

45-Day Comments for CLEAN Regulations

L=Letter S=Speaker

Comment Number	Summary of Comment	Commentator	Response	Revision Needed	Section/ Area
S-01-01	Expand the activities that could be done as part of the ISCP Loan to more thoroughly investigate the property	Mark Leymaster Leymaster Environmental Consultants	No Change: The Preliminary Endangerment Assessment (PEA) process is designed to collect sufficient information to determine whether there has been a release of a hazardous substance that poses a threat. The PEA provides sufficient info for the Department to determine if a response action is necessary. With small sites, a PEA and the funds available through the ISCP loan could be sufficient to determine the full nature of the contamination. But typically, a more thorough determination will be done in the Remedial Investigation phase which can be funded using a CLEAN loan.	No	68202(y)
S-01-02	Clarify if agencies other than DTSC are allowed to take to lead on investigation work.	Mark Leymaster Leymaster Environmental Consultants	No Change: HSC 25395.21(g) and 25395.25(b) require borrower to enter into an agreement with DTSC for oversight activities. New statutory language Assembly Bill 254 addresses this issue.	No	68201(a)(3) 68201(b)(4)
S-02-01	Reconsider requirement for first lien on properties	Bruce Amos	Noted: HSC 25395.26(a) requires DTSC to obtain security interest with first lien priority. New statutory language Assembly Bill 254 addresses this issue.	No	68209 (b)(14)
S-03-01	We are pleased with the way that Cal/EPA and the DTSC has worked with the redevelopment community and with the California Hispanic Chambers of Commerce to cleanup the prior legislation and to make the CLEAN program accessible to a greater number of communities.	Colleen Cox Daehnke & Cruz Attorneys at Law	Thank you for your support.	No	All
L01-01	Department has no comments on the regulations at this time.	Department of Pesticide Regulation	Thank you for your support.	No	All
L-02-01	Prohibition on loans for contiguous expansion or improvement of existing properties will inhibit minority businesses from growing and expanding.	The Greenlining Institute	No Change. HSC 25395.20 (a)(2)(B)(iii) precludes brownfields properties that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility from receiving funds from the CLEAN loan program. (See also changes from Senate Bill 468 that include small businesses even if they are contiguous expansions.	No	68202(m)(3)

L-02-02	The Office of Environmental Health and Hazard Assessment should be consulted on the subject of professional qualifications.	Targhee, Inc. Environmental Consultants	No Change: Formal peer review with Office of Environmental Health Hazard Assessment is not necessary because there are no requirements in the regulations to make scientific findings as part of the CLEAN program. These regulations instead set administrative standards and procedures for implementation of the loan program. Also, OEHHA has been the implementing agency for REAs, who may perform Phase Is or PEAs under the program.	No	68205
L-02-03	Important that people understand difference between CLEAN and US EPA Brownfields Economic Redevelopment Initiative.	Targhee, Inc. Environmental Consultants	Noted: Many programs that are part of the U.S. EPA Brownfields Initiatives also provide funding assistance for remediation work, they do not directly relate or conflict with the CLEAN program.	No	N/A
L-02-04	An environmental assessment is either a PEA or it is not. There is no such thing as a PEA-equivalent.	Targhee, Inc. Environmental Consultants	No Change. The term PEA-equivalent is used to inform applicants that the Department may accept an environmental document, even though its format and contents may be different than a Preliminary Endangerment Assessment prepared using the Department's Preliminary Endangerment Guidance Manual, so long as the document contains sufficient information to determine if there is, or has been, a release or threatened release of a hazardous material at the property for which a CLEAN loan is being requested. This provides greater flexibility to applicants in the preparation of environmental assessment documents.	No	68202(v)
L-02-05	The phrase "demonstrated expertise in hazardous materials remediation" is too vague.	Targhee, Inc. Environmental Consultants	No Change: Other sections of the CLEAN regulations provide information on the educational and experience-based requirements needed by a licensed professional engineer to meet this standard. The language in the regulations is intended to provide flexibility to applicants to meet these requirements in a variety of ways by setting performance standards, rather than imposing prescriptive standards.	No	68204 (a)(2)(A)
L-02-06	A Phase 1 should be performed by a Class II Environmental Assessor.	Targhee, Inc. Environmental Consultants	No Change. The regulations require a Phase 1 to be performed by, or under the supervision of, a Class II Environmental Assessor or licensed engineer, licensed geologist or licensed engineering geologist or environmental scientists. The regulations also outline educational/experience requirements for these professionals. The Department has determined that these educational and professional experience requirements are appropriate for the preparation of these environmental documents.	No	68205(e)(1)
L-02-07	Requiring two years experience for individuals doing	Targhee, Inc. Environmental	No Change: These regulations are based on requirements in Ed. Code § 17210 (b) for	No	68205(e)(2) 68205(d) (2)

