



Fact Sheet
February 2001

Fact Sheet #2: Update on Environmental Requirements for Proposed School Sites/Construction Projects



ASSEMBLY BILL 2644 SUMMARY

*It is DTSC's
mission to protect
public health
and the
environment
from
harmful exposure
to hazardous
substances.*

Introduction

Assembly Bill [AB] 2644 was signed by Governor Davis on September 13, 2000 and became effective on that date. This new law amended California Education Code (CEC) Sections 17210, 17210.1, 17213.1 and 17213.2 and added Section 17072.18 so as to fine-tune the environmental review process for the proposed acquisition and construction of school properties where state funding is utilized. In conjunction with AB 387 and Senate Bill 162, which were effective January 1, 2000 (please see Department of Toxic Substances Control's (DTSC) Fact Sheet #1), AB 2644 was written to clarify and ensure that all necessary information on the environmental assessment is relayed to the public and to all interested parties before the final approval for prospective school sites. The new law made significant changes in the public review and approval process for Preliminary Endangerment Assessments (PEAs). It also addressed qualifications of environmental assessors, defined the standard for Phase I Site Assessments, and defined related environmental terms, agreements, studies, and response actions. Finally, the new law clarified the roles, responsibilities, and timeframes for school districts and for DTSC.

Changes to the School Site Environmental Review Process

The following are some substantive environmental review process modifications to the CEC pursuant to the passage of Assembly Bill 2644:

I. School Districts Comply With New Public Participation Requirements Concurrent With California Environmental Quality Act (CEQA) Process For PEAs

CEC 17213.1(a)(6) was amended to describe the new public review process to be used by school districts and DTSC for PEAs performed in conjunction with the California Environmental Quality Act (CEQA) process (see Division 13, commencing with Section 21000 of the Public Resources Code). However, if further response actions beyond a PEA are required by DTSC, school districts must then comply with Superfund public participation requirements set forth in Sections 25358.7 and 25358.7.1 of the California Health and Safety Code (HSC).

New public participation requirements for school districts during PEAs include:

- 1) providing a notice to residents in the immediate area prior to initiating PEA

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field work; 2) scheduling a public notice and comment period commensurate with the CEQA process; and 3) holding a public hearing. All steps must be completed prior to DTSC approval of the final PEA. In those instances where school districts identify a need for additional public participation activities within the PEA phase, DTSC's public participation staff is available for consultation on optional activities (please see contact list on last page).

Note: School districts may elect at any time during the process outlined below not to pursue the acquisition or construction projects.

The following narrative and Figure 1 summarize DTSC's understanding of possible implementation scenarios for the public participation requirements in the PEA approval process pursuant to CEC changes:

a) Draft PEA: DTSC must complete its review of the preliminary draft PEA within 60 calendar days of receipt from the school district. DTSC will either issue comments on the preliminary draft PEA to request modifications, or request further assessment, or approve the PEA as a final draft PEA. DTSC's approval will specify whether the site is complete and needs "no further action" or whether further environmental action is required. DTSC will work with the school district to address and resolve any outstanding issues.

b) Public Review and Comment Before CEQA: If the school district cannot make CEQA documents available until more than 90 days after the final draft PEA is approved, the school district must, within 60 days of DTSC approval of the final draft PEA, separately publish a notice of the availability of the final draft PEA for public review in a local newspaper of general circulation. The school district shall hold a public hearing for both the final draft PEA report and final draft CEQA document. All public comments received by the school district pertaining to the final draft PEA and draft CEQA document shall be forwarded to DTSC immediately for consideration in the final PEA approval.

c) Public Review and Comment With CEQA Process: After DTSC approves the final draft PEA, if the school district elects to proceed with site acquisition or a construction project, the school district must make

the final draft PEA available to the public on the same basis and at the same time as it makes available the draft Environmental Impact Report (EIR) or Negative Declaration, pursuant to the CEQA requirements for the school site. The school district shall hold a public hearing for both the final draft PEA report and final draft CEQA document. All public comments received by the school district pertaining to the final draft PEA shall be forwarded to DTSC immediately for consideration in the final PEA approval.

