



FACT SHEET: New Environmental Requirements for Proposed Schoolsites (Assembly Bill 387 and Senate Bill 162)

INTRODUCTION

On January 1, 2000, two new laws affecting schools became effective: Assembly Bill (AB) 387 (Wildman) and Senate Bill (SB) 162 (Escutia). These bills require that the *Department of Toxic Substances Control (DTSC)* be involved in the environmental review process for the proposed acquisition and/or construction of school properties utilizing state funding. These new laws address concerns raised by parents, teachers, local communities, and the Legislature over school site properties that are or may be contaminated by hazardous materials and may pose a health threat to children and school faculty. DTSC's role in the assessment, investigation, and cleanup of proposed schoolsites is to ensure that selected properties are free of contamination, or if the property is contaminated, that it is cleaned up to a level that is protective of the students and faculty who will occupy the new school.

In conjunction, AB 387 and SB 162 provide a comprehensive program to ensure that hazardous material contamination issues are adequately addressed prior to school development. These bills amend California Education Code (CEC) sections 17070.50 and 17268, and add sections 17072.13, 17210, 17210.1, 17213.1, 17213.2, and 17213.3 to the CEC.

ENVIRONMENTAL REVIEW PROCESS

Environmental assessments are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site, that may pose a risk to human health or the environment. All proposed schoolsites which will receive state funding for acquisition and/or construction are required to go through a comprehensive environmental review and cleanup process under DTSC oversight.

Phase I Environmental Assessments. Prior to acquiring a schoolsite or engaging in a construction project, school districts must contract for the preparation of a Phase I environmental assessment (Phase I). A Phase I is a record review conducted to determine whether there may have been a release of a hazardous material or if there may be a naturally occurring hazardous material present at the site. It generally includes a review of public and private records of current and historical land uses, historical aerial photographs, environmental databases, federal, state and local regulatory agencies' files, a site visit, and interviews with current and previous owners or operators. In addition, a Phase I should contain sufficient information to determine if there is the potential for exposure to *naturally occurring* hazardous materials such as oil, gas, and asbestos containing serpentine rock. This information may include summaries of geohazards reports and contact with, and review of databases from, the Division of Oil, Gas, and Geothermal Resources. Based on the information gathered, the Phase I should conclude that either 1) no recognized environmental conditions were identified or 2) a Preliminary Endangerment Assessment (PEA) is necessary.

School districts are encouraged to contact the DTSC Glendale office for advice in deciding whether to directly initiate a PEA instead of submitting a Phase I for DTSC review. Skipping a Phase I may save some time and expense in cases where the historical uses of the site will obviously require a PEA, for example properties with gas stations or industrial processes. In addition, many, but not necessarily all, former agricultural properties will require a PEA.

- C **Time line for Phase I reviews:** If, based upon the Phase I report, a school district concludes that further investigation of the site is not warranted, the Phase I report must be sent to the California Department of Education (CDE). CDE will route the Phase I reports to DTSC **within 10 calendar days of receipt.**
- C DTSC has **30 calendar days to review the Phase I report** and determine whether 1) to approve the Phase I report (DTSC issues a “no action” letter), or 2) the property is or may be contaminated and should be further investigated (DTSC issues a “PEA recommended” letter).
- C Environmental sampling is not required nor recommended in a Phase 1.

Preliminary Endangerment Assessments. If a Phase I concludes or DTSC determines that a PEA be conducted, the school district has two options. It can either proceed to contract with a qualified environmental assessor (as defined in the CEC) to conduct a PEA of the property under DTSC oversight, or it can drop the schoolsite from further consideration. The primary objective of a PEA is to determine if there has been a release or there is a potential release of a hazardous material, which could pose a health threat to children, staff, or community members. In addition, the presence of naturally occurring hazardous materials must be evaluated. As part of the PEA, environmental sampling is conducted on site to identify specific hazardous materials present. A risk evaluation, using the results from the environmental sampling is conducted to estimate the potential threat to children’s health, public health or the environment, posed by the hazardous material.

- C If the school district chooses to proceed with a PEA, it will be required to enter into an Environmental Oversight Agreement (EOA) with DTSC to oversee the preparation of the PEA. DTSC will assist the school district with the scoping of the work plan for the PEA investigation. When the PEA has been completed, the school district forwards the PEA report to DTSC for review and approval. DTSC will advise the school district if there are any technical shortcomings with the PEA, so that they can be corrected in a timely manner. All proposed schoolsites must be suitable for residential land use, which is DTSC’s most protective standard for children.
- C **Time line for PEA reviews:** DTSC is required to review and respond to PEA reports **within 60 calendar days of receipt.**

If No Contamination is Found at a Proposed Schoolsite. If the approved PEA concludes that the property has no contamination that may pose a threat to children’s health, public health and/or the environment, DTSC will issue a “No Further Action” determination and will not require additional investigation or cleanup at the subject schoolsite.

