown in ~~strikeout~~/underline rule language and the new rule language in subdivision (b) will read as follows:

- (b) *This rule, in whole or in part, is applicable to owners and operators; including, but not limited to, property owners, property lessors, asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and asbestos consultants, of any demolition or renovation activity, and the associated disturbance of asbestos-containing material, any asbestos storage facility, or any active waste disposal site.*

Subdivision (c) Definitions

Staff proposes to add nine (9) new definitions and revise twenty-eight (28) existing definitions in the proposed amended rule to provide enhanced clarity of existing definitions and further define terms used throughout the rule. These thirty-seven new and revised definitions are shown in ~~strikeout~~/underline rule language.

New definitions in Proposed Amended Rule 1403:

Paragraph (c)(5) – Proposed New Language

Staff proposes to add a definition for ASBESTOS CONSULTANT since they are the person conducting asbestos surveys as described in subparagraph (d)(1)(A). It is also a requirement that building or facility surveys shall be performed by a licensed Asbestos Consultant as described in clause (d)(1)(A)(iv) and (v), as newly proposed. The proposed new rule language in subdivision (b) includes Asbestos Consultant and staff believes that further warrants the proposed language as follows:

- (5) ASBESTOS CONSULTANT is any person conducting asbestos surveys as specified in subparagraph (d)(1)(A) and required to have the qualifications as specified in clause (d)(1)(A)(iv) or (v).*

Paragraph (c)(18) – Proposed New Language

Staff proposes to add two definitions for END DATE FOR RENOVATION ACTIVITIES and END DATE FOR DEMOLITION ACTIVITIES. The Notification requirement in subclause (d)(1)(B)(ii)(VI) stipulates a project start date and an end date, but there was some confusion with stakeholders as to what was meant by each date. Staff proposes new rule language to clarify these end dates; the proposed language is as follows:

- (18) END DATE FOR RENOVATION ACTIVITIES is the last day when teardown is complete or, if later, the last day when all accumulated ACWM is removed*

from the project site. END DATE FOR DEMOLITION ACTIVITIES is the last day when the last load of building waste has left the project site.

Paragraph (c)(25) – Proposed New Language

Staff proposes to add a new definition for HOMOGENEOUS MATERIAL since the term homogeneous material, is referenced in subclause (d)(1)(A)(iii)(V) and subparagraphs (h)(1)(A) through (E). Staff believes this new rule language provides additional clarification on what is homogeneous material. The proposed language for is as follows:

(25) HOMOGENEOUS MATERIAL is material that is similar in color, texture, and apparent or known date of installation.

Paragraph (c)(33) – Proposed New Language

Staff proposes to add a new definition for OWNER-OCCUPANT to specifically define an owner-occupant, as separate from those who buy residential homes and perform renovation or demolition activities, for the purpose of profiting off their quick sale (e.g., “house flippers”). This new proposed definition seeks to prevent this practice by clarifying who is an Owner-Occupant for the purposes of this rule. The proposed rule language is as follows:

(33) OWNER-OCCUPANT is a homeowner who occupies a residential single-unit dwelling as a principal place of residence as demonstrated by an approved claim for the homeowners’ property tax exemption or the disabled veterans’ property tax exemption.

Paragraph (c)(37) – Proposed New Language

Staff proposes to add a new definition for RECEPTOR to compliment proposed language in subclause (d)(1)(B)(i)(II); which refers to a specific renovation activity within one-quarter (1/4) mile of a “receptor.” This reference warrants a definition for what is meant by a receptor. The proposed rule language is as follows:

(37) RECEPTOR is any offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, recreational areas inhabited or occupied by the public at any time, or such other locations as the district may determine.

Paragraph (c)(42) – Proposed New Language

Staff proposes to add a new definition for START DATE address the confusion within the regulated community on when the start day begins. Staff believes a new proposed definition will clarify the start date for renovation and demolition activities. The proposed rule language is as follows:

(42) START DATE is the first date the renovation or demolition activities disturb building materials including, but not limited to, the setting up of containment. This activity does not include staging of equipment.

Paragraph (c)(45) – Proposed New Language

Staff proposes to add a new definition for SUPERVISOR to clarify what is meant by the term Supervisor; which is referenced in subclause (d)(1)(B)(ii)(II), subparagraph (d)(1)(G), clauses (d)(1)(H)(v) and (vii), and subparagraph (g)(1)(E). The proposed rule language is as follows:

(45) SUPERVISOR is any employee of the owner or operator conducting the demolition or renovation activity who has the required training as described in subdivision (i).

Paragraph (c)(46) – Proposed New Language

Staff proposes to add a new definition for SURFACING MATERIALS to clarify what is meant by this term; which is referenced in subparagraph (h)(1)(A). Sampling protocols vary depending on surfacing materials or other types of materials. This warrants a definition to clarify what is meant by surfacing materials. The new proposed rule language is as follows:

(46) SURFACING MATERIAL is material that is sprayed-on, troweled-on, or otherwise applied to surfaces, including, but not limited to acoustical plaster, fireproofing materials, texturizing materials, or other materials on surfaces for acoustical, fireproofing, or other purposes.

Paragraph (c)(45) – Proposed New Language

Staff proposes to add a new definition for VISIBLE EMISSIONS, emissions or evidence of emissions coming from asbestos related activities found outside the contained work area or asbestos containers. Staff believes this new proposed rule language is appropriate for asbestos renovation and demolition activities. The new proposed rule language is as follows:

(45) VISIBLE EMISSIONS are any emissions or evidence of emissions coming from asbestos related activities found outside the isolated work area or on-site storage including but not limited to dust, debris, particles, or fibers, which are visually detectable without the aid of instruments.

Revisions to existing definitions in Proposed Amended Rule 1403:

Staff proposes to revise twenty-eight (28) existing definitions in Subdivision (c) to enhance clarity of the rule. These twenty-eight (28) existing definitions have minor revisions to enhance the proposed rule language and to clarify the given definition. These minor revisions are shown in strikeout/underline rule language.

Paragraph (c)(2) – Proposed Revised Language

Staff proposes additional rule language to clarify the low-pressure spray or mist. The proposed rule language is as follows:

- (2) *ADEQUATELY WET is the condition of being sufficiently mixed or penetrated with amended water to prevent the release of particulates or visible emissions. The process by which an adequately wet condition is achieved is by using a dispenser or water hose with a nozzle that permits the use of a fine, low-pressure spray or mist that uses a setting that will not break up the ACM during the wetting operation.*

Paragraph (c)(4) – Proposed Revised Language

Staff proposes a minor revision to clarify “actinolite and tremolite” rather than “actinolite or tremolite.” The proposed rule language is as follows:

- (4) *ASBESTOS is the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite, ~~or~~ and tremolite.*

Paragraph (c)(5) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(6) as deemed appropriate, and add additional language to promote clarity to this definition. The proposed rule language is as follows:

- (~~5~~6) *ASBESTOS-CONTAINING MATERIAL (ACM) is ~~both friable asbestos-containing material or any material that contains more than one percent (1.0%) asbestos including friable ACM, Class I nonfriable asbestos-containing material~~ ACM and Class II nonfriable ACM as determined by the provisions in paragraph (h)(2) in this rule. This includes any material that is presumed or assumed to contain more than one percent (1.0%) asbestos.*

Paragraph (c)(6) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(7) as deemed appropriate, add scraping and drilling as additional mechanical asbestos removal methods and include the filters from

control devices that have been contaminated with asbestos. The proposed rule language is as follows:

(67) ASBESTOS-CONTAINING WASTE MATERIAL (ACWM) is any waste that contains commercial asbestos and that is generated by a source subject to the provisions of this rule. ACWM includes, but is not limited to, ACM which is friable, has become friable, or has a high probability of becoming friable, or has been subjected to scraping, sanding, grinding, cutting, drilling or abrading, and the waste generated from its disturbance, such as asbestos waste from control devices, filters from control devices, particulate asbestos material, asbestos slurries, bags or containers that previously contained asbestos, used asbestos-contaminated plastic sheeting and clothing, and clean-up equipment waste, such as cloth rags or mop heads.

Paragraph (c)(7) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(8) as deemed appropriate, and add additional text “Part” to the existing rule language. The proposed rule language is as follows:

(78) ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA) is the act which legislates asbestos-related requirements for schools (40 CFR Part 763, Subpart E).

Paragraph (c)(8) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(9) as deemed appropriate, and remove Class II nonfriable ACM text from the existing rule language. The proposed rule language is as follows:

(89) ASSOCIATED DISTURBANCE of ACM ~~or Class II nonfriable ACM~~ is any crumbling or pulverizing of ACM ~~or Class II nonfriable ACM~~, or generation of uncontrolled visible debris from ACM ~~or Class II nonfriable ACM~~.

Paragraph (c)(9) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(10) as deemed appropriate, and add additional language to promote clarity to this definition. The proposed rule language is as follows:

(910) CLASS I NONFRIABLE ASBESTOS-CONTAINING MATERIAL is ~~material~~ ACM, containing more than one percent ~~(1%)~~ (1.0%) asbestos as determined by paragraph (h)(2), and that, when dry, can be broken, crumbled, pulverized, or reduced to powder in the course of demolition or renovation activities. Actions which may cause material to be broken, crumbled, pulverized, or reduced to powder include physical wear and disturbance by mechanical

force, ~~such as~~ including, but not limited to, scraping, sanding, sandblasting, cutting, drilling or abrading, improper handling or removal or leaching of matrix binders. Class I nonfriable ~~asbestos-containing material~~ ACM includes, but is not limited to, packings, gaskets, resilient floor covering, fractured or crushed asbestos cement products, cement water pipes, transite materials, mastic, asphalt roofing products, roofing felts, and roofing tiles, ~~cement water pipes and resilient floor covering.~~

Paragraph (c)(10) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(11) as deemed appropriate, and revise the weighted percent from “1%” to “1.0%.” The original intent of Rule 1403 was to regulate more than one-percent asbestos, meaning that 1.15% asbestos was not to be rounded down to 1% asbestos. The proposed rule language is as follows:

~~(1011)~~ *CLASS II NONFRIABLE ASBESTOS-CONTAINING MATERIAL is ~~all other material~~ ACM containing more than one percent ~~(1%)~~ (1.0%) asbestos as determined by paragraph (h)(2), that is neither friable nor Class I nonfriable.*

Paragraph (c)(12) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(13) as deemed appropriate and include additional language to clarify the definition and that it applies to cutting with the intent to remove asbestos. The proposed rule language is as follows:

~~(1213)~~ *CUTTING is ~~penetrating~~ the partial or complete penetration into a material with the intent of removing ACM ~~with~~ using a sharp-edged instrument, ~~and~~ Cutting includes sawing, but does not include shearing, slicing, or punching.*

Paragraph (c)(13) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(14) as deemed appropriate, and include additional language to clarify a load-supporting structural member. The proposed rule language is as follows:

~~(1314)~~ *DEMOLITION is the wrecking or taking out of any load-supporting structural member; including, but not limited to, the foundation, roof support structures, or any exterior wall of a facility and related handling operations or the intentional burning of any facility.*

Paragraph (c)(14) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(15) as deemed appropriate, and correct grammatical errors. The proposed rule language is as follows:

~~(14)~~15) *EMERGENCY DEMOLITION is a demolition ordered by a governmental agency for the purpose of eliminating peril to the safety of persons, property or the environment resulting from hazards such as collapse, fire, crime, disease, ~~or~~ toxic contamination, or other hazard ~~as~~ determined by the Executive Officer.*

Paragraph (c)(15) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(16) as deemed appropriate, and add additional language to provide clarification to this definition. Staff proposes adding to the definition “an imminent threat to public health ~~and~~or safety” and “encountering previously unknown ACM during demolition or excavation” to facilitate obtaining an emergency waiver from the requirement to submit the notification 10 working days prior to beginning any demolition or renovation activities. The proposed rule language is as follows:

~~(15)~~16) *EMERGENCY RENOVATION is any renovation that was not planned and results from an imminent threat to public health ~~and~~or safety, a sudden unexpected event that results in unsafe conditions, or encountering previously unknown ACM during demolition or excavation. Such events include, but are not limited to, renovations necessitated by non-routine failures of equipment, earthquake, flood or fire damage. An ~~economic-unreasonable financial~~ burden alone, ~~without a sudden, unexpected event~~, does not give rise to conditions that meet this definition.*

Paragraph (c)(17) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(19) as deemed appropriate, and clarify that it must be locked when storing ACM. The proposed rule language is as follows:

~~(17)~~19) *ENCLOSED STORAGE AREA means a storage room, drum, roll-off container, other hard-sided container, or fenced area that is designed to be securely closed with a lock when storing ACM.*

Paragraph (c)(18) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(20) as deemed appropriate, and add additional language to clarify this definition. Debate has prevailed within the industry as to when a building or facility does not require an asbestos survey because it was built after a certain date. While asbestos-containing materials are typically more prevalent in pre-1980 construction, there is no guarantee that asbestos-containing materials would not be present in

newer construction. Staff, therefore, proposes to add language which states that a facility is subject to Rule 1403 in spite of its “age or date of construction.” The proposed rule language is as follows:

~~(1820)~~ *FACILITY is any institutional, commercial, public, industrial or residential structure, installation, building, any ship ~~or~~, vessel, ~~and any~~ active, or inactive waste disposal site. A facility is subject to this rule regardless of its current use, ~~or~~ function, age, or date of construction. For example, a facility destroyed by fire, explosion, or natural disaster, including any debris, shall remain ~~s~~-subject to this rule’s provisions.*

Paragraph (c)(19) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(21) as deemed appropriate, and spell out Heating, Ventilation, and Air Conditioning systems; which is identified by the acronym HVAC. The proposed rule language is as follows:

~~(1921)~~ *FACILITY COMPONENT is any part of a facility including foundations and or utility/commodity pipelines; and equipment such as but not limited to heaters, boilers, Heating, Ventilation, and Air Conditioning systems (HVAC), and motors.*

Paragraph (c)(20) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(22) as deemed appropriate, and revise the weighted percent from “1%” to “1.0%.” The original intent was more than one-percent asbestos, meaning that 1.15% asbestos was not to be rounded down to 1% asbestos. In addition, Staff also proposed to add additional rule language to provide examples of friable asbestos-containing material. The proposed rule language is as follows:

~~(2022)~~ *FRIABLE ASBESTOS-CONTAINING MATERIAL is any material containing more than one percent ~~(1%)~~(1.0%) asbestos as determined by paragraph (h)(2), that, when dry, can be crumbled, pulverized, or reduced to powder by using hand pressure or lacks fiber cohesion, identified by flaking, blistering, water damage, scrapes, gouges, or other physical damage. Friable ACM may include, but is not limited to, sprayed-on or troweled-on fireproofing, acoustic ceiling material and ceiling tiles, resilient floor covering backing, thermal systems insulation, nonasphalt-saturated roofing felts, asbestos-containing paper and joint compound.*

Paragraph (c)(21) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(23) as deemed appropriate, and add additional text “typically” and “Part” to the existing rule language and remove an obsolete

reference to “Appendix G” from the existing rule language. The proposed rule language is as follows:

~~(2123)~~ *GLOVE_BAG is a sealed compartment with attached inner gloves used for handling ACM. When properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove bag installation, equipment, and supplies, and work practices is contained in the Occupational Safety and Health Administration's final rule on occupational exposure to asbestos (~~Appendix G to~~ 29 CFR 1926.1101(g)).*

Paragraph (c)(23) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(26) as deemed appropriate, and correct grammatical errors. The proposed rule language is as follows:

~~(2326)~~ *INSTALLATION is any building or structure, or any group of buildings or structures, at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under central control).*

Paragraph (c)(24) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(27) as deemed appropriate, and remove the existing “enclosed ~~container~~containment” rule language. The proposed rule language is as follows:

~~(2427)~~ *ISOLATED WORK AREA is the immediate-~~enclosed-containment~~ area in which the asbestos abatement activity takes place.*

Paragraph (c)(26) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(29) as deemed appropriate, and add the word “an” to clarify the existing rule language. The proposed rule language is as follows:

~~(2629)~~ *LOCKED means rendered securely closed and able to be opened only with a key or an access code.*

Paragraph (c)(28) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(31) as deemed appropriate, and correct grammatical errors. The proposed rule language is as follows:

~~(2831)~~ *OUTSIDE AIR is the air outside of ~~the~~a facility or outside of the isolated work area.*

Paragraph (c)(29) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(32) as deemed appropriate, and add the demolition and renovation operation proposed language. The proposed rule language is as follows:

~~(29)~~³² *OWNER or OPERATOR OF A DEMOLITION OR RENOVATION ACTIVITY is any person who owns, leases, operates, controls or supervises activities at the facility being demolished or renovated; the demolition or renovation operation; or both.*

Paragraph (c)(31) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(35) as deemed appropriate, capitalize where necessary, and add “renovation operation” to promote clarity to this definition. The proposed rule language is as follows:

~~(31)~~³⁵ *PLANNED RENOVATION is a renovation operation, or a number of such operations, in which the amount of ACM that will be removed or stripped within a given period of time can be predicted. Individual ~~Renovation~~ ~~Operations~~ are included if a number of such operations can be predicted to occur during a given period of time based on ~~operating~~renovation operation experience.*

Paragraph (c)(33) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(38) as deemed appropriate, and add additional language to clarify what staff considers the removal of ACM or facility components. The proposed rule language is as follows:

~~(33)~~³⁸ *REMOVAL is the taking out of ACM or facility components including, but not limited to, cutting, drilling, scraping, abrading, grinding, or similarly disturbing ACM or facility components that contain or are covered with ACM from any facility.*

Paragraph (c)(34) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(39) as deemed appropriate, refer to the acronym HVAC solely since Heating, Ventilation, and Air Conditioning Systems was used previously in the rule language, and include the term “one or more” for clarity. The proposed rule language is as follows:

~~(34)~~³⁹ *RENOVATION is the altering of a facility or the removing or stripping of one or more facility components in any way, including, but not limited to, the stripping or removal of ACM from facility components, retrofitting for fire protection, and the installation or removal of ~~heating, ventilation, air~~*

~~conditioning (HVAC)~~ systems. Activities involving the wrecking or taking out of one or more load-supporting structural members are defined as demolitions.

Paragraph (c)(35) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(40) as deemed appropriate, and include the term “Duplexes” for clarity. The proposed rule language is as follows:

~~(35)~~(40) *RESIDENTIAL SINGLE UNIT DWELLING is a structure that contains only one residential unit. Duplexes, Apartment buildings, townhouses, and condominiums are not residential single unit dwellings.*

Paragraph (c)(36) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(41) as deemed appropriate, and revise the weighted percent from “1%” to “1.0%.” The original intent was more than one-percent asbestos, meaning that 1.15% asbestos was not to be rounded down to 1% asbestos. The proposed rule language is as follows:

~~(36)~~(41) *RESILIENT FLOOR COVERING is asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than one percent ~~(1%)~~(1.0%) asbestos as determined by paragraph (h)(2).*

Paragraph (c)(39) – Proposed Revised Language

Staff proposes to change the paragraph number to (c)(48) as deemed appropriate, and change the term from “source” to “facility” for clarity, as follows:

~~(39)~~(48) *WASTE GENERATOR is any person who owns or operates a ~~source~~facility subject to the provisions of this rule according to subdivision (b), and whose act or process produces ACWM.*

Subdivision (d) Requirements

Staff proposes to provide clarity to existing requirements and add rule language which will assist the regulated community in understanding the requirements of Rule 1403 that were not denoted in existing rule language. ~~This additional language~~While Rule 1403 is consistent with a more stringent regulation than that of the National Emission Standards for Hazardous Air Pollutants (NESHAP), set by the United States Environmental Protection Agency (EPA), this additional language is consistent with the NESHAP and other local Air Pollution Control Districts within the United States and the state of California. These proposed changes are promulgated by a misunderstanding of the original intent of Rule 1403 as understood by a review of previous staff reports. These changes are shown in strikeout/underline format.

Clause (d)(1)(A)(i) – Proposed Revised Language

Staff proposes to enhance the clarity of the current rule language by stating that an asbestos consultant is the only person who shall conduct a facility survey provided that the person is certified by Cal/OHSA Section 9021.5 of the labor code or possesses a current and valid certificate from a Cal/OSHA approved AHERA building inspector training course in accordance with clause (d)(1)(A)(iv) or (v). Staff proposes to clarify that a survey may be limited to the part of the facility where the demolition or renovation will occur, shall include an “onsite” inspection, the sampling of materials in accordance with subdivision (h), and that there are not any exceptions to a survey based on the age of the facility. The proposed new language is as follows:

- (i) *The affected facility, part of the facility where the demolition or renovation operation will occur, or facility components shall be thoroughly surveyed by an asbestos consultant, meeting the requirements of clause (d)(1)(A)(iv) or (v), for the presence of asbestos prior to any demolition or renovation activity. The survey shall include the onsite inspection, identification, and quantification of all friable, and Class I and Class II non-friable ~~asbestos-containing material~~ ACM, and any physical sampling of materials in accordance with subdivision (h). There are no exceptions to this survey requirement based on the date of construction or the age of a facility.*

Clause (d)(1)(A)(ii) – Proposed Revised Language

Staff is proposing a minor grammatical correction in clause (d)(1)(A)(ii) in efforts to clarify rule language. The proposed new language is as follows:

- (ii) *A thorough survey shall include, at a minimum, identification of all affected materials at the facility, including but not limited to all layers of flooring materials to the joist level, and all materials s in the wall or ceiling cavities as necessary to identify and sample them.*

Clause (d)(1)(A)(iii) – Proposed Revised Language

Staff is proposing additional language to subclauses (d)(1)(A)(iii)(II) and (d)(1)(A)(iii)(III), in efforts to clarify the rule language. In subclause (d)(1)(A)(iii)(IV), staff proposes to refine the requirements for a listing of all samples collected and to require a unique code or number delineating each sample on the sketch of the facility. In subclause (d)(1)(A)(iii)(V), staff proposes new rule language requiring a table in the survey report containing all suspected materials tested, the area of homogeneous material, asbestos content, and the percent damage. In subclause (d)(1)(A)(iii)(VII), staff proposes new rule language detailing the requirements for a Chain of Custody document. The proposed rule language for the subclauses under clause (d)(1)(A)(iii) are shown as follows:

- (II) *A written statement of the qualifications of the ~~person~~ asbestos consultant who conducted the survey, demonstrating compliance with clause (d)(1)(A)(iv) or (v);*
- (III) *The dates the facility was visited and the survey was conducted;*
- (IV) *A listing of all suspected materials containing any asbestos, a listing of all samples collected, ~~and~~ a sketch of detailed sufficiently to determine where the samples were taken, and a unique code or number delineating each sample on the sketch;*
- (V) *A table of all suspected materials tested, the approximate area each homogeneous material, the asbestos content of each material tested, and the percent of the area that is damaged;*
- (VII) *A detailed Chain of Custody (COC) document identifying all samples obtained that shall, at minimum, satisfy the following:*
- (1) Record of the name of the individual collecting the samples;*
 - (2) Record of the location, type of material, date, ~~time~~, and unique identification number or code for each sample that was obtained; and,*
 - (3) Whenever the possession of samples is transferred, both the individual relinquishing the samples and the individual receiving the sample shall sign, print their name legibly, and record the date ~~and time~~ on the COC document.*

Clause (d)(1)(A)(iv) – Proposed Revised Language

Staff proposes revisions to clause (d)(1)(A)(iv) to clarify training and certification requirements for persons performing asbestos surveys and to distinguish asbestos consultants who are contracted outside of the facility to perform asbestos surveys from employees who conduct asbestos surveys exclusively for the facility where they are employed, which are addressed in the subsequent proposed clause. The proposed rule language is as follows:

- (iv) *Persons ~~conducting~~ contracted to perform asbestos surveys, ~~in accordance withas specified in~~ subparagraph (d)(1)(A), shall be certified by Cal/OSHA pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code, and shall have taken and passed an EPA-approved Building Inspector Course and conform to the most recent updated procedures outlined in the Course.*

Clause (d)(1)(A)(v) – Proposed Revised Language

Staff proposes the addition of a new clause following clause (d)(1)(A)(iv) to specify the training and certification requirements for persons performing asbestos surveys exclusively at the facility where they are employed. Cal/OSHA has confirmed that persons conducting asbestos surveys for ~~the~~ their employers need not be certified asbestos consultants, but must possess a current and valid certificate from a Cal/OSHA approved AHERA building inspector

training course. Staff believes adding this new rule language will clarify that asbestos surveys conducted by the facility employee(s) are allowed provided that they have current and valid Cal/OSHA certification. This additional rule language is to accommodate stakeholders who have staff certified to perform surveys and inspections at their facilities, but are not licensed and certified asbestos consultants. The proposed clause is as follows:

(v) Persons conducting asbestos surveys at the facility where they are employed exclusively, as specified in ~~accordance with~~ subparagraph (d)(1)(A), shall possess a current and valid certificate from a Cal/OSHA approved AHERA ~~building inspector~~ Building Inspector training course.

Subparagraph (d)(1)(B) – Proposed Revised Language

Staff proposes revisions to the current rule language to clarify who shall submit notifications and to update the format by which the notifications shall be submitted. Staff proposes language clarifying that only the person performing the renovation or demolition shall submit complete and correct notifications in a District-approved electronic format. In November 2016, the district put into operation the Rule 1403 Notification Web Application as the District-approved electronic format for notification of any renovation or demolition activity subject to Rule 1403. Staff proposes removing from rule language any text that references notifications in other formats. Staff also proposes additional rule language that directs how notifications for emergency renovations or emergency demolitions shall be made during non-District staffing hours or periods when the Web Application is unavailable. The proposed rule language for the subparagraph is as follows:

(B) The District shall be notified of the intent to conduct any demolition or renovation activity. Complete and correct Notifications shall be submitted by the person performing the renovation or demolition in a District-approved electronic format. ~~format which may include but not be limited to U.S. mail, telephone, facsimile, digital, internet, and e-mail. Telephone, facsimile, digital, and e-mail notifications shall be confirmed with follow up written notifications to the District postmarked or delivered to the District within 48 hours from submitting the telephone, facsimile, digital, or e-mail notification.~~ No notification shall be considered ~~received~~ submitted unless it is accompanied by the required fee ~~pursuant to~~ in accordance with District Rule 301, ~~as part of the required written notification~~ and has a status of “submitted” in the District Rule 1403 Notification Web Application. Notifications for emergency renovations or emergency demolitions during non-District staffing hours or periods when the Web Application is unavailable shall be made by calling (800) CUT-SMOG. Notifications shall be provided ~~in accordance with~~ as specified in the following requirements:

Clause (d)(1)(B)(i) – Proposed Revised Language

Staff is proposing minor grammatical corrections to subclauses (d)(1)(B)(i)(I) and (d)(1)(B)(i)(III). Staff proposes the addition of subclause (d)(1)(B)(i)(II) to address specific projects whereby underground pipe renovation activities can be submitted two (2) working days before any activities begin instead of the usual ten (10) working days as required in subclause (d)(1)(B)(i)(I). This notification is limited to underground pipe located more than one-quarter (1/4) mile from the nearest receptor; which is now a defined term. This additional rule language is to accommodate renovations performed by stakeholders who routinely handle this type of project; whereby the release of asbestos fibers and the risk of public exposure are minimal. However, projects that are subject to the NESHAP and to its requirement for a 10 working day notification would not be able to depend on this proposed rule accommodation. As a result of the addition of subclause (d)(1)(B)(i)(II), staff proposes the changes to the numbers of the subsequent subclauses as deemed necessary. In subclause (d)(1)(B)(i)(IV), staff proposes additional language pointing to clauses (d)(1)(B)(iii) and (d)(1)(B)(iv) in order to clarify that complete and correct notifications for emergency demolition or renovation have the required additional information as stated in those clauses. The proposed rule language for the subclauses under clause (d)(1)(B)(i) are shown as follows:

(I) Demolition or Renovation Activities

The notification shall be submitted to the District no later than 10 working days before any demolition or renovation activities other than emergency demolition, emergency renovation, ~~or~~and planned renovations involving individual ~~or~~Nonscheduled ~~or~~Renovation ~~or~~Operations begin.

(II) Renovation Activities exclusively involving Underground Pipe Situated in Remote Locations

The notification shall be submitted to the District no later than two (2) working days before any activities begin if the location is more than one-quarter (1/4) mile from nearest receptor. The distance to the nearest receptor, the method used to determine the distance, and the person determining the distance shall be included with the survey.

(HIII)Planned Renovation - Annual Notification

The District shall be notified by December 17 of the year preceding the calendar year for which notice is being given for ~~or~~Planned ~~or~~Renovation activities which involve individual ~~or~~Nonscheduled ~~or~~Renovation ~~or~~Operations.

(HIV)Emergency Demolition or Renovation

The District shall be notified as soon as possible, but prior to any emergency demolition or renovation activity in accordance with clauses (d)(1)(B)(iii) and (d)(1)(B)(iv).

Clause (d)(1)(B)(ii) – Proposed Revised Language

Staff is proposing additional language and revisions to clause (d)(1)(B)(ii) in efforts to clarify the rule language addressing the information that shall be included in all notifications and to enhance consistency.

In subclause (d)(1)(B)(ii)(II), staff proposes to include “site” before “owner” to distinguish the owner of the site, which is the area occupied by one facility or multiple facilities, from the operator of the facility and to replace “supervising person” with “at least one supervisor” to update the terminology and acknowledge that the owner or operator conducting the demolition or renovation activity may provide information for more than one supervisor.

In subclause (d)(1)(B)(ii)(IV), to adhere to one unit of measurement to describe the size of Asbestos-Containing Material (ACM) or facility or part/components of a facility affected by demolition or renovation, staff proposes to remove “square meters” so that (square) feet remains.

In subclause (d)(1)(B)(ii)(VI), staff proposes minor revisions to streamline and harmonize the rule language which include updating “starting” with “start” and “completion” with “end” before dates, removing redundant language requiring starting and completion dates for demolition or renovation on notifications, adding capitalization where necessary, and replacing “as described in” with “in accordance with” to maintain the notion of conformity.

Staff also proposes to add two new items to subclause (d)(1)(B)(ii)(VI) to address additional notification procedures for 1) projects that do not conform to the traditional Monday through Friday work schedule, and 2) for projects that suffer a delay due to events outside their control after the Start Date (e.g., flood, fire, earthquake). Due to the alteration in the schedule of work inherent to these two project scenarios, staff proposes new rule language specifying what to submit (as part of or as an update to a notification) and when to inform the District of the altered work schedule for each project scenario. The proposed time frame by which the required submission of updated items shall be provided to the District (i.e., as soon as the change of schedule or delay is known but no later than the start of the work shift associated with the change or delay) allows reasonable and sufficient time for owners and operators of demolition or renovation activities to conduct operations as necessary following the change of schedule or delay and for SCAQMD compliance staff to adjust accordingly for the inspections of these projects.

In subclause (d)(1)(B)(ii)(VIII), staff proposes to use one unit of measurement to describe the size of Asbestos-Containing Material (ACM) or facility or part/components of a facility affected by demolition or renovation; staff also proposes to remove all size description language in excess of surface area in square feet.

In subclause (d)(1)(B)(ii)(X), staff proposes to remove the language of Class II nonfriable asbestos-containing material becoming crumbled, pulverized, or reduced to powder. This maintains the proposed definitional change to Asbestos-Containing Material (ACM) to include

Class II nonfriable ACM, and upholds the District's position that materials that would be considered nonfriable ACM, including Category II nonfriable as defined in NESHAP, have the potential to be broken, crumbled, pulverized, or reduced to powder in the course of demolition or renovation activities and shall be treated as ACM.

In subclause (d)(1)(B)(ii)(XII), staff proposes additional language to clarify that the Cal/OSHA Registration number is in relation to renovation activities.

In subclause (d)(1)(B)(ii)(XIV), staff proposes additional language requiring the Department of Toxic Substances Control (DTSC) Registration Number and expiration date of the ACWM transporters in order to align with DTSC waste transporter compliance requirements.

In subclause (d)(1)(B)(ii)(XVI), staff proposes to include additional language clarifying that the trained person supervising the activities described in the notification is an employee of the renovation or demolition operator.

Staff proposes the addition of three new subclauses, (d)(1)(B)(ii)(XVII), (d)(1)(B)(ii)(XVIII), and (d)(1)(B)(ii)(XIV), which contain new rule language clarifying specific information that shall also be provided on the notifications to enhance compliance verification pertaining to demolition notifications, asbestos survey reports, and facility surveys. The proposed rule language for the all of the above mentioned subclauses under clause (d)(1)(B)(i) are shown as follows:

- (II) *Name, address and telephone number of both the site owner and operator of the facility, at least one supervising person supervisor, and the asbestos removal contractor, ~~owner or operator~~;*
- (IV) *Description of the facility or affected part of the facility to be demolished or renovated including the size (measured in square meters or square feet), ~~and~~, number of floors), age, and present or prior uses of the facility;*
- (VI) *Scheduled project ~~starting~~ and ~~completion~~ end dates of demolition or renovation. ~~Notifications shall also include the ACM removal starting and completion dates for demolition or renovation;~~ Planned renovation activities involving individual ~~n~~Nonscheduled ~~r~~Renovation ~~o~~Operations need only include the beginning and ~~ending~~ end dates of the report period ~~as described in accordance with subclause (d)(1)(B)(i)(HIII)~~;*
 - (1) *For projects that do not conform to the traditional Monday through Friday work schedule, a Schedule of Work shall be included as part of the notification and updated as soon as the change of schedule is known, but no later than the first work shift when the change of schedule takes effect.*
 - (2) *For projects that suffer a delay due to events outside their control after the Start Date including, but not limited to, flood, fire, or earthquake; an updated Schedule of Work shall be submitted as soon as the delay is known, but no later than the start of the work shift that was delayed. A*

reason for the delay shall be included with the updated Schedule of Work.

- (VIII) A separate estimate for each of the amounts of friable, Class I, and Class II nonfriable asbestos-containing material to be removed from the facility in terms of ~~length of pipe in linear feet, surface area in square feet on other facility components, or volume in cubic feet if off the facility components. The total as equivalent surface area in square feet shall also be reported;~~
- (X) Description of steps to be followed in the event that unexpected ACM is found ~~or Class II nonfriable asbestos-containing material becomes crumbled, pulverized, or reduced to powder;~~
- (XII) Cal/OSHA Registration number - for renovation activities;
- (XIV) Name, address, Department of Toxic Substances Control (DTSC) Registration Number and expiration date, and telephone number of transporters used to transport ACWM off-site;
- (XV) Procedures, including analytical methods, used to detect the presence of friable and nonfriable asbestos-containing material; ~~and~~
- (XVI) Signed certification that at least one person employed by the renovation or demolition operator who has been trained as required in subparagraph (d)(1)(G) will be supervisesupervising ~~the stripping and removal the activities~~ described by this notification.;
- (XVII) Demolition notifications shall also include, if applicable: the name of the renovation operator that removed ACM; the end date for the removal of the ACM; and the quantity of ACM removed;
- (XVIII) The name, address, telephone number and, either:
- (1) A valid Cal/OSHA certification number of the person who was contracted to complete the asbestos survey report, and the date of the asbestos survey report; or,
 - (2) A valid Cal/OSHA approved AHERA building inspector certification number of the person employed by the facility who completed the facility survey and the date of the asbestos survey report.

Clause (d)(1)(B)(iv) – Proposed Revised Language

Staff proposes revisions and additional rule language to subclause (d)(1)(B)(iv)(III), (IV), and (V), in efforts to clarify the additional information that is required for notifications of all emergency renovation activities.

In subclause (d)(1)(B)(iv)(III), staff proposes to delete the words “sudden, unexpected” from the current rule language and then reference to the proposed definition of Emergency Renovation in paragraph (c)(16).

In subclause (d)(1)(B)(iv)(IV), staff proposes to add new rule language to reference an Emergency Renovation as defined in paragraph (c)(16). This proposed language clarifies that

in order to meet the District's definition of an emergency renovation, the description of the emergency should contain the considerations precisely defined in paragraph (c)(16), which in turn will facilitate obtaining an emergency waiver from submitting the notification 14 calendar days (10 working days) prior to beginning any demolition or renovation activities.

In subclause (d)(1)(B)(iv)(V), staff proposes rule language clarifying what an emergency letter shall contain in order to certify that the emergency renovation is in response to an actual emergency. The new rule language requires that the emergency declaration letter contain both the signatures of the person affected by the emergency (e.g., the property owner) and an authorized representative of the renovation or demolition operator. If the renovation or demolition operator does not wish to sign the emergency declaration letter, then document must be signed in the presence of a Public Notary. In addition, the emergency declaration letter must contain attestations under penalty of perjury that the information in the emergency letter is true and correct. This proposed rule language is intended to discourage submission of fraudulent emergency letters (i.e., the letter contains a false signature of the property owner), discourage the misuse of emergency renovation notifications, and lays out feasible options for certifying the validity and accuracy of emergency declaration letters while minimizing delays to projects (as a result of the emergency). The proposed rule language for subclauses (d)(1)(B)(iv)(III), (d)(1)(B)(iv)(IV), (d)(1)(B)(iv)(V), are as follows:

- (III) A description of the ~~sudden, unexpected~~ event that meets the parameters of the definition in paragraph (c)(16);
- (IV) An explanation of how the event, that meets the parameters of the definition in paragraph (c)(16), caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden; and;
- (V) A ~~signed~~ letter with a valid signature from the person directly affected by the emergency, such as the property owner or property manager, attesting to the circumstances of the emergency. The letter shall contain in the signature section the following statement, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Both the person affected by the emergency and an authorized representative for the renovation or demolition operator shall sign the certification or declaration on the same page. In lieu of a renovation operator signature, the person affected by the emergency shall sign the letter in the presence of a public notary and obtain and attach that notary's certificate of acknowledgement or jurat for the letter's signing.

