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PROCEEDINGS

SENATOR DUTTON: Thank you all for joining us. We're going to go ahead and start as a subcommittee of Rules. There's other Members who will be joining us as quickly as possible; but in the interest of everybody's time, we want to go ahead and get started.

I'm going to go ahead and go out of order on the agenda, and so what I'd like to do is start with item number 2, Senator Simitian's legislation request involving SJR 23.

(Discussion off the record re SJR 23.)

SENATOR DUTTON: Let's establish a quorum.

MS. BROWN: Senator Alquist.

SENATOR ALQUIST: Here.

MS. BROWN: Alquist here.

De León.

Fuller.

SENATOR FULLER: Here.

MS. BROWN: Fuller here.

Dutton.

SENATOR DUTTON: Here.

MS. BROWN: Dutton here.

Steinberg.

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1 (Continued discussion off the record
2 re SJR 23.)

3 SENATOR DUTTON: This would be an
4 appropriate time for a motion.

5 SENATOR ALQUIST: I move.

6 SENATOR DUTTON: Moved by Senator Alquist.
7 Will you please take the roll.

8 MS. BROWN: Senator Alquist.

9 SENATOR ALQUIST: Aye.

10 MS. BROWN: Alquist aye.

11 De León.

12 SENATOR De LEÓN: Aye.

13 MS. BROWN: De León aye.

14 Fuller.

15 SENATOR FULLER: Aye.

16 MS. BROWN: Fuller aye.

17 Dutton.

18 SENATOR DUTTON: Aye.

19 MS. BROWN: Dutton aye.

20 Steinberg.

21 CHAIRMAN STEINBERG: Aye.

22 MS. BROWN: Steinberg aye.

23 SENATOR SIMITIAN: Thank you, Mr. Chairman,
24 plural, and I appreciate the support.

25 CHAIRMAN STEINBERG: Thank you, Senator

1 Simitian.

2 Thank you, Senator Dutton, for chairing and
3 getting the meeting started.

4 Let us move now to governor's appointees
5 appearing today and begin with Deborah O. Raphael as the
6 director of the Department of Toxic Substances Control.

7 Welcome to you.

8 MS. RAPHAEL: All right.

9 CHAIRMAN STEINBERG: Please take the hot
10 seat in the middle.

11 MS. RAPHAEL: It's a great one.

12 CHAIRMAN STEINBERG: We want to welcome you,
13 Ms. Raphael, and invite you to introduce any member
14 of your family or special guest, to make a brief
15 opening statement, and then we'll commence
16 questioning.

17 MS. RAPHAEL: Thank you, Senator, and
18 Members of the Rules Committee. I'm deeply honored
19 to be here today. I would like to introduce my
20 family members who are here. My husband, Miles; my
21 daughter, Katie; and my son, Brian; my nephew, Grant;
22 and my children's godfather even came, Scott. So I
23 feel I'm in good hands, knowing they're behind me.

24 CHAIRMAN STEINBERG: Well supported.
25 Welcome to all of you.

1 MS. RAPHAEL: As I said, I'm deeply honored
2 to be here. I feel this is ultimately the best place
3 for me to be in my career. I am a lifelong
4 Californian. I'm the daughter of a physicist, so
5 science has been in my blood from the very first
6 moments of my life.

7 I spent my undergraduate years at U.C.
8 Berkeley and my graduate years at UCLA where I fully
9 intended to pursue a life of science. Instead I
10 found a different life, a compatible life in public
11 service, and for the past 20 years I have found for
12 me the perfect nexus of science and changing the
13 world, which is, in fact, the public sector.

14 Today as DTSC director, I feel perfectly
15 positioned to execute those responsibilities that are
16 at the nexus of science and public policy. I find
17 myself at the helm of this organization at a
18 particularly difficult time in California right now,
19 whether it's financial or, certainly, a crisis of
20 confidence in government; and I believe it is my
21 passion in public service and my commitment to good,
22 pragmatic, scientifically based decisions that will
23 see me forward during the next years.

24 DTSC has a particularly unique charge where
25 we are held with the responsibility of managing

1 hazardous waste, managing toxins in the environment.
2 We do that by looking at the problems and the
3 challenges of yesterday, which is cleanup of
4 brownfields, for example, the challenges of today,
5 which, as we all know in this room, are exemplified
6 by the permitting of hazardous waste landfills, as
7 well as the permitting and enforcement of operations
8 that use hazardous materials.

9 In addition, we're looking forward, and in
10 terms of hazardous waste, we're looking at what are
11 the wastes of the future, whether those be solar
12 panels or other electronics that come to the end of
13 life. It's our job to create workable solutions and
14 manage those toxins that are in the everyday
15 products, but that challenge comes with some
16 particular competing interests. Some think that
17 we're asking too little; some think we're asking too
18 much.

19 So it's a tough mandate to find that nexus,
20 to find that pragmatic space where we can balance the
21 interest of different entities and find solutions
22 that benefit the entire state of California. And in
23 order to find that balance, I do not stay behind my
24 desk on the 25th floor in the CalEPA building in
25 Sacramento. Whenever I can, I get out into the

1 community, because it's only there where I can get a
2 true sense and understanding for the impacts of the
3 decisions I need to make. I ask hard questions, I
4 bring in all viewpoints, and I'm not afraid to make
5 the tough decisions, from Indian lands, to farm
6 lands, to the inner-city. I'm listening carefully,
7 for that is the information I use, juxtaposed with my
8 legal authorities, my scientific/technical expertise,
9 and the advice of my staff, to make my decisions
10 forward.

