

## TEXT OF PROPOSED REGULATIONS

*The following shows the changes (highlighted in bold and double-underlined for additions and bold and double-strikeout for deletions) being made to the text of the existing State regulations:*

**Amend** Title 22, division 4.5, chapter 10, section 66260.10 of the California Code of Regulations as follows:

### **§ 66260.10. Definitions.**

\* \* \* \* \*

“Boiler” means an enclosed device using controlled flame combustion and having the following characteristics:

(a)(1) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids or heated gases; and

(2) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterfalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(3) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(4) the unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) the unit is one which the USEPA Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in 40 CFR section 260.32.

~~“Border zone property” means any property designated as border zone property pursuant to Health and Safety Code section 25229 which is within 2,000 feet of a~~

~~significant disposal of hazardous waste, and the wastes so located are a significant existing or potential hazard to present or future public health or safety on the land in question.~~

~~\* \* \* \* \*~~

~~“Hazardous waste property” means (a) land which is either of the following:~~

~~(1) any hazardous waste facility or portion thereof, required to be permitted pursuant to this division, which has a permit for disposal from the Department or has submitted an application for such a permit;~~

~~(2) a portion of any land designated as a hazardous waste property pursuant to Health and Safety Code section 25229 where a significant disposal of hazardous waste has occurred on, under or into the land resulting in a significant existing or potential hazard to present or future public health or safety.~~

~~(b) “Hazardous waste property” does not mean residential land that has never received waste chemicals from an industrial, commercial, agricultural, research or business activity.~~

~~\* \* \* \* \*~~

Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25218.3(d), 25316 and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Section 42475, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, ~~25117.3~~, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.10, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, ~~25229~~, 25316, 25354(b), 25355.5, 25355.6, ~~25356.9~~, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529 and 58012, Health and Safety Code; and 40 CFR Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

**Amend** Title 22, division 4.5, chapter 14, section 66264.550 of the California Code of Regulations as follows:

**§ 66264.550. Applicability of Corrective Action Management Unit (CAMU) Regulations.**

(a) Except as provided in subsection (b) of this section, corrective action management units for RCRA hazardous waste, or for management of both RCRA and non-RCRA hazardous wastes in the same unit are subject to the requirements of section 66264.552. Corrective action management units for hazardous waste that is solely non-RCRA are subject to the requirements of section 66264.552.5.

(b) Corrective action management units for RCRA hazardous wastes that were approved before April 22, 2002, or for which substantially complete applications (or

equivalents) were submitted to the Department on or before November 20, 2000, are subject to the requirements in section 66264.551 for grandfathered corrective action management units; corrective action management unit waste, activities, and design will not be subject to the standards in section 66264.552, so long as the waste, activities, and design remain within the general scope of the corrective action management unit as approved.

Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, ~~25356.9~~, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.550.

**Amend** Title 22, division 4.5, chapter 14, section 66264.551 of the California Code of Regulations as follows:

**§ 66264.551. Grandfathered Corrective Action Management Units (CAMUs).**

\* \* \* \* \*

(D) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The Department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.

(g) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(h) The designation of a corrective action management unit does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to corrective action at a facility, or other corrective action selection decisions.

Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, ~~25356.9~~, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.551.

**Amend** Title 22, division 4.5, chapter 14, section 66264.552 of the California Code of Regulations as follows:

**§ 66264.552. Corrective Action Management Units (CAMU) for RCRA Hazardous Waste.**

\* \* \* \* \*

(i) Notwithstanding any other provision of this section, the Department may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(k) The designation of a corrective action management unit does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to corrective action at a facility, or other remedy selection decisions.

Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25358.9 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, ~~25356.9~~, 25358.3 and 25358.9, Health and Safety Code; and 40 CFR Section 264.552.

**Amend** Title 22, division 4.5, chapter 14, section 66264.552.5 of the California Code of Regulations as follows:

**§ 66264.552.5. Corrective Action Management Units for Non-RCRA Hazardous Waste.**

\* \* \* \* \*

(f) The Department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.

(g) Incorporation of a corrective action management unit into an existing permit shall be approved by the Department according to the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division, or according to the permit modification procedures of section 66270.42 of chapter 20 of this division.

(h) The designation of a corrective action management unit does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to corrective action at a facility, or other corrective action selection decisions.

Note: Authority cited: Sections 58102 of the Governor's Reorganizational Plan # 1 of 1991; and Sections 25150, 25159, 25187, 25200.10, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25200.14, 25316, 25355.5, ~~25356.9~~, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.552.

**Amend** Title 22, division 4.5, chapter 14, section 66264.553 of the California Code of Regulations as follows:

**§ 66264.553. Temporary Units.**

\* \* \* \* \*

(f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:

(1) Approved in accordance with the procedures for Department-initiated permit modifications under section 66270.41 of chapter 20 of this division; or

(2) Requested by the owner or operator as a Class II modification according to the procedures under section 66270.42 of chapter 20 of this division.

(g) The Department shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

Note: Authority cited: Section 58102 of the Governor's Reorganizational Plan # 1 of 1991; and Sections 25150, 25159, 25187, 25200.10, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25187, 25200, 25200.10, 25316, 25355.5, ~~25356.9~~, 25358.3 and 25358.9, Health and Safety Code; 40 CFR Section 264.553.

**Amend** Title 22, division 4.5, chapter 31, section 67100.13 of the California Code of Regulations as follows:

**§ 67100.13. Certification Requirements.**

(a) The review and plan, report, and compliance checklist, completed pursuant to this article shall be reviewed by an engineer who is registered as a professional engineer pursuant to section 6762 of the Business and Professions Code, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor ~~who is registered pursuant to section 25570 Health and Safety Code, as defined in section 25114.5 of the Health and Safety Code.~~

(b) The engineer, individual, or environmental assessor shall certify the review and plan only if the review and plan meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to section 67100.5(h) of these regulations.

(2) The review and plan addresses the source reduction approaches specified in section

67100.5(j) of these regulations.

(3) The plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and documents the rationale for rejecting available source reduction measures.

(4) The plan does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(c) The engineer, individual, or environmental assessor shall certify that compliance checklist has been completed.

(d) The engineer, individual, or environmental assessor shall certify the report only if the report meets the following requirement:

(1) The report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

(e) The plan, report, and compliance checklist shall contain the following language signed and dated by either the owner, the operator, or the responsible corporate officer of the site or an authorized individual; who is capable of committing financial resources necessary to implement the source reduction measures:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for making false statements or representations to the Department, including the possibility of fines for criminal violations."

Note: Authority cited: Sections 25150 and 25244.15, Health and Safety Code; and section 58012, Governor's Reorganization Plan, No. 1 of 1991. Reference: Sections 25189.2, 25244.19, and 25244.20 ~~and 25570.3~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 32, section 67383.3 of the California Code of Regulations as follows:

**§ 67383.3. General Standards for Tank Systems.**

\* \* \* \* \*

(f) The cleaned tank system shall be certified as meeting the standards of paragraphs (e)(1) and (2) of this section by the CUPA, authorized agency or LIA, or one of the following professionals, ~~certified or registered in California~~:

- (1) ~~certified~~ industrial hygienist certified in California;
- (2) ~~certified~~ safety professional certified in California;
- (3) ~~certified~~ marine chemist certified in California;
- (4) ~~registered~~ environmental health specialist registered in California;
- (5) ~~registered~~ professional engineer registered in California; or
- (6) ~~registered~~ environmental assessor, ~~Class II, as defined in section 25570.3, Health and Safety Code~~; or
- (7) a contractor properly licensed by the Contractor's State License Board (CSLB) to contract for the removal of underground storage tanks and who holds a Hazardous Substance Removal Certification issued by the CSLB.

(g) The certificate issued pursuant to subsection (f) of this section shall be submitted on the Hazardous Waste Tank Closure Certification page of the Unified Program Consolidated Form (x/99), Appendix E of Title 27 CCR, or an alternative version or a computer generated facsimile as allowed pursuant to Title 27, CCR, Sections 15610 and 15620. The submittal must include the Business Activities Page, and the Business Owner/Operator pages of the Unified Program Consolidated Form (x/99). The certificate shall include the following:

- (1) the tank owner's name and address;
- (2) the address of tank closure site;
- (3) the tank's State identification number, if applicable;
- (4) the statement that the tank is visually free of product, sludge, scale, rinseate and debris;
- (5) if applicable, the tank's interior atmosphere readings for concentrations of flammable vapor and oxygen;
- (6) the name, professional classification, registration or certification number if applicable, signature, address and phone number of the certifying person; and
- (7) the date and time of certification.

(h) Copies of the certificate shall be provided to the following:

(1) CUPA, authorized agency or LIA;

(2) owner and/or operator of the tank system;

(3) the contractor responsible for the removal of the tank system; and

(4) the recycling or disposal facility to which the tank is transported.

(i) A copy of the certificate shall accompany the tank to the recycling/disposal facility.

(j) A person who treats a tank by employing physical methods to satisfy the standard in subsection (e)(2) is authorized to perform such treatment for purposes of Health and Safety Code Section 25201.

Note: Authority cited: Sections 25141, 25150, 25159 and 58012, Health and Safety Code. Reference: Sections 25117, 25124 and 25201, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 39, of the California Code of Regulations as follows:

**Chapter 39. Hazardous Waste Property and ~~Border Zone Property Land Use~~ Restrictions**

**Amend** Title 22, division 4.5, chapter 39, section 67390.2 of the California Code of Regulations as follows:

**§ 67390.2. Information Required for a ~~Determination~~ Variance.**

(a) Upon receipt of a written request made pursuant to Health and Safety Code sections ~~25221, 25222.1, 25233 and 25234, 25223 or 25224~~ the Department shall review all available documents and other written information with regard to the property concerned and notify the requester whether sufficient evidence exists for the Department to ~~proceed with a hazardous waste property or border zone property designation, variance from such designation, issue a written variance from a land use restriction imposed by the department,~~ or removal of such designation~~restriction~~.

(b) In determining whether sufficient evidence exists for the Department to proceed with a ~~determination variance~~ pursuant to Health and Safety Code sections ~~25221, 25222.1, 25233 and 25234, 25223 and 25224~~ the Department shall take into account:

(1) the hazardous characteristics of the wastes that caused the land to be designated restricted, such as, but not limited to, toxicity, reactivity, corrosivity,

flammability, persistence, bioaccumulative characteristics, and infectiousness;

(2) factors affecting the potential for movement of any waste constituents away from the site through air, water, or soil, such as, but not limited to, the quantity of the wastes, physical state of the wastes, volatility of the wastes, solubility of the wastes, soil binding characteristics of the wastes, soil permeability, geological characteristics, hydrological characteristics, meteorological characteristics, flood potential and site

terrain;

(3) factors affecting the potential for exposure of any population within 2,000 feet of the wastes such as, but not limited to, containment of the wastes, accessibility of the wastes, ground water use, wells, surface water use, existing and potential land use, sensitive environments, and critical habitats.

Note: Authority cited: Section 25156, Health and Safety Code. Reference: Sections ~~25221, 25222, 25222.1, 25233 and 25234~~ 25223 and 25224, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 39, section 67391.1 of the California Code of Regulations as follows:

**§ 67391.1. Requirements for Land Use Covenants.**

(a) Except as provided in subsections (e)(2) and (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to division 20 of the Health and Safety Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsections (e)(2) and (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include a description of the implementation and enforcement provisions, including but not limited to frequency of inspections and reporting requirements, necessary to ensure the integrity and long-term protectiveness of the land use covenant. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) ~~or section~~

~~25398.6(i)~~. The Department will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsections (e)(2) and (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long-term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county where the property is located, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, ~~25222.1~~, 25355.5, or 25395.99 ~~or 25398.7 and 25396(l)~~ and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h) 3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant, except as provided in subsection (e)(2), will be executed by the Department and the federal government or the successor-in-interest to the federal government during the initial property transfer process, and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government shall use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of

hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include, but are not limited to, publicly owned tidelands trust property: such mechanisms may include physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

Note: Authority cited: Sections 25351.5 and 25150, Health and Safety Code.  
Reference: Sections 25202.5, ~~25222.1, 25223~~, 25355.5, and 25395.99, ~~25398.6 and 25398.7~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.1 of the California Code of Regulations as follows:

## Chapter 40. Selection and Ranking Criteria for Hazardous Waste Sites Requiring Remedial Action

**Editorial Note: Sections 67401.1 through 67401.13 were adopted to implement the California Expedited Remedial Action Reform Act of 1994, which was repealed effective June 27, 2012 by Senate Bill 1018 (Stats. of 2012, Chapter 39). Senate Bill 1018 also codified Health and Safety Code section 25396, which provides that the requirements of the former California Expedited Remedial Action Reform Act of 1994 (formerly Chapter 6.85 (commencing with Section 25396) of Division 20) continue to apply to sites selected before the effective date of this chapter for participation in the pilot program established by that act. The effective date of the chapter containing section 25396 is June 27, 2012.**

### § 67401.1. Definitions.

(a) When used in this article, unless otherwise defined in Health and Safety Code (H&SC) Section 25396 **(as it read on June 26, 2012)**, the following terms have the meanings given below:

(1) “Community benefit” means an equitable factor that will be used in conjunction with other equitable factors listed in H&SC Section 25398.8 **(as it read on June 26, 2012)** that DTSC shall consider when conducting its apportionment of liability. Community benefit may consider protection of public health and the benefit to the environment that may be realized by members of the public and the affected community by implementation of the response action.

