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HAZARDOUS MATERIALS PROGRAMS

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**MEMORANDUM**

To: Contra Costa Health Services Hazardous Materials Programs

From: Randall L. Sawyer, Director

Date: January 23, 2012

RE: FILING HAZARDOUS MATERIALS BUSINESS PLAN FOR BUSINESS WITH  
SHORT DURATION CONSTRUCTION PROJECT

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**Question Presented**

Are businesses that store hazardous materials in reportable quantities or generate hazardous waste for the sole purpose of construction projects required to submit a Hazardous Materials Business Plan (HMBP) or Business Activities Form to Contra Costa Health Services Hazardous Materials Programs (CCHSHMP) and therefore subject to corresponding permit fees?

**Brief Answer**

A business is required to submit the appropriate documentation to CCHSHMP for the storage of hazardous materials in reportable quantities and/or the generation of hazardous waste. However, the business will not be subject to fees if the activities are specifically related to construction projects (environmental remediation, soil excavation, removal of asbestos containing materials, etc.) that have a duration of sixty (60) days or less.

**Statement of Facts**

Health and Safety Code Section 25503.5(a) requires that a business must submit a HMBP if the business handles a hazardous material or a mixture containing a hazardous material that is stored in a reportable quantity at any one time during the reporting year. Therefore, businesses that conduct construction projects that require the storage of hazardous materials in a reportable quantity are required to submit the appropriate documentation. The Business Activities Form requires the notification of the generation of hazardous waste, even if it is not stored in reportable quantities for the HMBP Program.

CCHSHMP staff has 45 to 60 days to conduct an inspection of a business that submits the Business Activities Form for the first time, but if it is a construction project that will last 60 days or less, CCHSHMP will not perform an inspection.



**Discussion**

In September 2010, there was a notification from the Contra Costa County Fire Protection District (ConFire) of smoke coming from the ground being reported by the public in Antioch. The smoke was actually steam coming up through the ground from the reaction of hydrogen peroxide injected into shallow groundwater as a remedial action pilot study. The facility had hydrogen peroxide in reportable quantities at the business, which CCHSHMP was not notified of, for use during a pilot study. The pilot study lasted approximately six (6) weeks. Although the information was required to be submitted to CCHSHMP, the hazardous material was not at the business long enough for CCHSHMP to conduct an inspection. In this case, the information would have been helpful for ConFire as well as CCHSHMP, but the issuance of fees and a permit were not warranted because the duration of the pilot study was not long enough for CCHSHMP to conduct an inspection.

Some businesses conduct one-time excavation projects to remove contaminated soil or conduct building modifications for the purpose of removing asbestos containing materials. Although these activities result in manifests that can be reviewed following the completion of the construction project, these activities are conducted under a temporary Environmental Protection Agency Identification (EPA ID) Number and pose a potential risk to the public only during the limited duration of the removal activities. The limited duration of the construction project may not allow sufficient time for CCHSMHP to conduct an inspection while the activity is occurring.

Existing businesses that conduct short duration construction projects in addition to the other hazardous materials stored or hazardous waste generated as part of an ongoing construction project or as part of the routine business operations, are inspected at regular intervals. The regular inspection will result in the review of the HMBP and/or manifests that are a product of the short duration construction project. Therefore, existing businesses are required to provide documentation for the reportable quantities of hazardous materials along with the storage of hazardous waste as a result of the short duration construction project and it is reasonable to use the quantities reported in the assessment of fees.

If ongoing construction projects extend beyond the initially proposed activity across a business, facility, site, continuous property, etc., even though each individual activity does not extend beyond sixty (60) days, then it is appropriate that CCHSHMP conduct an inspection resulting in the assessment of fees and issuance of a permit to recoup incurred costs. Although construction projects and remedial activities are often benefits to the environment and public safety, long duration activities are subject to inspection and therefore warrant the issuance of a permit and assessment of fees to recoup incurred costs. The fees assessed for long duration construction projects should be viewed as a recoup of inspection and administrative costs and not a penalty for improving the environment and protecting public safety.

It is not only required, but it is in the best interest of public safety that storage of hazardous materials and generation of hazardous waste be reported, even when the activities are to improve the quality of the environment and/or occupant safety. However, if the duration of the storage of those hazardous materials does not allow for an inspection, there is potential risk to the public

only during the short duration activity, and the activities are the result of a remedial type activity, it may not be necessary to issue a permit and assess fees. Furthermore, CCHSHMP wants to encourage businesses to report the storage of reportable quantities of hazardous materials and the generation of hazardous waste for short duration construction projects.

### **Conclusion**

Businesses must submit the appropriate documentation to CCHSHMP, regardless of the activity that resulted in the storage of reportable quantities of hazardous materials or the generation of hazardous waste. However, if the business is conducting a construction project that the scope is sixty (60) days or less, provides a full written explanation of the construction project with project start and completion dates, appropriate documentation, and if applicable, obtains a temporary EPA ID Number, CCHSHMP will not perform an inspection and assess fees to that business. If CCHSHMP observes the construction project extending beyond the completion date provided from the business; the business obtains a permanent EPA ID Number; or the business conducts multiple short duration construction projects at the same business, facility, site, continuous property, etc., an inspection will be conducted and the full assessment of fees issued.