



DTSC is one of six Boards and Departments within the California Environmental Protection Agency. The Department's mission is 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



BACKGROUND

Assembly Bill (AB) 1876 (Statutes 1995, Chapter 820), established the Private Site Management Program. The purpose of this voluntary program is to provide the private sector with an incentive to cleanup low-threat sites, including "brownfields."

Prior to the creation of the Private Site Management Program, the private sector frequently conducted site cleanups of low-threat sites without any regulatory oversight by State or local government. The project proponents (property owners, responsible parties, and prospective purchasers) often found that financial institutions were reluctant to finance redevelopment efforts or make loans using these properties as collateral. This Program addresses the need for an appropriate level of environmental oversight at certain types of brownfields and other low-risk sites. It authorizes private site managers, who must be Registered Environmental Assessors, Class II (REA IIs), to objectively conduct one or more aspects of an environmental assessment including preliminary endangerment assessments (PEAs), site investigations, and removal or remedial actions at low-risk sites with limited Department of Toxic Substances Control (DTSC) oversight. The Private Site Management Performance Standards Regulations were adopted by DTSC in February 2003, and add Title 22 of the California Code of Regulations, division 4.5, chapter 51, article 1, by adding sections 69000 through 69013. These regulations (DTSC Reference Number R-96-01) are available for review on DTSC's website at:

www.dtsc.ca.gov/LawsRegulationsPolicies/PrivateSiteMgmt

NEW LEGISLATION – CHANGES REA PROGRAM AND PRIVATE SITE MANAGEMENT PROGRAM

AB 1876 required the Office of Environmental Health Hazard Assessment to adopt regulations for implementing the REA II Program. The REA II Program is responsible for registering qualified environmental professionals in accordance with the Health and Safety Code section 25570.1, and the REA II Regulations in [California Code of Regulations, title 14, division 8, chapter 3, sections 19030 through 19044.](#)

Effective January 1, 2003, Senate Bill 1011 authorizes DTSC to administer the REA I and REA II Program. DTSC has responsibility for registering REA I/II's; providing limited oversight of site investigation and cleanup actions at Private Site Management sites; conducting audits; issuing certifications for sites that have been satisfactorily remediated; investigating complaints against REA I/II's; and taking appropriate action as provided by statute and regulations. More information on the REA Program is available at: <http://www.dtsc.ca.gov/REA/index.html>

OVERVIEW OF THE PRIVATE SITE MANAGEMENT PROGRAM PERFORMANCE STANDARDS REGULATIONS

This fact sheet provides only a brief overview of the regulations. Please refer to the statutory authority in the Health and Safety Code (beginning with section 25395.1) and the regulations for a complete description of the Program.

Purpose

Section 69000 of the regulations specifies that minimum standards of performance are necessary for the activities conducted by the private site manager and members of the private site management team under this Program.

Definitions

Section 69000.5 provides relevant definitions meant to clarify terminology used in the regulations.

Performance Standards

Section 69001 of the regulations establishes minimum performance standards for private site managers and members of a private site management team for all of the following:

- 1) Conducting all site investigation and cleanup activities in compliance with all applicable federal, State and local laws and regulations;
- 2) Describing the methods for identifying, verifying, and obtaining additional site information and data;
- 3) Reporting requirements to notify the project proponent and DTSC if site conditions pose a substantial endangerment to the public health or welfare or the environment; and
- 4) Minimum criteria for preparing opinions, determinations, decisions, and other required reports that the private site manager or members of a private site management team prepare and submit to DTSC. Private site managers are responsible for selecting private site management team members who possess the necessary skills, work experience, licenses, and appropriate insurance for performing site cleanup activities as specified in Health and Safety Code section 25395.4.

Preliminary Endangerment Assessment (PEA) Report

Section 69002 of the regulations specifies that the private site manager is required to perform site investigations using the PEA Guidance Manual which was adopted by DTSC in January 1994, and reprinted in 1999. The private site manager is required to

either pay DTSC's costs for reviewing the PEA report and other documentation or to provide a signed statement from the project proponent indicating that the project proponent agrees to pay DTSC's costs.

Private Site Management Program Application Package

Section 69003 of the regulations specifies that the "Application Package" is not a single document; it refers to all the documentation the private site manager used as the basis for determining the appropriateness of a site's participation in the Private Site Management Program. The application package includes reports, documentation, and other information that should be provided or be attached to the application regarding professional qualifications of private site management team members, appropriate insurance information, and sufficient information on site conditions. The determining criteria is listed in Health and Safety Code section 25395.3, subsections (a) (1) through (5). DTSC must have sufficient information to determine if a site is eligible for participation in this Program.

