



In the Matter Of:

DTSC Hearing: Toxicity Draft Regulation

AUDIO TRANSCRIPT

December 12, 2016

Case No:

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

PRE-RULEMAKING WORKSHOP

TOXICITY CRITERIA DRAFT REGULATION

TRANSCRIPTION OF AUDIO RECORDING

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Held on December 12, 2016

8800 Cal Center Drive

Sacramento, CA

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Transcribed by:
THOMAS J. LANGE, CSR No. 4689

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1 December 12, 2016 1:00 p.m.

2

3 MR. SCHUMACHER: Good afternoon. Welcome,
4 everybody. Glad you could make it. My name is Nathan
5 Schumacher. I'm with DTSC and I'll facilitate our
6 discussion today. We'll be discussing all of what we
7 present and any concerns or questions you may have.
8 But before we do that, there are a few housekeeping
9 introductions as well.

10 First of all, let me introduce all the DTSC
11 staff who will participate in this process today.

12 MR. DEPIES: Are we muted?

13 MR. SCHUMACHER: We're webcasting, so just so
14 you know.

15 (Discussion re webcasting settings)

16 MR. SCHUMACHER: As I said, I'm Nathan
17 Schumacher. I'm the lead facilitator in the
18 discussion today. I'm with DTSC. Peter Bailey, who
19 is just sitting right here, he will be our presenter.
20 He also will be participating in the discussion. He's
21 a Senior Engineering Geologist Supervisor with the
22 Department.

23 Also participating and presenting will be
24 Kimberly Gettmann. She's a Toxicologist with us.
25 She's to my right here.

1 Additionally, we have a number of other
2 people who will be participating in the discussion.
3 Vivian Murai who is an attorney, to Kim's left, and
4 also Richard Hume, who is the Chief of the Landfills,
5 Legacy Landfills Section of our department. And then
6 Ray LeClerc, Assistant Director will all be
7 participating in the discussion.

8 There are some housekeeping items. First of
9 all, to our left out those doors and down the hall to
10 the right are the restrooms in case you might need
11 that. Also, I think everybody got copies of all the
12 materials we're handing out. But if you want
13 refreshments, they're also in the back there, the back
14 table by the door. In case we have to evacuate for
15 some reason, some emergency, God forbid, please follow
16 our lead. We will give you clear instructions. There
17 are a number of ways to go in and out of this room.
18 So obviously you'll have to follow our lead if we have
19 to leave for some reason, God forbid.

20 So beyond that, Peter Bailey will be
21 presenting for about 15 minutes; then after his
22 presentation, we'll open for discussion.

23 This is pre-rulemaking. So we have no set
24 regulation at this point that we're proposing. We're
25 open to whatever you have to share with us, any

1 concerns, questions. We also have a comment form, so
2 if something occurs to you after today's meeting,
3 please feel free to send that in to us or email to
4 Kevin Depies, who is our contact for this as well.
5 And Kevin Depies is a project manager. He'll be
6 involved in the discussion as well as the others I
7 mentioned earlier.

8 Anything else? I think that's it for now so
9 I'll turn it over to Peter Bailey who will give a
10 short presentation with Kimberly Gettmann.

11 MR. BAILEY: Thanks, Nathan. My name is
12 Peter Bailey. I'm a Senior Engineering Geologist
13 Supervisor for the Legacy Landfills office. And as
14 Nathan mentioned earlier, this is a pre-rulemaking
15 workshop regarding toxicity criteria. For those who
16 are in the back, you probably can't see this screen.
17 It's a little small for you but I'm on slide 3, which
18 is about the proposed draft regulation, some
19 highlights of it.

20 It will be a new chapter or article within
21 Division 4.5 of the California Code of Regulation
22 Title 22, titled Human Health Toxicity Criteria For
23 Cleanup. It provides clear objectives for risk
24 assessment and remediation goals and applies to all
25 hazardous waste and hazardous substance cleanup sites

1 in California.

2 You also got a handout of the proposed
3 regulation. This is what you -- a copy of what you
4 got. Also one of the key reasons why we're here is
5 that the purpose of the proposed draft regulation is
6 to codify DTSC's past and existing practice of
7 applying the more protective toxicity criteria at all
8 sites in California.

9 Another key reason for the proposed draft
10 regulation is to close a potential ambiguity for
11 federally owned and Superfund sites. So the key
12 element in the toxicity criteria or the proposed rule
13 is toxicity criteria. And Dr. Kimberly Gettmann, I'll
14 ask you to discuss a little bit about this.

15 DR. GETTMANN: Thank you, Peter. Just to do
16 a little bit of background so we're all on the same
17 page here, as Peter mentioned, the key element of this
18 proposed regulation right now are toxicity criteria.
19 So how do we use these toxicity criteria here at DTSC?
20 What are we doing with them?

21 We use the toxicity criteria in our human
22 health risk assessments, baseline post-closure site
23 specific risk assessments. We also use them when we
24 develop risk-based screening levels, and they also do
25 get used in developing cleanup goals or remediation

1 goals when a promulgated number is not available, such
2 as the maximum contaminant level or MCL for water.

3 So we have two different sets of toxicity
4 criteria that we use. One set of toxicity criteria
5 addresses the noncancer component of a chemical, and
6 those criteria are the amount of the chemical that one
7 can ingest or breathe every day for a lifetime that is
8 not anticipated to cause harmful effects. Okay.

9 Then the second type of toxicity criteria
10 that we have are those that address the cancer
11 component of chemicals, and the definition of that is
12 it quantifies the upperbound estimate of the excess
13 cancer risk resulting from a lifetime oral or
14 continuous inhalation exposure to that chemical.

15 So how do we use these or where do we get
16 these toxicity criteria from? Okay. So at this date
17 we have CalEPA, and underneath the umbrella of CalEPA,
18 we have got several departments. One of those
19 departments is the Office of Environmental Health
20 Hazard Assessment or OEHHA. And OEHHA is tasked
21 within CalEPA of developing and setting the toxicity
22 criteria that are used within our profiles. And these
23 toxicity criteria are peer-reviewed criteria that get
24 used in the prop 65 program, the Hot Spots program,
25 and we use them here in our cleanup program.

1 So if you look at the federal level, our
2 counterparts there at US EPA, and you have multiple
3 departments under US EPA. And one of those
4 departments is NCEA/ORD, which is National Center For
5 Environmental Assessment within the Office of Research
6 and Development. And what ORD -- within ORD, there's
7 what they call the information risk -- Integrated Risk
8 Information Systems, sorry, or IRIS program. And what
9 IRIS has been tasked with for EPA is to develop and
10 set those toxicity criteria that are used within EPA's
11 programs and their regional office for hazardous waste
12 cleanups.

