

## **GUIDELINES FOR OVERSIGHT AGENCY SELECTION**

### **CALIFORNIA LAND ENVIRONMENTAL RESTORATION AND REUSE ACT**

#### **Background.**

The California Land Environmental Restoration and Reuse Act (Senate Bill No. 32 (Escutia, Chapter 764, Statutes of 2001) established the California Land Environmental Restoration and Reuse (CLERR) Program. Among other things, the program prescribes a process by which local governmental agencies may determine whether properties that are within their jurisdictions are impaired by hazardous material contamination and, if they are contaminated, procedures that must be followed to address that contamination. The program allows local agencies to compel property owners to assess the conditions of their property, or to assess the property themselves.

All assessments and any subsequent cleanup activities that are conducted under the provisions of this program are required to be done under the oversight of the Department of Toxic Substances Control (DTSC), the appropriate Regional Water Quality Control Board (Regional Board), or, under limited circumstances, a local regulatory agency.

The California Land Environmental Restoration and Reuse Act requires the California Environmental Protection Agency (Cal/EPA) to develop guidelines to determine which of the above oversight agencies is to oversee site investigations and remedial actions under the program. This document has been developed to provide those guidelines.

#### **I. Submissions of Phase I Environmental Assessment Reports** (Health & Safety Code (HSC) § 25401.2(b)(1)).

To begin the process of oversight agency selection, a local agency must first submit a Phase I environmental assessment prepared for this program to Cal/EPA.

##### **A. Addresses.**

All Phase I environmental assessments prepared under this program, and any other information related to the selection of an oversight agency, shall be sent to the following addresses:

California Land Environmental Restoration and Reuse Program  
Oversight Agency Selection  
c/o California Environmental Protection Agency  
P.O. Box 2815  
Sacramento, CA 95812

Ms. Dorothy Rice, Deputy Director  
Site Mitigation Program  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Ms. Barbara Evoy, Chief  
Division of Clean Water Programs  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**B. Information to be submitted.** In addition to the Phase I environmental assessment prepared to assess the subject property, the local agency shall also submit the following information:

1. The location of the property;
2. The names and addresses of the owner and operator of the property;
3. Copies of any notices sent to the owner or operator under the provisions of this program and any responses of the owner or operator to those notices;
4. Information demonstrating that the property is an eligible property under the program;
5. Information demonstrating that the local agency is an agency designated under this program. Note: This information need only be provided on a local agency's first request for oversight agency selection. Any subsequent requests may omit this information, unless that information has substantively changed since the original request.

## **II. Eligible Oversight Agencies** (HSC § 25401.2(b)(2))

Under this program, the selected oversight agency may only be DTSC, the Regional Board in whose jurisdiction the property is located, or, under limited circumstances, a qualified local agency.

## **III. Oversight Agency Selection** (HSC § 25401.2(d))

To select the oversight agency, representatives of DTSC and the State Water Resources Control Board (SWRCB) will, within the specified timeframes, meet and confer on each Phase I environmental assessment and related information submitted under this program. In selecting an oversight agency, the representatives of DTSC and SWRCB will weigh the factors described in

paragraph IV below as they apply to the property, and use the criteria specified in paragraph V below as guidelines. If more than one of the criteria apply to the property, the representatives of DTSC and SWRCB are to use their best judgment, taking into account the known facts concerning the hazardous materials release at the property and its regulatory history, in determining which agency may best serve as the oversight agency.

When an oversight agency has been selected, the selected oversight agency shall notify the local agency and the owner or operator of the property of its selection and of any additional requirements that must be fulfilled in order to oversee the site investigation or remedial activities at the property.