(2) “Department” means the Department of Toxic Substances Control.

(3) “Expedited Remedial Action Program” means the program that was created pursuant to H&SC Section 25396 **(as it read on June 26, 2012)** et seq. of the Expedited Remedial Action Reform Act of 1994.

(4) “Fiscal Year” is the period of the year beginning July 1 and ending the following calendar year on June 30.

(5) “National Priorities List” means the list, compiled by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. Section 9605), of uncontrolled hazardous releases in the United States that are priorities for long-term remedial evaluation and response.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 **and section 25396, Health and Safety Code**. Reference: Section 25396, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.2 of the California Code of

Regulations as follows:

**§ 67401.2. Response Costs.**

(a) Response costs are all costs described in subdivision (t) of H&SC Section 25396 (as it read on June 26, 2012) including, but not limited to:

(1) The cost of preparing and reviewing a Preliminary Endangerment Assessment (PEA) including, but not limited to, the cost of collecting, reviewing, and analyzing data or any activities necessary to complete the PEA.

(2) Costs associated with the Department's preparation of a recommendation to the Site Designation Committee pursuant to subdivision (b) of H&SC Section 25396.5 (as it read on June 26, 2012).

(b) Response costs do not include:

(1) Fees and costs incurred by any responsible person associated with an arbitration or litigation.

(2) Fees and costs not directly related to and necessary to perform a response action.

(c) Subdivision (t) of H&SC Section 25396 (as it read on June 26, 2012) shall not limit the Department's ability to recover past costs under Chapter 6.8 of the Health and Safety Code.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Section 25396~~(t)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.3 of the California Code of Regulations as follows:

**§ 67401.3. Requirements for a Completed Preliminary Endangerment Assessment.**

(a) In making its recommendation to the Site Designation Committee pursuant to Health and Safety Code section 25396.5 (as it read on June 26, 2012), the Department shall consider the condition set forth in H&SC section 25396.6(b) (as it read on June 26, 2012) to be satisfied if the responsible person or persons requesting selection of the site have submitted documents that the Department determines constitute a completed Preliminary Endangerment Assessment (PEA) and the PEA:

(1) provides sufficient information for the Department to determine that current or past waste management practices have resulted in the release or a threatened release of hazardous substances which pose a threat to public health or the environment; and

(2) provides sufficient information for the Department to conclude that significant response actions are necessary at the site; and

(3) includes an analysis of the scope and identity of the affected community.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Sections 25319.5 and 25396-~~6(b)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.4 of the California Code of Regulations as follows:

**§ 67401.4. Site Eligibility for the National Priorities List (NPL).**

The Department may not recommend that a site be selected for remediation pursuant to the Expedited Remedial Action Program if the site is proposed to be listed or is listed on the National Priorities List pursuant to the procedures specified in 40 Code of Federal Regulations, Part 300.425.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Sections 25319.5 and 25396-~~6(b)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.5 of the California Code of Regulations as follows:

**§ 67401.5. Termination of Agreements and Site Stabilization.**

(a) In the event that a responsible person who has entered into an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) (as it read on June 26, 2012) fails to comply with the agreement, the Department may terminate the agreement and remove the site from eligibility for response actions pursuant to the Expedited Remedial Action Program, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8, Division 20, of the H&SC, unless one or more of any other responsible person agree to assume the noncomplying responsible person's responsibilities under the agreement.

(b) A responsible person who has entered into an enforceable agreement with the Department and who fails to comply with the agreement, shall take any action necessary to stabilize the site in order to protect public health and the environment, unless one or more of any responsible persons agree to assume the noncomplying responsible person's responsibilities the site under the agreement. Actions which are necessary to stabilize the site include, but are not limited to, the following:

(1) Action to preclude the possibility that the public can come in direct contact with hazardous substances either through ingestion, dermal absorption, or inhalation.

(2) Actions to prevent offsite migration of hazardous substances.

(c) Site stabilization activities shall be maintained by the responsible person to ensure protection of public health and the environment until the response action is complete.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Sections 25396 ~~25398.3(a) and 25398.2(b)(1)(D)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.6 of the California Code of Regulations as follows:

**§ 67401.6. Financial Assurance.**

(a) Any agreement entered into pursuant to H&SC Section 25398.2 (as it read on June 26, 2012) shall require a responsible person to demonstrate to the Department the availability of adequate forms of financial assurance for response costs that will or may be assigned to the orphan share.

(b) Any responsible person who must comply with operation and maintenance requirements as part of a response action must demonstrate the availability of adequate forms of financial assurance prior to issuance of a certificate of completion.

(c) For the purposes of complying with subdivisions (a) or (b) of this section, the responsible person shall choose from one or more of the following options as specified below.

(1) Establish a trust fund as described in Section 66265.143(a).

(2) Obtain a surety bond as described in Section 66265.143(b).

(3) Obtain a letter of credit as described in Section 66265.143(c).

(4) Obtain insurance as described in Section 66265.143(d).

(5) Submit to the financial test and corporate guarantee as described in Section 66265.143(e).

(6) Or any other form of financial assurance deemed acceptable by the Department.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Sections 25396-~~6(c)(2) and 25398.2(b)(1)(B)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.7 of the California Code of Regulations as follows:

### **§ 67401.7. Information Gathering and Access.**

(a) The Department may require any person identified to furnish and provide access to, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a site or which have been, or are, transported to a site.

(2) The nature or extent of a release or threatened release of a hazardous substance at or from a site.

(3) The identification of any person who may be responsible or have knowledge relating to a release or threatened release of a hazardous substance.

(b) The Department may require any responsible person to furnish, upon reasonable notice, information or documents relating to the following matter:

(1) Ability of a person to pay for or to perform a response action.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 **and section 25396, Health and Safety Code**. Reference: Sections 25185.6, 25358.1, ~~25396 25398(b)(1) and 25398.9(e)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.8 of the California Code of Regulations as follows:

### **§ 67401.8. Engineering Design**

(a) Pursuant to H&SC Section 25398.14 (**as it read on June 26, 2012**), upon completion of an engineering design to implement an approved remedial action plan, the responsible person for the site shall submit the engineering design to the Department for approval. The Department shall approve, modify, request information, or deny in writing the engineering design within 60 days from the date of receipt.

(b) The Department shall approve an engineering design if the Department determines that the engineering design is consistent with the selected remedial alternative outlined in the approved Remedial Action Plan (RAP). If the engineering design is consistent with the technical and operational plans in the approved RAP and there is compliance with all federal, state, and local statutes, regulations, and ordinances then the Department will grant an approval.

(c) The Department shall request that the responsible person modify the engineering design if the Department determines that the engineering design does not contain

sufficient information necessary to ensure that the engineering design is consistent with the approved remedial alternative selected in the RAP and compliance with all federal, state, and local statutes, regulations, and ordinances. The Department shall identify in writing deficiencies that must be addressed in the engineering design. A responsible person shall not implement the response action until the responsible person has made the modifications to the engineering design required by the Department.

(d) The Department shall not approve an engineering design if the Department determines that the engineering design is inconsistent with the selected remedial alternative outlined in the approved RAP.

(e) Any responsible person whose engineering design has been disapproved may request a meeting with the Department to discuss the reasons for the disapproval.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Section 25396 25398.14, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.9 of the California Code of Regulations as follows:

**§ 67401.9. Orphan Share Determination.**

The Department's recommendation as to whether a site should be selected for the Expedited Remedial Action Program shall include a determination of whether the site has an orphan share. For those sites already selected for the Expedited Remedial Action Program, the Department shall make a determination as to whether sites are an orphan share site within 30 days of the effective date of this regulation, unless that determination already has been made by the Department or the Site Designation Committee. No more than ten sites may be determined to have an orphan share.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Section 25396-5(b), Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.10 of the California Code of Regulations as follows:

**§ 67401.10. Modification of Orphan Share Determination.**

(a) At the time the Department proposes an apportionment of liability for response costs at a site, it may change its determination regarding whether a site has an orphan share under the following circumstances:

(1) The Site was determined to have an orphan share pursuant to Section 67401.9 and the Department finds that no orphan share actually exists.

(2) The Site was determined not to have an orphan share pursuant to Section 67401.9 and the Department makes the following findings:

[A] An orphan share actually exists;

[B] Not more than ten sites, for which response actions are being conducted pursuant to the Expedited Response Action Program, have been determined to have an orphan share pursuant to Section 67401.9; and

[C] There are funds available in the trust fund to cover all response costs that will be assigned to the orphan share after payment of any claims already received for response costs that have been allocated to an orphan share at other sites in the Expedited Remedial Action Program.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 **and section 25396, Health and Safety Code**. Reference: Sections 25396(~~m~~), ~~25396.5(b)~~ and ~~25398.8(a)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.11 of the California Code of Regulations as follows:

**§ 67401.11. Allocation of Orphan Share.**

(a) The following factors shall be used by the Department to determine when a responsible person cannot be located or identified, or when a responsible person is considered insolvent. The factors that shall guide the Department in allocating response costs to an orphan share shall include, but are not limited to, the following:

(1) A responsible person cannot be located when the Department determines that the responsible person is deceased and there are no assets remaining in the estate of the deceased, and there is no successor in liability.

(2) A responsible person shall be considered insolvent if the Department makes a finding pursuant to H&SC Section 25396(j) **(as it read on June 26, 2012)**.

(b) When allocating response costs to an orphan share, the Department shall apply a community benefit factor in conjunction with the established equitable factors listed in H&SC Section 25398.8(c) **(as it read on June 26, 2012)**. The community benefit factor includes consideration of the following:

(1) The relative threat posed by the site to public health and the environment.

(2) The community benefit realized by members of the public and the affected community as a result of the implementation of the response action.

Note: Authority cited: Section 25396~~(m)~~, Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396~~(m)~~ and ~~25398.8(e)~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.12 of the California Code of Regulations as follows:

**§ 67401.12. Procedures for Filing Claims Against the Expedited Site Remediation Trust Fund.**

(a) Within 3 months after the Department has approved a request for a certificate of completion pursuant to H&SC Section 25398.15 (as it read on June 26, 2012), responsible persons who entered into and are in compliance with an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) (as it read on June 26, 2012) may file a claim with the Department for reimbursement of the portion of the response action allocated to an orphan share pursuant to H&SC Section 25398.8 (as it read on June 26, 2012). For purposes of this section, the Department will only accept one consolidated claim for a reimbursement of response costs allocated to an orphan share from responsible persons who have signed an enforceable agreement pursuant to H&SC Section 25398.2(b)(1) (as it read on June 26, 2012). Responsible persons filing such a claim shall comply with the following claims procedures for reimbursement by the Expedited Site Remediation Trust Fund:

(1) The responsible person shall file a written claim with the Department. All claims must be filed with the Department by March 1 of each year to be considered for distribution of funds appropriated for that fiscal year.

(2) All claims filed by the responsible person shall include copies of the following: the enforceable agreement entered into pursuant to H&SC Section 25398.2(b)(1) (as it read on June 26, 2012), the Department's apportionment of liability conducted pursuant to H&SC Section 25398.8 (as it read on June 26, 2012), and an accounting of response costs defined in subdivision (t) of H&SC Section 25396 (as it read on June 26, 2012) and Section 67401.2, and any other information requested by the Department deemed appropriate in determining the legitimacy of the claim.

Note: Authority cited: Sections 25298.8(b) and ~~25396 25399.1~~, Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396~~(m)~~, ~~25398.8(b)~~ and ~~25399.1~~, Health and Safety Code.

**Amend** Title 22, division 4.5, chapter 40, section 67401.13 of the California Code of Regulations as follows:

**§ 67401.13. Distribution of Orphan Share.**

(a) Distribution of funds from the Expedited Site Remediation Trust Fund will be conducted annually. The distribution will only occur to the extent funds are available in the Expedited Site Remediation Trust Fund to pay claims received for response costs that have been allocated to an orphan share.