13 Occasionally -- so we have got a bunch of
14 chemicals but not chemicals that have been evaluated
15 by IRIS and so there's not a toxicity criteria in our
16 database for all chemicals. When that happens, US EPA
17 has another department called the Superfund
18 Remediation and Technology Innovation or Superfund
19 program. And within that program, if a chemical you
20 have on a site does not have an IRIS value, it can be
21 requested for that chemical to be evaluated and
22 reviewed and for then the Superfund program to develop
23 that toxicity criteria. Those criteria are called
24 provisional peer-reviewed toxicity values for
25 Superfund or PPRTVs.

1 So you can see we have got multiple sources
2 for toxicity criteria that can be used for the risk
3 assessments as I mentioned or the cleanup goals from
4 the previous slide. So what do we do here at DTSC?

5 What DTSC's practice has been in the past and
6 what current practice is and what our future practice
7 is to use the toxicity criteria from the more health
8 protective source. And so I'm going to turn this
9 presentation back over to Peter who will kind of go
10 into more detail on how this regulation is envisioned
11 shows our current practice and proposed practice.

12 MR. BAILEY: Thank you, Kim.

13 So just to reiterate what Kim said, so it has
14 been and continues to be DTSC's practice to use the
15 more health protective value in the event OEHHA and
16 IRIS values are protective and use them in human
17 health risk assessment documents in California. So
18 this is a practice that both DTSC and the US EPA
19 Region 9 have been using since 1994 in California.

20 So now DTSC wants to codify this practice.
21 We want to close a possible ambiguity on federally
22 owned sites and Superfund sites. And to do that our
23 intent is to memorialize practice in the draft
24 proposed regulation by first setting a point of
25 departure for screening levels and remediation goals

1 at an incremental excess lifetime cancer risk of 1
2 times 10^{-6} and a cumulative hazardous index of 1.
3 Second, to use the more health protective
4 peer-reviewed toxicity criteria from the sources Kim
5 mentioned earlier in the blue boxes, including OEHHA,
6 IRIS and the PPRTV.

7 So, a little bit of background or rationale
8 for the proposed regulation. In 2003 EPA issued a
9 directive on federal level establishing a hierarchy
10 for assessing risk in Superfund sites. The directive
11 indicates that if available, IRIS toxicity criteria
12 would be used and if it was not available in that tier
13 1 level, that it would go -- use the next level, which
14 would be the PPRTV or the Provisional Peer Reviewed
15 Toxicity Value under EPA and so forth down to other
16 toxicity values available by the state, in our case,
17 into OEHHA.

18 So also the directive requires remedial
19 project managers to use their best professional
20 judgment. So, this was written to allow states to
21 choose the more protective toxicity criteria than
22 IRIS. So recently however, federally -- a federal
23 landowner and responsible party has unilaterally
24 applied a strict interpretation of the hierarchy and
25 proposed remedy using a less protective IRIS value.

1 So DTSC invoked the formal dispute process and opposes
2 this approach. So DTSC's solution is to develop a
3 regulation that requires the same level of protection
4 across all sites in California, consistent with the
5 last decades of practice.

6 So I know that's a mouthful but this is an
7 example. You see this table shows a particular
8 screening level for PCE, PCE indoor air screening
9 levels in micrograms per cubic meter based on OEHHA
10 toxicity criteria and IRIS toxicity criteria for
11 commercial and industrial. That screening level was 2
12 for OEHHA based and 47 for IRIS based, which is the
13 IRIS base is 20 times -- more than 20 times the OEHHA
14 and that's over an order of magnitude difference.

15 So what this is showing is there's a
16 potential for two sites side-by-side in California,
17 for example, one private and one other federal having
18 two different screening levels. So without the
19 proposed regulation, different screening levels at
20 different sites provides unequal protection to the
21 public and potentially allows undesirable exposure to
22 human health.

23 So we just wanted to introduce that DTSC
24 would like to propose the concept of a narrative
25 standard that incorporates the required toxicity

1 criteria in the regulation as an alternative approach.
2 And, you know, Nathan will bring it up later, but we
3 would like to open up for discussion and talk about
4 the proposed regulation first and then later introduce
5 and discuss the narratives -- a narrative standard.

6 So the next steps are first we need to finish
7 the regulation development. This is pre,
8 pre-development right now. That's what we were
9 working on and then go in and collect and consider the
10 preruling requirements or comments that you submit and
11 then we go to revised regulation for formal
12 rulemaking. And then after that, then we go into the
13 expected rulemaking activities, which there would be
14 another comment period and also hearings in Northern
15 and Southern California, followed up by the submittal
16 to the California Office of Administrative Law review
17 and adoption of the final rules.

18 MR. WHITE: I have a question.

19 MR. BAILEY: Can you save it, Chuck?

20 This is the last slide. We have DTSC is
21 accepting comments until January 16th. Please email
22 your comments to Kevin Depies right here and I'll
23 leave this screen up if you need to write down the
24 information.

25 So with that, I'm going to turn it over to

1 Nathan to facilitate the discussion. Can you wait
2 until we get to that?

3 MR. SCHUMACHER: Okay. Before we start the
4 discussion, Ray LeClerc would like to say a few words.

5 MR. LECLERC: I think we took this
6 opportunity to get some input early on in the process
7 so we can take people's comments in before we actually
8 go to formal rulemaking. So this is an important part
9 of our process, so we would like all to participate
10 and ask questions. Feel free as this is a free forum
11 and people should be able to share their thoughts and
12 ask whatever questions you like and be able to offer
13 up any information you have. And then we'll take all
14 that in and then go to formal rulemaking. So I want
15 to encourage everyone's participation.

16 MR. SCHUMACHER: Including those sitting in
17 the back, too.

18 MR. LECLERC: Yes. And we're here till 4 so
19 there should be plenty of time for everyone to engage.
20 I guess we'll start with Chuck.

21 DR. GETTMANN: So everybody does realize,
22 sorry, we do have a court reporter who is recording
23 this. It's, you know, just for -- he's taking it down
24 so we will have a court reporter recording it so just
25 so you guys are aware for anybody that speaks that we

1 do have a court reporter. Also, too, if you can make
2 sure that when you do speak if you introduce yourself
3 and clearly state so that we can make sure we get your
4 name and everything, we appreciate that.

5 MR. WHITE: This is being webcast but it's
6 not being recorded?

7 DR. GETTMANN: Right.

8 MR. SCHUMACHER: Right, so again what Kim
9 just said, please state your full name and any
10 affiliations you have when you speak.

11 MR. LECLERC: We're not recording it.

12 MR. SCHUMACHER: We're not recording it;
13 that's right.

14 MS. MURAI: One last thing. Sorry, Chuck.

15 This IRP meeting with the email address is
16 not what we're doing today. Okay. Do not pay
17 attention to that. Please do not use that IRP meeting
18 thing because that's not going to get to us. Please
19 use Kevin's email address that's in the actually
20 legible print on your slide. Thank you.

