



Toxics Special Edition REGISTER

THE NEWSLETTER OF CALIFORNIA'S COALITION FOR ADEQUATE SCHOOL HOUSING

History of Toxics Issue:

Why Schools Can't Self-Certify



In 1995, the Department of Toxic Substances Control (DTSC) became involved in the acquisition of a new school site that was near a State Superfund cleanup site in the Los Angeles area. A number of issues arose as to how the district handled the cleanup of the site.

This incident, along with a handful of others in Southern California, prompted the Joint Legislative Audit Committee (JLAC) to conduct hearings in 1998. The JLAC concluded that existing practices were inadequate to assure due diligence in the approval process for new site acquisitions. As a result, a number of state legislators were eager to resolve these issues and in 1999 introduced legislation.

The legislation addressed site acquisition for future sites (AB 387/Wildman and SB 162/Escutia), health standards for school children (SB 993/Hayden) and a pilot project for existing sites (AB 137/Firebaugh). All four bills were passed by the Legislature; however, the Governor only signed legislation to address toxic contamination issues when acquiring new school sites and additions to existing school sites.

Schools may no longer self-certify that a schoolsite meets specified standards and are now required to obtain approval from the DTSC before they can access state bond funds for site acquisition.

C.A.S.H. Task Force

C.A.S.H. has formed a Toxics Task Force Committee to develop appropriate recommendations for changes to state administrative regulations and state law dealing with the implementation of new toxic requirements for site acquisition.

Members of the committee include:

- Past Chair Terry Bradley, Clovis Unified School District
- Legislative Chair Stephanie Gonos, San Juan Unified School District
- Board Member Lettie Boggs, Anaheim City School District
- Legal Advisor Stephen Hartsell, Schools Legal Service
- C.A.S.H. Staff Member Laura O'Leary

Task Force members meet monthly with the California Department of Education (CDE), Department of Toxic Substance Control (DTSC) and the Office of Public School Construction (OPSC) to discuss the various issues associated with the new legislation.

In This Issue...

Page 2 ▶ New Laws on Site Aquisition

Page 3 ▶ Meeting Calendar

Page 5 ▶ Update on Activites

Page 6 ▶ How to Contact DTSC

Page 6 ▶ CASH Hires

Environmental Experts

New Laws on Site Acquisition

Last year's legislation, Assembly Bill 387 (Wildman) and Senate Bill 162 (Escutia), require a new process for site acquisition to ensure that there is no presence of toxic contamination.

The new laws apply to projects funded with Proposition 1A funds under the new School Facility Program beginning on January 1, 2000. Following are the steps schools must now take when acquiring new schoolsites or adding to existing schoolsites:

Phase I Environmental Assessment

1. Require the school district governing board to contract with an environmental assessor to conduct a Phase I environmental assessment on the proposed site;
2. Submit the Phase I to the California Department of Education (CDE). The Phase I may be submitted prior to the submission of other documentation related to the proposed schoolsite;
3. Require the CDE to transmit the Phase I, within 10 calendar days, to the Department of Toxic Substances Control (DTSC) for review and approval; and
4. Require the DTSC to review and approve the Phase I within 30 calendar days.

Preliminary Endangerment Assessment (PEA)

If it is determined by the CDE or DTSC that a PEA is warranted, the school district must enter into an agreement with an environmental assessor to prepare a PEA *and* contract with DTSC to oversee the preparation of a PEA, or elect not to pursue the proposed schoolsite.

A PEA requires the sampling and analysis of a site to determine the type and extent of hazardous material contamination present on the site. It also includes a preliminary evaluation of the risks that the hazardous material contamination may pose to children's health, public health, or the environment according to the guidelines published by DTSC.

The school district must submit the PEA to: 1) DTSC for review and approval and 2) the public for review for not less than 30 calendar days. DTSC must complete its review within 60 calendar days for either approval or disapproval.

Remediation/Response

If the PEA (and DTSC) determine that a release of hazardous materials has occurred, the school district may elect not to pursue the site acquisition *or* do *all* of the following:

1. Prepare a financial analysis to estimate response costs;
2. Assess the benefits of using the proposed schoolsite compared to alternative sites;
3. Obtain CDE approval that the proposed site meets specified standards; and
4. Evaluate the suitability of the site in light of recommended alternative sites.

If response action is required for the proposed schoolsite, the district must contract with DTSC to oversee the response action. The school district must reimburse DTSC for all their costs related to any review and/or response action.

Funding

The State Allocation Board (SAB) may provide 50 percent of the cost of the evaluation and any remediation action, including the fees charged by DTSC.