Clause (d)(1)(B)(v) – Proposed Revised Language

Staff proposes revisions and additional rule language to clause (d)(1)(B)(v) to clarify and update the requirements for notification updates. Staff proposes the addition of a new subclause, (d)(1)(B)(v)(I), to address the condition of cancellation to a notified project and

when the notification shall be updated with the cancellation. As a result, staff proposes the changes to the numbers of the subsequent subclauses as deemed necessary.

In the proposed revisions to subclauses (d)(1)(B)(v)(II), (d)(1)(B)(v)(III), (d)(1)(B)(v)(IV), and (d)(1)(B)(v)(V), staff proposes to include rule language that notification updates shall be made through the District Rule 1403 Notification Web Application to streamline all revisions to the quantity of asbestos, starting date, and end date. In addition, this affirms that the only changes allowed to notifications on the Web Application are for these three conditions. Staff also proposes to remove outdated language to reflect that notifications are now to be in an electronic format. In subclauses (d)(1)(B)(v)(III), (IV), (V) and (VI) staff seeks to enhance consistency and improve clarification in the rule language by replacing “starting date” with “start date” and by replacing “completion date” with “end date.”

Additionally, in subclause (d)(1)(B)(v)(VI), staff seeks to enhance consistency and clarification in the rule language by adding the word “one” in addition to the numerical version of one, and by removing the word “written” just before “notification update”.

The proposed rule language for all the subclauses under clause (d)(1)(B)(v) are shown as follows:

(I) Cancellation

Projects that will not be conducted as notified shall be cancelled no later than the notified start date.

(II) Change in Quantity of Asbestos

A change in the quantity of affected asbestos of 20 percent or more from the notified amount shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application as soon as the information becomes available, but not later than the project end date, unless otherwise specified in an approved Procedure 5.

(III) Later Starting Date

A delay in the starting date of any demolition or renovation activity shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application as soon as the information becomes available, but no later than the original start date.

(IV) Earlier Starting Date

A change in the starting date of any demolition or renovation activity to an earlier starting date shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application no later than 10 working days before any demolition or renovation activities begin.

(V) ~~Completion-End~~ Date Change

~~Changes in the completion date shall be reported to the District at least two (2) calendar days before the original scheduled completion date. In the event renovations or demolitions are not completed, are delayed, or are completed~~

ahead of schedule, the District shall be notified by providing a notification update in the District Rule 1403 Notification Web Application as soon as possible, but no later than the following ~~business~~-day.

(VI) Planned Renovation Progress Report

Notifications for on-going planned renovation operations in which the scheduled starting and ~~completion~~end dates are more than one (1) year apart shall be updated, every year of the operation by December 17, unless the most recent ~~written~~ notification update was postmarked or delivered after October 1 of that year and include the amount of ACM removed and the amount of ACM remaining to be removed.

Clause (d)(1)(C)(i) – Proposed Revised Language

Staff proposes to replace “SCAQMD” with “District” to maintain rule language uniformity. The proposed new language is as follows:

- (i) All ACM and Class II asbestos-containing material shall be removed from a facility prior to any demolition by intentional burning. All demolition by intentional burning shall be performed in accordance with District Rule 444 – Open Burning.*

Clause (d)(1)(C)(ii) – Proposed Revised Language

Staff proposes to add “scraping” to the existing rule language of subclause (d)(1)(C)(ii)(IV) to comprehensively address the activities that may be involved in the removal of ACM. The inclusion of “scraping” as a specific activity is relevant and consistent with 29 CFR 1926.1101(b) and 29 CFR 1926.1101(g)(8)(i)(D), which collectively describe “scraping” as an activity conducted during the removal of asbestos-containing mastic from floors, during which asbestos fibers may be released. Staff also proposes to replace “must” with “shall” to maintain rule language uniformity while preserving and imposing a legal obligation on the regulated community. Staff proposes to remove the phrase “or Class II nonfriable ACM” from the existing rule language of subclause (d)(1)(C)(ii)(V) as ACM is defined, in the current proposed version, as “any material that contains more than one percent (1.0%) asbestos including friable ACM, Class I nonfriable ACM and Class II nonfriable ACM.” ~~Finally, staff proposes additional rule language in subclause (d)(1)(C)(ii)(VI) to address the discovery of any disturbed, damaged, or suspected ACM outside of containment or the work area with specific instructions and procedures to be followed in this event.~~ The proposed new rule language for the subclauses is as follows:

- (IV) If the renovation or demolition activity involves any mechanical force such as, but not limited to, scraping, sanding, sandblasting, cutting, or abrading and thus would render the materials friable, they ~~must~~shall be removed prior to the renovation or demolition.*

(V) *If for any reason, any renovation or demolition results in an associated disturbance of ACM ~~or Class II nonfriable ACM~~ outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up.*

~~*(VI) If any disturbed, damaged, or suspected ACM is discovered outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up.*~~

Clause (d)(1)(D)(i) – Proposed Revised Language

Staff proposes to add a space to “glovebag” to separate “glove” from “bag” to the existing rule language of subclause (d)(1)(D)(i)(II) for both clarity and consistency with 29 CFR 1926.1101(g) and current Cal/OSHA requirements. Additionally, staff is proposing to replace “Section” with “Part” and remove the outdated “Appendix G” for clarity and consistency. Staff proposes a revision to existing rule language of item (d)(1)(D)(i)(III)(4) stating only non-power tools shall be used “to remove nonfriable ACM” to provide clarification. Staff also proposes a grammatical correction to subclause (d)(1)(D)(i)(IV) to enhance clarity. The proposed new language is as follows:

(II) *Procedure 2 - Glove_bag*

Remove ACM by the glove_bag method or mini enclosures designed and operated according to 29 CFR ~~Section~~ 1926.1101(g), ~~Appendix G~~, and current Cal/OSHA requirements.

(III) *Procedure 3 - Adequate Wetting*

Procedure 3 shall only be used to remove nonfriable asbestos-containing materials, using the following techniques:

(4) Only non-power tools shall be used to remove nonfriable ACM.

(IV) *Procedure 4 - Dry Removal*

~~*Obtain written*~~ *Written approval shall first be obtained from the Executive Officer's designee prior to using dry removal methods for the control of asbestos emissions when adequate wetting procedures in the renovation work area would unavoidably damage equipment or present a safety hazard. Dry removal methods may include one or more of the following:*

Clause (d)(1)(D)(ii) – Proposed Revised Language

Staff proposes to add the phrase “any amount of” to existing rule language in subclause (d)(1)(D)(ii)(I) to make the requirement absolute and free of any quantity-based confusions. Staff also proposes to remove “or Class II nonfriable ACM” for clarity and consistency with

the overall rule language, as ACM, by the proposed definition, includes Class II nonfriable materials. Staff also proposes to add additional rule language consisting of “or disturbance,” from “a natural disaster including, but not limited to,” fire, “flood, or” explosion to both clarify and be consistent with NESHAP’s presentation of what constitutes an unplanned, natural disaster, which includes “flood.” Staff is also proposing the inclusion of Procedure 4 as an approved alternative along with Procedure 5, particularly if and when dry removal is to be performed. Finally, staff is proposing to add additional rule language to clause (d)(1)(D)(ii) by adding subclause (d)(1)(D)(ii)(II) further clarifying that unassessed materials of which have been presumed or assumed to be ACM also require the submission of a Procedure 4 or 5 Approved Alternative. The proposed new language is as follows:

- (I) *No person shall remove ~~or~~ strip, or abate any amount of ACM ~~or Class II nonfriable ACM~~ that has suffered any damage or disturbance from fire, explosion, or natural disaster without the use of a Procedure 4 or 5 Approved Alternative. The causes of damage or disturbance include, but are not limited to, fire, flood, explosion, or other natural disaster.*
- (II) *Notifications for materials ~~that cannot be assessed for damage~~ where the property owner has chosen not to expose the material, thereby making an assessment of the condition impossible, such as, but not limited to, subterranean piping, where the asbestos consultant has presumed or assumed the material to be asbestos-containing, shall be submitted as a Procedure 4 or 5 Approved Alternative. A facility survey is still required as specified in subparagraph (d)(1)(A).*

Clause (d)(1)(F) – Proposed Revised Language

Staff proposes to revise existing rule language by expressing the units for temperature in their unabbreviated forms (e.g., Celsius instead of C and Fahrenheit instead of F) in subparagraph (d)(1)(F) to provide clarity and rule consistency. Additionally, for subclause (d)(1)(F)(ii), staff is proposing to express “2” in text form in addition to the numeric 2. The proposed new language is as follows:

- (F) *When the temperature at the point of wetting is below 0° Celsius (32° Fahrenheit), the wetting provisions of subparagraph (d)(1)(D) shall be superseded by the following requirements:*
- (ii) *The temperature in the area containing the facility components shall be recorded at the beginning, middle, and end of each workday during periods when wetting operations are suspended due to freezing temperatures. Daily temperature records shall be available for inspection by the District during normal business hours at the demolition or renovation site. Records shall be retained for at least two (2) years.*

Clause (d)(1)(G) – Proposed Revised Language

Staff proposes to replace “Representative” with “Supervisor” to specify the level of authority, training, and responsibility deemed appropriate as an effective representative of the worksite. In addition, staff proposes to remove rule language that refers to “stripping, removing, handling, or disturbing of ACM” and replace it with “activities described in the notification.” The proposed new language is as follows:

- (G) *On-Site ~~Representative~~ Supervisor*
At least one on-site ~~representative~~supervisor, such as a foreman, manager, or other authorized representative, trained in accordance with the provisions of paragraphs (i)(1) ~~and/or~~ (i)(3), shall be present during the ~~stripping, removing, handling, or disturbing of ACM~~activities described in the notification. Evidence that the required training has been completed shall be posted at the demolition or renovation site and made available for inspection by the Executive Officer's designee.

Clause (d)(1)(H) – Proposed Revised Language

Staff proposes to replace lower-cased “copies” of clause (d)(1)(H)(iii) to upper-cased “Copies.” For enhanced clarity and consistency, staff proposes to replace “pursuant to” with “in accordance with”, and omit the unnecessary “and”. Similarly, for clause (d)(1)(H)(iv), staff proposes to replace lower-cased “copies” with upper-cased “Copies”, replace “pursuant to” with “in accordance with”, and add a semi-colon to the end. Additionally, staff proposes additional rule language to subparagraph (d)(1)(H) with clauses (d)(1)(H)(v), (d)(1)(H)(vi), and (d)(1)(H)(vii) mandating the owner or operator maintain the required training certificate(s) for both the supervisors and workers along with all required records and logs. The proposed new language is as follows:

- (iii) *eCopies of surveys, conducted ~~pursuant to~~in accordance with subparagraph (d)(1)(A); ~~and~~*
- (iv) *eCopies of notifications submitted ~~pursuant to~~in accordance with subparagraph (d)(1)(B);*
- (v) *Copies of the training certificate(s) demonstrating that the on-site supervisor has been trained in accordance with paragraphs (i)(1) or (i)(3);*
- (vi) *Copies of all current training certificates demonstrating that workers have successfully completed the Abatement Worker course, or refresher course as applicable, in accordance with AHERA; and,*
- (vii) *Copies of all supervisor logs or equivalent records documenting the demolition or renovation activities at the project site.*

Subdivision (e) Warning Labels, Signs, and Markings

Staff proposes to update the existing rule language and provide clarity which will assist the regulated community in complying with the identification requirements of asbestos related health hazards. The additional revisions make the rule language consistent with identification requirements specified by federal and state Occupational Safety and Health Administration (OSHA). These changes are shown in strikeout/underline rule language format.

Paragraph (e)(1) – Warning Labels, Signs, and Markings

Staff proposes revisions to rule language in subparagraph (e)(1)(A) to cite parts of the OSHA asbestos general standard and the applicable parts in the current OSHA asbestos construction standard, which contains requirements more appropriate to the scope of work in renovation and demolition activities subject to Rule 1403. Staff also proposes to remove presentations of the warning label/sign information specified in the associated regulation citations in order to retain consistency if there are future changes in the OSHA standard. Currently, 29 CFR 1910.1001(j)(2) contains language requiring employers and building owners to treat certain installed materials as ACM, which is irrelevant to warning label/sign information. Additionally, 29 CFR Part 1926.58 has been redesignated to 1926.1101. Staff proposes additional rule language in subparagraph (e)(1)(B) clarifying the necessity of visible and readable container labels for identification and compliance verification purposes for asbestos waste generation and transport. The proposed rule language is as follows:

- (A) *Warning labels for leak-tight containers and wrapping shall have letters of sufficient size and contrast as to be readily visible and legible, and shall contain ~~the following~~all information, ~~or~~ as specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR ~~1910.1001(j)(2)~~ ~~or~~ ~~1926.58(k)(2)(iii)~~, 1926.1101(k)(8), or current Cal/OSHA requirements.*

CAUTION

Contains Asbestos Fibers

Avoid Opening or Breaking Container

Breathing Asbestos is Hazardous to Your Health

Or

DANGER

CONTAINS ASBESTOS FIBERS

AVOID CREATING DUST

CANCER AND LUNG DISEASE HAZARD

- (B) *Leak-tight containers that are transported off-site shall be labeled with the name of the waste generator and the location at which the waste was generated. The location description shall include the street address. The label shall be clearly visible and readable from the outside of the container.*

Paragraph (e)(2) – Active Waste Disposal Sites:

Staff proposes rule language revisions to paragraph (e)(2) and subparagraphs (e)(2)(B) and (D) to clarify the existing rule language. Subparagraph (e)(2) was revised to clarify that operation of an Active Waste Disposal Site must meet all of the provisions in subparagraphs (e)(2)(A) through (D). Subparagraph (e)(2)(B) was revised to spell out the word “centimeters”. Subparagraph (e)(2)(D) was revised by including the number “2” after the word “two” to maintain rule clarity and consistency. The proposed changes are as follows:

(2) *Active Waste Disposal Sites*

No person shall operate an active waste disposal site unless warning signs are conspicuously posted and meet all of the following requirements:

- (B) *Conform to the requirements for 51 ~~em~~centimeters x 36 ~~em~~centimeters (20 inches x 14 inches) upright format signs specified in 29 CFR 1910.145 (d)(4) and this subparagraph;*
- (D) *Have spacing between any two (2) lines at least equal to the height of the upper of the two (2) lines.*

Paragraph (e)(3) – Warning Labels, Signs, and Markings/Transportation Vehicles:

Staff proposes rule language revisions to paragraph (e)(3) and subparagraphs (e)(3)(B) and (C) to clarify and maintain consistency in the existing rule language. Subparagraph (e)(3) was revised to clarify that operation of Transportation Vehicles must meet all of the provisions in subparagraphs (e)(3)(A) through (D). Subparagraph (e)(3)(B) was revised to spell out the word “centimeters” and properly cite “subparagraph.” Subparagraph (e)(3)(C) was revised to properly cite “subparagraph.” Subparagraph (e)(2)(D) was revised by including the number “2” after the word “two.” The proposed changes are as follows:

(3) *Transportation Vehicles*

Markings for transportation vehicles shall meet all of the following requirements:

- (B) *Conform to the requirements for 51 ~~em~~centimeters x 36 ~~em~~centimeters (20 inches x 14 inches) upright format signs specified in 29 CFR 1910.145(d)(4) and this subparagraph; ~~and~~*
- (C) *Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this subparagraph:*

<i>Legend</i>	<i>Notation</i>
<i>DANGER</i>	<i>2.5 cm (1 inch) Sans Serif, Gothic or Block</i>
<i>ASBESTOS DUST HAZARD</i>	<i>2.5 cm (1 inch) Sans Serif, Gothic or Block</i>
<i>CANCER AND LUNG DISEASE HAZARD</i>	<i>1.9 cm (3/4 inch) Sans Serif, Gothic or Block</i>
<i>Authorized Personnel Only</i>	<i>14 Point Gothic</i>

; and

- (D) *Have spacing between any two lines at least equal to the height of the upper of the two [\(2\)](#) lines.*

Subdivision (g) Recordkeeping

Staff proposes to include a new subparagraph, (g)(1)(G), which contains rule language clarifying specific records that shall be maintained in addition to the records specified in the existing rule language. This new rule language enhances compliance verification and enforcement pertaining to all contracted activity related to a renovation or demolition. The proposed subparagraph is as follows:

(G) A copy of all contracts the owner or operator has entered into for the performance of labor in a demolition or renovation activity or the related removal of waste.

Subdivision (h) Sampling Protocol and Test Methods

Staff is proposing to clarify existing sampling requirements and insert additional rule language which will assist the regulated community with understanding the sampling protocols of Rule 1403 that were not properly denoted within existing rule language. The proposals are shown as strikeout/underline rule language format.

Paragraph (h)(1) – Proposed Revised Language

In 1989, Rule 1403 was adopted by the SCAQMD ~~governing board~~Governing Board and the staff report accompanying those rule adoption proceedings explained that Rule 1403 would refer to 40 CFR 768.107 for the sampling protocol guidelines. In other words, an asbestos consultant was to refer to 40 CFR 768.107 and follow those guidelines for bulk sampling of materials that will be sent to a NVLAP certified laboratory to determine the asbestos content of suspected ACM. Rule 1403 (version adopted on 10/06/1989) stated in clause (d)(1)(C), “*Follow the provisions of 40 Code of Federal Regulations (CFR) 763.107 for bulk sampling*

friable material and paragraph (g) of this rule for the analytical procedure used to determine the presence and percentage of asbestos-containing material in the bulk sample.”

In 1994, Rule 1403 was amended and the rule language in clause (d)(1)(C) was moved to new paragraph (h)(1), but the language still referred to 40 CFR 763.107. Rule 1403 (version adopted on 04/08/1994) stated in paragraph (h)(1), *“Follow the provisions of 40 Code of Federal Regulations (CFR) 763.107 for bulk sampling friable material and paragraph (g) of this rule for the analytical procedure used to determine the presence and percentage of asbestos-containing material in the bulk sample.”*

The rule language from this CFR is as follows:

40 CFR 763.107 Sampling friable material

- (a) If friable materials are found in a school building local education agencies shall identify each distinct sampling area of friable materials within the school building take at least three samples from locations distributed throughout the sampling area and label each sample container with a sample identification number unique to the sampling location and building.*
- (b) Officials should consult “Asbestos Containing Materials in School Buildings: A Guidance Document” Part 1 Chapter 5 for further information on sampling procedures.*

In 2006, Rule 1403 was amended and the rule language in paragraph (h)(1) changed the CFR reference from 40 CFR 763.107 to 40 CFR 763.86 and that remained the reference in the subsequent 2007 rule amendment. Rule 1403 (versions adopted on 11/03/2006 & 10/05/2007) stated in paragraph (h)(1), *“Sampling of materials suspected to contain asbestos, to comply with this rule, shall be conducted following the provisions of 40 CFR Part 763.86.”*

The rule language from this CFR is as follows:

40 CFR 763.86

(a) Surfacing material. An accredited inspector shall collect, in a statistically random manner that is representative of the homogeneous area, bulk samples from each homogeneous area of friable surfacing material that is not assumed to be ACM, and shall collect the samples as follows:

- (1) At least three bulk samples shall be collected from each homogeneous area that is 1,000 ft² or less, except as provided in § 763.87(c)(2).*
- (2) At least five bulk samples shall be collected from each homogeneous area that is greater than 1,000 ft² but less than or equal to 5,000 ft², except as provided in § 763.87(c)(2).*
- (3) At least seven bulk samples shall be collected from each homogeneous area that is greater than 5,000 ft², except as provided in § 763.87(c)(2).*

(b) Thermal system insulation. (1) Except as provided in paragraphs (b) (2) through (4) of this section and § 763.87(c), an accredited inspector shall collect, in a randomly distributed

manner, at least three bulk samples from each homogeneous area of thermal system insulation that is not assumed to be ACM.

(2) Collect at least one bulk sample from each homogeneous area of patched thermal system insulation that is not assumed to be ACM if the patched section is less than 6 linear or square feet.

(3) In a manner sufficient to determine whether the material is ACM or not ACM, collect bulk samples from each insulated mechanical system that is not assumed to be ACM where cement or plaster is used on fittings such as tees, elbows, or valves, except as provided under § 763.87(c)(2).

(4) Bulk samples are not required to be collected from any homogeneous area where the accredited inspector has determined that the thermal system insulation is fiberglass, foam glass, rubber, or other non-ACBM.

(c) Miscellaneous material. In a manner sufficient to determine whether material is ACM or not ACM, an accredited inspector shall collect bulk samples from each homogeneous area of friable miscellaneous material that is not assumed to be ACM.

(d) Nonfriable suspected ACBM. If any homogeneous area of nonfriable suspected ACBM is not assumed to be ACM, then an accredited inspector shall collect, in a manner sufficient to determine whether the material is ACM or not ACM, bulk samples from the homogeneous area of nonfriable suspected ACBM that is not assumed to be ACM.

SCAQMD adopted Rule 1403 as a more stringent regulation than that the NESHAP (e.g. regulating both friable and non-friable materials) and the original rule language referred to 40 CFR 763.107; which required a minimum of three (3) samples of suspected ACM for analysis to determine asbestos content. SCAQMD staff has interpreted Rule 1403 sampling protocol to mean that a minimum number of bulk samples for all suspected ACM is three (3) - including friable and non-friable materials.

Additionally, the American Society for Testing and Materials (ASTM) has published an ASTM standard, ASTM E2356-14 “Standard Practice for Comprehensive Building Asbestos Surveys,” where it regularly recommends a minimum of three (3) samples to be obtained when sampling suspected ACM. Here are some citations from the ASTM:

6.1.4.1 Under this practice, a minimum of three bulk samples representative of each different homogeneous area of suspect material to be sampled shall be collected and analyzed to prove that the material sampled is not ACM.

6.4.6.2 A minimum of three bulk samples representative of each distinct homogeneous area of suspect thermal system insulation material (TSI) should be collected. One sample should be collected of each TSI patch. For the purpose of this practice, a patch is a distinct location or replacement or repair which is less than or equal to 6.0 ft (1.82 m) or 6.0 ft² (0.557m²).

6.4.6.3 A minimum of three bulk samples shall be collected of each homogeneous miscellaneous material, except that a single sample may suffice for small manufactured items such as HVAC vibration dampeners, gaskets and friction products. This exception applies to individual components of less than 6 ft² (0.557 m²) in size and not to multiple installations of similar components.

6.4.6.4 A minimum of three bulk samples shall be collected of surfacing materials of less than 1000 ft² (93 m²). A minimum of five bulk samples shall be collected of homogeneous surfacing materials ranging between 1000 to 5000 ft² (93 to 465 m²) and a minimum of seven bulk samples shall be collected of surfacing material >5000 ft² (465 m²).

Staff seeks to clarify the sampling protocol by proposing a minimum number of samples for all suspected ACM and remove any uncertainty in Rule 1403 to better protect public health and safety. Staff proposes revisions to existing rule language in paragraph (h)(1) by removing unnecessary language and any reference to the CFR's. Staff proposes additions to existing rule language under paragraph (h)(1) with specific sampling protocols to clarify the minimum number of samples that must be obtained to comply with Rule 1403. The proposed rule language for paragraph (h)(1) is as follows:

(h)(1) Sampling of materials suspected to contain asbestos, ~~to comply with this rule,~~ shall be conducted ~~following the provisions of 40 CFR Part 763.86~~ as follows:

(A) Bulk samples shall be collected from each homogeneous area of friable surfacing material that is not assumed to be ACM as follows:

(i) A minimum of three samples shall be collected from each area of homogeneous material that is 1,000 square feet or less, except as provided in subparagraph (h)(1)(D);

(ii) A minimum of five samples shall be collected from each area of homogeneous material that is greater than 1,000 square feet but less than 5,000 square feet, except as provided in subparagraph (h)(1)(D); and,

(iii) A minimum of seven samples shall be collected from each area of homogeneous material that is greater than, or equal to, 5,000 square feet, except as provided in subparagraph (h)(1)(D).

(B) Bulk samples shall be collected from each homogeneous area of other friable material (other than friable surfacing) that is not assumed to be ACM as follows:

(i) A minimum of three samples shall be collected from each homogeneous material; except as provided in subparagraph (h)(1)(D).

- (C) Bulk samples shall be collected from each homogeneous area of Class I and Class II non-friable material that is not assumed to be ACM as follows:
- (i) A minimum of one sample shall be collected from each area of homogeneous material that is 16 square feet or less; and,
- (ii) A minimum of three samples shall be collected from each area of homogeneous material that is greater than 16 square feet, except as provided in subparagraph (h)(1)(D).
- (D) A homogeneous area shall be determined to be ACM based on a finding that the results of at least one sample collected from that area shows that asbestos is present in an amount greater than one percent (1.0%).
- (E) A homogeneous area is considered not to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of one percent (1.0%) or less, in accordance with subparagraphs (h)(1)(A) through (C);
- (F) When composite sampling is performed of layered materials, analysis shall be performed as specified in subparagraph (h)(2)(C).

Paragraph (h)(2) – Proposed Revised Language

Staff is proposing to clarify existing test method requirements and insert additional rule language which will assist the regulated community in understanding Rule 1403 and the required methods of analysis for determining asbestos content in bulk samples.

Rule 1403, as it is currently written, states:

“Analysis of materials for asbestos, to comply with this rule, shall be determined by using SCAQMD Method 300-91 as detailed in the District's Laboratory Methods of Analysis for Enforcement Samples manual, or by using the Method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy. Asbestos analyses performed to comply with this rule must be undertaken by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).”

Staff proposes revisions to existing rule language in paragraph (h)(2) to clarify approved test methods to determine asbestos content, remove obsolete language, and provide consistency with the NESHAP. “Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy” has since been moved to “40 CFR Part 763 Appendix E to Subpart E” and staff proposes revisions to paragraph (h)(2) and cite the proper CFR, and removing “SCAQMD Method 300-91;” which is a method that is not recognized by the EPA to determine asbestos content. Additionally, staff proposes a revision to paragraph (h)(2) with the addition of “EPA Method for the Determination of Asbestos in Bulk Building Materials (EPA/600/R93/116);”

which is the contemporary test method and guidelines for determining asbestos content. Either of these test methods, “40 CFR Part 763 Appendix E to Subpart E” or “EPA/600/R93/116” are acceptable methods to comply with Rule 1403. Staff is proposing these revisions to clarify the approved test methods, provide the most accurate results possible, and remain in-line with the NESHAP. The proposed rule language for paragraph (h)(2) is as follows:

(h)(2) Analysis of materials ~~for suspected to contain asbestos, to comply with this rule, shall be determined by using SCAQMD Method 300-91 as detailed in the District's Laboratory Methods of Analysis for Enforcement Samples manual, or by using the Methods specified in accordance with Appendix A, Subpart F, 40 CFR Part 763, Section 1~~ 40 CFR Part 763 Appendix E to Subpart E, Polarized Light Microscopy or the EPA Method for the Determination of Asbestos in Bulk Building Materials (EPA/600/R-93/116). Asbestos analyses performed to comply with this rule ~~must~~ shall be undertaken by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). ACM shall be determined as follows:

Staff proposes additions to existing rule language in subparagraph (h)(2)(A) to provide clarification and guidance by stating that any sample that is analyzed with Polarized Light Microscopy (PLM) and determined to not contain asbestos does not have to be point counted, ~~but a minimum of three (3) subsamples must be analyzed by PLM to verify that no asbestos is present.~~ EPA provided guidance with the issuance of Applicability Determination Index, control number C-112 where it is stated “*It should be noted that samples in which no asbestos is detected during analysis by polarized light microscopy (PLM) do not have to be point counted. However, a minimum of three slide mounts should be prepared and examined in their entirety by PLM to determine if asbestos is present.*”~~—~~The proposed rule language for subparagraph (h)(2)(A) is as follows:

(A) A sample in which no asbestos is detected by Polarized Light Microscopy (PLM) does not have to be point counted. ~~However, to confirm no asbestos was detected, survey reports shall document three (3) subsamples were prepared and examined in their entirety;~~

Staff proposes additions to existing rule language in subparagraph (h)(2)(B) to provide clarification and guidance by stating any sample in which the amount of asbestos is determined to be under 10%, the facility owner may direct the asbestos consultant to presume or assume the sample to be ACM, or the owner/operator shall perform further testing to report the results more precisely. Currently, the NESHAP requires a test referred to as 400-point counting; which can produce results with accuracy down to a quarter (1/4) percent asbestos. Staff believes this change is necessary because, during the review of survey reports, the laboratory asserts that sample results contain “trace” amounts or “less than one percent (1.0%)” asbestos. However, they have only been analyzed using PLM and this test alone is not recognized as

being accurate enough to determine if a sample is less than one percent (1.0%). PLM is a qualitative test method and while it has been utilized to determine the quantity of asbestos, it is not recognized as method accurate enough to determine very low percentages of asbestos content. Referring again to the EPA Applicability Determination Index, control number C-112, which states “If the amount by visual estimation appears to be less than 10 percent, the owner or operator may (1) assume the amount to be greater than 1 percent and treat the material as asbestos-containing material, or (2) require verification of the amount by *point counting*” (emphasis added). Furthermore, the Occupation Safety and Health Administration (OSHA) regulation 1910.1001 App J - Polarized Light Microscopy of Asbestos -- Non-Mandatory also states that one of the disadvantages of PLM is “significant bias in the low range especially near 1%. EPA tried to remedy this by requiring a mandatory *point counting* scheme for samples less than 10%” (emphasis added). The EPA and OSHA recognize that PLM, by itself, is not accurate enough to determine if a sample is greater than, or less than, one percent (1.0%) and the EPA’s remedy to this deficiency is to require point counting for any sample that is less than ten percent (10%); which is not presumed or assumed to be greater than one percent (1.0%).

In addition, the regulated community may choose to use a more stringent test method; which may yield more accurate results. However, SCAQMD staff proposes point counting to harmonize with the NESHAP and better protect public health and safety. The option is available for the owner/operator choosing to assume or presume the material contains more than one percent (1.0%) and avoid this additional test. The proposed rule language for paragraph (h)(2)(B) is as follows:

(B) For a sample in which the amount of asbestos is detected and determined by PLM to be less than 10%, the facility owner or operator may direct the asbestos consultant to presume or assume the amount to be greater than one percent (1.0%) asbestos and treat the material as ACM, or the amount must be verified as follows:

(i) ACM content shall be determined by a minimum 400-point counting or a more stringent method including, but not limited to, 1,000-point counting, point counting with gravimetric reduction, or Transmission Electron Microscopy (TEM);

Staff proposes additions to existing rule language in subparagraph (h)(2)(C) to provide clarification and guidance by stating composited samples must be separated and each layer must be analyzed individually. Composite samples are building material samples where there are separate materials contained within one sample; often referred to as layered samples (e.g. flooring with attached mastic/adhesive). EPA provides guidance on how to analyze layered samples instructing the laboratory to separate each material, or layer, and analyze each layer independently for asbestos content. In Federal Register document published at 60 Fed. Reg. 65243 (December 19, 1995), the EPA speaks about situations where one or more layers are

present in building samples which may contain asbestos. EPA states, “*If the result of the composite analysis shows that the average content for the multi-layered system (across the layers) is greater than one percent, then the multi-layered system must be treated as asbestos-containing and analysis by layers is not necessary. If the result of the composite sample analysis indicates that the multi-layered system as a whole contains asbestos in the amount of one percent or less, but greater than none detected, then analysis by layers is required to ensure that no layer in the system contains greater than one percent asbestos. If any layer contains greater than one percent asbestos, that layer must be treated as asbestos containing. This will have the effect of requiring all layers in a multi-layered system to be treated as asbestos containing if the layers cannot be separated without disturbing the asbestos-containing layer. Once any one layer is shown to have greater than one percent asbestos, further analysis of the other layers is not necessary if all the layers will be treated as asbestos containing.*”

Staff recognizes that the EPA excludes wall systems as stated earlier in this FR document, “*This clarification basically stated that all multi-layered systems except for wall systems where joint compound was used only at the joints and nail holes must be analyzed as separate materials, and results were not allowed to be combined to determine average asbestos content (continuing the policy that dilution of an asbestos-containing material is not allowed).*” In essence the EPA does not require analysis of each layer of material within a wall system. EPA allows for the wall system (wallboard, joint compound, and tape) to be homogenized into one material (e.g. blended together) and analyzed as one (1) material; which is referred to as composited analysis. It is common knowledge within industry that the majority of asbestos will be contained within the joint compound and when composited together with the wallboard and tape that this will ultimately dilute the sample. After diluted, this sample will be analyzed and the probable result will be less than one-percent (1.0%). Staff believes that the extent with which joint compound is used to cover only wallboard joints and nail holes is not detectable underneath painted surfaces and contends that the use of joint compound to finish wall systems, even to simply cover the joints and nails holes, is extensive. When joint compound is used as an add-on material for skim coating a wall system or texturizing a wall, the EPA does not allow for composited analysis. On the following page, Figures 1, 2 and 3 show examples of unfinished wall systems demonstrating the broad use of joint compound to finish a wall system:

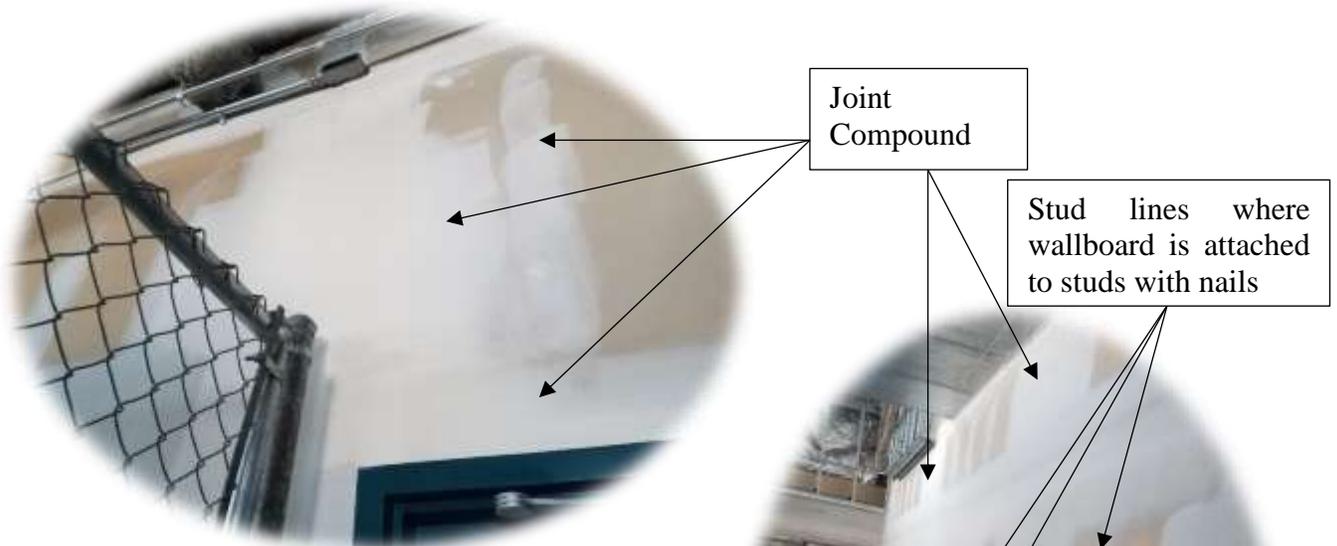


Figure 1: Photo of an unfinished wall system with widespread application of joint compound to cover wallboard joints. In this scenario the joint compound would be categorized as covering wallboard joints and nail holes. If this joint compound contained two-percent (2%) asbestos, but the composited analysis of this multi-layered system was less than one-percent (1%), then it would not be subject to Rule 1403 and could be removed without controls.



Figure 2: Photo of the application of joint compound to cover nail holes, but demonstrating that compound isn't covering small nail holes, but applied much more liberally.



Figure 3: Photo of a partially painted wall system with paint (right side) covering joint compound and concealing where it was applied to the wall system

As demonstrated in Figures 1, 2, and 3, the use of joint compound can be applied in such a way as to almost be a skim coat and the extent of its use is not quantifiable underneath a painted surface. Due to the difficulty of determining the extent of joint compound use and the

prevalence of joint compound that contains greater than two percent (2%) asbestos, staff believes that there could still be a risk of asbestos contamination resulting from the disturbance of wall systems that have an asbestos content less than one percent (1%) by composite analysis. As such, all wall systems must be renovated (abated) in compliance with Rule 1403 if any part of the wall system (wallboard, joint compound, or joint tape) as analyzed separately has an asbestos content greater than one percent (1.0%). This position is not a change in implementation of Rule 1403. So far in 2018, our compliance staff has received 3,700 notifications for wallboard renovation or demolition projects that total up to 7,500,000 square feet of wall systems.