11 One solution clearly is that we need to
12 generate less of this hazardous waste to begin with,
13 and the department is positioned at a very unique
14 place in time right now with the regulations that we
15 are working on to actually change the way toxic
16 chemicals are used in the design of consumer
17 products. But in the meantime, we face some
18 difficult issues, and I want you to know that I
19 commit that in the work I do, communities will have
20 their health protected, that businesses will be
21 treated fairly, and that government under me will
22 operate predictably and professionally, because if we
23 do it right, we will have a better and safer
24 environment for all of those who come.

25 So in short, I want to leave you with what I

1 believe in: I believe in the rights of communities
2 to participate in the decisions that affect them; I
3 believe in the power of science to offer solutions;
4 and I believe that a strong economy and strong
5 environmental regulations must coexist.

6 As director of DTSC, I have one goal, and
7 that goal is to protect people and to do that with
8 decisions that in the long run build fresh confidence
9 not only in DTSC but in the State of California as
10 well.

11 With that, again, I'm honored to be here,
12 and I am excited and interested to answer your
13 questions.

14 CHAIRMAN STEINBERG: Okay. Thank you again.
15 I know I have a series of questions, but I think I'm
16 going to ask my colleagues to go first and see where
17 it goes.

18 Senator Alquist.

19 SENATOR ALQUIST: Thank you, Mr. Chair.

20 Welcome, Ms. Raphael. Two weeks ago I asked
21 the director of the Department of Public Health what
22 type of followup work DPH is doing in Kettleman City.
23 I know this is my big question. Several weeks ago, I
24 asked Secretary Rodriguez questions about Kettleman
25 City; and by now I hope everyone is well aware of the

1 relatively high number of severe birth defects in
2 this small town.

3 The mission of your department is to protect
4 the public health and the environment from the
5 harmful effects of toxic substances. I doubt that
6 all the residents of Kettleman City believe their
7 health is being protected. And this issue has been
8 going on for many years, way before you were there,
9 but it's important that we talk about it and solve
10 the situation. So I have basically two or three
11 questions.

12 What work and community outreach have you
13 done during your tenure as director of the Department
14 of Toxic -- TSC with Kettleman City, would be my
15 first question.

16 MS. RAPHAEL: Okay. Thank you.

17 Clearly, the issue of what to do with
18 hazardous waste, where does it go, touches no
19 community more deeply than that of Kettleman City.
20 They live three and a half miles from the state's
21 largest facility as an end point for the hazardous
22 waste that is not generated in their community, that
23 is generated across the state of California. That is
24 a significant burden to such a small community of
25 people.

1 Well before I took this job, I was aware of
2 the challenges and the problems in that small town,
3 and the burden that they face. So very early on in
4 my tenure -- I've been here a little over ten
5 months -- I traveled to Kettleman, and I wanted to go
6 in two directions when I was there. Number one, I
7 wanted to see the community itself and talk to the
8 residents; and, number two, I needed to see the
9 facility. This is the place that we regulate that I,
10 as the director, have the responsibility to make and
11 the decision to make to ensure it operates safely and
12 it obeys the law. In order to do that, I needed to
13 see the facility with my own eyes.

14 So I spent almost a day at the facility,
15 looking at the various operational aspects, talking
16 with the people who run it, talking with my
17 enforcement team and my inspectors to understand what
18 is it that they are doing at the facility, and where
19 would my confidence be that this is a facility that
20 could operate or could not operate.

21 So in terms of my own personal connection,
22 I've spent time at the facility; I've spent time on a
23 number of occasions with residents, either in the
24 Kettleman area or when we would meet in other
25 locations in the Central Valley, as well as in my

1 offices in Sacramento. My door has always been open
2 to community members and members of the activist
3 community. I take this responsibility very
4 personally, and I want to make sure I have the best
5 information.

6 SENATOR ALQUIST: Thank you.

7 Your department is one of three coordinating
8 the use of biomonitoring programs. The legislature
9 established biomonitoring to assess exposure to
10 chemicals that cause, among other things, birth
11 defects, which we know is a quite high rate in this
12 small town.

13 So to date, biomonitoring has not happened
14 in Kettleman City, so -- this would be my last
15 question, but it's two or three questions in here.
16 So I would ask you: Why has it not occurred; what
17 role should it play; and how important could it be to
18 Kettleman City?

19 MS. RAPHAEL: We are blessed in California,
20 because we have a state biomonitoring program. That
21 is not something any other state in the nation can
22 say that they have, and that was at the behest of the
23 legislature who passed that law and gave it to three
24 departments. So DTSC, OEHHA, and Department of
25 Public Health share that responsibility.

1 DTSC has used biomonitoring extensively as a
2 way to have an early warning signal when toxic
3 chemicals are showing up in wildlife and in people.
4 So, clearly, there could be a nexus here in looking
5 at impacted communities.

6 To this moment in time, biomonitoring has
7 not actually -- You are correct in saying
8 biomonitoring has not been offered to the residents
9 of Kettleman. What I will commit to and am excited
10 to do is to go deeper into the why on that and to
11 work with the Department of Public Health to ask the
12 question: Is this an appropriate place for
13 biomonitoring? If not, why not? Let's talk to the
14 community members, bring them into the conversation
15 to get a realistic view of what could
16 biomonitoring -- how could it help; what kind of
17 information could it give to the community members
18 that they don't already have. The idea of finding
19 out what's in their bodies, can we link it to
20 anything in the environment, are the chemicals that
21 they're being exposed to even -- sorry -- contained
22 in their bodies, that some of the pesticides won't be
23 picked up in biomonitoring, is what I want to say.

