

TITLE 22

PROPOSED EMERGENCY REGULATIONS

PHASE I ENVIRONMENTAL SITE ASSESSMENT (PHASE I) (SCHOOLS)

Department Reference Number: R 02-01

FINDING OF EMERGENCY

Pursuant to section 11346.1 of the Government Code, the Department of Toxic Substances Control (DTSC) finds that adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety or general welfare. Refer to the section entitled "Statement of Facts Supporting Finding of Emergency" for a further explanation of the immediate need for these emergency regulations.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 58012. This section provides DTSC with the authority to adopt and enforce rules and regulations needed for the execution of its duties.

Education Code section 17210, subsection (g). This section authorizes DTSC to adopt final regulations that establish guidelines for Phase I for proposed school sites.

These regulations implement, interpret, or make specific the following:

Education Code section 17210, subsection (g). This section authorizes DTSC to adopt final regulations that establish guidelines for Phase I for proposed school sites.

Education Code section 17213.1. This section specifies the role of DTSC in the Phase I process.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations will benefit all school districts conducting environmental assessments. However, there are at least 11 school districts (45 school sites) that are currently awaiting the implementation of the emergency regulations in order to expedite the completion of environmental assessments. Lead assessments of these properties must be completed prior to school construction. Under Department of General Services' State Allocation Board regulations, once school districts obtain funding, they have only eighteen months to begin school facility construction, or they risk losing these funds. These regulations will allow these school districts to submit a Phase I Addendum to DTSC for review, and proceed quickly with school construction if DTSC approves the Phase I Addendum. Use of the Phase I Addendum, would reduce their environmental

review process time by at least 30 days and possibly by as much as six months. Without the emergency regulations, school districts under current law would need to prepare and submit a more extensive Preliminary Endangerment Assessment to DTSC, and go through a mandatory 30-day public review period. DTSC's evaluation of the Phase I Addendum under the emergency regulations will enable the school districts to move quickly into additional sampling and cleanup if it is needed, and/or to proceed with school construction, and will help them to avert the potential loss of substantial state funding.

Immediate regulatory change in the environmental assessment process for school sites is also necessary to preserve the general welfare of our State, by promoting the construction of new or expanding schools, and to address severe over-crowding school facilities. These procedural changes will expedite document preparation and review timeframes, saving public resources and minimizing the cost and burden on school districts. In addition, these regulations will facilitate and clarify environmental assessment statutory requirements in the Education Code. The following is an overview of the environmental assessment review process:

In order for a school district to receive state funds for acquisition or construction of schools, a school district must complete an environmental site assessment and, if necessary, select a response action that shall at a minimum be protective of children's health, with an ample margin of safety.

DTSC has developed a number of technical guidance documents to assist school districts, consultants, and the general public in understanding the environmental review process for proposed school sites. However, there are no existing regulations establishing guidelines for Phase Is conducted at proposed school sites. Since state funding for new schools requires completion of an environmental site assessment, several school districts and other stakeholders have been involved in reviewing the proposed regulations and are awaiting their implementation. For example, the Los Angeles Unified School District and the Coalition for Adequate School Housing (a large statewide organization of about 600 school districts) have expressed interest in the status of these emergency regulations.

The existing statutory requirement is that a school district conduct a Phase I in accordance with the American Society for Testing and Materials (ASTM) standards. If the Phase I indicates the presence of hazardous materials, the school district may conduct a Preliminary Endangerment Assessment (also called a Preliminary Environmental Assessment or PEA), which includes entering into an agreement with DTSC, sampling and analyzing potential contaminants, and meeting public participation requirements. Completing a PEA is more time-consuming and costly than completing a Phase I.

The existing requirement is that when DTSC determines that a Phase I indicates potential contamination of lead in soil from lead-based paint and for polychlorinated biphenyl (PCB) in soil from electrical transformers, the school district must conduct a PEA to determine the extent, if any, of lead or PCB contamination. These two contaminants commonly result from previously commercial or residential land uses at proposed school sites. Old structures may contain lead-based paints. Old electrical transformers may contain PCBs. Both are likely to cause surface soil contamination with lead and/or PCBs. The potential presence of these contaminants is often the only reason a PEA is required at many proposed school sites.

Based upon past experience, numerous cases have shown that the PEA indicates levels of lead or PCBs that do not pose a health risk. Nevertheless, because existing standards do not include a procedure for submitting lead and PCB samples and analytical results during the Phase I, the school district has to go through the PEA process.

The proposed regulations specify procedures for conducting a Phase I for proposed school sites and includes an Addendum for sampling and analysis for lead in soil from lead-based paint and for PCBs in soil from electrical transformers in the Phase I process.

The proposed regulations enable school districts and their proponents to include the analytical results of sampling for lead in soil from lead-based paint and for PCBs in soil from electrical transformers in the Phase I. If results of sampling for these two contaminants at a proposed school site indicate that these contaminants do not pose an excessive threat to human health or the environment under unrestricted land use, no further investigation of the site would be required by DTSC for those contaminants. Therefore, these guidelines will help expedite the environmental review process where appropriate, and allow focusing of resources where they are most needed.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

These emergency regulations are needed immediately to enable the Department of Education to proceed with construction projects to provide safe, healthy school facilities in California. California is desperately in need of new school facilities. Existing school facilities are inadequate in quality and quantity. In many instances school facilities are unsafe due to overcrowded conditions and physical plant deterioration.

The general welfare of California's children is at stake. If DTSC does not proceed with these emergency regulations immediately, the result is likely to be:

- 1 – 6 month delay in obtaining the statutorily required environmental reviews at proposed school sites.
- Delays in the start of construction of at least 45 new school facilities needed to provide a safe environment for California's school age children.
- School districts face the potential loss of millions in state funding. If such funding is lost, school districts may not have options for new funding.
- Added environmental review costs for school districts if they cannot accomplish the needed environmental review through this proposed Phase I process.

These regulations are necessary for the general welfare of school age children by addressing the problems of inadequate and severely overcrowded public schools. The site assessment process for proposed school sites will be improved by adoption of these regulations, and clarify the environmental assessment requirements in the Education Code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

FISCAL IMPACT ESTIMATES:

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates. These regulations provide a voluntary option to school districts that choose to conduct a Phase I. Any mandates that are imposed on school districts already exist in statute and these regulations impose no new mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: The requirements for completion of a Phase I in the regulations would have no fiscal impact on DTSC because the regulations merely clarify Phase I activities required by current law. The regulations could result in some

additional costs for DTSC to review a Phase I Addendum. However, any costs for DTSC to review the Phase I Addendum would be reimbursed by the school district.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.