21 MR. SCHUMACHER: State your name.

22 MR. WHITE: Yes, Chuck White. I'm a private
23 consultant. I'm also on the DTSC's Community
24 Protection and Hazardous Waste Reduction Advisory
25 Committee, and we have been meeting a lot on issues

1 related to reducing the amount of waste that's
2 disposed of in landfills.

3 And of course I'm curious about how this is
4 going to affect cleanup levels because of course the
5 lower cleanup levels you have result in more waste
6 that could potentially have to be disposed of in a
7 landfill or something else be done with it.

8 And I've perused that capacity for a
9 clarifying question, because I'm frankly a person --
10 and I'm sure not the only one in this room who is
11 personally confused about what the -- how the
12 screening levels relate to cleanup levels. I would
13 think that that whole issue needs to be very clearly
14 articulated before these regulations are adopted. An
15 example that I saw recently in the Sacramento Bee was
16 related to that shooting range over by central
17 Sacramento that had these lead levels in it and people
18 were referring to the screening levels of 80 parts per
19 million as a cleanup level. And I thought that was
20 kind of strange and I didn't see any rebuttal from
21 anybody to that effect.

22 So there's clearly misinformation out there
23 or misunderstanding, certainly the way I have a
24 misunderstanding. So when I raised my hand earlier, I
25 was actually, when you first raised the issue of

1 setting screening levels and setting cleanup levels,
2 it would be helpful, I mean I know for me and perhaps
3 for others, if the Department could articulate how the
4 screening levels relate to cleanup levels and the area
5 that I've been looking at on this advisory committee
6 has to do with all kinds of contaminants, organic and
7 inorganic, but the whole exide lead acid battery thing
8 is going to -- is going to be cleanup levels set for
9 that.

10 There has been talk -- when I first started
11 working for the Department back in 1982 the cleanup
12 level was 1,000 parts per million because that was the
13 lead hazardous waste regulatory. And then EPA came
14 along with lead, for example, of about 400 parts per
15 million, and then there has been talk of we should be
16 lower down to 150. And the screening level for lead
17 as I understand I think is based upon this kind of
18 process you're talking about codifying and
19 regulations, is 80 parts per million.

20 So we've got cleanups going back to the '80s
21 that were cleaned up to 1,000 parts per million. And
22 if you're setting the lowest possible screening level
23 and that somehow triggers the cleanup level, are we
24 going to be going back and excavating all of Los
25 Angeles down to the ocean because of all the historic

1 lead deposition that was there? So it seems to me
2 before you go forward and adopt regulations like you
3 are proposing, there needs to be a clear understanding
4 about how this all fits into the overall risk
5 assessment and cleanup strategy, including screening
6 levels, and agree on those.

7 I know I went on and on, but if you can help
8 me at least with the differentiation between screening
9 levels and cleanup level, that would be really
10 helpful. Thank you.

11 DR. GETTMANN: Definitely. I will go ahead
12 and start and you guys can pitch in. So for screening
13 levels, screening levels are set at 1 times 10⁻⁶ risk
14 for cancer and a hazard of 1 for noncancer. And
15 that's the initial process for screening sites to see
16 if there is a potential concern or we need to move the
17 site forward with a risk assessment.

18 MR. WHITE: Based upon in the case of lead,
19 ingestion?

20 DR. GETTMANN: Yes. And for -- well, for
21 lead we have, yeah, for ingestion. And so the
22 toxicity criteria is not the only value that goes into
23 developing that risk-based concentration. There's
24 exposure time. There's exposure frequency. There's
25 body weight, if this is soil or water. There's

1 breathing, you know, the amount of hours if it's air.
2 So there's other components that go into it.

3 The toxicity criteria is just one component
4 that goes into determining what your risk-based
5 screening concentration is going to be. Okay. So
6 what we're trying to do is to fix that one component.
7 The site specific -- you know, so for the screening
8 level, we've got our set of default exposure
9 parameters. So, for a residential, it's 26 years, 350
10 days a year, assuming a 24-hour exposure. Okay. So
11 those are the default parameters that both US EPA and
12 DTSC uses when we set our risk-based screening levels.

13 When we go to a cleanup value, a cleanup
14 goal, that may or may not be the same as that
15 risk-based screening level. Or it may be a different
16 value depending on site specific conditions. What
17 would change in that would be the exposure times, the
18 exposure frequencies. The site case managers, the
19 project managers, and the team for that site have the
20 ability to determine what is site specific for that
21 site.

22 So you still have, when you develop a cleanup
23 goal, your exposure frequency, your -- let's see,
24 frequency and, you know, the days that are there, your
25 hours, your days. So those values may change. Let's

1 say your site is strictly going to be a residential or
2 a recreational area.

3 There are other land-use covenants on that
4 site, restrictions on that site. So you can develop a
5 cleanup goal for that site for a chemical that may not
6 be the same as that risk-based concentration initially
7 because they have put other restrictions on there to
8 prohibit activities or prohibit exposure. Does that
9 make sense?

10 MR. WHITE: It's helpful, but I don't -- are
11 there -- are there regulations that lay out this
12 process of selecting a cleanup level based upon all
13 available information and parameters that might be at
14 the site? Because we're talking about adopting a
15 regulation here but I was not aware that the process
16 you just described is in regulation as law.

17 MR. DEPIES: Let me elaborate then on what
18 Kim was saying in answering your question. For
19 instance our cleanup program is modeled under
20 Superfund program, EPA Superfund program. And that's
21 based on the National Contingency Plan, the NCP, which
22 actually describes the process for evaluating a site
23 and selecting the remedy for that site. And so as Kim
24 said, we'll use a screening level to get us an initial
25 indication of whether or not there's a problem at a

1 site, if the contamination might be at levels that
2 were of concern. And then it's up to the project
3 managers then to utilize the various information that
4 you're gathering from the investigation, whether it's
5 a site investigation or a remedial investigation or
6 similar.

7 And our schools program would be the same.
8 In coming up with our remediation goal, I actually put
9 together a bullet list of things that I use and I
10 don't even think this is comprehensive. I whipped
11 this out a couple of hours ago. The NCP allows you to
12 evaluate all these inputs in determining what would be
13 an appropriate level. And here are some of the things
14 I look at: Site complexity, media that are impacted,
15 the data confidence, the data density, exposure
16 pathways, potential property uses, contaminant type,
17 public input, economics of cleanup, conformance to
18 California state policy, assurance of projected long
19 term future use of a site and assurance of projected
20 long term site security.

