

## What You Need to Know About SB 352

Signed by former Governor Gray Davis, Senate Bill 352 (SB 352) took effect January 1, 2004. SB 352 expands the existing requirements to review sources of air toxins within a ¼-mile radius of a school site. The statute also creates a new requirement to determine whether a school site within 500 feet of a freeway or busy traffic corridor would create a health hazard from exposure to high levels of criteria pollutants (see Education Code §17213 and Public Resources Code §21151.8). These requirements apply to school projects where either the CEQA document will be adopted or the school project will be approved after January 1, 2004. This **CENTERVIEWS** explains the new requirements and provides recommendations on how best to implement SB 352.

### EXPOSURE TO TOXINS

Anyone who has processed a school project in recent years is familiar with requirements for school sites located within ¼-mile of facilities that might be reasonably anticipated to emit hazardous air emissions or handle acutely hazardous materials, substances or waste. These facilities are identified through contacts with administering agencies (typically the fire department or health department) and the respective air quality districts. The agencies identify permitted facilities in

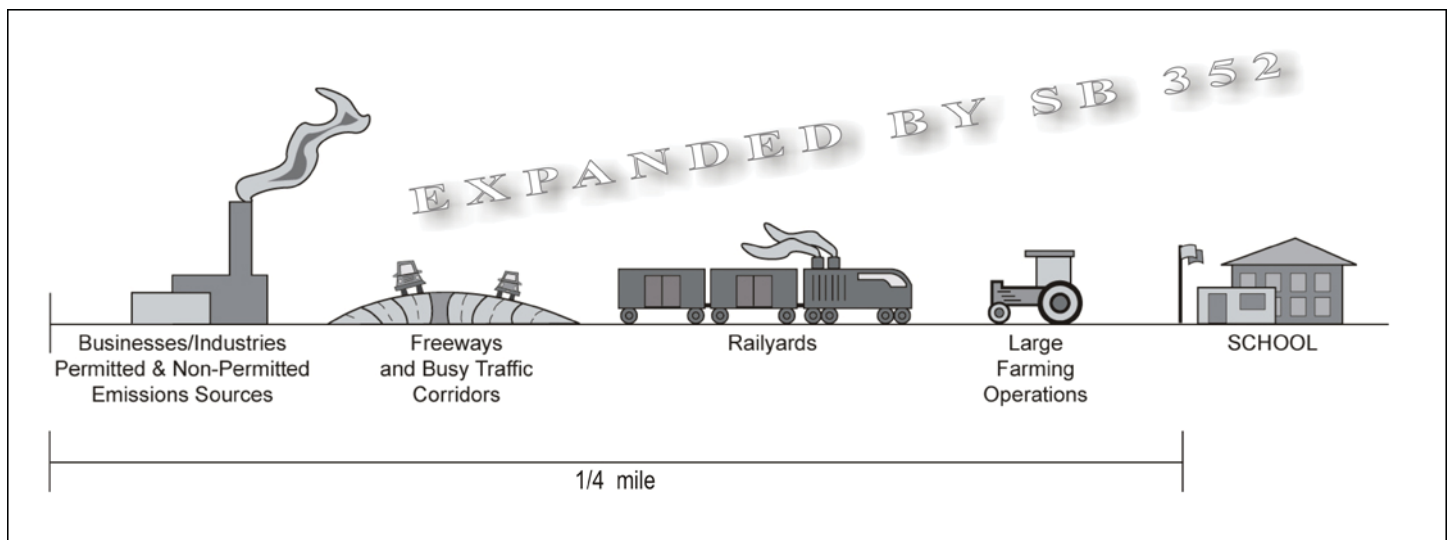
SB 352 expands existing requirements to review sources of air toxins near school sites and creates new requirements to review criteria pollutants where schools are within 500 feet of freeways and major roadways.

proximity to school sites. Because permit data does not always reflect actual conditions in the areas surrounding the school sites, good practice dictates that project vicinities be field-checked. As a result, facilities should be added and subtracted as appropriate.

SB 352 now directs school districts to consult with these agencies to identify non-permitted facilities. However, by definition, the databases maintained by these agencies do not include non-permitted facilities. To satisfy the spirit of this legislation, a field survey of the project vicinity should be completed to identify non-permitted facilities and to verify the accuracy of permit data.

The statute directs school districts to include in the school site analysis any emissions sources, including but not limited to, freeways and other busy traffic corridors, large agricultural operations, and rail yards located within ¼-mile of a school site (see *Figure 1* below). It is important to note that the definition of "facilities" is very broad (see definition below).

