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Memorandum

TO: Senator Donald Olson
FROM: Susan Haymes, Legislative Analyst *SH*
DATE: March 21, 2012
RE: Naturally Occurring Asbestos and Immunity from Liability
LRS Report 12.257

You asked if laws governing the use of naturally occurring asbestos in California and Virginia provide for immunity from liability similar to the proposed language in SB 180 and HB 258.

The short answer to your question is no. Neither California nor Virginia have any provisions that create immunity from a civil action or a claim for civil damages based on the use of gravel and aggregate materials containing naturally occurring asbestos (NOA).

According to John Yeltman, Environmental Health Specialist, Fairfax County Health Department, the state of Virginia does not have a law that provides for liability immunity from claims relating to the use of gravel or other aggregate materials containing naturally occurring asbestos.¹ Mr. Yeltman notes that the potential exposure to naturally occurring asbestos is not a statewide issue, but exists primarily in Fairfax County. The county operates a NOA program which has established standards and requirements to control exposure to asbestos generated from construction activities. Soil and other materials containing asbestos can be used as fill as long as the recipient has been notified of the asbestos and the fill is capped with at least six inches of clean material. Mr. Yeltman explained that if the responsible party does not provide a warning and an asbestos-related injury or illness occurs, the party could be sued under Virginia law.

The California Air Resources Board (CARB) implemented regulations in that state, known as Airborne Toxic Control Measures, to minimize public exposure to NOA in rock and soil. The CARB established a 0.25 percent threshold for asbestos content. If the asbestos content is less than 0.25 percent, the material may be used for surfacing or any other use; if the material has greater than or equal to 0.25 percent, its use is restricted. Any person who sells, supplies, or offers for sale restricted material for non-surfacing applications must provide a written receipt containing a warning that it is unlawful to use the material for surfacing or any application in which the material would remain exposed (CA Code of Regulations, Title 17, Section 93106).²

We searched Lexis, the state of California's online statutes, and the National Conference of State Legislature's 50-State Bill Information Service for state laws and proposed legislation. We found no laws or proposed legislation that provide immunity from liability for persons supplying or using materials containing naturally occurring asbestos for asbestos-related claims.³

We hope this is helpful. If you have questions or need additional information, please let us know.

¹ Mr. Yeltman can be reached at 703.246.2541.

² More information on the California NOA program can be accessed at www.arb.ca.gov/toxics/asbestos/reginfo.htm.

³ California laws can be accessed at www.leginfo.ca.gov/calaw.html, and state legislation can be accessed at the National Conference of State Legislature's 50-State Bill Information Service at www.ncsl.org/issues-research.aspx?tabs=966,124,829. California does allow immunity from liability to an owner of a building that has asbestos-containing construction materials, if the owner provides notice to employees and occupants of the buildings (Cal Health & Safety Code § 25915.5).