21 We use those to determine do we want to
22 select a remediation goal that's closer to the point
23 of departure, 1 times 10⁻⁶ for cumulative risk or if
24 instead we might allow a less restrictive cleanup goal
25 or remediation goal that would then put us in the risk

1 range which is described in the NCP, 1 times 10-6,
2 10-4.

3 MR. WHITE: Well, I understand the NCP and
4 the requirement that those relate, and I'm not even
5 sure of the federal regulations or federal guidelines,
6 but I'm just curious that we've got a federal process
7 but they don't use OEHHA cleanup standards for the
8 federal process. But you're talking about marrying a
9 cleanup level by OEHHA with the federal process that
10 California has adopted.

11 I mean, I'm just thinking out loud, because
12 I'm just -- I'm really concerned that we're going to
13 find ourselves at cleanup levels that are going to be
14 generating cleanups that -- and I don't disagree --

15 MR. DEPIES: Sorry. I actually could answer
16 that really quickly. We're not changing what we have
17 been doing for the last 20, 30 years. We're trying to
18 codify what we have been doing. So we're not trying
19 to -- we're not selecting lower values based on this
20 process.

21 MR. WHITE: When I started working for the
22 DTSC in '82, 1,000 was the cleanup level.

23 MS. MURAI: But that's not based on this
24 process.

25 MR. WHITE: I understand that.

1 MS. MURAI: It's based strictly on the
2 science that's evolved since then. So that is a
3 scientifically different driven issue that certainly I
4 think, as someone with kids, I very much appreciate.
5 But the short answer is we follow the analytical
6 outline and process that's in the NCP and it is
7 federal regulation.

8 Our statute under 68 requires us to be
9 compliant with federal guidance, federal regs, and
10 federal law. And we try to do that carefully and even
11 if the words are not the same under our corrective
12 action process, we try to satisfy the same analytical
13 tenets and benchmarks so that our decisions are
14 defensible.

15 So when we have been saying that we're just
16 trying to codify existing practice, that's all we're
17 doing. It happens to be one particular input into an
18 equation under the risk assessment guidance that the
19 feds have and we are just anchoring that one number in
20 accordance with our existing practice for the last
21 three decades. So understandably, yes, in some cases
22 it will be a lower number. Where the OEHHA number is
23 not more protective than the federal number, the IRIS
24 number will reign, and that is certainly true for T,
25 as in "Tom," CE.

1 MR. WHITE: I don't disagree with what you
2 said. My only point here is that I'm on this advisory
3 committee for the Department to try to figure out a
4 way to reduce hazardous waste being disposed of in
5 landfills. I get what you're saying.

6 At the same time, if the Department is coming
7 up with cleanup standards that are ever more, ever
8 more, then you by necessity are going to be generating
9 more ways that's going to have to be either managed or
10 treated or disposed of in landfills. An example that
11 we're looking at is like DDT cleanup which
12 historically has been excavated and hauled off to
13 landfills for disposal.

14 We have been looking at a supercritical water
15 oxidation process, back of the envelope calculations
16 to do the Montrose chemical site to levels that people
17 want to see cleaned up. You would take 10 to 15 years
18 of 24 hours a day running a supercritical oxidation
19 that has about 100 to 150 decibels of noise going on
20 in that neighborhood for that period of time at a cost
21 that's probably about 20 times the disposal cost of
22 excavating that and hauling it away to a landfill.

23 Now that may be the best way to go in, all
24 things being considered, but I'm just wondering how a
25 policy of rigidly putting these in regulations to

1 force ever lower screening standards and ever lower
2 cleanup levels is going to match with the department's
3 goal to reduce the disposal of hazardous waste in
4 landfills. I just think you ought to evaluate that
5 as far as this ruling making.

6 MR. LECLERC: We appreciate that, Chuck, but
7 I think the concept of reducing waste at the landfill
8 wasn't at the cost of protectiveness.

9 MR. WHITE: I don't disagree with you.

10 MR. LECLERC: So I think our concept was we
11 would not compromise on the protectiveness. And this
12 rule is about protectiveness.

13 MR. WHITE: Right.

14 MS. MURAI: And it's not necessarily always
15 evolving down necessarily, because, as science,
16 scientific studies are produced that might produce
17 different information. For instance, we might learn
18 about bioavailability later on as we have with certain
19 compounds.

20 The information may change that may drive the
21 number to a different place, and we will then revisit
22 that as appropriate. And certainly we're first and
23 foremost only looking to peer-reviewed values so it's
24 not just that a study can come up and, boom, the
25 number changes. So there are some checks and balances

1 there.

2 MR. BAILEY: That's already been a practice
3 we have been doing for years.

4 DR. GETTMANN: There's several people in the
5 back that have had their hands raised.

6 MR. SCHUMACHER: Right there, sir. Yes, you.

7 MR. NARLOCH: You just described a number of
8 parameters that --

9 MR. SCHUMACHER: Could you introduce
10 yourself?

11 MR. NARLOCH: Bruce Narloch with MWH. And
12 you were describing a number of parameters that --

13 MR. SCHUMACHER: Since we have a large room,
14 can you stand? I'm sorry.

15 MR. DEPIES: Otherwise the webcast may not
16 hear you also.

17 MR. NARLOCH: So you described a number of
18 parameters that a project manager would evaluate in
19 deciding appropriate rules for a site, anticipated
20 exposure pathways, cost of cleanup, et cetera. What I
21 thought I heard you say was that the project manager
22 might select a less restrictive point of departure
23 from NCP. Cleanup goal might be different. Did I
24 understand you correctly?

25 MR. DEPIES: Well, the NCP allows for us to

1 select cleanup goals that fall within a risk range but
2 the target is to go towards a cumulative risk of 1
3 times 10^{-6} . That's one of the reasons it's called a
4 point of departure.

5 MR. NARLOCH: So if that point of departure
6 of 1 times 10^{-6} is codified, how do you set that risk
7 level?

8 MR. DEPIES: What we're codifying is the
9 application of using that 1 times 10^{-6} for developing
10 screening levels. That's part of it.

11 MR. LECLERC: We're not intending to change
12 the NCP.

13 MR. DEPIES: Absolutely not.

14 MS. MURAI: We're not setting a risk level
15 for cleanups. We're merely anchoring the bottom of
16 the risk range or the top of the risk -- down to the
17 bottom of the risk. We're anchoring the bottom of the
18 risk range. We're not setting the risk level for
19 cleanup. Will that help?

20 MR. STOKER: It doesn't read that way.

21 MS. MURAI: We're open to edits.

22 MR. SCHUMACHER: One at a time. Your name,
23 please?

24 MR. STOKER: Yeah, Chris Stoker with
25 Equipoise Corp. The whole reason I flew here this

1 week was because of how this was written. I'm looking
2 at 69000.2 and the heading says action levels,
3 screening levels, remediation goals, and point of
4 departure.

