



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Phase I Environmental Site Assessments (Schools)

Department Reference Number: R-02-01

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to add sections 69100 through 69107, including chapter 51.5, to division 4.5 of title 22, California Code of Regulations.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on November 4, 2002 in the Central Valley Auditorium, 2nd Floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on November 4, 2002 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 58012. This section provides DTSC with the authority to adopt and enforce rules and regulations needed for the execution of its duties.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.

Education Code section 17210, subdivision (g). This section authorizes DTSC to adopt final regulations that establish guidelines for Phase I Environmental Site Assessments for proposed school sites.

These regulations implement, interpret, or make specific the following:

Education Code section 17210, subdivision (g). This section specifies the requirements for conducting a Phase I Environmental Site Assessment in the absence of DTSC regulations and authorizes DTSC to adopt final regulations that establish different guidelines for Phase I Environmental Site Assessments for proposed school sites. Education Code section 17213.1. This section specifies the role of DTSC in the Phase I environmental assessment process for proposed school sites.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations will benefit all school districts conducting environmental assessments. However, there are at least 11 school districts (45 school sites) that were awaiting the implementation of the emergency regulations (effective September 3, 2002) in order to expedite the completion of environmental assessments. Lead assessments of these properties must be completed prior to school construction. Under Department of General Services' State Allocation Board regulations, once school districts obtain funding, they have only eighteen months to begin school facility construction, or they risk losing these funds. These regulations will allow these school districts to submit a Phase I Addendum to DTSC for review, and proceed quickly with school construction if DTSC approves the Phase I Addendum. Use of the Phase I Addendum, would reduce their environmental review process time by at least 30 days and possibly by as much as six months. Without the emergency regulations, school districts under current law would need to prepare and submit a more extensive Preliminary Endangerment Assessment to DTSC, and go through a mandatory 30-day public review period. DTSC's evaluation of the Phase I Addendum under the emergency regulations will enable the school districts to move quickly into additional sampling and cleanup if it is needed, and/or to proceed with school construction, and will help them to avert the potential loss of substantial state funding. Finalization of the emergency regulations is necessary to ensure the ongoing benefits of the Phase I process.

Immediate regulatory change in the environmental assessment process for school sites is also necessary to preserve the general welfare of our State, by promoting the construction of new or expanding schools, and to address severe over-crowding school facilities. These procedural changes will expedite document preparation and review timeframes, saving public resources and minimizing the cost and burden on school districts. In addition, these regulations will facilitate and clarify environmental

assessment statutory requirements in the Education Code. The following is an overview of the environmental assessment review process:

In order for a school district to receive state funds for acquisition or construction of schools, a school district must complete an environmental site assessment and, if necessary, select a response action that shall at a minimum be protective of children's health, with an ample margin of safety.

DTSC has developed a number of technical guidance documents to assist school districts, consultants, and the general public in understanding the environmental review process for proposed school sites. However, there are no existing regulations establishing guidelines for Phase I Environmental Site Assessments (Phase Is) conducted at proposed school sites. Since state funding for new schools requires completion of an environmental site assessment, several school districts and other stakeholders have been involved in reviewing the proposed regulations and are awaiting their implementation. For example, the Los Angeles Unified School District and the Coalition for Adequate School Housing (a large statewide organization of about 600 school districts) have expressed interest in the status of these emergency regulations.

The existing statutory requirement is that a school district conducts a Phase I in accordance with the American Society for Testing and Materials (ASTM) standards. If the Phase I indicates the presence of hazardous materials, the school district may conduct a Preliminary Endangerment Assessment (also called a Preliminary Environmental Assessment or PEA), which includes entering into an agreement with DTSC, sampling and analyzing potential contaminants, and meeting public participation requirements. Completing a PEA is more time-consuming and costly than completing a Phase I.

The existing requirement is that when DTSC determines that a Phase I indicates potential contamination of lead in soil from lead-based paint and for polychlorinated biphenyl (PCB) in soil from electrical transformers, the school district must conduct a PEA to determine the extent, if any, of lead or PCB contamination. These two contaminants commonly result from previously commercial or residential land uses at proposed school sites. Old structures may contain lead-based paints. Old electrical transformers may contain PCBs. Both are likely to cause surface soil contamination with lead and/or PCBs. The potential presence of these contaminants is often the only reason a PEA is required at many proposed school sites.