#### **IV. Oversight Agency Selection Factors**

(HSC § 25401.2(b)(3))

The representatives of DTSC and the SWRCB will consider the following factors in the selection of the appropriate oversight agency:

- A. The type of release or threatened release that is the subject of the site investigation or remedial action.
- B. The nature of the threat that the release or threatened release poses to human health and safety or to the environment, including waters of the state.
- C. The source of the release or threatened release, the type of facility or activity from which the release or threatened release occurred, the regulatory programs that currently govern or have historically governed the property, facility or activity involved, and the current or historic involvement of regulatory agencies at the subject property.
- D. The regulatory history of the property or site, the types of regulatory actions or enforcement actions that have been taken with respect to the property or site or the facility or activity from which the release has occurred, and the experience and involvement that DTSC, the appropriate Regional Board, or a qualified local agency have had with the property.
- E. The capabilities and expertise of DTSC, the appropriate Regional Board, or a qualified local agency, and the degree to which those capabilities and that expertise are applicable to the type of release at the property, the nature of the threat that the release poses to health and safety or the environment, including waters of the state, and the probable remedial measures that will be required.

- F. The level of staffing and other relevant resources that are currently available within DTSC, the appropriate Regional Board, or a qualified local agency to provide appropriate and timely oversight of the proposed remedial action.

## **V. Oversight Agency Selection Criteria**

(HSC § 25401.2(b)(3))

### **A. Selection of DTSC**

The oversight agency shall be DTSC if one of the following applies:

1. DTSC is conducting, or has conducted, oversight of the site investigation and remedial action at the property at the request of the responsible party.
2. DTSC has been selected to oversee the site investigation or remedial activities at the property under the authority of another program.
3. The type of release or threatened release that is the subject of the site investigation or remedial action involves primarily soil contamination, and the primary concern is the risk posed to human health.

### **B. Selection of a Regional Board**

The oversight agency shall be the Regional Board for the region in which the property is located if one of the following applies:

1. The source of the release is a facility or an activity that is regulated by the Regional Board pursuant to article 5.5 (commencing with section 25159.10) or article 9.5 (commencing with section 25208) of chapter 6.5, or pursuant to chapter 6.67 (commencing with section 25270), of division 20 of the Health and Safety Code.
2. The Regional Board has jurisdiction over the property pursuant to chapter 5.6 (commencing with section 13390) of division 7 of the Water Code.
3. The Regional Board is conducting, or has conducted, oversight of the site investigation and remedial action at the property at the request of the responsible party.
4. The Regional Board has been selected to oversee the site investigation or remedial activities at the property under the authority of another program.
5. The type of release or threatened release that is the subject of the site investigation or remedial action primarily affects the waters of the

state, and the primary concern is the risk posed to water and water quality.

**VI. Oversight by a Local Agency**  
(HSC § 25401.2(d))

Under limited circumstances, the CLERR Program also allows for a local regulatory agency to oversee site investigation and remedial activities at properties being addressed under the program. The selection of a local oversight agency will be conducted under the following procedures.

**A. Qualifications**

To be selected to oversee site investigation and remedial activities at properties being addressed under this program, a local oversight agency must meet one of the following criteria:

1. It must be a Unified Program Agency that:
  - a. Has been certified by the Secretary for Environmental Protection as having met the requirements of regulations adopted by DTSC pursuant to Health and Safety Code section 25404.1, subdivision (a) (3) (C); and
  - b. Has jurisdiction over the hazardous materials release or threatened release on the subject property based on that certification.
2. It must be a local agency that:
  - a. Has entered into an agreement with the SWRCB pursuant to Health and Safety Code section 25297.1, subdivision (b) to provide regulatory oversight of remedial actions related to the release of hazardous substances from underground storage tanks; and
  - b. Has jurisdiction over the known or suspected hazardous materials release on the subject property based on that agreement.

**B. Prohibition**

To be selected as an oversight agency under this program, the local agency performing oversight and the local agency designated to implement this program may not be formed, in whole or in part, by the same political subdivision.

**C. Selection of a Local Agency as an Oversight Agency**

At the time when the representatives of DTSC and SWRCB are meeting and conferring on submittals of Phase I environmental assessments and

related information for the selection of an oversight agency under the procedures described above, they shall also consider whether the subject site is located within the jurisdiction of local agencies that meet the above criteria, and whether the local agency has jurisdiction over the subject property under the above criteria. The representatives of DTSC and SWRCB shall weigh these factors as well in selecting the appropriate oversight agency.

Before selecting a qualified local agency as the oversight agency, the representatives of DTSC and SWRCB will contact the local agency to describe the obligations and requirements of this program and to determine the local agency's willingness to be selected as the oversight agency.