24 SENATOR ALQUIST: Would you commit to, in
25 the next three months, asking these questions?

1 MS. RAPHAEL: I will.

2 SENATOR ALQUIST: And at that point, putting
3 out a statement after you evaluate the answers to
4 those questions, stating either specifically why
5 biomonitoring would not be a good thing to use in
6 Kettleman City, or why it would be to implement the
7 process.

8 MS. RAPHAEL: Yes. I would -- So a piece of
9 that, along with that, is the report on birth
10 defects, and when that comes out and is finalized,
11 and we can take a look at if there are significant
12 patterns of birth defects that might point us to
13 particular chemicals that we want to biomonitor for,
14 that will inform that decision.

15 I'm committing to do what you say. The
16 three months, I don't know when the report is coming
17 out, so I want to make sure whatever conversation we
18 have is robust.

19 SENATOR ALQUIST: Thank you very much.

20 CHAIRMAN STEINBERG: Senator Fuller.

21 SENATOR FULLER: I really appreciated the
22 time you took yesterday to explain the green
23 chemistry initiative. Unfortunately, not through
24 your fault, but I was a bit overwhelmed. I still
25 have some questions in that area.

1 One of the things that you made very clear
2 was the value of the scientific process to analyze
3 potential harms of the chemicals concerned, as well
4 as the potential harms of any alternatives to the
5 chemicals. And I'm hoping you can briefly just kind
6 of go over a little bit again the importance of the
7 alternative analysis so that we don't get into a
8 situation where -- I think you called it "regrettable
9 substitution," and we'll move to a couple more
10 questions on this area, so we'll kind of go briefly.
11 But I want to try to get us through the sequence, how
12 hard this is going to be, and how we find a way
13 together to make it palatable.

14 The first thing is, if we don't do something
15 in a thoughtful way with a scientific process, we end
16 up with a regrettable substitution. Can you briefly
17 explain the importance of the alternative analysis
18 process to avoid that?

19 MS. RAPHAEL: I think, perhaps, the most
20 important element of AB 1879, the law that put this
21 regulation in motion, is introducing the idea of
22 alternatives analysis. What can happen when somebody
23 says, "I want to get formaldehyde out of this
24 product," they just put anything in that's not
25 formaldehyde, for example. The problem with that, as

1 we said in our conversation, is you could actually
2 substitute something worse off than the formaldehyde
3 itself. And we call that -- maybe it's a
4 euphemism -- a "regrettable substitute," because you
5 end up regretting the fact that you made that change.

6 So how do you know something is safer?
7 That's really the question that the alternative
8 analysis is trying to tackle. When you say we have
9 identified there's a problematic chemical in a
10 product that has the potential to expose a
11 population, how do we know that what we're replacing
12 it with is, in fact, safer for the environment, for
13 humans? The only way to do that is to look at what
14 would you be substituting, a range of alternatives,
15 and asking for each one: Does that one cause cancer?
16 Does that one have a different impact? Because what
17 you don't want to do is substitute an air pollutant
18 for a water pollutant, right? That's the classic
19 case of MTBE that we're all painfully aware of. And
20 so by having a number of criteria by which you use to
21 compare things, and if you compare each one using the
22 same, then you end up with an array of information
23 that points you in the direction of a safer
24 alternative.

25 The real power of this law is that you don't

1 stop there. It's not enough to say something is safer.
2 It also has to be feasible. It has to be practical.
3 You have to be able to meet performance standards. So
4 you cannot, for example, get rid of a solvent to take
5 paint off with water, right? Water would be less toxic,
6 but if it doesn't remove the paint, you haven't really
7 gotten a real alternative.

8 So the beauty of this law is that it directs
9 our department to not only look at the science of the
10 alternatives and their safety, but also the pragmatic
11 aspects: Are they real alternatives? Are they
12 technologically feasible? Are they financially
13 feasible? And all of that is required in part of
14 this analysis.

15 SENATOR FULLER: And so that leads us to the
16 conclusion that it's preferable to do this process
17 compared to having individual laws banning the use of
18 a specific chemical in order to be able to get at
19 exactly in what particular environment it is. In
20 other words, you are saying that in some environments
21 the chemical is not toxic, but in other environments
22 it is, depending on the kind of contact it has for
23 individuals.

24 So one of the concerns I'm still struggling
25 with little bit, and I hope you can help me understand,

1 last year you supported legislation banning the use of a
2 single chemical, BPA, and stated it was prudent to
3 restrict its use in a narrow range of products, but yet
4 the Office of Environmental Health has since reported
5 that the replacements for BPA are showing the potential
6 to be more problematic from a public health perspective.
7 In fact, one member of the biomonitoring California
8 Scientific Guidance Panel, who is a U.C. Berkeley
9 researcher, expressed concern that the alternatives to
10 BPA are equally problematic or worse. So that's exactly
11 the situation that you're trying to stay out of. Going
12 forward, how are we going to avoid getting in that place
13 again?