(b) No orphan share funds for a site shall be disbursed until all Department response costs incurred for that site have been paid.

(c) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year does not exceed the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be fully funded.

(d) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year exceeds the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be paid in the following manner:

(1) Payment of claims for those response costs that have been allocated to an orphan share shall be prorated based on the total sum of all approved orphan share claims for that fiscal year, except that all claims for amounts under \$50,000.00 shall be paid in full, if there is a sufficient amount available in the Expedited Site Remediation Trust Fund.

(2) The balance of claims not fully paid in a fiscal year shall be carried over to subsequent fiscal years and either paid in full if funds are available in the Expedited Site Remediation Trust Fund, or prorated with claims from each year.

Note: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3 and section 25396, Health and Safety Code. Reference: Section 25396(m), Health and Safety Code.

**Repeal** Title 22, division 4.5, chapter 51, of the California Code of Regulations as follows:

~~**Chapter 51. Site Remediation**~~

~~**Article 1. Private Site Management Performance Standards**~~

~~**§ 69000. Purpose.**~~

~~**This article sets forth minimum standards of performance for the activities and conduct of Private Site Managers and members of Private Site Management Teams that conduct site investigations and response actions pursuant to this article and Article 8, as administered by the Department of Toxic Substances Control.**~~

~~**Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25356.1, 25395.1-25395.15 and 25396, Health and Safety Code.**~~

~~§ 69000.5. Definitions.~~

~~Except as otherwise specified, the terms used in this article have the same meaning as the definitions specified in Chapter 6.8. For purposes of this article, the following definitions apply:~~

~~(a) "Administrative Record" means the record or file of all documents relied upon or considered by the Private Site Manager or members of the Private Site Management Team when selecting the response action for a site under this article. These documents may include, but are not limited to: engineering and technical reports; verified sampling data; quality control and quality assurance documentation; policy and guidance documents; statutes and regulations; correspondence; CEQA documents; technical journals, workplans for remedial investigations and feasibility studies; analyses of factual information and data that may have formed the basis for the selection of the response action at the site, and all documents that show the public was notified of site activity and had an opportunity to participate in the response selection process.~~

~~(b) "Administrative Record List" means the list of all documents in the Administrative Record. The Administrative Record List shall be included in each RAW and RAP required under this article.~~

~~(c) "Application Package" means the Private Site Management Program Application Package submitted under section 69003 that contains a request to the Department that a response action be conducted under the Private Site Management Program.~~

~~(d) "Article 8" means article 8, Private Site Management Program, of chapter 6.8 of division 20 of the Health and Safety Code (commencing with section 25395.1).~~

~~(e) "CEQA" means the California Environmental Quality Act (Public Resources Code sections 21000-21178) and the State CEQA Guidelines contained in the California Code of Regulations, title 14, sections 15000-15387.~~

~~(f) "Chapter 6.5", "Chapter 6.66," "Chapter 6.8," and "Chapter 6.85" mean chapter 6.5, chapter 6.66, chapter 6.8 and chapter 6.85 respectively of division 20 of the Health and Safety Code.~~

~~(g) "Department" means the Department of Toxic Substances Control.~~

~~(h) "EIR" means an environmental impact report prepared under CEQA.~~

~~(i) "FS" means Feasibility Study.~~

~~(j) "Independent" means that a Private Site Manager or a member of a Private Site Management Team meets all of the following requirements:~~

~~(1) The Private Site Manager or Private Site Management Team member is not an employee of the Project Proponent, a known responsible party, or a prospective buyer of the site or portion of the site;~~

~~(2) The Private Site Manager or Private Site Management Team member is not a general partner or a limited partner with any Project Proponent, known responsible party, or prospective buyer of the site or portion of the site;~~

~~(3) The Private Site Manager or Private Site Management Team member is not a shareholder in the Project Proponent entity, a known responsible party, or a prospective buyer of the site or portion of the site;~~

~~(4) The Private Site Manager or Private Site Management Team member does not receive any source of income from the Project Proponent, a known responsible party, or a prospective buyer of the site or portion of the site, other than the payment of fees for professional services, and;~~

~~(5) The Private Site Management Team member does not accept, or agree to accept, any payment that is in any way contingent upon the completion of a response action of the site under the Private Site Management Program.~~

~~(k) "Initial Study" means an Initial Study prepared under CEQA.~~

~~(l) "Land Use Controls" means recorded instruments restricting the present and future uses of the site as defined in subsection (l) of section 25396 of the Health and Safety Code.~~

~~(m) "Material Deviation" means a significant change in physical conditions at a site or previously unknown information about physical conditions at a site that may cause the Department to rescind its approval of an Application Package, PEA report, draft or final RAW, draft or final RAP, remedial design, certification request, or certification.~~

~~(n) "O&M" means operation and maintenance.~~

~~(o) "PEA" means preliminary endangerment assessment.~~

~~(p) "Private Site Management Program" means the program under this article and Article 8 in which Private Site Managers and Private Site Management Teams conduct investigations of potential hazardous substance release sites and response actions on sites where a significant release of a hazardous substance has occurred or is likely to have occurred.~~

~~(q) "Private Site Management Program Agreement" means the agreement under section 69007 between the Department and a Project Proponent for performance~~

~~of all necessary response actions at a site.~~

~~(r) "Private Site Management Team" means a group coordinated by a Private Site Manager as defined under subsection (b) of section 25395.1 of the Health and Safety Code.~~

~~(s) "Private Site Manager" means an individual who is a California Registered Environmental Assessor - Class II as defined under California Code of Regulations, title 14, section 19030, subsection (r), and is conducting a response action under this article.~~

~~(t) "Project Proponent" means a person who has submitted an Application Package under section 69003 requesting that a response action be conducted under the Private Site Management Program.~~

~~(u) "Remedial Action Plan" or "RAP" means the remedial action plan prepared by the Private Site Management Team in accordance with all the requirements of sections 25356.1 and 25395.5 of the Health and Safety Code.~~

~~(v) "RAW" means removal action work plan.~~

~~(w) "Reasonable Costs" means costs that are incurred by the Department under this article in accordance with Chapter 6.5, Chapter 6.66, Chapter 6.8, or Chapter 6.85 including all costs incurred in complying with CEQA, all costs incurred in investigating, remediating and certifying a site, and all costs incurred in performing audits.~~

~~(x) "RI" means remedial investigation.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25356.1, 25395.1, 25395.15 and 25396, Health and Safety Code.~~

#### ~~§ 69001. Performance Standards.~~

~~(a) In the performance of actions under this article and Article 8, a Private Site Manager shall select Private Site Management Team members who possess the necessary qualifications, work experience, licenses, registrations, professional skills, and appropriate insurance in accordance with section 69004, for properly performing response actions at the site based upon specific site conditions.~~

~~(b) In the performance of actions under this article and Article 8, a Private Site Manager and members of a Private Site Management Team shall:~~

~~(1) Comply with the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, the requirements of Chapter 6.85;~~

~~(2) Conduct all activities in compliance with all applicable federal, State, and local laws and regulations, including but not limited to, requirements to obtain permits and to assure worker safety;~~

~~(3) Make a good faith and reasonable effort to identify the level of community concern and identify and obtain all material, data, reports, and other information that may relate to site conditions. The Private Site Manager and members of the Private Site Management Team shall comply with the requirements of sections 25358.7 and 25358.7.1 of the Health and Safety Code in implementing or taking action under this article and Article 8. Any public participation requirements specifically set forth in this article are in addition to those requirements otherwise imposed by sections 25358.7 and 25358.7.1 of the Health and Safety Code;~~

~~(4) Identify and obtain any additional data and other information necessary to comply with the requirements of this article and Article 8; and~~

~~(5) Comply with the requirements of section 25355.8 of the Health and Safety Code, when the Project Proponent is not the current record owner of fee title to the property.~~

~~(c) Each report, plan, design, or other document that contains a finding, opinion, determination or decision related to a response action at the site and that is prepared by a Private Site Manager or Private Site Management Team and submitted to the Department under this article shall include all of the following:~~

~~(1) Description of the methods, data, assumptions, models, risk assessments, and conditions used to support the finding, opinion, determination, or decision;~~

~~(2) Describe any data, assessments, assumptions, qualifications or limitations regarding alternative findings, opinions, determinations or decisions that were considered and rejected;~~

~~(3) A statement verifying that the finding, opinion, determination, or decision submitted to the Department is in conformance with all requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85;~~

~~(4) A list of any State and federal technical guidance documents and manuals used to prepare the report, plan, design or other document;~~

~~(5) To the extent feasible, use appropriate formatting similar to the Department prepared or approved reports, plans, designs or other documentation;~~

~~(6) The signature, and if appropriate the seal or stamp, of the Private Site Manager, and the date the document was signed; and~~

~~(7) The signatures of all Private Site Management Team members who prepared or helped to prepare the report, plan, design or other document being submitted by the Private Site Manager.~~

~~(d) In addition to the performance standards set forth in subsections (a) through (c), the Private Site Manager or a member of the Private Site Management Team shall immediately notify the Project Proponent when site conditions or an incident at the site poses an imminent or substantial endangerment to the public health, welfare, or environment. The Private Site Manager shall notify the Department within 24 hours of discovery of the site condition or incident unless the Private Site Manager knows the Project Proponent has already notified the Department of that site condition or incident.~~

~~(e) Private Site Managers and members of a Private Site Management Team are subject to the requirements and prohibitions of section 25395.13 of the Health and Safety Code.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25358.7, 25358.7.1, 25395.1, 25395.2, 25395.3, 25395.4, 25395.10, 25395.13 and 25395.15, Health and Safety Code.~~

#### ~~§ 69002. Preliminary Endangerment Assessment Report.~~

~~(a) A Private Site Manager shall use the Department's PEA Guidance Manual (January 1994 and reprinted in June 1999), which is incorporated by reference, to conduct an investigation of a potential hazardous substance release site and to prepare a PEA report that determines if there has been a hazardous substance release or threatened release at the site.~~

~~(b) If a Private Site Manager determines, based on the PEA results, that a significant hazardous substance release has not occurred and is not likely to occur at the site and therefore site conditions do not require any further investigation or remedial action, the Private Site Manager may submit a PEA report to the Department certifying that no further action is required at the site. If the Private Site Manager submits a PEA report under this subsection, the Private Site Manager shall do either of the following:~~

~~(1) Submit a signed statement indicating that the Private Site Manager agrees to pay all of the Department's Reasonable Costs for reviewing the PEA report upon receipt of the Department's invoice; or~~

~~(2) Submit a statement, signed by the Project Proponent, indicating that the Project Proponent agrees to pay all of the Department's Reasonable Costs for reviewing the PEA report upon receipt of the Department's invoice.~~

~~(c) If a Private Site Manager determines, based on the PEA results, that a significant hazardous substance release has occurred or is likely to occur at the site, the Private Site Manager may submit the PEA report and the determination to the Department for review and concurrence under section 69011.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25395.2 and 25395.14, Health and Safety Code.~~

### ~~§ 69003. Private Site Management Program Application Package~~

~~(a) If the PEA report prepared by the Private Site Manager under subsection (a) of section 69002 determines that a significant hazardous substance release has occurred or is likely to have occurred at the site, and if the Department concurs with this determination under subsection (b) of section 69011, the Private Site Manager may do either of the following:~~

~~(1) Assist the Project Proponent in submitting an Application Package; or~~

~~(2) Prepare and submit an Application Package that has been signed by the Project Proponent.~~

~~(b) The Application Package shall include the following:~~

~~(1) Names of the designated members of the Private Site Management Team;~~

~~(2) Statement of the professional qualifications of each Private Site Management Team member;~~

~~(3) Description of how each Private Site Management Team member's experience and expertise will address specific site conditions;~~

~~(4) PEA report prepared under subsection (a) of section 69002, including a community profile report;~~

~~(5) RI report, if one has been prepared, or other investigative reports;~~

~~(6) Name and professional qualifications of the Private Site Management Team member with the experience or training in public participation, risk communication, and community involvement required by section 25395.4 of the Health and Safety Code;~~

~~(7) Sufficient information for the Department to determine that the Private Site Manager and members of the Private Site Management Team possess appropriate insurance, as specified in section 69004;~~

~~(8) Information that demonstrates that the site meets all the conditions set forth in~~

~~subsection (a) of section 25395.3 of the Health and Safety Code; and~~

~~(9) Information that demonstrates that the Private Site Manager meets all the requirements of subsection (b) of section 25395.3 of the Health and Safety Code.~~