5 And everything that reads thereafter is all
6 based on 1 times 10-6 for a cumulative HI of 1. So
7 there is some departure with the NCP in the sense that
8 there's no discussion about management range. There's
9 a point of departure so de minimis, but there's not a
10 discussion about a management alternative, there's no
11 discussion about particular land use conditions. You
12 know we closed many sites in California obviously, all
13 of us, at something other than 1 times 10-6. And so,
14 that if you're going to codify 1 times 10-6,
15 clarification needs to be put in here as to how you
16 keep interpreting point of departure. Because I can
17 tell you every one of my clients freaked out when they
18 saw that.

19 MR. WHITE: If you go back and evaluate all
20 the sites that were being done at 1 times 10-3, and
21 reevaluate them because you're going to apply this
22 uniformly across all cleanup sites in the state, if I
23 heard you correctly at the beginning. Are you serious
24 about that?

25 MR. HUME: Are you objecting to the term

1 point of departure?

2 MR. STOKER: No. No, I wonder -- I would
3 like to see clarification. Point of departure is
4 really for the screening levels.

5 MS. MURAI: Yes, it is.

6 MR. STOKER: Okay. Then after the screening
7 levels you go through the typical process of RIFS or
8 maybe just the FS at that point, you come up with your
9 remedial action plan and your remedial goal based on
10 site specific conditions. The project manager, the
11 client and the Department all have the ability to work
12 collectively to come up with how that site is best
13 managed based on its site specific conditions as you
14 mentioned in the risk-assessment portion.

15 And then we can look at -- we can use things
16 like land use covenants. We can use other things that
17 can break the exposure or limit the exposure so that
18 we can use alternative numbers. The way this is
19 written does not say that whatsoever. It says the
20 point of departure of 10-6, you'll use this for all
21 those different things: Action levels, screening
22 levels, remediation goals.

23 MS. MURAI: Thank you. Does some of that go
24 away when we delete the words "action levels"?

25 MR. STOKER: And remediation.

1 MS. MURAI: Well, point of departure is not
2 setting the cleanup goal. And because their statute
3 requires us to be consistent with the NCP; we don't
4 get to redefine point of departure, but --

5 MR. STOKER: No, I agree with that.

6 MS. MURAI: But clarification is certainly in
7 our minds and we were thinking of putting that in the
8 initial statement of reasons.

9 MR. STOKER: Yeah, and I think the key is
10 that people have done -- it has to be evident, however
11 it's codified, that there is still the ability to
12 manage risk in accordance or in the same manner that
13 is been there for years under DTSC and in accordance
14 with the NCP. We're still looking at one in 10,000,
15 to one in a million. Each site gets evaluated
16 independently but this doesn't read that way.

17 MR. HUME: Are you concerned it doesn't allow
18 a point of departure --

19 MR. STOKER: No, not point of departure.

20 MR. HUME: Is it just ambiguous or --

21 MR. STOKER: It's ambiguous. Yeah.

22 MR. HUME: Okay.

23 MR. LECLERC: That certainly wasn't our
24 intent. But thank you for bringing it to our
25 attention.

1 MR. STOKER: No, I didn't -- I should hope
2 not. I mean I'm in negotiations with DTSC right now
3 on many different projects, but -- you know, this has
4 never come up.

5 MR. SCHUMACHER: So this is why we're doing
6 this.

7 MR. STOKER: Right.

8 MS. MURAI: To address Mr. White's point, we
9 do not intend this regulation to be retroactive.
10 Okay. So it would not reopen every single decision
11 DTSC has ever made. However it would come into play
12 in terms of five-year reviews, I believe, because we
13 would want to apply the appropriate peer-reviewed
14 level of protection when we do come to the time of
15 reviewing remedies because we do believe that that's
16 our duty.

17 MR. SCHUMACHER: Did you want to say
18 something, sir? You both had your hands up.

19 MS. DESHILLES: Yes, so --

20 MR. SCHUMACHER: Your name?

21 MS. DESHILLES: Bridgette DeShilles with
22 Integral Consulting. I wanted to go back to -- agree
23 with the points he made, by the way. I also want to
24 go back to the process eval. You say you're fixing
25 the process eval, you're not fixing some of the other

1 parameters. You brought up the whole concept of
2 exposure time and you talked also about the fact that
3 this has been a practice.

4 And I agree generally it's been a practice,
5 but there have been some exceptions to that in the
6 past. To give you an example, there has been a couple
7 of times where we've had -- there's been values in
8 IRIS or OEHHA are chronic toxicity values and because
9 subchronic values you have proposed alternate toxic
10 values accepted by DTSC in those instances, and the
11 way we found that not --

12 DR. GETTMANN: Yeah, and we do realize that
13 that is some of -- we actually have been talking with
14 others and that's one point that has been gotten in
15 for those chronic situations because we do -- or
16 subchronic situations and cases at DTSC where sites
17 are evaluated that way. So that is something that has
18 been brought to our attention already, but we
19 definitely appreciate you bringing that up because
20 that is something that we have to now go back and
21 think about it when we're adding or including that
22 into our division.

23 MR. SCHUMACHER: The gentleman standing.

24 MR. UMENHOFER: I appreciate that. Tom
25 Umenhofer.

1 MR. SCHUMACHER: Your name and affiliation?

2 MR. UMENHOFER: You're going to get it. Tom
3 Umenhofer. I'm Vice President of Operations for
4 Western States Petroleum Association. And we
5 represent the majority of refineries and production
6 facilities in the State of California.

7 And just to reinforce the comments that you
8 heard, I have had a tremendous amount of feedback from
9 my membership along the exact same lines that you've
10 heard already today. And you know I wanted to kind of
11 start at the end in that I didn't see in your
12 discussion where we're going to have another one of
13 the preregulatory workshops because we have a lot of
14 questions and there's not a lot of answers. And you
15 heard the questions.

16 So that is one thing I wanted to ask, would
17 you contemplate that here today? And then in terms of
18 comments by the 16th with the holidays, I have a lot
19 of folks thinking a lot about this and what you will
20 get by the 16th from me is questions. It will not be
21 our comprehensive comments. Today as we sit here,
22 I'll write that in a letter if I have to, but I would
23 like to have you consider pushing off that comment,
24 that line item.

25 We all understand the preregulatory process.

1 It's a soft deadline, but we're still playing around
2 with thoughts. The only question I would ask in
3 follow up with you here, have you looked at the
4 workload that you all have. By implementing this type
5 of thing because you have a model that basically is --
6 could be conceivably everybody. That's a lot of work,
7 and I was just wondering if you took a look at how
8 this changes your job in terms of -- I understand the
9 screening but --

10 MS. MURAI: It doesn't change our job. It's
11 what we have been doing for 30 years.

12 MR. UMENHOFER: So you'll be screening the
13 exact same facilities?

14 MS. MURAI: I mean the science may change,
15 but it is science driven and not process driven.

16 MR. DEPIES: The science in developing the
17 toxicity criteria changes, yes. But what we do here
18 at DTSC in using those data won't change.