Figure 1 – Exposure to Toxins (Chronic, Long-Term Exposure)



## WHAT YOU NEED TO KNOW ABOUT SB 352

### EXPOSURE TO CRITERIA POLLUTANTS

SB 352 creates a new requirement that any school site located within 500 feet of the edge of the closest travel lane of a freeway or other busy traffic corridor be reviewed for potential health risks (see *Figure 2* at the bottom of this page). The focus of this analysis is on potential acute, short-term exposure to criteria pollutants, such as carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM<sub>10</sub>) [Education Code §17213(c)(2)(C)].

### REQUIRED FINDINGS

Prior to SB 352, school districts were required to make one of the following findings concerning facilities within ¼-mile of a school site:

- (1) No such facilities were found;
- (2) Facilities were found, but one of the following conditions apply:
  - (A) The health risks associated with the facilities do not constitute an actual or potential endangerment of public health to those attending or employed at the school;
  - (B) Corrective measures would result in mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute a health risk to those attending or employed at the school.

### WHAT'S NEW

The findings listed above have been broadened to incorporate "other pollution sources," which include such non-permitted facilities as "freeways and other busy traffic corridors, large agricultural operations, and rail yards." It is important to understand that this list simply provides examples of non-permitted facilities and is not intended to exclude other pollution sources. The definition of "facilities," which is provided below, was intentionally written very broadly to capture any non-deminimus hazardous air pollution source.

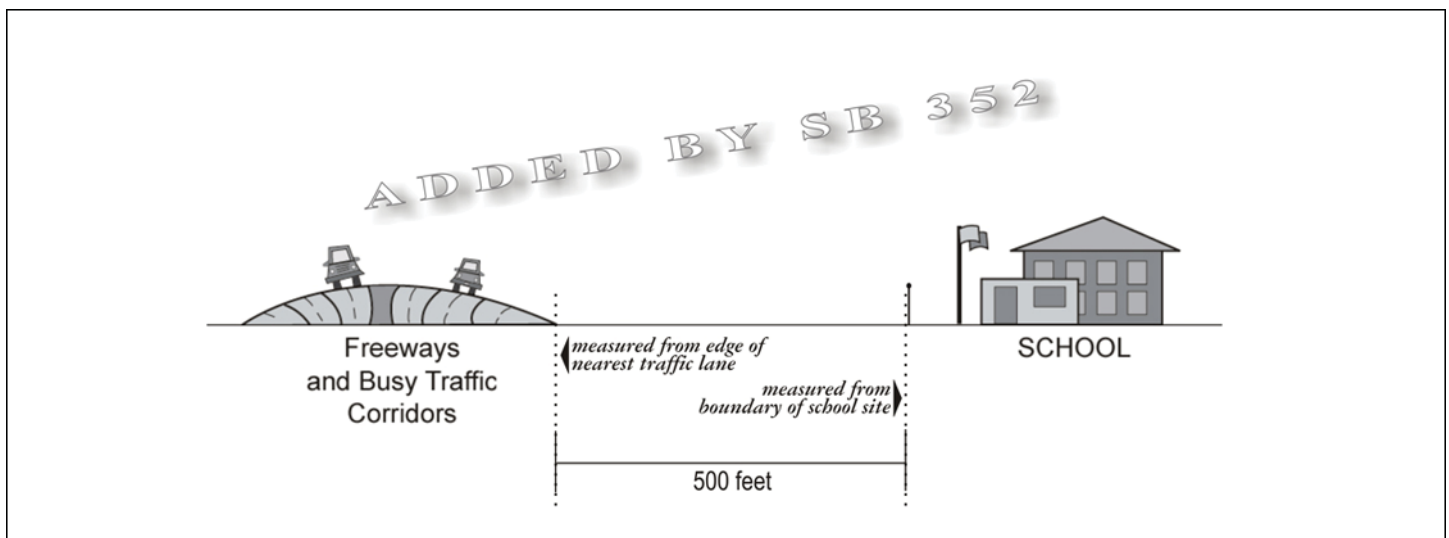
A third finding is required under SB 352 for any school site located within 500 feet of a freeway or other busy traffic corridor:

- (C) Neither the short-term nor long-term exposure poses a significant health risk to students.

SB 352 provides an option for school districts to accept a school site that would result in a significant health risk. A district may adopt a Statement of Overriding Considerations as part of the CEQA process and make finding (D) where an alternative site is not available:

- (D) If the district is unable to issue finding (B) or (C) above and the district is unable to locate a suitable alternative site, the district may accept the site with the adoption of a Statement of Overriding Considerations.

Figure 2 – Exposure to Criteria Pollutants (Acute, Short-Term Exposure)



## SOME IMPORTANT DEFINITIONS

### “FACILITIES”

**Any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board. (Education Code §17213(d)(8))**

This definition is intentionally broad. Refer to the California Air Resources Board web site for the list of source categories identified in the definition above:

<http://www.arb.ca.gov/emisinv/emsmain/emsmain.htm>

While this web site also identifies residential sources, the intent of the legislation is to limit review to non-residential sources.