Insurance Requirements

Section 69004 of the regulations establishes minimum insurance requirements for private site managers. Among other things, it requires that all private site management insurance policies must contain a statement that insurance coverage will not be canceled without providing 120 days prior written notice to the project proponent and DTSC. This notice is required because DTSC and the project proponent must have a way to know if appropriate insurance is not being maintained. DTSC may terminate the private site manager's participation in the Private Site Management Program if the private site manager fails to keep in effect appropriate insurance as specified in the regulations. Upon request by DTSC, the private site manager and each member of the private site management team are required to provide certificates of the insurance and copies of each insurance policy required under Section 69004, subsections (b) through (h). DTSC may also allow the private site manager or team member to provide only the portion of the insurance that is not being maintained by the contractor/subcontractor, as provided by Section 69004(i).

Compliance with the California Environmental Quality Act (CEQA)

Section 69005 of the regulations provides the specific CEQA requirements necessary to assure that all site cleanup actions conducted under the Private Site Management Program are in compliance with this statute. This includes providing a 30 day public comment period.

Project Proponent

Section 69006 of the regulations establishes minimum requirements for project proponents who choose to participate in this Program. These requirements include such things as providing private site managers with all site information, entering into a written agreement with DTSC, notifying DTSC of any imminent or substantial endangerment conditions at the site, reimbursing DTSC for its costs, and cooperating with DTSC's audit efforts. It also emphasizes the requirement for the project proponent to remain "independent" as defined by section 69000.5(j) of the regulations.

Private Site Management Program Agreement

Section 69007 of the regulations specifies that in order to participate in the Private Site Management Program, all project proponents must enter into a written agreement with DTSC that clearly identifies the procedures, requirements, costs and other associated components of the Program as required by the Health and Safety Code. This provision ensures that the project proponent is adequately informed of the potential costs associated with this Program.

Guidance Documents

Section 69008 of the regulations establishes the process under which DTSC will provide an advisory list of technical guidance documents and manuals to private site managers.

Change in Site Conditions or Site Information

Section 69009 of the regulations establishes the requirement to notify DTSC regarding changes in site conditions/site information which is materially different from the facts, data or information used at the time a preliminary endangerment assessment report, removal action work plan, remedial action plan, remedial design, or certification request was prepared. Every site approved for participation in this Program must meet specific criteria. DTSC must be able to determine whether or not the site qualifies as a low-risk site.

Material Deviation from Department Approved Report

Section 69010 of the regulations establishes notification procedures to be followed if the project proponent, private site manager or private site management team member knows or has reason to believe that an action or decision will materially deviate from a DTSC approved preliminary endangerment assessment report, removal action work plan, remedial action plan, or remedial design. This notification is required if a change in conditions at the site is such that it no longer qualifies for participation in this Program. The term "Material Deviation" is defined in section 69000.5(m) of the regulations.

Department Review and Approval of Submittals

Section 69011 of the regulations establishes procedures and time frames that DTSC will use when reviewing preliminary endangerment assessment reports, removal action workplans, and remedial action plans, as well as final remedial designs and certification requests. If DTSC rejects a report or other documentation, it must provide a written report describing the deficiencies and the corrective actions necessary to resolve the problems. Health and Safety Code section 25395.8 specifies that DTSC will conduct timely reviews of all documentation, reports, and designs submitted by the private site manager and members of the private site management team. DTSC must also determine if appropriate land use controls and restrictions are needed at the site to protect public health and safety and the environment, and if so, require that land use controls be properly recorded. In addition, if a site is selected for an audit, DTSC will not approve a certification request until the audit is completed. This ensures that once a

site has been certified by DTSC, it will not be subject to further reopening by DTSC except as specified in the statute.

Department Audits

Section 69012 of the regulations requires the project proponent, private site managers, and private site management team members to provide DTSC with complete access to information, records, technical data, reports, sampling data, photographs, maps, and files related to a cleanup action. By providing all of the required information, DTSC is able to verify that every participant involved in the site has completed all the necessary steps, and required documentation to meet the minimum performance standards. It is essential to keep these records for ten years or more because operation and maintenance activities at some sites may last more than ten years, and the records may be necessary to evaluate the adequacy of the cleanup in the future.

Withdrawal of Department Approval

Section 69013 of the regulations allows DTSC to rescind its approval of a Private Site Management Program application under certain specified conditions. This is a voluntary program with a lower level of State oversight and DTSC must be able to ensure that the cleanups under this Program are protective of public health and the environment.

FOR MORE INFORMATION ABOUT THE PRIVATE SITE MANAGEMENT PROGRAM

Contact the Site Mitigation and Brownfields Reuse Program, Planning and Policy Unit, Department of Toxic Substances Control, 1001 "I" Street, P.O. Box 806, Sacramento, California 95812-0806, (916) 323-3394.

OTHER BROWNFIELDS-RELATED ACTIVITIES

The Site Mitigation and Brownfields Reuse Program has developed a comprehensive Brownfields website. For more information (fact sheets, policies, regulations, etc.) about other types of voluntary cleanup activities, such as the Voluntary Cleanup Program, the Cleanup Loans and Environmental Assistance to Neighborhoods, and the Expedited Remedial Action Program, see DTSC's website at:

www.dtsc.ca.gov/SiteCleanup/Brownfields