

Fact Sheet
November
2001

Fact Sheet #3: Update on School Site Environmental Review Process



ASSEMBLY BILL 972 SUMMARY

It is DTSC's mission to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

State of California



California
Environmental
Protection Agency



Introduction

Assembly Bill [AB] 972 became effective as an urgency statute on October 14, 2001, amending California Education Code (CEC) Sections 17210.1 and 17213.1. AB 972 follows AB 2644 in further refining the environmental review process for acquisition and construction of schools using state funding. Significant changes were made in the public review and approval processes for Preliminary Endangerment Assessments (PEAs). Specifically, the new law repealed the provision requiring PEA review in conjunction with California Environmental Quality Act (CEQA) documents. AB 972 also addressed the procedures required to notify residents of investigative fieldwork and to provide proof of the qualifications required of the environmental assessor submitting the Phase I environmental assessment.

Changes to the School Site Environmental Review Process with Assembly Bill 972:

I. The document should be entitled "Preliminary Endangerment Assessment" or "Preliminary Environmental Assessment". CEC Sections 17213.1(a)(5), (6), and (7) have been amended to remove prior code references to a "preliminary draft", "final draft", or "final" PEA.

II. Public Comment

School Districts now have two options for making the Preliminary Endangerment Assessment (PEA) available for public review and comment (see Figure 1). CEC 17213.1(a)(6) was amended to state that at the same time a school district submits a PEA to the Department of Toxic Substances Control (DTSC), the school district must also publish a notice in a local newspaper and post the notice at the proposed school site. The notice, which should also be submitted to DTSC, shall state the district's determination to make the PEA available for public review and comment pursuant to Option A or B described below.

Option A. PEA Review Separate from California Environmental Quality Act (CEQA) Review. Under this option, the school district shall offer to receive

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our web site at www.dtsc.ca.gov.

written comments for at least 30 calendar days after the PEA is submitted to DTSC and shall hold a public hearing to receive further comments. The notice of the public hearing shall include the date and location of the hearing, and the location where the public may review the following documents upon request:

- the PEA
- any changes to the PEA requested by DTSC
- any correspondence between the school district and DTSC relating to the PEA.

These documents shall be made available to the public through the time of the public hearing. If the PEA is revised or altered following the public hearing, the school district shall make those revisions or changes available to the public.

The school district shall transmit a copy of all public comments received on the PEA as soon as possible to DTSC, and should notify DTSC of the close of public review. DTSC shall complete its review of the PEA and public comments within 30 calendar days of the close of the public review period. If DTSC determines it is likely to disapprove the PEA prior to its receipt of the public comments, DTSC shall inform the school district of this determination and any action required for DTSC approval.

Option B. PEA Review Combined with CEQA Review. Under this option, DTSC shall complete review of the PEA within 60 calendar days or receipt and shall either return the PEA to the school district with comments and requested modification, or concur with the adequacy of the PEA, pending its review of public comment. If DTSC concurs with the adequacy of the PEA, and the district proposes to proceed with the site acquisition or construction project, the district shall make the PEA available to the public on the same basis and time it makes available the draft environmental impact report (EIR) or negative declaration for the site, pursuant to CEQA.

The district will normally provide one notice of the public review period for both the PEA and the draft CEQA document that would be simultaneous with the circulation of the draft CEQA document through

the State Clearinghouse (SCH). Unless a SCH shortened review period is granted, the public and state agency review period would normally be 30 days for a negative declaration and 45 days for a draft Environmental Impact Report (EIR). (For additional information, see Public Resource Code 21092 and 21092.3 and Guidelines 15072 and 15073. These sections address CEQA options for notice of intent to adopt a draft CEQA document allowing comment by public and responsible agencies by publication, posting of notice, or direct mailing, and Notice to be filed with County Clerk and SCH.) However, if the draft CEQA document will not be made available until more than 90 days after DTSC issues concurrence with the adequacy of the PEA, the district shall, within 60 calendar days of DTSC approval of the PEA, separately publish a notice of availability of the PEA for public review in a local newspaper of general circulation.

Note: School districts may elect at any time during this process not to pursue the acquisition or construction project.

III. New Requirements for Providing Notice to Residents Prior to Commencing Work on a PEA

CEC Section 17210.1(b) was amended to require school districts to provide notice to residents in the immediate area prior to the commencement of work on a PEA utilizing a *format developed by DTSC* (See Figure 2). School districts can obtain a sample notice developed for this purpose from DTSC.

IV. New Requirements for Environmental Assessor Qualifications

AB 972 amended the Section 17213.1(a)(2) of the CEC to state that school districts may submit a Phase I and proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 to the State Department of Education (CDE). Within 10 calendar days of CDE's receipt, the Phase I and proof of qualifications shall be transmitted to DTSC for review and approval within 30 calendar days of receipt.