14 MS. RAPHAEL: In that letter, the point I
15 was trying to make is that while -- First, the
16 process that we're working on regulations on is not
17 in place yet. Once it's in place, the legislature
18 will have an offering. You will have a place to move
19 this kind of question so that it is a more
20 thoughtful, long kind of issue. The process is not
21 in place, and even once it is in place, there will be
22 times where the legislature will want to act.

23 In the case of BPA, what was important about
24 the law as it was adopted in the state of California
25 is that it talked about the alternatives, that the

1 alternatives cannot be worse off than the
2 Bisphenol A. Part of the problem in the past is that
3 we would just write the ban language without any
4 mention of alternatives, and so the BPA ban was very
5 narrow. And it was also on a -- I'm not sure how
6 much we want to go -- I think what you're trying to
7 get at are those mutually exclusive ideas.

8 SENATOR FULLER: Yes. And at the time you
9 put out the letter, it seems that you felt that was a
10 problematic chemical, but yet we didn't seem to have
11 found in technology a chemical that was better, and
12 there wasn't a process to identify that. And it
13 seems like the whole process of 2,100 chemicals that
14 are listed is going to take a really long time, and
15 I'm kind of afraid we'll continually end up in that
16 situation where we haven't gotten guidance on the
17 technology that will allow us to take the proper
18 alternative and that the process itself takes so
19 long.

20 So you're sitting in that chair where you
21 will have that dilemma to correct, and I hope you can
22 explain and give me some feeling of how we can get
23 from here to there.

24 MS. RAPHAEL: I hope I can answer the
25 question to give you confidence in my ability to make

1 those determinations.

2 The way the process will work -- Assuming
3 the 2,100 chemicals is, in fact, the list that is
4 there, those are all chemicals that have known
5 problems. We identify them with a product that has
6 exposure. In the case of BPA, it was the baby
7 bottle. It wasn't all uses of BPA. It was simply
8 baby bottles. So we would identify a product
9 category, and then we would put that out for public
10 comment.

11 So we would say: Here are three, four, five
12 potential products that we are considering looking
13 at. Let's get feedback from the manufacturers. Are
14 there alternatives out there now? Are those -- Do we
15 know enough to say there's a safer alternative out
16 there? Maybe we shouldn't pick something of those
17 five if there isn't a right alternative, if you will,
18 or maybe we do pick something because it drives the
19 research that way.

20 It's a very flexible outcome. It's not just
21 a ban, which is the other beautiful part of this.
22 It's not an all-or-nothing. If we were to choose
23 something like BPA, the end regulatory response could
24 be more study, that we need some specific more
25 information.

1 So my job as director will be to take in the
2 science, make the best determinations we can for
3 which product chemical combinations are the most
4 important to California, put that out for public
5 comment, taking that information back, and then
6 proceed from there.

7 SENATOR FULLER: Thank you.

8 MS. RAPHAEL: Thank you.

9 CHAIRMAN STEINBERG: I may have some
10 followup on that line of questioning in a moment, but
11 Senator Dutton.

12 SENATOR DUTTON: Thank you, Mr. Chairman.

13 I want to thank you for taking the time. I
14 enjoyed discussing the agency and what your thoughts
15 are with regard to how you plan to run it or direct
16 it, as the case may be. I guess that leads to one of
17 my questions.

18 Oftentimes, the kind of calls I get into my
19 office regarding businesses that are trying to work
20 with various agencies in the state is that it almost
21 seems like the people at the ground level, at the
22 local level, have power and try to have all the
23 power, and sometimes it almost appears as though --
24 I'm not saying they do -- but it appears as though
25 they may have a little bit too much freedom.

1 I was curious from your perspective, do you
2 feel you have the authority and power to be able to
3 run the agency and make sure that people all the way
4 down the line actually are in compliance with the
5 policies and protocols that you're going to put into
6 place?

7 MS. RAPHAEL: The short answer is:
8 Absolutely, yes. The "how" I do that is an
9 interesting journey. One of the --

10 When I was speaking with Governor Brown
11 about this job, he said to me, "I would like you to
12 approach this job with two words," and he said,
13 "'genuine inquiry.' I want you to ask the hard
14 questions." And that's a place I'm very comfortable
15 in being.

16 So when I came to the department, I started
17 asking those questions, and I found a number of
18 answers, depending on the questions. I found an
19 incredible willingness to work with me and to join me
20 in asking questions. And one of the things I
21 uncovered, one of the challenges we have is
22 inconsistency. We have policies. We have
23 hierarchies, and yet we aren't -- haven't done a good
24 enough job of communicating that down, and I, as a
25 director, need to make sure that is happening in a

1 way that is understandable, my expectations, all the
2 way up and down the agency. And that's tough when
3 you've got 980 employees across eight sites across
4 the state. We're doing that. And I'm very
5 encouraged by what we're seeing, because I'm
6 encouraging the bottom-up to ask those same questions
7 too, because they may be frustrated by those
8 inconsistencies as well.

9 So when you have a constituent come to you
10 and say, "I don't think I'm being treated fairly. I
11 don't think DTSC staff are treating me the same way
12 they are treating someone else," that's exactly what
13 I need to know, because I can respond to that
14 immediately. And it's those conversations that I'm
15 committed to having. Thank you.

16 SENATOR DUTTON: Will you be performing an
17 economic analysis on the proposed regs that will be
18 coming up here shortly regarding green chemistry and
19 so forth?

