

- A. The basic problem with the chemical risk sections of the current CA Department of Education [Dof Ed] school siting regime** [under Title V 14001 et seq] is that the CA legislature has enacted piecemeal on a few occasions weak and vague directives that Local Educational Authorities [LEAs, or school districts] in their school siting analyses and site selections **take some account** of chemical disaster release risks from nearby toxic waste sites, air pollution, railroads and pipelines. **The result is a pretense of state regulation and protective oversight** which is designed to be misleadingly reassuring, while allowing nearly unfettered LEA risk-taking, e.g., proposing to site a new school in an abandoned UP railyard with an operating freight rail line a few feet away. The state Department of Education is currently proposing to revise the Title V siting and design standards. DofEd also is suggesting “Potential Areas of Attention” that might prompt revisions in its 2007 guidance protocol for pipeline risk, prefaced by elaborate disclaimers as to how these additions would also be only voluntary, not imposing any new requirements on LEAs.

But the lawmakers have not enacted for major hazard risks in the school siting context any serious, fleshed-out, comprehensive regulatory regime such as other major hazard chemical safety laws, e.g., the federal Clean Air Act Amendments of 1990, Section 112r ; the state-level California Accidental Release Prevention [CalARP] laws, or the local Contra Costa County and Richmond Industrial Safety Ordinance regimes.

B. The current state DoEd school siting regime, unfortunately:

- **Is un-serious, e.g., with no real standards.** There is no state standard as to what is an acceptable risk that a nearby facility can pose to a school population at a given proposed site. And the CA DofEd is apparently not adequately funded nor staffed with technical experts who can assess the siting analyses and decisions made by LEAs. *[Nothing here is designed to criticize the dedication of state employees working in a difficult situation.]*
- **Is un-accountable,** e.g., there is reportedly no online database of existing siting decisions that can be scrutinized for comparison regarding siting analysis and selection methods, scope and outcomes. No Dof Ed reporting is required to Governor or legislature. No regular performance assessment of the school siting regime is required; the new DofEd “Potential Areas of Attention” effort has come 8 years after the 2007 Protocol for School Site Risk Analysis, and the suggested issues reveal serious deficiencies in the overall process and standards. The CA DofEd apparently does no regular survey of users and impacted parties to assess the school siting regime’s workability, comparability of outcomes in similar risk settings, or environmental justice.
- **Is designedly as un-transparent as possible as far as accessibility for the at-risk public,** in that the current regime allows and even encourages the use by LEAs [as the LA USD pioneered] of the extremely complex but dubiously valid practice [sometimes called “a science”, also

sometimes “the art”, as major DoEd consultant URS admits] of Quantitative Risk Assessment [QRA]. QRA employs inscrutable probabilistic analyses relying on hundreds of often hidden assumptions and on woefully inadequate data to reach nearly universally findings that the risks of nearby chemical hazards is lower than [an arbitrary guideline] one in a million. QRA has not been embraced nationally nor by most US jurisdictions.

C. A review of a sample [inadequate so far] of the school siting analyses documents under the current CA DoEd regime reveals that the current state guidance allows LEA school siting consultant risk analyses of proposed school sites that:

- vary widely in quality and scope
- rarely reveal vividly what kinds of serious release consequence risks would be posed to the school population by the nearby fixed facility or transportation route
- almost always result in approval of the proposed site, regardless of significant chemical release risks found nearby
- are based on whatever data can be scraped up by one of the hired LEA’s consultants, especially since, e.g., railroads often will not cooperate and provide data on their hazmat shipments
- do not even suggest, much less require, that the LEA collect and analyze the available chemical accident consequence data long provided already by local facilities under the 1990s-era federal community right to know laws, e.g., the EPA’s Risk Management Program
- recommend very weak mitigation measures as adequate to reduce the risk

***** Notes *****

The current CA school siting state law [regarding chemical release hazards of nearby facilities] is weak and vague, allows LEAs [Local Education Authorities] to make siting decisions impacting school safety without serious constraints from the CA Department of Education [CA DoEd]:

- State protocols/guidance are explicitly presented as “strictly voluntary”, aimed only to help LEAs. But the CA Dept of Ed has some kind of vague “approval” process over siting decisions made by LEAs
- LEAs required to hire “qualified consultants” based on vaguest of standards.
- Various types of non-rigorous risk assessments at LEA level explicitly leaving out key components:
 - Probabilistic risk assessment [QRA] leaving out consequence analysis
 - Consequence analysis without data from risk-imposing industry
 - Neither QRA nor consequence analysis
- State agency can adopt pipeline guidance for LEAs based on QRA methods

- LEAs can produce guidance/protocols for school siting assessments based on QRA methods
- LEAs in their assessments and site decisions can weight certain risks very high, ignore others. [cf. Somis]
- Weak oversight at state level. State Dof Ed considers LEAs their “stakeholders”, plans no public comment meetings on proposed regs for wider public or NGOs.
- No reporting required to Governor or legislature.
- No regular performance assessment required; only “Potential Areas of Attention” work came 8 years after 2007 Protocol ?? These suggestions reveal serious deficiencies in the overall process and standards.
- No regular survey of users and impacted parties to assess workability, comparability, environmental justice.
- EJ is missing as a criterion in the risk assessments and the protocols/guidance.

No serious oversight at state level : risk assessment guidance is only voluntary, state theoretically has some approval authority over some assessments, but..

State agency reportedly has no ability to assess the LEAs’ consultants’ assessments – state would need own consultant to do so.

No evidence that state has seriously assessed how LEAs are performing in commissioning their assessments, reviewing them, and the results in school siting decisions, either during a particular period or trends over time.

Apparently state requires no standard assessment format nor maintains a statewide database of LEA-commissioned assessments that could allow independent scrutiny of the quality of the assessments and the results of the siting deliberations based on these.

Assessments rely on federal data known to be inadequate, often outdated, sometimes risk-imposing industry withholds key data

QRA methodology designed to be non-transparent, inaccessible to public scrutiny, giving pretense of science when in fact findings are riddled with consultant biases, assumptions, engineering judgments, uncertainties.

LEAs’ QRAs do not admit to serious limitations, uncertainties

Neither CA nor vast majority of LEAs have any standard for quality of QRA or adequacy of safety outcomes