d) Public Review and Comment After CEQA: If the school district has previously complied with CEQA prior to initiating the PEA, the school district must reconsider the adequacy of its approved environmental documents (EIR or Negative Declaration) in light of the information provided in the approved final draft PEA. The school district must determine whether a further environmental document is necessary pursuant to CEQA. The school district must then hold a public hearing on both the final draft PEA and the district's determination as to the adequacy of the existing CEQA documents. All public comments pertaining to the final draft PEA and the CEQA documents shall be forwarded to DTSC immediately for consideration in the final PEA approval.

e) DTSC Approval of PEA: School District Approval of CEQA: DTSC must approve or disapprove the final PEA within 30 days of the school district's approval action of CEQA documents, and must issue its determination with a statement of the basis for the determination. If the final PEA is not approved by DTSC, DTSC shall inform the school district of the actions necessary to secure approval. The school district shall not file its Notice of Determination under CEQA until after DTSC has approved the final PEA.

f) No Further Action PEA: If the PEA determines further investigation of the site is not required and DTSC approves the determination, DTSC will notify the California Department of Education (CDE) and the school district of its approval of the Draft Final document. Following a 30-day public review and comment period, and consideration of any comments received on the PEA, DTSC will issue approval of the Final PEA document. Upon receipt of DTSC's notice of approval, the school district may then proceed with the final approval of the site or construction project in accordance with the CDE's School Facilities Planning Division (SFPD) guidelines.

II. Expanded Definition of Environmental Assessor Qualifications

School districts are required to contract with a qualified environmental assessor, as defined in CEC Section 17210(b), before acquiring a school site or engaging in a construction project for which facility funding is being sought. Prior to passage of AB 2644, only a Class II Environmental Assessor registered by the Office of Environmental Health Hazard Assessment, or a licensed hazardous substance contractor certified according to the Business and Professions Code, were qualified to perform environmental assessments in accordance with the Education Code. The new law has expanded these qualifications to include Professional Engineers, Registered Geologists, and Certified Engineering Geologists who are registered in California. CEC Section 17210(b) also clarifies that any person who conducts a Phase I Site Assessment shall have at least two years experience in preparation of Phase 1s, and that any person who conducts a Preliminary Endangerment Assessment (PEA) shall have at least three years experience in completing PEAs. Therefore, DTSC requires that the Phase 1 and PEA documents submitted for school sites contain proper documentation of the qualifications and experience of the Environmental Assessor who signs the documents.

III. Definition of Environmental Terms, Processes, and Standards

The new law defines environmental terms for school sites, including Phase 1 and Preliminary Endangerment Assessments (PEAs). The law further specifies that Phase 1 environmental assessments must be conducted pursuant to the requirements adopted by the American Society for Testing and Materials (ASTM) for due diligence for commercial real estate transactions, until such time as DTSC adopts final regulations establishing Phase 1 guidelines for school sites. Such Phase 1 reports must include a review of all reasonably available records and data bases regarding current and prior gas or oil wells, hazardous materials, and/or naturally occurring hazardous materials that could affect the site. The latest version (ASTM-E 1527-00) was approved in June 2000. DTSC is also preparing an additional advisory with recommendations for consultants preparing Phase 1 reports.

The Preliminary Endangerment Assessment shall be conducted in a manner that complies with guidelines published by DTSC entitled “Preliminary Endangerment Assessment Guidance Manual” dated January 1994, including any amendments that are determined by DTSC to be appropriate to address issues that are unique to school sites.

IV. DTSC Oversight Process, Review and Approval Timeframes for Phase 1 Reports

The new law has revised CEC Section 17213.1 to require California Department of Education to transmit the Phase 1 Environmental Assessment and fee to DTSC within 10 calendar days of receipt from the school district. DTSC must review Phase 1 environmental assessments from California school districts within 30 days of receipt of the assessment. If DTSC determines that Phase 1 reports are incomplete, DTSC must identify the additional information necessary for DTSC to approve the Phase 1. The school district may elect to: a) supply the information requested; b) conduct a PEA; or c) not pursue the site or construction project. Within 30 days of receipt of the additional information, DTSC shall conduct its review and issue a determination of “no action” or “further action required.” Supplemental information may be provided to DTSC via telephonic or electronic means.

V. School Districts’ Immunity from Liability for Release of Phase 1 or PEA Information

Environmental documents, such as Phase 1s and PEAs, submitted for DTSC review are considered public records and must be made available for public review and inspection. CEC 17213.1 has been changed so as to provide school districts with immunity from liability in any actions filed against them for making information concerning the environmental assessment, whether a Phase 1 or a PEA, available to the public.