20 MS. RAPHAEL: Indeed. We did -- There was a
21 preliminary economic analysis done for the first
22 round. We have now asked the team of outside experts
23 to look back on the revised regulation, to let us
24 know -- I'm assuming they need to update that
25 economic analysis, and when we release the

1 regulations, whenever that is, that will also be
2 released as well. Absolutely.

3 SENATOR DUTTON: One of the challenges that
4 I found personally as a -- now, a ten-year
5 legislator, is that sometimes you have a long,
6 unintended consequence. Sometimes a little bit
7 better analysis on the front end could save you some
8 trouble. So that was my concern in that area there.

9 I noted that in your support for the
10 confirmation, there's very few businesses on the list.
11 And now I have an updated list, but it seems mostly
12 larger organizations. What do you plan to do to reach
13 out to the small business community of our state to make
14 sure they have an understanding and clarity, or -- and
15 also they have the opportunity to provide input?

16 MS. RAPHAEL: When I joined public service,
17 I joined at the local level, so for most of my
18 20 years I have been working in local government,
19 City of Santa Monica, City of San Francisco, and in
20 that capacity I became very familiar with local
21 chambers of commerce and small business commissions.
22 So my history is an affinity to that size of an
23 organization, and I fully understand the importance
24 they play in the state of California.

25 Now that I find myself in the state capital,

it feels a little distant from that face-to-face with small businesses. It's very easy for me to have interactions with the larger businesses. They have their lobbyists; they have a presence here. The Chamber of Commerce is here. Those are easy relationships to build.

The small business relationships are more challenging, and those are the ones I've been working on on a steady state. So I am looking for partners to help me get out in front of small businesses. I have met with small businesses across the state on individual levels. We've given awards to plating shops in Southern California. I have met with auto shops when we're talking about automotive products, and I've met with small manufacturers who are parts of alliances looking at sustainable production. I have a lot more I can do on that, and I'm very excited to do that, especially in the context of these regulations, because it is the small business that we're most concerned with in terms of their ability to meet the expectations.

SENATOR DUTTON: I made the offer in our office, and I'll make it in public too. I'll be more than happy to facilitate workshops down in my district. The Inland Empire is basically a

1 manufacturing and industrial-type area, so I think
2 maybe having a better working relationship between
3 the small business community down in those areas -- I
4 was sincere yesterday. Publicly, I'm going to say it
5 again. I'll be more than happy to work with you to
6 put together some workshops down in my district to
7 help to give the small business community a little
8 bit better understanding of your agency and what it
9 is you are trying to achieve.

10 MS. RAPHAEL: Senator, I will publicly say I
11 will take you up on that offer and very much look
12 forward to it.

13 SENATOR DUTTON: Thank you.

14 CHAIRMAN STEINBERG: Senator De León.

15 SENATOR De LEÓN: Thank you very much,
16 Mr. Pro Tem.

17 Ms. Raphael, I know we met yesterday. We had a
18 good meeting. You have a very impressive resumé. I
19 know we mentioned, obviously, you worked in Santa Monica
20 as well as San Francisco. I know that you have a B.A.
21 from UCLA, as well as a master's degree from Cal. We
22 talked about yesterday you have a B.A. in physiological
23 plant ecology.

24 MS. RAPHAEL: Right. Very helpful subject.

25 SENATOR De LEÓN: Let me rephrase that. You

1 have a master's in physiological plant ecology.

2 MS. RAPHAEL: Yes.

3 SENATOR De LEÓN: And all but the
4 dissertation for your Ph.D., and, obviously, biology
5 as well as ecology, your B.A. at University of
6 California at Berkeley.

7 Given -- Touching upon a little of Senator
8 Alquist's line of questioning, given that it's a very
9 difficult period economically, obviously, the budget
10 has been cut and department heads are being told to
11 squeeze their budgets even tighter, to do more with
12 less, I want to talk to you about your plan
13 specifically to ensure that disadvantaged communities
14 are protected.

15 Obviously, we know that these are
16 communities that are disproportionately impacted by
17 chemicals, by chemical plants, because of their
18 zoning laws at the local/county levels. We don't
19 always exactly know, but for whatever reasons, there
20 was junkyards and chemical plants all over the place,
21 and if you live in another income -- zip code area
22 where there were -- there's green parks and open
23 space, but they're closer to a tire dumping center or
24 a junkyard.

25 With that tighter budget, give us a ballpark

1 figure -- I'm not asking you to give us a magic
2 solution. I know it's difficult right now, but what
3 are you going to do as the head of this department to
4 ensure that these communities that have
5 disproportional impact to their health, that they
6 will be protected?

7 MS. RAPHAEL: That's the central question.
8 And this actually, in my mind, gets back to Senator
9 Dutton's question on how can I be sure that at the
10 ground level -- do I have enough authority at the
11 ground level as the director.

12 It really gets back to the idea that as the
13 director, I set the vision, and I set the
14 expectation, and while that expectation has to do
15 with consistency and performance, it also has to do
16 with commitment to environmental justice and
17 commitment to protection of communities. That starts
18 with me. That is my most important role as director.
19 How I manifest that is not only in my words, but in
20 my actions.

21 One of the things I have done is put people
22 in place who I believe share that same commitment.
23 My deputy for enforcement, my chief counsel, my
24 deputy for cleanup, these are all people who I know
25 at their very core believe that this is their

1 responsibility and are driven to prioritize this with
2 their staff.