~~(c) The Application Package shall contain CEQA documentation including sufficient information to allow the Department to determine whether site conditions or any proposed response actions may require the preparation of an EIR. A site will not be automatically disqualified if an EIR is required. The Application Package shall include information regarding the impacts that site conditions or any proposed response actions may have on: the geologic features of the site; land use planning; public health and safety; local population and housing in the vicinity of the site; water quality; air quality; traffic and transportation; ecological and biological resources; energy and mineral resources; noise levels; public service systems and utilities; local aesthetics; cultural resources; and recreation. The Department may be the lead agency for CEQA compliance for sites participating in the Private Site Management Program. If another public agency is the lead agency for the site or a portion of the site, the Application Package shall identify the lead agency and shall include any CEQA documents prepared by the lead agency. If the Application Package does not contain sufficient information to allow the Department to determine whether an EIR may be required, the Department may request the Private Site Manager to provide additional information. If the Department determines a subsequent or supplemental EIR is required and that the CEQA documentation is insufficient, the Department may prepare additional documentation in accordance with section 21166 of the Public Resources Code and section 15162 of title 14 of the California Code of Regulations and may request the Private Site Manager to provide additional CEQA documentation.~~

~~(d) The Application Package shall include a description of the public participation activities proposed for the site.~~

~~(e) If the Department determines that there is a substantial likelihood that further significant environmental damage or human exposure may occur as the response action is implemented, the site is not appropriate for the Private Site Management Program, and the Department will disapprove the Application Package.~~

~~(f) If the Department determines that the Application Package does not include the information and documentation required by this section, the Department may disapprove the Application Package. The Department will describe the actions needed to correct identified deficiencies.~~

~~(g) Sites listed pursuant to section 25356 of the Health and Safety Code are not appropriate for the Private Site Management Program.~~

~~(h) If the Department approves an Application Package, a Private Site~~

~~Management Team may be designated for the site.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25395.2, 25395.3, 25395.4 and 25395.10, Health and Safety Code.~~

~~§ 69004. Insurance Requirements.~~

~~(a) The Private Site Manager shall ensure that the Private Site Manager and each member of the Private Site Management Team maintains appropriate insurance. All insurance policies maintained under this article shall provide for 120-day advance written notice of cancellation to the Project Proponent and to the Department. In the event the Private Site Manager or a member of the Private Site Management Team fails to keep in effect the insurance coverage specified in this section, the Department may terminate the Private Site Manager's participation in the Private Site Management Program. If the Department terminates the Private Site Manager's participation in the Private Site Management Program, the Project Proponent may submit a new Application Package for the site. Upon request by the Department, the Private Site Manager and each member of the Private Site Management Team shall provide certificates of the insurance and copies of each insurance policy required under subsections (b) through (h).~~

~~(b) The Private Site Manager shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined, with an annual aggregate of no less than \$2,000,000. The policy shall include coverage for liabilities arising out of the site premises and operations, independent contractor activities at the site, products used or produced at the site, completed site operations, personal and advertising injury, and liability assumed under an insured contract.~~

~~(c) The Private Site Manager shall maintain motor vehicle liability insurance with limits of not less than \$1,000,000 per accident, with an annual aggregate of no less than \$2,000,000. This motor vehicle liability insurance shall cover liability arising out of operation of a motor vehicle including owned, hired, and non-owned motor vehicles.~~

~~(d) The Private Site Manager shall maintain statutory workers' compensation and employer's liability coverage for all of its employees who will be engaged in activities under the Private Site Management Program, including special coverage extensions where applicable.~~

~~(e) In addition to the minimum insurance requirements in subsections (b) through (d), a Private Site Manager and each member of the Private Site Management Team who performs consulting services shall provide evidence of Professional Liability/Errors and Omissions Coverage, with policy limits of at least \$1,000,000 per claim, with an annual aggregate of no less than \$2,000,000, for liabilities~~

~~arising out of errors, omissions or negligent acts related to or in connection with activities under the Private Site Management Program.~~

~~(f) The Private Site Manager who performs response actions shall provide evidence of Pollution/Environmental Impairment Liability Coverage with policy limits of at least \$1,000,000 per occurrence, with an annual aggregate of no less than \$2,000,000, for bodily injury and property damage liability combined.~~

~~(g) The Private Site Manager shall obtain appropriate environmental insurance coverage under article 8.7 (commencing with section 25395.40) of Chapter 6.8 if insurance coverage under article 8.7 is available.~~

~~(h) The Private Site Manager shall maintain any other types of insurance appropriate for conditions at the site, as required by the Project Proponent or as required by any statute, regulation, or ordinance of a state or local governmental agency.~~

~~(i) If the Private Site Manager or a member of the Private Site Management Team demonstrates by evidence satisfactory to the Department that any contractor or subcontractor maintains insurance covering activities at the site that is equivalent to the insurance described in subsections (b) (h), or insurance covering the same risks but in lesser amount, then the Private Site Manager or member of the Private Site Management Team need provide only that portion of the insurance that is not maintained by the contractor or subcontractor.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25355.2, 25395.3, 25395.4, 25395.10 and 25395.40, Health and Safety Code.~~

#### ~~§ 69005. Compliance with the California Environmental Quality Act.~~

~~(a) The Department may be the lead agency for CEQA actions for sites in the Private Site Management Program or another public agency may be the lead agency for a site or a portion of the site. If the Department is not the lead agency, the Department, as a responsible agency, will review the lead agency's CEQA documents.~~

~~(b) If the Private Site Management Team determines the site requires a removal action, the Private Site Manager shall submit the following to the Department: draft RAW, PEA report, RI report, draft CEQA information, and any other investigative documents pertaining to the site. The Department will consider the draft RAW technically complete if the draft RAW meets the requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.~~

~~(c) If the Department is the lead agency, the Department will determine whether~~

~~an Initial Study is required for the RAW. For the Department's determination regarding an Initial Study, the Private Site Manager shall submit to the Department all information necessary for making a determination of the potential for significant effects on the environment from the removal action. The Department will consider the CEQA information technically complete if the Department determines that all information necessary to prepare an Initial Study has been submitted. If the Department determines the removal action is not exempt from CEQA, the Department will prepare an Initial Study. When the Department determines that all applicable CEQA documents have been completed, a 30-day comment period will commence on the Department's proposed CEQA determination. Public review of the CEQA documents and the draft RAW will be held concurrently.~~

~~(d) If the Private Site Management Team determines the site requires a RAP, the Private Site Manager shall submit the following to the Department: draft RAP, RI report, FS report, draft CEQA information, and any other investigative documents pertaining to the site. The Department will consider the draft RAP technically complete if the draft RAP meets the requirements of this article, Article 8, and Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.~~

~~(e) If the Department is the lead agency, for the Department's preparation of the Initial Study for the RAP, the Private Site Manager shall submit all information necessary for making a determination of the potential for significant effects on the environment. The Department will consider the CEQA information technically complete if the Department determines that all information necessary to prepare an Initial Study has been submitted. If the Department determines the response action is not exempt from CEQA, an Initial Study will be prepared. When the Department determines all applicable CEQA documents have been completed, a 30-day comment period will commence on the Department's proposed CEQA determination. Public review of the CEQA documents and the draft RAP will be held concurrently.~~

~~(f) If the Department determines the CEQA documentation is insufficient, the Department will prepare additional documentation in accordance with section 21166 of the Public Resources Code and section 15162 of title 14 of the California Code of Regulations. The Department may request the Private Site Manager to provide additional CEQA documentation.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.3, 25395.4, 25395.5 and 25395.11, Health and Safety Code.~~

~~§ 69006. Project Proponent.~~

~~(a) The purpose of this section is to establish minimum requirements for Project~~

## ~~Proponents.~~

~~(b) A Project Proponent shall do all of the following:~~

~~(1) Provide the Private Site Manager with all information regarding the site known to the Project Proponent or in the Project Proponent's possession;~~

~~(2) Sign and submit an Application Package or sign and have the Private Site Manager submit the Application Package;~~

~~(3) Enter into a Private Site Management Program Agreement with the Department as specified under section 69007;~~

~~(4) Notify the Department whenever any known condition or incident at the site poses an emergency or an imminent or substantial endangerment to human health or the environment. The Project Proponent shall provide written notification to the Department within 24 hours of discovery of the site condition or incident;~~

~~(5) Reimburse the Department for its costs based on the level of oversight requested by the Project Proponent and consistent with the requirements of Article 8, including the cost of reviewing and commenting on documents submitted.~~

~~(6) Cooperate with the Department in its performance of any audit of a site conducted under section 69012.~~

~~(c) The Project Proponent shall be Independent of the Private Site Manager and all Private Site Management Team members.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.1, 25395.3, 25395.4, 25395.12, 25395.14 and 25359.15, Health and Safety Code.~~

## ~~§ 69007. Private Site Management Program Agreement.~~

~~(a) A Project Proponent shall enter into a Private Site Management Program Agreement with the Department for the performance of all necessary response actions at the site. The Project Proponent shall agree to pay all Reasonable Costs incurred by the Department at the site and the Project Proponent shall also agree to perform all response actions at the site in accordance with the requirements of Chapter 6.8, or for sites selected under section 25396.6 of the Health and Safety Code, Chapter 6.85. The Project Proponent may elect to have minimal Department oversight as provided by this article.~~

~~(b) The Department will meet and confer with the Project Proponent in~~

~~accordance with section 25269.5 of the Health and Safety Code. The Department will provide the following:~~

~~(1) An estimate of the cost of the Department's oversight of the response actions at the site, including a list of estimated personnel labor rates;~~

~~(2) An estimate of the total hours the Department expects its staff to incur in implementing the terms of the Private Site Management Program Agreement entered into under subsection (a) to the extent that the Department can project its time and costs in advance; and~~

~~(3) A discussion and thorough review of the services the Department will provide to the Project Proponent and Private Site Manager.~~

~~(c) The Agreement may provide for the Department's oversight of preparation of a draft RAW or draft RAP, preparation of a remedial design or implementation of the response action. Department oversight of this preparation or implementation is not required.~~

~~(d) The Project Proponent may terminate the Private Site Management Program Agreement for any reason by providing 30-day advance written notice of the termination to the Department.~~

~~(e) The Department may terminate the Private Site Management Program Agreement if the Department (1) determines that any grounds for withdrawal exist as set forth in section 69013 or any grounds for rescission exist as set forth in section 69009, and (2) provides 30-day advance written notice to the Project Proponent.~~

~~Note: Authority cited: Sections 25269.5, 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.3, 25395.5, 25395.6, 25395.7, 25395.14 and 25396.6, Health and Safety Code.~~

#### ~~§ 69008. Guidance Documents.~~

~~(a) The Department will provide an advisory list of technical guidance manuals, relevant State and federal laws, regulations and other types of guidance documents that the Department believes would be useful for conducting PEAs, site assessments, investigations, site cleanups, remedial designs, O&M agreements, and site certifications. A copy of this list will be provided to the Private Site Manager upon approval of a Private Site Management Application Package or upon request.~~

~~(b) At the request of a Private Site Manager, the Department may suggest other appropriate technical guidance documents and manuals on a case-by-case basis for the site.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25395.5, 25395.6 and 25395.11, Health and Safety Code.~~

~~§ 69009. Change in Site Conditions or Site Information.~~

~~(a) If the documented physical conditions at a site change, or a change in physical conditions becomes known to the Private Site Manager, to the extent that the site no longer meets the conditions in subsection (a) of section 25395.3 of the Health and Safety Code, the Private Site Manager shall notify the Department and the Project Proponent. The Private Site Manager shall provide notification in writing no later than seven (7) calendar days after identifying a physical change in conditions or identifying new information about physical conditions.~~

~~(b) If a Private Site Manager or a member of a Private Site Management Team becomes aware of facts, data, or information that are a Material Deviation from the facts, data, or information used to prepare a PEA report, draft or final RAW, draft or final RAP, or remedial design, the Private Site Manager shall:~~

~~(1) Determine whether a selected response action is protective of public health and safety or the environment, considering the new facts, data, or information; and~~

~~(2) Notify the Department and the Project Proponent in writing within seven (7) calendar days of becoming aware of the Material Deviation. The written notification shall include the determination required under paragraph (1).~~

~~(c) If, at any time, a Material Deviation becomes known to the Department, the Department may (1) rescind approval of the Application Package, PEA report, draft or final RAW, draft or final RAP, remedial design, certification request, or certification, or (2) require the Private Site Management Team to include additional professional staff members with expertise appropriate to the changed physical conditions or to the new information about physical conditions at the site. Any proposed additional professional staff members are subject to approval by the Department.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25395.2, 25395.3, 25395.4, 25395.5, 25395.6 and 25395.11, Health and Safety Code.~~