Staff proposes additions to existing rule language in subparagraph (h)(2)(C) to provide clarification and guidance that all composite samples of multi-layered systems shall be separated by layers, analyzed individually, and reported independently. Nothing within this proposal prohibits the analysis for composited samples, but for purposes of complying with Rule 1403, and the removal of wall systems, all separable layers must be analyzed and reported separately for asbestos content. If any layer shows the results greater than one-percent (1.0%), then it must be removed in accordance with Rule 1403. The proposed rule language for paragraph (h)(2)(C) is as follows:

(C) The analysis of composite samples of multi-layered material including, but not limited to, stucco (base and scratch coat) and wall systems is prohibited for the quantification of asbestos content. All separable layers shall be analyzed and reported separately for asbestos content;

Staff proposes the addition to existing rule language in subparagraph (h)(2)(D) to provide clarification that if any single sample that is analyzed and shown to be ACM, then the subsequent samples need not be analyzed. Commonly referred to as “stop at the first positive,” staff proposes to formalize this with rule language. The proposed rule language for paragraph (h)(2)(D) is as follows:

(D) If any analysis is performed which shows a single sample greater than one percent (1.0%) ACM, then an asbestos consultant may forego analysis of subsequent samples ~~and presume or assume subsequent samples are greater than one percent (1.0%) ACM.~~

Subdivision (i) Training Requirements

Staff is proposing to clarify rule language with minor corrections. These revised training requirements are shown in strikeout/underline rule language format.

Paragraph (i)(1) – Proposed New Language

Staff proposes changing “supervisory personnel” to “Supervisors,” a defined term in Subdivision (c) – Definitions, and the person who shall obtain and maintain AHERA accreditation. In addition, staff proposes to use the acronym “AHERA” for Asbestos Hazard Emergency Response Act. The proposed rule language for subparagraph (i)(1)(A) is as follows:

- (~~1A~~) On-site ~~supervisory personnel~~ Supervisors shall successfully complete the Asbestos Abatement Contractor/Supervisor course pursuant to the ~~Asbestos Hazard Emergency Response Act (AHERA)~~, and obtain and maintain accreditation as an AHERA Asbestos Abatement Contractor/Supervisor.*

Paragraph (i)(3) – Proposed New Language

Staff proposes changing “supervisory personnel” to “Supervisors,” a defined term in Subdivision (c) – Definitions, and one of the persons who shall maintain proper training. Staff proposes changing “on” the provisions of this rule to “in accordance with” the provisions of this rule. In addition, staff proposes proper citation of the CFR in reference. The proposed rule language for subparagraph (i)(1)(C) is as follows:

- (~~3C~~) ~~Supervisory personnel~~ Supervisors and workers shall be trained ~~on~~ ~~in~~ ~~accordance~~ ~~with~~ the provisions of this rule as well as on the provisions of 40 CFR Parts 61.145, 61.146, 61.147 and 61.152 (Asbestos NESHAP provisions) and Part ~~763~~ 40 CFR Part 763, Subpart E, and the means by which to comply with these provisions.*

Subdivision (j) Exemptions

Staff proposes to add two (2) new exemptions and revise eight (8) existing exemptions in the proposed amended rule language to provide clarity of existing exemptions. These new and revised exemptions are shown in strikeout/underline rule language format.

New exemptions in Proposed Amended Rule 1403Paragraph (j)(1) - Proposed New Language

Staff proposes to add an exemption from paragraph (d)(1) in the event of an extreme emergency that poses and immediate risk to injury or death, that the owner/operator may address the emergency without notifying District in the event suspected ACM is damaged and/or disturbed. Once the hazard has been addressed and the threat has been eliminated, then the activity should stop and the site evaluated for the presence of ACM. The proposed language in paragraph (j)(1) is as follows:

~~(1) The requirements of paragraph (d)(1) for notification prior to renovation shall not apply to a hazardous situations that poses an immediate risk of injury or death imminent threat to public health or safety. Once the immediate imminent hazard threat has been addressed, then activity must stop, and the site must be secured, stabilized, and surveyed for the presence and condition of ACM and asbestos-contaminated materials. If ACM has been disturbed or damaged as a result of, or as part of the response to, the hazardous situation and was not cleaned up as a necessary part of the response, a Procedure 4 or 5 (Approved Alternative) clean-up plan must be submitted for review and approval prior to proceeding with the cleanup. by By the end of the third business working day following the incident and approved prior to any asbestos clean-up. Written explanation of, a notification for the hazard and hazard response must be submitted to the District along with the, as well as any required Procedure 4 or 5 clean-up plan.~~

Paragraph (j)(11) - Proposed New Language

Staff proposes to add an exemption from the electronic notification requirements under subparagraph (d)(1)(B). Staff proposes new rule language that will not require electronic notification by an owner-occupant of a residential single-unit dwelling, as defined in subdivision (c), who personally conducts a demolition activity at that dwelling. Paper notifications will be allowed for these projects. The proposed language in paragraph (d)(11) is as follows:

(11) The District-approved electronic notification requirements of subparagraph (d)(1)(B) shall not apply to an owner-occupant of a residential single-unit dwelling, as defined in subdivision (c), who personally conducts a demolition activity at that dwelling. Notification shall be submitted by paper only.

Revisions to exemptions in Proposed Amended Rule 1403

Paragraph (j)(1) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(2) as deemed appropriate and clarify that the requirements of subparagraph (d)(1)(B) still apply to Procedures 4 and 5, even if less than 100 square feet of surface are of ACM are removed. Procedures 4 and 5 pertain to damaged or disturbed ACM and there are not exemptions based upon square footage. Staff also proposes to capitalize “Planned Renovation” and “Nonscheduled Renovation Operations” since these are considered titles. The proposed rule language in paragraph (d)(2) is as follows:

~~(12) The notification requirements of subparagraph (d)(1)(B) and the training requirements of subdivision (i) shall not apply to renovation activities, other than Procedures 4 and 5, or pPlanned rRenovation activities which involve nNonscheduled rRenovation oOperations, in which less than 100 square feet~~

of surface area of intact ACM are removed or stripped. This exemption does not apply to Planned Renovation activities which involve Nonscheduled Renovation Operations, or Approved Alternative plans (Procedures 4 or 5).

Paragraph (j)(2) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(3) as deemed appropriate and change the rule language and capitalize “Planned Renovation” and “Nonscheduled Renovation Operations” since these are considered titles. The proposed rule language in paragraph (d)(3) is as follows:

(23) The notification requirements of subparagraph (d)(1)(B) and the training requirements of subdivision (i) shall not apply to ~~p~~Planned ~~R~~Renovation activities which involve ~~n~~Nonscheduled ~~R~~Renovation ~~O~~Operations, in which the total quantity of ACM to be removed or stripped within each calendar year of activity is less than 100 square feet of surface area.

Paragraph (j)(3) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(4) as deemed appropriate and clarify that the requirements of subclauses (d)(1)(A)(iii)(IV) through (IX) and subclause (d)(1)(B)(ii)(XV), which pertain to survey information, are not required when suspected material is treated as ACM and removed appropriately. Staff also proposes rule language requiring an asbestos consultant to state in an asbestos survey report that the material is presumed or assumed to be ACM. The proposed rule language paragraph (j)(4) is as follows:

(34) For asbestos survey reports where the material is presumed or assumed to be ACM by the asbestos consultant, ~~Clauses–subclauses (d)(1)(A)(iii)(IV) through (IX) and subclause–(d)(1)(B)(ii)(XV) shall not apply to the owner or operator of any renovation or demolition activity,~~ when the suspected material is treated as ACM when being removed, stripped, collected, handled, and disposed of in accordance with the provisions of this rule. The asbestos consultant shall state in the asbestos survey that the material is presumed or assumed to be ACM.

Paragraph (j)(4) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(5) as deemed appropriate and clarify that the requirements of clauses (d)(1)(A)(iv), which pertain to licensing of the asbestos consultant, are not required when less than 100 square feet of surface area of ACM are removed. Labor Code, Section 6501.5 specifically refers to asbestos work that is greater than 100 square feet so, for the purpose of simplification, staff has removed this reference to the Labor Code. The proposed rule language in paragraph (j)(5) is as follows:

~~(45)~~ *The portion of clause (d)(1)(A)(iv) ~~or (v)~~ which requires Cal/OSHA certification shall not apply to persons performing work ~~not subject to the certification requirement established by regulations pursuant to the Labor Code, Section 6501.5~~ in which less than 100 square feet of surface area of ACM is removed or stripped.*

Paragraph (j)(6) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(7) as deemed appropriate and clarify that the requirements of clauses (d)(1)(A)(iv), which pertain to Cal/OSHA registration, are not required when less than 100 square feet of surface area of ACM are removed. Labor Code, Section 6501.5 specifically refers to asbestos work that is greater than 100 square feet so, for the purpose of simplification, staff has removed this reference to the Labor Code. The proposed rule language in paragraph (j)(7) is as follows:

~~(67)~~ *Subclause (d)(1)(B)(ii)(XII) and clause (d)(1)(H)(ii), requiring Cal/OSHA registration, shall not apply to persons performing work ~~not subject to the registration requirement established pursuant to the Labor Code, Section 6501.5~~ in which less than 100 square feet of surface area of ACM is removed or stripped.*

Paragraph (j)(8) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(9) as deemed appropriate and change the word “phrase” to “item” which is the proper rule order citation. In addition, staff proposes to add scraping to the prohibited methods of removal in order to qualify for this exemption. The proposed rule language in paragraph (j)(9) is as follows:

~~(89)~~ *The handling requirements of ~~phrases~~items (d)(1)(D)(i)(I)(2), (d)(1)(D)(i)(I)(5), and (d)(1)(D)(i)(I)(6), the training requirements of paragraphs (i)(1) and (i)(2), the reporting of training certificate requirement of subclause (d)(1)(B)(ii)(XVI), and the on-site proof of training requirement of subparagraph (d)(1)(G) and subdivision (i) shall not apply to the exclusive removal of asbestos-containing packings, gaskets, resilient floor covering and asphalt roofing products which are not friable, have not become friable, and have not been subjected to scraping, sanding, grinding, cutting, or abrading.*

Paragraph (j)(9) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(10) as deemed appropriate and clarify who may qualify as an owner-occupant and use this exemption to avoid complying with the provisions of Rule 1403. Staff proposes adding a reference to the definition of a residential single-unit dwelling, and clarifying that the owner-operator must reside at the property and

solely and personally conduct the renovation. The proposed rule language in paragraph (j)(10) is as follows:

(~~9~~10) The provisions of this rule shall not apply to an owner-occupant, as defined in paragraph (c)(33), of a residential single-unit dwelling, as defined in paragraph (c)(40), who resides at the property and solely and personally conducts a renovation activity at that dwelling.

Paragraph (j)(11) – Proposed Revised Language

Staff proposes to change the paragraph number to (j)(12) as deemed appropriate, and clarify this exemption by adding a reference to the definition of a residential single-unit dwelling. The proposed rule language is as follows:

(~~10~~12) The survey requirements of subparagraph (d)(1)(A) shall not apply to renovation activities of residential single-unit dwellings, as defined in paragraph (c)(40), in which less than 100 square feet of surface area of ACM are removed or stripped.

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

CHAPTER 3: KEY ISSUES OF PROPOSED AMENDED RULE 1403

- SUMMARY OF KEY ISSUES
- KEY ISSUES CONCERNING THE ENFORCEMENT OF RULE 1403
- KEY ISSUES FOR THE REGULATED COMMUNITY

SUMMARY OF KEY ISSUES

Staff has conducted five (5) Working Group Meetings (WGM's) to gather information from stakeholders and present the position for amending Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities.

The first two meetings were organized to present basic information about the health effects from asbestos exposure, common areas of exposure to asbestos, current rule requirements, and some common issues that District compliance staff has encountered while enforcing Rule 1403. The goal was to work with stakeholders to find areas of agreement, smooth out some of the areas of contention, and find common ground to move forward with the amendment process.

During WGM's #3 and #4, staff presented draft rule language to the stakeholders in order to garner early feedback on the initial proposals and continue ongoing discussions. The plan to release draft rule language facilitated a lot of feedback and some of the rule language has undergone more than a few changes. Staff has summarized key issues and how the rule language addresses, if possible, these subjects. Staff has also committed resources to develop an enhanced frequently asked questions (FAQ) document. These FAQs will assist the regulated community in addressing many compliance questions which were not spoken to with any particular proposed rule revision.

Key issues concerning the enforcement of Rule 1403

The common issues encountered by District staff which have resulted in proposed amendments to Rule 1403 are as follows:

- Incomplete on-site sampling of suspected ACM including, but not limited to, inadequate number of samples
- Incomplete survey reports lacking basic information including, but not limited to, sampling information, asbestos consultant information, and site diagrams
- Uncertainty with lab results including, but not limited to, improper analysis (determination of less than 1.0% asbestos without proper test method), compositing or combining materials for analysis leading to diluted results, and inadequate chain of custody
- Improper use of Emergency Notifications to start projects without delay when Rule 1403 and the NESHAP require a 10 business day (14 calendar days) notification period to allow for inspection scheduling
- Notifications lacking necessary information including, but not limited to, OSHA and Department of Toxic Substance Control (DTSC) registration numbers, asbestos consultant information, training certificates, site owners, and on-site personnel
- Inadequate recordkeeping and the lack of availability of on-site records

With the proposed rule language, staff has addressed many of these concerns while removing ambiguity that has led to a misunderstanding between District staff and the regulated community. While there are other proposed changes in the rule language, this is simply a summary of the key issues encountered by our compliance staff.

Incomplete on-site sampling of suspected ACM

Staff has proposed language in paragraph (h)(1) to address sampling requirements. Staff has clarified the number of samples required for homogeneous material and set minimum quantities based upon surface area of material. While the regulated community may contend that the sampling protocol is too burdensome or impractical, District staff asserts that these minimum standards are consistent with current EPA guidance and necessary to assure that ACM is uncovered in efforts to further protect public health and safety.

Incomplete survey reports

Staff has proposed language in clauses (d)(1)(A)(i) through (v) which will close some of the uncertainty with what information is required when inspecting, surveying, sampling, and assessing the presence of asbestos within a facility. Staff provides clarification in the rule language that a certified asbestos consultant must perform the survey, and spells out more clearly what types of information shall be included with a survey report.

Uncertainty with lab results

Staff has proposed rule language in paragraph (h)(2) to address the test method that must be utilized to quantify and determine accurately the asbestos content of a sample. If any sample is analyzed at trace levels, or less than 1.0%, with PLM, then proposed rule language will require 400-point counting, at the minimum, to verify the asbestos content. This language is not a novel idea, but is supported by EPA documents and guidance. While the regulated community may find the approach as onerous, this method is in-line with the NESHAP. Additionally, nothing precludes the regulated community from performing other methods proven to be as accurate, if not more so, than 400-point counting. There is, also, nothing to prohibit the regulated community from assuming or presuming any material is asbestos containing and avoid these testing procedures; which is addressed with an exemption in paragraph (j)(4). Staff has proposed additional rule language in subparagraph (h)(2)(D) to clarify that the regulated community may stop the analysis of subsequent bulk samples if the first sample bares a positive result of asbestos greater than 1.0%.

Improper use of Emergency Notifications

Staff has proposed rule language in subclause (d)(1)(B)(iv)(V) which will require either that the owner and the contractor sign the emergency declaration letter or the owner must have the emergency letter notarized to verify the identity of the signer. Staff proposes this rule language

because, at times, the emergency letter is being used to bypass the 10 working day waiting period. Emergency letters have been submitted fraudulently and even signed by persons other than the owner/operator of the facility. Additionally, staff proposes language that the letter must contain a legal disclaimer stating that the person signing the documents is signifying that the information contained within is true and correct.

Notifications lacking necessary information

Staff has proposed rule language with revisions in subclauses (d)(1)(B)(ii)(I) through (XVI) and the addition of subclauses (d)(1)(B)(ii)(XVII) through (XIV) to clarify precisely the information that shall be required with the Notification.

Inadequate recordkeeping and the lack of availability of on-site records

Staff has proposed rule language with revisions in clauses (d)(1)(H)(i) through (iv) and the addition of clauses (d)(1)(H)(v) through (vii) to clarify precisely the information that shall be required for on-site records.

Key issues from the regulated community

During the five (5) WGM's with stakeholders, many concerns were raised about the proposed amendments to Rule 1403. As mentioned previously, staff addressed many of the concerns through the FAQ document; which includes answers to compliance questions that are not addressed by the rule amendment. Many of the topics discussed were more about a misunderstanding, rather than a mandate to revise the rule. Below is a list of the key issues from the regulated community:

- The proposed amendments are going to require unnecessary sampling
- The NESHAP allows for composite analysis of wall systems; which Rule 1403 will disallow
- Previous management and enforcement of Rule 1403 allowed for shorter notification periods for essential public services (water, electricity, and gas)
- Whenever there is a change to the start date, end date, or the quantity of asbestos abated, the system charges a fee; which seems excessive
- Emergency notifications are denied because staff doesn't believe it is truly an emergency
- The proposed amendments do not allow for AHERA trained building inspectors to perform surveys at their place of employment; which is allowed by Cal/OSHA
- Previous surveys will become invalidated when the proposed rule language is adopted
- Requiring three (3) samples for very small areas is impractical
- The start date and end dates for a project are ambiguous and should be clarified

With the proposed rule language, staff has addressed many of these concerns, and removed ambiguity. Many more questions have been addressed and answered in the FAQs. While there are other proposed changes in the rule language, the following is a summary of the key issues brought up by the regulated community and addressed by staff.

The proposed amendments are going to require unnecessary sampling

Staff stands by the sampling protocol and the proposed rule language to require a minimum number of samples based upon square footage. Rule 1403 was adopted in 1989 with the inclusion of friable and non-friable materials as regulated ACM. As stated earlier in this report, the American Society for Testing and Materials (ASTM) has published an ASTM standard, ASTM E2356-14 “Standard Practice for Comprehensive Building Asbestos Surveys,” where it recommends a minimum of three (3) samples to be obtained when sampling suspected ACM. Sections 6.1.4, 6.4.6.2, 6.4.6.3, and 6.4.6.4 consider three (3) bulk samples as the minimum standard for sampling of suspected ACM.

Previous management and enforcement of Rule 1403 allowed for shorter notification periods for essential public services (water, electricity, and gas)

Rule 1403 subclause (d)(1)(B)(i)(I) requires that a notification shall be submitted to the District no later than 10 working days (14 calendar days) before any demolition or renovation activities other than emergency demolition, emergency renovation, planned renovations involving individual Nonscheduled Renovation Operations begin. Current staff is unaware of any practices by previous management, but both the NESHAP and Rule 1403 require this notification period to have opportunity for enforcement officials to perform inspections as time allows. We are unable to be less stringent than the NESHAP in establishing requirements for renovation/demolition activities involving asbestos.

Staff has proposed new language to define an Emergency Renovation as “any renovation that was not planned and results from an imminent threat to public health and/or safety, a sudden unexpected event that results in unsafe conditions, or encountering previously unknown ACM during demolition or excavation.” Staff will consider waiving the 10-day notification period if the situation meets any of these three (3) conditions independently from one another. Staff, also, considers any situation that may result in injury or death, and must be corrected ASAP, as something that a facility does not need to pause for notification. After the immediate threat is contained, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up. Proposed Amended Rule 1403 language will be included to clarify that these steps (secure, stabilize, and survey) are also required for disturbed suspect ACM resulting from a sudden unexpected event.

If disturbed or damaged Asbestos-Containing Material (ACM) is in the public right-of-way and cannot be adequately secured and stabilized, this is considered an immediate threat to

public health ~~and~~or safety, and the abatement contractor responsible for the clean-up should call the Asbestos Hotline at (909) 396-2336 (during SCAQMD regular business hours [Tuesday through Friday, 7 AM to 5:30 PM]) or 1-800-CUT-SMOG (after regular SCAQMD hours), and request to speak to an asbestos supervisor to immediately review a Procedure 5 notification.

The NESHAP allows for composite analysis of wall systems, but Rule 1403 will prohibit

Staff stands by the understanding that Rule 1403 currently requires analysis of each individual layer of a wall system and is attempting to clarify this position with the proposed rule language to remove all ambiguity. Currently Rule 1403 clause (d)(1)(A)(i) states that *“The survey shall include the inspection, identification, and quantification of all friable, and Class I and Class II non-friable asbestos-containing material, and any physical sampling of materials.”* By utilizing composite analysis of any bulk sample, the result would not meet the intention of the currently written rule. Combining materials for analysis, which is by definition a composited analysis, would not identify and/or quantify all homogeneous friable and Class I and Class II non-friable ACM. We also note that at least one other jurisdiction, the Texas Department of Health Services, does not allow for the analysis of composited samples for wall systems for purposes of abatement in public buildings. Finally, in their Construction Standard for Asbestos, OSHA explicitly does not allow for composite analysis of wall systems, citing the potential risk of asbestos exposure to joint compound even though it is a relatively small portion of the wall system.

When the invisible asbestos fibers are inhaled, they can remain in the lungs for a long time, increasing the risk for severe health problems such as lung cancer, mesothelioma, and asbestosis (Cannizzo, J.V. (2004). Asbestos: a legal primer for Air Force installation attorneys. *Air Force Law Review*, 54, 39-64). Suspected ACM in construction materials such as wallboard systems, had, at one time, affected nearly 1.3 million people in the construction industry (United States Department of Labor. OSHA Fact Sheet. Asbestos. DEP FS-3507. 01/2014 and United States Department of Labor. Fact Sheet No. OSHA 92-06. Better Protection against Asbestos in the Workplace). Death certificates of drywall construction workers have been found to indicate mesothelioma and excess lung cancer deaths (Boelter, Xia, & Dell, 2014, p. 860). Staff understands that the use of joint compound containing greater than two percent (2%) asbestos was widespread in the industry, and that in many cases is used in a way more approximating a skim coat than merely to cover taping joints and nail holes. With today’s active construction industry, activities related to renovation and demolition are expected to increase proportionally, and, as a consequence, exposure to asbestos from the disturbance, or removal, of ACM is expected to rise in turn. Therefore, SCAQMD staff recognizes and considers wallboard systems a significant potential asbestos source warranting regulation under the provisions of Rule 1403.

Whenever there is a change to the start date, end date, or the quantity of asbestos abated, the system charges a fee; which seems excessive

Fee rules and policies are set through SCAQMD Rule 301 – Permitting and Associated Fees and cannot be addressed by an amendment to Rule 1403. Staff recognizes this is a valid concern and will work with the rule developers when Rule 301 is opened for amendments and put forward the regulated communities concerns about the fees.

Emergency notifications are denied because staff doesn't believe it is truly an emergency

Staff has proposed new language to define an Emergency Renovation as “any renovation that was not planned and results from [an imminent threat to public health and/or safety](#), a sudden unexpected event that results in unsafe conditions, [or encountering previously unknown ACM during demolition or excavation](#).” Staff will consider waiving the 10-day notification period if the situation meets any of these three (3) conditions independently from one another. Staff believes this additional rule language will help alleviate some concerns where previous emergencies did not meet the definition; which required a sudden and unexpected event to occur along with imminent threat to public health [and/or](#) safety.

The proposed amendments do not allow for AHERA trained building inspectors to perform surveys at their place of employment; which is allowed by Cal/OSHA

Staff has contacted Cal/OSHA and clarified that employees may perform inspections, surveys, and obtain samples if they possess a current and valid certificate from a Cal/OSHA approved AHERA building inspector training course. Staff has proposed new rule language in clause (d)(1)(A)(v) to correct this omission.

Previous surveys will become invalidated when the proposed rule language is adopted

Previous surveys will not become invalidated if the ~~governing~~[Governing Board](#) adopts the proposed rule language. However, previous survey reports that show sample results which are less than 1.0% must have been point counted and the minimum number of three (3) samples must have been analyzed to be validated as a proper survey under the current rule language.

Requiring three (3) samples for very small areas is impractical

Staff is proposing new rule language for small areas of Class I & Class II non-friable materials. Staff has proposed new rule language in subparagraph (h)(1)(A) that only one (1) sample will be required for each homogeneous area that is less than 16 square feet of Class I or Class II non-friable suspected ACM.

The start date and end dates for a project are ambiguous and should be clarified

Staff has proposed new rule language to address this ambiguity. The start date and end dates will have clear descriptions within Subdivision (c) – definitions.

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

CHAPTER 4: IMPACT ASSESSMENT OF PROPOSED AMENDED RULE 1403

- EMISSION IMPACT ASSESSMENT
- COST ANALYSIS
- INCREMENTAL COST EFFECTIVENESS
- CALIFORNIA ENVIRONMENTAL QUALITY ACT
- SOCIOECONOMIC ASSESSMENT
- COMPARATIVE ANALYSIS
- DRAFT CONCLUSIONS AND RECOMMENDATIONS

EMISSION IMPACT ASSESSMENT

Staff does not anticipate any real quantifiable emission reductions or increases, since the proposed amendment seeks to align Rule 1403 with the NESHAP, other California APCDs/AQMDs, and District prior practices, will not lead to major changes in operations, and thus will be administrative in nature.

COST ANALYSIS

~~The proposed amendment to Rule 1403 is not expected to have a net cost impact, since industry will be able to continue business as usual and operate in a similar manner to the current rule. Updated rule language clarifies compliance requirements already included in the NESHAP or previous versions of Rule 1403. Staff determined that any additional cost to surveys and/or increased sampling may be offset by deciding more frequently to presume or assume the presence of asbestos and not accruing the laboratory expense of analysis. Additionally, staff has proposed language to clarify that lab analyses may cease after the first positive result which indicates a sample is ACM. Therefore, the cost burden is not substantial and the associated costs are expected to be minimal.~~

The proposed amendment to Rule 1403 is not expected to have a net cost impact, since industry will be able to continue business as usual and operate in a similar manner to the current rule. Updated rule language clarifies compliance requirements already included in the NESHAP or previous versions of Rule 1403. Staff believes that any businesses that decide to increase surveys and/or increase sampling due to the amended rule will be offset by other businesses deciding to more frequently assume that asbestos is present, thus not accruing the laboratory expense of analysis. Additionally, staff has proposed language to clarify that lab analyses may cease after the first positive result which indicates a sample is ACM. Therefore, the cost burden is not substantial and the associated costs are expected to be minimal.

INCREMENTAL COST-EFFECTIVENESS

Proposed Amended Rule 1403 will not result in emission reductions and therefore no incremental cost analysis is required under Health and Safety Code § 40920.6.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

~~Staff has reviewed the proposed project pursuant to California Environmental Quality Act (CEQA) Guidelines §15002(k)(1) and has concluded that the proposed project is administrative in nature because it merely involves clarifying rule language to reflect existing practice, which does not create any new adverse impacts to the environment. Therefore, it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment and, therefore, is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3). Upon approval of the proposed project, a notice of exemption will~~

~~be prepared pursuant to CEQA Guidelines §15062 and sent for posting to the county clerks in the four counties within the jurisdiction of the SCAQMD.~~

Pursuant to the California Environmental Quality Act (CEQA) and SCAQMD Rule 110, the SCAQMD, as lead agency for the proposed project, has reviewed the proposed amendments to Rule 1403 pursuant to: 1) CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and 2) CEQA Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA.

SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment. Therefore, the project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule. Furthermore, the proposed amendments are considered categorically exempt because they are considered actions to protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. Further, SCAQMD staff has determined that there is no substantial evidence indicating that any of the exceptions to the categorical exemptions apply to the proposed project pursuant to CEQA Guidelines Section 15300.2 – Exceptions. Therefore, the proposed project is exempt from CEQA. A Notice of Exemption has been prepared pursuant to CEQA Guidelines Section 15062 - Notice of Exemption. If the proposed project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties.

SOCIOECONOMIC ASSESSMENT

~~No socioeconomic impact assessment was performed for the proposed amendments, because the proposed amendments are administrative in nature and will not result in cost impacts and the amendment will not significantly affect air quality or emissions limitations.~~

No socioeconomic impact assessment was performed for the proposed amendments, because the proposed amendments only clarify existing requirements, are administrative in nature, and will not significantly affect air quality or emissions limitations. Additionally, updated rule language clarifies requirements already included in the NESHAP and/or previous versions of Rule 1403 and are not expected to result in increased compliance costs for facility owners, general contractors, contractors, subcontractors, consultants and others who work with asbestos.

COMPARATIVE ANALYSIS

No comparative analysis is necessary. Health and Safety Code § 40727.2 states that a comparative analysis is not required if the proposed amended rule “....does not impose a new emission limit or standard.”

DRAFT CONCLUSIONS AND RECOMMENDATIONS

Staff recommends Rule 1403 – Asbestos Emissions from Renovation/Demolition Activities be amended as proposed.

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

CHAPTER 5: PUBLIC COMMENTS

PUBLIC COMMENTS AND RESPONSES

~~Public comments and staff responses will be addressed following the Public Workshop~~

PUBLIC WORKSHOP

The following stakeholder comments and staff responses were discussed at the October 31, 2018 Public Workshop for PAR1403 – Asbestos Emissions from Demolition/Renovation Activities.

Stakeholder Comment #1:

Proposed Amended Rule (PAR) 1403 subparagraph (h)(2)(A) states that a sample with no asbestos does not have to be point counted. However, to confirm no asbestos was detected, survey reports shall document three (3) subsamples were prepared and examined in their entirety. Can the wording be changed to state the “lab report” must document subsamples, since the asbestos consultant is using the lab report to document asbestos content?

Staff Response:

Staff has reconsidered its position. Rule 1403 is not intended to impose lab procedure requirements of this type for laboratories who are certified by the National Voluntary Laboratory Accreditation Program (NVLAP). In consideration of this point, we have removed the proposed rule language requiring the survey report to document subsamples. It is recommended that the asbestos consultant verify the laboratory is otherwise aware of the requirements within PAR 1403 and all samples are analyzed accordingly.

Stakeholder Comment #2:

PAR 1403 paragraph (j)(12) states “The survey requirements of subparagraph (d)(1)(A) shall not apply to renovation activities of residential single-unit dwellings, as defined in paragraph (c)(40), in which less than 100 square feet of surface area of ACM are removed or stripped”. PAR 1403 (d)(1)(C)(ii)(V) states “If for any reason, any renovation or demolition results in an associated disturbance of ACM or Class II nonfriable ACM outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up.” Are there contradictions within these two portions of Rule 1403?

Staff Response:

The exemption from the survey requirement for areas less than 100 square feet only applies to undisturbed or undamaged ACM that is going to be removed. If material is disturbed or damaged outside of a containment or work area, then the exemption under paragraph (j)(12) does not apply and an approved Procedure 5 plan is required prior to clean-up. Clean-up of damaged or disturbed asbestos always requires an approved Procedure 5 plan.

Stakeholder Comment #3:

With regards to PAR 1403 subparagraph (h)(2)(A), NVLAP certified laboratories already analyze three (3) subsamples, so this is redundant or unnecessary language.

Staff Response:

See Staff Response to Stakeholder Comment #1

Stakeholder Comment #4:

PAR 1403 paragraph (c)(47) defines visible emissions. How will visible emissions be enforced according to Rule 1403? If a puff of smoke comes from a controlled work area, then will this be considered a violation?

Staff Response:

The definition for visible emissions in PAR 1403 specifically states, "...emissions or evidence of emissions coming from asbestos related activities found outside the isolated work area or on-site storage," so only visible emissions including track-out are determined or discovered outside of the asbestos related work area would be in violation of this subparagraph. If the smoke, dust, or other materials are confined to the work area for the asbestos related activities, then it would not be considered a violation of Rule 1403. Visible emissions from activities unrelated to the asbestos project would be regulated in District Rule 403 and would be handled according to the enforcement guidelines of that regulation.

Stakeholder Comment #5:

Subclause (d)(1)(A)(iii)(V) states a survey is required to contain "A table of all suspected materials tested, the area of each homogeneous material, the asbestos content of each material tested, and percent of the area that is damaged." How exact do you need to be?

Staff Response:

Staff considers the requirements for stating the percent (%) of the area that is damaged to be an estimated amount and the rule language has been revised to state an "estimated" percent (%) damage.

Stakeholder Comment #6:

The applicability of PAR 1403 in subdivision (b) includes asbestos consultants (AC). Is it the intention to cite the AC, through Notices to Comply or Notices of Violation, for records, surveys, pictures, contracts, and/or field notes; which may be proprietary information between the facility owner and the contractor?

Staff Response:

It is not SCAQMDs intention to hold the asbestos consultant responsible for portions of the rule that are not their responsibility or under their control; therefore, no enforcement action would be taken against an asbestos consultant for violations unrelated to the requirements and duties recognized to apply to the conduct of an AC under the rule. Given specific facts, however, an AC may also be an owner or operator for a demolition or renovation activity on a broader basis (for example, when a renovation activity is conducted on property owned by an AC).

Stakeholder Comment #7:

Can you identify what portions of the rule you will cite as applicable parties within PAR 1403 subdivision (b) - Applicability? Will you cite any person for work outside of their control?

Staff Response:

Ultimate responsibility for the compliance with Rule 1403 falls on the owners or operators of a demolition or renovation activity. While multiple individual and entities may be cited for conduct that violates the Rule, the general objective is to only hold parties responsible for things in their control or administration. This will generally promote the best compliance and deter violations by persons that are in positions to avoid the non-compliant conduct. Staff cannot write rule language that would limit Rule applicability for persons listed in the PAR1403 subdivision (b) on applicability, because it is not possible to do so without improperly limiting enforcement discretion for all varieties of cases where persons would be considered, for purposes of the Rule, as the owner or operator of the demolition activity.

Stakeholder Comment #8:

We do not include laboratories in the applicability subdivision (b) of PAR 1403, but we dictate laboratory procedures in paragraph (h)(2). Do we intend on holding the asbestos consultant responsible for lab?

Staff Response:

We do not dictate laboratory procedures in PAR 1403, but simply clarify the minimum analysis that must occur to classify a sample as either ACM or non-ACM. NVLAP certified laboratories will follow their analytical standards for preparing and analyzing samples. PAR 1403 simply states "For a sample in which the amount of asbestos is detected and determined by Polarized Light Microscopy (PLM) to be less than 10%," then the sample must be point counted to verify that the material is not ACM or it must be treated as such for renovation of demolition activities. This would include samples that are analyzed and reported on laboratory reports as trace, or less than one-percent (1.0%), by PLM.

Stakeholder Comment #9:

Can we have the FAQs as part of the staff report?

Staff Response:

The FAQs will be a living document to provide guidance to the regulated community, and subject to revisions for clarification, therefore, we will not be including it with the staff report. The current version of the FAQs are available on the AQMD website.

Stakeholder Comment #10:

PAR 1403 does not specifically address asbestos containing construction material (ACCM); which would be material that contains less than one-percent (1%) asbestos. Compliance requires point counting for any sample that is less than 10% when analyzed by PLM, but trace amounts and ACCM are not addressed in the rule.

Staff Response:

If a separate and distinct analysis of ACCM confirms that this material is less than one-percent (1.0%), then the owner-operator may dispose of the ACCM at a landfill that accepts asbestos according to the appropriate solid waste disposal laws and regulations. However, any suspected ACM that was removed from a facility has to be analyzed according to subparagraph (h)(2)(A). See Staff Responses to Stakeholder Comments #16, #24, and #25.

Stakeholder Comment #11:

If the rule is adopted, is there an appeal process?

Staff Response:

Our rule adoption process is subject to CA law and the rule development process has followed the same procedures by which all of our rules are adopted and amended. When the Governing Board votes to adopt a rule and make it effective, there is no administrative appeal process. Instead, adversely affected parties who would contend an adopted rule to not comply with California law may seek independent judicial review of those claims.

Stakeholder Comment #12:

PAR 1403 Item (d)(1)(D)(i)(III)(4) states “only non-power tools shall be used to remove nonfriable ACM.” There are power tools (e.g. roof warrior) which are used to remove these materials. Do we intend on banning this type of equipment?

Staff Response:

Under the existing provisions of Rule 1403, this type of equipment cannot be used for the purposes of removing ACM. Projects subject to the NESHAP are similarly, precluded from the use of any power equipment to be used for the removal of ACM.

Stakeholder Comment #13:

PAR 1403 (d)(1)(C)(ii)(V) states, “If for any reason, any renovation or demolition results in an associated disturbance of ACM outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up.” Does this imply that if some asbestos has been disturbed, even less than 100 sq. feet, then we have to prepare a procedure 5 plan?