3 So as we contract, which we will at DTSC,
4 because our budget is not looking terribly good, as
5 we contract and lose positions, certainly lose
6 vacancies, we must set those priorities so that that
7 doesn't fall off, that becomes the mission of every
8 single person. Whether they're in my legal shop, my
9 admin shop, my lab, everyone carries that around as
10 their central responsibility.

11 The other place we're focusing to make sure
12 those needs are not lost is within our public
13 outreach, our community liaison. Those people know
14 that it is their job to not sit behind a desk but to
15 get out in the community. If I may, I'd love to give
16 you an example of how we're going to do that in a
17 more effective way.

18 SENATOR De LEÓN: Let me ask another
19 question before you get to that. You made an
20 interesting point. Is that the current culture, if
21 you will, of your department, and you see the
22 challenges in front of you, and you want to make
23 folks more proactive, or do you have a sense that --
24 or, rather, do you have proactive bodies that don't
25 sit behind a desk but are actively engaged in their

1 community? Please be candid.

2 MS. RAPHAEL: Candidly, it's a mix.
3 Candidly, it's a mix. We have some of the most
4 impressive, dedicated staff. In fact, the example I
5 was going to give was one in the Imperial Valley
6 where there's something called the IVAN database, and
7 what that is -- IVAN is "Imperial Valley -- " and I
8 just blanked out what the A-N stands for, so I
9 apologize. The point of that is that it's a
10 community-driven set of eyes where the community
11 looks out in their neighborhoods and identifies the
12 blight, identifies the things that are most upsetting
13 to them, whether it's illegal dumping, or an air
14 emissions problem, or a water pollution problem.
15 Whatever it is, they put it in a central database
16 that comes to DTSC's office in El Centro, California,
17 and there we have identified a community
18 problem-solver. That's a person who wears many hats.
19 One of them is community problem-solver. That DTSC
20 employee takes that information and acts as a hub,
21 because not all those problems are related to DTSC.
22 They could be under the authority of other
23 jurisdictions, but because of that fractured nature
24 of government, we serve as the hub.

25 That idea did not come from me. That came

1 from that employee working with community members.
2 And Luis Almada (phonetic) and his team of people
3 down in the Imperial County came up with those ideas.
4 So it's a mix of people. We have the very best, and
5 we have people who, perhaps, need a little push.

6 SENATOR De LEÓN: Sure. Thank you for your
7 answer and for your candidness.

8 I was struck by your answer about a set of core
9 values that you adhere to, and, obviously, that will be
10 manifested in your management style and the vision you
11 bring to this department.

12 At the core -- I would make the assumption,
13 please correct me if I'm wrong, your upper management
14 folks that you have selected share those core values.
15 Obviously, they share your philosophy and that,
16 obviously, of the governor.

17 So how does that -- Walk me through sort of
18 management leadership 101. How does the very top,
19 obviously, through your leadership as being the head
20 of this department, sort of penetrate, trickle down,
21 if you will, to the very bottom? Because
22 sometimes -- I enjoy what you're saying. I'm with
23 you 100 percent. I'm cheering you on. It's great,
24 theoretically, great for folks to teach in class at a
25 theoretical level, you know, but how it actually is

1 practiced, how it's executed, top to bottom, bottom
2 up, if you will, walk us through that.

3 MS. RAPHAEL: There's so many levels to
4 that. So jumping to the end, how do I know I've done
5 it. The emails I get back from people saying how
6 they are looking at their job differently. So I know
7 it's working. I'll jump to the bottom. How have I
8 been doing it? I do it by honestly setting
9 expectations clearly, clearly saying, "This behavior
10 is not acceptable. This is not a professional
11 example, and this is." And I ask people to think of
12 it through a very simple lens -- it's a one-word
13 lens -- and that is "confidence."

14 I have asked every individual in our
15 department to ask: Is this action they're taking
16 building confidence or eroding confidence? That's a
17 very, very powerful frame. And as we talk and meet,
18 and I meet with staff -- I meet with staff
19 one-on-one, with 15-minute conversations with any
20 staff who wants to meet with me. So I get the truth,
21 not the filtered truth, through staff meetings,
22 through problem solving and prioritization. I have a
23 white board where all the problems that stakeholders
24 bring to me, the decisions we haven't made,
25 frustrations they have with the department, are up on

1 my white board. And I call, and we have committees
2 for each one of those to solve them.

3 So people see action, and they understand
4 the word "confidence." And that's been a very
5 effective and powerful frame for our department.
6 And, frankly, I think the staff at our department are
7 hungry for this and are responding. And I'm very
8 proud of the work we're doing.

9 SENATOR De LEÓN: Okay. I know we had,
10 yesterday, a little bit of conversation to some
11 degree on Kettleman City. I know Senator Alquist had
12 a -- broached that subject, and I know that we're
13 waiting for data still from the federal EPA so --
14 before some action items could be put forth.

15 Mr. President, just one last question.

16 I know we broached this yesterday, and this
17 is with regard to a letter, obviously, that I sent, I
18 believe to you, with regards to the potential
19 relocation of a lab in downtown Los Angeles. Could
20 you give us an update on what's happening? And the
21 reason why -- my background, obviously -- the
22 background. I shouldn't say mine.

23 Tough economic times. You have families
24 right now not knowing what's going to happen. Do
25 they have to relocate to Northern California,

1 Berkeley? They have roots in Southern California.
2 Are they going to be, you know, rooted elsewhere
3 throughout Southern California? Some sense of
4 uncertainty, I would suspect. So what's happening
5 with that?