Funding for these costs may not exceed 50 percent of a number calculated by subtracting the school district's cost of the site from what the appraised value of the site would be after the clean up.

Financial Hardship—The SAB may provide up to 100 percent of the cost of the evaluation for eligible hardship districts.

Environmental Hardship—School districts may apply to the SAB for site acquisition funding prior to having construction plans for that site approved by the Division of the State Architect (DSA) and the CDE. The project is eligible for environmental hardship if: 1) the remediation plan approved by DTSC is estimated to take more than six months to complete and 2) the CDE determines that the site is the best available alternative site. The date the SAB approves the environmental hardship will become the SAB

Continued on page 5

About C.A.S.H. Membership

C.A.S.H. is a diverse coalition of public and private sector members with one main goal: provide adequate school housing for all public school children in California.

In addition to the over 500 school districts and county offices of education that are members, C.A.S.H. has over 500 associate members in the following categories:

- Affiliated Organizations
- Architects
- Attorneys
- Construction Managers
- Consultants & Planners
- Contractors & Developers
- Election Consultants
- Energy Consultants
- Environmental/Toxics Consultants
- Facility Consultants
- Financial Consultants
- Financial Institutions
- Furniture & Equipment Suppliers
- Governmental Relations Consultants
- Inspectors
- Licensed Professionals Serving Architects
- Other
- Outdoor/Recreation Equipment Suppliers
- Real Estate Consultants
- Relocatable Dealer & Suppliers
- Relocatable Manufacturers
- Technology/Telecommunications Consultants



Tentative Calendar

Meetings, Workshops and Conferences for 2000-2002

May 18-19, 2000
Thursday-Friday

C.A.S.H. Spring Conference
Wyndham Hotel San Diego
400 West Broadway
San Diego, CA

September 27, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

May 24, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

September 29, 2000
Friday

Workshop
Ontario Airport Marriott
2200 E. Holt Blvd.
Ontario, CA

June 27, 2000
Tuesday
9:00 a.m. - 2:30 p.m.

Cost Containment Cookbook Review
Doubletree Hotel
2001 Point West Way
Sacramento, CA

October 12-13, 2000
Thursday- Friday

C.A.S.H. Fall Conference
Doubletree Hotel
3050 Bristol Ave.
Costa Mesa, CA

June 28, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

October 25, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

June 30, 2000
Friday
9:00 a.m. - 2:30 p.m.

Cost Containment Cookbook Review
Ontario Airport Marriott
2200 E. Holt Blvd.
Ontario, CA

The November/December C.A.S.H. monthly meeting, workshops and State Allocation Board meeting dates will be determined at a later date

July 25, 2000
Tuesday

Toxics Issues Workshop
Doubletree Hotel
2001 Point West Way
Sacramento, CA

March 5, 2001
Monday

**C.A.S.H. Annual Conference
Golf Tournament**
Location: TBA

July 26, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

March 6-8, 2001
Tues. - Thurs.

C.A.S.H. 22nd Annual Conference
Doubletree Hotel
2001 Point West Way
Red Lion Hotel
1401 Arden Way
Sacramento, CA

July 28, 2000
Friday

Toxics Issues Workshop
Ontario Airport Marriott
2200 E. Holt Blvd.
Ontario, CA

October 11-12, 2001
Thursday- Friday

C.A.S.H. Fall Conference
Doubletree Hotel
3050 Bristol Ave.
Costa Mesa, CA

August 22, 2000
Tuesday

Workshop
Doubletree Hotel
2001 Point West Way
Sacramento, CA

February 25, 2002
Monday

**C.A.S.H. Annual Conference
Golf Tournament**
Location: TBA

August 23, 2000
Wednesday
11:00 a.m. - Noon

General Membership Meeting
California Chamber of Commerce Meeting Room
1215 K Street, 14th Floor
Sacramento, CA

February 26-28, 2002
Tues. - Thurs.

C.A.S.H. 23rd Annual Conference
Sacramento Convention Center
1301 L Street at 14th Street
Sacramento, CA

August 25, 2000
Friday

Workshop
Ontario Airport Marriott
2200 E. Holt Blvd.
Ontario, CA

October 10-11, 2002
Thursday- Friday

C.A.S.H. Fall Conference
Doubletree Hotel
3050 Bristol Ave.
Costa Mesa, CA

September 26, 2000
Tuesday

Workshop
Doubletree Hotel
2001 Point West Way
Sacramento, CA

C.A.S.H. monthly meetings are held from 11:00 a.m. to Noon in Sacramento on the 4th Wednesday of the month to coincide with the monthly meeting dates of the State Allocation Board. Workshop are scheduled on the 4th Tuesday of the month in Sacramento and repeated on the 4th Friday of the month in Ontario. Workshop and meeting locations are subject to change. Workshops are not held in February, May and October.