19 MR. UMENHOFER: So you don't think that these
20 screening levels that you're talking about will bring
21 in more facilities?

22 MS. MURAI: No, my understanding is that
23 there's only about six or seven chemicals that are
24 more protective -- where the state is more protective
25 than IRIS. And so those are not necessarily drivers

1 at a lot more sites. And this has been our existing
2 practice so we don't see that it's going to change
3 what we're doing.

4 DR. GETTMANN: Actually, there are more --
5 yeah, there are quite a few more if you look at the
6 notes that HERO has put up on our website, it lists
7 all the different screening levels and for soil, we've
8 got I think there's roughly like 60 on there,
9 something like that.

10 For air, I think there's another 70 or
11 something; and then for water, we're somewhere in that
12 range. So there are quite a few chemicals.

13 But as Vivian said, we have been using that
14 human health risk note and that's, you know, kind of
15 the same practice; we have been doing that. It's not,
16 you know -- it's not that we have been changing what
17 we have been changing so -- or we're not proposing to
18 change a practice that we have -- you know, to
19 something new to us.

20 MR. LECLERC: This wouldn't affect our
21 workload or how we do our work at all. What happened
22 is that someone said we're a federal owned property
23 and an NPL site; what you're doing now doesn't apply
24 to us.

25 So we're saying, whoa, I don't think they're

1 right, but we're going to be darn sure you're not
2 right. So that's what this rule is about, is that we
3 don't want to see federally owned property say, we're
4 sovereign, we don't have to follow the state law and
5 hence they have a different cleanup goal than the vast
6 majority of other facilities in the state.

7 MS. GOLDBERG DAY: Amy Goldberg Day with
8 Arcadis. Where you change note 3 so residential which
9 is the result that Nicole described, the exposure no
10 longer equals unrestricted land use. So you're
11 bringing out these, you know, codifying the
12 residential screening levels but it's our
13 understanding they're not unrestricted. So if our
14 client wants to get an unrestricted land use with
15 administrative controls, what could we do?

16 DR. GETTMANN: That's going to be a
17 site-specific issue. And it was a note; there was
18 note 4 actually.

19 MS. GOLDBERG DAY: Note 4, you're right.

20 DR. GETTMANN: So that people don't go back
21 and look at note 3 and say where is she talking about,
22 it was actually human health note 4 that discusses the
23 screening level risk assessment process. And within
24 that note we did remove the unrestricted is equal to
25 residential.

1 And that may be the case for 99 percent of
2 our sites and there may be that 1 percent of our site
3 work doesn't apply and what it's been counted down to
4 a site specific situation. And where this came up was
5 that we were having waste greater than ten feet. And
6 whether or not that waste though was left in place
7 greater than ten feet for that site, needed to be
8 addressed, and how that needed to be addressed.

9 So to make that and turn that over to a
10 site-specific decision made by the project managers
11 for that site, we just removed the language so that it
12 wasn't, you know -- if you see unrestricted and
13 residential, you can always, you know, go unrestricted
14 residential. Does that make sense?

15 MS. GOLDBERG DAY: Well, I'm just wondering,
16 how this is -- so you need 10-6, something that says 30
17 feet below grade?

18 DR. GETTMANN: No. And again this turns it
19 into a site-specific condition, not falling into those
20 site specific when you're setting up those goals.
21 Note 4 is strictly for screening level risk
22 assessments. Note 4 does not get into your
23 nitty-gritty detailed risk assessment.

24 When you're doing a screening level risk
25 assessment it's DTSC's practice that it is based on

1 the 1 to the minus 6, and it's a screening level is to
2 determine whether or not you need to bump that site
3 for further evaluation. So if you pass that screening
4 level risk assessment and you don't have contamination
5 greater than ten feet, then, you can -- we can move
6 forward and we can write off it. But if you do have
7 contamination greater than ten feet, that means you
8 need to go in a more site specific risk assessment and
9 have it then determined within your team and your
10 project and project managers of whether or not it's
11 okay for that risk to be there at 30 feet.

12 Does that make sense?

13 MS. GOLDBERG DAY: Well, it is. I have a
14 case where we can't come to a solution.

15 DR. GETTMANN: Right. So again note 4 is
16 strictly discussing our screening level process here
17 at DTSC, and a screening level process isn't meant
18 to -- you know, it's to determine whether or not you
19 do have a concern at your site and you need to do a
20 more detailed risk assessment. That's what a more
21 detailed risk assessment allows us to do is to bring
22 in the site specific conditions so that the project
23 manager has that information when they're making the
24 decision. You know, screening level is just supposed
25 to bump us, whether or not we need to go to that

1 level; or okay, this site is okay, we can actually
2 close this site off and we don't have a concern.

3 MR. SCHUMACHER: Okay?

4 MS. GOLDBERG DAY: Well, it's just if you're
5 bringing one time -- it's various interpretations that
6 people have and if you try to codify it, there's still
7 going to be interpretations.

8 MS. MURAI: How would you like it to read?

9 MS. GOLDBERG DAY: Well, just define what is
10 unrestricted closure? How do you get unrestricted
11 closure?

12 MS. MURAI: If it's 1 times 10⁻⁶ you're
13 automatically, you're automatically unrestricted so
14 long as your hazard quotient doesn't go over one,
15 right?

16 MS. GOLDBERG DAY: Well, no.

17 MS. MURAI: So that would be the first
18 automatic at screening. But later on there could be a
19 site specific determination and I believe DTSC has
20 done that before so that becomes where you do need the
21 more extensive analysis. It's just not the automatic
22 right off the top.

23 MS. GOLDBERG DAY: Well, if it's deeper than
24 ten feet, it's not automatic.

25 DR. GETTMANN: That's because deeper than ten

1 feet you may have instances depending on what your
2 site is what the reuse of the site is going to be.
3 And so it may be greater than 10 feet right now but it
4 may be 10 feet, may be 12 feet. You know, you may
5 have to have it at 12 or 15 feet, and so that means
6 that, okay, well unrestricted using the screening
7 level risk assessment is not acceptable because we
8 don't know what future land uses are going to be
9 within the state.

10 You never know how land is going to change
11 over or what is going to be developed on that land.
12 So that just bumps it into we need to do a more
13 detailed analysis of this site, not necessarily that
14 something needs to be done or it's going to be done.
15 It's just it's bumping it into that more detailed
16 analysis so that we can ensure that for whatever final
17 decision gets made, it gets made that's going to be
18 based on all the data for the site.