6 MS. RAPHAEL: We have a lab. One of our
7 facilities is a very old, ancient, outdated
8 laboratory facility in downtown Los Angeles. I've
9 been there twice to meet with staff. We have about
10 11 staff members who work there now. It's not an
11 appropriate place for our staff to work. I do not
12 believe it's a healthy environment for them, and so
13 we are committed to moving them. In fact, we must,
14 because DPH occupies the lease on that, and they are
15 closing it down in six months.

16 So we're now looking at facilities across
17 Southern California, as well, as you mentioned, in
18 Berkeley, and looking at the cost estimates of that
19 move, and the plusses and minuses. What do we lose
20 if we move and consolidate everything to Northern
21 California? What is important for our enforcement
22 team to have present for them in Southern California
23 with respect to the lab?

24 We made a map of where everybody lives who
25 works there, and then we looked at various

1 facilities. And the problem, as you know, with
2 Southern California, it's a big place, and it's very
3 hard to find something that's centrally located and
4 doesn't impact one of those families. Our commitment
5 is to do our very best to keep it in Southern
6 California, if we can.

7 SENATOR De LEÓN: Have you or someone in
8 management been in touch, obviously, with the staff
9 members who would be impacted?

10 MS. RAPHAEL: Yes. Frequently.

11 SENATOR De LEÓN: All right. Thank you very
12 much.

13 MS. RAPHAEL: Thank you.

14 CHAIRMAN STEINBERG: Thank you, Senators.

15 A couple follow-up questions for myself.

16 Ms. Raphael, I know there are a number of people here
17 from in and around the Kettleman City area I believe
18 who will testify in a few minutes. It might be an
19 opportunity to clarify a few things, understanding a
20 couple of things: Number one, that your department
21 has limited jurisdiction over the overall issue in
22 Kettleman City; two, I'm appreciative of your earlier
23 testimony that you've been there, and you've talked
24 to residents, and you've surveyed the situation
25 yourself. And there's some facts here unrelated,

1 again, to anything that you have been involved in
2 that are just unreal to me --

3 MS. RAPHAEL: Okay.

4 CHAIRMAN STEINBERG: -- that in 1994,
5 residents filed a civil rights complaint with the
6 U.S. EPA around their claim of toxic exposure, and
7 this is 2012, and they have never received a response
8 on their claims.

9 Now I understand, in part from your advocacy
10 and the advocacy of the community, that they have now
11 committed to providing such a report by the 31st of
12 August of 2012, a response to the claim of a
13 disproportionate number of birth defects as a result
14 of toxic exposure.

15 Now you have this regulatory responsibility,
16 if you will, over the hazardous waste project. Do
17 you want to say anything here today publicly? Not,
18 obviously, about what decision you're going to make,
19 because this isn't the place to do it, and you have
20 to obey the law, but the timing of your decision
21 versus the receipt of that response, 18-years-late
22 response, from the United States Environmental
23 Protection Agency?

24 MS. RAPHAEL: I'm glad that timing wasn't on
25 my shoulders.

1 CHAIRMAN STEINBERG: No, it isn't.

2 MS. RAPHAEL: I think what -- But what it
3 points to is: What do I need, as a director, to make
4 a decision? What are those factors that have to
5 become clear to me in order to have confidence that
6 we are making the right decision?

7 There are two main -- There are a number of
8 things that we're working on, because a decision has
9 not been made. And I am very clear on that. We are
10 still at the discussion of whether or not a permit
11 expansion will be adopted, will be granted. We are
12 in that process of gathering information.

13 In order to have that information, we're
14 going to need to know about birth defects; we're
15 going to need to know what happened since the 2010
16 study that looked up 2007 and 2008, so we're going to
17 need that information before.

18 CHAIRMAN STEINBERG: How will you obtain
19 that information?

20 MS. RAPHAEL: That is Department of Public
21 Health, and I believe they committed to this group a
22 couple weeks ago to have that out shortly. I'm
23 looking forward to seeing that.

24 The second thing would be then -- the piece
25 would be the resolution of this complaint that was

1 filed in 1994 that U.S. EPA has been sitting on for
2 all those years. If it takes till August, I will
3 wait until August, because I think it's incumbent
4 upon me as the director to be able to answer those --
5 the charges that were brought in the complaint about
6 DTSC's performance. Even though those charges were
7 from 1994, if we can get information on how we are to
8 proceed now and how we need to proceed in light of
9 those, I need to know that.

10 CHAIRMAN STEINBERG: What about some
11 additional CEQA evaluation regarding the facility; is
12 that something you plan to do before making a
13 decision?

14 MS. RAPHAEL: So those were the two
15 documents that are not in my control, that are not in
16 DTSC's control. One is the resolution of the Title 6
17 complaint, the civil rights complaint, and one is the
18 birth defects. What is in DTSC's control is how we
19 evaluate and use the CEQA process to get a broader
20 feel for what is going on in Kettleman.

21 We need to -- Part of CEQA is looking at
22 cumulative impacts. So since the time that the
23 previous CEQA document was completed, which was 2007,
24 we need to take additional information into account,
25 look at what other facilities have been cited around

1 the Kettleman community, look at the issue of birth
2 defects, look at pesticide exposures, to try to have
3 an idea of what -- paint a picture of the reality of
4 the situation for the residents of Kettleman, and how
5 does the facility play into that. And that's part of
6 the additional work that we are working on right now.