Staff Response:

Yes, once ACM is disturbed or damaged, then an approved Procedure 5 plan must be submitted. The exemption applies to undisturbed or undamaged ACM; if less than 100 square feet of undisturbed or undamaged ACM is being removed, then you may have a specific exemption. However, there are no exemptions from all parts of the rule unless you are an owner-occupant, as defined in PAR 1403, and perform the work alone.

Stakeholder Comment #14:

Can there be a de-minimis amount for small projects where sampling or removal is not subject to this rule? AHERA has 3 square feet. Can we have some small amount which would not be subject to 1403?

Staff Response:

AHERA mentions small-scale projects, but does not mention a specific square foot defining small-scale projects. It does mention patched thermal system insulation of less than six (6) linear or square feet, but this is a specific type of ACM. Staff does not see a way forward for any de-minimis amount since small amounts may be spread over wide areas and may impact public health in ways that larger areas of undisturbed ACM may not have a significant effect during renovation.

Stakeholder Comment #15:

Paragraph (j)(1) states, "...If ACM has been disturbed or damaged as a result of, or as part of the response to, the hazardous situation, a Procedure 4 or 5 (Approved Alternative) clean-up plan must be submitted by the end of the next business day and approved prior to any asbestos clean-up." It is unreasonable to require a plan to be submitted this quickly. The survey and preparation takes more time to prepare.

Staff Response:

Staff has agreed with this comment and amended the proposed rule language to require a plan within three (3) business days.

Stakeholder Comment #16:

The requirement for point counting on samples which contain trace or less 1% asbestos is not completely spelled out. It is confusing with current language of less than 10%.

Staff Response:

Any samples which are analyzed with PLM and visually "estimated" to be less than 10%, including less than one-percent (1.0%) or trace amounts, must either be presumed or assumed to be ACM, or point counted to determine the actual asbestos content. A sample which is deemed trace, or less than one-percent (1.0%), by PLM analysis would be recognized as a sample that is less than 10% and would need to be point counted to verify it is not ACM. Only samples that do not contain asbestos when analyzed with PLM (e.g. non-detect) do not have to be point counted.

Stakeholder Comment #17:

Subparagraph (h)(1)(A) states friable surfacing material shall be collected in sample quantities of 3, 5, or 7 depending on square footage. Should non-friable surfacing material (e.g. stucco) be covered under the same 3-5-7 guidelines?

Staff Response:

PAR 1403 previously referenced the Asbestos Hazard Emergency Response Act (AHERA) as the principle regulation for guiding the sampling protocol. AHERA requires up to seven (7)

samples for friable surfacing materials only, so staff has adopted this rule language verbatim. Additionally, PAR 1403 has set minimum standards for other types of materials following the guidelines within the American Society for Testing and Materials (ASTM) standard E2356-14 “Standard Practice for Comprehensive Building Asbestos Surveys,” where it specifies minimum of three (3) samples to be obtained when sampling many other types of suspected ACM.

Stakeholder Comment #18:

PAR 1403 clause (h)(2)(c)(i) states, “A minimum of one sample shall be collected from each area of homogeneous material that is 16 square feet or less.” Can we raise this 16 square feet to a higher amount (e.g. 100 or 500 square feet)?

Staff Response:

Staff believes this standard is commensurate with the protection of public health. 16 square feet corresponds with an area 4 foot by 4 foot, analogous to a small bathroom. Staff believes when taking samples of non-friable materials (e.g. resilient floor tile) from this small area, that one (1) sample would be sufficient to analyze for the presence of asbestos.

Stakeholder Comment #19:

Can newer buildings (e.g. a home built after the year 2000) be under an umbrella of less than 3 samples?

Staff Response:

Staff does not believe that any building, regardless of the year built, can reasonably be considered asbestos free. There is not a complete ban on all ACM and asbestos is still being used in building materials. To protect public health, staff believes only an asbestos consultant can determine whether there is suspected ACM, and whether the minimum sampling protocols within PAR 1403 would be sufficient to determine asbestos content. The US-EPA holds a similar position, and staff believes it is appropriate that our interpretation is consistent with that of the US-EPA.

Stakeholder Comment #20:

Paragraph (d)(12) states “The survey requirements of subparagraph (d)(1)(A) shall not apply to renovation activities of residential single-unit dwellings, as defined in paragraph (c)(40), in which less than 100 square feet of surface area of ACM are removed or stripped.” This is interpreted by some people to provide an exemption from the entire rule and allow that any person can do the abatement. Can you clarify?

Staff Response:

Rule 1403 is currently written specifically to exempt those renovation activities less than 100 square foot of surface area only from the survey requirements or subparagraph (d)(1)(A). It does not exempt any person from the entire rule or any other portion therein. Staff will address this misunderstanding in the FAQs.

Stakeholder Comment #21:

If waste is stored on-site, does that require the end-date to remain open until the asbestos containing waste material (ACWM) is removed? Will this not consume unnecessary inspection time when the desire of compliance is to witness actual abatement activities?

Staff Response:

The storage of waste is part of the Rule 1403 Notification and part of the inspection process, it is not considered an unnecessary inspection activity. The goal of our proposed amendments is to limit compliance activities where the inspector arrives at an inspection site where absolutely no activity, including the storage of waste, is occurring during the notification period.

Stakeholder Comment #22:

Because samples in the AHERA regulation refers to “samples” in the plural form then are two samples not always the minimum? Reconsider one (1) sample for less than 16 square feet.

Staff Response:

Staff believes the requirement for one (1) sample for such a small area of non-friable suspected ACM is sufficient to determine the asbestos content for this type material.

EMAILS AND LETTERS

The following stakeholder comments and staff responses were received by e-mail and postal mail following the October 31, 2018 Public Workshop for PAR1403 - Asbestos Emissions from Demolition / Renovation Activities.

Stakeholder Comment #23:

The 400 point count will satisfy AQMD but not Cal-OSHA requirements for employee protection. AQMD should require the 1000 point count, in consideration of Cal-OSHA requirements. Not doing so would create additional cost burden on consumers when the results are used by only one regulatory agency.

Staff Response:

Since alignment with the NESHP, where appropriate, is the goal of these amendments and the Test Methods regulated in paragraph (h)(2) point to 40 CFR Part 763 Appendix E to Subpart E or the EPA Method for the Determination of Asbestos in Bulk Building Materials (EPA/600/R-93/116) as the guiding documents. The minimum requirement within the 40 CFR Appendix E to Subpart E § 1.7.2.4 “Quantitation of Asbestos Content” states that asbestos quantitation is performed by a point-counting procedure (specifically 400 points) or an equivalent estimation method. Nothing precludes a sample from being analyzed by more stringent methods, including 1000-point counting, but SCAQMD does not wish to mandate this requirement believing this would be overly expansive and beyond the original intent of Rule 1403.

Stakeholder Comment #24:

Would the analysis of composite sampling be allowed for the purposes of waste disposal of stucco and drywall? The disposal costs of such materials if the composite is less than 1%, would be a huge economic burden to the public.

Staff Response:

PAR 1403, as it pertains to renovation or demolition, specifically forbids this and mandates that all separable layers must be analyzed independently. If any layer confirms the presence of asbestos at greater than one-percent (1.0%), then it must be removed in compliance with Rule 1403. If a separate and distinct analysis of a composited sample confirms that the combined material is less than one-percent (1.0%), then the owner-operator may dispose of the ACWM at a landfill that accepts asbestos, according to the appropriate solid waste disposal laws and regulations.

Stakeholder Comment #25:

Please revisit the requirements for the test results of less than 1% in each layer (trace). Point count should not be required. Back in 1990's, the EPA's intention in the rules was that less than 1% by PLM, is not even ACM. EPA's intention behind point counting was to give the option to analyze for the more than 1% and less than 10%. They did that for the possibility that the material may become less than 1%, and relieve the costs of the operations. It is a huge economic burden on the public and property owners to pay for point count on three samples minimum, while the statistics has not shown that the results would go over 1%, if the analysis is done by an NVLAP laboratory. I did not see anyone pointing to this issue of the statistically reliable data. While this requirement is a real financial advantage for consultants (like us) and the laboratories, it would break the back of the public, school districts, etc., and especially the people on fixed income. Based on my 31 years' experience as an asbestos consultant in Utah and California, I do not find it to be of ANY benefit on reducing the asbestos release or a safety concern. Cal-OSHA already has requirements for employee protection which would totally satisfy employee protection and using wet methods, isolation, site cleanups, HEPA vacuums, etc. That protection is totally perfect for trace amounts. Please take a close look at this new requirement.

Staff Response:

The US-EPA Applicability Determination Index Control Number: C112, dated May 8, 1991, specifically states, "A sample in which no asbestos is detected by PLM does not have to be point counted." However, it continues, "If the amount by visual estimation appears to be less than 10 percent, the owner or operator may (1) assume the amount to be greater than 1 percent and treat the material as asbestos-containing material, or (2) require verification of the amount by point counting." For purposes of NESHAP implementation and for our implementation of Rule 1403 with the appropriate and required consistency, we recognize EPA to not make any exception for trace amounts or an estimate of less than 1% by PLM. PLM is not precise enough to quantify asbestos content and the guidance specifically states that any sample that "appears" to be less than 10% shall be point-counted or treated as ACM. This includes samples where the lab report states "trace" or "less than 1%."

Stakeholder Comment #26:

The percent of damaged area should not be required in the report. We have AHERA guidelines for “Good, Damaged and Significant Damage” condition.

Staff Response:

Staff considered the requirement in Rule 1403 to mean an estimation of the percent of the area that is damaged. Rule language suggested an exact measurement and ratio be reported. In consideration of the comment, PAR 1403 rule language has been revised to reflect an estimation for percent (%) damaged.

Stakeholder Comment #27:

Can the asbestos consultant be held liable for the work of contractor? Please provide clarification.

Staff Response:

Rule 1403 subdivision (b) states, “This rule, in whole or in part, is applicable to... asbestos consultants.” Only the portions of the rule that are the responsibility of the asbestos consultant are applicable, unless the asbestos consultant is otherwise and additionally involved in the demolition or renovation activity (e.g., as an owner of the property).

Stakeholder Comment #28:

NVLAP should be the bench mark and should not be the CAC’s responsibility for lab results.

Staff Response:

In consideration of this comment, staff agreed and asbestos consultants shall not be held responsible for laboratory results. In response, staff has revised PAR 1403 rule language and removed any language that is the responsibility of the NVLAP certified laboratory (e.g. preparation of three (3) slide mounts). However, it is imperative that the asbestos consultant confer with their NVLAP laboratory of choice and verify that they are following any specific regulations in Rule 1403 (e.g. Point Counting samples that have been determined to contain asbestos by PLM).

Stakeholder Comment #29:

Asking for time of sample collection to be entered on a Chain of Custody (COC) is not reasonable, it is very time consuming with no benefits.

Staff Response:

Staff agrees and has removed this rule language from PAR 1403. However, the date and time that samples are transferred to a new custodian must be entered on the COC.

Stakeholder Comment #30:

Item (d)(1)(B)(ii)(XVIII)(2) states “Persons conducting asbestos surveys at the facility where they are employed exclusively, in accordance with subparagraph (d)(1)(A), shall possess a current and valid certificate from a Cal/OSHA approved AHERA building inspector training course.” That is not legal by Cal-OSHA. Cal-OSHA requires that only a CSST or CAC can collect the samples, and not someone with three (3) days AHERA training.

Staff Response:

We have received input from Cal-OSHA and in specific instances where an employee is performing surveys at their place of employment exclusively, Cal-OSHA allows for inspections, surveys, and sampling by this person if they possess a current and valid certificate from a Cal-OSHA approved AHERA building inspector training course. Cal-OSHA confirms that this course teaches specifics about inspections, surveying, and sampling.

Stakeholder Comment #31:

We highly recommend that a cut off amount of disturbance (such as 1-3 square feet) should be stated for Procedure 5, if possible.

Staff Response:

Staff has considered this proposal but stands by our conclusion that it is not possible to determine the amount of contamination by small areas of damage or disturbance, nor is it reasonable to assume that it could not be spread over a wider surface area. See Staff Response to Stakeholder Comment #14.

Stakeholder Comment #32:

Regarding paragraph (j)(1), a consultant would not be able to write a Procedure 5 (P5) clean-up plan by the next business day. We always have the area boarded up/blocked up right away, order emergency cleaning of public accessed areas. It takes time to get a contract approved, material tested, get lab results, prepare a report and write a P5. Normally about five (5) days minimum.

Staff Response:

In consideration of this comment, staff agreed and has revised PAR 1403 rule language to require a clean-up plan within three (3) business day. This requirement is only for those situations covered by the exemption in paragraph (j)(1) and in response to an emergency where there is risk of death or injury.

Stakeholder Comment #33:

Also, would you clarify how collecting composite samples pertains to piles of debris (for example for fire incidents) for waste disposal purposes?

Staff Response:

Property owners may have samples collected to determine how material is to be disposed as long as it is not in conflict with Rule 1403. In order to comply with Rule 1403 for the removal and abatement of these materials, identifiable suspect materials from within the debris pile must be sampled and analyzed for their asbestos content.

Stakeholder Comment #34:

Many companies or handymen who are not qualified to remove asbestos quote the "100 square feet" exemptions and believe they may remove or disturb ACM because their the work is under 100 square feet. I believe clear language in the rule that states only asbestos removal contractors listed at The Cal-OSHA Asbestos Registration may remove any ACM from a

facility unless being removed by the owner-occupant. There are no exceptions to this requirement based on how many square feet of ACM will be removed.

Staff Response:

Staff believes the exemptions are clear and each provides exemptions from specific portions of the rule only. Staff will address this issue in our enhanced Frequently Asked Questions (FAQs).

Stakeholder Comment #35:

Working Day Definition - Monday through Friday only. What about Saturdays and notifications where a revision would fall on the weekend. Does this mean we have until Monday to revise?

Staff Response:

The Rule 1403 Asbestos Notification Web Application is available seven (7) days per week, so any update of a notification may occur on the weekends.

Stakeholder Comment #36:

Notification: Completing notification by the “Person” performing the renovation. The wording should be by the “Operator”

Staff Response:

PAR 1403 subparagraph (c)(34) defines a “person” as “any individual, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner, or any state or local government agency or public district or any other officer or employee thereof”. “PERSON also means the United States or its agencies to the extent authorized by Federal law.” This would include anyone who is termed the “Operator.”

Stakeholder Comment #37:

PAR 1403 Subclause (d)(1)(b)(iv)(II) states, “The date and hour that the emergency occurred,” while the WebApp does not include an “hour” of emergency. This verbiage should be removed from 1403.

Staff Response:

Staff recognizes that the hour that an emergency occurred may have escaped the facility owner or may not be explicitly known, so the hour was not included with the Rule 1403 Notification Web Application. We have amended rule language and changed the requirement to the “approximate” hour; which should be included in the written emergency letter. Future changes to the Rule 1403 Notification Web Application may include the addition of the hour the emergency occurred to correspond to rule language.

Stakeholder Comment #38:

Revision of the Notification Start Date states that it shall be revised “no later than original start date.” We suggest within 24 hours of notification.

Staff Response:

The Notification Start Date can be modified through the Rule 1403 Notification Web Application at any time, seven (7) days per week (with the exception of short time periods when the web app is unavailable). The Start Date shall be revised no later than the original date or the facility will be in violation of Rule 1403.

Stakeholder Comment #39:

The definition for “facilities” under PAR 1403 paragraph (c)(20) is not in-line with other definitions in the AQMD rule book. Please clarify if the definitions for facilities are different across the rule book and will only apply to the specifics (lead, asbestos, etc.) for each covered pollutant and for reporting purposes.

Staff Response:

Definitions for facilities are rule specific and will vary across regulations.

Stakeholder Comment #40:

Please clarify who may conduct surveys for industrial sites. 8 CCR 1529 (k)(5)(B)(2) allows a Certified Industrial Hygienist and accredited inspectors to collect bulk samples and interpret results.

Staff Response:

PAR 1403 rule language specifically identifies who may conduct surveys to comply with Rule 1403 in clauses (d)(1)(A)(iv) and (v). These two (2) categories of persons are certified by Cal-OSHA and are confirmed as persons qualified to inspect, survey, and obtain samples of suspected ACM from a facility. See Staff Response to Stakeholder Comment #30.

Stakeholder Comment #41:

DOSH/Cal OSHA certifies and dictates the training requirements, protocols, and responsibilities for certified asbestos consultants, building inspectors, site surveillance technicians, project designers, supervisors, manager planners, and workers. Any added responsibilities to these individuals assigned outside the certified scope of practice could/may not be properly conveyed since they will not be required for certification and training. Additionally, the training centers may not convey the information during recertification session. Most training centers do convey 1403 requirements, since it is not part of the state requirements.

Staff Response:

See Staff Response to Stakeholder Comment #6.

Stakeholder Comment #42:

The label requirements in Rule 1403 are no longer in alignment align with the state and federal language as of 2017.

Staff Response:

PAR 1403 rule language has been revised to reference and reflect the most current labeling requirements.

Stakeholder Comment #43

I'm providing comment on the proposal to include damaged ACP as a nonfriable asbestos product. I feel this is a mistake since the material is actually quite capable of emissions even without mechanical damage. Crushed or Fractured Asbestos Cement products are already deemed RACM in the Federal NESHAP. Changing this to a Nonfriable material will be a relaxation of the Federal Asbestos NESHAP regulation and represent an unnecessary hazard to public health.

Staff Response:

Current rule language considers Asbestos Cement products as regulated ACM when removed or abated. All ACM (Friable, Class I ACM, and Class II ACM) must be removed in compliance with Rule 1403.

Stakeholder Comment #44

I think the rule could be simplified by simply changing the repetitive items. A contractor is the same as sub-contractor, or demolition contractor or asbestos contractor. The addition of "any person with a fiduciary interest" and "third-party advisors" to the applicability section may be inclusive of more individuals or entities.

Staff Response:

Staff believes clearly stating all contractors by name and type is the best path forward for assuring that all these persons understand their responsibility to comply with Rule 1403. However, adding terms such as "fiduciary interest" or "third-party advisors" are too generic to be effective and may be vaguer than current or proposed rule language.

Stakeholder Comment #45

To clarify the Chain of Custody, I suggest the relocation of the date and time information to Item (d)(1)(A)(iii)(VII)(1) and removing time from Item (d)(1)(A)(iii)(VII)(2). This would eliminate any confusion as to the date and time, since the time and date of each sample is not salient, the date when the work was accomplished and the material sent to the lab is salient.

Staff Response:

Staff believes that the survey report will contain the date and time of any inspection(s) and does not believe adding that requirement to Item (d)(1)(A)(iii)(VII)(1) has any additional benefit. Staff has removed the time requirement from Item (d)(1)(A)(iii)(VII)(2). See Staff Response to Stakeholder Comment #6.

Stakeholder Comment #46

Under this Paragraph (h)(2) add the following method information: "In order to develop an adequate risk assessment a licensed California Asbestos Consultant may use the assessment

tools for settled dust by using the ASTM Method ASTM D5755 or ASTM 5756 to determine if hidden reservoirs of asbestos fibers exist or if asbestos fibers exist that could be re-entrained into the air.”

Staff Response:

Staff considers the test methods proposed in PAR 1403 to be sufficient to determine the asbestos content of suspected ACM and is aligned with the Asbestos NESHAP. Wipe samples, while important to determine the extent of contamination in surrounding areas from damaged or disturbed ACM, does not identify the asbestos content of suspected ACM. It is the asbestos consultant’s discretion to pull Wipe or Micro-Vac samples for clean-up purposes, or compliance with other regulations, but it is not required to comply with PAR 1403.

Stakeholder Comment #47

Revise Item (d)(1)(D)(i)(III)(4) to state “Only permitted power tools shall be used to remove nonfriable ACM.” Otherwise any new methods would be forever banned and the use of a HEPA Vacuum could be construed as a violation of the rule. A vacuum is after all a power tool.

Staff response:

Current rule language states Power tools are not allowed to remove Nonfriable ACM. Staff considers the use of a HEPA vacuum as a cleaning tool and not used for the purpose of removing ACM.

Stakeholder Comment #48

A section discussing the need for a new survey could be simplified if we codified the following: “An outdated survey (more than 24 months since production) or “AS BUILT Drawings” that positively identified RACM can be used for mitigation purposes. A survey that is outdated and is a negative finding for regulated asbestos material cannot be used for demolition purposes. A survey that assumes the material is regulated can be used, and a policy that assumes materials such as buried utilities are positive and regulated asbestos material can be used in lieu of a site survey.

Staff Response:

Every facility, or facility components, requires a thorough and complete inspection or survey. A Survey is valid as long as the facility or condition of the facility has not changed since the survey was performed. Only an asbestos consultant, as defined in PAR 1403, can perform an inspection and survey, so “as built drawings” cannot be substituted for a survey performed by an asbestos consultant. A survey in which the suspected material has been presumed or assumed to be ACM can be used, but that survey must be performed and the survey report

signed by an asbestos consultant. Only an asbestos consultant may presume or assume material to be ACM and this still requires an on-site inspection.

Stakeholder Comment #49

Had a question with respect to (e)(3)(B). Reference is to 29 CFR 1910.145(d)(4), but I thought this requirement was for signs specific to a site, not for those signs used for over-the-road shipments of hazardous waste, which are covered by Title 49. The language in the scope below appear to state that this section is not for signs used for streets, highways, and railroads. If this section is for waste shipments, is there any thought on using the same format as in (e)(1), where the regulation is called out rather than specific wording?

Staff Response:

This reference to 29 CFR 1910.145(d)(4) is specific to background colors and font colors for signage. Staff believes the four Subparagraphs under Paragraph (e)(3) are a straightforward way to delineate sign requirements for Transportation Vehicles.

COMMENT LETTER #1



**City of Anaheim
PUBLIC UTILITIES DEPARTMENT
Environmental Services**

November 13, 2018

Bradley McClung
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition /
Renovation Activities

Dear Mr. McClung:

BACKGROUND

The City of Anaheim Public Utilities Department (the Department) is responsible for providing clean, reliable water and electricity to Anaheim’s residents, businesses, and visitors. Anaheim takes the protection of both public and worker health and safety seriously. Asbestos containing materials (ACM) are present in some parts of the water system through the use of asbestos cement (AC) pipe. AC pipe was installed in the mid-1900s due to its high strength a resistance to corrosion. This material has proven to be a resilient pipe material. Our staff is trained to handle AC pipe in accordance with state, federal, and local rules, and our use of AC pipe poses no threat to the public. Renovation and demolition of this material is regulated by the South Coast Air Quality Management District (AQMD)’s Rule 1403 (the Rule). As a user of ACM, we have several comments related to the draft Rule. For the purposes of these comments, “utility” refers to water systems and electric providers. The Existing Rule refers to the approved Rule dated October 5, 2007. The Proposed Rule refers to the draft Rule dated October 31, 2018. The Staff Report refers to the Preliminary Draft Staff Report dated October 31, 2018.

REGULATORY STATUS

As background, California recognizes the low-risk, yet essential, maintenance work that utilities conduct on AC pipe. California Labor Code Section 6501.8(c) specifically excludes AC pipe operations from their definition of “asbestos-related work” when conducted by trained workers. The California Division of Occupational Safety and Health (Cal/OSHA) has established training requirements for utility workers (17 CCR 341.17) who work with AC pipe (AC Pipe Worker training). Our Department staff continues to maintain these certifications.

AQMD staff has expressed concern about maintaining compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP). Our work with ACM involves maintenance and repair on existing AC pipe in the water distribution system. This include replacing valves connected to AC pipe, tapping AC pipe to add customer water connections, and repairing broken AC pipes. Under NESHAP, projects that disturb less than 260 linear feet of regulated asbestos containing material (RACM) are exempt from NESHAP (40 CFR 61.145(a)(1)(i)). Intact AC pipe which has not become “crumbled, pulverized, or reduced to powder” is not considered RACM (EPA Docket EPA-HQ-OAR-2017-0427-0001). A typical

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**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

repair project involves exposing only several feet of pipe. Even under our worst case scenario (repairing broken AC pipe), most of the exposed piping is undamaged, and the amounts of ACM encountered in our maintenance projects are typically far below the threshold which would trigger NESHAP requirements.

Recommendations:

- The Regulatory Background section of the staff report should be revised to reflect that most utility pipeline work is exempt from NESHAP. The section should also acknowledge that intact AC pipe is not RACM for the purposes of calculating NESHAP threshold quantities.

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RULE 1403 INTENT

The Staff Report states “Staff proposes to provide clarity to existing requirements and add rule language which will assist the regulated community in understanding the requirements of Rule 1403 that were not denoted in existing rule language.”

This statement is troubling. It implies that AQMD staff has been enforcing requirements on the regulated community which are not written in the Existing Rule, may not have been presented for public comment, and may not have been considered or approved by your Board.

The Staff Report goes on to state “This additional language is consistent with the National Emission Standards for Hazardous Air Pollutants (NESHAP) set by the United States Environmental Protection Agency (EPA) and other local Air Pollution Control Districts within the United States and the state of California. These proposed changes are promulgated by a misunderstanding of the original intent of Rule 1403 as understood by a review of previous staff reports.”

We disagree with the assessment that revisions to the Rule are consistent with NESHAP and other Air Pollution Control Districts (APCDs). Upon a brief review of other APCD requirements, we note that 26 of 35 California APCDs regulate ACM by incorporating federal NESHAP regulations by reference without modification. The APCD’s that do have local rules relating to ACM generally have minor modifications. The Proposed Rule imposes requirements far beyond those used elsewhere in California.

The Staff Report references a frequently asked question (FAQ) document, which “...will assist the regulated community in addressing many compliance questions which were not spoken to with any particular proposed rule revision.” We anticipate that the FAQ referenced in the Staff Report will be used by AQMD staff when interpreting and enforcing the Proposed Rule. The Staff Report has acknowledged the considerable confusion caused by the Rule, so it is essential that the FAQ be incorporated in the Staff Report as an appendix, and be made available for public comment and concurrence by your Board. We are concerned that without a formal review process, there will continue to be misunderstandings between the regulated community, AQMD staff, and your Board.

Recommendations:

- The Staff Report be revised to more clearly state what requirements AQMD has been imposing on the regulated community that were not included in the Existing Rule.
- The Staff Report should be revised to more accurately state that the Proposed Rules differ greatly from NESHAP, EPA, and other California APCD rules if that is the direction that is to be continued.
- The Staff Report should include the FAQ document as an appendix to ensure transparency and consensus between the regulated community, AQMD staff, and your Board.

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UTILITY PIPELINE EXEMPTIONS

The Rule was clearly designed for above-ground building renovation projects, and it is difficult to apply this framework to buried pipeline repair and maintenance projects conducted by utilities. NESHAP recognized this difficulty by including a full exemption for pipeline projects less than 260 linear feet. To

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**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

accomplish this, NESHAP merely requires that the owner or operator “thoroughly inspect” the renovation location. NESHAP provides no requirement for training or sampling. Clearly if the work area is less than 260 feet long, the project would be exempt from NESHAP.

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The draft Rule does not clearly include a facility survey exemption for materials which are obviously not ACM. Should it be necessary to conduct an asbestos survey on an uncoated cast iron pipe or wooden pole before drilling into it? Should landscaping contractors conduct a facility survey before repairing a broken sprinkler pipe – even if it is known the pipe material is made of plastic and clearly would not be ACM? Should a facility survey be required prior to working on a metal electrical conduit where one knows it contains plastic-insulated copper wires? Clearly this is not the intent of NESHAP, Cal/OSHA, or the Rule.

A small portion of our water system is built using AC pipe, but the majority of the water pipelines are made of copper, mortar-lined steel, plastic (PVC), or iron – materials which lack an ACM coating. Because utility piping is buried and typically only accessed when conducting water system repairs or modifications, it is impractical to conduct surveys in advance on every buried structure. Fortunately, the Department maintains plans and maps of our piping network which describe the composition of the pipe materials. Because the records are already available, it is easy for our staff to identify whether the pipe does or does not contain ACM. Requiring a formal facility survey merely forces repair activities to stop while a Certified Asbestos Consultant (CAC) visits the site to confirm what our records and crews trained to meet Cal/OSHA standards have already identified.

It also appears that the Rule requires facility surveys even if the material is known or presumed to be an ACM. We find this unnecessary, and recommend that the survey requirement be eliminated if the material is either known as not being an ACM by nature, or if the material is presumed ACM and handled as such.

Recommendations:

- The following exemptions should be added to section (j):
 - The rule shall not apply to projects involving work on less than 260 linear feet of buried pipe.
 - The rule shall not apply to work conducted by utilities on buried pipes if institutional knowledge such as maps, plans, or specifications demonstrate the pipe is constructed of material which would not contain ACM including, but not limited to, copper, iron, steel, plastic, or PVC.
- The exemption in Section (j)(4) be revised to remove the phrase “by the asbestos consultant”, allowing anyone to presume the material is asbestos and handle it as such.
- If AQMD intends to impose the additional requirement for a facility survey to be conducted when the material has already been presumed to be ACM, the Staff Report should be revised to describe how presuming a material is ACM from a facility drawing would pose a threat to public safety, and specific reasons why NESHAP does not alleviate these threats.

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EMERGENCY RESPONSE AND NOTIFICATION

The Department has a duty to provide water and electricity to the public. We are concerned that the Proposed Rule would results in extended utility outages and delay completing repairs. Consider if an AC pipe were to break on a Friday night beneath a road:

- The utility shuts off water to the affected neighborhood. Stopping the flow typically requires shutting off water for many customers.
- Once the immediate hazard has been abated, the Rule requires work to stop. This requires traffic control to be set to protect the public from the open hazard that must remain open in the street – trench plates cannot always safely be installed over unplanned main breaks.

**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

- The Rule requires an on-site facility survey before continuing. The inspector must visit the site to confirm that the material is AC pipe – which the crew already knows from their maps and AC Pipe Worker Training. Traffic disruptions are extended to comply with this administrative requirement.
- Because the pipe is broken, the Proposed Rule requires a Procedure 5 plan. Because the Proposed Rule requires AQMD to approve the plan before proceeding, they are unable to proceed with repairing the pipe until AQMD has reviewed and approved the plan. Meanwhile the street is left in an unusual and hazardous condition.

At the October 31, 2018 Public Workshop, AQMD staff suggested loss of water or electric service could be considered an emergency event on a case-by-case basis. Water and electric service are essential public services. Our customers may have specific medical needs, and it is imperative that AQMD recognize that any loss of water or electric service threatens public safety.

At the Public Workshop, AQMD staff noted that if the event is deemed an emergency, broken pipelines can be patched and water service can be restored. However, AQMD staff stated utilities would be prohibited from backfilling the excavation or restoring the roadway until a facility survey has been completed by a CAC, and the report has been submitted to AQMD.

This approach presents a risk to public safety. It is not always possible to use trench plates to cover an excavation. After water pipes are repaired, unstable soil conditions can be present, the roadway is often undermined, and even during small repairs, the excavation should be backfilled as soon as possible to stabilize and maintain the existing roadway. Even if an excavation can be safely covered, it still presents an unnecessary hazard to pedestrian, bicycles, and motorcycles. Trench plates are sometimes used during road construction, but they would be used during the course of completing long-term construction; not to accommodate administrative delays. A typical pipe break and street repairs can be completed within several hours, and it does not make sense to delay these repairs to comply with an administrative requirement.

The Staff Report suggests that emergency work can be conducted in the right-of-way if utilities call the AQMD for Procedure 5 approval. The Staff Report does not accurately represent AQMD's expectations as stated at the Public Workshop. The Staff Report fails to explain that written surveys would still need to be submitted to AQMD electronically before calling AQMD. It is also unclear if the Procedure 5 plan could be described verbally, or if that would need to be prepared by a CAC and submitted in writing. The Proposed Rule does not specify a timeframe for AQMD staff to complete this review. While the Staff Report implies authorization to complete the repairs would be given immediately over the phone, we suspect that may not be correct. If not, the Staff Report should be revised to describe the exact steps the regulated community should use when reporting an emergency, and how AQMD will respond to the notification. Any reviews or delays should be described, and should discuss how eliminating these review would negatively affect public safety.

When repairing AC pipe, trained AC Pipe Workers would have already identified the type and condition of the piping material, removed the debris (including the loose ACM), and repaired the AC pipe. Because a trained crew has already removed the ACM, what is the point of the survey?

The Staff Report should explain why a post-repair survey would be required for broken AC Pipe, but not for other abatement activities. For instance, above-ground asbestos abatement, such as removing floor tiles with ACM, is often conducted under Procedure 3. The ACM is visually removed, the area is cleaned, and work is completed with no follow-up facility survey. Clearly the floor tile scenario poses a greater health risk since the work is conducted in a building. AC pipe work would be conducted in the street, restricting public access during maintenance. Any ACM debris would be removed during the normal course of repairs, but even if broken pieces were to remain, the location would be backfilled and capped

**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

with asphalt or concrete upon completion and future digging would be conducted in an area with known AC pipe by trained AC Pipe Workers. It does not make sense why some work requires a post-work survey, and other work does not.

The Rule also requires a Notary Public to sign emergency notifications if remediation contractors do not sign it. AQMD staff stated this was because remediation contractors sometimes forge property owner signatures for residential renovation projects. We are concerned that this notification requirement could cause delay responding to emergency utility repairs when outside contractors are used. Because it is alleged that residential contractors are already knowingly violating the Existing Rule by forging a signature, what is to stop them from signing two signatures to circumvent the Notary Public requirement? We do not understand how this requirement will improve compliance. Instead, it will only delay work conducted by compliant entities.

Recommendations:

- Section (j)(1) should be revised to allow crews to fully repair damaged infrastructure, including street repairs, without delay. If AQMD desires documentation of these NESHAP-exempt activities, the documentation could be submitted after work has been completed and public services have been restored. The exemption should clarify that loss of water or electrical services are emergency events. } 1-9
- An exemption should be added to Section (j) stating “The provision requiring a Notary Public in section (d)(1)(B)(iv)(V) shall not apply to facilities owned by utilities or government agencies.” } 1-10
- If AQMD desires to impose requirements beyond NESHAP, the Staff Report should be revised to describe why NESHAP is insufficient to protect the public and why trained AC Pipe Workers cannot complete a repair in its entirety. It should describe the significant environmental and economic impacts caused by temporary repairs blocking access to homes, businesses, and public facilities such as hospitals and fire stations. } 1-11
- The Staff Report should clearly describe why a post-work inspection by a CAC would be required to ensure public safety, when visible debris is already removed during the course of emergency repairs, and when the repair area will be backfilled, capped with asphalt or concrete, mapped as an area with AC pipe, and where future digging will be conducted by trained AC Pipe Workers. } 1-12

TRAINING REQUIREMENTS

We appreciate that AQMD has proposed language recognizing that dedicated facility staff are well suited to conduct facility surveys and eliminating the requirement to use a CAC, allowing Certified Building Inspectors to be used instead. However, when discussing these revisions with AQMD staff, we learned AQMD does not believe that use of a Certified Building Inspector is allowed for work in the public right-of-way, because the right-of-way itself is not the facility where the Building Inspector works. This conclusion is confusing and is not clearly expressed in the Proposed Rule. If the roadway is not a facility, then why is a facility inspection required? The Staff Report states Building Inspectors may complete facility surveys at “their place of employment”. We believe this includes conducting surveys on any utility infrastructure, regardless of actual location, when the Building Inspector is employed by the utility.

We propose that AQMD include provisions for other asbestos-trained individuals to complete facility surveys. Certified Building Inspectors receive training described in 40 CFR 736, Subpart E, Appendix C. While ideal for above ground structures, the curriculum focuses on topics which are not applicable to buried pipes. Some examples include:

- **Bulk material sampling.** AC pipe can be visually identified by a trained AC Pipe Worker and presumed to be asbestos. Other utility piping lacks exterior coatings which would contain asbestos.

**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

- **Legal liabilities and defenses.** These training topics which include claims, insurance, and bonding. These topics are not applicable to on-staff utility workers.
- **Understanding building systems.** This topic would include heat, ventilation, and air conditioning, electrical systems, and building safety which would not be applicable to buried pipe maintenance.
- **Public/employee/building occupant relations.** Buried piping is not located in a structure and building notification procedures would not be relevant.

Cal/OSHA has developed AC Pipe Worker training as described in 17 CCR 341.17. The training focuses on materials and conditions which would be encountered working on utility pipeline projects. AC Pipe Worker training is ideal for conducting facility surveys on buried utility pipeline systems. Our Department employees already receive this training, and are well qualified to assess the type and condition of the pipe before implementing repairs.

The Staff Report states “Cal/OSHA has confirmed that persons conducting asbestos surveys for the employers need not be certified asbestos consultants, but must possess a current and valid certificate from a Cal/OSHA approved AHERA building inspector training course.” The Staff Report does not include a citation. However, we presume AQMD is referring to 8 CCR 1529 (k)(5)(B)(2). This section discusses training requirements for workers to sample thermal insulation or surfacing materials to demonstrate it does **not** contain ACM. A trained AC Pipe Worker is qualified to differentiate AC pipe from other pipe materials.