	environmental assessments is too vague. Does it mean that for two years, the individual has worked full time?	Consultants	environmental assessors qualifications. The Department has determined that these educational and professional experience requirements are appropriate for the preparation of these environmental documents.		
L 02-08a b	ASTM standard practice for Phase 1 is to ensure property owner would qualify for innocent landowner defense, does not address business environmental risk. Scope of services should be expanded.	Targhee, Inc. Environmental Consultants	No Change: The ASTM is a nationally-accepted standard for conducting a Phase 1 assessment	No	68205(e)(3)
L-02-09	Only a registered Class II Environmental Assessor should conduct a PEA.	Targhee, Inc. Environmental Consultants	No Change. The Department does not require PEAs to be performed by a Class II Environmental Assessor. Imposing that requirement would not be consistent with industry practices for PEA work, and may present an unnecessary burden to the property owners in the CLEAN program.	No	68205(f)(1)
L-02-10	Defining experience in years is too vague.	Targhee, Inc. Environmental Consultants	No Change. These regulations are based on requirements in Ed. Code § 17210 (b) for environmental assessor qualifications. In addition, further definition of required experience is detailed in other sections of the regulations.	No	68205(f)(2) 68205(e)(2)
L-02-11	Open space and habitat should be included under the definition of parks.	Targhee, Inc. Environmental Consultants	Accepted. Section 68202 will be revised to clarify that open space and habitat may be included in eligibility criteria.	Yes	68202 (i)(C)(5) 68202(n)(C)(5)
L-02-12	Conservancy should qualify as a "person."	Targhee, Inc. Environmental Consultants	Noted. Conservancies that are non-profit organizations are already included in the definition of "person" in section 68202w.	No	68202 (w)
L-02-13	\$100,000 Loan Amount may not be enough for large parcels.	Targhee, Inc. Environmental Consultants	No Change. HSC 25395.21(d) mandates that the maximum loan amount for the Investigating Site Contamination Loan is \$100,000.	No	68203
L-02-14	Loan Committee shall include a Qualified Environmental Professional or Class II Registered Environmental Assessor	Targhee, Inc. Environmental Consultants	No Change. The regulations do not prescribe the qualifications of any of the public members of the Loan Committee. No particular professions are specified, and none are excluded, including, Qualified Environmental Professionals or Class II Registered Environmental Assessors.	No	68207
L-02-15	Description of Los Angeles is unclear	Targhee, Inc. Environmental Consultants	Noted. A detailed listing of every community included in the U.S. Census Bureau definition of urbanized areas is available upon from the Department and on the Department's website. It is not practical to list every eligible community in the regulations.	No	Appendix 1
L-03-01	Reconsider requirement that responsible parties must contractually agree with the Department to complete any and all response actions at a site.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	No Change. The Borrower shall be responsible for complying with all applicable laws and regulations. This is similar to other DTSC Site Mitigation agreements and encourages complete site cleanup.	No	68201(b)(2) 68209(b)(7)

L-03-2	Make clear that provision in regulations requiring borrower to provide assessment data, reports, documentation, PEA results, and a full audit of information are not intended to prohibit a borrower from obtaining assistance from an attorney.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	No Change. Nothing in the regulations prohibits a borrower from using an attorney's services.	No	68210
L-03-03	Requirement for applicant to submit information on all tasks needed to complete all response actions for a property may not be necessary.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	Noted. Language clarifying the reason for these requirements will be included in final regulations	Yes	68210(c)(2)
L-03-04	Section 68202(v) mentions subdivision y(1)(13) and no such subdivision exists	Kevin Daehnke Daehnke & Cruz Attorneys at Law	Accepted. Section 68202(dd) will be revised to refer to subdivision gg(1-3). This was a typographical error.	Yes	68202(v) 68202(dd)
L-03-05	Definition of 'estimated current fair market value' is not clear.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	Accepted: Section 68209(b)(14) will be amended to clarify that current fair market value is based on the estimated value of the property in a cleaned up state.	Yes	68209 (b)(13) 68209(b)(14)
L-03-06	Provision that borrower indemnify and hold the State of California harmless from any and all claims may deter borrowers from obtaining CLEAN loans.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	No change. This is standard language in DTSC Site Mitigation agreements.	No	68209(b)(11)
L-03-07	Regulations do not clarify the oversight costs for the CLEAN loans will be paid for out of CLEAN funds.	Kevin Daehnke Daehnke & Cruz Attorneys at Law	Noted. New statutory language as (Assembly Bill 254) will address this issue. Oversight costs may be paid out of CLEAN funds if sufficient funds are available.	Yes	68210(a)(12) 68210(12)(A)