State Allocation Board Implementation Committee
January 7, 2003

Assistance for Site Acquisition and Response Action

ISSUES

Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, allows for increased site funding for toxics when specified conditions have been met. It also provides additional funding for evaluation and response action in connection with hazardous substances at an existing school site. There are two issues related to these statutory changes which include:

1. For purposes of Education Code Section 17072.13(a) and (b), what criteria will be utilized to provide toxic funding in excess of 50 or 100 percent of one and one-half times the appraised value?

2. What will the mechanism be for the advance release of funding for toxic evaluation and response action on existing school sites?

BACKGROUND

Prior to AB 14, existing law authorized State funding for up to 50 percent of the school district's cost of the site plus the response action costs associated with hazardous substances but not to exceed the appraised value of the site.

Pursuant to AB 14, Education Code Section 17072.13 modifies the funding formula to increase the State's share for purposes of toxics clean-up of a site. However, in order to receive that increased funding, there are specific conditions that need to be met. The following issues are discussed below:

DISCUSSION

Issue Number 1:

Education Code Section 17072.13 stipulates that site and toxics funding shall not exceed 50 or 100 percent of one and one-half times the appraised value of the uncontaminated site. In a 50/50 example, this means that the "new" total spending cap on a site that is appraised at $10 million, with toxic remediation issues, would be $15 million ($10 million x 50 percent = $5 million, so $10 million + $5 million = $15 million). In this example, the State's share for a 50/50 project would be $7.5 million, that would provide half the site value at $5 million and half the toxic cost at $2.5 million. This change allows districts to receive additional dollars in order to clean-up toxic site problems beyond the original appraised value "cap." This change will be addressed by modifying current site toxic regulations. The same methodology would be calculated for financial hardship projects, but the State's share is 100 percent, less any available district contribution for the project.

Education Code Section 17072.13 further states that the Board may exceed this 50 or 100 percent of one and one-half times the appraised value maximum for projects that demonstrate circumstances of extreme need. In order to ensure program integrity and encourage cost-effective site decisions, the OPSC is proposing criteria that districts will be required to meet prior to receiving the additional toxic funding. They are as follows:

- California Department of Education (CDE) determination that the site is the best available site for meeting the educational and safety needs of the school district.
- Substantiation that the district exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and response action approved by the DTSC.

Issue No. 2:

Current regulation would provide funding for response action for hazardous remediation on an existing school site. AB 14 provides that the evaluation and response action costs shall be available to school districts in advance of the submittal of the construction funding application. As a result of this statutory change, no mechanism exists for the funding of these costs on existing school sites in advance of the submittal of the construction funding application. Staff proposes to modify current environmental hardship regulations to allow for funding on existing school sites in advance of the submittal of the construction funding application for evaluation and response action for hazardous remediation.

RECOMMENDATIONS

1. Modify existing Regulation Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, and 1859.81.1 to reflect new toxics spending caps and criteria for extreme need.

2. Modify Form SAB 50-04 to incorporate the new toxics spending caps.

Amend Regulation Section 1859.74.2 as follows:

Section 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable site costs shall not exceed ~~the lesser of~~ one and one half ~~of (a) or (b) below~~ times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

(a) The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) ~~The costs may include~~ T~~t~~he costs for preparation of the RA.

(2) ~~The costs may include~~ T~~t~~he DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(c) Not less than $50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

~~(3) The costs may not include continuous operational and maintenance costs associated with the RA.~~

~~(c) The difference in the amounts determined pursuant to Section 1859.74 (a) and (b).~~

~~In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).~~

(d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:

(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Amend Regulation Section 1859.74.3 as follows:

Section 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes and a site evaluation requires a RA, the Board shall provide funding, in addition to any other funding authorized by these Regulations for ~~the lesser of~~ one and one half times the appraised

valuation that conforms to Section 1859.74.1.~~of the amounts allowed in (a) or (b) below:~~ The allowable site costs shall not exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

(a) ~~The sum of all the following:~~ The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs for preparation of the RA.

(2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.

(b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(c) Not less than $50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

~~(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.~~

~~(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:~~

~~(A) The costs may include the costs for preparation of the RA.~~

~~(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.~~

~~(C) The costs may not include continuous operational and maintenance costs associated with the RA.~~

~~(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.~~

(d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:

(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

(e) If the toxics evaluation of the leased site does not require a RA, then the allowable site costs shall not exceed the lesser of one half the appraised or actual purchase price plus the additional amounts provided in Section 1859.74.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12, 17251 and 17070.71, Education Code.

Amend Regulation Section 1859.74.4 as follows:

Section 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:
(1) The New Construction Grant request is for additional school facilities on an existing school site.
(2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
(4) The hazardous material cleanup costs are required by the DTSC.
(b) If all the criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:
(1) The costs for preparation of the POESA, the PEA and the RA.
(2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
(B) The costs may not include continuous operational and maintenance costs associated with the RA.
(c) In advance of the New Construction Adjusted Grant, districts performing a RA on additions to existing school sites shall be eligible for the costs associated with evaluation and RA required by the DTSC.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.18, Education Code.

Amend Regulation Section 1859.75 as follows:

Section 1859.75. Alternative District-Owned Site.

In order to receive funding authorized by Sections 1859.74 or 1859.74.2, the district must:
(a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
(b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize either (1) or (2) ~~the lesser of~~:
(1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or
(2) fifty percent of one and one-half times the ~~actual cost or the appraised~~ value of the site purchased for the project as determined in Section 1859.74.2.~~, whichever is the lesser.~~

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Section 17072.12, Education Code.

Amend Regulation Section 1859.75.1 as follows:

Section 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:
(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.
(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.
(b) If the conditions in (a) are met, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (b)(1) and (b)(4) plus the additional costs included in (b)(2) and (b)(3). The costs included in (b)(2) and (b)(3) are in addition to the one and one half times the appraisal value cap.~~for one half of the following:~~
(1) The ~~lesser of the appraised value~~ cost of the site as determined in Section 1859.74.1 and ~~or~~ the amount the district reasonably expects to pay for ~~the site including~~ any hazardous materials/waste removal and/or remediation costs for the site.
(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than $50,000.
(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.

(c) In lieu of the funding provided in (b) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17076.10, Education Code.

Amend Regulation Section 1859.81.1 as follows:

Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met <u>on a site that does not require a RA,</u> the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than $50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

<u>(c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to the one and one half times the appraisal value cap.</u>

<u>(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.</u>

<u>(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.</u>

<u>(3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than $50,000.</u>

<u>(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.</u>

<u>(d) In lieu of the funding provided in (c) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:</u>

<u>(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.</u>

<u>(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.</u>

~~(c)~~ (e) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

Note: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code.

Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.