

INITIAL STATEMENT OF REASONS

Phase I Environmental Site Assessment (Schools)

Department Reference Number: R-02-01

This rulemaking affects California Code of Regulations, title 22, division 4.5, chapter 51.5, by adding sections 69100 through 69107. The proposed regulations would establish procedures for conducting a Phase I and for submission of sampling and analysis results for lead in soil from lead-based paint and/or polychlorinated biphenyls in soil from electrical transformers in Phase I Environmental Site Assessments to the Department of Toxic Substances Control (DTSC).

These regulations propose to incorporate by reference the following documents, which because of their length and complexity would be impractical to duplicate in the regulatory text:

(1) "American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," ASTM Standard E-1527, adopted May 10, 2000; available from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, (610) 832-9585; website <http://www.astm.org>.

(2) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 Third Edition, November 1986, as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), IIB (January, 1995), III (December, 1996), IIIA (April, 1998), IVA (January, 1998) and IVB (November, 2000); available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, (202) 512-1800; website <http://www.epa.gov/SW-846/main.htm>.

(3) "USEPA Contract Laboratory Program National Functional Guidelines for Organic Data Review," EPA 540/R-94/012; February 1994, available from National Technical Information Service (NTIS), United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487-4650; website <http://www.epa.gov/region09/qa/supfundclp.html>.

(4) "USEPA Contract Laboratory Program National Functional Guidelines for Inorganic Data Review," EPA 540/R-94/013; February 1994, available from National Technical Information Service (NTIS); United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; (703) 487-4650; website <http://www.epa.gov/region09/qa/supfundclp.html>.

(5) "Guidance on Environmental Data Verification and Data Validation," EPAQA/G-8; Peer Review Draft, June 2001, available from United States Environmental Protection Agency, Quality Staff (2811 R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (202) 564-6830; website <http://www.epa.gov/Region10/offices/oea/epaqag8.pdf>

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

At this time, there is no equivalent federal program that this regulation would conflict with or duplicate.

STUDIES RELIED ON

There were no studies relied on in the development of these regulations. A Notice of Exemption under the California Environmental Quality Act has been prepared as allowed by title 14, California Code of Regulations, and is available for public review. The proposed regulations are establishing administrative procedures that do not require peer review.

ALTERNATIVES CONSIDERED

DTSC did not pursue any alternatives other than developing regulations pursuant to Education Code section 17210(g). This Education Code section authorizes DTSC to adopt final regulations that establish guidelines for a Phase I Environmental Site Assessment. DTSC held informal meetings with the Coalition for Adequate School Housing, the California Department of Education and various school districts in the process of developing the proposed regulations. Emergency regulations were developed and went into effect on September 3, 2002. The finalization of the emergency regulations is considered to be beneficial for all parties involved. Additionally, in order for schools to receive funds to purchase property, these assessments must be conducted to ensure the health and safety of California's children.

DETAILED STATEMENT OF REASONS

Duplication: In some instances, these proposed regulations may duplicate statutory provisions in part; however, such duplication is necessary to meet the clarity standard of review. The duplication is necessary to put regulatory requirements into context and to ensure that school districts and landowners have easy access to information on preparation of Phase I Environmental Site Assessments.

Section 69100. Purpose. This section is necessary to explain why the guidelines for the development of a Phase I Environmental Site Assessment are required.

Section 69101. Applicability. This section requires that preparation of a Phase I be done in accordance with title 1, division 1, part 10.5, chapter 1, section 17213.1 of the Education Code and is necessary to explain that the governing board of a school district must obtain a Phase I Environmental Site Assessment in certain instances (refer to section 17213.1 of the Education Code).

Section 69102. Definitions. This section provides certain definitions that are applicable to the proposed regulations. The term "Phase I Addendum" provides a clear explanation of what constitutes a Phase I Addendum. "Department" is defined to

ensure there is no confusion that the term “Department” refers only to DTSC. The term “Phase I” is needed to clarify that this term is different than a Phase I Addendum. The term “PCBs” means polychlorinated biphenyls. This is provided so anyone reading the regulations understands how the term is used. USEPA Test Methods is defined, so that anyone reading the regulations can understand the term.