~~§ 69010. Material Deviation from Department Approved Report, Workplan, or Remedial Design.~~

~~(a) If a Private Site Manager or a member of a Private Site Management Team knows, or has reason to know, that any proposed action or decision of the~~

~~Project Proponent or the Private Site Management Team is based on a Material Deviation from information in a Department-approved PEA report, draft or final RAW, draft or final RAP, or remedial design, the Private Site Manager or a member of the Private Site Management Team shall notify the Department and the Project Proponent. The notification shall be made in writing seven (7) calendar days prior to taking the action or making the decision that is based on a Material Deviation from the Department-approved PEA report, draft or final RAW, draft or final RAP, or remedial design.~~

~~(b) The written notice required by subsection (a) shall include a description of how the proposed action or decision is based on a Material Deviation from the Department-approved PEA report, draft or final RAW, draft or final RAP, or remedial design.~~

~~(c) If the proposed action or decision of the Project Proponent or Private Site Management Team would require a significant change in an approved draft or final RAW because of a Material Deviation that is the subject of a notification under subsection (a), the Department may either:~~

~~(1) publish a public notice that describes the proposed changes and explains the reasons for the differences in the revised draft or final RAW; or~~

~~(2) reject the proposed action or decision.~~

~~(d) Any public notice under subsection (c) will be published in a newspaper of general circulation, with a 30-day public comment period. Based on the level of community interest, the Department may hold a community meeting during the public comment period.~~

~~(e) If the proposed action or decision of the Project Proponent or Private Site Management Team would require a significant change in the selected remedy in an approved draft or final RAP because of a Material Deviation that is the subject of a notification under subsection (a), the Department may either:~~

~~(1) publish a public notice that describes the proposed action or decision and solicits public comment; or~~

~~(2) reject the proposed action or decision.~~

~~(f) Any public notice under subsection (e) will be published in a newspaper of general circulation, with a 30-day public comment period. The Department will hold a community meeting during the public comment period.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25395.2, 25395.4, 25395.5, 25395.6, 25395.8 and 25395.13, Health and Safety Code.~~

~~§ 69011. Department Review and Approval of Submittals by the Private Site Manager or Private Site Management Team.~~

~~(a) Within 60 days of receipt of a PEA report submitted by a Private Site Manager under section 69002 certifying that site conditions do not require any further investigation or remedial action at a site, the Department will review the PEA report.~~

~~(1) If the Department does not provide a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report, the Department shall be deemed to be in agreement with the PEA report and will designate the site as a site that requires no further action.~~

~~(2) If the Department disagrees with the certification in the PEA report, the Department will issue a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report describing the deficiencies of the PEA report and the reasons for the Department's disagreement with the certification in the PEA report.~~

~~(3) The Department will not designate the site as a site that requires no further action if the release of hazardous substances has caused, or threatens to cause, discharges to waters of the State.~~

~~(b) Within 60 days of receipt of a PEA report submitted by a Private Site Manager under section 69002 that determines that a significant hazardous substance release has occurred or is likely to have occurred at a site, the Department will review the PEA report.~~

~~(1) If the Department concurs with the determination under subsection (b), the Private Site Manager may submit an Application Package under the provisions of section 69003.~~

~~(2) If the Department does not concur with the determination under subsection (b), the Department will issue a written notice of disagreement to the Private Site Manager within 60 days of the Department's receipt of the PEA report describing the deficiencies of the PEA report and the reasons for the Department's disagreement with the Private Site Manager's determination.~~

~~(c) Within 60 days of receipt of both a draft or final RAW and technically complete draft CEQA information submitted by a Private Site Manager under section 69005, the Department will approve or reject the draft or final RAW and draft CEQA information. To be approved, the draft or final RAW shall include a description of past community involvement efforts, recommendations for future public participation activities, and the Administrative Record List for the site, and shall be prepared in accordance with all of the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter~~

~~6.85, and applicable regulations and guidance documents. The draft or final RAW may be prepared without Department oversight.~~

~~(1) If the Department rejects a draft RAW and draft CEQA information, the Department will state the reasons for rejecting the draft RAW and draft CEQA information and describe the actions needed to correct identified deficiencies.~~

~~(2) If the Department rejects a draft RAW and draft CEQA information, the Private Site Manager or a member of the Private Site Management Team may submit a revised draft RAW and draft CEQA information. The Department will have an additional 60 days from receipt of a revised submittal to review any new documents, reports, or workplans provided with the revised submittal.~~

~~(3) If the Department considers the draft RAW and draft CEQA information to be technically complete and if the Department approves the draft RAW and draft CEQA information, the Department will release the draft RAW and the draft CEQA determination for a 30-day public comment period. The draft RAW and draft CEQA determination will be noticed in a newspaper of general circulation at the beginning of the comment period.~~

~~(4) The Department may approve or reject the final RAW. If the Department approves the final RAW, the Private Site Management Team shall implement the response action set forth in the approved final RAW. The implementation may be conducted without Department oversight.~~

~~(d) Within 60 days of receipt of a draft RAP and technically complete draft CEQA information submitted by a Private Site Manager under section 69005, the Department will approve or reject the draft RAP and draft CEQA information. To be approved, the draft RAP shall include a description of past community involvement efforts, recommendations for future public participation activities, and the Administrative Record List and shall be prepared in accordance with all the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, and applicable regulations and guidance documents. The draft RAP may be prepared without Department oversight.~~

~~(1) If the Department rejects a draft RAP and draft CEQA information, the Department will state the reasons for rejecting the draft RAP and draft CEQA information and describe the actions needed to correct identified deficiencies.~~

~~(2) If the Department rejects a draft RAP and draft CEQA information, the Private Site Manager or a member of the Private Site Management Team may submit a revised draft RAP and draft CEQA information. The Department will have an additional 60 days from receipt of a revised submittal to review any new documents, reports, or workplans provided with the revised submittal.~~

~~(3) If the Department considers the draft RAP and draft CEQA information to be technically complete and if the Department approves the draft RAP and draft CEQA information, the Department will release the draft RAP and the draft CEQA determination for a 30-day public comment period. During that period, at least one community meeting will be held to solicit public comment. The draft RAP and draft CEQA determination will be noticed in a newspaper of general circulation at the beginning of the public comment period. Following the public comment period, the Department will comply with subsection (f) of section 25356.1 of the Health and Safety Code, prepare a written notice that informs the community of the final selected remedy, and file a Notice of Determination under section 21108 of the Public Resources Code.~~

~~(e) The Private Site Manager shall prepare and submit to the Department for the Department's approval a final RAP in accordance with Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, and applicable regulations and guidance documents. The Department may approve or reject a final RAP. If the Department approves a final RAP, the Private Site Management Team shall implement the approved final RAP. The implementation may be conducted without Department oversight.~~

~~(f) The Private Site Management Team shall prepare a remedial design for implementation of the response action selected in the approved final RAP and submit the remedial design to the Department for approval. Within 60 days of receipt of the remedial design submitted by the Private Site Management Team, the Department will approve or reject the remedial design. The Department will review the remedial design to ensure that it is consistent with implementation of the final RAP approved by the Department under subsection (e).~~

~~(1) If the Department rejects the final remedial design, it will state the reasons for rejecting the document and describe the actions needed to correct the identified deficiencies.~~

~~(2) If the Department rejects the final remedial design, the Private Site Management Team may submit a revised remedial design. The Department will have an additional 60 days from receipt of a revised submittal to review any new documentation provided.~~

~~(3) If the Department approves the final remedial design, the Private Site Manager will prepare a fact sheet describing pertinent activities associated with the remedial action including, but not limited to hours of operation, noise, traffic, and duration of work. Upon the Department's approval, the Private Site Manager will issue the fact sheet to the public and, if appropriate, the Private Site Manager will conduct a public meeting.~~

~~(4) The Private Site Management Team shall implement the approved remedial design. The implementation may be conducted without Department oversight.~~

~~(g) The Private Site Manager shall submit a request for a certificate of completion to the Department upon completion of the response action. Except as provided under paragraph (7), within 30 days from receipt of a request for a certificate of completion submitted by a Private Site Manager, the Department will review the request and will approve or reject it.~~

~~(1) Requests for a certificate of completion shall include all information specified in subsection (a) of section 25395.8 of the Health and Safety Code, documentation that any required Land Use Controls have been recorded as specified in subsection (b)(4) of section 25395.8 of the Health and Safety Code, documentation that all necessary response actions have been satisfactorily completed and that the information contained in the certification request is accurate to the best of the Private Site Manager's knowledge, and any other documentation required by the Department to demonstrate the response action was completed in accordance with the requirements of Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85.~~

~~(2) For sites that require O&M, the Private Site Manager shall submit a plan for implementation of any O&M measures required by the approved RAW or approved final RAP, including periodic submittal of reports and data to document the effectiveness of the O&M, documentation that any long-term monitoring, maintenance, and abatement systems are functioning as designed, and documentation that the O&M will achieve and maintain the abatement goals established by the approved final RAP. The Private Site Manager shall submit documentation demonstrating that financial assurance requirements for O&M have been met as specified under section 25355.2 of the Health and Safety Code.~~

~~(3) The Department will evaluate a certification request to ensure that response actions have been completed in accordance with the approved RAW or the approved final RAP for the site. The Department will determine if there is sufficient documentation to support the RAW or final RAP. The Department may request the Private Site Manager to provide additional documentation to support the RAW or final RAP. The Department will also determine if appropriate Land Use Controls have been recorded as specified in subsection (b)(4) of section 25395.8 of the Health and Safety Code.~~

~~(4) If the Department approves the certification request, the Department will prepare a certification that includes a certificate of completion, requirements for ongoing reporting and O&M, and a description of applicable Land Use Controls. The Department will provide the certification to the Project Proponent, all known responsible parties, and owners of properties located adjacent to the site, and will make the certification available to the community where the site is located.~~

~~(5) If the Department rejects the certification request, it will state the reasons for rejecting the request and describe the actions needed to correct the identified~~

~~deficiencies.~~

~~(6) If the Department rejects the certification request, the Private Site Manager or a member of a Private Site Management Team may submit a revised certification request. The Department will have an additional 30 days from its receipt of a revised certification request to review any new documentation provided by the Private Site Manager or member of a Private Site Management Team and to approve or reject the revised certification request.~~

~~(7) If the site is selected for an audit under section 69012, the Department will not approve or reject a certification request until the audit is completed.~~

~~(h) After a site has been certified, the Department may determine that the site no longer qualifies for certification under the Private Site Management Program, if the Department makes one or more of the following findings:~~

~~(1) Subsequent monitoring, testing, or analysis indicates that the remedial action standards and objectives were not achieved or are not being maintained;~~

~~(2) One or more of the conditions, restrictions or limitations imposed on the site as part of the remedial action or certification are violated;~~

~~(3) Site monitoring or O&M activities that are required as part of the response action or certification are not adequately funded or are not properly performed;~~

~~(4) A hazardous substance release is discovered at the site that was not the subject of the site investigation and response action for which the site certification was issued;~~

~~(5) A Material Deviation from the conditions known at the time the Department issued a certification, or the discovery of new information, causes the Department to require further site investigation and response action in order to prevent a significant risk to human health and safety or to the environment; or~~

~~(6) The Private Site Manager or a member of the Private Site Management Team induced the Department to issue the site certification by means of misrepresentation, fraud, negligence, or intentional nondisclosure of information.~~

~~(i) After a site has been certified, if the Department determines that the site no longer qualifies for certification under subsection (g), the Department will withdraw its approval for the response action conducted at the site and will provide the Private Site Manager with written notification setting forth the reasons for the Department's determination.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code.  
Reference: Sections 25355.2, 25395.2, 25395.3, 25395.4., 25395.5, 25395.6,~~

~~25395.7, 25395.8, 25395.11, 25395.12, 25395.13 and 25396.6, Health and Safety Code, and Sections 21108 and 21166, Public Resources Code.~~

~~§ 69012. Department Audits.~~

~~(a) The Department will conduct audits of the sites subject to the Private Site Management Program as specified in section 25395.12 of the Health and Safety Code.~~

~~(b) A Project Proponent, Private Site Manager, and members of a Private Site Management Team shall cooperate fully with a Department audit by providing complete access to information, records, technical data, reports, sampling data, photographs, maps, and files related to a response action conducted by a Private Site Manager or a member of a Private Site Management Team.~~

