

FINAL STATEMENT OF REASONS

Amendment to Phase I Environmental Site Assessments (Proposed New and Expanding School Sites) (R-2004-01) OFFICE OF ADMINISTRATIVE LAW REGULATORY ACTION NUMBER: Z-07-0227-10

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subsection (d), the Department of Toxic Substances Control (DTSC) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

No changes were made to the proposed regulations following the public hearing and 45-day comment period. Therefore, no changes are necessary to the Initial Statement of Reasons, except for the following statement:

DTSC obtained an extension of the emergency regulations for Amendment to Phase I Environmental Site Assessments (Proposed New and Expanding School Sites), initially approved on November 27, 2006 (note: the Initial Statement of Reasons incorrectly had this date as November 27, 20006). The existing emergency regulations were approved by the Office of Administrative Law on March 20, 2007 and will expire on July 19, 2007.

LOCAL MANDATE DETERMINATION

These regulations are applicable only on a voluntary basis in order to allow quicker assessment of new and/or expanding school sites that are anticipated to have one or more of just three types of contamination-- lead in soil from lead-based paint, polychlorinated biphenyls in soil from electrical transformers, and/or OCPs in soil from termiticide application. These regulations also establish guidelines using the updated American Society for Testing and Materials (ASTM) Standard E1527-05. The updated federal regulations became effective on November 1, 2006, and DTSC needs to be in compliance with the amended standard. The rulemaking does not impose a mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

DTSC has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

BUSINESS REPORT DETERMINATION

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

ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No comments or proposed alternatives were submitted by the Office of Small Business Advocate. These regulations pose no adverse economic impact on small businesses.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF MARCH 9, 2007 THROUGH APRIL 23, 2007

1. Comment from Mr. Tom Dahlgren, dated April 3, 2007

My name is Tom Dahlgren and I have been doing assessments for 20 years. I noted two glaring omissions from the proposed regulations for conducting school site Phase I's. The proposed testing for lead for lead paint sources should be expanded to test soils around school sites for lead concentrations from historical leaded gasoline emissions. I have repeatedly found high concentrations of lead (exceeding 100 ppm) along highways and busy streets. Both total lead and soluble lead testing should be done. I also recommend that past oil wells and associated oil sumps be clearly identified within the immediate area or within school sites. Where oil wells are found, recommendations should be made to physically locate wells and associated sumps. The full Title 22 series soil tests should be done of oil sumps. Thank you for allowing me this opportunity to comment.

Response: The intent of the proposed regulations is to streamline the environmental review process and help minimize site assessment costs for properties historically considered unlikely to have contamination, such as residential properties. To accomplish this, sampling and analysis for organochlorine pesticides (OCPs) in soil from termiticide application may be included in a Phase I Addendum. This supplements existing regulations that allow sampling and analysis for lead in soil from lead-based paint and polychlorinated biphenyls (PCBs) in soil from electrical transformers. However, the proposed regulations do not eliminate the need to evaluate other potential sources of lead at proposed new or expanding school sites, such as gasoline emissions, oil wells, or oil sumps if the Phase I identifies these as recognized environmental conditions. An evaluation of potential lead sources other than lead-based paint and of other chemicals of concern should be conducted in a Preliminary Endangerment Assessment or Preliminary Environmental Assessment.

This comment is beyond the scope of the proposed regulations as noticed and written.

2. Comment from Mr. Robert A. Lauritzen, PG, County of El Dorado, Environmental Management Department, dated March 28, 2007

I would like to request that the El Dorado County Environmental Management Department be copied on final Phase I reports for prepared for school sites within our county.

Response: Mr. Lauritzen made a request concerning distribution of Phase I reports prepared for school sites within El Dorado County. DTSC has provided Mr. Lauritzen with information regarding available public access to information and site documentation directly from DTSC's EnviroStor database via the Internet. Interested persons can query the database directly for information about school sites, and can download copies of DTSC-approved documents, including the Phase I reports.

This comment is beyond the scope of the proposed regulations as noticed and written.