State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: DISTRICT DIRECTORS
DEPUTY DISTRICT DIRECTORS – PROJECT DELIVERY
HQ DIVISION CHIEF – PROJECT DELIVERY
TERRY ABBOTT, Chief
Local Assistance

Date: December 9, 2003

File: 604.51

From: MARK LEJA
Chief
Division of Design

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Chief
Division of Environmental Analysis

Subject: Hazardous Material Remediation for Special Funded and Jointly Funded Projects

Responsibility for management and funding of hazardous material remediation activities when hazardous material is encountered in the Department of Transportation's (Department) right of way during Special and Jointly Funded Projects will be governed as described in the attached provisions.

Nothing in this memorandum is intended, nor shall it be construed, to obligate the Department to undertake the funding or management responsibility related to any hazardous material located outside the Department's existing right of way. Therefore, regardless of project funding, proposed new right of way for the project must be free of hazardous material before title to such property is transferred to the Department as is described in the memorandum on the "Approval Process for Acquisition of Hazardous Waste Contaminated Property" dated August 16, 1995. Responsibility for both funding and management activities related to hazardous material on such property shall rest with the party that proposes to transfer such property to the Department.

The cooperative agreement standard language formats and pre-approved forms relating to hazardous material will be revised accordingly in the Cooperative Agreement Manual. All future cooperative agreements shall include clauses relating to hazardous material that reflect this memorandum.

The Department will make every reasonable effort to encumber available funds for any hazardous material management for which the Department is responsible. In the event the Department is unable to encumber available funds, the local sponsor will have the option to delay the project, or to proceed with the project and assume the funding responsibility for hazardous material management, without Department assurance of reimbursement.

Please call Marcia Arrant, Division of Design, at (916) 653-5510 if you have questions regarding cooperative elements and Marge Rouch, Division of Environmental Analysis, at (916) 653-3352 if you have questions regarding the definition of the hazardous material category.

Attachment

c: MArrant
MRouch

Provisions for Hazardous Material for Special Funded and Jointly Funded Projects
Attachment to Memorandum Dated December 9, 2003

Hazardous material is being categorized for purposes of this memorandum as HM-1 or HM-2.

Definitions.

HM-1: Hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to state or federal law, whether disturbed by the project or not.

HM-2: Hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to state or federal law, only if disturbed by the project.

State Highway Account: Funding from the SHOPP or STIP (Interregional or Regional Shares) based on project programming.

Local Funds: Funds that do not include any money from the State Highway Account.

Jointly Funded Projects: Projects with funding from the State Highway Account, in addition to local source funding.

The Department recognizes the important health and safety concerns raised by the finding of HM-1 within its right of way, and accordingly accepts primary responsibility for funding and management activities related to that material. Because HM-1 requires active management, without regard to the project, any costs associated with this management will not be considered project costs. The Department also recognizes the unique legal status of HM-2, and the lower risks to health and safety associated with this material, as compared to HM-1. Because HM-2 requires active management only if disturbed by the project, any costs arising from management of HM-2 will be considered project costs.

Accordingly, for any project that is 100% locally funded or jointly funded on pre-existing Department right of way where HM-1 is encountered during project development, the Department will be responsible for all management activities and funding (subject to availability of funds) related to such HM-1. If the Department, in its sole judgment, determines that the management costs associated with HM-1 are increased due to concurrent project development activities, any such increased increment of the HM-1 management costs will be considered a project cost.

If HM-2 is encountered on pre-existing Department right of way during project development, the funding responsibility for management of such HM-2 will reflect the funding responsibility for the project itself. For any 100% locally funded project, any management costs associated with such HM-2 will be the sole responsibility of the project sponsor. For any jointly funded project, any management costs associated with such HM-2 will be shared in the same proportion as other project costs.

If HM-2 is encountered on pre-existing Department right of way during project development, the responsibility for management activities relating to such HM-2 shall rest with the party that has accepted responsibility for advertisement, award, and administration (AAA) of the contract for project construction. Such management activities may include, for example, manifest signature and designation of disposal facility.

Regardless of project funding, proposed new right of way for the project must be free of hazardous material, of either category, before title to such property is transferred to the Department as is described in the memorandum on the "Approval Process for Acquisition of Hazardous Waste Contaminated Property" dated August 16, 1995. Responsibilities for both funding and management activities related to hazardous material on such property shall rest with the party that proposes to transfer such property to the Department.