Based upon past experience, numerous cases have shown that the PEA indicates levels of lead or PCBs that do not pose a health risk. Nevertheless, because existing standards do not include a procedure for submitting lead and PCB samples and

analytical results during the Phase I, the school district has to go through the PEA process.

The proposed regulations specify procedures for conducting a Phase I for proposed school sites and includes an Addendum for sampling and analysis for lead in soil from lead-based paint and for PCBs in soil from electrical transformers in the Phase I process.

The proposed regulations enable school districts and their proponents to include the analytical results of sampling for lead in soil from lead-based paint and for PCBs in soil from electrical transformers in the Phase I. If results of sampling for these two contaminants at a proposed school site indicate that these contaminants do not pose an excessive threat to human health or the environment under unrestricted land use, no further investigation of the site would be required by DTSC for those contaminants. Therefore, these guidelines will help expedite the environmental review process where appropriate, and allow focusing of resources where they are most needed.

These regulations propose to incorporate by reference the following documents which, because of their length and complexity, would be impractical to duplicate in the regulatory text:

(1) "American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," ASTM Standard E-1527, adopted May 10, 2000; available from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9585; website <http://www.astm.org>.

(2) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 Third Edition, November 1986, as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), IIB (January, 1995), III (December, 1996), IIIA (April, 1998), IVA (January, 1998) and IVB (November, 2000); available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, (202) 512-1800; website <http://www.epa.gov/SW-846/main.htm>.

(3) "USEPA Contract Laboratory Program National Functional Guidelines for Organic Data Review," EPA 540/R-94/012; February 1994, available from National Technical Information Service (NTIS), United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487-4650; website <http://www.epa.gov/region09/qa/supfundclp.html>.

(4) "USEPA Contract Laboratory Program National Functional Guidelines for Inorganic Data Review," EPA 540/R-94/013; February 1994, available from

National Technical Information Service (NTIS); United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487-4650; website <http://www.epa.gov/region09/qa/supfundclp.html>.

(5) "Guidance on Environmental Data Verification and Data Validation," EPAQA/G-8; Peer Review Draft, June 2001, available from United States Environmental Protection Agency, Quality Staff (2811 R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 564-6830; website <http://www.epa.gov/Region10/offices/oea/epaqag8.pdf>.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Peer review under the provisions of Health and Safety Code section 57004 is not required since the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

FISCAL IMPACT ESTIMATES:

Mandates on Local Agencies and School Districts: DTSC has made a determination that adoption of these regulations will create no new local mandates. These regulations provide a voluntary option for school districts that choose to conduct a Phase I Environmental Site Assessment. Any mandates that are imposed on school districts already exist in statute and these regulations impose no new mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: The requirements for completion of a Phase I Assessment in the regulations would have no fiscal impact on DTSC because the regulations merely clarify Phase I activities required by current law. The regulations could result in some additional costs for DTSC to review a Phase I Addendum. However, any costs for DTSC to review the Phase I Addendum would be reimbursed by the school district.

Cost or Savings in Federal Funding to the State: DTSC has made a determination that the proposed regulations will have no impact on Federal revenue or costs.

Effect on Housing Costs: DTSC has made a determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses: These regulations do not impose any costs over what is already required by statute. Specifically, any such costs would have been as a result of implementation of Senate Bill 162 (Stats. of 1999, ch. 1002) and Assembly Bill 387 (Stats. of 1999, ch. 992). Together these bills establish the authority for these regulations by requiring school districts, as a condition of receiving state funds, to enter into an agreement with DTSC to oversee response actions in certain instances as well as establishing the parameters for school districts conducting Phase I assessments. The statutes also have provisions for reimbursing DTSC for oversight costs. Costs for site cleanup will vary greatly from site to site.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made a determination that the proposed regulations will not have a statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

- (A) **Creation or elimination of jobs within California** – DTSC has made a determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** – DTSC has made a determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** – DTSC has made a determination that it is not likely that businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses: DTSC has determined that these regulations do not have an effect on small businesses because the regulations apply only to school districts seeking state funding for acquisition of property or construction projects.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons, which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Laurie Grouard of DTSC at (916) 323-3394 or, if unavailable, Kathleen Hartshorne of DTSC at (916) 323-3395. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Ms. Joan Ferber, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

Dated: _____

James McRitchie, Chief
Office of Environmental Analysis,
Regulations and Audits