C.A.S.H. Leadership

OFFICERS

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PAST CHAIRS

Gene Hartline, Founding Chair (78-80)
California Financial Services
(949)496-7800 • (949)496-4082 fax

Dave King, Past Chair (80-82)
Dave King & Associate
(714)544-5029 • (714)731-1350 fax

Constantine Baranoff, Past Chair (83-84)
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(916)686-7711 • (916)686-7754 fax

Dave Christensen, Past Chair (85-86)
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(909)943-4014 • (909)940-0427 fax

Tom Duffy, Past Chair (87-88)
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(916)441-3300 • (916)441-3893 fax

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(707)263-3080 • (707)263-0197 fax

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Dry Creek Elem. SD
(916)771-0683 • (916)771-0650 fax

Marnie Starr, Past Chair (95-96) • Lodi USD
(209)331-7219 • (209)331-7229 fax

Terry Bradley, Immediate Past Chair • Clovis USD
(559)327-9120 • (559)327-9129 fax

MEMBERSHIP APPLICATION FORM

Membership Categories:

School Districts (by ADA):

- 0-999 (Maximum dues \$132) \$27.50
plus \$0.13 per ADA
- 1,000-4,999 \$259.00
- 5,000-9,999 \$352.00
- 10,000-14,999 \$468.00
- 15,000 and over \$567.00
- County Offices of Education \$540.00
- Associate Members, including corporations, private companies and consultants \$490.00
- Affiliated Organizations (other Associations and Gov't Agencies) \$275.00
- Licensed Professionals Serving Architects \$150.00
- School Construction Inspectors \$150.00
- C.A.S.H. Web Sponsorship \$400.00
- Additional Mailing to a member at the same address \$75.00

- C.A.S.H. Fax Service \$120.00
- State Agency Individual \$75.00
- Maintenance Network \$190.00

Associate Members (please check one category):

- Architect
- Attorney
- Consultant or Facility Planner
- Contractor, Developer or Subcontractor
- Construction Manager
- Election Consultant
- Energy Consultant
- Environmental/Toxics Consultant
- Facility Consultant
- Financial Consultant
- Financial Institution
- Furniture or Equipment Supplier
- Outdoor/Recreation Equipment Supplier
- Real Estate Consultant
- Relocarable Classroom Manufacturer
- Relocarable Dealers/Suppliers
- Technology/Telecommunications Consultants
- Other (please specify) _____

Organization _____

Name 1 _____ Name 2 _____

Phone 1 _____ Phone 2 _____

Address _____

City _____ State _____ Zip _____

Fax _____ Date _____

M/C Visa American Express _____ Expiration _____

Signature _____

Make checks payable to: Treasurer, C.A.S.H., 1130 K Street, Suite 210, Sacramento, CA 95814.

Questions? Call (916) 448-8577.

Update on Activities

C.A.S.H. has been working with DTSC, CDE, the Legislature and the Administration on a number of issues to make the new site acquisition program work for schools. Following is an update on those activities:

Model Agreement: The Toxic Task Force Committee, in consultation with the C.A.S.H. Legal Advisory Committee, spent many hours revising and refining the Voluntary Cleanup Agreement (VCA).

Previously, DTSC required schools to use the department's existing VCA; however, this agreement was very cumbersome and did not address issues specific to public schools. DTSC asked C.A.S.H. to propose an alternative agreement, which is now called the Environmental Oversight Agreement (EOA).

C.A.S.H. would like to thank DTSC staff for their efforts in coming to an agreement on the new EOA. This agreement is expected to be final by the end of April. The agreement will be distributed to all C.A.S.H. members as well as posted to the C.A.S.H. web site: www.cashnet.org.

Penalty Regulations: DTSC has proposed a set of regulations that would change the way it assesses administrative penalties for violations of hazardous waste requirements. The proposed regulations could potentially result in DTSC assessing significantly higher penalties than they do now. These regulations would apply to all school districts and local agencies.

C.A.S.H.'s environmental attorney, Peter Weiner, raised a number of issues with DTSC about the proposed regulations. DTSC has agreed to revisit some of the objectionable language identified by C.A.S.H., and will be talking with interested parties before re-circulating a new set of proposed regulations.