Proof of qualifications will consist of a copy of a stamp indicating the State of California registration number, including expiration date, of the assessor signing the report. Qualified assessors include class II registered environmental assessors, professional engineers (restricted to civil engineers pursuant to the Business and Professions Code), registered geologists, certified engineering geologists, and licensed hazardous substance contractors. A statement of qualifications showing at least two years of experience preparing Phase I assessments (if a PEA, three years of experience preparing PEAs) may be required. For licensed hazardous substance contractors, minimum educational requirements must also be met, pursuant to CEC Section 17210(b). If necessary, DTSC will contact the assessor regarding any questions on the proof of qualifications submitted.

V. Exemption from AB 972 Requirements

According to CEC Section 17213.1(d), changes made by AB 972 do not apply to a school site acquisition or construction project if, on or before October 14, 2001: (1) the final PEA for the school site acquisition or construction project was approved by DTSC or (2) a public hearing for the project was completed, pursuant to the law in effect on that date.

Existing Law Not Amended by AB 972

Phase I Environmental Assessments

Phase I Environmental Assessments must be conducted pursuant to the requirements of the American Society for Testing and Materials (ASTM) E 1527-00, dated June 2000. If the Phase I concludes that further investigation of the site is not required, CEC Section 17213.1 requires California Department of Education to transmit the Phase I and fee (and now proof of qualifications) to DTSC within 10 calendar days of receipt from the school district.

DTSC must review Phase I environmental assessments from school districts within 30 days of receipt of the assessment. If DTSC determines that Phase I reports are incomplete, DTSC must identify the additional information necessary for DTSC to

approve the Phase I. The school district may elect to: a) supply the information requested; b) conduct a PEA; or c) not to 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.

PEA Guidance Manual

PEAs shall be conducted in a manner that complies with the "Preliminary Endangerment Assessment Guidance Manual" as published by DTSC, dated January 1994, with second printing in June, 1999, and with guidelines determined by DTSC to be appropriate to address issues that are unique to school sites.

Public Records

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

Site Access

CEC 17213.1(a)(4) allows 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.

PEA Work Notice- Immediate Area

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. DTSC suggests that the notice be distributed so that residents will receive it at least 3-5 days prior to field work.

DTSC Oversight Process For Environmental Cleanup At School Sites

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/or cleanup, the school district can either investigate and/or 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:

1. 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
2. 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")
3. 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.

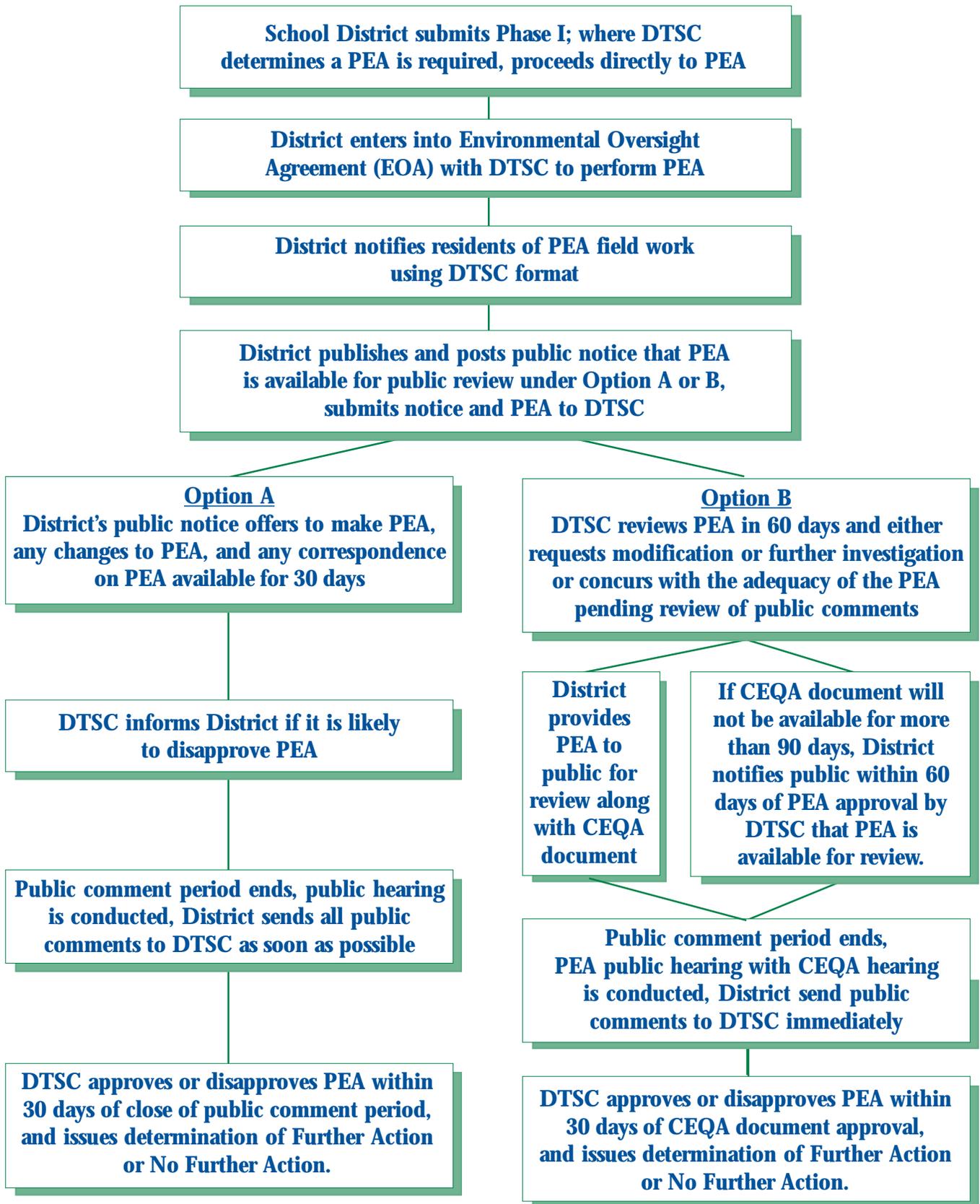
e) Partial Site Approval: For sites where DTSC requires completion of response actions, DTSC may issue a Partial Site Approval for areas not impacted by contamination, so as to enable school districts to proceed with construction. However, the entire site must be fully certified by DTSC prior to occupancy.