#### **D. Local Oversight Agency Responsibilities**

If a qualified local agency is selected as the oversight agency, the local oversight agency shall provide the following:

1. Notification. The local oversight agency shall notify the local agency designated to implement this program and the owner or operator of the property of its selection as the oversight agency and of any additional requirements that must be fulfilled in order to oversee the site assessment or remedial activities at the property.
2. Progress Reports. The local oversight agency shall provide written quarterly progress reports to DTSC and SWRCB (containing information and in a format specified by DTSC and SWRCB) and any other information DTSC and SWRCB may require to adequately monitor the local oversight agency's performance and progress.

#### **E. Withdrawal of Oversight Agency Selection**

DTSC and SWRCB will monitor the progress made by a local oversight agency to ensure that site investigation or remedial activities being conducted under this program and under the local agency's oversight are being conducted in a timely and effective manner and in compliance with all relevant and applicable state and local laws, regulations, ordinances, and standards. If DTSC and the SWRCB determine that: (1) the local oversight agency is failing to provide timely progress reports or other requested information, (2) the local oversight agency is not making sufficient progress toward investigation and remediation of the property, (3) the site investigation or remedial activities are not being conducted in accordance with all relevant and applicable state and local laws, regulations, ordinances, and standards, or (4) public health and safety or the environment, including waters of the state, is threatened or may be threatened by conditions at the property to which the local oversight

agency is not adequately responding, the oversight agency selection may be withdrawn.

Withdrawal of oversight agency selection will be accomplished by a written notice to the local agency withdrawing the oversight agency selection and identifying the new oversight agency. A determination to withdraw the oversight agency selection is effective on the date specified in such written notice. Within 30 days after the effective date of withdrawal of oversight agency selection, the local oversight agency shall transfer to the new oversight agency all subject property related documents and files.

**VII. Transfer of Oversight Responsibility (DTSC and Regional Boards)**  
(HSC § 25401.2(b)(4))

If at any time after the oversight agency is selected the oversight agency determines that new information indicates there is a material change to one or more of the factors or criteria relied upon to select the oversight agency, the oversight agency shall contact DTSC, SWRCB and the appropriate Regional Board to discuss whether it may be appropriate to transfer oversight responsibility to another agency. If the representatives of DTSC and the SWRCB determine that a transfer of oversight responsibility is appropriate, the current oversight agency shall notify the local agency and the property owner or operator of the proposed transfer of oversight responsibilities. The local agency and the property owner or operator will have 30 days to provide any written comments or concerns to the representatives of DTSC and SWRCB about the transfer of oversight responsibilities.

DTSC and the SWRCB may not transfer oversight responsibility for any site investigation or remedial action under this program if the transfer would either:

- A. Unreasonably delay the investigation of the property.
- B. Delay the implementation of the schedule established in a remediation plan for the property unless the local agency and the prospective state oversight agency agree to the transfer.

Within 30 calendar days after the transfer of oversight responsibility, the oversight agency first selected shall transmit copies of all documents and information that it has collected in its efforts regarding the subject property to the new oversight agency.

#### **F. Preservation of Authority**

Nothing in the selection of a local agency as an oversight agency under this program shall in any way limit or affect Cal/EPA's or any of its constituent boards, departments or offices' rights, obligations or authorities. Cal/EPA or any of its constituent boards, departments or offices may issue an order or undertake any other action they deem necessary to respond to a hazardous materials release or threatened release on a property that is being overseen by a local oversight agency.

Selection of a local oversight agency does not in any way affect the enforcement or cost recovery authority of a state agency regarding any property or site that is being overseen by a local oversight agency under this program.

#### **VIII. Availability and Amendment of Guidelines**

(HSC Section 25401.2(c))

These guidelines are available upon request to any person who is interested. Copies may be obtained either on Cal/EPA's Internet website or by contacting Cal/EPA directly at the above address.

Cal/EPA may make any changes to these guidelines that it determines are appropriate and in accordance with the California Land Environmental Restoration and Reuse Act. The amended guidelines shall be made available by posting on Cal/EPA's Internet website.