Agricultural Land Guidelines: DTSC is in the process of developing screening guidelines for agricultural sites. C.A.S.H. will have an opportunity to respond to the proposed guidelines before they are finalized. DTSC

will provide a draft copy to C.A.S.H. within the next two weeks.

Demolition Specifications: C.A.S.H. is working with CDE and DTSC on developing specifications for demolitions.

Budget Request: C.A.S.H. is proposing a budget request to fund DTSC oversight costs. DTSC anticipates its oversight costs for Phase I environmental assessments, Preliminary Endangerment Assessments, and complex cleanups to be as much as \$8.4 million this next year.

Currently, school districts pay DTSC oversight costs out of state general obligation bond funds or their local funds. The Governor is proposing to fund DTSC staff positions through reimbursements. Given that this source of funding is also public money, it is more efficient to appropriate the money from the General Fund directly to DTSC. C.A.S.H. believes it is appropriate to take from the general fund because of the total benefit to the State of providing clean, safe schools, and it is far better to fund DTSC upfront so that it can obtain adequate staff for the job, and assist in expediting the process.

Assembly Member Virginia Strom-Martin (D) and Senator Byron Sher (D), the chairs of the relevant subcommittees of the Assembly and Senate Budget Committees, have raised this issue in their respective subcommittees. Both subcommittees have put this item over until the May Revision is released.

Legislation: C.A.S.H. is co-sponsoring Assembly Bill 2644 (Calderon) with the Association of California School Administrators and the California School Boards Association.

AB 2644 (Calderon), makes necessary fine-tuning adjustments to the new program requiring DTSC to review environmental assessments of school sites. Specifically, AB 2644 will:

- Expand the number of qualified environmental professionals who are available to conduct the required environmental assessments by allowing the same professional engineers and

geologists who currently work on private sites, to work on school sites

- Ensure that school districts are provided with a fair opportunity to remedy and resubmit a Phase I environmental assessment that has initial deficiencies rather than automatically being required to undertake the second step of investigation before there has been adequate information to determine that the time-consuming second step is actually warranted;
- Codify DTSC's informal practice of allowing the Phase I assessment requirement to be satisfied by following the requirements adopted by the American Society for Testing and Materials (ASTM);
- Clarify language that could inaccurately imply that the assessments are conducted because there is a known environmental problem with a site rather than their true purpose which is to find out whether or not there is any problem; and
- Ensure that public participation requirements will be initiated only after DTSC has determined that there are indeed environmental problems that need to be remedied. ☐

New Laws on Site Aquisition

Continued from page 2

approval date for the project's construction funding for that site.

Additions to Existing Sites

For existing sites where minor additions are made, these requirements do not apply if the addition is eligible for an exemption under the California Environmental Quality Act (CEQA).

Liability

The bill specifies a school district that releases information concerning a PEA may not be held liable for any action filed against the school district for making the assessment available for public review. ☐

How to Contact DTSC

The Department of Toxic Substance Control (DTSC) has created a new schools division within its department to provide staff assistance specifically to school districts in getting their site acquisition applications approved.

Mr. Hamid Saebfar has been named the new School Division Chief. He will be responsible for all school issues across the state. Mr. Saebfar is in the process of setting up managers in offices throughout the state. These offices will be up and running by this Fall. In the meantime, school districts should contact Mr. Saebfar directly for all of their DTSC applications.

Contact:

Hamid Saebfar, Division Chief
School Property Evaluation and Cleanup
Department of Toxic Substance Control
1011 N. Grandview Avenue
Glendale, CA 91201
(818) 551-2878 ph.
(818) 551-2832 fax



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c/o Murdoch, Walrath & Holmes
1130 K Street, Suite 210
Sacramento, CA 95814

C.A.S.H. Hires Environmental Experts

Due to the nature and complexity of the toxic issues, C.A.S.H. has recently contracted with two acknowledged experts to assist in resolving identified administrative and legislative issues.

The two individuals are environmental attorney Peter Weiner, Paul Hasings, Janofsky & Walker LLP; and environmental consultant Anthony Ward, ARCADIS Geraghty & Miller.

The Toxic Task Force Committee has asked these experts to assist in the following areas:

Administrative Issues:

- Model Environmental Oversight Agreement
- Standards, including asbestos, lead, and agricultural land
- Proposed DTSC Penalty Regulations

Legislative Issues:

- Indemnification for the Phase I Study
- REA II qualifications
- Public participation after the completion of the Preliminary Endangerment Assessment
- DTSC oversight fees

Attn: School Board President
Westside Elem SD
Box 308
95814

95300

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