

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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State of California



California Environmental Protection Agency
Department of Toxic Substances Control
Office of Scientific Affairs
400 P Street, Fourth Floor
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28 June 1993

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James Pawlisch
Director, Environmental Division
Southwest Division, Naval Facilities Engineering Command
Department of the Navy
1220 Pacific Highway, Room 18
San Diego, California 92132-5181

Re: Use of California Cancer Potency Factors for Marine Base Camp Pendleton

Dear Mr. Pawlisch,

Mr. Scandura of the Department's Region 4 office asked that the Office of Scientific Affairs respond to your letter of 12 May 1993. We appreciate the Navy's willingness to carry out "dual track analyses" using cancer potency factors published by both USEPA and Cal/EPA. Because the chemicals of potential concern at the base have not yet been identified, we are unable to inform you which chemical-specific Cal/EPA cancer potency factors are more stringent than their USEPA counterparts.

Notwithstanding this, we note for your information, however, that Cal/EPA interprets its published cancer potency factors to meet the criteria for designation as potential chemical-specific "applicable or relevant and appropriate" (ARAR) criteria, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We make this interpretation in light of USEPA policies carefully described in the USEPA guidance document entitled "CERCLA Compliance with Other Laws Manual" (EPA 540/G-89/006). Thus, any differences between USEPA and Cal/EPA on the technical bases for cancer potency factors are immaterial.

Cancer potency factors published by Cal/EPA are issued according to regulations pursuant to California law, specifically the Safe Drinking Water and Toxic Enforcement Act of 1986 (aka Proposition 65) and the Toxic Air Contaminant Act of 1983. Cal/EPA considers that these cancer potency factors are duly promulgated, having gone through a period of public commentary before publication in Title 22 of the California Code of Regulations. The most current set of cancer potency factors is published in a memorandum dated June 1992 from the Standards and Criteria Work Group, which is comprised of scientists from several programs within Cal/EPA, including the Department of Toxic Substances Control.



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We feel it is useful to bring to your attention a recent decision by USEPA Administrator Carol Browner regarding a dispute between the Air Force and Cal\EPA regarding State ARARs. Administrator Browner decided that she had the authority to resolve the dispute, because selection of ARARs bears heavily on selection of the final remedy for CERCLA sites and USEPA has a statutory obligation to approve that final remedy. Administrator Browner stated directly that the principal arbiter for interpretation of State ARARs is the State itself. We stress particularly that the Administrator rejected a claim by the Air Force that their interpretation of ARARs should supersede any other.

It is certainly true that neither Cal\EPA nor the Navy has brought to dispute resolution the question of whether Cal\EPA potency factors are ARAR. Cal\EPA feels it is self-evident that its cancer potency factors are at the very least criteria "to be considered" (TBC), as defined in the "CERCLA Compliance with Other Laws Manual". TBC criteria are non-promulgated advisories or guidance issued by Federal or State government that are not legally binding and do not have the status of ARARs. The USEPA guidance manual states on page *xiv*:

"[I]n many circumstances, TBCs will be considered along with ARARs as part of the site risk assessment and may be used in determining the necessary level of cleanup for protection of health or the environment."

The manual further states on page 1-76:

"Chemical specific TBC values such as health advisories and reference doses will be used in the absence of ARARs or where ARARs are not sufficiently protective to develop cleanup goals. In addition, other materials such as guidance or policy documents developed to implement regulations may be considered and used as appropriate, where necessary to ensure protectiveness."

This indicates that Cal\EPA cancer potency factors, whether ARAR or TBC, must be given significant weight in any risk assessment at Marine Base Camp Pendleton. Therefore, their technical bases relative to other cancer potency factors (such as those of USEPA) are immaterial to any decision on their status as ARAR or TBC.

The various justifications for the Cal\EPA cancer potency factors have undergone extensive scientific review and public scrutiny during the promulgation process. The technical basis for each potency factor can be obtained from the public record. The regulatory package supporting the Cal\EPA potency factor for chromium VI, which is a typical regulatory package, is included for your information. The package contains legal and regulatory background, toxicological information, risk assessment, public comments, and responses to those comments. Please contact the Office of Scientific Affairs to obtain similar such packages for specific

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chemicals of particular interest to the Navy.

Regarding resolution of differences between cancer potency factors published by USEPA and Cal\EPA, we urge the Navy and its consultants seek the consensus advice of toxicologists and risk assessors from Cal\EPA and USEPA Region IX. This consensus method is working well at many sites and facilities in California, including several interactions with the other uniformed services.

We are pleased to be of assistance to the Navy in this matter. We at the Office of Scientific Affairs look forward to working closely with the Navy on issues of health and environmental risk assessment during the regulation of environmental restoration at bases in California. Please call upon us for any additional inquiries you might have.

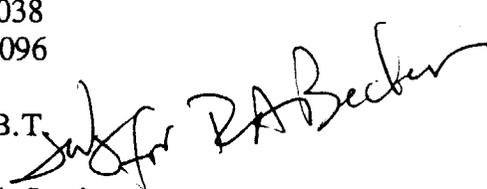
Sincerely yours,



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cc: John Scandura, Chief, Region 4 Site Mitigation Branch
Steve Picco, Toxics Legal Office
David Wang, Chief, Base Closure Branch

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bcc: L. Segovia, Region 4 SMB
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