

FINAL STATEMENT OF REASONS ADDENDUM

Amendment to Phase I Environmental Site Assessments (Proposed New and Expanding School Sites) (R-2004-01) OFFICE OF ADMINISTRATIVE LAW REGULATORY ACTION NUMBER: 07-0615-01C

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

The following statements update/augment the Final Statement of Reasons:

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

At this time, there is no equivalent federal regulation that this regulation would conflict with or duplicate.

DTSC finds this rulemaking necessary to avoid conflict with the national ASTM Standard E1527-05 for conducting Phase I Environmental Site Assessments and federal regulations (40 C.F.R. Part 312), Standards and Practices for All Appropriate Inquiries. The Phase I Environmental Site Assessments (Schools) regulations that were effective on February 10, 2003, reference the out-of-date standard (ASTM Standard E1527-00). These regulations update the reference to the new standard which, in part, may duplicate some of the federal final rule. However, for purposes of clarity, this regulation has been drafted in straightforward language, and the duplication is necessary to make the regulations more coherent and easily read and understood.

OTHER CHANGES

DTSC has made a number of nonsubstantive changes which do not materially alter any right, requirement, responsibility, condition, or prescription of the proposed regulation. The changes are being made to clarify and ensure consistent use of wording throughout the regulation text:

- 1) **Changes to Authority and Reference Citations.**--The Authority and Reference citations in sections 69100 through 69109 were amended so that they conform to the current California Code of Regulations.
- 2) **Section 69100. Purpose.**--There are two clarifying changes (changing the word "maintain" to "provide" in the first sentence and changing "establishing" to "contains" in the second sentence.)

- 3) Section 69105. Sampling for Lead in Soil.**--In subsection (b), the proposed phrase “from lead-based paint” was deleted to eliminate redundancy.

In subsection (c)(1), there is one clarifying change. The phrase “evaluate lead in soil” was amended to read “evaluate ‘possible’ lead in soil” to be consistent with section 69105 subsection (b).

In subsection (d), there are three clarifying changes. The term “buildings” was changed to “structures” to be consistent throughout the regulations. The term “former” has been added to subsection (d)(1) in the first sentence, to clarify that the expectation is to identify where structures previously existed based on the remaining foundations or slabs. In the second sentence, the phrase “under pre-existing” has been added to clarify that samples would be collected at locations where there used to be windows, doors, etc., prior to demolition. In the last sentence of subsection (d)(1), the word “possible” has been added to be consistent with section 69105 subsections (b) and (c) and clarifies that the purpose is to determine if there is lead in soil.

- 4) Section 69106. Sampling for OCPs in Soil.**--There are two clarifying changes: the term “possible” has been added to subsections (c)(1) and (d)(1) prior to the word “OCPs.” These changes were made to be consistent with use of “possible” related to lead in soil in section 69105. It also clarifies that the purpose is to determine if there are OCPs in soil.

- 5) Section 69109. Phase I Addendum Recommendations.**--There is no change to the text of this section. This information clarifies why DTSC makes a determination on a case-by-case basis. The Phase I Addendum must demonstrate that concentrations of lead, OCPs, and/or PCBs in soil at a Proposed School Site do not exceed concentrations determined by DTSC to be protective of public health and the environment. Consistent with ASTM requirements and other applicable federal guidance as specified in section 69103, DTSC determines concentrations to be protective of public health and the environment based on a preliminary evaluation of potential risks posed to children’s health, public health, or the environment by hazardous material contamination found at a site. Each site must be evaluated for its site-specific conditions. The risk evaluation includes an exposure assessment using chemical toxicity parameters and site-specific information, such as, environmental fate and transport, exposure pathways, exposure routes (e.g. ingestion, inhalation, dermal contact), exposure point concentrations, receptors, range of soil concentrations, distribution of contamination, and cumulative risk and/or hazard from multiple contaminants.

ECONOMIC IMPACT ON BUSINESS DETERMINATION

DTSC has determined that the regulatory action will not have a significant adverse economic impact on business based upon facts, evidence, documents, and testimony.

INCORPORATION BY REFERENCE DETERMINATION

DTSC has determined that it would be cumbersome and otherwise impractical to publish the documents incorporated by reference in section 69103 of title 22 due to the large size of the documents.

DTSC has determined that the documents incorporated by reference in section 69103 of title 22 were available upon request directly from DTSC and were reasonably available to the affected public from a commonly known source. The regulations identify a physical mailing address to obtain the documents and provide a website to directly access the documents.