f) Notification of Design Modification Requirements for Environmental Response Actions: CEC 17213.2 (g) states that DTSC will notify the State Architect and the Office of Public School Construction of any required design modification requirements, such as gas venting systems, etc., that may be necessary whenever a response action has an impact on the design of a school facility in order to protect the integrity of the response action.

g) 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.

h) 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).

Department of Toxic Substances Control Preliminary Endangerment Assessment (PEA) Review Process for Proposed School Sites (Figure1)



PEA Fieldwork Notice Format (Figure 2)

(SCHOOL DISTRICT LETTERHEAD)

(DATE)

TO: Parents and Neighbors of ABC School (or Neighbors and Community Members)

FROM: ABC School District

RE: Environmental Investigation at ABC School (or School Site address)

We would like to provide you with advance notice of an environmental investigation which will be conducted at ABC School, located at 123 Main Street in Any Town (or School Site Address). The investigation will be performed by a licensed contractor and will consist of the sampling of soils for any hazardous materials. The district is conducting this work with the oversight of the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). Although an assessment will be conducted, this does not mean hazardous substances are located on this property. Recently enacted state laws now require that all proposed new school sites undergo a complete environmental review, and if necessary, a cleanup to protect students, faculty and staff who will occupy the school.

Field work is scheduled to begin on (Day, Date) and is expected to take approximately (Number) days to complete. All field work will (or will not) be conducted during normal business hours (specify if work will be done on weekends or holidays). It is not expected that any street closures will be necessary during the investigation.

The District will submit the results of this Preliminary Environmental Assessment (PEA) to DTSC for review; DTSC may require the District to modify or revise the PEA, or may concur with it as written. The PEA will include an assessment of whether hazardous materials are present and, if so, whether the materials are present in concentrations that would require some type of cleanup before using the site for a school. If the District elects to proceed with school development, the District will hold a public hearing to discuss the investigation results, and will take public comment. All comments received in this process shall be forwarded to DTSC for consideration. When the public participation process is complete, DTSC will issue a final determination with regard to the PEA.

If you have any questions concerning the upcoming soil investigation or other activities at the (proposed school site) address noted above, please contact (Name and Title of School District Representative) at (Telephone Number and Email Address).

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:

Mr. Javier Hinojosa
1011 No. Grandview Avenue
Glendale, California 91201
(818) 551-2172
jhinojos@DTSC.CA.GOV

Mr. Peter Garcia
5796 Corporate Avenue
Cypress, California 90630
(714) 484-5310
pgarcia@DTSC.CA.GOV

Mr. Charlie Ridenour
8800 Cal Center Drive
Sacramento, California 95826-3200
(916) 255-6522
cridenou@DTSC.CA.GOV