



Calaveras County Environmental Management Agency

Brian S. Moss ♦ Agency Administrator / Director of Environmental Health / Air Pollution Control Officer

Date: July 2, 2015

CB Asphalt
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Ford Construction
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Subject: Calaveras County Health Officer Determination
Air Pollution Control District - Authority to Construct

I. Health Officer's Determination Under Calaveras County Code 17.42.035

Pursuant to Calaveras County Code 17.42.035, when there is a proposed change of use in an industrial zone, the project proponent must submit to the Health Officer a list or plan of all substances to be used or produced by the proposed business. Thank you for the recent submittal of this information.

As the Health Officer, I am required to review the submitted information to determine whether the type, method of use or quantity of substance(s) is such that there may be a significant effect on the environment associated with the substances. If so, I am required under 17.42.035 to notify the Planning Director of this determination.

In my letter of May 29, 2015, I initially asserted that both the ATC and my determination under 17.42.035 are "projects" under CEQA and that this project would automatically require an Initial Study. After further research with County Counsel and the Planning Department in the wake of both Ford's and CB Asphalt's appeals to the Planning Commission, I will be recommending that the Planning Commission make a partial amendment to my determination.

With respect to my determination under 17.42.035, I concur with Ford and CB Asphalt that this is "not a project" under CEQA because, despite the fact that it requires me to apply my expertise and render judgment as the Health Officer, the determination does not contemplate "approval" of a project or any portion of a project. In making that determination, I have no discretion to approve, disapprove, or

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impose conditions on the project based on its potential to impact the environment. What I am required to do under 17.42.035 is to determine whether or not a project involves the production or use of hazardous or toxic materials that have the potential to impact the environment. If I, as the Health Officer, determine that "yes" a project involves the production or use of hazardous or toxic materials that may have a significant impact on the environment, the Code requires me to notify the Planning Director—who, in turn, must direct the project proponent to apply for a Conditional Use Permit (CUP). It is the issuance of the CUP, not my preliminary determination about the hazardous nature of the materials, which would be the "project" under CEQA for purposes of Title 17 of the Calaveras County Code. It is through the issuance of the CUP application process that potential impacts to the environment would be addressed and, if necessary, mitigated. Therefore, I will be recommending that the Planning Commission reverse my initial determination that the finding I am required to make under 17.42.035 for purposes of this proposal is a "project" under CEQA.

However, based on the information I received from the CB Asphalt on June 25, 2015, I have determined that applicant's proposal to add a Hot Mixed Asphalt Plant will involve the use of a hazardous material that may have a significant effect on the environment absent the imposition of mandatory conditions and requirements designed to reduce the risk associated with the use of that material.

It should be noted that Section 17.42.035 predates Assembly Bill (AB) 1082 that was passed during the 2000 legislative session. This bill enacted the Unified Hazardous Waste Program and delegated local Certified Unified Program Agencies (CUPA's) to carry out the program under California Health and Safety Code, Chapter 6.95. Therefore, as Health Officer, I currently rely upon state law and state definitions to determine whether substances and materials related to a land use are hazardous and may have a significant effect on the environment. Chapter 6.95, Section 25501 (n) (1) states: "Hazardous material" means a material listed in paragraph (2) that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment, or a material specified in an ordinance adopted pursuant to paragraph (3). Asphalt is considered a hazardous material.

The hazard summary for Asphalt is as follows:

Hot material can cause severe eye and skin burns on contact. Hydrogen sulfide from heated material can accumulate in vapor space of tanks and containers. Contact between heated material and water can cause a violent eruption. Fumes from heated material can cause irritation to the eyes, skin, and respiratory system, and can increase susceptibility to sunburn.

Asphalt is also considered hazardous by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200).

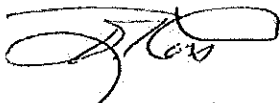
A copy of this determination will be forwarded to the Planning Director as required by Section 17.42.035 of the Calaveras County Code.

II. Application to Air Pollution Control Board for Authority to Construct

With respect to my issuance of an Authority to Construct (ATC) on behalf of the Calaveras County Air Pollution Control District, I maintain that this proposal is a "project", as defined under California Public Resources Code, Section 21065 and Section 15378 of the CEQA Guidelines, and subject to further analysis under the California Environmental Quality Act. I concur with Ford and CB Asphalt that it was premature as of May 29, 2015 for me to conclude *that an Initial Study will be required*, as the Air

Pollution Control District had yet to receive a complete ATC application. Therefore, I will be recommending that the Planning Commission amend my determination with respect to issuance of the ATC to read as follows: "The County has determined that issuance of an ATC is a project, as defined by the California Public Resources Code, Section 21065 and Section 15378 of the CEQA Guidelines, and subject to further analysis under the California Environmental Quality Act."

Since the County has determined that the project is subject to a CUP under 17.42.035, no ATC will be issued by the Air Pollution Control District until a CUP is approved by the Planning Department. The Planning Department will, upon receipt of a complete application for a CUP, complete preliminary CEQA review of whether or not an exemption applies or whether an Initial Study and environmental document will be required. Should the Health Officer's determination under 17.42.035 be reversed, the Calaveras County Air Pollution Control District will complete preliminary CEQA review as part of the ATC process.



Brian S. Moss, Administrator
Environmental Management Agency