VI. DTSC Authority To Enter Properties To Conduct A PEA

CEC 17213.1(a)(4) was amended to allow DTSC to exercise its authority, pursuant to HSC Section 25358.1, to designate a person to enter the site and inspect and

obtain samples, if this will assist in expediting completion of the PEA. This authority will be exercised only after DTSC has received a request from the school district, documenting that a reasonable effort has been made by the district to obtain site access from the owner or trustee of the proposed school site property.

VII. Name of PEA Oversight Agreement, PEA, and Option to Skip Phase 1

CEC 17213.1(a)(4) was amended to state that the oversight agreement entered between DTSC and a school district for preparation of a PEA now must be entitled an “Environmental Oversight Agreement” (EOA), rather than a Voluntary Cleanup Agreement (VCA). This section also states that, with DTSC concurrence, a school district may enter into such an agreement without having first prepared a Phase 1. Per CEC 17213.1(a)(5), school districts may now entitle their reports “Preliminary Environmental Assessments,” rather than “Preliminary Endangerment Assessments;” however, the title changes neither the nature nor the substantive requirements of the PEA.

VIII. Notification To Residents Prior To Commencement of PEA Fieldwork

CEC Section 17210.1(b) requires that school districts provide a notice to residents in the “immediate area” of a proposed school site prior to the commencement of field work for a PEA project. DTSC suggests that the “immediate area” be considered as the geographical area in the line of sight of the proposed school site property. The form of the school district’s notice to local residents must be approved by DTSC prior to distribution. This requirement serves to provide residents in the immediate vicinity of the proposed school site with advance notice of field work such as drilling, sampling, truck traffic, and other environmental data collection activities. DTSC will coordinate with the districts in determining the level of community interest, and will provide an approved generic notice. DTSC suggests that the notice be distributed so that residents will receive it at least 3-5 days prior to field work.

IX. DTSC Oversight Process For Environmental Cleanup At School Sites

An overview of the property evaluation and cleanup process is shown in Figure 1. The following is a description of the DTSC oversight process for environmental cleanup at school sites, including several provisions that were changed by AB 2644:

a) Pursuing Site Acquisition at Sites Requiring Further Action: If the Phase 1 Environmental Assessment or the PEA concludes that the property has contamination that 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 an investigation and/or cleanup, as a condition of receiving state funds, the CEC requires school districts to:

- ◆ Prepare an estimate of the cost of investigation and cleanup of the proposed schoolsite;
- ◆ Assess the benefits of selecting the proposed schoolsite as compared to alternative schoolsites;
- ◆ Obtain the approval of California Department of Education (CDE) that the proposed schoolsite meets the schoolsite selection standards adopted by CDE (implemented by CDE as a “Contingent Site Approval”); and
- ◆ Evaluate the suitability of the proposed schoolsite, in light of recommended school site locations via CDE.

b) Voluntary Cleanup Agreement (VCA); Applicability of Health and Safety Code: If the school district elects to acquire the schoolsite or proceed with construction, the district must enter into a VCA with DTSC to oversee the environmental response actions. Pursuant to CEC 17213.1(a)(6), all further investigations and response actions must be conducted pursuant to the California Health and Safety Code, including requirements for a public participation plan and compliance with CEQA. Specific compliance will depend on the type of response action(s).

c) Groundwater Contamination: CEC 17213.2 states that a school district need not take action in response to a release of hazardous material to groundwater underlying the school site if the release occurred at a site other than the school site and other specific conditions are met.

d) Identification of Previously Unsuspected Hazardous Materials During Construction: If hazardous materials are encountered during school construction on a property, after completion of the environmental review process, the school district is required to stop construction, promptly notify DTSC, and take necessary response actions under DTSC's oversight.

e) DTSC Approval of Response Action: When the school district has completed all necessary investigation and cleanup activities, and these have been approved by DTSC, DTSC will issue a letter to the school district (with copies to CDE, the State Architect and the Office of Public School Construction) certifying that the cleanup is complete. CEC 17213.2(g) has been amended to state that DTSC must notify the Division of State Architect whenever a response action has an impact on the design of a school facility in order to protect the integrity of the response action.

f) Reimbursement for DTSC Response Costs: The school district shall reimburse DTSC for all response costs incurred by the department in accordance with CEC 17213.2(h).