Recommendations:

- The Proposed Rule and Staff Report should be revised to more clearly describe when a Building Inspector may conduct a facility survey. } 1-13
- Section (d)(1)(A)(v) should be revised to allow AC Pipe Workers trained in accordance with 17 CCR 341.17 to conduct facility inspections on buried utility pipelines. } 1-13
- Section (i) should be revised to include AC Pipe Worker training as an approved certification for supervisors and workers unless otherwise required by law. } 1-14
- If AQMD intends to only allow a CAC or Certified Building Inspector to conduct a facility survey on AC pipe, the staff report should be revised to discuss why the task-specific training described in 17 CCR 341.17 is insufficient, and should describe how a survey conducted by these trained individuals would result in a risk to public safety. } 1-15

PROCEDURE 5 PLANS

Overreliance on Procedure 5 Plans

In our experience, AC pipe is durable, as it is designed to withstand pressures above 100 psi. If broken, it tends to break into pieces that are easy to see, handle, and remove. When excavating a utility pipeline the work crew will follow the same general procedure at any location. The nature of the work is ideal for developing a consistent set of rules.

AQMD staff has stated that the Existing Rule requires the use of a Procedure 5 plan when excavating buried AC pipe, but this is not explicitly stated in the Rule. “Fractured or crushed asbestos cement products”, such as broken water pipes, are defined as Class I Non-Friable ACM in the Existing Rule (see section (c)(10)), and the Existing Rule states that this material can be handled using Procedure 3. From discussions at the public work shop, it is clear that there is confusion between AQMD staff and the regulated community.

The use of Procedure 5 plans results in different entities using different methods to complete the same work. This makes it difficult for the regulated community to anticipate how AQMD expects work to be

**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

conducted, and the requirements are subject to change without an opportunity for public comment, and without the concurrence of the Board.

We recognize situations might arise which do not fit within a defined procedure so we support the inclusion of Procedure 5 in the Proposed Rule. However, Procedure 5 plans should be reserved for unique situations that cannot be anticipated during the rulemaking process. Maintaining AC pipes is not a unique scenario, and should be governed through procedures in the Rule that do not require case-by-case approval from AQMD.

Clarify Procedure 5 Requirements

At the workshops, AQMD staff noted that they often receive deficient Procedure 5 plans. Similarly, Workshop participants noted that AQMD’s expectations for Procedure 5 plans was sometimes inconsistent or unclear. To rectify this, we recommend that the Rule specify the requirements for a Procedure 5 plan to be deemed complete, including the criteria staff will use when approving a Procedure 5 plan. Having clear requirements will help ensure applicants submit the proper documentation, and will reduce AQMD’s burden reviewing these plans.

While AQMD has not proposed modifying this section, we find the wording of section (d)(1)(C)(ii)(V) confusing. The text discusses removal of non-friable materials such as gaskets after renovation work begins. Despite the low-risk nature of this work, the section requires that this work be conducted under an approved Procedure 5 plan. It is unclear why a specific Procedure 5 plan would be necessary for this level of work and we recommend that this section be clarified.

Pipeline Inspection and Damaged Pipelines

Section (d)(1)(D)(ii)(I) requires use of a Procedure 4 or Procedure 5 plan when removing ACM which has been damaged by natural disaster. “Damaged” is not defined in the Rule. We recommend that a Procedure 4 or Procedure 5 plan only be required if the damage has rendered the ACM friable to the point where other procedures in the Rule would not be effective.

Section (d)(1)(D)(ii)(II) requires a Procedure 4 or Procedure 5 plan when buried material cannot be assessed for damage. It appears that this would require pipeline operators to obtain AQMD approval before exposing any pipeline. It is unclear if pipeline operators would be required to submit a second Procedure 5 plan upon investigating the pipeline. We recommend that this section be removed, and the rule be clarified to allow pipelines to be exposed without a Procedure 5 plan. The procedures used to work on the specific pipeline would be selected based on the nature of the material.

Recommendations:

- The Proposed Rule should be revised to include a procedure for handling buried AC pipe that does not require case-by-case approval. It would be reasonable for AC pipe procedures to be consistent with Cal/OSHA training recommendations and include provisions to:
 - Establish a Regulated Work Area,
 - Ensure that only qualified employees who have been trained to handle AC pipe are present in the work area,
 - Expose the buried pipe taking care not to scrape or disturb the pipe surface,
 - Keep the pipe wet while cutting,
 - Use mechanical tools to snap or tap into the pipe,
 - Wrap the pipe and associated debris in plastic, and
 - Inspect the work area and remove for proper disposal any pieces of AC pipe which may have been dislodged during the removal process.
- The Proposed Rule should include criteria for review and approval of Procedure 5 plans.

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**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

- Sections (d)(1)(D)(ii)(II), (d)(1)(C)(ii)(V), and (j)(1) should be revised to eliminate the need for a Procedure 5 plan when conducting maintenance on AC Pipe (emergency and non-emergency). Instead, a notification could be submitted as described in the Rule (if over the threshold amount is removed or affected, and notification does not interfere with emergency response), and work could be completed using a buried pipe maintenance procedure described in the Proposed Rule. If AQMD is concerned with local compliance, workers could receive training from AQMD to discuss local expectations, similar to the training program proposed by AQMD staff in Section (i)(2)(A). These sections should also be revised to remove the need for a facility survey when the material is presumed to be ACM. } 1-18
- The Rule should include a definition of “damaged” in Section (c), which clarifies that for the purposes of the draft Rule, damage must result in the material becoming friable. } 1-19
- If AQMD continues to require a Procedure 5 plan for buried AC pipe work, the Staff Report should be revised to discuss:
 - Why AC pipe repairs require the strictest level of procedural review by AQMD (Procedure 5).
 - Specific evidence that AC pipe repairs conducted by CalOSHA trained AC Pipe Workers using established industry best practices would create a public health risk. This should discuss how a Procedure 5 would mitigate those impacts, and why it is infeasible to include these routine mitigations in the Proposed Rule.
 - Specific reasons why it is beneficial for routine AC pipe maintenance procedures to be developed on a case-by-case basis by AQMD staff, instead of being included in the Rule, available for public comment, and considered by the Board. This evaluation should clarify how this lack of consistency serves the public better than a consistent and transparent approach. } 1-20

PIPE REMOVAL USING PROCEDURE 3

AQMD staff noted that using lifting equipment to move even intact pieces of pipe would require a Procedure 5 plan. Procedure 3 states “Only non-power tools shall be used”. We disagree with the interpretation that lifting equipment would meet this definition, as it is not used to directly disturb the asbestos material. Buried pipe work takes place in trenches, where it is typically not safe or practical to remove these heavy cut materials by hand. For reasons of worker safety, we propose revising the Rule to include provisions for mechanized lifting. AQMD’s interpretation is also confusing, as it could set a precedent for other common tasks to be prohibited since they might be considered “power tools”. For instance:

- Can a roll-off bin be loaded onto the back of a truck using a powered winch?
- Can wrapped ACM be transported between floors on an elevator?
- Could a piece of AC pipe be moved on a pallet using a forklift? Or would a hand-pushed pallet jack be necessary?

Recommendations:

- Section (d)(1)(D)(i)(III)(4) should be revised to state “Only non-power tools shall be used to remove nonfriable ACM. Powered lifting equipment such as slings, forklifts, and equipment buckets may be used to lift ACM if it will remain intact.” } 1-21

Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018

CALIFORNIA ENVIRONMENTAL QUALITY ACT, EMISSION IMPACT ASSESSMENT, AND COST ANALYSIS

The Staff Report states the Proposed Rule would be categorically exempt from the California Environmental Quality Act (CEQA). AQMD staff seems to consider these changes to the Rule administrative and clarifications. However, AQMD’s expectations were not fully described in the Existing Rule and these changes could result in operational changes which may have an impact on the environment. } 1-22

The Proposed Rule would force utilities to leave emergency repair projects in an incomplete state for an undetermined length of time. It does not appear that AQMD staff has considered the potentially significant traffic impacts or the potentially significant impacts to public safety presented by this approach. Maintenance crews will need to mobilize and demobilize multiple times which may create excess vehicle trips and air emissions. The Staff Report does not discuss the cumulative impacts from these extended construction projects. The Staff Report also states “Staff determined that any additional cost to surveys and/or increased sampling may be offset by deciding more frequently to presume or assume the presence of asbestos...” The Staff Report acknowledges that the Proposed Rule may result in additional disposal of asbestos (generally to a distant hazardous waste landfill), but there is no Emission Impact Assessment to assess the potential impacts of these additional landfill trips. } 1-23
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The Staff Report does not discuss increased costs associated with multiple mobilizations to construction projects, extensive overtime standby costs incurred while waiting on AQMD review, costs to prepare unnecessary facility surveys, costs for CACs to visit sites after AC pipe repairs are already completed, costs for extended construction equipment rental, or cost for trench plates and shoring. As a public utility, we have a fiduciary responsibility to our ratepayers, and must ensure our funds are being used wisely. These extra costs will be incurred only to accommodate AQMD’s desire for administrative reviews and will not benefit air quality or public safety. These costs should be disclosed to the public and your Board.

Recommendations:

- We believe there is a fair argument that adopting the Proposed Rule, as written, may result in potentially significant impacts. AQMD should conduct additional CEQA analysis to evaluate impacts to traffic, public safety, and increased construction air emissions.
 - The Staff Report should include a cost analysis if no revisions are made to the Proposed Rule that would remove these issues.
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OTHER COMMENTS

We have several other comments as follows:

- The facility survey requirements in (d)(1)(A)(iii)(V) requires that the amount of damaged asbestos be quantified as a percentage. This metric could be difficult to assess. Instead, we recommend that the survey only be required to report quantities of asbestos as “friable” or “nonfriable”.
 - The notification requirements in (d)(1)(B)(iv)(II) require reporting of the date and hour that an emergency occurred. It might not be possible to know the exact date and time of an emergency incident. We requires this section be modified to state “The date and hour that the emergency occurred, if known, and an estimate if uncertain with an explanation as to why the exact time and date are not known.”
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We recognize that AQMD has the authority to impose requirements above federal regulations, but these actions should not be taken lightly, and should present an overall benefit to the public. The Staff Report does not provide the background to justify the extensive additional regulation when conducting low-risk

**Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities
November 13, 2018**

and routine work. We recommend that AQMD delays considering the Proposed Rule until our comments have been addressed and further discussion takes place in the form of public workshops.

We are committed to continue to follow AQMD requirements, and we hope as stakeholder meetings continue, AQMD staff will gain a better understanding of utility operations and how our work is difficult to integrate into a Rule designed for building renovations. We look forward to working collaboratively to develop a Rule which protects air quality, while ensuring safe and reliable water, electricity, and roadways for the public.

Please feel free to contact me at 714-765-4117 or by email at jsanks@anaheim.net if you have questions as rulemaking continues.

Sincerely,



Jonathan Sanks
Environmental Services Manager

C: Luke Eisenhardt - AQMD
Janis Lehman – Anaheim Public Utilities Chief Risk Officer

Staff responses to letter from City of Anaheim, Public Utilities Department dated 11/13/2018Staff Response to section titled Regulatory Status

- 1-1) Rule 1403 considers Class I Nonfriable materials to be ACM. ACM is any material with an asbestos content greater than one-percent (1.0%). This would include asbestos containing pipe (AC Pipe) with an asbestos content greater than one-percent (1.0%). Current rule language has not been revised to include this material as regulated material, but has always considered it regulated since inception. Any time AC Pipe is removed, then it is regulated per Rule 1403. Where appropriate, staff has revised or clarified rule language to align it with the Asbestos NESHAP, but Rule 1403 has always been more stringent than the NESHAP. In fact, Rule 1403 regulates single-family dwellings, material areas down to 100 square feet, and does not contemplate any length of pipe, but requires the pipe to be converted to surface area by measuring the circumference and length. These requirements are categorically more stringent than that of the NESHAP.
- 1-2) Any work on undisturbed AC Pipe where less than 100 square feet will be removed to complete the project (e.g. tapping a line to add a customer valve) may be exempt if the project meets the language within a specific exemption and if the pipe has been exposed and evaluated to be undisturbed and undamaged. Any amount of AC Pipe which has been damaged or disturbed prior to any renovation work is not exempt and must be handled in accordance with the provisions of Rule 1403.

Staff Response to section titled Rule 1403 Intent:

- 1-3) Referring to the statement in paragraph one (1), “Staff proposes to provide clarity to existing requirements and add rule language which will assist the regulated community in understanding the requirements of Rule 1403 that were not denoted in existing rule language,” this does not imply compliance staff has been enforcing rule language that was not written into the existing rule language. Any enforcement action taken by our compliance staff must be litigated by our legal department and if rule language does not support the action taken, then the matter would not stand up to legal argument. The use of “clarifying,” “clarification,” or “to provide clarity,” means, for example, when rule language is referencing an outdated federal regulation or when the federal regulation is ambiguous or doesn’t contemplate the specific matter (e.g. How many samples of Nonfriable AC Pipe is necessary?).
- 1-4) Every proposal in PAR 1403 is supported by the federal requirements or the original intent of the requirements in Rule 1403 as outlined in previous staff reports. Staff does not believe that any measure in PAR 1403 differs greatly from the NESHAP, EPA, or other California APCD’s. As stated, Rule 1403 was adopted to be more stringent than any of these agencies and SCAQMD maintains their rightful position to adopt a more comprehensive rule.

- 1-5) The Frequently Asked Questions (FAQs) document will be released to the public prior to the Public Hearing. However, it is simply a tool to be used as guidance to the stakeholders and is not considered an enforcement guidance document. It is a living document subject, by itself, to revisions and clarifications as warranted. It will be further modified to reflect the changes if PAR 1403 is adopted by our Governing Board.

Staff response to section titled Utility Pipeline Exemptions:

- 1-6) Staff disagrees with the statement in paragraph one (1), “The Rule was clearly designed for above-ground building renovation projects, and it is difficult to apply this framework to buried pipeline...” While the NESHAP was adopted with an emphasis on Friable ACM, it considers AC Pipe that has been crumbled, pulverized, or reduced to powder to be regulated ACM. Rule 1403, adopted to be more stringent than that of the NESHAP, has always regulated AC Pipe and considered it a Class I Nonfriable material, not to be confused with Category I Nonfriable ACM in the NESHAP. Rule 1403’s definitions for Class I Nonfriable ACM does not specifically match the definition of Category I Nonfriable ACM in the Asbestos NESHAP, so any comparisons are irrelevant. Staff does not believe that any ACM can be removed without asbestos fiber emissions and Rule 1403 was originally adopted with this principle in mind. On Page A-5 in the 1989 PAR 1403 staff report presented to the Governing Board, it states “Nonfriable materials that may be **broken** or crumbled and emit asbestos fiber during demolition or renovation operations if not removed and disposed of properly is part of the definition of “Asbestos-Containing Material” (emphasis added).” Inherently, Rule 1403 considered any removal of AC pipe to be regulated since its adoption in 1989 with the allowance for any exemptions within subdivision (j).
- 1-7) Rule 1403 was adopted with the exemption threshold set at 100 square feet (100 ft²) with the understanding that 260 linear feet of 6 inch AC Pipe is vastly different than 260 linear feet of 24 inch AC Pipe. Stakeholders shall convert length of pipe along with its circumference to surface area and comply with Rule 1403 accordingly. Rule 1403 does not apply to pipe that does not contain asbestos and believes this is clear and implicit within existing rule language, “The purpose of this rule is to specify work practice requirements to limit asbestos emissions from building and facility demolition and renovation activities, including the removal and associated disturbance of Asbestos-Containing Materials (ACM).”
- 1-8) Rule 1403 and the NESHAP require a complete and thorough inspection or survey of the facility, or facility components, for the presence of ACM. Only an asbestos consultant, as defined in PAR 1403, shall conduct surveys and even though the assumption or presumption of asbestos may occur for buried AC Pipe, this shall not preclude the asbestos consultant from performing a surface inspection of where the project will occur for the presence of any other suspected material; however remote

the possibility of discovering other ACM at the site. Staff believes it is imperative that the surface or area where a project is occurring be thoroughly inspected or surveyed for the presence of ACM since the presumption or assumption of ACM pertains only to underground pipe and could not adequately assess if the area has other materials. However remote the possibility of discovering ACM, staff believes that it is imperative to inspect the project site at the surface level for potential ACM. Whether left from a previous project or randomly dumped unsuspectedly staff believes that the public is well served by all efforts to verify that the project site is free of ACM other than the buried underground pipe; which is the only part of the project that is assumed or presumed to contain asbestos.

Staff response to section titled Emergency Response and Notification:

- 1-9) Staff will be working with stakeholders to provide guidance and procedures when ACM is renovated during an emergency event where essential public services are interrupted. It is not the intent of staff to inhibit the restoration of these public utility services when there is an imminent threat to public health or safety, but current protocol is a response to the emergency and restoration of the utility service to protect public health or safety. However, Rule 1403, as it is currently written, does not allow for the completion of the renovation project without stopping to secure, stabilize and survey the project site for asbestos contamination. The reference to “stabilize” in the previous sentence signifies stabilizing any area that may have been contaminated by asbestos to prevent fugitive asbestos fibers from leaving the project site in the best manner possible. This should not to be confused with stabilizing a leaking water pipe, gas pipe, etc.; which are actually a response to the emergency and SCAQMD does not intend on becoming a barrier to the restoration of utilities during an actual emergency. Staff is committed to working with the public utility providers to resolve the issue when an emergency response, repairs to the equipment, and restoration of the utility does not leave any ACM contamination.
- 1-10) The provision requiring a Public Notary to verify the identity of the property owner only applies in the event the contractor is unwilling to sign the emergency declaration letter. For most PUC's, if the work is performed by their employees, then the person representing the PUC's simply signs the emergency letter in both places. If the PUC hires a contractor to complete the renovation activity, then both the person representing the PUC and the person representing the contractor must sign the document. Staff does not see this as time consuming effort and would accept scans and/or photographs of the signed document.
- 1-11) As stated previously, Rule 1403 is more stringent than the NESHAP in several areas and nowhere in the proposed rule language does it state that AC Pipe Workers cannot complete the repair in its entirety. What Rule 1403 does not allow, nor does the NESHAP, is for an AC Pipe Worker to perform surveys, identify suspect ACM (they

are only educated on AC Pipe), obtain samples, or submit survey reports – all duties relegated to an asbestos consultant. SCAQMD does not wish to become a barrier to the restoration of essential public services, but if there is asbestos contamination beyond the repair, then the PUC must secure, stabilize, and survey the project site to determine the extent of the asbestos contamination and propose a clean-up plan. While being sensitive to the impacts of temporary road closures, they occur frequently in our community for a variety of reasons and SCAQMD efforts are to prevent public exposure to asbestos fibers; which is a no less important environmental concern.

- 1-12) Please see staff response 1-11. The post-work inspection referred to is an inspection of the project site after the emergency repair has been performed. The asbestos consultant's objective is to assess asbestos contamination in the surrounding area.

Staff response to section titled Training Requirements:

- 1-13) PAR 1403 states that only a Certified Asbestos Consultant (CAC) who has passed an asbestos certification examination or an AHERA Building Inspector who has attended and possesses a valid certificate from a Cal-OSHA approved training course may conduct surveys. These individuals possess the necessary training to find, identify, assess the condition, and obtain samples of suspected ACM. Their qualifications to conduct facility surveys have been confirmed with representatives from Cal-OSHA and staff believes these are the only individuals who shall conduct surveys. They have been trained to identify suspected ACM, including AC Pipe. An AHERA Building Inspector may only conduct surveys for their employer at their place of employment; which would include an employee of a public utility company performing inspections on their infrastructure.
- 1-14) The Supervisor and Worker training requirements in subdivision (i) are existing rule language and staff believes these are the minimum standards for these positions.
- 1-15) Please see Staff Response 1-13. Staff believes the Asbestos Cement Pipe Worker course provides the training for those who only repair breaks in A/C Pipe. It is insufficient to complete other tasks that required of an asbestos consultant who possess certain skills designed to better protect public health or safety as described in Staff Response 1-13.

Staff response to section titled Procedure 5 Plans:

- 1-16) Staff has considered rule language that would include a specific procedure for A/C Pipe, but feels each individual project to be specific and, as such, different and requiring particular approved alternative. For such companies where the clean-up plan is repeatable and duplicated, a pre-approved Procedure 5 may be submitted and utilized for similar projects.

- 1-17) Staff has an existing document that provides Procedure 5 guidelines. It may be found at: http://www.aqmd.gov/docs/default-source/compliance/Asbestos-Demolition-/procedure5_guidelineDC2E0081F4B7.doc. In reference to the statement in paragraph two (2), “It appears that this would require pipeline operators to obtain AQMD approval before exposing any pipeline.” The purpose of an approved alternative Procedure 5 is only for situations when the facility does not want to unbury the pipe and assess its condition; which then requires a 10 working day notification period and may result in an open area in the ground. The purpose of an approved alternative Procedure 5 is to forgo having open areas of terrain while waiting the 10 working day notification period, but nothing precludes a facility unburying A/C pipe, assessing its condition, and submitting a Procedure 3.
- 1-18) See answer above to Comment 1-17.
- 1-19) Staff has considered a definition for damaged, but believes it could not be adequate to address all material or serve any clarifying purpose. Rule 1403 considers all material to have the propensity to become friable when removed whether damaged or not and thus subject to Rule 1403.
- 1-20) The word “repairs” suggests that the AC pipe has been damaged or disturbed. A Procedure 5 is only required if the ACM has suffered damage or disturbance or in the instance where the materials cannot be assessed for damage or disturbance. In each case, staff considers these projects to be considerably more precarious than projects where the ACM is visible and in good condition or has been exposed (aka unburied) and determined to be in good condition prior to removal; which can then be submitted as a Procedure 1, 2, 3, or 4. In any instance where there is damaged or disturbed ACM, or the condition of the ACM is unknown, then staff believes it is in the public’s interest for SCAQMD staff to review the procedure that will be utilized to remove and contain the ACM. For routine replacement of intact AC pipe, Procedure 3 is the most appropriate procedure, and no approval is required. What is required, is a survey that includes an assessment of the condition of the material. In order to do an assessment of the condition, the entire pipe to be replaced must be exposed. The choice to expose the pipe and wait 10 working days with a Procedure 3 notification, or submit a Procedure 5 and wait 10 working days before digging up the pipe is an operational one that the property owner must make.
- 1-21) Staff has revised rule language in Item (d)(1)(D)(i)(III)(4) to state that “only non-power tools shall be used to removed nonfriable ACM.”
- 1-22) One of the purposes of the proposed amendments to Rule 1403 is to clarify existing rule language to reduce stakeholder misunderstandings related to facility surveys, asbestos

sample collection, composite sample analysis, the SCAQMD Web Application (Web App) notification system, emergency notifications, issues related to underground Transite pipe, approved-alternative clean-up procedures, and test methods. In particular, the emergency notification provision has been misused by some to circumvent the normal 10-day notification requirements contained in the rule. Specifically, improper claims have been made that indicate a need to conduct emergency renovations or demolitions, but when SCAQMD staff followed up on these claims, no emergency actually existed.

At the time Rule 1403 was first adopted in 1989 and later amended in 2007, the CEQA analyses conducted in the 1989 Determination of No Significant Environmental Impact and 2007 Final Environmental Assessment (EA), respectively, were prepared by applying worst-case assumptions which included the potential for increased collection and disposal of asbestos as hazardous waste, predicated on the achievement of full compliance. Thus, even if some members of the regulated community may have not completely complied with these key requirements in the past, the impacts of full compliance were previously analyzed in the aforementioned CEQA documents. This is why the CEQA analysis of the potential impacts from the currently proposed amendments contained in PAR 1403 were made relative to the aforementioned baseline conditions in place at the time these requirements were initially included in Rule 1403. Thus, any future increased compliance that is expected to occur as a result of the currently proposed amendments to Rule 1403 is not considered to be a new or significant environmental effect relative to what was previously contemplated and analyzed in the 1989 Determination of No Significant Environmental Impact and 2007 Final EA. Thus, PAR 1403 makes no changes which could result in any new significant adverse impacts on the environment relative to baseline conditions.

The additional clarifications and administrative changes contained in PAR 1403 are necessary to prevent future rule circumvention, avoid misunderstanding, and to protect the environment from asbestos exposure during demolition and renovation activities. For these reasons, SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment. Therefore, the project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule. Furthermore, the proposed amendments are considered categorically exempt because they are considered actions to protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. Further, SCAQMD staff has determined that there is no substantial evidence indicating that any of the exceptions to the categorical exemptions apply to the proposed project pursuant to CEQA Guidelines Section 15300.2 – Exceptions. Therefore, the proposed project is exempt from CEQA.

Finally, while the comment suggests that PAR 1403 would create operational changes that may have an impact on the environment, no supporting substantial evidence on what the changes may be or what impacts would result and whether the impacts would be beneficial or adverse to the environment have been provided. Without substantial evidence to support this assumption, the claim of potential operational impacts is broad and speculative.

SCAQMD staff's analysis of PAR 1403 is based on substantial evidence in the record in accordance with CEQA Guidelines Section 15384 which states: "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Also, as stated in Public Resources Code §21082.2(c) and in CEQA Guidelines Section 15064(f)(5), "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence."

A lead agency has some discretion to determine whether particular evidence is substantial and to assess the credibility of evidence. The comment does not point to or provide such substantial evidence, however. Since no substantial evidence was provided that demonstrated potentially significant adverse environmental impacts that may result from the proposed project, the preparation of an Environmental Impact Report is not required.

Thus, in absence of any supporting, substantial evidence in the comment to the contrary, SCAQMD staff's analysis of PAR 1403 indicates that implementation of the proposed project will not result in operational impacts that may have a significant adverse impact on the environment.

- 1-23) Contrary to the comment, the proposed amendments to Rule 1403 will not force utilities to leave emergency repair projects in an incomplete state for an undetermined length of time. PAR 1403 will not change the amount of time construction projects remain incomplete, as the only changes related to project delays involve clarifications for what constitutes an emergency and would qualify for expedited emergency notification review. Further, because there are no changes from the baseline conditions with

respect to the need for maintenance crews needing to mobilize and demobilize multiple times, and associated vehicle trips and air emissions, there are no additional impacts to analyze. Additionally, SCAQMD staff has addressed previously raised concerns which are germane to PAR 1403, as follows:

Previously Addressed Concerns

Similar sentiments expressed in the comment above were previously raised by the regulated community and addressed by SCAQMD staff in the October 31, 2018 Preliminary Draft Staff Report¹ for PAR 1403. The concern from the regulated community was that public utilities, especially essential services such as water, electricity, and gas, had previously experienced shorter notification periods. Further, the comment inferred that the regulated community believes enforcement under the updated rule would result in longer notification periods, causing delays in project completion. The comment from the regulated community and the corresponding response from SCAQMD staff, explains how the notification requirements have not changed, except to clarify what constitutes an emergency for an expedited notification and review process, as follows:

[Comment from regulated community]

Previous management and enforcement of Rule 1403 allowed for shorter notification periods for essential public services (water, electricity, and gas).

[Response]

Rule 1403 subclause (d)(1)(B)(i)(I) requires that a notification shall be submitted to the District no later than 10 working days (14 calendar days) before any demolition or renovation activities other than emergency demolition, emergency renovation, planned renovations involving individual Nonscheduled Renovation Operations begin. Current staff is unaware of any practices by previous management, but both the NESHAP and Rule 1403 require this notification period to have opportunity for enforcement officials to perform inspections as time allows. We are unable to be less stringent than the NESHAP in establishing requirements for renovation/demolition activities involving asbestos.

Staff has proposed new language to define an Emergency Renovation as “any renovation that was not planned and results from an imminent threat to public health or safety, a sudden unexpected event that results in unsafe conditions, or encountering previously unknown ACM during demolition or excavation.” Staff will consider

¹ PAR 1403 Preliminary Draft Staff Report. October 31, 2018. Page 3-4. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1403/r1403-prelim-draft-staff-report.pdf>

waiving the 10-day notification period if the situation meets any of these three (3) conditions independently from one another. Staff, also, considers any situation that may result in injury or death, and must be corrected ASAP, as something that a facility does not need to pause for notification. After the immediate threat is contained, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up. Proposed Amended Rule 1403 language will be included to clarify that these steps (secure, stabilize, and survey) are also required for disturbed suspect ACM resulting from a sudden unexpected event.

If disturbed or damaged Asbestos-Containing Material (ACM) is in the public right-of-way and cannot be adequately secured and stabilized, this is considered an immediate threat to public health or safety, and the abatement contractor responsible for the clean-up should call the Asbestos Hotline at (909) 396-2336 (during SCAQMD regular business hours [Tuesday through Friday, 7 AM to 5:30 PM]) or 1-800-CUT-SMOG (after regular SCAQMD hours), and request to speak to an asbestos supervisor to immediately review a Procedure 5 notification.

The sentiments expressed in Comment Letter #1 relative to PAR 1403 were also previously raised and addressed in the 2007 Final EA², which demonstrated how enforcement components in Rule 1403 had been intended prior to what is currently proposed in PAR 1403. In particular, the 2007 Final EA indicated that it has always been the intention of the rule that work must stop when there is a disturbance of asbestos-containing material outside of the containment or work area, as follows:

Currently, it is the practice of SCAQMD staff to require that any renovation or demolition that results in an associated disturbance of ACM or Class II nonfriable ACM outside of the containment or work area needs to be handled appropriately before continuing with any renovation or demolition activity. SCAQMD staff require that the associated disturbance be secured, stabilized, surveyed and an approved Procedure 5 plan be submitted and obtained prior to any cleanup. To ensure consistency and clarity, this language was added to PAR 1403 as [subclause] (d)(1)(C)(ii)(V) to codify current practice and improve enforceability of the rule.

As such, the comment's claim that extended construction schedules and longer notification periods would constitute new impacts from the proposed amendments to Rule 1403, is contradicted by the 2007 Final EA.

Existing Practice: Emergency Notifications and Expedited Review

² Final Environmental Assessment for Proposed Amended Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities. September, 2007. Page 2-4. Available at: <http://www3.aqmd.gov/hb/2007/September/07092a.html>

Rule 1403 has always allowed for exceptions in emergency renovation or demolition situations. Many of the requirements of the rule are waived in emergency situations. In particular, paragraph (j)(1) explains that facility survey, notification, asbestos removal schedule, removal procedures, handling operations, freezing temperature conditions, on-site supervisor, on-site proof, on-site storage, disposal, container labeling, transportation vehicle marking, waste shipment records, and recordkeeping requirements from paragraph (d)(1) shall not apply in the event of a hazardous situation that poses an immediate risk of injury or death. Once the immediate hazard has been secured, stabilized, and surveyed, if ACM has been found to be disturbed, a Procedure 4 or 5 clean-up plan must then be submitted. The normal 10-day notification time-frame would still apply under this circumstance; however, as explained in the October 31, 2018 Preliminary Draft Staff Report, the asbestos abatement contractor has the option to call the SCAQMD asbestos hotline and request immediate expedited review for a cleanup protocol. Therefore, as is the current practice which will be continued under PAR 1403, emergency repair projects would not be left in an incomplete state for an undetermined length of time.

Further, the only changes contained in PAR 1403 regarding emergency demolitions or renovations are clarifications relative to disturbed, damaged, or suspected asbestos containing material which is discovered during a renovation or demolition; these materials must be secured, stabilized and surveyed before completing the asbestos clean-up, and may be granted expedited review as emergency renovation projects. PAR 1403 also contains a clarification that immediate hazardous situations which threaten public health or safety, should be addressed before proceeding with any asbestos abatement that may be needed as a result of the hazardous situation, and would also qualify as emergency situations for notification purposes and expedited review. None of the proposed changes alter the original intent, meaning, or enforcement of the rule. Therefore, contrary to the comment, PAR 1403 would not force utilities to leave emergency repair projects in an incomplete state for an undetermined length of time, and would not result in new environmental impacts.

Previously Analyzed Impacts

Furthermore, as explained in Response 1-1, two CEQA documents previously analyzed the effects of Rule 1403, the 1989 Determination of No Significant Environmental Impact for the adoption of Rule 1403 in 1989 and the 2007 Final EA for the amendments to Rule 1403 in 2007, the potential impacts to traffic and public safety were included in these CEQA documents. The aforementioned clarifications in PAR 1403 relative to emergency demolitions do not change the impacts previously analyzed in the 1989 Determination of No Significant Environmental Impact and the 2007 Final EA, which are now considered baseline conditions. Lastly, because the 1989 Determination of No Significant Environmental Impact and the 2007 Final EA both concluded to have less than significant impacts, and the current analysis of PAR 1403

relative to baseline conditions does not indicate any significant impacts, an analysis of cumulative impacts is not required under CEQA.

- 1-24) Updated rule language clarifies requirements already included in the NESHAP or previous versions of Rule 1403 and will not result in increased compliance costs due to multiple mobilizations to construction projects, extensive overtime standby costs incurred while waiting on SCAQMD review, costs to prepare unnecessary facility surveys, costs for extended construction equipment rental, or cost for trench plates and shoring. Staff has revised subclause (d)(1)(C)(ii)(VI) to make clear that additional costs are not incurred beyond what is already required in the existing Rule 1403.D
- 1-25) Contrary to the comment, the Draft Staff Report for PAR 1403 does not contain any statement indicating that PAR 1403 may result in additional disposal of asbestos-containing waste material. In addition, the comment does not explain why and how PAR 1403 would result in the additional disposal of asbestos. Further, as previously explained in Responses 1-1 and 1-2, the effects of PAR 1403 relative to additional disposal and additional associated trips would not create a change from baseline conditions. In particular, when Rule 1403 was adopted on October 6, 1989, the staff report concluded that there would be an increase in asbestos disposal at asbestos landfills and a decrease of waste disposal at other landfills. Further, the 1989 Determination of No Significant Environmental Impacts concluded there would be no significant impact on utilities from waste disposal and no significant air quality impacts from disposal operations. Additionally, the 2007 Final EA concluded that while the amendments to the rule clarified existing handling and disposal procedures, the proposed changes at that time did not alter the handling or disposal of asbestos such that there would be no significant adverse impacts to solid or hazardous waste generation or disposal and no significant adverse impacts to air quality. Similarly, the current proposal in PAR 1403 does not alter the handling or disposal of asbestos, but rather provides clarifications to handling, identifying, and disposal of asbestos and asbestos-containing waste materials. Therefore, no additional disposal of asbestos or resulting emissions are expected or reasonably foreseeable as a result of implementing PAR 1403.
- 1-26) See Staff Response 1-24.

COMMENT LETTER #2



Daniel McGivney
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November 13, 2018

Philip Fine, Ph.D.
 Deputy Executive Officer
 South Coast Air Quality Management District
 21865 Copley Drive
 Diamond Bar, CA 91765

Subject: Concerns with Proposed Amended Rule (PAR) 1403—Asbestos Emissions from Demolition/Renovation Activities

Dear Dr. Fine:

Southern California Gas Company (SoCalGas) has been working actively with South Coast Air Quality Management District (SCAQMD) on Rule 1403 clarifications since October 2017. We appreciate the many opportunities to engage with rulemaking and compliance staff on this rule; however, our major concerns have yet to be resolved despite discussion during five (5) working group sessions and other meetings. We have outlined our key concerns below and request the set hearing date to be moved from December 2018 to January 2019 to work these issues out with staff.

I. SCAQMD should revise PAR 1403 to make clear that SoCalGas can respond immediately during an emergency to repair and restore service.

SoCalGas plays an important role as an essential service utility subject to the California Public Utilities Commission's (CPUC) many rules, directives, and policies. Additionally, natural gas is a critical energy source for many sectors. As the rule is currently written, SCAQMD is no longer considering SoCalGas to be an essential service utility and would be barred from responding immediately to repair and restore service in an emergency situation.¹ Being unable to respond immediately during an emergency to repair and restore service, however, could adversely affect public safety and services such as natural gas power plants, healthcare, water supply (potable and fire flow), flood control, sewage treatment and conveyance, water reclamation, other essential uses that are supplied by natural gas fueled equipment like boilers in hospitals and emergency engine-generators.

2-1

¹ **Currently, the rule states:** "Once the immediate hazard has been addressed, then activity must stop, and the site must be secured, stabilized, and surveyed for the presence and condition of asbestos containing materials". Natural gas pipelines and equipment cannot be repaired until SCAQMD approves the notification.

Page 2

As outlined in our November 1st comment letter, SCAQMD has historically determined SoCalGas to be an essential service utility and provides rule exemptions during power outages or emergency disruptions.² We **remain extremely concerned by SCAQMD’s change in position** and strongly urge SCAQMD to revise rule language to make clear that SoCalGas can respond immediately during an emergency to make repairs and restore service.

2-1

II. SCAQMD should make Frequently Asked Questions (FAQs) available for public review and Board approval before PAR 1403 adoption.

At Working Group meeting #4 in August, staff told stakeholders that FAQs were being developed to help address rule concerns.³ On September 7th, SoCalGas met with staff and other electric and water utilities to raise concerns and stress the need for an emergency exemption for essential service utilities in PAR 1403. In follow-up calls and Working Group #5 in October, staff continued to allay our concerns about rule revisions and compliance staff interpretations with the promise of a 40-page FAQ document that they hoped to release prior to the public workshop on October 31st.⁴ Comments made by Executive Planning Staff during the October 31st workshop regarding a utility’s ability to respond in an emergency (which included repairs and restoring service) were contradicted by Compliance Staff moments later.