~~(c) The Project Proponent shall retain all data, reports, the Administrative Record, and any other relevant documents prepared by the Private Site Manager or a member of a Private Site Management Team for a minimum of ten (10) years after the conclusion of all site activities, including ongoing O&M, under this article and Article 8.~~

~~(d) If the Department requests that some or all of these documents be preserved for a longer period of time, the Project Proponent shall: (1) comply with that request; (2) deliver the documents to the Department, or (3) permit the Department to copy the documents prior to destruction. The Project Proponent shall notify the Department in writing at least six (6) months prior to destroying any documents prepared under this article or Article 8.~~

~~(e) If a Department audit finds that the performance of a Private Site Manager failed to meet the minimum performance standards set forth in this article, Article 8, Chapter 6.8 or, for sites selected pursuant to section 25396.6 of the Health and Safety Code, Chapter 6.85, or if the Department makes any of the findings set forth in subsection (l) of section 25570.3, of the Health and Safety Code, the Department may take appropriate action to do any one or more of the following: (1) deny, suspend or rescind the Environmental Assessor - Class II registration of the Private Site Manager; (2) reject the request for a certificate of completion under subsection (g) of section 69011; (3) withdraw its approval for the response action under subsection (i) of section 69011.~~

~~(f) If a site for which a request for a certificate of completion has been submitted under section 69011 is selected for audit, the Department will notify the Project Proponent in writing within twenty-one (21) working days of submittal of the certification request that the site has been selected for audit.~~

~~(g) The Department will complete an audit within forty-five (45) working days of sending the audit notification to the Project Proponent. The Department will~~

~~submit the audit findings to the Project Proponent in writing.~~

~~(h) If a site for which a certificate of completion has been submitted under section 69011 is selected for an audit, the Department's time to act on the certification request will be extended to forty-five (45) working days from sending the audit notification to the Project Proponent or until the audit is completed, whichever comes first. If the audit reveals facts or information that would require additional response action, the Department will reject the certification request.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.12, 25395.13, 25395.15 and 25570.3, Health and Safety Code.~~

#### ~~§ 69013. Withdrawal of Department Approval.~~

~~(a) The Department may withdraw approval of an Application Package or may terminate a Private Site Management Program Agreement under subsection (e) of section 69007 if any of the following apply:~~

~~(1) The Department determines that a Private Site Manager, a member of a Private Site Management Team, or a Project Proponent has failed to comply with any of the requirements of this article, Article 8, Chapter 6.8 or, for sites selected under section 25396.6 of the Health and Safety Code, Chapter 6.85;~~

~~(2) The Department determines that the Project Proponent has failed to comply with the Private Site Management Program Agreement for the site;~~

~~(3) At any time the Department determines that there is a substantial likelihood that further significant environmental damage or human exposure may occur as the response action is implemented;~~

~~(4) The Department determines that the site is no longer appropriate for the Private Site Management Program because the conditions set forth in subsection (a) of section 25395.3 of the Health and Safety Code do not exist or because the site is placed on the list created pursuant to section 25356 of the Health and Safety Code; or~~

~~(5) An action or decision of the Project Proponent or Private Site Management Team is based on a Material Deviation from information in a Department-approved PEA report, RAW, RAP, or remedial design.~~

~~(b) If the Department determines that grounds for withdrawal of approval or termination exist under subsection (a), the Department will withdraw its approval of the Application Package in writing or will terminate the Private Site Management Program Agreement in writing and state the reasons for the withdrawal or termination. If the Department withdraws its approval of the~~

~~Application Package, the site is no longer appropriate for conducting a response action under the Private Site Management Program.~~

~~(c) The Department may withdraw its approval for conducting a response action under subsection (i) of section 69011.~~

~~Note: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25395.2, 25395.3, 25395.4, 25395.10, 25395.11, 25395.12, 25395.15 and 25396.6, Health and Safety Code.~~

Repeal Title 22, division 4.5, chapter 52, of the California Code of Regulations as follows:

~~Chapter 52. Voluntary Registration of Environmental Assessors  
§ 69200. Definitions.~~

~~For purposes of this Chapter, definitions in Health and Safety Code section 25570.2 shall apply unless further specified in this section:~~

~~(a) "Corrective Action Plan" means a workplan that details the actions to be taken to achieve the required corrective action.~~

~~(b) "Department" means the Department of Toxic Substances Control.~~

~~(c) "Director" means the Director of the Department of Toxic Substances Control or designee.~~

~~(d) "Environmental quality assessment" or "assessment" means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated or conducted under Chapter 6.5 (commencing with section 25100), Chapter 6.8 (commencing with section 25300), or Chapter 6.95 (commencing with section 25500) of the Health and Safety Code, to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:~~

~~(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water~~

~~quality, emergency preparedness and response, hazard communications, and occupational safety and health.~~

~~(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.~~

~~(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.~~

~~(e) "Feasibility Study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment at a hazardous waste or hazardous substance release site, or other activities deemed necessary by the lead agency for the development of a remedial action plan, corrective action plan, removal action workplan or equivalent. A feasibility study shall include treatability studies as necessary to evaluate potential performance and the cost of treatment and/or remedial work.~~

~~(f) "Hazardous Substance or Hazardous Waste Site Cleanup Opinion" means the opinion of a Registered Environmental Assessor (REA) II of the need for further investigation or remedial work at a site.~~

~~(g) "Lead Agency" means the Department of Toxic Substances Control, the State Water Quality Control Board, Regional Water Quality Control Boards, Certified Unified Program Agency, as defined in Health and Safety Code section 25281(c)(1), Participating Agency, as defined in Health and Safety Code section 25281(c)(2), Unified Program Agency, as defined in Health and Safety Code section 25281(c)(3), or the local, authorized administering agency, overseeing the assessment or mitigation activities at a site, and pursuant to these regulations.~~

~~(h) "Multi-media investigations" means hazardous waste or hazardous substance site assessment and characterization work requiring serious evaluation of pathways of exposure in two or more of the environmental media consisting of air, water and soil.~~

~~(i) "Operation and Maintenance" means those activities initiated or continued following completion of a remedial or removal action that are deemed necessary by the lead agency to protect the public health and the environment and achieve or maintain the abatement goals established by the final remedial action plan, corrective action plan, removal action workplan, or equivalent.~~

~~(j) "Phase I Environmental Assessment" or "Phase I" means a preliminary site assessment based on reasonably available knowledge of a site, including, but not limited to, historical use of the property, prior releases, visual and other surveys,~~

~~records, consultant reports, and regulatory agency correspondence. Sampling or testing is not required as part of the Phase I survey. The Phase I survey shall be certified by an REA and shall indicate whether the REA believes that further investigation, including sampling and analysis is necessary to determine whether a release has occurred, or to determine the extent of a release.~~

~~(k) "Physical Sciences" means any of the sciences, such as physics and chemistry, that analyze the nature and properties of energy and non-living matter.~~

~~(l) "Preliminary Endangerment Assessment" means an activity which is performed to determine whether current or past waste management practices have resulted in the release or threatened release of hazardous substances which pose a threat to human health or the environment. A Preliminary Endangerment Assessment shall include a review of the Phase I Environmental Assessment, sampling, data evaluation, public participation (as required by section 69211(a)(2), human health screening, ecological screening and a report of the findings of the assessment.~~

~~(m) "Professional-level environmental experience" means all of an REA II's professional experience that is determined by the Department to be experience applying scientific or engineering principles in a physical or biological science, engineering or related field. This experience includes instances where the REA II's conclusions formed the basis for reports, studies and other similar documents. Professional-level environmental experience shall be in positions in which scientifically supportable technical decision-making, as well as professional responsibility and integrity are demonstrated with minimal supervision.~~

~~(n) "Professional-level site mitigation experience" means supervisory or project management related experience obtained through managing or supervising scientific or engineering staff who are conducting multimedia investigations, assessments, and cleanup work at hazardous substance and hazardous waste sites. Such experience shall be of a professional level and indicative of an REA II's competence to conduct investigations, assessments, and remedial work and/or to render opinions regarding investigations, assessments, and remedial work at response action sites. Professional-level site mitigation experience shall be in positions in which the applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites; supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, or removals; and drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.~~

~~(o) "REA I Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor - Class I (REA I).~~

~~(p) "REA II Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor - Class II (REA II).~~

~~(q) "Registered Environmental Assessor - Class I (REA I) means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69200 through 69202, who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. REA Is may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, geologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, and environmental program managers. The work of an REA I includes, but is not limited to, Phase I assessments and waste reduction plans and reports prepared pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989, commencing with section 25244.12 of the Health and Safety Code.~~

~~(r) "Registered Environmental Assessor - Class II (REA II)" means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69203 through 69214. An REA II issues hazardous substance and hazardous waste site cleanup opinions which describe whether contamination is present at a site, the work needed to reduce the risk from that contamination and whether that work has been completed. These opinions are based upon careful study of a site, including, but not limited to, preliminary endangerment assessments, remedial investigations, feasibility studies, remedial design, remedial actions, corrective action plans, remedial action plans and other work associated with the investigation, assessment and remediation of hazardous waste and hazardous substance release sites.~~

~~(s) "Registrant" means any person registered as an REA I or REA II.~~

~~(t) "Remedial Action" means those actions which are:~~

~~(1) consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous waste or hazardous substance into the environment;~~

~~(2) necessary to monitor, assess, and evaluate a release or a threatened release of a hazardous substance or hazardous waste; and~~

~~(3) Site operation and maintenance.~~

~~(u) "Remedial Action Plan" means a workplan which shall include the following:~~

~~(1) Health and safety risks posed by the conditions at the site. When considering these risks, the lead agency shall consider scientific data and reports which may~~

~~have a relationship to the site,~~

~~(2) The effect of contamination or pollution levels upon the present, future, and probable beneficial uses of contaminated, polluted or threatened resources.~~

~~(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses.~~

~~(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.~~

~~(5) Cost effectiveness of alternative remedial action measures.~~

~~(6) The potential environmental impacts of alternative remedial action measures including the reduction of toxicity, mobility and volume.~~

~~(7) A statement of reasons setting forth the basis for the removal or remedial actions selected, including an evaluation of each proposed alternative, and reasons for the rejection of alternative remedial or removal actions.~~

~~(v) "Remedial Design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the lead agency.~~

~~(w) "Remedial Investigation" means those actions deemed necessary by the lead agency to characterize the nature, full extent and risks posed by a hazardous substance and/or hazardous waste release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan, corrective action plan, removal action workplan or equivalent. Characterization of the nature, full extent and risks shall include:~~

~~(1) Gathering information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and~~

~~(2) Data gathering shall be adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment.~~

~~(3) The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices and shall take into consideration guidance published by the Department.~~

~~(x) "Removal Action" means the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release of hazardous substances or hazardous wastes.~~

~~(y) "Removal Action Workplan" means a workplan which is developed to carry out a removal action, in an effective manner, which is protective of the public health and safety and the environment. The removal action workplan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.~~

~~(z) "Rescind" or "rescission" means to suspend or revoke an REA registration.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69201. REA I Criteria for Registration.~~

~~The applicant for registration as an REA I shall:~~

~~(a) Demonstrate a minimum of five (5) years full time experience in the REA I applicant's general field of expertise, acquired within the last eight (8) years.~~

~~(b) Demonstrate a minimum of two (2) years substantial experience in performing environmental assessments relating to hazardous substances and hazardous wastes acquired within the last four (4) years.~~

~~(c) Possess a bachelor's or higher degree from an accredited college or university in a physical or biological science, engineering or law. State certification, licensing or registration, or certification by a nationally recognized professional association in a physical or biological science, engineering or law shall be considered equivalent to such training. Five (5) years substantial experience performing environmental assessments relating to hazardous wastes or hazardous substances acquired within the last eight (8) years shall also be considered equivalent to such training.~~

~~(d) Provide the names, addresses, telephone numbers and professional affiliations of three or more references who as employers, supervisors, co-workers at equal or higher level or clients can attest to the accuracy of the evidence provided by the applicant, to the applicant's professional competence and character, or both.~~

~~(e) Apply using a form provided by the Director entitled "Registered Environmental Assessor (REA I) Application Form."~~

~~(f) An REA I applying for REA II registration shall also follow the application procedures in sections 69204 through 69205.~~

~~(g) Forward a \$50 (fifty dollar) non-refundable application fee by check, credit card, or money order made payable to the Department of Toxic Substances Control, Registered Environmental Assessor Program, or DTSC/REA I Program, along with the application.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69202. REA I Application, Renewal, and Denial or Rescission of Registration.~~

