



To: Mr. Kevin Depies, Engineering Geologist, Department of Toxic Substances Control

From: The Rocketdyne Cleanup Coalition

Re: Comments on Revised Proposed Toxicity Criteria for Health Risk Assessments, Screening Levels, and Remediation Goals
DTSC Reference Number: R-2016-08
OAL Notice File Number: Z-2017-0725-08

Date: April 21, 2018

VIA EMAIL kevin.depies@dtsc.ca.gov

The Rocketdyne Cleanup Coalition is deeply troubled by the proposed changes to the draft toxicity criteria rule, which substantially weakens the prior proposal, which was itself inadequate to protect public health. The conduct of the Department of Toxic Substances Control (DTSC) regarding the proposed rule reinforces the widespread perception of capture by the polluting interests DTSC is supposed to regulate.

We have for three decades worked for the cleanup of one of the most contaminated sites in the state. During almost all of that time, DTSC has been our adversary, working with the Responsible Parties to help them get out of cleanup obligations rather than working to protect our health.

Our painful experience has not been unique. Across the state, at countless toxic sites, there is tremendous distrust, to say the least, about DTSC's conduct. DTSC's failure to regulate adequately led to the contamination of numerous communities; its refusal then to carry out its regulations has resulted in compounding the problem by failing to get these toxic sites cleaned up in any protective fashion.

Over recent years, there has been exposé after exposé in the news media; critical legislative investigations; an independent oversight panel established by law whose critical recommendations have been ignored and vetoed.

The Conduct of DTSC in Preparation of This Rule Underscores the Reality of Regulatory Capture and Heartless Ignoring of the Impacts on Real People's Health

We now know that DTSC held a meeting in December 2016 with lobbyists and other representatives of polluting interests to get their input on the proposed regulations before redrafting it for formal public comment. The meeting was held in Sacramento, where

everyday victims of DTSC's policies and these polluters' actions could not readily attend. The great majority of people affected by this pollution were not even informed.

At that pre-rulemaking meeting, the polluters' representatives lobbied DTSC to abandon its own stated purpose for the regulation, which was to codify longstanding practice that the most protective of toxicity criteria from either the California Office of Environmental Health Hazards or USEPA would be employed. The polluters pushed back, and DTSC caved.

When the proposed rule was issued for public comment, it had been severely weakened. OEHHA values that were more protective than US EPA values were abandoned; the language requiring the most protective standards had been jettisoned; other changes were made that further diminished the rule.

Then the proposed rule was issued for public comment. Despite the promise that there would be hearings on it Southern and Northern California, again the hearing was in Sacramento, and no comments were received (no surprise, if DTSC purposely schedules hearings far from where its victims reside.)

Written comments were received from a wealth of polluting interests; these resulted in numerous changes that further weakened the rule. Written comments by environmental and community groups were ignored, misrepresented, and / or just rejected. The troubling result:

- The revised proposed rule removed even more toxicity criteria that were the more protective standards.
- The rule language was further weakened, so that now it was not only the question of peer review that would affect whether the more protective standard was adopted, but DTSC's subjective view of the scientific basis.
- OEHHA, which DTSC admits is the agency tasked with determination of these science based toxicity values, is now proposed to be overruled by DTSC staff, despite the far lesser scientific credibility and public confidence associated with DTSC.
- And critically, DTSC gratuitously added, in response to the polluters' requests, repeated references to anticipated land use as something to weaken public protections. This is one of the oldest dirty tricks of polluters, to declare the land they have contaminated to be too contaminated to be released for unrestricted use and those to declare unilaterally that they will restrict its use (e.g., for parkland) and get out of most of their cleanup obligations. This of course ignores the people who live nearby. DTSC has just declared, for example, that Boeing can't do that; but now others in DTSC, at polluters' urging, are trying to undercut that very DTSC position.

We therefore strongly urge that the proposal be revised to:

1. Require the most protective standard be employed.
2. Remove any suggestion that DTSC's troubled toxicology staff would be allowed to override OEHHA's toxicity criteria.
3. Remove all references to anticipated or reasonably foreseeable land use.
4. And finally, cease resisting fundamental reform of DTSC; end its capture by the polluters it is to regulate; and start carrying out the intended mission, protecting the public from toxic materials.