2-2

Given staff’s insistence that FAQs will address rule concerns and compliance staff interpretations, we are surprised that staff has yet to release these FAQs to the public. Moreover, it appears that staff has changed its position and is now stating that FAQ will be released sometime after rule adoption. The public process for this rule has moved quickly and frequently changed course. We are concerned that stakeholders have been promised answers, but that those responses will now be developed behind closed doors and without public input. SoCalGas strongly urges SCAQMD to release the document for public review and comment *before* the rule is set to be adopted. Furthermore, to avoid concerns about underground rule-making, and to ensure that the FAQs will have weight with compliance and enforcement staff, we recommend that they should be Board-approved like those the guidelines in Rule 2202 and Rule 1180.⁵

² See Attachment A.

³ See Working Group Meeting #4 Presentation at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1403/par1403_wgm_4_presentation.pdf?sfvrsn=6

⁴ See Working Group Meeting #5 Presentation at: <https://www.aqmd.gov/docs/default-source/default-document-library/par-1403-wgm-5-presentation.pdf?sfvrsn=6>

⁵ See Rule 2202 Guidelines at: <http://www.aqmd.gov/home/programs/business/r2202-forms-guidelines> and Rule 1180 Guidelines at: <http://www.aqmd.gov/docs/default-source/rule-book/support-documents/1180/rule-1180-guidelines.pdf>

Page 3

III. SCAQMD should remove the notary signature requirement during an emergency for essential service utilities.

The provision to have a notarized emergency letter is not practical in an emergency situation.⁶ Emergencies usually occur during off-hours and weekends. SoCalGas proposes an exemption for essential service utilities, that would include natural gas utilities. In lieu of the notary requirement during an emergency, we request that a letter with the perjury certification be signed on company letterhead by a utility/company representative only and be accepted by SCAQMD.

2-3

IV. SCAQMD should clarify that abatement activities under 100 square feet are exempt from notification and training requirements.

As currently written in PAR 1403, exemption 2 implies that notification and training requirements are always applicable to a Procedure 4 or 5 regardless of square footage.⁷ In PAR 1403, Removal Procedures 4 and 5 require notifications asbestos containing materials (ACM) and a facility survey is required.⁸ Therefore, when applying exemption 2 to Removal Procedures 4 or 5 for ACM, all subterranean work, regardless of size, will now require notification and a facility survey. Staff should clarify language in exemption 2 that Procedure 4 or 5 is for asbestos containing material (ACM) clean-up to avoid unnecessary notifications for subterranean work under 100 square feet.

2-4

V. SCAQMD should clarify notification requirements based on project size.

Since October 2017, SoCalGas has been working with compliance staff to resolve issues in Rule 1403 regarding notification requirements based on project size. PAR 1403 does not determine project size limitations. **We are concerned that compliance staff's current interpretation will result in project piecemealing by not allowing one notification for an entire project.** We request additional time to work with staff to discuss these notification requirements as they affect our major projects and other CPUC mandates like the Pipeline Safety Enhancement Plan (PSEP).

2-5

VI. Conclusion

SoCalGas supports SCAQMD's efforts to carefully craft rulemakings to protect public health without undermining the operations of regulated stakeholders. Given our concerns outlined above and the delay of the FAQs document being released to the public, we request more time to work with staff on PAR 1403 rule revisions.

⁶ See pg. 1403-14 & 1403-15 at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1403/par1403_public_workshop.pdf?sfvrsn=12

⁷ See Exemptions Section (j)(2) on page 1403-33 at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1403/par1403_public_workshop.pdf?sfvrsn=12

⁸ See pg. 1403-20 at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1403/par1403_public_workshop.pdf?sfvrsn=12

Page 4

Sincerely,

Daniel R. McGivney

Daniel McGivney
Environmental Affairs Program Manager
Southern California Gas Company

Cc: Sarah Rees, Ph.D.
Dave De Boer
Don Hopps
Bradley McClung

Staff responses to letter from Southern California Gas Company dated 11/13/2018

- 2-1) Staff does not believe, nor did it consider, that So-Cal Gas is not an essential public utility service (PUC). What staff meant to imply is that each situation would need to be evaluated in terms of whether or not a particular project poses an imminent threat to public health or safety and this would apply to all PUC companies.
- 2-2) The Frequently Asked Questions (FAQs) document were released to the public on December 19, 2018. However, this document is simply a tool to be used as guidance to the stakeholders and is not considered an enforcement guidance document. It is a living document subject to revisions and may change if PAR 1403 depending on the action taken by our Governing Board.
- 2-3) The provision requiring a Public Notary to verify the identity of the property owner only applies in the event the contractor is unwilling to sign the emergency declaration letter. For most public utility companies (PUC's), if the work is performed by their employees, then the person representing the PUC's simply signs the emergency letter in both places. If the PUC hires a contractor to complete the renovation activity, then both the person representing the PUC and the person representing the contractor must sign the document. Staff does not see this as time consuming effort and would accept scans and/or photographs of the signed document.
- 2-4) The exemption in paragraph (j)(2) applies to a project size less than 100 square feet of undisturbed and undamaged ACM (e.g. tapping a line to add a component). Implicit with this exemption is any work on undisturbed AC Pipe where less than 100 square feet will be removed to complete the project may be exempt if the project meets the language of the exemption and if the pipe has been exposed and evaluated to be undisturbed and undamaged. Any amount of AC Pipe which has been damaged or disturbed prior to any renovation work is not exempt and must be handled in accordance with the provisions of Rule 140 by submitting a Procedure 4 or 5 clean-up plan.
- 2-5) Staff does not believe it is possible to draft rule language that would address the issue of pipe repairs or enhancements over varying distances between projects. Staff encourages the stakeholders to work with the compliance staff and find an equitable resolution on when a project on a pipe line may be submitted as one (1) notification event and when multiple notifications are required when the individual repairs or enhancements are too far from one another to be considered one (1) project.

COMMENT LETTER #3



TECHNICAL AND ADVISORY SERVICES • ENVIRONMENTAL HEALTH AND SAFETY

October 15, 2018 (Revised on November 13, 2018)

Bradley McClung
South Coast Air Quality Management District (AQMD)
21865 Copley Dr.
Diamond Bar, CA, United States

Re: Comments related to the proposed changes to Rule 1403.

Dear Mr. McClung:

This is a revised e-mail related to the referenced rule. Again, I am Joel I. Berman, CIH, CSP, CAC, CIAQM, CDPH LST, Vice President at Health Science Associates (HSA). HSA is a full service Industrial Hygiene, Safety, Environmental consulting, asbestos, lead-based paint (LBP), and training firm. We have been providing service to our clients in the State of California out of our primary corporate office in Los Alamitos, CA since 1969. Additionally, since approximately 1988 we have maintained a small consulting capability in the greater San Francisco/Oakland area.

We are writing to you to provide you our revised comments related to the referenced proposed rule changes. This revision is based on the amended version of the rule dated October 31, 2018. Again, our first comments are related to your change to add asbestos consultants under the Applicability section of the rule. This concerns us since as a consultant, our ability to act in regards to a project is extremely limited. We are not capable of acting in place of the owner, general contractor, and we cannot direct any of the contractors that may be on-site. It is assumed that by adding asbestos consultants to the Applicability section of the rule, you are trying to make asbestos consultants responsible for the implementation of the rule; therefore, opening us up to being cited and/or fined for the lack of proper implementation of the rule. As stated, as an asbestos consultant, our authority on a project is extremely limited and therefore, we should not be responsible for implementing the rule. We again ask that you provide a statement that a consultant, general contractor, sub-contractor, etc., can only be cited for those items that are within their ability to control. As we see it, without this statement, your inspectors may try to cite this new group for things that they cannot control.

3-1

If it is your intention to be able to site and/or fine an asbestos consultant for improper surveys, that is separate from actual rule implementation and should be separated from the Applicability section of the rule.

Again, there has been no update to Section (c), new item 22, the definition of friable includes a statement in the sixth line that states “. . . may include . . .”. This is a very vague statement and should be further defined. The statement “may include” can easily be interpreted differently between inspectors and could open contractors, asbestos consultants, and district inspectors to constant disagreements in what “may include” means. In the same definition, the term water damaged is also included. Water damaged is not defined and one inspector could view any water staining as damaged, where another may not. Therefore, again, disagreements could easily occur due to different interpretations of this statement. The concept of water damage that has caused ACM to lose its cohesion to its substrate may be a better definition to use. Also, what is the purpose of identifying these other issues as friable, will then the inspector have the ability to require the abatement of these materials and if so, under what authority would this be?

3-2

It appears that SCAQMD is not trying to put into their regulation the one fiber in a lifetime concept that was stated years ago by Dr. Irving Selikoff. However, this statement and concept has been out of style for many years and it is quite clear that the risk, if there is one, of one fiber causing an asbestos related disease is so low that it cannot be calculated. If you include many of the items in list above in the definition of friable asbestos, then almost any situation could easily be considered to be friable. Additionally, what is the

3-3

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Bradley McClung
October 15, 2018 (Revised on November 13, 2018)
Page 2

definition of the term "lacks fiber cohesion", especially when we are discussing materials that are invisible to the naked eye. It could be assumed that with this new version of 1403, that SCAQMD is trying to control all potential aspects of asbestos based on the worst case scenario, leaving out the fact that the majority of building owners are trying to comply. It would further appear that when your site inspectors lead field trips to the group that is amending 1403, that they only visited sites that they knew would be shocking, rather than sites where controls were likely in place. Finally, this and many other revisions appear to be based on fining the various groups included in the applicability section rather than working with them to create a workable rule. I based this on the many requested edits to the rule that I and many others have requested, and only one or two revisions have been accepted.

3-3

In Section (c), item 47, the concept of visible emissions appears to have been expanded to potentially include any material that might produce dust at an asbestos project. The current EPA definition of visible emissions is as follows, "Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor."³ The proposed definition is an extreme increase in the requirements for a demo or abatement contractor and based on certain projects may be impossible to achieve especially on larger projects where generally non-friable material is being demolished along side various non-ACMs. During the last meeting related to this, I asked the question that is a Procedure 3 project, open wet, I asked that as long as the "visible dust" remains inside of the barrier area, would this be acceptable, and the response was yes. While of definition of Isolated Area (item c, 27) does intimate this concept, I feel that it should be further defined.

3-4

Section (d), (1), (A), (i), this section appears to have been amended to include the statement "part of the facility where the demolition or renovation operation will occur". This was a very helpful change. Thank you.

During the IAQA meeting of October 11, 2018, Inspector Michael Haynes, stated that the AQMD understands three basic types of asbestos surveys, 1) Limited (i.e. for a specific project and/or section of a building that will undergo renovation, excluding areas not involved), 2) Comprehensive (i.e. a demolition survey), and 3) an Assessment (i.e. to determine the extent of clean-up required after a disturbance and as part of the preparation of a Procedure 5 document). It may be in the districts interest to include these definitions in the new rule rather than using the term thoroughly as used above.

3-5

Again, in the same section, the final sentence states that the age of the building is not considered when planning a demolition. Under the Asbestos Hazard Emergency Response Act (AHERA) regulation, if the architect will state that there were no ACMs used in the construction of the building, then the building does not require assessing. Additionally, in the past, a representative sampling (not meeting the requirements of AHERA, but ensuring that all suspect ACMs were sampled) of a building constructed well after asbestos was no longer typically used in building materials was allowed. This statement will require a full survey of all buildings, which is likely not necessary. There should be a similar allowance in the rule.

3-6

Section (d), (1), (A), (i), will now require the asbestos survey report to be on-site. Based on this, it is possible that a inspector could require that all surveys in a building would be required to be on-site rather than just the survey related to the specific project being performed (this needs to be more specific). Rule 1403 has been in place since 1988 and in many instances, the actual report(s) related to specific building materials may be almost 30 years old (or in some cases older) and may not be easy to find. In that instance,

3-7

³<https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol8/pdf/CFR-2011-title40-vol8-part61-subpartM.pdf>

Bradley McClung
October 15, 2018 (Revised on November 13, 2018)
Page 3

building owners have typically kept an inventory of the various ACMs related to their buildings and those are used to document which materials are ACM and which materials are not. Older reports may be difficult to have on-site and may include many areas of a building that are not applicable to the present project. If the district is going to require that each project have a separate report, this will be an onerous financial burden to building owners. I still do not see where there has been any sort of resolution of this issue in the rule. How will you deal with these issues? 3-7

Section (d), (1), (A), (iii), (VII), (2), the first line of this section requires the asbestos consultant to record the "time" that each sample was collected. This is an onerous requirement and serves no purpose and the work "time" should be removed from this paragraph. It is our understanding that this issue will be resolved. I would like to see the resolution of this item. 3-8

Section (d), (1), (B), in the third line, the rule requires "... the person performing the renovation or demolition ..." to notify the district of an abatement. This should probably be replaced with the name of the abatement contractor instead of an individual's name. It has been identified that Person, as defined in item 34 of the rule include a company as well. Therefore this is resolved. 3-9

Section (d), (1), (D), (ii), (II), requires either a "... Procedure 4 or 5 for materials that cannot be assessed." This appears to be related to buried materials such as asbestos containing cement (A/C) pipe. Previously, it was allowed that if the pipe was found to be intact that the abatement of the pipe could be performed under a Procedure 1 abatement. However, if after excavation began, it was determined that the A/C pipe was damaged, then a Procedure 5 would be required. The AQMD is now assuming that all A/C pipe is friable and damaged, which in most instances will not be the case. Therefore, this is an extreme and un-necessary extension of the rule requirements. This issue has not been resolved in the version of the rule dated October 31, 2018. We would like to see this resolved in the manner that was previously enforced. 3-10

Section (h),(1), (A-E), was a complete revision and change of the EPA's AHERA requirements related to sampling of suspect ACMs, which have been the districts standard since 1403 was originally written. Since its original issuance, this has been changed to being more in line with the AHERA regulations. The only change to the current version was requested would be to increase the square footage where only one sample of Class I and Class II non-friable suspect ACMs are collected. The current version limits this to 16 square feet (ft²). The suggested change was to either 50 or 100 ft² of homogeneous materials could be assessed with one sample. 3-11

Section (h), (2), (B) (i), is in direct conflict with an "EPA Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems" document that states that if joint compounds only cover the seams and penetrations of wall systems, then for analysis purposes, the materials can be analyzed as a single system. If the ACM is spread thorough the wall surface, they the layers must be analyzed separately.² While this will put AQMD in-line with Cal/OSHA requirements, which is accurate, it still appears that the district is trying to ensure that they are always notified of projects that are impacting asbestos containing construction material (ACCM), increasing their notification fee revenue stream. Under Cal/OSHA this is required in order to control worker exposure, ensuring their protection. Again, under AQMD, it appears that this is merely a grab for more revenue, especially when they layers are cannot be separated (mud and drywall, stucco, etc.). It would be easier to understand if the layers could be separated, but they cannot. 3-12

In the last meeting, section (d) (1) (C) (I) (VI), page 17, regarding the definition of the word "any" in relationship to the requirement for a Procedure 5 was discussed. The use of the word "any" is onerous, overboard, and inane. This concept and requirement is completely foreign in relationship with NESHAPS 3-13

²<https://www.gpo.gov/fdsys/pkg/FR-1995-12-19/pdf/95-30790.pdf>

Bradley McClung
October 15, 2018 (Revised on November 13, 2018)
Page 4

and would technically require a owner/operator to notify when a single vinyl asbestos floor tile is scratched causing an extremely minute/minor disturbance to the floor tile, or if a pea sized piece of fireproofing drops to the floor when a ceiling tile is moved, or technically, or even a consultant collecting a bulk sample of a suspect ACM since bulk sampling is not performed inside of a containment. There must be some concept akin to small scale, short duration work that the district can work with that would allow trained workers to clean up a small disturbance. The requirement could include that the workers must have at least received Cal/OSHA Class VI training (i.e. janitorial) and that they must use a HEPA equipped vacuum and/or wet wiping techniques.

3-13

Under the AHERA regulation, a minor fiber release is considered when less than three ft² of ACM is disturbed and a major fiber release is when more than three ft² is disturbed. It would be nearly impossible for AQMD to expect an owner/operator to commission a Procedure 5 for a clean-up that will take an short period of time to clean-up (i.e. less than 30 minutes). The time lost and expense for such a small amount of material is unimaginable. Asking a building owner/operator to stop everything for a minuscule amount of ACM just boggles then mind. Additionally, if this were actually be put into place, and if it were to be followed by the letter of the rule, will the district be able to process all of the new Procedure 5 notifications that it will receive in a timely manner such that AQMD itself is not the roadblock to the actual cleaning up of asbestos materials. There must be a logical middle ground that can be reached between the district and the governed building owners, operators, consultants, etc., to allow for a certain amount of clean-up when proper procedures are followed, instead of trying to control each and every fiber release that may or may not occur.

3-14

Finally, adding this requirement will be onerous to all facilities in the district and it could be stated that AQMD is just trying to be able to increase revenues with an increased number of Procedure 5 notifications or fines to facilities who violate this portion of the rule.

If you have any questions regarding this correspondence, please feel free to contact us at (714) 220-3922.

Sincerely yours,



Joel I. Berman, CIH, CSP, CIAQM, CAC
Vice President

Staff responses to letter from Health Science Associates dated 11/13/2018

- 3-1) Rule 1403 subdivision (b) states, “This rule, in whole or in part, is applicable to... asbestos consultants.” Only the portions of the rule that are the responsibility of the asbestos consultant are applicable, unless the asbestos consultant is otherwise and additionally involved in the demolition or renovation activity (e.g., as an owner of the property).
- 3-2) Staff believes the statement “may include” for the definition of Friable ACM in Paragraph (c)(22) is consistent with the other portion of the definition that states Friable ACM is material that “when dry, can be crumbled, pulverized, or reduced to powder by using hand pressure.” Some of the materials included in this list may, in actuality, be considered Nonfriable ACM under certain conditions. Therefore, the definition does not expressly state that these materials are always friable, but simply they are common materials found to be friable. Our compliance staff would use their training and expertise to make a fact-based determination when classifying any suspected ACM.
- 3-3) Neither the US-EPA, OSHA, California Air Resources Board, Cal-OSHA, nor any scientific study has determined a safe exposure threshold to asbestos fibers. The NESHAP and Rule 1403 are written to reduce exposure and staff believes that they are an instrument to limit that exposure. Considering the rules do not consider material with an asbestos content less than one-percent (1.0%) to be regulated and have specific exemptions for small areas of abatement, then they are evidently written with the intent to limit, but not eliminate all exposure.

While staff conducted site visits to some larger facilities as noted in this staff report, most of our field inspections with the compliance staff were to smaller projects operated by small contractors. We have worked closely with the stakeholders by holding five (5) well attended working group meetings, presented multiple versions of the rule language, and revised much of our rule language upon the advice of our stakeholders.

- 3-4) The definition for visible emissions in PAR 1403 specifically states, “...emissions or evidence of emissions coming from asbestos related activities found outside the isolated work area or on-site storage,” so only visible emissions including track-out are determined or discovered outside of the asbestos related work area would be in violation of this subparagraph. If the smoke, dust, or other materials are confined to the work area for the asbestos related activities, then it would not be considered a violation of Rule 1403. Visible emissions from activities unrelated to the asbestos project would be regulated in District Rule 403 and would be handled according to the enforcement guidelines of that regulation.
- 3-5) Staff has revised Clause (d)(1)(A)(i) to the following language, “The affected facility, part of the facility where the demolition or renovation operation will occur, or facility

- components shall be thoroughly surveyed...” Staff believes this clears up any ambiguity without expanding our list of definitions.
- 3-6) See Staff Response to Stakeholder Comment #19 on Page 5-6.
- 3-7) An on-site survey is required per clause (d)(1)(H)(iii). Enforcement staff has typically been sensitive to the availability of an on-site survey and allows for electronic copies to provided, but the maintenance of records at the project site is defined in subparagraph (d)(1)(H).
- 3-8) Staff has removed the time requirement from Item (d)(1)(A)(iii)(VII)(2). See Staff Response to Stakeholder Comment #45 on Page 5-13.
- 3-9) Person, as defined in Rule 1403, includes the abatement contractor.
- 3-10) Subclause (d)(1)(D)(ii)(II) only refers to activities where the ACM has not been exposed or cannot be assessed prior to commencement. Any project where the ACM is visible and in good condition or has been exposed (aka unburied) and determined to be in good condition prior to removal can be submitted as a Procedure 1, 2, 3, or 4. For routine replacement of intact AC pipe, Procedure 3 is the most appropriate procedure, and no approval is required. What is required, is a survey that includes an assessment of the condition of the material. In order to do an assessment of the condition, the entire pipe to be replaced must be exposed. The choice to expose the pipe and wait 10 working days with a Procedure 3 notification, or submit a Procedure 5 and wait 10 working days before digging up the pipe is an operational one that the property owner must make.
- 3-11) See Staff Response to Stakeholder Comment #17 on Page 5-5 and Stakeholder Comment #18 on Page 5-6.
- 3-12) See staff comments on “The NESHAP allows for composite analysis of wall systems, but Rule 1403 will prohibit” in the section titled Summary of Key Issues on Page 3-5.
- 3-13) Staff believes that stakeholder is referring to Subclause (d)(1)(C)(ii)(VI) and not the inaccurate citation of Subclause (d)(1)(C)(I)(VI). In this instance, staff believes that Subclause (d)(1)(C)(ii)(VI) is redundant language and has removed this from PAR1403.
- 3-14) Staff does not disagree with the position that minor disturbances (e.g. scraping resilient floor tile) should not require notification to the district or the implementation and a Rule 1403 clean-up plan. However, it is equally rash to place any specific threshold on when Rule 1403 would or would not apply to a clean-up plan. Each case would have to be evaluated independently by the facility owner and determined to be regulated or simply a disturbance to be cleaned immediately.

COMMENT LETTER #4

George Minter
Regional Vice President
External Affairs & Environmental Strategy
Southern California Gas Company

555 W. 3rd Street
Los Angeles, CA 90013
(213) 244-2550
GMinter@semprautilities.com

November 1, 2018

Mr. Wayne Nastri
Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: Concerns with Proposed Amended Rule (PAR) 1403—Asbestos Emissions from Demolition/Renovation Activities

Dear Mr. Nastri:

Southern California Gas Company (SoCalGas) has been working actively with South Coast Air Quality Management District (SCAQMD) on Rule 1403 clarifications since October 2017. We appreciate the many opportunities to engage with rulemaking and compliance staff on proposed amendments. While several issues remain unresolved, we are writing today to address a very concerning comment made by SCAQMD staff during a meeting held on October 30, 2018 with the California Council for Environmental and Economic Balance (CCEEB), and other utilities including Southern California Edison (SCE) and the Los Angeles Department of Water and Power (LADWP).

As currently written, PAR 1403 will delay the restoration of essential natural gas service during an emergency pending SCAQMD approval.¹ During the October 30th meeting, SCAQMD Executive Staff stated that restoring natural gas service during an emergency is not on par with restoring electrical or water services. Based on this interpretation, electric and water utilities would be given flexibility to restore service during an emergency renovation; whereas, natural gas utilities would not.

However, the current draft of PAR 1403 and **staff's interpretation** of the proposed rule language contradicts several similar SCAQMD rules. We are writing today to respectfully request that staff revise its stated position that a natural gas utility is not an essential service utility, and accordingly, revise rule language to make clear that SoCalGas can respond

¹ See Exemption j (1) on pg. 1403-33 of PAR 1403 (October 31st version). Also, see pg. 3-4 of Preliminary Draft Staff Report (Oct. 31st version). NESHAPS, Section 61.145(b)(3)(i) does not indicate any requirement for waiting for district approval or notification to begin mitigation work.

Page 2

immediately during an emergency to repair and restore service. Natural gas plays an important role as an essential service utility with California Public Utilities Commission (CPUC) obligations and is a resilient and critical energy source during natural disasters.

I. SCAQMD has correctly and consistently determined natural gas to be an essential service utility and provides rule exemptions during power outages or emergency disruptions.

SCAQMD has not previously made a distinction between electric, water, or natural gas utilities in emergency situations or service outages. For example, Rule 403 (Fugitive Dust) created an exemption for “active operations conducted by essential service utilities to provide electricity, natural gas, telephone, water and sewer during periods of service outages and emergency disruptions.”² Rule 1186 (PM₁₀ Emissions from Paved and Unpaved Roads, and Live Stock Operations) is tied to Rule 403 and provides the same definition of an essential service utility.³ This precedent and exact language continued in 2017 with the adoption of Rule 1466 (Control of Particulate Emissions from Soils with Toxic Air Contaminants).⁴ Now, without any sufficient justification, Executive Planning Staff have indicated a intent to break with this precedent and disallow an exemption for natural gas utilities alongside electric and water utilities.

Furthermore, some essential public service operations defined in Rule 1303 (BACT Requirements) would be jeopardized without natural gas supply.⁵ Both water and sewer facilities rely on engine-driven pumps, compressors, and other technologies fueled by natural gas in day-to-day operations and during emergencies like fires and flooding. If water and sewer utilities cannot provide water and flood protection or cannot process sewage, public health and safety would be greatly impacted in an emergency situation.

II. Like water and electric utilities, SoCalGas is a regulated utility with state-mandated service obligations.

Natural gas is an essential service that millions of Californians rely on to heat their homes and prepare meals. SoCalGas supplies natural gas to over 21 million customers in Southern California. Over 90 percent of homes use natural gas for space and water heating in the Los Angeles Basin. If SoCalGas is not afforded the same flexibility as other utility service providers

² See pg. 403-10 of Rule 403 accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/rule-iv/rule-403.pdf>

³ See pg. 1186-10 of Rule 1186 accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1186.pdf>

⁴ See pg. 1466-15 of Rule 1466 accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1466.pdf>

⁵ See Rule 1303 accessed at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xiii/rule-1303-requirements.pdf>

Page 3

in an emergency situation, millions of Californians could be without heat – a legal requirement for a dwelling to be habitable in California.⁶

Moreover, SoCalGas is a public utility regulated by the CPUC to provide safe, reliable, and affordable natural gas service to California’s residents and businesses. California Public Utilities Code Section 451 requires SoCalGas (and other public utilities) to maintain equipment and provide service “necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” The CPUC has previously found that “Natural gas is essential to provide heat and hot water in homes and businesses, for cooking food and drying clothes, and for fuel for many industries and electric generators.”⁷ SCAQMD’s new position that the restoration of natural gas service is not “essential” like restoring electric, water, and sewer service conflicts with other local and state policies that require the maintenance of safe and reliable natural gas service.

III. Natural gas ensures reliability for other utilities and is a critical energy source needed during natural disasters.

As we noted during the October 30th meeting, natural gas is primarily used by utilities to supply electricity to customers 24 hours a day, 365 days a year. In the event of a wildfire, it is current practice for electric utilities to shut down distribution assets to ensure they do not contribute to fires. For fire suppression, only natural gas would be available to drive water supply pumps or power the grid for electric pumps. During an earthquake or other natural disasters and emergency situations, natural gas provides back-up generation for hospitals and relief centers via the use of emergency engines and local combined heat and power (CHP) systems. Loss of local CHP facilities could affect recovery efforts in the event of an emergency situation and endanger public health through loss of power and hot water.

IV. Conclusion

SoCalGas supports SCAQMD’s efforts to carefully craft rulemakings to protect public health without undermining the operations of regulated stakeholders. While we reserve the right to follow-up in a subsequent comment letter with other concerns regarding PAR 1403, today we respectfully request that staff revise its stated position that a natural gas utility is not an essential service utility. SoCalGas is an essential service utility and will continue to provide the region with clean energy in the future. Our system will serve as an energy storage system for intermittent wind and solar, as well as transport increasing amounts of renewable gas for use in thermal applications and clean technologies in the heavy-duty transportation sector. We strongly urge SCAQMD to revise rule language to make clear that SoCalGas can respond immediately during an emergency to make repairs and restore service.

⁶ See Cal. Civil Code Section 1941.1, available at:

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=1941.1

⁷ Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California at 17 (Rulemaking 04-01-025).

Page 4

Sincerely,



George Minter
Regional Vice President, External Affairs & Environmental Strategy
Southern California Gas Company

Cc: Philip Fine, Ph.D.
Sarah Rees, Ph.D.
Terrence Mann

Staff responses to letter from Southern California Gas Company dated 11/01/2018

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4182
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*Office of the Executive Officer
Wayne Nāstri
909.396.2100, fax 909.396.3340*

November 20, 2018

Mr. George Minter
Regional Vice President, External Affairs & Environmental Strategy
Southern California Gas Company
555 W. 5th Street
Los Angeles, CA 90013

Dear Mr. Minter:

I am writing in response to the November 1, 2018 letter you sent regarding concerns with Proposed Amended Rule (PAR) 1403 – Asbestos Emissions from Demolition/Renovation Activities, specifically citing what you characterized as “a very concerning comment” made by South Coast Air Quality Management District (SCAQMD) staff.

As currently written, Rule 1403 has a provision allowing for a waiver of the required 10-day notification period for asbestos work¹ in the event of emergencies. The current rule language requires that “[t]he District shall be notified as soon as possible, but prior to any emergency demolition or renovation activity.”² The definition of emergency renovation is “any renovation that was not planned and results from a sudden unexpected event that results in unsafe conditions.”³ The waiver of the 10-day notification period is consistent with the federal regulations regarding asbestos demolition and renovation work. However, the definition of “emergency renovation” in Rule 1403 is more stringent than the federal requirement in that it turns on a consideration of risk to public health.⁴ This definition has been consistent since the original adoption of Rule 1403 in 1989.

During the rule development process, stakeholders raised concerns that SCAQMD staff’s interpretation of an emergency within the meaning of Rule 1403 had been inconsistent. Specifically, utility stakeholders raised concerns regarding emergencies that resulted in a disruption of utility services, and the purported need to wait for SCAQMD approval of an emergency notification prior to starting work. Staff clarified that in the event of a true

¹ Note that the 10-day notification requirement is a federal requirement and can only be waived in the event of an emergency.

² Rule 1403 (d)(1)(B)(i)(III).

³ Rule 1403 (c)(15).

⁴ Staff believe that the 10-day notification period is an important component of Rule 1403 in that it provides staff the opportunity to review asbestos plans to ensure that the asbestos abatement work is conducted in a way that minimizes risk to public health. This additional protection is outweighed by the imminent threat to public health and safety in emergencies.

emergency that resulted in a risk to public health and safety, we would expect the owner/operator to submit the notification and then immediately work to address the emergency instead of waiting for SCAQMD approval. However, once the emergency has been remedied, if additional asbestos abatement were needed, the owner/operator would then provide the 10-day notification and follow routine Rule 1403 procedures. Staff is proposing adding language to clarify the definition of "emergency renovation" as well as adding an explicit exemption for such emergency situations.

Through multiple conversations, including in the October 30, 2018 meeting referenced in your letter, staff discussed how these provisions would relate to emergencies that resulted in disruption of utility services. The exemption provision does not provide a blanket waiver for certain situations – like a disruption of utility service. Instead, it provides for a specific fact-based analysis as to whether a given situation constitutes an imminent threat to public health and safety.

Staff have acknowledged that a disruption of utility services could constitute an imminent threat to public health and safety that would qualify as an emergency. Staff also discussed that situations involving disruption of water and power may more frequently lead to circumstances that constitute an imminent risk to public health and safety than disruption in natural gas. But staff did not state that a disruption of water or power would always constitute an emergency, nor did staff state that a disruption in natural gas service would never qualify as an emergency. And staff did not state that natural gas is not an essential service utility.

You raise several examples where the natural gas supply is a critical energy resource during natural disasters. For your situation where there is a wildfire and natural gas remains the sole energy source to power water supply pumps – in the unlikely event there were a disruption in natural gas supply requiring asbestos work to restore service – it is fair to say that SCAQMD staff would not require a gas utility to wait the standard 10 working days before commencing the work. Similarly, if there is a disruption to natural gas service involving asbestos work during an earthquake, that situation seems to fall squarely within our interpretation of "emergency renovation." Please note that Rule 1403 already includes language explicitly pointing to fires and earthquakes as emergency events regardless of whether there is a disruption in utility service.

We appreciate your comments and willingness to work with us as we continue our efforts to enhance and further clarify this important rule. To that end, you mention that "several issues remain unresolved" regarding PAR 1403. We would welcome the opportunity to better understand and fully discuss your concerns and, to the extent there is remaining confusion regarding our proposed amendments, provide further clarity.

Sincerely,



Wayne Natri
Executive Officer

PF:SR

COMMENT LETTER #5



November 12, 2018

Philip Fine Ph.D.
 Deputy Executive Officer
 South Coast Air Quality Management District
 21865 Copley Drive
 Diamond Bar, CA 91765

Subject: SCAP Concerns with Proposed Amended Rule (PAR) 1403

Dear Dr. Fine,

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) has recently become aware of an issue with PAR 1403 that could have an adverse effect on the ability of SCAP member agencies to provide essential water and wastewater services.

The current draft of PAR 1403 does not include an exemption for a natural gas utility to respond immediately to repair and restore service in an emergency. SCAP member agencies utilize natural gas fueled engine standby electricity generators and natural gas fueled engine driven primary duty and standby pumps for water and wastewater. Several of these facilities are in the SCAQMD service area. During electric power outages or other utility emergencies SCAP agencies rely on these natural gas engines to provide water and wastewater service to the community. It is critical that natural gas supply for these engines be reliable and in the event of an outage, restored immediately. Unlike diesel fueled standby engines, most natural gas fueled standby engines do not have a fuel storage tank and rely on a continuous flow of natural gas to operate.

In addition to natural gas fueled standby engines, SCAP members rely on natural gas fueled boilers and other process equipment for treatment of wastewater to protect the environment and public health.

} 5-1



SCAP will greatly appreciate SCAQMD’s consideration of including an exemption for a natural gas utility to restore and repair service immediately in an emergency situation. This rule change is critical in order for our members to reliably execute their mission.

} 5-2

If there are any questions or if additional correspondence is desired please do not hesitate to contact me at (760) 479-4112 or sjepsen@scap1.org

Sincerely,

A handwritten signature in blue ink, which appears to read "Steve Jepsen".

Steve Jepsen
Executive Director SCAP

Cc:

- Sarah Rees, Ph.D.
- Dave De Boer
- Don Hopps
- Bradley McClung
- Terrence Mann

Staff responses to letter from SCAP dated 11/12/2018

5-1) Staff would refer stakeholder to Mr. Wayne Nastri's response letter to Southern California Gas Company (Comment letter #4) on Page 5-52 and 5-53:

“Staff have acknowledged that a disruption of utility services could constitute an imminent threat to public health or safety that would qualify as an emergency. Staff also discussed that situations involving disruption of water and power may more frequently lead to circumstances that constitute an imminent risk to public health or safety than disruption in natural gas. But staff did not state that a disruption of water or power would always constitute an emergency, nor did staff state that a disruption in natural gas service would never qualify as an emergency. And staff did not state that natural gas is not an essential service utility.”

5-2) See Staff Response 1-9 (Comment Letter #1) on Page 5-28.

COMMENT LETTER #6



H A S C
515 S. Figueroa St., Ste. 1300
Los Angeles, CA 90071
P: (213) 538-0700
www.hasc.org

December 6, 2018

Mr. Wayne Natri
Executive Officer
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 91765

**Subject: Amended Rule (PAR) 1403: Asbestos Emissions from Demolition /
Renovation Activities**

Dear Mr. Natri:

The Hospital Association of Southern California (HASC) represents 184 hospitals and health systems that are located in the counties of Los Angeles, Santa Barbara, Ventura, Orange, San Bernardino and Riverside. As a leader in health policy and advocacy, we provide our member organizations with representation on issues that impact their operation and delivery of services to patients that require medical attention. This comment letter addresses a concern related to the current PAR 1403 draft policy and its impact on patient health and safety.

Hospitals, which are critical infrastructure assets, require water, electricity and gas to operate in order to fulfill their mission of providing medical and emergency services to those in need 24/7. Aside from their mission, healthcare facilities are mandated to have these services available 24/7 in order to remain fully operational and in compliance with state and local regulations. Classifying the restoration of gas as an un-urgent utility following an emergency would not only adversely affect hospital operations but puts thousands of patients at serious risk. Gas is not only used to heat the physical plant it is also readily used to sterilize medical equipment and ensure patient safety.

I respectfully urge the Southern California Air Quality Management District (SCAQMD) to revise the draft language within PAR 1403 and classify natural gas as an essential service for hospitals following an emergency or interruption in service. As critical assets in a community, and the vital role of hospitals in the recovery effort following an emergency, they must be prioritized in the restoration of service.

} 6-1

On behalf of the Hospital Association of Southern California, I would like to thank you in advance for considering the unique needs of hospitals in the SCAQMD region.