~~(a) The Director shall compile and update a directory of REA Is, based on the application information, and other relevant information brought to the Director's attention.~~

~~(b) Upon notice of acceptance, and annually thereafter, the REA I applicant shall forward the sum of \$100 (one hundred dollars) by check, credit card, or money order made payable to the DTSC/REA I Program. When submitting the annual renewal fee, REA Is may also update the application information they previously submitted.~~

~~(c) Each REA I shall apply for renewal of registration every five (5) years following the date of initial registration by completing a renewal application form provided by the Director and paying the application renewal fee of \$50.00 (fifty dollars).~~

~~(d) For cause, the Director may revoke or suspend the registration of any REA I and delete that assessor's name from the directory.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69203. REA II Criteria for Registration.~~

~~(a) If an REA II applicant is not already registered as an REA I, then the REA II application will be considered an application for both an REA I and an REA II.~~

##### ~~(b) Minimum Educational Requirements~~

~~(1) REA II applicants for registration shall have graduated from an accredited college or university and possess a bachelor of science degree, in a physical or~~

~~biological science, engineering or a related field.~~

~~(2) The Department shall consider a United States (U.S.) college or university to be an accredited college or university when it is accredited by Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges. A college or university which is located outside of the U.S. shall be considered an accredited college or university on the basis of its accreditation status in the education system which has jurisdiction. REA II applicants with a foreign degree may be required to submit a report by a member of the National Association of Credential Evaluation Services, Inc., or other qualified credential evaluation service.~~

~~(c) Minimum Experience Requirements.~~

~~(1) Each REA II applicant shall possess a minimum of eight (8) years of professional level environmental experience, acquired within the last ten (10) years, of which four (4) years shall be professional level site mitigation experience acquired in the last six (6) years. Professional level environmental experience and professional level site mitigation experience performed for less than an average minimum of thirty (30) hours per week will be applied toward the satisfaction of these requirements on a pro rata basis.~~

~~(d) Professional Level Environmental Experience~~

~~(1) Professional level environmental experience shall be determined by the REA II applicant's professional experience in positions in which the REA II applicant demonstrated scientifically supportable technical decision-making, as well as professional responsibility and integrity with minimal supervision.~~

~~(e) Professional Level Site Mitigation Experience~~

~~(1) Professional level site mitigation experience shall be determined by the REA II applicant's professional experience in positions in which:~~

~~(A) More than 50% of the REA II applicant's professional level site mitigation position included assessment, containment, or removal action responsibilities;~~

~~(B) An REA II applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites;~~

~~(C) An REA II applicant supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, removals; and,~~

~~(D) An REA II applicant draw scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.~~

~~(2) Professional level site mitigation experience shall be determined in part by at least four references, named by the REA II applicant, with professional level site mitigation experience. At least one reference shall be from a qualified representative of a lead agency with regulatory authority over the cleanup work at a hazardous substance or hazardous waste release site at which the REA II applicant acted as project manager. None of the references shall be related to the REA II applicant by birth or marriage.~~

~~(3) Professional level site mitigation experience shall be gained through exercising a broad range of responsibilities with assessments, containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, containments, or removals. Professional level site mitigation experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, REA II applicants must demonstrate to the Department that they have been an active participant and a principal decision maker, including but not limited to a team leader, project leader or principal scientist.~~

~~(f) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69204. REA II Application for Registration.~~

~~(a) An REA II applicant shall complete the Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and file the form, together with the REA II application fee, with the Department.~~

~~(b) Incomplete REA II applications, and applications that are not legible, not typed or printed, not completed according to the instructions, or not accompanied by the requisite fee and references, may be rejected by the Department if the REA II applicant fails to correct identified deficiencies within 30 days of notification of the deficiency. The Department may require the REA II applicant, at any time during the review period, to submit references and information related to the REA II applicant's employment history, education, experience, and any other information necessary to clarify an REA II application.~~

~~(c) If requested, the REA II applicant shall submit copies of transcripts from the appropriate educational institution or other documentation issued by educational institutions from which the REA II applicant earned the degree to demonstrate the minimum education requirement for registration. If an REA II applicant is requested to provide official transcripts for a degree, the REA II application will not be considered complete and will not be reviewed until official transcripts of the degree have been received by the Department.~~

~~(d) The Department shall consider each REA II application and the REA II applicant's eligibility for registration. The Department shall review each REA II application and supporting evidence to determine the completeness of the REA II application. Within 30 days of receipt, the Department shall inform the REA II applicant, in writing, that the REA II application is complete and accepted for review, or that the REA II application is deficient and what additional information is necessary.~~

~~(e) All fees required by provisions of Health and Safety Code section 25570.3(e)(2) as implemented by the Department shall be transmitted by money order, bank draft, credit card, or check, payable to: "DTSC/REA II."~~

~~(1) The following are the fees: \$125 nonrefundable application fee \$275 annual fee~~

~~Total initial REA II application and annual fees are \$400.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69205. DTSC's Review of Application.~~

~~Within 60 days of the Department's determination that an REA II's application is complete under section 69204, the Department shall determine if the REA II applicant meets the minimum criteria in section 69203 and is eligible for registration.~~

~~(a) The Department shall review the application for registration of an REA II for current REA I registration. If the applicant for REA II is not registered as an REA I, he or she shall become registered as an REA I pursuant to section 69201.~~

~~(b) The Department shall review REA II applications meeting the requirements of section 69204, to determine if the applicant's experience and education qualify the applicant to perform the tasks required of an REA II. In order to make this determination, the Department shall consider all relevant information pertaining to the REA II applicant's education and experience as required by Health and Safety Code section 25570.3(e), including, but not limited to, information concerning:~~

~~(1) The knowledge, skill, and expertise of the REA II applicant;~~

~~(2) The duration of the REA II applicant's relevant employment;~~

~~(3) The previous performance of the REA II applicant with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations have occurred;~~

~~(4) The previous performance of the REA II applicant with regard to the various types of remedial systems designed and monitored;~~

~~(5) The performance of the REA II applicant with regard to risk and exposure assessments;~~

~~(6) The number of individuals and disciplines of other professionals supervised or coordinated by the REA II applicant;~~

~~(7) The scientific defensibility of conclusions reached and recommendations and opinions presented by the REA II applicant; and~~

~~(8) The degree to which the REA II applicant relied upon other environmental consultants and the degree to which the REA II applicant's decision-making responsibilities were differentiated from others.~~

~~(c) Within 120 days of determining that an REA II application is complete under section 69204, the Department shall notify the REA II applicant, in writing, if registration is approved or denied.~~

~~(d) The determinations in sections 69203 and 69205 are made by reviewing evidence, including but not limited to references, reports prepared by the REA II applicant, time sheets, affidavits, comments, the REA II Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and other sources the Director deems appropriate.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69206. REA II Denial of Registration.~~

~~(a) The Department may deny the registration of an REA II applicant for the following reasons:~~

~~(1) Failure to meet the minimum criteria in sections 69203 or 69204.~~

~~(2) Any of the grounds listed in Health and Safety Code section 25570.3 (1)(1) through (8).~~

~~(3) Knowingly making any materially false or inaccurate statement in any application, record, or report.~~

~~(b) Conviction of a felony or misdemeanor involving an act of moral turpitude, as used in Health and Safety Code section 25570.3(1)(7) includes, but is not limited to, fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering or money laundering.~~

~~(c) Conviction of a felony or misdemeanor as used in Health and Safety Code sections 25570.3(1)(6) and (7) means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.~~

~~(d) An REA II applicant who is denied registration as an REA II may appeal to the Department for re-evaluation of their REA II application pursuant to section 69209. An appeal shall be filed within sixty (60) days after the date of the denial notice.~~

~~(e) The Director has final authority with respect to the denial of the registration of an REA II applicant.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69207. REA II Renewal of Registration.~~

~~(a) Registration shall be renewed within five (5) years of the anniversary date of the initial registration or renewed registration.~~

~~(b) The Department may deny a renewal for any of the following:~~

~~(1) The Registrant fails to demonstrate that his or her experience during the prior five (5) years did not consist of more than 50% of professional level site mitigation or professional level environmental experience.~~

~~(2) The Director determines, pursuant to Health and Safety Code section 25570.3 (i), that factual complaints regarding the work of the REA II warrant denying renewal; or~~

~~(3) Any of the grounds listed in section 69206.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

~~§ 69208. REA II Rescission of Registration.~~

~~(a) The Director may rescind, temporarily or permanently, the registration of an REA II, or take other disciplinary action for any of the following reasons:~~

~~(1) The grounds specified in Health and Safety Code section 25570.3(l); or~~

~~(2) any of the grounds for denial of registration specified in sections 69206(a) or 69214.~~

~~(3) The REA II knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the REA II keeps, or is required to keep, pursuant to any law.~~

~~(4) The REA II knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the REA II maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.~~

~~(5) The REA II knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement signed by the REA II.~~

~~(6) The REA II knowingly allows or orders others to do any of the actions specified in paragraphs (3) to (5).~~

~~(7) The REA II knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death.~~

~~(8) The REA II knowingly, while performing the work of an REA, places another person in imminent danger of death or serious bodily injury.~~

~~(9) The REA II makes a false statement of fact required to be revealed in the application for registration.~~

~~(10) The REA II accepts, or agrees to accept, any payment that is in any way contingent upon the completion of a response action.~~

~~(11) The REA II accepts or agrees to accept any payment that is in any way contingent upon a specified finding, opinion or result of the services rendered.~~

~~(12) The REA II fails to comply with Health and Safety Code sections 25570.3 through 25570.4; and California Code of Regulations, title 22, sections 69200 through 69214.~~

~~(13) The REA II lends his or her registration to any other person or knowingly permits the use by another person.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69209. REA II Appeal Procedures.~~

~~(a) The following procedures shall govern the appeal of decisions made under sections 69206, 69207, and 69208.~~

~~(1) An appeal shall be filed within sixty (60) days after the date of the rescission or denial notice.~~

~~(2) An appeal shall be made in writing and shall state the reason therefor. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information.~~

~~(3) The Director may reject an appeal which is not filed within the time period provided in subsection (a)(1).~~

~~(4) The Director shall notify, in writing and within 120 days of receipt of the appeal, each REA II applicant or registrant who appeals under this section of the Director's decision to either:~~

~~(A) Affirm the prior administrative decision and the reasons for the decision, or~~

~~(B) Reverse the prior administrative decision.~~

~~(5) If the Director affirms the prior administrative decision, the Director shall notify the REA II applicant or registrant of his or her right to a hearing under the Administrative Procedure Act (Government Code sections 11500 through 11530). A hearing shall be scheduled if the REA II applicant or registrant makes a written request for a hearing within 60 days after service of the notice of denial.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code.  
Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69210. REA II Audits.~~

~~(a) The Department may perform periodic audits of work performed and certified by an REA II in order to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(l).~~

~~(b) The Department may perform periodic audits of work performed outside the~~

~~Private Site Management Act (Health and Safety Code, Division 20, Chapter 6.8, Article 9), commencing with section 25395.1) and certified by an REA II to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(k) and described in section 69211.~~

~~(c) Deficiencies found during an audit, not severe enough to fall below the desired standard of performance shall be reported to the REA II and the lead agency.~~

~~(d) If, as the result of an audit, the Department finds that the work of an REA II is not in compliance with the provisions of sections 69208 and 69211, the registration of the REA II may be rescinded.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69211. Performance Standards.~~

~~(a) When conducting audits pursuant to section 69210 and when determining whether an REA II meets the desired standard of performance, the Department will consider the following:~~

##### ~~(1) Gross Negligence~~

~~Gross negligence means the REA II's failure to comply with the following:~~

~~(A) In conducting a Preliminary Endangerment Assessment, as defined in section 69200(i) or a Phase I assessment as defined in section 69200(j), the REA II shall establish and document whether a release or threatened release of hazardous substances and hazardous wastes has occurred and whether that release or threatened release poses a threat to public health or the environment.~~

~~(B) The Preliminary Endangerment Assessment shall include a community survey of residents, businesses, local officials and property owners surrounding the site to determine if there is significant community interest or controversy concerning the site. The REA II may use or employ an alternative mechanism to make this determination if it is approved by the lead agency.~~

~~(C) While conducting a Remedial Investigation as defined in section 69200(w) and a Feasibility Study as defined in section 69200(d) the REA II shall efficiently and effectively characterize the nature and extent of risks posed by hazardous substances and hazardous wastes and evaluate remedial options. Characterization of the nature and extent of risks shall include:~~

~~1. The gathering of information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate~~