19 MR. SCHUMACHER: Okay.

20 MR. STOKER: Chris Stoker again.

21 So why does this read the way that it reads?
22 Why can't this be very simple? Your presentation took
23 ten minutes, 15 minutes and it was all about the
24 toxicity criteria. And you have your use defined in
25 your presentation. It's for -- we use these toxicity

1 criteria in this prioritization for human health risk
2 assessment for risk-based screening levels and for the
3 development of cleanup goals.

4 There's nothing in here that requires you
5 to -- if you notice, everybody in this room goes
6 sideways on how you implement it once you get past the
7 screening level. Right? We're all hung up on which
8 parameter you use, which land use you're going to look
9 at, which closure criteria you're going to come up
10 with. This should read basically you're going to use
11 these toxicity criteria in this order in the State of
12 California if you're doing anything risk based.

13 You're going to follow your procedure which
14 is you can develop a screening level if you wish for a
15 compound, but it's going to use 10-6 for screening at
16 which time if you fail, then you're going to work with
17 your project manager at DTSC to determine the
18 applicability of site-specific considerations and more
19 advanced risk assessment. That's it. That's what
20 you've been doing for 30 years. This other stuff that
21 you're writing in here leads to nothing but confusion.

22 MS. MURAI: So I wish I could write faster.
23 So could you email us?

24 MR. LECLERC: I imagine you can reply in
25 written comments?

1 MR. STOKER: No. I will. (Laughter)

2 MS. MURAI: We would be happy to take a look
3 at that. Part of our issue is in order -- I take a
4 deep breath because in order for us to get a state
5 requirement to apply to a federal NPL site, it has to
6 be substantive and such and such and such. So we just
7 want to make sure that we nail those aspects clearly.

8 MR. STOKER: The word is nail -- a nail in
9 your own coffin. I mean because you're painting a
10 corner -- you're painting yourselves into a corner
11 with this regulation. We've now gone over how many
12 different exceptions to the regulation in the first
13 15, 20 minutes of starting this meeting. So, you
14 know, we've brought up multiple scenarios where, as
15 the thing is written, you have to open it up to
16 site-specific interpretation.

17 MR. LECLERC: We're not intending to change
18 all that.

19 MR. STOKER: What I'm saying is -- what I'm
20 saying is when you start talking about lumping
21 remediation goals, lumping screening levels it's my
22 original comment. When you lump all those together,
23 without clear discussion about management practices, a
24 flow chart maybe even that shows or a narrative that
25 describes the process and how these toxicity values

1 would be used. They can be used for screening.
2 That's 10-6. They can be used for site specific risk
3 assessment, remediation goals, action levels. Those
4 are 10-4 to 10-6, maybe even an HI of 1 with target
5 organ impacts. You know, that's a whole different
6 animal than what you have written here.

7 MR. LECLERC: Or in reference to the NCP, so
8 our intention is not to deviate from our standard
9 practice.

10 MR. STOKER: And I'm saying when I'm talking
11 about is your standard practice but the language here
12 is not.

13 MR. LECLERC: Right.

14 MR. STOKER: We're going round and round on
15 that.

16 MR. LECLERC: No, I don't think we're
17 disagreeing. I think we're saying the same. That's
18 not -- that wasn't our intent when we write it; we
19 didn't see it that way. So when we huddle back, we're
20 going to go looking at this through your eyes now, and
21 if we agree with you, you provide written comments and
22 we'll take a look at that. That's why we're holding
23 the workshop. Now often when you write something
24 there's unintended consequences and we would like to
25 catch those.

1 MR. HUME: I think your written comments are
2 important because we did spend a lot of time with the
3 language and I'm not wedded to it at all. I don't
4 have any personal stake in it. So I'm very interested
5 in your comments. We want to get it right but we also
6 don't want to get it wrong, so --

7 MR. STOKER: It's the hard part. It's the
8 language.

9 MS. MURAI: Yeah, and we definitely wanted to
10 come out with this pre-reg workshop earlier because,
11 you know, heaven forbid we spend more time on this and
12 head further down the wrong path. So, we figure if we
13 can tap your intellects, we're better off for the next
14 step, so --

15 MR. HUME: Are we still concerned about using
16 the term point of departure? Or --

17 MR. STOKER: Yes.

18 MR. NARLOCH: I keep hearing the term point
19 of departure related back to screening levels, but the
20 point of departure is used in multiple versions of the
21 RFS. It's used in determining the results of a base
22 line risk assessment. That -- you use the point of
23 departure HI of 1, cancer risk.

24 So, again, I've worked on projects with DTSC
25 toxicologists where we put in the risk and safe

1 condition and he said, well, there's a cumulative HI
2 of 2. You know, let's call that good. Well, if it's
3 codified, that's not good for determining baseline
4 risk assessment.

5 It's -- again, I'll tap into this gentleman's
6 remarks about it. You're using that term in multiple
7 points in the process, but if it is designed to be how
8 you calculate or interpret screening levels, then that
9 means you really need to clarify it and mandate point
10 of departure for these other steps in the process.

11 MS. MURAI: I think it may actually intend it
12 because of the screening aspect to be the point above
13 which, meaning higher risk, we would evaluate other
14 cleanup alternatives, but a no cleanup alternative is
15 one of them. So we would have to see what we thought
16 was appropriate. That's when we would turn to the
17 site specific analysis essentially. So it's more
18 than -- it's both more and not more than just the
19 redone if you're 10⁻⁶ or below. So we may --

20 MR. LECLERC: We're not intending to change
21 that.

22 MS. MURAI: Correct, we're not changing
23 anything.

24 MR. LECLERC: That's the issue we wrestle
25 with every day. We will keep wrestling with it. It's

1 not being solved by NCP.

2 MS. MURAI: Right, right. And we're not
3 looking to apply the NCP to 6.5, chapter 6.5 cleanups.
4 But analytically, the benchmarks are still the same no
5 matter what you call the documents. You still have to
6 have the same sort of information to justify the
7 cleanup decisions.

8 MR. NARLOCH: I just want to clarify
9 something you said a little bit ago. I thought I
10 heard you say it was -- I thought I heard you say that
11 if your site needs human health screening levels in
12 note 3, that that site would be appropriate for no
13 further action.

14 DR. GETTMANN: It all depends on what the
15 site is. I mean --

16 MR. NARLOCH: I heard your point about
17 contamination within ten feet. But what about if you
18 decide to be more restrictive a land use is
19 appropriate, then what?

20 DR. GETTMANN: More restrictive than
21 residential?

22 MR. LECLERC: If you go to an industrial
23 cleanup, then that would require, you know -- that
24 would have to be appropriate with the local land use
25 and appropriate land use restrictions.