Thank you,

Jaime Garcia
Regional Vice President

Cc:
Philip Fine
Sarah Rees

Staff responses to letter from the Hospital Association of So. Calif. dated 12/6/2018

6-1) Staff would refer stakeholder to Mr. Wayne Nastri's response letter to Southern California Gas Company (Comment letter #4) on Page 5-52 and 5-53:

"Staff have acknowledged that a disruption of utility services could constitute an imminent threat to public health or safety that would qualify as an emergency. Staff also discussed that situations involving disruption of water and power may more frequently lead to circumstances that constitute an imminent risk to public health or safety than disruption in natural gas. But staff did not state that a disruption of water or power would always constitute an emergency, nor did staff state that a disruption in natural gas service would never qualify as an emergency. And staff did not state that natural gas is not an essential service utility."

COMMENT LETTER #7





 P.O. Box 1771 • Orange, CA • 92856 •
www.pasmaonline.org

December 26, 2018

David De Boer, Planning and Rules Manager
 South Coast Air Quality Management District
 21865 Copley Drive
 Diamond Bar, CA 91765

Subject: Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities

Dear Mr. De Boer:

The Public Agency Safety Management Association (PASMA), represents over 140 public agencies in California. Our members include municipal and county government agencies, water districts, and other special districts, who would be affected by the South Coast Air Quality Management District (SCAQMD) proposed changes to Rule 1403 (Asbestos Emissions from Demolition / Renovation Activities). It is our understanding that the SCAQMD intends to consider adopting the Proposed Rule on February 7, 2019. Several of our members are extremely concerned that despite holding several workshops, revisions to this rule have not been fully communicated to the water industry. Therefore, we would like to join these and other stakeholders in requesting that SCAQMD postpone adopting the Rule, as we have not had time to fully evaluate the impacts to our operations. The Proposed Rule refers to Proposed Rule 1403 dated October 31, 2018. Several of our members are water utilities, and they use asbestos cement (AC) pipes in their water distribution systems. When handled properly, these pipelines pose no risk to their customers or the public. We are concerned that SCAQMD does not explicitly define loss of water service as an emergency event. As written, it appears that the Proposed Rule would place the burden of proof on water utilities to justify that an AC pipe break is truly an emergency. We are concerned that leaving this interpretation to enforcement staff could cause water purveyors to be subject to violation. Any loss of water service is an emergency, and this should be reflected in the Rule.

7-1

We are troubled that the Proposed Rule will prohibit water purveyors from completing repairs in a timely manner. We understand AQMD expects that when a main breaks, the utility may repair the main break, but may not patch or repair the street until the site has been surveyed and SCAQMD has approved further work. This approach presents an unacceptable safety risk. Main breaks cannot always be safely secured. These unstable excavations can pose a risk to motorists, pedestrians, and our workers if not properly backfilled. Because trained workers would already be on-scene responding to a main break, it does not make sense to delay repairs to the street.

7-2

We understand that a revised draft will be released for public review prior adoption by your Board. We hope that SCAQMD intends to release a substantially revised next draft, as we have many additional concerns with the Proposed Rule as written. In the meantime, we have the following recommendations:

- Adoption of the Proposed Rule should be delayed until additional outreach has been conducted with water utilities.
- The Proposed Rule should explicitly include loss of water service as an emergency event.
- The Proposed Rule should allow utilities to fully complete repairs, including patching the street, without delay.

7-3

We appreciate the opportunity to provide comments on the proposed changes to Rule 1403. If you have further questions please contact me at (714) 765-4399.

Sincerely,



Bill Taylor, CSP
PASMA-South Chapter, Legislative and Regulatory Representative

cc: Anna Levina, PASMA-South Chapter, President
Stephen Hackett, PASMA-North Chapter, President

Staff responses to letter from PASMA dated 12/26/2018

7-1) Staff has held two (2) formal meetings directly with Public Utility Companies (PUC's), along with many telephonic and Email correspondences, working diligently to prepare a revised Frequently Asked Questions (FAQs) document addressing many of their policy concerns. Additionally, Rule language has been specifically written at their appeal to respond to an emergency which poses and imminent threat to public health or safety. Staff will continue to work closely with the PUC's to address emergency response and compliance with Rule 1403.

Staff would refer stakeholder to Mr. Wayne Nastri's response letter to Southern California Gas Company (Comment letter #5).

7-2) Staff has added an exemption in paragraph (j)(1) and clarified the procedures when encountering a project which poses an imminent threat to public health or safety.

7-3) PAR 1403 is currently scheduled for Public Hearing on February 1, 2019. See Staff Responses 7-1 and 7-2 above.

COMMENT LETTER #8

December 19, 2018

Don Hopps
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: Proposed Revisions to Rule 1403 – Asbestos Emissions from Demolition / Renovation Activities

Dear Mr. Hopps:

The water agencies of Orange County recently learned that the South Coast Air Quality Management District (AQMD) is proposing to revise Rule 1403 (Asbestos Emissions from Demolition / Renovation Activities) and the AQMD intends to consider adopting the Proposed Rule on February 7, 2019. We are concerned that despite holding several workshops, revisions to this rule have not been fully communicated to the water industry. Therefore, we request that AQMD postpone adopting the Rule, as we have not had time to fully evaluate the impacts to our operations. The Proposed Rule refers to Proposed Rule 1403 dated October 31, 2018. As water utilities, the undersigned agencies use asbestos cement (AC) pipes in our water distribution systems. When handled properly, these pipelines pose no risk to our customers or the public.

8-1

We are concerned that AQMD does not explicitly define loss of water service as an emergency event. As written, it appears that the Proposed Rule would place the burden of proof on water utilities to justify that an AC pipe break is truly an emergency. We are concerned that leaving this interpretation to enforcement staff could cause water purveyors to be subject to violation. Any loss of water service is an emergency, and this should be reflected in the Rule.

We are troubled that the Proposed Rule will prohibit water purveyors from completing repairs in a timely manner. We understand AQMD expects that when a main breaks, the utility may repair the main break, but may not patch or repair the street until the site has been surveyed and AQMD has approved further work. This approach presents an unacceptable safety risk. Main breaks cannot always be safely secured. These unstable excavations can pose a risk to motorists, pedestrians, and our workers if not properly backfilled. Because trained workers would already be on-scene responding to a main break, it does not make sense to delay repairs to the street.

8-2

We understand that a revised draft will be released for public review prior adoption by your Board. We hope that AQMD intends to release a substantially revised next draft, as we have many additional concerns with the Proposed Rule as written. In the meantime, we have the following recommendations:

- Adoption of the Proposed Rule should be delayed until additional outreach has been conducted with water utilities.
- The Proposed Rule should explicitly include loss of water service as an emergency event.
- The Proposed Rule should allow utilities to fully complete repairs, including patching the street, without delay.

8-3

Water agencies of Orange County:



Anaheim Public Utilities



City of Buena Park



East Orange County Water District



City of Fountain Valley



City of Fullerton



City of Garden Grove



Golden State Water Company



City of Huntington Beach



Irvine Ranch Water District



City of La Palma



Mesa Water District



City of Newport Beach



City of Orange



City of Santa Ana



City of Seal Beach



Serrano Water District



City of Tustin



City of Westminster



Yorba Linda Water District



City of Brea



El Toro Water District



Emerald Bay Service District



Moulton Niguel Water District



Santa Margarita Water District



South Coast Water District



Trabuco Canyon Water District



Laguna Beach County Water District



City of San Juan Capistrano

Staff responses to letter from The Water Agencies of Orange County dated 12/19/2018

8-1) See Staff Response to 7-1 (Comment Letter #7)

8-2) See Staff Response to 7-2 (Comment Letter #7)

8-3) See Staff Response to 7-3 (Comment Letter #7)

Bradley McClung

From: F. Stephen Masek <stephenmasek@masekconsulting.net>
Sent: Sunday, December 9, 2018 1:59 PM
To: Bradley McClung; John Anderson
Subject: Rule 1403 - Consultant's revisions and corrections
Attachments: 1403 Consultants' Revision.pdf

Dear Bradley and John:

A number of us who own and manage consulting companies have been discussing Rule 1403 and the remaining problems with the draft of the revised of Rule 1403. I have synthesized all of the issues and prepared the attached PDF file with each change shown in bold blue text. You have met with and visited several of us, and we are happy to meet again and to participate in additional public events. As I stated at the board meeting, good progress from the first draft has been made, but it is not yet finished, with significant problems remaining in the October 27th version.

I will be enjoying Christmas and the New Year at my second home in Vilnius, Lithuania and with my wife's family and our friends there. We are departing on December 18 and returning on January 4. FYI - asbestos is much less common in buildings in Lithuania than is typical in southern California, as most of it there is asbestos-cement roofing and underground pipes/conduits.

--

F. Stephen Masek
Masek Consulting Services, Inc. President
23478 Sandstone, Mission Viejo, CA 92692
cell: 714-878-5284 office: 949-581-8503

**December 9, 2018 Version from Masek Consulting Services, Inc. In Consultation With
Other Consulting Company Owners and Senior Managers**

**PROPOSED AMENDED RULE 1403. ASBESTOS EMISSIONS FROM
DEMOLITION/RENOVATION ACTIVITIES**

(a) Purpose

The purpose of this rule is to specify work practice requirements to limit asbestos emissions from building and facility demolition and renovation activities, including the removal and associated disturbance of Asbestos-Containing Materials (ACM). The requirements for demolition and renovation activities include asbestos surveying, notification, ACM removal procedures and time schedules, ACM handling and clean-up procedures, and storage, disposal, and landfilling requirements for Asbestos-Containing Waste Materials (ACWM). All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.

(b) Applicability

~~This rule, in whole or in part, is applicable to owners and operators, including, but not limited to, property owners, property lessors, asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and asbestos consultants, of any demolition or renovation activity, and the associated disturbance of asbestos-containing material, any asbestos storage facility, or any active waste disposal site.~~

This rule, in whole or in part, is applicable to the following people involved with renovation or demolition activities:

- (1) Property owners, property lessors, and property managers.**
- (2) Asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and individual trade contractors.**
- (3) Any asbestos storage facility, or any active waste disposal site.**
- (4) City and County government departments responsible for issuing renovation and demolition permits (data sharing).**

(c) Definitions

For the purpose of this rule, the following definitions shall apply:

- (1) ACTIVE WASTE DISPOSAL SITE** is any disposal site that receives, or has received or processed ACWM within the preceding 365 calendar days.

- (2) ADEQUATELY WET is the condition of being sufficiently mixed or penetrated with amended water to prevent the release of particulates or visible emissions. The process by which an adequately wet condition is achieved is by using a dispenser or water hose with a nozzle that permits the use of a fine, low-pressure spray or mist that uses a setting that will not break up the ACM during the wetting operation.
- (3) AMENDED WATER is water to which a chemical wetting agent or surfactant has been added to improve penetration into ACM.
- (4) ASBESTOS is the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite, and tremolite.
- (5) ASBESTOS CONSULTANT is any person conducting asbestos surveys in accordance with subparagraph (d)(1)(A) and required to have the qualifications as specified in clause (d)(1)(A)(iv) or (v).
- (6) ASBESTOS-CONTAINING MATERIAL (ACM) is any material that contains more than one percent (1.0%) asbestos including friable ACM, Class I nonfriable ACM and Class II nonfriable ACM as determined by the provisions in paragraph (h)(2) in this rule. This includes any material that is presumed or assumed to contain more than one percent (1.0%) asbestos.
- (7) ASBESTOS-CONTAINING WASTE MATERIAL (ACWM) is any waste that contains commercial asbestos and that is generated by a source subject to the provisions of this rule. ACWM includes, but is not limited to, ACM which is friable, has become friable, or has a high probability of becoming friable, or has been subjected to scraping, sanding, grinding, cutting, drilling or abrading, and the waste generated from its disturbance, such as asbestos waste from control devices, filters from control devices, particulate asbestos material, asbestos slurries, bags or containers that previously contained asbestos, used asbestos-contaminated plastic sheeting and clothing, and clean-up equipment waste, such as cloth rags or mop heads.
- (8) ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA) is ~~the act which legislates asbestos-related requirements for schools~~ (40 CFR Part 763, Subpart E).
- (9) ASSOCIATED DISTURBANCE of ACM is ~~any~~ crumbling or pulverizing of ACM, or generation of uncontrolled visible debris from ACM, **except Small Scale Short Duration activities as defined in AHERA.**
- (10) CLASS I NONFRIABLE ASBESTOS-CONTAINING MATERIAL is ACM, containing more than one percent (1.0%) asbestos as determined by paragraph

(h)(2), and that, when dry, can be broken, crumbled, pulverized, or reduced to powder in the course of demolition or renovation activities. Actions which may cause material to be broken, crumbled, pulverized, or reduced to powder include physical wear and disturbance by mechanical force, including, but not limited to, scraping, sanding, sandblasting, cutting, drilling or abrading, improper handling or removal or leaching of matrix binders. Class I nonfriable ACM includes, but is not limited to, packings, gaskets, resilient floor covering, fractured or crushed asbestos cement products, cement water pipes, Transite materials, mastic, asphalt roofing products, roofing felts, and roofing tiles.

- (11) CLASS II NONFRIABLE ASBESTOS-CONTAINING MATERIAL is ACM containing more than one percent (1.0%) asbestos as determined by paragraph (h)(2), that is neither friable nor Class I nonfriable.
- (12) COMMERCIAL ASBESTOS is any material containing asbestos that is extracted from asbestos ore.
- (13) CUTTING is the partial or complete penetration into a material with the intent of removing ACM using a sharp-edged instrument. Cutting includes sawing, but does not include shearing, slicing, or punching.
- (14) DEMOLITION is the wrecking or taking out of any load-supporting structural member; including, but not limited to, the foundation, roof support structures, or any exterior wall of a facility and related handling operations or the intentional burning of any facility.
- (15) EMERGENCY DEMOLITION is a demolition ordered by a governmental agency for the purpose of eliminating peril to the safety of persons, property or the environment resulting from hazards such as collapse, fire, crime, disease, toxic contamination, or other hazard determined by the Executive Officer.
- (16) EMERGENCY RENOVATION is any renovation that was not planned and results from an imminent threat to public health and safety, a sudden unexpected event that results in unsafe conditions, or encountering previously unknown ACM during demolition or excavation. Such events include, but are not limited to, renovations necessitated by non-routine failures of equipment, earthquake, flood or fire damage. An unreasonable financial burden alone, without a sudden, unexpected event, does not give rise to conditions that meet this definition.
- (17) ENCAPSULATION is the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).
- (18) END DATE FOR RENOVATION ACTIVITIES is the last day when teardown is

complete or, if later, the last day when all accumulated ACWM is removed from the project site. END DATE FOR DEMOLITION ACTIVITIES is the last day when the last load of building waste has left the project site.

- (19) ENCLOSED STORAGE AREA means a storage room, drum, roll-off container, other hard-sided container, or fenced area that is designed to be securely closed with a lock when storing ACWM.
- (20) FACILITY is any institutional, commercial, public, industrial or residential structure, installation, building, any ship, vessel, active or inactive waste disposal site. A facility is subject to this rule regardless of its current use, age, or date of construction. For example, a facility destroyed by fire, explosion, or natural disaster, including any debris, shall remain subject to this rule's provisions.
- (21) FACILITY COMPONENT is any part of a facility including foundations and or utility/commodity pipelines; and equipment such as but not limited to heaters, boilers, Heating, Ventilation, and Air Conditioning systems (HVAC), and motors.
- (22) FRIABLE ASBESTOS-CONTAINING MATERIAL is any material containing more than one percent (1.0%) asbestos as determined by paragraph (h)(2), that, when dry, can be crumbled, pulverized, or reduced to powder by using hand pressure or **significantly** lacks fiber cohesion, identified by flaking, blistering, water damage, scrapes, gouges, or other physical damage **localized to more than 10% of the material or to more than 25% of the total surface area of the material**. Friable ACM may include, but is not limited to, sprayed-on or troweled-on fireproofing, acoustic ceiling material and ceiling tiles, resilient floor covering backing, thermal systems insulation, nonasphalt-saturated roofing felts, asbestos-containing paper and **drywall** joint compound.
- (23) GLOVE BAG is a sealed compartment with attached inner gloves used for handling ACM. When properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove bag installation, equipment, and supplies, and work practices is contained in the Occupational Safety and Health Administration's final rule on occupational exposure to asbestos (29 CFR 1926.1101(g)).
- (24) HIGH EFFICIENCY PARTICULATE AIR (HEPA) FILTER is a filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometer in diameter or larger.
- (25) HOMOGENEOUS MATERIAL is material that is similar in color, texture, and apparent or known date of installation.
- (26) INSTALLATION is any building or structure, or any group of buildings or structures, at a single demolition or renovation site, that are under the control of

- the same owner or operator (or owner or operator under central control).
- (27) ISOLATED WORK AREA is the immediate area in which the asbestos abatement activity takes place.
 - (28) LEAK-TIGHT is the condition whereby any contained solids or liquids are prevented from escaping or spilling out.
 - (29) LOCKED means rendered securely closed and able to be opened only with a key or an access code.
 - (30) NONSCHEDULED RENOVATION OPERATION is a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given calendar year based on past operating experience, but for which an exact date cannot be predicted.
 - (31) OUTSIDE AIR is the air outside of the facility or outside of the isolated work area.
 - (32) OWNER or OPERATOR OF A DEMOLITION OR RENOVATION ACTIVITY is any person who owns, leases, operates, controls or supervises activities at the facility being demolished or renovated; the demolition or renovation operation; or both.
 - (33) OWNER-OCCUPANT is a homeowner who occupies a residential single-unit dwelling as a principal place of residence as demonstrated by an approved claim for the homeowners' property tax exemption or the disabled veterans' property tax exemption.
 - (34) PERSON is any individual, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner, or any state or local government agency or public district or any other officer or employee thereof. PERSON also means the United States or its agencies to the extent authorized by Federal law.
 - (35) PLANNED RENOVATION is a renovation operation, or a number of such operations, in which the amount of ACM that will be removed or stripped within a given period of time can be predicted. Individual Non-scheduled Renovation Operations are included if a number of such operations can be predicted to occur during a given period of time based on operating renovation operation experience.
 - (36) PROJECT is any renovation or demolition activity, including site preparation and clean-up activity.
 - (37) RECEPTOR is any offsite residences, institutions (e.g., schools, hospitals),

industrial, commercial, and office buildings, parks, recreational areas inhabited or occupied by the public ~~at any time, or such other locations as the district may determine.~~

- (38) REMOVAL is the taking out of ACM or facility components including, but not limited to, cutting, drilling, scraping, abrading, grinding, or similarly disturbing ACM or facility components that contain or are covered with ACM from any facility.
- (39) RENOVATION is the altering of a facility or the removing or stripping of one or more facility components in any way, including, but not limited to, the stripping or removal of ACM from facility components, retrofitting for fire protection, and the installation or removal of HVAC systems. Activities involving the wrecking or taking out of one or more load-supporting structural members are defined as demolitions.
- (40) RESIDENTIAL SINGLE UNIT DWELLING is a structure that contains only one residential unit. Duplexes, apartment buildings, townhouses, and condominiums are not residential single unit dwellings.
- (41) RESILIENT FLOOR COVERING is asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than one percent (1.0%) asbestos as determined by paragraph (h)(2).
- (42) START DATE is the first date the renovation or demolition activities disturb building materials including, but not limited to, the setting up of containment. This activity does not include staging of equipment.
- (43) STRIPPING is the taking off of ACM from any part of a facility or facility component.
- (44) STRUCTURAL MEMBER is any load-supporting member of a facility, such as beams and load-supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.
- (45) SUPERVISOR is any employee of the owner or operator conducting the demolition or renovation activity who has the required training as described in subdivision (i).
- (46) SURFACING MATERIAL is material that is sprayed-on, troweled-on, or otherwise applied to surfaces, including, but not limited to acoustical plaster, fireproofing materials, texturizing materials, or other materials on surfaces for acoustical, fireproofing, or other purposes.
- (47) VISIBLE EMISSIONS are any emissions or evidence of emissions coming from

asbestos related activities found outside the isolated work area or on-site storage including but not limited to dust, debris, particles, or fibers, which are visually detectable without the aid of instruments.

- (48) WASTE GENERATOR is any person who owns or operates a facility subject to the provisions of this rule according to subdivision (b), and whose act or process produces ACWM.
- (49) WASTE SHIPMENT RECORD is the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of ACWM as specified by the provisions of subdivision (f).
- (50) WORKING DAY is Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

(d) Requirements

A person subject to this rule shall prevent emissions of asbestos to the outside air by complying with the following requirements:

- (1) Demolition and Renovation Activities
The owner or operator of any demolition or renovation activity shall comply with the following requirements:

(A) Facility Survey

- (i) The affected facility, part of the facility where the demolition or renovation operation will occur, or facility components shall be thoroughly surveyed by an **Asbestos Consultant**, meeting the requirements of clause (d)(1)(A)(iv) or (v), for the presence of asbestos prior to any demolition or renovation activity. The survey shall include the onsite inspection, identification, and quantification of all friable, and Class I and Class II non-friable asbestos-containing material ACM, and any physical sampling of materials in accordance with subdivision (h). There are no exceptions to this survey requirement based on the date of construction or the age of a facility.
- (ii) A thorough survey shall include, at a minimum, identification of all affected materials at the facility, including but not limited to all layers of flooring materials to the joist level, and all materials in the wall or ceiling cavities as necessary to identify and sample them.
- (iii) The survey shall be documented with the following information:

- (I) The name, address, and telephone number of the person who conducted the survey;
- (II) A written statement of the qualifications of the **Asbestos Consultant** who conducted the survey, demonstrating compliance with clause (d)(1)(A)(iv) or (v);
- (III) The dates the facility was visited and the survey was conducted;
- (IV) A listing of all suspected materials containing any asbestos, a listing of all samples collected, and a sketch of detailed sufficiently to determine where the samples were taken, and a unique code or number delineating each sample on the sketch;
- (V) A table of all suspected materials tested, the approximate area of each **ACM homogeneous material**, the asbestos content of each material tested, and the **percent of the area that is damaged and the disturbance potential and condition using the definitions in AHERA**;
- (VI) The name, address, and telephone number of any laboratory used to conduct analyses of materials for asbestos content;
- (VII) A detailed Chain of Custody (COC) document identifying all samples obtained that shall, at minimum, satisfy the following:
 - (1) Record of the name of the individual collecting the samples;
 - (2) Record of the ~~location, type of material, date, time,~~ **and** unique identification number or code for each sample that was obtained; and,
 - (3) Whenever the possession of samples is transferred, both the individual relinquishing the samples and the individual receiving the sample shall sign, print their name legibly, and record the date ~~and time~~ on the COC document.
- (VIII) A statement of qualification of the laboratory which conducted the analyses, demonstrating compliance with paragraph (b)(2);

- (IX) A list of the test methods used, demonstrating compliance with subdivision (h), including sampling protocols and laboratory methods of analysis, test data, and any other information used to identify or quantify any materials containing asbestos.
- (X) A general description of the condition of the facility, including but not limited to a description of any obvious fire or structural damage.
- (XI) Asbestos Consultants shall not be required to use any particular report format, so may place the required information anywhere they choose in their report. (including the laboratory report).**
- (XII) SCAQMD personnel and people acting on their behalf shall discuss the Asbestos Consultant's report with them prior to issuing a Notice of Violation or Notice To Comply based on information they could not find in an Asbestos Consultant's report.**
- (iv) Persons contracted to perform asbestos surveys, in accordance with subparagraph (d)(1)(A), shall be certified by Cal/OSHA pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code, and shall have taken and passed an EPA-approved Building Inspector Course and conform to the most recent updated procedures outlined in the Course.
- (v) Persons conducting asbestos surveys at the facility where they are employed exclusively, in accordance with subparagraph (d)(1)(A), shall possess a current and valid certificate from a Cal/OSHA approved AHERA Building Inspector training course.
- (B) Notification The District shall be notified of the intent to conduct any demolition or renovation activity. Complete and correct Notifications shall be submitted by the person performing the renovation or demolition in a District-approved electronic format. No notification shall be considered received submitted unless it is accompanied by the required fee in accordance with District Rule 301, and has a status of "submitted" in the District Rule 1403 Notification Web Application. Notifications for emergency renovations or emergency demolitions during non-District staffing hours or periods when the Web Application is unavailable shall be made by calling (800) CUT-SMOG. Notifications shall be provided in accordance with the following requirements:
- (i) Time Schedule

(I) Demolition or Renovation Activities

The notification shall be submitted to the District no later than 10 working days before any demolition or renovation activities other than emergency demolition, emergency renovation, and planned renovations involving individual Nonscheduled Renovation Operations begin.

(II) Renovation Activities exclusively involving Underground Pipe Situated in Remote Locations

The notification shall be submitted to the District no later than two (2) working days before any activities begin if the location is more than one-quarter (1/4) mile from nearest receptor. The distance to the nearest receptor, the method used to determine the distance, and the person determining the distance shall be included with the survey.

(III) Planned Renovation - Annual Notification

The District shall be notified by December 17 of the year preceding the calendar year for which notice is being given for Planned Renovation activities which involve individual Non-scheduled Renovation Operations.

(IV) Emergency Demolition or Renovation

The District shall be notified as soon as possible, but prior to any emergency demolition or renovation activity in accordance with clauses (d)(1)(B)(iii) and (d)(1)(B)(iv).

(ii) Notification Required Information

All notifications shall include the following information:

- (I) An indication of whether the notice is the original or a revised notification;
- (II) Name, address and telephone number of both the site owner and operator of the facility, at least one supervising personsupervisor, and the asbestos removal contractor, owner or operator;
- (III) Address and location of the facility to be demolished or renovated and the type of operation: demolition or

renovation;

- (IV) Description of the facility or affected part of the facility to be demolished or renovated including the size (measured in square feet), number of floors, age, and present or prior uses of the facility;
- (V) The specific location of each renovation or demolition at the facility and a description of the facility components or structural members contributing to the ACM to be removed or stripped from the facility;
- (VI) Scheduled project starting and completion end dates of demolition or renovation. Planned renovation activities involving individual Nonscheduled Renovation Operations need only include the beginning and ending dates of the report period as described in accordance with subclause (d)(1)(B)(i)(III);
 - (1) For projects that do not conform to the traditional Monday through Friday work schedule, a Schedule of Work shall be included as part of the notification and updated as soon as the change of schedule is known, but no later than the first work shift when the change of schedule takes effect.
 - (2) For projects that suffer a delay due to events outside their control after the Start Date, including, but not limited to, flood, fire, or earthquake; an updated Schedule of Work shall be submitted as soon as the delay is known, but no later than the start of the work shift that was delayed. A reason for the delay shall be included with the updated Schedule of Work.
- (VII) Brief description of work practices and engineering controls to be used to comply with this rule, including asbestos removal and waste handling emission control procedures;
- (VIII) A separate estimate for each of the amounts of friable, Class I, and Class II nonfriable asbestos-containing material to be removed from the facility in terms of surface area in square feet.

- (IX) Name and location of waste disposal site where ACWM will be deposited.
- (X) Description of steps to be followed in the event that unexpected ACM is found;
- (XI) California State Contractors License Certification number;
- (XII) Cal/OSHA Registration number -for renovation activities;
- (XIII) Name and location address of off-site storage area for ACWM;
- (XIV) Name, address, Department of Toxic Substances Control (DTSC) Registration Number and expiration date, and telephone number of transporters used to transport ACWM off-site;
- (XV) Procedures, including analytical methods, used to detect the presence of friable and nonfriable asbestos-containing material.
- (XVI) Signed certification that at least one person employed by the renovation or demolition operator who has been trained as required in subparagraph (d)(1)(G) will be supervising the stripping and removal the activities described by this notification.
- (XVII) Demolition notifications shall also include, if applicable: the name of the renovation operator that removed ACM; the end date for the removal of the ACM; and the quantity of ACM removed; and,
- (XVIII) The name, address, telephone number and, either:
 - (1) A valid Cal/OSHA certification number of the person who was contracted to complete the asbestos survey report, and the date of the asbestos survey report; or,
 - (2) A valid Cal/OSHA approved AHERA building inspector certification number of the person employed by the facility who completed the facility survey and the date of the asbestos survey report.

(iii) Emergency Demolition Additional Information

Notification of all emergency demolition activities shall include the following additional information

- (I) The agency, name, title, telephone number and authority of the representative who ordered the emergency demolition; and
- (II) A copy of the order, and the date on which the demolition was ordered to begin.

(iv) Emergency Renovation Additional Information

Notification of all emergency renovation activities shall include the following additional information:

- (I) The name and phone number of the responsible manager or authorized person who is in charge of the emergency renovation;
- (II) The date and hour that the emergency occurred;
- (III) A description of the event that meets the parameters of the definition in paragraph (c)(16);
- (IV) An explanation of how the event, that meets the parameters of the definition in paragraph (c)(16), caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden; and,
- (V) A signed letter with a valid signature from the person directly affected by the emergency, such as the property owner or property manager, attesting to the circumstances of the emergency. The letter shall contain in the signature section the following statement, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Both the person affected by the emergency and an authorized representative for the renovation or demolition operator shall sign the certification or declaration on the same page. In lieu of a renovation operator signature, the person affected by the emergency shall sign the letter in the presence of a public notary and obtain and attach that notary's certificate of acknowledgement or jurat for the letter's signing.

- (v) Notification Updates All notifications shall be updated when any of the following conditions arise:
- (I) Cancellation
Projects that will not be conducted as notified shall be cancelled no later than the notified start date.
 - (II) Change in Quantity of Asbestos
A change in the quantity of affected asbestos of 20 percent or more from the notified amount shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application as soon as the information becomes available, but not later than the project end date, unless otherwise specified in an approved Procedure 5.
 - (III) Later Starting Date
A delay in the starting date of any demolition or renovation activity shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application as soon as the information becomes available, but no later than the original start date.
 - (IV) Earlier Start Date
A change in the start date of any demolition or renovation activity to an earlier start date shall be reported to the District by providing a notification update in the District Rule 1403 Notification Web Application no later than 10 working days before any demolition or renovation activities begin.
 - (V) End Date Change
In the event renovations or demolitions are not completed, are delayed, or are completed ahead of schedule, the District shall be notified by providing a notification update in the District Rule 1403 Notification Web Application as soon as possible, but no later than the following day.
 - (VI) Planned Renovation Progress Report

Notifications for on-going planned renovation operations in which the scheduled start and completion dates are more than one (1) year apart shall be updated, every year of the operation by December 17, unless the most recent notification update was postmarked or delivered after October 1 of that year and include the amount of ACM removed and the amount of ACM remaining to be removed.

(C) Asbestos Removal Schedule

Material containing asbestos shall be removed from a facility according to the following schedule:

(i) Burning Demolitions

All ACM and Class II asbestos-containing material shall be removed from a facility prior to any demolition by intentional burning. All demolition by intentional burning shall be performed in accordance with District Rule 444 – Open Burning.

(ii) Renovations and Non-Burning Demolitions

- (I) All ACM shall be removed from a facility being demolished or renovated before any non-burning demolition or renovation activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.
- (II) ACM not accessible for testing or not discovered until after the renovation or demolition activities begin may be removed after the start of the renovation or non-burning demolition activities, pursuant to the appropriate procedure in subparagraph (d)(1)(D).
- (III) Notwithstanding the above, asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products which are not friable and are not crumbled, cut, abraded, or otherwise not damaged and in good condition (as defined in AHERA), may be removed after the start of renovation or non-burning demolition activities if prior approval from the District is obtained (Procedure 5).
- (IV) If the renovation or demolition activity involves any mechanical force such as, but not limited to, scraping,

sanding, sandblasting, cutting, or abrading ~~and thus which~~ would render the materials friable, they shall be removed prior to the renovation or demolition.

- (V) If for any reason, any renovation or demolition results in an associated disturbance of ACM outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up (**no Procedure 5 is required if the project does not exceed Small Scale Short Duration as defined in AHERA**).
- (VI) If any disturbed, damaged, or suspected ACM is discovered outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up (**no Procedure 5 is required if the project does not exceed Small Scale Short Duration as defined in AHERA**).

(D) Removal Procedures

- (i) One or more of the following procedures shall be used when removing or stripping ACM:

- (l) Procedure 1 - HEPA Filtration

Remove ACM within an isolated work area. The following techniques shall be used during Procedure 1 ACM removal activities:

- (1) All stationary objects and surfaces not intended for removal or stripping of ACM shall be covered with plastic sheeting;
- (2) All air passageways, such as doors, windows, vents and registers in the work area, shall be covered and rendered air tight with plastic sheeting or hard wooden barriers with studded support (**as needed**). Air passageways used to provide makeup air for the isolated work space need not be covered;

- (3) All sources of air movement, including the air-handling system, shall be shut off or temporarily modified to restrict air movement into the work zone;
 - (4) The barriers used for the construction of the isolated work area shall be equipped with transparent viewing ports which allow outside observation of all stripping and removal of ACM;
 - (5) The isolated work area shall be vented, with negative air pressure to a HEPA filtration system, which shall be operated continuously from the commencement of removal activities through the final clean-up of the work area;
 - (6) The HEPA filter shall be free of tears, fractures, holes or other types of damage and shall be securely latched and properly situated in the holding frame to prevent air leakage from the filtration system; and
 - (7) ACM shall be adequately wet during the removal process.
- (II) Procedure 2 - Glove bag
- Remove ACM by the glove bag method or mini enclosures designed and operated according to 29CFR1926.1101(g), and current Cal/OSHA requirements.
- (III) Procedure 3 - Adequate Wetting
- Procedure 3 shall only be used to remove nonfriable asbestos-containing materials, using the following techniques:
- (1) All exposed ACM shall be adequately wet during cutting or dismantling procedures.
 - (2) ACM shall be adequately wet while it is being removed from facility components and prior to its removal from the facility.
 - (3) Drop cloths and tenting shall be used to contain the work area to the extent feasible.

- (4) Only non-power tools shall be used to remove nonfriable ACM.

(IV) Procedure 4 - Dry Removal

Written approval shall first be obtained from the Executive Officer's designee prior to using dry removal methods for the control of asbestos emissions when adequate wetting procedures in the renovation work area would unavoidably damage equipment or present a safety hazard. Dry removal methods may include one or more of the following:

- (1) Use of a HEPA filtration system, operated in accordance with subclause (d)(1)(D)(i)(I), within an isolated work area;
- (2) Use of a glove bag system, operated in accordance with subclause (d)(1)(D)(i)(II); or
- (3) Use of leak-tight wrapping or an approved alternative, to contain all ACM removed in units or sections prior to dismantlement.

(V) Procedure 5 - Approved Alternative

- (1) Use an alternative combination of techniques and/or engineering controls. Written approval from the Executive Officer or his designee shall first be obtained prior to the use of a Procedure 5 Approved Alternative.
- (2) The Executive Officer may pre-approve specific combinations of techniques and/or engineering controls in writing, which may be used by any person as a Procedure 5 Approved Alternative, subject to such conditions and limitations as required by the Executive Officer.
- (3) No person shall use a Procedure 5 Approved Alternative without complying with all of the conditions and limitations set forth therein.
- (4) **Procedure 5 shall not be required for any Small Scale Short Duration project as defined in AHERA.**

(ii) Specific procedure requirements

- (I) ~~No person shall remove or strip any amount of ACM that has suffered any damage or disturbance without the use of a Procedure 4 or 5 Approved Alternative. The causes of damage or disturbance include, but are not limited to, fire, flood, explosion, or other natural disaster.~~ (H) Notifications for materials that cannot be assessed for damage such as, but not limited to, subterranean piping ~~other than asbestos-cement piping, where the asbestos consultant has presumed or assumed the material to be asbestos-containing,~~ shall be submitted as a Procedure 4 or 5 Approved Alternative. A facility survey is still required in accordance with subparagraph (d)(1)(A).

(E) Handling Operations

All ACWM shall be collected and placed in transparent, leak-tight containers or wrapping. The following techniques shall be used:

- (i) ACM shall be carefully lowered to the ground or a lower floor without dropping, throwing, sliding, or otherwise damaging or disturbing the ACM;
- (ii) ACM which has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections shall be transported to the ground via leak-tight chutes or containers;
- (iii) ACWM shall be collected, and sealed in leak-tight containers. ACWM shall be adequately wet prior to and during collection and packaging. Alternatively, areas of Class I nonfriable asbestos-containing material which have become friable or have been subjected to sanding, grinding, cutting, or abrading, may be sealed via encapsulation; and
- (iv) All surfaces in the isolated work area shall be cleaned, with a vacuum system utilizing HEPA filtration, wet mopping and wipe down with water, or by an equivalent methods, prior to the dismantling of plastic barriers or sealed openings within the work area.

(F) Freezing Temperature Conditions

When the temperature at the point of wetting is below 0° Celsius (32° Fahrenheit), the wetting provisions of subparagraph (d)(1)(D) shall be

superseded by the following requirements:

- (i) Facility components containing, coated with, or covered with ACM shall be removed as units or in sections to the maximum extent possible; and
- (ii) The temperature in the area containing the facility components shall be recorded at the beginning, middle, and end of each workday during periods when wetting operations are suspended due to freezing temperatures. Daily temperature records shall be available for inspection by the District during normal business hours at the demolition or renovation site. Records shall be retained for at least two (2) years.

