

Overview of Asbestos Existence and Disturbance in El Dorado Hills

In the fall of 2004, the Environmental Protection Agency (“EPA”) sent agents to an El Dorado Hills town park dressed in respirators and protective suits. There the agents “played” in the park, kicking soccer balls, running, and riding bicycles. The purpose of these activities was to take air samples during activities that children would engage in at the facility.

The results of the EPA’s study were published in May 2005 and noted that the presence of naturally-occurring asbestos created an exposure level “of concern” to El Dorado Hills residents. According to Jere Johnson of the EPA the somewhat hesitant phrase “of concern” was used to avoid alarming the people of El Dorado Hills.

Parents and other concerned citizens seem to have become worried, however, as attendance at the El Dorado Hills Asbestos Citizen Advisory Group grew to increasingly higher levels after publication of the study. Most laypeople are aware of the connotations of the existence of asbestos; scientists are virtually certain of the dangers the element presents.

There is no known safe exposure level to asbestos, whether it is in a commercial or a natural form; even low doses can cause malignant mesothelioma, a rare lung cancer. And the evidence keeps mounting. In the summer of 2005, researchers from the University of California-Davis Department of Public Health Sciences announced the findings of a study comparing the addresses of 2,900 Californians suffering from malignant mesothelioma against a geological map of the state. They concluded that the risk of developing lung cancer was directly related to how close the patients had lived to areas of rock associated with naturally occurring tremolite asbestos. “The odds of getting mesothelioma drop 1 percent for every mile one moves away from an asbestos source.) As one of the authors explained, “We showed that breathing asbestos in your community is not magically different from breathing asbestos in an industrial setting.”

-Mother Jones Magazine, May 2007 “Not In Their Back Yard”

After publication of the 2005 EPA study, further dust mitigation plans were put in place by the El Dorado County Air Quality Management District (“EDCAQMD”). Specifically, home-builders agreed to spray down building sites and rinse off their trucks' tires after work. Any sightings of "fugitive dust" were to be reported to a new "dust enforcement" team.

Marcella McTaggart, head of the EDCAQMD said that blasting on some occasions at the development site created huge clouds of dust. It was this type of blasting that led to citations for home builder Lennar Corporation and developer AKT Investments, as well as earth mover DeSilva Gates.

West Valley LLC, a joint venture between Lennar and AKT, and De Silva Gates were accused of 47 violations of these air and water pollution laws during the period of 2005-2006. The parties were observed during that period as they constructed their Valley View subdivision housing

development. Air district inspectors photographed explosions and dust clouds which drifted far beyond the job site.

One of the most egregious incidents concerned a designated asbestos area in which DeSilva Gates detonated 27,245 pounds of explosives on December 15, 2005. Ms. McTaggart was scathing in a letter to Lennar following the explosion, saying “the blasts...show no improvement in your efforts to control the release of fugitive emissions” and that “we were very disappointed to note that the agreed-upon measures to minimize...dust were completely disregarded by your company.”

The city discussed these infractions with DeSilva Gates and Lennar/AKT and the EDCAQMD issued a Notice of Violation. Unable to reach a resolution with the developers and contractor, EDCAQMD referred the Notice of Violation to the El Dorado County District Attorney.

In late 2006, the District Attorney reached a \$350,000 settlement with West Valley and DeSilva Gates in which no party admitted liability in regard to alleged public health violations and the settlement amount was to be paid wholly by DeSilva Gates.

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