

County of Santa Clara County Counsel



CC01 102108

Reviewed by: Miguel Marquez
Assistant County Counsel

DATE: *Approved*
Meeting Date: October 21, 2008
Process or Name: Dusty Christopherson
Item Number: 28
October 21, 2008

TO: Board of Supervisors

FROM:

Handwritten signature of Ann Miller Ravel.

Ann Miller Ravel
County Counsel

Handwritten signature of Michael Murdter.

Michael Murdter
Director, Roads & Airports Department

Handwritten signature of Kim Roberts.

Kim Roberts
SCVHHS - Chief Executive Officer

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Greg Van Wassenhove
Director of Agriculture and Environmental Management

SUBJECT: Report back on Addressing Possible Lead Pollution from Reid-Hillview Airport

RECOMMENDED ACTION

Consider recommendations relating to monitoring ambient air for lead in urban areas and near County Airports.

Possible action:

- a. Under advisement from August 26, 2008 (Item No. 12): Accept report from the Office of the County Counsel relating to the Environmental Protection Agency's monitoring requirements and from the Department of Environmental Health on the County's existing effort to prevent childhood lead poisoning, including any oral report.
- b. Accept oral report from the Department of Public Health relating to the components of an epidemiological study regarding potential lead exposure from the Reid-Hillview Airport.
- c. Accept oral report from the Roads & Airports Department relating to execution of any future Environmental Protection Agency lead monitoring.
- d. Direct the Administration and/or County Counsel to take any action the Board deems appropriate.

FISCAL IMPLICATIONS

There is no impact to the General Fund as a result of accepting this report.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

At the request of Supervisor Alvarado, the Board of Supervisors directed the Administration and County Counsel on August 26, 2008, to prepare information outlining actions the County can undertake through its Public Health Department, Administration, or County Counsel to address possible lead pollution resulting from general aviation at County airports, particularly Reid-Hillview Airport (RHV), including testing individuals who reside near Reid-Hillview Airport; provide an update on the Federal Environmental Protection Agency (EPA) requirements to install operational lead monitors in urban areas by January 1, 2010, including associated costs and responsibility for the monitoring process. This report responds to the referral.

On October 15, 2008, the EPA is expected to issue a final rule setting national ambient air quality standards ("NAAQS") for lead and to provide implementation guidelines for its regulations. This will be the first revision of the NAAQS standards for lead in 30 years. The EPA's requirements for air monitoring for lead will depend heavily on the NAAQS standard it adopts--even determining, for instance, the number of monitoring sites required across the country. The EPA has indicated that after it issues the new NAAQS for lead, it plans to consult with monitoring agencies as to whether a centralized or decentralized plan for monitoring would be more efficient. At the current time, without a final rule in place, the EPA has indicated it is neither possible to predict the size of the monitoring network, nor is it possible to assess the probable burden on state and local governments. County Counsel will orally update the Board on the status of the EPA's expected October 15 rulemaking. In addition, the Department of Public Health will orally update the Board on the components of an epidemiological study regarding potential lead exposure from the Reid-Hillview Airport.

The Office of the County Counsel recommends that it monitor the EPA's promulgation of its rule, and any announcements related to the EPA's monitoring at Reid-Hillview, and provide updates to the Board of Supervisors as appropriate.

At the County level, the County's Department of Environmental Health provides a Registered Environmental Health Specialist (REHS) to the Public Health Childhood Lead Poisoning Prevention Program (CLPPP). The REHS is a State certified Lead Inspector/Assessor who conducts home investigations in coordination with a Public Health Nurse. The purpose of the investigation is to determine the source of lead exposure for children with elevated blood lead levels. The investigation includes testing of paint, dust, soil, water and other items such as candy or home remedies suspected of lead exposure. When lead hazards are identified actions are taken to eliminate the exposure including notices to property owners to abate identified lead hazards. Compliance with ordered abatement is either confirmed by reinspection or referred to the District Attorney's Office for further action. In addition to child case management activities, the REHS responds to complaints from the public regarding suspected lead hazards due to deteriorated paint or unsafe work practices when painting or remodeling older homes.

