Emergency Regulations
Amendments to Phase I Environmental Site Assessments for Schools

Proposed for New and Expanding School Sites

The Department of Toxic Substances Control (DTSC) has developed emergency regulations to amend Title 22, Division 4.5, chapter 51.5, sections 69100-69108. This will ensure that prospective new or expanding school sites are evaluated in accordance with the 2005 American Society for Testing and Materials (ASTM) standard E 1527-05 for Phase I Environmental Site Assessments, and will allow submittal of sampling and analytical results in a Phase I Addendum for organochlorinated pesticides (OCPs) in soils from termite application.

These emergency regulations were approved by the Office of Administrative law on November 27, 2006, and will remain in effect for 120 days, unless extended. DTSC has also initiated the formal rulemaking process to permanently adopt these emergency regulations. This process will include a public notice to interested stakeholders, who will be provided an opportunity to voice their comments/concerns during a 45 day public comment period and public hearing.

The emergency regulations will:

- Maintain consistency with the new American Society for Testing and Materials (ASTM) national standard for Phase I Environmental Site Assessments (Phase Is)
- Streamline the environmental assessment process for school sites by allowing evaluation of potential presence of OCPs in soils from termite application in a Phase I Addendum
- Ensure consistency of DTSC regulations and policies with state and federal laws

A copy of the emergency regulations are posted at:
http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/PhaseI_Emergency_Text.cfm

Public Comment Opportunity

DTSC will hold a 45-day public comment period ending in February, 2006. The exact date is yet to be determined. To subscribe to any future rulemaking information (including notice of the 45-day public comment period) please go to:

http://www.calepa.ca.gov/Listservs/dtsc/

Scroll down the list of rulemaking titles until you find the Phase I Environmental Site Assessment title and then hit the “Subscribe” button. You will need to enter the requested subscriber information. Once subscribed through this ListServ function, subscribers will receive an e-mail anytime DTSC posts any additional notices, draft regulations, or other information concerning this specific regulation effort.

DTSC will consider all comments submitted.
Detailed Description of Changes to Existing Regulations

1. Maintain Consistency with New ASTM National Standard

The new regulation requires that a Phase I be conducted in accordance with the new national standard, and updates reference from the superseded ASTM Standard E1527-00, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” as cited in the existing regulations, to the new ASTM Standard E1527-05, which was approved by the United States Environmental Protection Agency in their final rule on November 1, 2005, effective November 1, 2006.

An overview of changes to Phase I requirements under ASTM Standard E1527-05 is included in DTSC Fact Sheet #10, Update on Phase I Environmental Site Assessments for School Sites; All Appropriate Inquiries; ASTM E-1527-05, dated October 2006, available at http://www.dtsc.ca.gov/Schools/upload/Environmental_I_Site_Assessment_FS_10-03-06.pdf.

2. Streamline Environmental Assessment Process by Allowing Evaluation of Termiticide Application in Phase I Addendum

DTSC studies have indicated that OCPs from termiticide application may be present around structures with wood components constructed on residential and commercial properties prior to January 1, 1989. OCPs may pose an unacceptable health risk if located in soils at proposed school sites. The emergency regulations will streamline the environmental assessment process by allowing evaluation of termiticide application in a Phase I Addendum, in addition to lead-based paint (LBP) and electrical transformers, if all of the following apply to the school site:

- LBP, termiticide application, and electrical transformers are the only recognized environmental conditions for the site (likely to include residential, commercial, or educational properties)
- A Preliminary Environmental Assessment (PEA) has not been completed for the site

The Phase I Addendum may be submitted along with or after submittal of the Phase I. Additional information on evaluation of termiticide application is available in the following documents:

- DTSC guidance, Interim Guidance, Evaluation of School Sites with Potential Contami-


3. Ensure Consistency of DTSC Regulations and Policies with State and Federal Laws

Updating reference to ASTM Standard E1527-05 will ensure consistency of DTSC regulations and policies with state and federal laws, including requirements for “All Appropriate Inquiries” to qualify for liability protections for environmental contamination as specified in federal and state law identified below:

- Assembly Bill (AB) 389 (ch. 705, stats. 2004), also known as the California Land Reuse and Revitalization Act of 2004 (CLRRA), effective January 1, 2005.

Information on “All Appropriate Inquiries” and related liability protections for environmental contamination is available in DTSC Fact Sheet #10, Update on Phase I Environmental Site Assessments for School Sites; All Appropriate Inquiries; ASTM E-1527-05, dated October 2006, available at http://www.dtsc.ca.gov/Schools/upload/Environmental_I_Site_Assessment_FS_10-03-06.pdf.

Public Comment Period and Public Hearing

DTSC will hold a 45-day public comment period ending in February, 2006. (See box on front page)

For More Information

Please contact DTSC Unit Supervisors if you have questions about applying these regulations to a school site:

- Sacramento: Mark Malinowski at (916) 255-3717; mmalinow@dtsc.ca.gov
- Glendale: Javier Hinojosa at (818) 551-2172; jhinojos@dtsc.ca.gov
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- Cypress: Tawfiq Deek at (714) 484-5305; tdeek@dtsc.ca.gov

For general information about these regulations, contact Triss Chesney at (714) 484-5447 or tchesney@dtsc.ca.gov.