



Department of Toxic Substances Control



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**15-DAY PUBLIC NOTICE AND COMMENT PERIOD
NOTICE OF PUBLIC AVAILABILITY OF POST-HEARING CHANGES
PRIVATE SITE MANAGEMENT PERFORMANCE STANDARDS**

Department Reference Number: R-96-01

Pursuant to Government Code Section 11346.8(c), notice is hereby given that the Department of Toxic Substances Control (DTSC) has revised section 69000.5 of the proposed regulations to delete the definition for "OEHHA" (Office of Environmental Health Hazard Assessment). Proposed section 69012, subsection (e) has also been revised to delete the reference to OEHHA and to specify the actions DTSC may take in the event an audit finds that the Private Site Manager failed to meet the Private Site Management performance standards or the Department makes one or more of the findings specified in Health and Safety Code section 25570.3, subdivision (I). These text revisions are necessary due to statutory changes based on Senate Bill No. 1011 (Stats. 2002, ch. 626), which transfer responsibility for the Registered Environmental Assessor Program from OEHHA to DTSC, effective January 1, 2003, and authorize DTSC to determine minimum standards of performance for registered environmental assessors.

The proposed regulations are described in detail in the Initial Statement of Reasons for this rulemaking and the 45-day notice for the initial proposal, published on June 7, 2002. A public hearing on the proposed regulations was held on July 22, 2002. Written and oral testimony regarding the proposed regulations was accepted at that public hearing. In addition, written comments were accepted during the 45-day public comment period preceding the public hearing. The proposed changes to the regulation text described in this 15-day notice were made after the public hearing.

This 15-day notice includes all proposed revisions made to the initially proposed regulatory text. Notice is given that any interested persons may submit comments regarding the proposed revisions in this 15-day notice to:

Ms. Joan Ferber
Department of Toxic Substances Control
Environmental Analysis and Regulations Section
PO Box 806
Sacramento, CA 95812-0806

Facsimile: (916) 323-3215
Email: Regs@dtsc.ca.gov

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

DTSC will consider written comments submitted by mail, facsimile or email prior to 5:00 p.m. on December 2, 2002 and will make modifications, if appropriate, in light of the comments received.

A copy of the proposed revised text is attached. The ~~bold/strike through~~ for deletions of text and the **bold/double underline** for additions of text represent the revisions to the text proposed in this 15-day notice. The information that forms the basis for the proposed revisions is available for public inspection between 8:00 a.m. and 5:00 p.m. at the Environmental Analysis and Regulations Section, located at 1001 I Street, 22nd Floor, Sacramento, California. Request and inquiries concerning this matter may be directed to Ms. Joan Ferber, Environmental Analysis and Regulations Sections, at the address indicated above or by telephone at (916) 322-6409.

Inquiries regarding technical aspects of the proposed changes in regulation text should be directed to Laurie Grouard, of the Site Mitigation and Brownfields Reuse Program, DTSC, at (916) 323-3394.

Dated: November 13, 2002

Original Signed by:
James McRitchie, Chief
Office of Environmental Analysis,
Regulations and Audits

**TEXT OF PROPOSED REGULATIONS
With Additional Proposed Modifications**

Additional Proposed Modifications are indicated by ~~bold/strike through~~ (for deletions of text) and **bold/double underline** (for additions of text).

(Add new chapter 51, article 1, commencing with section 69000, to title 22, California Code of Regulations)

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 25395.1 through 25395.15, Health and Safety Code.

§69000.5. Definitions.

Except as otherwise specified, the terms used in this article have 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) "OEHHA" means the Office of Environmental Health Hazard Assessment.

(no) "O&M" means operation and maintenance.

(op) "PEA" means preliminary endangerment assessment.

(pq) "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.

(qr) "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.

(rs) "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.

(st) "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.

(tu) "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.

(uv) "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.

(vw) "RAW" means removal action work plan.

(wx) "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.

(xy) "RI" means remedial investigation.

NOTE: Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25356.1, 25395.1 through 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 the State and federal technical guidance documents and manuals, consistent with section 69008, used to prepare the report, plan, design or other document;

(5) Appropriate formatting, to the extent feasible, as designated by the Department in its policies and procedures and guidance documents relevant to the submitted document;

(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.

Authority cited: Sections 25351.5 and 25395.15, Health and Safety Code. Reference: Sections 25358.7, 25358.7.1, 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 (June 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.

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 section 69011(b), 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 25395.1 through 25395.15, 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 section 25395.8(a) 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; sections 21108 and 21166 of the 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 ~~or a Private Site Management Team~~ 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 subdivision (l) of section 25570.3, of the Health and Safety Code**, the Department ~~will transmit its findings to OEHHA~~ **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 a 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, **and** 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 section 69011(i).

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.