The Department of Environmental Health's current childhood lead sampling program does not have the capacity on its own to provide an in-house study of lead in the air or to assess the possible health effects of lead in the air. The Department stands ready to apply its expertise and resources in any monitoring required by the EPA. The design of any study independent of the EPA would require ongoing EPA consultation, unless the proposed standards are finalized

in time and with the required range of standards and methodologies. Current data based on limited testing of paint, dust, soil, and water do not indicate an additional risk of lead exposure in housing immediately adjacent to RHV compared to other San Jose neighborhoods. However, since there is no current data regarding lead in air at the RHV, the possibility of negative health effects from the use of leaded gas at RHV cannot be ruled out. The department also notes that the data available indicate that the results of a lead air emissions study at the general aviation airports might not show lead air emissions levels that exceed either the current or the proposed EPA standards for lead emissions. Finally, the department clarifies that lead in the soil does not necessarily come from the airport, in part because paint is not necessarily lead-free even if it is not legally defined as "lead-based paint." All the native soil the department has tested in Santa Clara County has had some level of lead in it.

BACKGROUND

The EPA is responsible for promulgating regulations relating to NAAQS for lead and other pollutants. The EPA last promulgated NAAQS for lead in 1978. Even though EPA is required to review the NAAQS for lead at five-year intervals, it has failed to do so since then.

In 2004, the Missouri Coalition for the Environment filed an action in the U.S. District Court for the Eastern District of Missouri to force the EPA to review its NAAQS for lead. The court issued a decision in September 2005 requiring a review of the lead NAAQS by September 1, 2008. However, on July 1, 2008, the District Court gave the EPA an extension to October 15, 2008 to issue final regulations.

On October 15 (barring another extension by the District Court) the EPA is expected to issue a final NAAQS lead standard and to provide implementation guidelines for its final regulations.

According to the EPA, average concentrations of lead in the air have dropped nearly 94 percent since 1980. Further, average blood lead concentrations for children have also dropped significantly since the 1970s. However, as acknowledged by the agency, health effects occur even at very low blood levels. In the proposed rule, the EPA states that it intends to revise the NAAQS for lead from 1.5 micrograms per meter cubed to within a range of 0.1 to 0.3 micrograms per meter cubed. In order to implement the new NAAQS, the EPA is also proposing to strengthen its ambient air monitoring and reporting requirements. The EPA has specifically noted in its proposed rule that the current monitoring network is inadequate to assess compliance and determine the extent of all the areas that may

violate the revised NAAQS. In fact, many states currently have no ambient air lead monitors.

In the Bay Area, the Bay Area Air Quality Management District ("BAAQMD") is the public agency responsible for air quality management in nine Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and portions of Solano and Sonoma counties. The BAAQMD stopped monitoring for lead in 1998 with permission from EPA because data showed that Bay Area lead levels were less than 10 percent of the national standard.

In response to the deterioration of the lead monitoring network, the EPA is proposing to improve the existing lead monitoring network to better assess national compliance with the proposed revisions to the lead standards. Further, the EPA proposes to require monitors to be placed near sources of lead emissions such as airports because they are large emitters of lead. The EPA is also proposing to require a small network of monitors to be placed in urban areas with populations greater than 1 million to gather information on the general population's exposure to lead in air.

The EPA's monitoring requirements will depend heavily on the NAAQS standard it adopts. Even the number of monitoring sites will vary widely depending on the standards. At the current time, without a final rule in place, EPA has indicated that it cannot estimate the size of the monitoring network or the potential burden on state and local governments. EPA has indicated that it plans to consult with monitoring agencies after completion of the rulemaking as to whether a centrally run program managed by EPA and funded with State and Tribal Assistance Grant funds would be a more efficient and preferred alternative than individual state-managed programs.

Therefore, October 15, 2008 marks a crucial date in the area of lead monitoring for the entire country. Not only will the EPA's final rule create a new NAAQS for lead for the first time in three decades, it will also provide implementation guidelines, as well as a timeline for implementation. EPA has thus far indicated that grants may be available, but has provided no details. As also noted, the EPA plans to consult with monitoring agencies, presumably the BAAQMD, after completion of this rulemaking as to whether the plan should be centralized or decentralized.

CONSEQUENCES OF NEGATIVE ACTION

If this report is not accepted, County Counsel and Administration will await further direction from the Board.