(G) On-Site Supervisor

At least one on-site supervisor, such as a foreman, manager, or other authorized representative, trained in accordance with the provisions of paragraphs (i)(1) or (i)(32), shall be present during the activities described in the notification. Evidence that the required training has been completed shall be posted at the demolition or renovation site and made available for inspection by the Executive Officer's designee.

(H) On-Site Proof

The following shall be maintained on-site and shall be provided to the District upon request:

- (i) California State Contractor's License certification number;
- (ii) Cal/OSHA Registration number;
- (iii) Copies of surveys, conducted in accordance with subparagraph (d)(1)(A);
- (iv) Copies of notifications submitted in accordance with subparagraph (d)(1)(B);
- (v) Copies of the training certificate(s) demonstrating that the on-site supervisor has been trained in accordance with paragraphs (i)(1) or (i)(3);
- (vi) Copies of all current training certificates demonstrating that workers have successfully completed the Abatement Worker course, or refresher course as applicable, in accordance with AHERA; and,

- (vii) Copies of all supervisor logs or equivalent records documenting the demolition or renovation activities at the project site.

Proof shall be consistent with the most recently updated information submitted in the notification.

(I) On-Site Storage

No ACWM shall be stored on-site except in a leak-tight container. When leak-tight containers are not in use, they shall be kept inside an enclosed storage area. The enclosed storage area shall not be accessible to the general public and shall be locked when not in use.

(J) Disposal

All ACWM shall be disposed of at a waste disposal site that is operated in accordance with paragraph (d)(3) of this rule.

(K) Container Labeling

Leak-tight containers which contain ACWM shall be labeled as specified in subdivision (e).

(L) Transportation Vehicle Marking

Vehicles used to transport ACWM shall be marked, as specified in subdivision (e), during the loading and unloading of ACWM.

(M) Waste Shipment Records

Waste Shipment Records shall be prepared and handled in accordance with the provisions of paragraph (f)(1).

(N) Recordkeeping

Records shall be kept as specified in subdivision (g).

(M) Monitoring and Clearance

An Asbestos Consultant shall be retained to perform clearance inspection and air sampling for all indoor asbestos removal projects other than those defined as Small Scale Short Duration in AHERA and/or less than 100 square feet. Notifications for projects for which an Asbestos Consultant is also retained to perform full-time oversight, monitoring and documentation of the asbestos removal project shall

be discounted 50% by the District.

- (2) ACWM Storage Facilities The owner or operator of any ACWM storage facility shall comply with the following requirements:
 - (A) Maintenance and Handling
 - (i) ACWM shall be stored in leak-tight containers;
 - (ii) All leak-tight containers shall be labeled as specified in paragraph (e)(1); and
 - (iii) ACWM shall be stored in an enclosed locked area.
 - (B) Transportation Vehicle Marking

Vehicles used to transport ACWM shall be marked, as specified in paragraph (e)(3), during the loading and unloading of ACWM.
 - (C) Waste Shipment Records Waste Shipment Records shall be handled in accordance with the provisions of paragraph (f)(2).
 - (D) Recordkeeping

Records shall be maintained as specified in paragraph (g)(2).
- (3) Active Waste Disposal Sites The owner or operator of any waste disposal site where ACWM is being deposited shall comply with the following requirements:
 - (A) Maintenance and Handling
 - (i) ACWM shall be in leak-tight containers;
 - (ii) Warning signs, as specified in paragraph (e)(2), shall be displayed at all entrances and at intervals of 330 feet or less along the property line of the site or along the perimeter of the sections of the site where ACWM is being deposited;
 - (iii) Access to the general public shall be deterred by maintaining a fence along the perimeter of the site or by using a natural barrier;
 - (iv) All ACWM shall be maintained in a separate disposal section;
 - (v) ACWM deposited at the site shall be covered with at least six (6) inches of nonasbestos-containing material at the end of normal business hours. The waste shall be compacted only after it has

been completely covered with nonasbestos-containing material. A low pressure water spray or nontoxic dust suppressing chemical shall be used for any surface wetting after compaction; and

- (vi) ACWM shall be covered with a minimum of an additional thirty (30) inches of compacted nonasbestos-containing material prior to final closure of the waste disposal site, and shall be maintained to prevent exposure of the ACWM.

(B) Transportation Vehicle Marking

Vehicles used to transport ACWM shall be marked, as specified in paragraph (e)(3), during the loading and unloading of ACWM.

- (C) Waste Shipment Records Waste Shipment Records shall be handled in accordance with the provisions of paragraph (f)(2).

(D) Recordkeeping

Records shall be maintained as specified in paragraph (g)(3).

(e) Warning Labels, Signs, and Markings

Warning labels, signs, and markings shall be used to identify asbestos related health hazards and comply with the following requirements:

(1) Leak-Tight Containers

Leak-tight containers shall be labeled according to the following requirements:

- (A) Warning labels for leak-tight containers and wrapping shall have letters of sufficient size and contrast as to be readily visible and legible, and shall contain the all information as specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR1926.1101(k)(8), or current Cal/OSHA requirements.
- (B) Leak-tight containers that are transported off-site shall be labeled with the name of the waste generator and the location at which the waste was generated. The location description shall include the street address. The label shall be clearly visible and readable from the outside of the container.

(2) Active Waste Disposal Sites

No person shall operate an active waste disposal site unless warning signs are conspicuously posted and meet all of the following requirements:

- (A) Are displayed in such a manner and location that a person can easily read the legend;
- (B) Conform to the requirements for 51 centimeters x 36 centimeters (20 inches x 14 inches) upright format signs specified in 29 CFR 1910.145(d)(4) and this subparagraph;
- (C) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this subparagraph:

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm (1 inch) Sans Serif, Gothic or Block
Do Not Create Dust	1.9 cm (3/4 inch) Sans Serif, Gothic or Block
Breathing Asbestos is Hazardous to Your Health	14 Point Gothic

; and,

- (D) Have spacing between any two (2) lines at least equal to the height of the upper of the two (2) lines.

(3) Transportation Vehicles

Markings for transportation vehicles shall meet all of the following requirements:

- (A) Be displayed in such a manner and location that a person can easily read the legend;
- (B) Conform to the requirements for 51 centimeters x 36 centimeters (20 inches x 14 inches) upright format signs specified in 29 CFR 1910.145(d)(4) and this subparagraph; and
- (C) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this subparagraph:

Legend	Notation
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DANGER	2.5 cm (1 inch) Sans Serif, Gothic or Block
ASBESTOS DUST HAZARD	2.5 cm (1 inch) Sans Serif, Gothic or Block
CANCER AND LUNG DISEASE HAZARD	1.9 cm (3/4 inch) Sans Serif, Gothic or Block
Authorized Personnel Only	14 Point Gothic

; and,

- (D) Have spacing between any two lines at least equal to the height of the upper of the two (2) lines.

(f) Waste Shipment Records

(1) Waste Generators

A waste generator shall comply with the following:

- (A) Waste shipment information shall include, but not be limited to, the following:
- (i) The name, address, and telephone number of the waste generator;
 - (ii) The name, address, and telephone number of the South Coast Air Quality Management District;
 - (iii) The quantity of ACWM in cubic meters or cubic yards;
 - (iv) The name and telephone number of the disposal site owner and operator;
 - (v) The name and physical site location of the disposal site;
 - (vi) The date transported;
 - (vii) The name, address, and telephone number of the transporter; and
 - (viii) A signed certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and in proper condition for highway transport according to applicable federal, state, and local regulations.

- (B) A copy of the Waste Shipment Record shall be provided to the disposal site owner or operator at the same time the ACWM is delivered to the disposal site.
 - (C) If a copy of the Waste Shipment Record, signed by the owner or operator of the designated disposal site, is not received within 35 days of the date the ACWM was accepted by the initial transporter, the transporter and/or the owner or operator of the designated disposal site shall be contacted to determine the status of the waste shipment.
 - (D) If a copy of the Waste Shipment Record, signed by the owner or operator of the designated disposal site, is not received within 45 days of the date the ACWM was accepted by the initial transporter, a written report shall be submitted to the District and shall include the following:
 - (i) A copy of the Waste Shipment Record for which a confirmation of delivery was not received; and
 - (ii) A signed cover letter explaining the efforts taken to locate the ACWM shipment and the results of those efforts.
- (2) Storage and Active Waste Disposal Facilities

The owner or operator of any storage facility or active waste disposal site shall comply with the following requirements:

- (A) Waste shipment information shall be filled out on the Waste Shipment Record forms provided by the waste generator, for all ACWM received from an off-site facility, and shall include, but not be limited to, the following:
 - (i) The name, address, and telephone number of the waste generator;
 - (ii) The name, address, and telephone number of the transporter;
 - (iii) The quantity of ACWM received in cubic meters or cubic yards; and
 - (iv) The date of receipt.
- (B) No shipment of ACWM shall be received from an off-site facility unless it is accompanied with a completed Waste Shipment Record signed by the waste generator.
- (C) If there is a discrepancy between the quantity of ACWM designated in the Waste Shipment Record and the quantity actually received, and if the

discrepancy cannot be resolved with the waste generator within 15 days of the date the ACWM was received, a written report shall be filed with the District. The report shall include the following:

- (i) A copy of the Waste Shipment Record; and
 - (ii) A signed cover letter explaining the discrepancy, and the attempts to reconcile it.
- (D) If any shipment of ACWM is not properly containerized, wrapped, or encapsulated, a written report shall be filed with the District. The report shall be postmarked or delivered within 48 hours after the shipment is received, or the following business day.
- (E) A signed copy of the Waste Shipment Record shall be provided to the waste generator no later than 30 calendar days after the ACWM is delivered to the disposal site.
- (g) Recordkeeping

(1) Demolition and Renovation Activities

The owner or operator of any demolition or renovation activity shall maintain the following records for not less than three (3) years and make them available to the District upon request:

- (A) A copy of all survey-related documents;
- (B) A copy of all submitted notifications. A copy of the most recently updated written notification submitted in accordance with the provisions of this rule shall be maintained on-site;
- (C) A copy of all written approvals obtained under the requirements of subparagraph (d)(1)(D);
- (D) A copy of all Waste Shipment Records;
- (E) All training informational materials used by an owner or operator to train supervisors or workers for the purposes of this rule; and
- (F) A copy of all supervisors and workers training certificates and any annual re-accreditation records which demonstrate EPA-approved or state accreditation to perform asbestos-related work.; and,
- (G) A copy of all contracts the owner or operator has entered into for the performance of labor in a demolition or renovation activity or the related

removal of waste.

(2) Storage Facilities

The owner or operator of any storage facility shall maintain a copy of all Waste Shipment Records on-site for not less than three (3) years and make them available to the District upon request.

(3) Active Waste Disposal Sites

The owner or operator of an active waste disposal site shall maintain the following information on-site for not less than three (3) years and make them available to the District upon request:

- (A) A description of the active waste disposal site, including the specific location, depth and area, and quantity, in cubic meters or cubic yards, of ACWM within the disposal site on a map or diagram of the disposal area;
 - (B) A description of the methods used to comply with waste disposal requirements; and
 - (C) A copy of all Waste Shipment Records.
- (4) In lieu of the requirements of paragraph (g)(1), the owner or operator of a renovation activity at any facility, in which less than 100 square feet of surface area of ACM on facility components is removed or stripped, may instead elect to maintain the following information for a period of not less than three (3) years, and make it available to the District upon request:
- (A) A copy of all survey-related documents;
 - (B) Records containing an estimate of the amount of ACM removed or stripped at each renovation subject to this paragraph;
 - (C) Type of removal controls used for each renovation; and
 - (D) A copy of all Waste Shipment Records.

(h) Sampling Protocols and Test Methods

- (1) Sampling of materials suspected to contain asbestos shall be conducted as follows:

- (A) Bulk samples shall be collected from **scattered locations within** each homogeneous area of friable surfacing material that is not assumed to be ACM as follows:
- (i) A minimum of three samples shall be collected from each area of homogeneous material that is 1,000 square feet or less, except as provided in subparagraph (h)(1)(D);
 - (ii) A minimum of five samples shall be collected from each area of homogeneous material that is greater than 1,000 square feet but less than 5,000 square feet, except as provided in subparagraph (h)(1)(D); and,
 - (iii) A minimum of seven samples shall be collected from each area of homogeneous material that is greater than, or equal to, 5,000 square feet, except as provided in subparagraph (h)(1)(D).
- (B) Bulk samples shall be collected from each homogeneous area of friable non-surfacing material that is not assumed to be ACM as follows:
- (i) A minimum of three samples shall be collected from **scattered locations within** each homogeneous material; except as provided in subparagraph (h)(1)(D).
- (C) Bulk samples shall be collected from **scattered locations within** each homogeneous area of Class I and Class II non-friable material that is not assumed to be ACM as follows:
- (i) A minimum of one sample shall be collected from each area of homogeneous material that is 16 square feet or less; and,
 - (ii) A minimum of three samples shall be collected from each area of homogeneous material that is greater than 16 square feet, except as provided in subparagraph (h)(1)(D).
- (D) A homogeneous area shall be determined to be ACM based on a finding that the results of at least one sample collected from that area shows that asbestos is present in an amount greater than one percent (1.0%).
- (E) A homogeneous area is considered not to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of one percent (1.0%) or less, in accordance with subparagraphs (h)(1)(A) through (C);
- (F) When composite sampling is performed of layered materials, analysis shall

be performed in accordance with subparagraph (h)(2)(C).

(G) One bulk sample shall be collected from each homogeneous area of sheet vinyl flooring (each pattern) which is not assumed to be ACM.

(2) Analysis of materials suspected to contain asbestos by using the Methods specified in 40CFR Part 763 Appendix E to Subpart E or the EPA Method for the Determination of Asbestos in Bulk Building Materials (EPA/600/R-93/116). Asbestos analyses performed to comply with this rule shall be undertaken by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). ACM shall be determined as follows:

(A) A sample in which no asbestos is detected by Polarized Light Microscopy (PLM) does not have to be point counted. ~~However, to confirm no asbestos was detected, survey reports shall document three (3) subsamples were prepared and examined in their entirety;~~

(B) For a sample in which the amount of asbestos is detected and determined by PLM to be less than 10%, the facility owner or operator may direct the asbestos consultant to presume or assume the amount to be greater than one percent (1.0%) asbestos and treat the material as ACM, or the amount must be verified as follows:

(i) ACM content shall be determined by a minimum 400-point counting or a more stringent method including, but not limited to, 1000-point counting, point counting with gravimetric reduction, or Transmission Electron Microscopy (TEM);

(C) The analysis of composite samples of multi-layered material including, but not limited to, stucco (base and scratch coat) and wall systems is prohibited for the quantification of asbestos content. All separable layers shall be analyzed and reported separately for asbestos content;

(D) If any analysis is performed which shows a single sample **from a homogeneous area** is greater than one percent (1.0%) ACM, then an asbestos consultant may forgo analysis of subsequent samples **from that homogeneous area** and presume or assume subsequent samples **from that homogeneous area** are greater than one percent (1.0%) ACM.

(i) Training Requirements

(1) The owner or operator performing a renovation activity shall provide asbestos-related training as follows:

(A) On-site Supervisors shall successfully complete the Asbestos Abatement

Contractor/Supervisor course pursuant to AHERA, and obtain and maintain accreditation as an AHERA Asbestos Abatement Contractor/Supervisor.

(B) Workers shall successfully complete the Abatement Worker course pursuant to the AHERA.

(C) Supervisors and workers shall be trained in accordance with the provisions of this rule as well as on the provisions of 40 CFR 61.145, 61.146, 61.147 and 61.152 (Asbestos NESHAP provisions) and Part 76340 CFR Part 763, Subpart E, and the means by which to comply with these provisions.

- (2) The owner or operator performing a demolition activity shall provide asbestos-related training as follows:
 - (A) On-site Supervisors shall obtain a certificate by attending the SCAQMD Rule 1403 Compliance Assistance Class or an equivalent training course such as, but not limited to, an asbestos awareness class.

(j) Exemptions

- (1) The requirements of paragraph (d)(1) shall not apply to a hazardous situation that poses an immediate risk of injury or death. Once the immediate hazard has been addressed, then activity must stop, and the site must be secured, stabilized, and surveyed for the presence and condition of ACM and asbestos-contaminated materials. If ACM **greater than the amount which could be removed as a Small Scale Short Duration project under AHERA** has been disturbed or damaged as a result of, or as part of the response to, the hazardous situation, a Procedure 4 or 5 (Approved Alternative) clean-up plan must be submitted by the end of the next business day and approved prior to any asbestos clean-up. Written explanation of the hazard and hazard response must be submitted to the District along with the Procedure 4 or 5 clean-up plan.
- (2) The notification requirements of subparagraph (d)(1)(B) and the training requirements of subdivision (i) shall not apply to renovation activities, other than Procedures 4 and 5, or Planned Renovation activities which involve Nonscheduled Renovation Operations, in which less than 100 square feet of surface area of ACM are removed or stripped.
- (3) The notification requirements of subparagraph (d)(1)(B) and the training requirements of subdivision (i) shall not apply to Planned Renovation activities which involve Nonscheduled Renovation Operations, in which the total quantity of ACM to be removed or stripped within each calendar year of activity is less than 100 square feet of surface area.
- (4) For asbestos survey reports where the material is presumed or assumed to be ACM by the asbestos consultant, subclauses (d)(1)(A)(iii)(IV) through (IX) and

- subclause (d)(1)(B)(ii)(XV) shall not apply when the suspected material is treated as ACM when being removed, stripped, collected, handled, and disposed of in accordance with the provisions of this rule. The asbestos consultant shall state in the asbestos survey that the material is presumed or assumed to be ACM.
- (5) The portion of clause (d)(1)(A)(iv) or (v) which requires Cal/OSHA certification shall not apply to persons performing work not subject to the certification requirement established by regulations pursuant to the Labor Code, Section 6501.5 in which less than 100 square feet of surface area of ACM is removed or stripped.
 - (6) Subclause (d)(1)(B)(ii)(XI) and clause (d)(1)(H)(i), requiring a California State Contractors License Certification number, shall not apply to persons performing work not subject to the certification requirement established pursuant to the Business and Professions Code, Section 7058.5.
 - (7) Subclause (d)(1)(B)(ii)(XII) and clause (d)(1)(H)(ii), requiring Cal/OSHA registration, shall not apply to persons performing work in which less than 100 square feet of surface area of ACM are removed or stripped.
 - (8) The provisions of subparagraph (f)(2)(E) shall not apply to storage facilities that do not meet the definition of an active waste disposal site as defined by paragraph (c)(1).
 - (9) The handling requirements of items (d)(1)(D)(i)(D)(2), (d)(1)(D)(i)(D)(5), and (d)(1)(D)(i)(D)(6), the training requirements of paragraphs (i)(1) and (i)(2), the reporting of training certificate requirement of subclause (d)(1)(B)(ii)(XVI), and the on-site proof of training requirement of subparagraph (d)(1)(G) and subdivision (i) shall not apply to the exclusive removal of asbestos-containing packings, gaskets, resilient floor covering and asphalt roofing products which are not friable, have not become friable, and have not been subjected to scraping, sanding, grinding, cutting, or abrading.
 - (10) The provisions of this rule shall not apply to an owner-occupant, as defined in paragraph (c)(33), of a residential single-unit dwelling, as defined in paragraph (c)(40), who resides at the property and solely and personally conducts a renovation activity at that dwelling.
 - (11) The District-approved electronic notification requirements of subparagraph (d)(1)(B) shall not apply to an owner-occupant, as defined in paragraph (c)(33), of a residential single-unit dwelling, as defined in paragraph (c)(40), who resides at the property and solely and personally conducts a demolition activity at that dwelling. Notification shall be submitted by paper only.
 - (12) The survey requirements of subparagraph (d)(1)(A) shall not apply to renovation activities of residential single-unit dwellings, as defined in paragraph (c)(40), in

which less than 100 square feet of surface area of ACM are removed or stripped.

(k) Data Sharing

For every renovation or demolition involving disturbance of over 100 square feet of material at an existing building, city and county government departments responsible for issuing permits for renovation or demolition shall provide the District, via electronic means, the address of the project and the names and contact information for the owner within two days of the issuance of the permit, and shall inform permit applicants that they are sharing this data with the District and provide them with the District web site and phone number.

Staff responses to Email from F. Stephen Masek dated 12/09/2018

Staff responded to each of the commenter's proposed rule language changes by copying the suggested language from commenter's letter and responding to each suggestion. The commenter's additions or deletions to the PAR 1403 rule language are noted in standard SCAQMD strike-out/underline formatting:

Subdivision (a)***Commenter's suggested rule language*****(a) Applicability**

~~This rule, in whole or in part, is applicable to owners and operators; including, but not limited to, property owners, property lessors, asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and asbestos consultants, of any demolition or renovation activity, and the associated disturbance of asbestos-containing material, any asbestos storage facility, or any active waste disposal site.~~

This rule, in whole or in part, is applicable to the following people involved with renovation or demolition activities:

(1) Property owners, property lessors, and property managers.

(2) Asbestos abatement contractors, demolition contractors, general contractors, subcontractors, and individual trade contractors.

(3) Any asbestos storage facility, or any active waste disposal site.

(4) City and County government departments responsible for issuing renovation and demolition permits (data sharing).

Staff Response

Asbestos consultants are an essential addition to PAR 1403. The addition of property managers has some merit, but should be covered by an operator and our listing should not be considered all-inclusive since it's written as "including, but not limited to". The agencies identified in Item #4 above (City and County government departments responsible for issuing renovation and demolition permits) are subject to Health & Safety Code 19827.5:

A demolition permit shall not be issued by any city, county, city and county, or state or local agency which is authorized to issue demolition permits as to any building or other structure except upon the receipt from the permit applicant of a copy of each written asbestos notification regarding the building that has been required to be submitted to the United States Environmental Protection Agency or to a designated state agency, or both, pursuant to Part 61 of Title 40 of the Code of Federal Regulations, or the successor to that part. The permit may be issued without the applicant submitting a copy of the written notification if the applicant declares that the notification is not applicable to the scheduled demolition project. The permitting agency may require the applicant to make the declaration in writing, or it may incorporate the applicant's response on the demolition permit application. Compliance with this section shall not be deemed to supersede any requirement of federal law.

Subdivision (c)***Commenter's suggested rule language***

(c)(8) ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA) is ~~the act which legislates asbestos-related requirements for schools~~ (40 CFR Part 763, Subpart E).

Staff Response

Staff believes that this deletion is unnecessary and removes clarity.

Commenter's suggested rule language

(c)(9) ASSOCIATED DISTURBANCE of ACM is ~~any~~ crumbling or pulverizing of ACM, or generation of uncontrolled visible debris from ACM, except Small Scale Short Duration activities as defined in AHERA.

Staff Response

Staff considers this a reduction in the protection of the public. Disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there is no lower limit as to how much disturbed material requires an approved alternative (Procedure 4 or 5) cleanup.

Commenter's suggested rule language

(c)(22) FRIABLE ASBESTOS-CONTAINING MATERIAL is any material containing more than one percent (1.0%) asbestos as determined by paragraph (h)(2), that, when dry, can be crumbled, pulverized, or reduced to powder by using hand pressure or significantly lacks fiber cohesion, identified by flaking, blistering, water damage, scrapes, gouges, or other physical damage localized to more than 10% of the material or to more than 25% of the total surface area of the material. Friable ACM may include, but is not limited to, sprayed-on or troweled-on fireproofing, acoustic ceiling material and ceiling tiles, resilient floor covering backing, thermal systems insulation, nonasphalt-saturated roofing felts, asbestos-containing paper and drywall joint compound.

Staff Response

Staff believes the addition of the word "significantly" adds confusion and uncertainty, as well as reduces protection of the public. Any amount of disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there is no lower limit as to how much disturbed material requires an approved alternative (Procedure 4 or 5) cleanup.

Commenter's suggested rule language

(c)(37) RECEPTOR is any offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, recreational areas inhabited or occupied by the public ~~at any time, or such other locations as the district may determine.~~

Staff Response

Staff believes the definition is consistent with other SCAQMD Regulation XIV rule definitions, guidance, and requirements. This change removes the protection of the public unless it can be proved that the areas named are "occupied", and removes the discretion of the SCAQMD.

Subdivision (d)**Commenter's suggested rule language**

(d)(1)(a)(i) The affected facility, part of the facility where the demolition or renovation operation will occur, or facility components shall be thoroughly surveyed by an Asbestos Consultant, meeting the requirements of clause (d)(1)(A)(iv) or (v), for the presence of

asbestos prior to any demolition or renovation activity. The survey shall include the onsite inspection, identification, and quantification of all friable, and Class I and Class II non-friable asbestos-containing material (ACM), and any physical sampling of materials in accordance with subdivision (h). There are no exceptions to this survey requirement based on the date of construction or the age of a facility.

(d)(1)(a)(iii)(II) A written statement of the qualifications of the [Asbestos Consultant](#) who conducted the survey, demonstrating compliance with clause (d)(1)(A)(iv) or (v);

(d)(1)(a)(iii)(V) A table of all suspected materials tested, the approximate area of each [ACM homogeneous material](#), the asbestos content of each material tested, and the ~~percent of the area that is damaged~~ [and the disturbance potential and condition using the definitions in AHERA](#);

Staff Response

PAR 1403 includes requirements for minimum numbers of samples for each homogeneous area of suspect material, and to know whether the Asbestos Consultant has taken the proper number of samples, the area of homogeneous suspect material must be reported. The added reference to AHERA is not appropriate in that this rule applies to facilities other than schools. Rule 1403 is more stringent than AHERA, and more precise reporting is necessary to ensure that all of the damaged ACM is addressed.

Commenter's suggested rule language

(d)(1)(a)(iii)(VII)(2) Record of the ~~location, type of material, date, time, and~~ unique identification number or code for each sample that was obtained; and,

(d)(1)(a)(iii)(VII)(3) Whenever the possession of samples is transferred, both the individual relinquishing the samples and the individual receiving the sample shall sign, print their name legibly, and record the date ~~and time~~ on the COC document.

Staff Response

Staff considers the location, type of material, and date a mandatory requirement for each sample to ensure that compliance staff can replicate the sampling if necessary. The "time" requirement has been reviewed and determined to be inconsequential. It has already been removed from proposed rule language.

Commenter's suggested rule language

(d)(1)(a)(iii)(X) [Asbestos Consultants shall not be required to use any particular report format, so may place the required information anywhere they choose in their reportponse \(including the laboratory report\).](#)

Staff Response

The District maintains the authority to require documents that are submitted to the District in an approved format.

Commenter's suggested rule language

(d)(1)(a)(iii) (XI) SCAQMD personnel and people acting on their behalf shall discuss the Asbestos Consultant's report with them prior to issuing a Notice of Violation or Notice to Comply based on information they could not find in an Asbestos Consultant's report.

Staff Response

The district does not believe this is appropriate for inclusion in a rule.

Commenter's suggested rule language

(d)(1)(C)(ii)(III) Notwithstanding the above, asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products which are not friable and are not crumbled, cut, abraded, or otherwise not damaged and in good condition (as defined in AHERA), may be removed after the start of renovation or non-burning demolition activities if prior approval from the District is obtained (Procedure 5).

Staff Response

The district does not believe that this added reference to AHERA is appropriate since this rule applies to facilities other than schools.

Commenter's suggested rule language

(d)(1)(C)(ii)(IV) If the renovation or demolition activity involves any mechanical force such as, but not limited to, scraping, sanding, sandblasting, cutting, or abrading ~~and thus~~ which would render the materials friable, they shall be removed prior to the renovation or demolition.

Staff Response

The District believes deleting "and thus" and replacing it with "which" removes the assertion of the paragraph that scraping, sanding, sandblasting, cutting, or abrading RENDERS the material friable (releasing fibers).

Commenter's suggested rule language

(d)(1)(C)(ii)(V) If for any reason, any renovation or demolition results in an associated disturbance of ACM outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up (no Procedure 5 is required if the project does not exceed Small Scale Short Duration as defined in AHERA).

(d)(1)(C)(ii)(VI) If any disturbed, damaged, or suspected ACM is discovered outside of a containment or work area then, prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility areas and submit and obtain an approved Procedure 5 plan, prior to any asbestos clean-up (no Procedure 5 is required if the project does not exceed Small Scale Short Duration as defined in AHERA).

Staff Response

Staff considers any amount of disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there are no lower limits as to how much disturbed material

requires an approved alternative (Procedure 4 or 5) cleanup. The added reference to AHERA is not appropriate since this rule applies to facilities other than schools.

Commenter's suggested rule language

(d)(1)(D)(i)(I)(2) All air passageways, such as doors, windows, vents and registers in the work area, shall be covered and rendered air tight with plastic sheeting or hard wooden barriers with studded support ([as needed](#)). Air passageways used to provide makeup air for the isolated work space need not be covered;

Staff Response

Staff believes the addition of "(as needed)" removes the definitive requirement that plastic sheeting or wooden barriers be supported by studs to ensure that the plastic or wood does not collapse from the negative pressure pulling these materials inward.

Commenter's suggested rule language

(d)(1)(D)(i)(V) [\(4\) Procedure 5 shall not be required for any Small Scale Short Duration project as defined in AHERA.](#)

Staff Response

Staff considers any amount of disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there are no lower limits as to how much disturbed material requires an approved alternative (Procedure 4 or 5) cleanup. The added reference to AHERA is not appropriate since this rule applies to facilities other than schools.

Commenter's suggested rule language

(d)(1)(D)(ii)(I) ~~No person shall remove or strip any amount of ACM or that has suffered any damage or disturbance without the use of a Procedure 4 or 5 Approved Alternative. The causes of damage or disturbance include, but are not limited to, fire, flood, explosion, or other natural disaster.~~

Staff Response

Staff considers this deletion to be inappropriate. Any amount of disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there is no lower limit as to how much disturbed material requires an approved alternative (Procedure 4 or 5) cleanup.

Commenter's suggested rule language

(d)(1)(D)(ii)(I) Notifications for materials that cannot be assessed for damage such as, but not limited to, subterranean piping [other than asbestos-cement piping](#), ~~where the asbestos consultant has presumed or assumed the material to be asbestos-containing~~, shall be submitted as a Procedure 4 or 5 Approved Alternative. A facility survey is still required in accordance with subparagraph (d)(1)(A).

Staff Response

The district's position is that Rule 1403 and the NESHAP both require an inspection prior to renovation or demolition, and even AHERA requires that the inspector touch the material as part of the inspection to determine friability. This section was added in PAR 1403 to allow property owners to submit notifications prior to assessing the material and to prevent potential

safety issues from having an open trench through the required waiting period. There are no exceptions for type of material in the requirement that they be inspected. The only way to avoid delay in the situation that disturbed material is found once the subterranean piping is exposed, is to have an approved Procedure 5 cleanup plan that addresses intact and disturbed material. This change removes suspect ACM from this requirement and removes the ability for the inspector to assume material is ACM.

Commenter's suggested rule language

(d)(1)(M) Monitoring and Clearance An Asbestos Consultant shall be retained to perform clearance inspection and air sampling for all indoor asbestos removal projects other than those defined as Small Scale Short Duration in AHERA and/or less than 100 square feet. Notifications for projects for which an Asbestos Consultant is also retained to perform full-time oversight, monitoring and documentation of the asbestos removal project shall be discounted 50% by the District.

Staff Response

Staff believes that adding this provision would be an expansion of the scope of the rule, and the District has no established standard to enforce.

Subdivision (h)

Commenter's suggested rule language

(h)(1)(A) Bulk samples shall be collected from scattered locations within each homogeneous area of friable surfacing material that is not assumed to be ACM as follows:

(h)(1)(B)(i) A minimum of three samples shall be collected from scattered locations within each homogeneous material; except as provided in subparagraph (h)(1)(D).

(h)(1)(C) Bulk samples shall be collected from scattered locations within each homogeneous area of Class I and Class II non-friable material that is not assumed to be ACM as follows:

Staff Response

Staff believes that Asbestos Consultant's certification through Cal OSHA to be sufficient for guidance on inspection and sampling techniques. They must demonstrate that they know how to conduct inspections and collect samples. Staff does not believe that this addition provides additional clarity.

Commenter's suggested rule language

(h)(1)(G) One bulk sample shall be collected from each homogeneous area of sheet vinyl flooring (each pattern) which is not assumed to be ACM.

Staff Response

PAR 1403(h)(1)(D) already provides for the allowance of a single positive sample result to establish that the material is ACM. Multiple samples are necessary to ensure that a single negative sample does not allow any ACM to be improperly removed.

Commenter's suggested rule language

(h)(2)(A) A sample in which no asbestos is detected by Polarized Light Microscopy (PLM) does not have to be point counted. ~~However, to confirm no asbestos was detected, survey reports shall document three (3) subsamples were prepared and examined in their entirety;~~

Staff Response

Staff has already removed this rule language from PAR 1403.

Commenter's suggested rule language

(h)(2)(D) If any analysis is performed which shows a single sample from a homogeneous area is greater than one percent (1.0%) ACM, then an asbestos consultant may forgo analysis of subsequent samples from that homogeneous area and presume or assume subsequent samples from that homogeneous area are greater than one percent (1.0%) ACM.

Staff Response

Staff believes that this is implicit within PAR 1403 and this addition would be unnecessary.

Subdivision (j)***Commenter's suggested rule language***

(j)(1) The requirements of paragraph (d)(1) shall not apply to a hazardous situation that poses an immediate risk of injury or death. Once the immediate hazard has been addressed, then activity must stop, and the site must be secured, stabilized, and surveyed for the presence and condition of ACM and asbestos-contaminated materials. If ACM greater than the amount which could be removed as a Small Scale Short Duration project under AHERA has been disturbed or damaged as a result of, or as part of the response to, the hazardous situation, a Procedure 4 or 5 (Approved Alternative) clean-up plan must be submitted by the end of the next business day and approved prior to any asbestos clean-up. Written explanation of the hazard and hazard response must be submitted to the District along with the Procedure 4 or 5 clean-up plan.

Staff Response

Staff considers any amount of disturbed or damaged ACM can release fibers and there is no safe exposure to asbestos, so there are no lower limits as to how much disturbed material requires an approved alternative (Procedure 4 or 5) cleanup. The added reference to AHERA is not appropriate since this rule applies to facilities other than schools.

Proposed Subdivision k***Commenter's suggested rule language*****(k) Data Sharing**

For every renovation or demolition involving disturbance of over 100 square feet of material at an existing building, city and county government departments responsible for issuing permits for renovation or demolition shall provide the District, via electronic means, the address of the project and the names and contact information for the owner within two days of the issuance of the permit, and shall inform permit applicants that

[they are sharing this data with the District and provide them with the District web site and phone number.](#)

Staff Response

Staff considers this addition to be an expansion of the rule and the agencies identified are already subject to Health & Safety Code 19827.5; which requires that a demolition permit applicant demonstrate that they have complied with the requirements of the SCAQMD prior to issuing the demolition permit.

RULE 1403 – ASBESTOS EMISSIONS FROM RENOVATION/DEMOLITION ACTIVITIES

APPENDIX - REFERENCES

- Appendix J TO § 1910.1001 - Polarized Light Microscopy of Asbestos
- Asbestos NESHAP - 40 CFR Subpart M
- Asbestos-Containing Materials in Schools (AHERA) - 40 CFR Part 763, Subpart E
- Attachment H from the 1989 Rule 1403 Staff Report: Referencing 40 CFR section 768.107 for sampling protocol
- EPA Test Method EPA/600/R-93/116: Method for the Determination of Asbestos in Bulk Building Materials
- Federal Register Document 95–30797: Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems
- Interim Method of the Determination of Asbestos in Bulk Insulation Samples - 40 CFR Appendix E to Subpart E of Part 763
- OSHA Standards Interpretation 1926.1101: Potential for Legal/Compliance Problems with OSHA’s Asbestos Standards dated November 5, 1996
- Texas Department of State Health Services: Analysis of Joint Compound for Asbestos Content
- US-EPA Applicability Determination Index Control No. C-112: Point Counting dated May 8, 1991
- US-EPA: Report No. 15-P-0168: EPA Should Update Guidance to Address the Release of Potentially Harmful Quantities of Asbestos That Can Occur Under EPA’s Asbestos Demolition Standard

Appendix J TO § 1910.1001 - Polarized Light Microscopy of Asbestos

Asbestos NESHAP - 40 CFR Subpart M

Asbestos-Containing Materials in Schools (AHERA) - 40 CFR Part 763, Subpart E

Attachment H from the 1989 Rule 1403 Staff Report: Referencing 40 CFR section 768.107
for sampling protocol

EPA Test Method EPA/600/R-93/116: Method for the Determination of Asbestos in Bulk Building Materials

Federal Register Document 95–30797: Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems

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Appendix E to Subpart E of Part 763

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OSHA's Asbestos Standards dated November 5, 1996

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