~~for a given site; and,~~

~~2. Data gathering that is adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment, conduct treatability studies as necessary and evaluate potential performance and evaluate the cost of treatment and/or remedial work.~~

~~3. The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices, and shall take into consideration guidance published by the Department.~~

~~(D) In conducting a Remedial Design as defined in section 69200(v), a Remedial Action as defined in section 69200(t), and/or a Removal Action as defined in section 69200(x), the REA II shall detail the steps to be taken to meet the remedial objectives outlined in the Remedial Action Plan as defined in section 69200(u), Corrective Action Plan as defined in section 69200(a), Removal Action Workplan as defined in section 69200(y) or equivalent plan required by a Lead Agency.~~

~~(E) When conducting remedial work that results in ongoing operations and maintenance as defined in section 69200(i), the REA II shall prepare an operations and maintenance (O&M) plan which includes the O&M schedule, cost estimate, and provides for periodic value engineering and review.~~

## ~~(2) Inexcusable Neglect of Duty~~

~~(A) An inexcusable neglect of duty means the failure of the REA II to comply with the following:~~

~~1. Hold paramount the public health, safety and welfare, comply with all applicable laws and regulations and;~~

~~a. Apply the knowledge and skill referenced in sections 69203 and 60205, and required of an REA II practicing in California;~~

~~b. Act in a manner that protects the health and safety of the public, the health and safety of workers, and the environment;~~

~~c. Provide proof of insurance to each client, prior to beginning work for that client.~~

~~2. Exercise independent professional judgment and objectivity in any professional statement, testimony or report issued by the REA II.~~

~~3. Make a good faith and reasonable effort to identify and obtain relevant material;~~

~~data, reports and other information, regarding conditions at the site upon which an REA II shall render a cleanup opinion. The Remedial Action Plan as defined in section 69200(u), Removal Action Workplan as defined in section 69200(y) or Corrective Action Plan as defined in section 69200(a), prepared by the REA II shall describe the efforts of the REA II to obtain relevant material, data, reports, and other information.~~

~~4. Evaluate and select sound scientific or technical methodologies for conducting investigations, assessments, and remedial work at hazardous substance and hazardous waste sites;~~

~~5. Develop sound technical conclusions, well-founded and documented recommendations and competent opinions based upon the results of multi-media investigations and assessments;~~

~~6. Have an understanding of relevant and applicable laws, regulations and guidance related to the investigation, assessment and remediation of hazardous substances and hazardous wastes; and~~

~~7. Render a hazardous substance or hazardous waste site cleanup opinion only when the REA II possesses the necessary education, training, and experience to render such an opinion, and the REA II has:~~

~~a. Managed, supervised or actually performed the work which is required to render a hazardous substance or hazardous waste site cleanup opinion; and,~~

~~b. Relied on personal professional experience, expertise, education or training; or,~~

~~c. Relied, in part, upon the advice of one or more professionals whom the REA II determines are qualified and possess the necessary education, training, expertise and experience in other areas, outside the registered professional's area of professional practice.~~

~~8. In rendering a hazardous substance or hazardous waste site cleanup opinion, the REA II shall disclose and explain the relevant facts, data, and other information which support the opinion. The opinion shall include all qualifications and limitations of the opinion.~~

~~9. If an REA II identifies an imminent hazard or a condition of imminent or substantial endangerment at a property at which the REA II is providing professional services, the REA II shall:~~

~~a. Immediately notify the client, and when necessary, an agency with authority to respond to an emergency, of the imminent hazard or the imminent and substantial endangerment, and of the need to notify the lead agency.~~

~~b. As soon as possible, but within 24 hours, the REA II shall orally notify the lead agency. Written confirmation of such notice shall be submitted electronically, by personal delivery or mail within 72 hours.~~

~~10. An REA II shall notify the client and lead agency, within 10 calendar days of learning of material facts, data or other information, which existed at the time a previous opinion was rendered by the assessor or a predecessor assessor, that:~~

~~a. Supports a hazardous waste site cleanup opinion contrary to his or her previously rendered opinion, or;~~

~~b. Supports a hazardous waste site cleanup opinion contrary to a previous opinion by a predecessor REA II.~~

~~(3) Intentional misrepresentation of laboratory data or other intentional fraud.~~

~~(4) Charging for services not rendered, or for performing services that are not reasonably necessary.~~

~~(5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.~~

~~(6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13.~~

~~(7) Conviction of a felony or misdemeanor involving moral turpitude.~~

~~(8) Knowingly making a false statement regarding a material fact or knowingly failing to disclose a material fact in connection with an application for registration.~~

~~(b) Upon request or referral by the Department, by any lead agency, or by any person, the Department shall investigate complaints regarding the REA II's failure to meet applicable performance standards. The Department may conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of the allegations set forth in a complaint.~~

~~(c) To facilitate disposition of a complaint, (at any time prior to the commencement of an adjudicatory proceeding), the Department may request the person filing the complaint, the REA II who is the subject of the complaint, or any other person to attend an informal conference to discuss the complaint, and any associated technical data, report, records, environmental samples, photographs, maps and files.~~

~~(d) An REA II shall provide the Director's authorized representative with complete access at any reasonable hour of the day to all requested information including, but not limited to, technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, contracts, invoices, payment schedules and accounting records, with the exception of proprietary or other confidential information related to implementation and compliance with the requirements of the REA II Program.~~

~~(e) An REA II shall not submit a report or render a hazardous substance or hazardous waste site cleanup opinion in a report which does not include the signature and registration number of the REA II. If other registered professionals perform engineering, geologic or other professional services which are included in, or form the basis of the report or opinion, the signature and registration number of each shall be included in the report or opinion.~~

~~(f) All engineering or geologic work shall be performed by a registered professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700-6799 and the Geologist and Geophysicist Act, Business and Professions Code sections 7800-7887.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69212. State Licensing Match System.~~

~~(a) The Department shall take action regarding the registration of any Registered Environmental Assessor when appropriate pursuant to the Welfare and Institutions Code, section 11350.6. Such action may include, but is not limited to, the issuance of a temporary registration, rescission of a registration, denial of an REA application for renewal, or any other action authorized or required pursuant to section 11350.6 of the Welfare and Institutions Code.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code; section 11350.6, Welfare and Institutions Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

#### ~~§ 69213. Limitations on Registration for Aliens.~~

~~(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for the public benefit.~~

~~(b) Pursuant to section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193 (PRWORA), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA)(8~~

~~U.S.C. § 1101 et seq.), or aliens paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year, are not eligible for registration as an REA II as set forth in section 25570.2 of the Health and Safety Code, except as provided in 8 U.S.C. § 1621(c)(2).~~

~~(c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive an REA II registration, is, under section 431(b) and (c) of the PRWORA (8 U.S.C. § 1641(b) and (c)), any of the following:~~

~~(1) An alien who is lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).~~

~~(2) An alien who is granted asylum under section 208 of the INA (8 U.S.C. § 1158).~~

~~(3) A refugee who is admitted to the United States under section 207 of the INA (8 U.S.C. § 1157).~~

~~(4) An alien who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for a period of at least one year.~~

~~(5) An alien whose deportation is being withheld under section 243 (h) of the INA (8 U.S.C. § 1253(h))(as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) as amended by section 305 (a) of division C of Public Law 104-208.~~

~~(6) An alien who is granted conditional entry pursuant to section 203 (a)(7) of the INA as in effect prior to April 1, 1980, (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")~~

~~(7) An alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).~~

~~(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:~~

~~(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.~~

~~(B) There is a substantial connection between such battery or cruelty and the~~

~~need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.~~

~~2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.~~

~~3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.~~

~~4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.~~

~~5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed or clothe children or to put children into a day care for fear of being found by the abuser).~~

~~7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.~~

~~9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.~~

~~(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:~~

~~1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154 (a)(1)(A)(ii), (iii) or (iv)),~~

~~2. classification pursuant to clause (ii) or (iii) of section 204 (a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(ii) or (iii)),~~

~~3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. § 1254, as in effect prior to April 1, 1997 [Pub.L. 104-208, sec. 501 (effective September 30, 1996 pursuant to sec. 591); Pub.L. 104-208, sec 304 (effective April 1, 1997, pursuant to sec. 309); Pub.L. 105-33, sec. 5581 (effective pursuant to sec 5582)] (incorrectly codified as “Cancellation of removal under section 240A of such Act [8 U.S.C. § 1229 b] (as in effect prior to April 1, 1997).”~~

~~4. status as a spouse or child of a United States citizen pursuant to clause (i) of section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154 (a)(1)(A)(i)) or classification pursuant to clause (i) of section 204(a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(i)), or~~

~~5. cancellation of removal pursuant to section 240A (b)(2) of the INA (8 U.S.C. § 1229b (b)(2)).~~

~~(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~(9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D), and (E) below:~~

~~(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term “battered or subjected to extreme cruelty” includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.~~

~~(B) The alien did not actively participate in such battery or cruelty.~~

~~(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a~~

~~substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.~~

~~2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.~~

~~3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.~~

~~4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.~~

~~5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).~~

~~7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.~~

~~9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.~~

~~(D) The alien meets the requirements of subsection (c)(8)(C) above.~~

~~(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and~~

~~(C) below:~~

~~(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.~~

~~(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~1. The benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser.~~

~~2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.~~

~~3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.~~

~~4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.~~

~~5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).~~

~~7. The benefits are needed to alleviate nutritional risk or need resulting from the~~

~~abuse or following separation from the abuser.~~

~~8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.~~

~~9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.~~

~~(C) The alien child meets the requirements of subsection (c)(8)(C) above.~~

~~(d) For purposes of this section, "nonimmigrant" is defined the same as in section 101 (a)(15) of the INA (8 U.S.C. § 1101(a)(15)).~~

~~(e) For purposes of establishing eligibility for the REA II registration, Health and Safety Code section 25570 et seq., all of the following must be met:~~

~~(1) The applicant must declare himself or herself to be a citizen of the United States, a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)). The applicant shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," (Form REA 5, Revised 9/98 or electronic Form REA 6, Revised 9/98) which is incorporated by reference.~~

~~(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Services (INS) which serve as reasonable evidence of the applicant's declared status.~~

~~(3) The applicant must complete and sign Form REA 5 or electronic Form REA 6.~~

~~(4) Where authorized by the INS, the documentation presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:~~

~~(A) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/ immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (B), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS-issued document that contains an alien registration or alien admission number.~~

~~(B) In any of the following cases, the secondary SAVE system verification~~

~~procedure must be used to forward copies of original INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year:~~

~~1. The primary SAVE system is unavailable for verification.~~

~~2. A primary check of the Alien Status Verification Index instructs the Department to "institute secondary verification."~~

~~3. The document presented indicates immigration status but does not include an alien registration or alien admission number.~~

~~4. The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.~~

~~5. The document is suspected to be counterfeit or to have been altered.~~

~~6. The document includes an alien registration number on the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.~~

~~7. The document is a fee receipt from INS for replacement of a lost, stolen, or unreadable INS document.~~

~~8. The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the REA II registration.~~

~~(5) Where verification through the SAVE system is not available, if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document should be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department should request verification by the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant should be referred to the local INS office to obtain documentation.~~

~~(6) If the INS advises that the applicant has citizenship status or immigration~~

~~status which makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, benefits should be denied and the applicant notified pursuant to the REA II appeal procedures (Cal. Code Regs., tit. 22 § 69209), of his or her rights to appeal the denial of benefits.~~

~~(7) Provided that the alien has completed and signed Form REA 5, revised 9/98 or electronic form REA 6, revised 9/98, under penalty of perjury, eligibility for REA registration shall not be delayed, denied, reduced or terminated while the status of the alien is verified.~~

~~(f) Pursuant to section 432 (d) of the PRWORA (8 U.S.C. § 1642 (d)), a nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.~~

~~(g) Nothing in this section shall be construed to withdraw eligibility for these programs described under section 411 (b) of the PRWORA, (8 U.S.C. § 1621 (b)).~~

~~(h) Pursuant to section 434 of the PRWORA (8 U.S.C. § 1644), where the Department reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.~~

~~(i) Any applicant who is determined to be ineligible for the REA II registration, whose services are terminated, suspended, or reduced pursuant to subsections (b), and (c), is entitled to a hearing, pursuant to section 69209.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code; 8 U.S.C. Sections 1621, 1641 and 1642.~~

#### ~~§ 69214. Sunset Review.~~

~~(a) The Director in consultation with the Secretary for Environmental Protection, shall conduct a sunset review, within five years of the effective date of the regulations in sections 69200 through 69213, to determine whether the regulations should be retained, revised, or repealed.~~

~~Note: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.~~