### “FREEWAYS OR OTHER BUSY TRAFFIC CORRIDORS”

**Roadways with an average daily traffic in excess of 50,000 vehicles in a rural area and 100,000 daily vehicles in an urban area. (Education Code §17213(d)(9) & Public Resources Code §21151.8(a)(9))**

### “RURAL AREA”

**Any open country or any place, town, village, or city which by itself and taken together with any other places, towns, villages, or cities that it is part of or associated with: (a) has a population not exceeding 10,000; or (b) has a population not exceeding 20,000 and is contained within a non-metropolitan area. Also includes any open country, place, town, village, or city located within a Standard Metropolitan Statistical Area if the population thereof does not exceed 20,000 and the area is not part of, or associated with, an urban area and is rural in character. (Health and Safety Code Section 50101)**

### “URBAN AREA”

**Any portion of a county or the state that is not a rural area. (Health and Safety Code Section 50104.7)**



It is important to understand that the listing of “other pollutant sources” simply provides examples of non-permitted facilities and is not intended to exclude other pollution sources. The definition of “facilities” was intentionally written very broadly to capture any hazardous air pollution source.

## RECOMMENDATIONS

- + Incorporate potential exposure to permitted and non-permitted facilities in your search for new school sites. Where possible, simply avoid sites proximate to industries, major farming operations, heavily traveled highways and similar facilities.
- + Work with your technical team to establish parameters and thresholds for school siting. You shouldn't need to complete full technical studies for every site under consideration. Learn how to screen sites for fatal flaws.
- + Incorporate SB 352 requirements into your CEQA process to ensure that there are no surprises after you have committed to a site.
- + Revise your Environmental Checklist questions to ensure that you will have adequate information to support the required findings.
- + The accompanying amendments to PRC §21151.8 include a requirement not mentioned in SB 352. You must include information in the CEQA document information needed to make a determination of whether your school site is located within 500 feet of a freeway or busy traffic corridor.
- + Recognize that the additional requirements under SB 352 are not substantially different from the previous law when compared to a well-prepared health risk assessment completed under the previous requirements.

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The Planning Center has completed projects well over 250 new and expanding schools all under the direction of Dwayne Mears, AICP. Dwayne manages a staff of a dozen experienced school facilities planners. He also teaches a course at UC Riverside Extension, titled "Practical Guide for Obtaining Environmental Clearance for New & Expanding School Sites," which includes a review of the latest procedural and substantive requirements of the California Environmental Quality Act (CEQA), the California Department of Education (CDE), and the California Department of Toxic Substances Control (DTSC).

The Planning Center has completed assignments for schools in probably every conceivable type of environment, ranging from urban, suburban and rural areas. We have successfully dealt with housing and business displacement; wetlands; endangered species; and proximity to rail lines, airports, high-pressure petroleum lines, water tanks and electrical transmission lines, toxic air emission sources, contaminated sites, geological hazards, site access problems, and pedestrian hazards.

The Planning Center would like to thank Mr. Michael O'Neill from the California Department of Education and Mr. Bill Piazza of Air Quality Dynamics, for their review and comments on this issue of CENTERVIEWS. However, the accuracy of the information and opinions reflected in this CENTERVIEWS are the responsibility of The Planning Center.

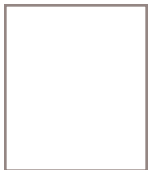
Questions related to this CENTERVIEWS may be directed to: Dwayne Mears, AICP, at 714.966.9220 or [dmears@planningcenter.com](mailto:dmears@planningcenter.com)

- + Recognize that SB 352 applies only to projects involving the acquisition of school property. Unless you are acquiring a new site or adding property to an existing school, SB 352 does not apply. There is no need to conduct these reviews for your modernization projects or expansion projects that do not involve new property. SB 352 applies regardless of whether you are seeking state facilities funding.
- + Be wary of pursuing site approval using Finding (D), which states that if the chosen site would be likely to result in a significant health effect and the district is unable to locate a suitable alternative site, the district may accept the site with the adoption of a Statement of Overriding Considerations. Does your school board have the fortitude to approve a site that requires overriding a significant health effect? What are the long-term implications of approving a site by means of a Statement of Overriding Considerations? You may have to revisit this issue any time you plan a change or expansion at the school site. Ultimately, how will parents react to such a decision on the part of the district?
- + You must prepare an Environmental Impact Report (EIR) to use Finding (D). Only under an EIR process are you allowed to override a significant impact. Preparation of a Negative Declaration or Mitigated Negative Declaration will not work if your site requires Finding (D).
- + If you must override a significant health effect under Finding (D), use the alternatives section of your EIR to demonstrate that a "severe shortage of sites" prevents you from finding an alternative that would satisfy Education Code §17213(a).



1580 METRO DRIVE  
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