If Contamination is Found at a Proposed Schoolsite. If the approved PEA concludes that the property has contamination which requires additional investigation and cleanup, the school district can either investigate and cleanup the property under DTSC oversight or it can elect not to proceed with the acquisition or construction project. If the school district elects to proceed with a cleanup, the school district is required to:

- C Prepare an estimate of the cost of investigation and cleanup of the proposed schoolsite;
- C Assess the benefits of selecting the proposed schoolsite as compared to alternative schoolsites;
- C Obtain the approval of CDE to acquire the schoolsite; and
- C Evaluate the suitability of the proposed schoolsite, in light of recommended schoolsite locations.

DTSC Oversight of Remedial Investigation And Cleanup. If the school district elects to acquire the schoolsite or proceed with construction, it will be required to enter into a Cleanup Agreement with DTSC to oversee the effort. Pursuant to the CEC, all investigations and cleanup actions must be conducted pursuant to Chapter 6.8, Division 20, of the California Health and Safety Code (the State Act). This includes requirements for public participation and compliance with the California Environmental Quality Act (CEQA).

- C When all necessary cleanup activities have been achieved, a letter will be issued to the school district (with copies to CDE, the State Architect and the Office of Public School Construction) certifying that the cleanup is complete. An overview of the environmental review and cleanup process is shown on the last page.
- C If hazardous materials are encountered during school construction on a property, the school district is required to stop construction, promptly notify DTSC, and take actions necessary to address the hazardous materials under DTSC oversight.

Requirements for Environmental Professionals. The CEC specifies the minimum requirements for environmental assessors responsible for the preparation of Phase I and PEA reports. These reports must bear the signature of a class II Registered Environmental Assessor (REA II) or signature of a State Licensed Hazardous Substance Contractor who possesses the professional qualifications required by the CEC. Reports that bear the signature of a contractor must be accompanied by a resume that demonstrates that the contractor possesses the education and experience required by the CEC. Reports submitted without this documentation will not be reviewed by DTSC until such time as the documentation is received. The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency evaluates and registers environmental assessors. For more information on REA II requirements and registered personnel, please visit the OEHHA REA Internet site at <http://www.calrea.com> or contact Beth Jines at (916) 445-1374.

DTSC Oversight Costs. School districts are responsible for reimbursing DTSC for all response costs which it incurs. Phase 1 reports submitted to CDE must be accompanied by a \$1500 advanced payment to cover DTSC oversight cost associated with the review of the Phase I. DTSC will refund school districts if Phase I costs are less than \$1500 and will invoice school districts for Phase I costs in excess of \$1500. Reimbursement of costs associated with the PEA and necessary Response Actions are addressed in the Agreements entered into by DTSC and school districts.

CEQA AND PUBLIC PARTICIPATION

It is recommended that CEQA documents prepared by a school district for schoolsite acquisition/new construction not be finalized until DTSC completes its review of the Phase I and/or PEA. In cases where DTSC recommends a Response Action, the DTSC approved Response Action may be included in the school district's project description and its potential impacts may be analyzed in the school district's CEQA document. In cases where the school district has already adopted a CEQA document that does not include analysis of the required Response Action beyond a PEA, a supplemental or additional CEQA document focusing on the response action must be prepared in coordination with DTSC. The school district will also need to carry out public participation activities, as required by the State Act, prior to implementing the Response Action.

LIABILITY EXEMPTIONS FOR SCHOOL DISTRICTS

- C Release of PEA Findings.** SB 162 requires school districts to make PEA reports available to the public for review for at least 30 days. It also provides immunity to the school district for any liability stemming from actions that may be filed against the school district based on the release of the PEA.
- C Groundwater Exemption.** AB 387 provides that school districts are not required to address contaminated groundwater that may have migrated from an offsite source and underlies a proposed schoolsite so long as the school district did not cause or contribute to the contamination. The school district must provide necessary access to the schoolsite, and cannot interfere with any investigation and/or cleanup actions deemed necessary by DTSC.

FOR MORE INFORMATION

To learn more about DTSC's school investigation and cleanup activities or initiate an agreement with DTSC for oversight of a PEA, please contact Robbie Morris of the School Property Evaluation and Cleanup Division at (818) 551-2941 in DTSC's Glendale office located at 1011 N. Grandview Avenue, Glendale, California 91201 or at [rmorris @dtsc.ca.gov](mailto:rmorris@dtsc.ca.gov).

In addition, you may obtain copies of the following documents and fact sheets through the DTSC Glendale office:

- C Preliminary Endangerment Assessment Guidance Manual;**
- C Voluntary Cleanup Program Policy and Procedure;**
- C Voluntary Cleanup Program Application;**
- C The standardized Environmental Oversight Agreement for conducting PEA for proposed schoolsites;**
- C Voluntary Cleanup Program fact sheet;**
- C ASTM Phase I Guidance; and**
- C Guide to Selecting a Consultant brochure.**

Additional guidance documents and fact sheets, which may be useful for environmental activities at school sites, are available through Ben McIntosh of the Site Mitigation Program in DTSC's headquarters office located at 1001 "I" Street, 11th Floor, Sacramento, California 95814 at (916) 323-3399 or at bmcintos@dtsc.ca.gov.

**More information will be available in the future at DTSC's Internet address:
<http://www.dtsc.ca.gov>**

School Siting Process: Environmental Review and Cleanup

