

April 21, 2018

Mr. Kevin Depies  
Engineering Geologist  
Department of Toxic Substances Control  
Sacramento, CA 95812-0806  
Submitted by email to: [kevin.depies@dtsc.ca.gov](mailto:kevin.depies@dtsc.ca.gov)

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

Dear Mr. Depies,

We appreciate the opportunity to comment on the revised proposal for Toxicity Criteria Rule.

Federal law requires that California standards be at least as protective as the EPA standards. California law requires the use of California's standards when they are more protective than the EPA's. The net effect is that California is supposed to use the more protective of its or EPA's standards.

Comments submitted by industry groups on the prior draft of the Toxicity Criteria Rule argued that the draft rule should be revised to facilitate the use of less protective standards. We are disturbed that DTSC has in response altered the draft to do precisely that.

In California, the Office of Environmental Health Hazard Assessment (OEHHA) is given the science-based task of setting toxicity criteria. The draft rule should thus be simple: the Toxicity Criteria should be based on the most protective of the OEHHA values or the US EPA Integrate Risk Information System (IRIS) values. Where neither has a value, the fallback sources should be used.

Instead, the draft rule would have DTSC's toxicologist veto the use of OEHHA criteria if more protective than IRIS values, and vice versa. Indeed, various toxicity criteria have been removed from the toxicity criteria table where there is an OEHHA value that is more protective than the IRIS value. Similarly, IRIS values that are more protective than OEHHA values have been disallowed as well.

OEHHA, although not perfect, has significantly more public confidence than DTSC, and it is OEHHA that is tasked with the scientific job of making these determinations. It is not appropriate to have DTSC reject the more protective standards, be they from OEHHA or US EPA.

Furthermore, given the drastic changes at US EPA under Administrator Scott Pruitt, including barring from US EPA science panels university scientists who have previously done work for EPA while filling the panels with people who work for polluting industries, using values from US EPA that are less protective than OEHHA values would be increasingly inappropriate. And it is OEHHA, whose mission this is, not DTSC, that should be determining if its criteria are scientifically based.

We therefore urge that the rule be revised so that the more protective OEHHA or IRIS value is used, period. When only OEHHA or IRIS has criteria, those should be used. If neither is available, one falls back, as proposed, to the other standards identified in the proposed rule. But when OEHHA and IRIS have criteria, the more protective should be used. DTSC personnel should not be allowed to throw out more protective values.

Secondly, industry also lobbied for the draft rule to be changed to indicate that site-specific factors should be allowed to result in weakening public protections. They specifically ask that there be specific reference to anticipated land use. This is a longstanding strategy of polluters who have contaminated land. They try to declare that they intend for the land to be restricted (e.g., to industrial or open space use) and that therefore they should be allowed to leave high levels of contamination, even though the site is surrounded by residences. It is impermissible for a polluter to get out of cleaning up a site by trying to declare it too contaminated to be used for unrestricted use; it needs to be cleaned up, and polluters should not control whether that happens. The Toxicity Criteria Rule should not be used to try to weaken cleanup requirements.

We urge that the reference to anticipated land use be struck wherever used in the draft. If that is not done, then it should be revised to “anticipated land use of the site and surrounding area.”

The Toxicity Criteria Rule should protect the public from toxic materials, not weaken those protections. We urge the proposed rule to be changed accordingly - and that we, the 18 undersigned California coalitions and organizations, are informed in a timely manner regarding the actions taken.

Sincerely,

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