

Paper Putsching

A record retention policy shreds an agency's credibility.

A law brought a flurry of bad press and a lawsuit to the embattled Office of Environmental Health Hazard Assessment (OEHHA), a division within Cal-EPA. Critics say the office may not have shredded many documents, but the policy has shredded the agency's credibility. Among other responsibilities, the health hazards division assesses toxic chemical health risks under Prop. 65 and other statutes, measures designed to warn the public of chemicals that cause cancer or birth defects. The six-year-old office inherited a regulatory program that drew numerous lawsuits over its alleged foot-dragging in implementing Prop. 65.

News of a so-called records-retention policy surfaced with an April 1996 internal memo instructing office staff to destroy documents and other evidence that didn't

support official agency findings regarding the safety of chemicals. The memo from Charles M. Shulock, the division's chief deputy director, stated in part, "The critical factor in determining whether the document should be retained is whether the document in its entirety is essentially representative of the final decision. Please dispose of all documents [including e-mail] and other communications prepared during the course of policy formulation which contain other policy proposals not adopted or reflected in the final decision."

The agency's director, Richard A. Becker, initially denied any records had been destroyed, but later admitted two boxes of documents, including draft reports, e-mail, handwritten notes, and other research materials, were purged. A subsequent memo confirmed the shredded documents included information on methyl bromide, a widely used pesticide; tamoxifen, a drug used to fight breast cancer that has been linked to uterine cancer; and vinyl chloride emissions from a private waste dump in West Covina.

At least two of the topics were fraught with controversy. Tamoxifen had been the subject of a 15-month battle over whether it should be listed as a carcinogen under Prop. 65 (it eventually was listed). Methyl bromide drew a lawsuit from environmentalists when the office designated it as a cause of reproductive toxicity when used for some purposes but not for others.

Though the agency's decisions were final by the time the documents were destroyed, the policy alarmed the Natural Resources Defense Council, the Environmental Law Foundation, and the Northern California Chapter of the Society of Professional Journalists. They filed a suit in San Francisco Superior Court alleging violations of the California State Records Management Act and seeking declaratory relief that the policy is unlawful. The office aborted the practice shortly after the groups sued. Critics think it is likely the issue will arise again at Becker's as-yet-unscheduled Senate confirmation hearings for his current position.

—Richard A. Levent