Section 69103. References. This section requires the use of specific references in the development of a Phase I. The ASTM and USEPA standards and guidance referenced in Section 69103 are nationally recognized standards set by well-known organizations and commonly used and referred to for sampling and analysis in similar situations. Subsection (a)(1) is necessary to reference the document which specifies the requirements adopted by ASTM for due diligence for commercial real estate transactions. A Phase I environmental assessment conducted according to this ASTM document meets the requirements of the California Education Code, Section 17210, subsection (g). Subsection (a)(2) is necessary to reference the document containing the sampling and analytical methods established by USEPA to be followed when implementing these regulations. The document specifies the exact procedures for sampling and analysis of soils for lead and polychlorinated biphenyls (PCBs). Subsection (a)(3) is necessary to reference the document containing the procedures to be followed to qualify the data produced by the USEPA analytical methods for organic compounds, including PCBs. This document offers guidance in technical review of analytical data, specifying performance criteria for specific areas such as blanks, calibration standards, performance evaluation standard materials, and instrument performance checks. Subsection (a)(4) is necessary to reference the document containing the procedures to be followed to qualify the data produced by the USEPA analytical methods for inorganic compounds, including lead. Similar to that in subsection (a)(3), this document offers guidance in technical review of analytical data. Subsection (a)(5) is necessary to reference the document, which provides guidance to assist in planning, implementing, or managing data verification and data validation processes. Data verification and data validation are necessary to demonstrate that field sampling and laboratory analytical activities have been conducted in accordance with applicable requirements, and that the resulting data meet the requirements for a specific intended use.

Section 69104. Preparation of a Phase I. This section requires that a Phase I be developed in accordance with applicable Education Code sections; that a Phase I be submitted to DTSC for review and approval; that a Phase I be prepared in accordance with references specified in Section 69104; that a Phase I may contain sampling results, and will contain a site map describing the boundary of the project and the current development on the property; a description of intended use as well as past and existing land uses; verifying information concerning site conditions, if the Phase I Addendum is submitted more than 180 days subsequent to when the Phase I was conducted; and a Phase I shall identify and evaluate sources for potential release or presence of hazardous materials. Subsection (a) is necessary to provide the specific statutory references requiring development of a Phase I Environmental Site Assessment

(Phase I). Subsection (b) is necessary to provide the process to be followed in the development of a Phase I. Subsection (c) is needed to outline what sampling may be included as part of the Phase I. Subsection (d) is necessary to describe the three types of information required--a site map, a description of the intended use of the property, and a description of past and existing land uses--in a Phase I. Subsection (e) is necessary to define how recent a Phase I and a Phase I Addendum need to be and/or the type of additional information required if the Phase I or Addendum were conducted more than 180 days prior to submittal to the Department. Subsection (f) is needed to specify the source(s) of potential contamination to be considered in the development of the Phase I.

Section 69105. Sampling for Lead in Soil from Lead-based Paint. If a school district decides to submit sampling data for lead in soil from lead-based paint, this section establishes the method for preparing and submitting sampling data, explains DTCS's review function, and outlines how sampling will occur prior to demolition of buildings or removal of foundations or slabs, or movement of soils on proposed school sites. Subsection (a) is needed to describe the ways in which a school district may submit sampling data. Subsection (b) is necessary to specify that the Department may request that sampling data be submitted in the form of a Phase I Addendum or a Preliminary Endangerment Assessment if it is determined that lead-based paint is the only potential source of contamination. Subsection (c) is needed to indicate the protocols for pre-demolition sampling for lead in soil for lead-based paint. Subsection (d) is necessary to delineate the protocols for post-demolition sampling for lead in soil from lead-based paint.

Section 69106. Sampling for PCBs in Soil from Electrical Transformers: If a school district decides to submit sampling data for PCBs in soil from electrical transformers, this section establishes the method for preparing and submitting sampling data. Subsection (a) outlines the various ways that a school district may submit sampling data for polychlorinated biphenyls (PCBs). Subsection (b) is necessary to indicate when the Department may require collection of soil samples to evaluate possible PCB contamination. Subsection (c) is needed to instruct where soil samples are to be taken from. Additionally this subsection indicates that further step-out borings may be required if PCBs from electrical transformers are identified in the soil. Subsection (d) is needed to state that only surface samples need be analyzed initially for PCBs, even though more samples are taken. If surface samples are positive for PCBs, then the samples that were collected at depth will be analyzed also. Subsection (e) is necessary to specify what quality control guidance is to be followed. Subsection (f) is required to indicate how sampling data is to be interpreted.

Section 69107. Phase I Recommendations. This section requires that the Phase I must contain one of three statements. This section is needed to inform school districts and consultants of the three recommendations that are acceptable in conclusion to a completed Phase I to be submitted to the Department: (a) No action is required; or (b) Investigation is recommended but has not been completed and results of further investigation need to be submitted to the Department as a Phase I Addendum; or (c) A

Preliminary Endangerment Assessment is required to determine if a release of a hazardous material has occurred, if there is the threat of a release of hazardous materials and/or if a naturally occurring hazardous material is present.

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