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 the School Property Evaluation and Cleanup Division at:

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Please visit DTSC's Internet address for additional information: <http://www.dtsc.ca.gov>

Department of Toxic Substances Control

Environmental Review and Cleanup Process for Proposed School Sites

(Figure 1)

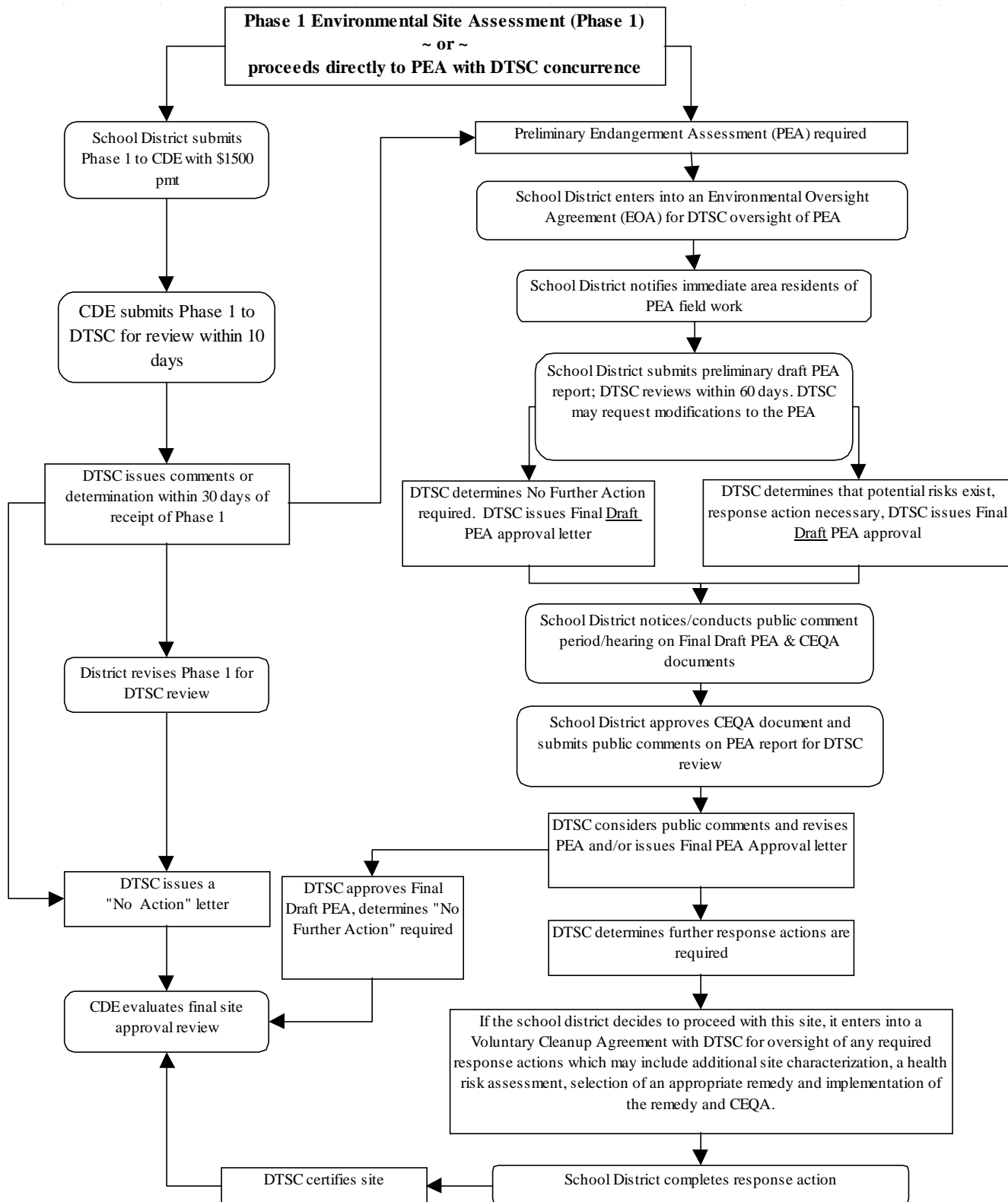


Figure 1 Legend:

- DTSC actions and responsibilities
- School District and CDE actions and responsibilities