7 CHAIRMAN STEINBERG: Thank you.

8 One other set of questions, if I might, on
9 green chemistry and the DTSC's responsibility.
10 Senator Fuller, I think, questioned you about it at
11 length, and Senator Dutton, I believe, to balance and
12 consider individual chemicals to determine their
13 safety. My friend, Senator Fuller, my colleague,
14 Senator Fuller -- I'm not sure, and, obviously, the
15 question is not directed to you, but I just want to
16 understand how you see this. If the concern is that
17 the legislature is doing one-offs here, or that the
18 green chemistry initiative itself is not good, sound
19 public policy. Because I know in opposing -- some
20 Members of the minority party ended up opposing the
21 Bisphenol A bans. Point two, the fact that we have a
22 process in place now --

23 MS. RAPHAEL: Hopefully.

24 CHAIRMAN STEINBERG: Hopefully. So I think
25 clarifying what the concern is, if there is a

1 concern, would be helpful to my understanding. But
2 maybe you can elaborate a little bit more about how
3 you see the relationship between the process that is
4 now established as a regulatory process to evaluate
5 the safety and the alternatives around specific
6 chemicals, and the legislature's, sometimes, desire
7 to get into the fray, especially when it comes to a
8 high-profile product, especially given the fact that
9 you have, if I'm reading this correctly -- how many
10 thousands of -- 3,000 chemicals of concern that you
11 potentially -- your department might potentially look
12 at over time, which means that if number 2,500 is
13 really important, you're not going to get to it for a
14 long while.

15 So how do you guide the legislature here in
16 determining whether to take up any of these chemical
17 issues legislatively versus giving you, as the
18 regulator, the responsibility to weigh that balance?

19 MS. RAPHAEL: So I think the short answer
20 is: Urgency and timing. The law 1879 was written
21 with no shortcuts in it. It was written to be very
22 deliberative. A list of chemicals of concern are
23 identified. They're paired with products, because
24 you can't -- the way I talk about this is, it answers
25 the question. It's law. By the way, we don't have

1 the system set up yet. We have a law in place. We
2 have no regulations in place. So at this point in
3 time, there is still no offer of the legislature in
4 terms of doing this kind of analysis.

5 The analysis was written to have no shortcuts,
6 so once a chemical and product is identified, like BPA
7 in baby bottles, for example, then an alternatives
8 analysis is done. That is done in a very deliberative
9 process. It can take up to a couple of years. Then you
10 have a regulatory response process. That takes time.
11 There may be a situation, and we'll use the BPA example
12 since that's the one at hand, where 11 other states have
13 already banned this product, and, wherein the case of
14 baby bottles, the only place BPA baby bottles were being
15 sold in the state of California is in 99 Cent stores.
16 So it becomes an access issue, not one of a level
17 playing field for the public.

18 There may be times when there's a need to
19 move quickly, that the legislature still wants to
20 have a role. So that's where I see these as
21 together. The preferable place will be the more
22 deliberative process, the process whereby we have the
23 time to look at alternatives, especially for ones
24 where we're not sure exactly what the alternative
25 might be, and we want to work with industry to ask

1 the question *Is it necessary?* and look for those
2 alternatives.

3 Did that help?

4 CHAIRMAN STEINBERG: Yes, it did.

5 MS. RAPHAEL: Okay.

6 CHAIRMAN STEINBERG: Please, Senator Fuller.

7 SENATOR FULLER: If I can shed any clarity
8 on your question, it's exactly that, that in some
9 instances in our earlier action, we seemed to have
10 jumped to "*This is a harmful chemical,*" but we didn't
11 have a safer alternative, and because we didn't have
12 one we landed on something that might have been
13 worse. So now we have this process for that not to
14 happen, but we have a list of, like, 3,000 chemicals,
15 and I don't think it's going to get done in the
16 near -- I know it's not the final list, but this is a
17 starting point. There's a long period of time to
18 look at it. I'm just saying: How do we get from
19 here to there over time?

20 CHAIRMAN STEINBERG: I think you've done a
21 good job, in my view, sort of describing at least an
22 analytical framework for how we might look at it.
23 Senator Fuller and others, we might agree or disagree
24 with that, but I think it's clear. What you're
25 saying is your process is the preferred process.

1 Where there's a matter of urgency, especially given
2 the backlog, then it's appropriate for the
3 legislature to consider it.

4 Of course, it's pretty obvious that a lot of
5 bills introduced in the legislature, they don't all
6 get through and signed by the governor, right? So
7 there is a filter there. We just don't say, "Yes, we
8 want this done," you know, "Do it."

9 MS. RAPHAEL: There's a process.

10 CHAIRMAN STEINBERG: Yes. Very good.

11 Let's hear from witnesses in support of the
12 nomination.

13 MR. MALAN: Mr. Pro Tem, Members, Justin
14 Malan on behalf of two organizations today. I'll try
15 to be brief. They're somewhat disparate groups, and
16 I think it reflects the merits of this candidate
17 today. With regard to the health directors
18 association of the local environmental health
19 directors that do most of the hazardous waste work
20 for the local level, and -- we want to commend the
21 administration for choosing this candidate to fulfill
22 that position. It's critically important that the
23 state and the local jurisdictions work in concert on
24 these issues, whatever they are, particularly as it
25 pertains to disadvantaged communities or any