1 DR. GETTMANN: Yeah.

2 MR. NARLOCH: What's residential?

3 MR. DEPIES: It certainly has a definition.
4 I can't glean it off the top of my head, but certain
5 occupancy.

6 MR. NARLOCH: Typically, it's dermal contact
7 with soil, some soil contamination, so it's some
8 dermal contact, inhalation of particulates or VOCs.
9 That's what the (unintelligible) and that's what RSLs
10 are based on. When you decide that, well, someone may
11 have a home garden and that would be a more
12 restrictive screening level than a residential
13 screening level. So is this the interpretation you're
14 talking about?

15 DR. GETTMANN: And the home and garden
16 pathway actually was just raised. That question that
17 you were raising was just actually raised last week by
18 one of our fellow colleagues and that is something
19 that we have not discussed internally yet. So it is
20 something that we need to go back and discuss.

21 So, I understand now where you're coming from
22 with a home garden pathway. That is actually in my
23 list of things for us to discuss so that we can
24 address that. I don't have an answer for you at this
25 point in time.

1 MR. NARLOCH: Okay. Thank you.

2 MR. SCHUMACHER: Yes, sir. Your name, sir?

3 MR. BELL: David Bell, Air Force and
4 Department of Defense. Here's the question. So you
5 say you're taking and you have a court reporter. Are
6 only you going to see that, see the notes you're
7 taking?

8 MR. DEPIES: It's our intention if we can to
9 try and put our comments on the web page. It will be.

10 MR. SCHUMACHER: We'll get a transcript. We
11 will have a transcript.

12 MR. DEPIES: Are we going to post that?

13 MR. SCHUMACHER: We can post. I mean we can.

14 MR. HUME: Our intent is to have an accurate
15 record of discussion so we can --

16 MR. BELL: For your own use?

17 MR. HUME: Yeah.

18 MS. MURAI: Well, as a document generated in
19 the course of business and kept for at least some time
20 while we do this renewal, it will be publicly
21 available so should someone request it, we would, I
22 believe, be able to produce it. We might have to work
23 out with the court reporter about costs and such
24 because sometimes there's issues with that.

25 MR. BELL: That's probably No. 1. You call

1 this informal and pre-rulemaking and you're going to
2 treat this as a formal ruling?

3 MS. MURAI: No, we're treating it as public.

4 MR. BELL: Okay.

5 MS. MURAI: Public.

6 MR. BELL: I didn't want to rely on our own
7 note taking if we needed the record. That's all.

8 I agree with everything that's been said. I
9 think there's been confusion as stated before about
10 the comment period, holidays, more time to be allowed.
11 We agree with clarification needs to be done with
12 screening levels, point of departure, but actually our
13 concern is the actual intent of this reg, toxicity
14 factors, how it subverts the intent of EPA guidance.

15 There is a reason why there's tier 1, tier 2,
16 tier 3. You mentioned it has been consistent with EPA
17 Region 9. I don't know if anyone is representing EPA
18 here today but that causes us angst because that was
19 -- EPA guidance is intended as a national guidance for
20 consistency. And my example was if there is a plume
21 crossing a state border from California or vice versa,
22 how could -- that would be problematic for a lot of
23 people, how you have one cleanup level on one side of
24 the state and another on the other.

25 I know that's not happening but that would

1 exemplify our concern. And so I guess one question is
2 I talked a lot about the notes. I assume if when this
3 is promulgated would those be revised and reissued?

4 DR. GETTMANN: Yes. Mr. Bell is referring to
5 the human health notes. And yes, if this regulation
6 is codified and it's adopted, the human health notes
7 which would be note 3 in particular, would be revised
8 in accordance with what the regulation, with what the
9 regulation says. It all depends on, you know, what
10 this regulation is going to be. But, yeah, we would
11 end up going back and revising our human health note
12 3.

13 MR. SCHUMACHER: In the back? Your name?

14 MS. KELLY: Caryn Kelly.

15 So I'm hearing that the human health risk
16 assessment note No. 3 would continue to be published
17 semiannually with RSLs, RSL updates?

18 DR. GETTMANN: Yes. Yes.

19 MS. KELLY: And I just wanted to clarify or
20 ask that it's clarified when there are certain
21 toxicity criteria on these be released, that use of
22 IRIS criteria that has since been revised, if those
23 notes were in some process clarified, what would be in
24 that instance. So what I wanted to say was as of
25 today, look at HERO note 3 and look at what decision

1 has been made to infer what is the current so we all
2 (unintelligible). Another question similar to the
3 subchronic criteria is --

4 MR. SCHUMACHER: We're having trouble hearing
5 you. Would you mind coming up a little bit closer?
6 Because also the webcast probably can't hear you.

7 MS. KELLY: For the child specific reference
8 doses, if those are also mentioned like the subchronic
9 criteria I know there's only a handful, but just to
10 explain that will continue to only be used for the
11 school site program or if that will be California
12 wide?

13 DR. GETTMANN: Okay. So first regarding the
14 database, OEHHA's database and the updating and such,
15 HERO tries to be on top of that as much as possible so
16 that we can definitely put that in our note 3 if
17 there's a difference or something. One of the
18 examples is BaP, Benzo(a)pyrene, where it's the OEHHA
19 value versus the IRIS value. And DTSC recommends
20 using the IRIS value for multiple reasons. And that's
21 all documented. I won't go into that here.

22 So that is something that we will continue to
23 do no matter where we are with this rulemaking.
24 That's part of our practice. The other thing you
25 were -- the subchronic, as I had mentioned earlier,

1 that was just brought up to our attention in the
2 discussion so that's something that I cannot tell you
3 right now what we're going to do because it's
4 something that it has now been brought to our
5 attention.

6 You guys have mentioned it here a couple of
7 times. We have it internally from one of our
8 colleagues, too, so that is something that we're going
9 to go back and see what we need to do with how the
10 regulation is written. Same thing goes to we have
11 been discussing the child specific reference doses and
12 same thing with that. We will be discussing those
13 internally and figuring out how we're going to -- what
14 we're going to be doing with those.

15 MS. KELLY: Thank you.

16 MR. SCHUMACHER: Don't be shy. We have
17 plenty of time. Yes, sir.

18 MR. UMENHOFER: Okay. Tom Umenhofer again.
19 I just want to follow up so I have some clarity and
20 maybe others. What we heard today is we saw a few
21 industry factors and a disconnect from what was said
22 that I have no written regs; I appreciate all the work
23 that has been done. But rather I wanted to ask kind
24 of what's -- what's the next step based on what we've
25 heard today? Because what I heard was your intent was

1 one thing but we're reading something else.

2 And I think you heard that. What are you
3 going to do with that so before the regs roll out
4 we'll have a little bit more comfort level in terms of
5 what was heard. I think that a lot of my members'
6 concerns relate to this, this disconnect of intent
7 versus what is written.

8 MR. DEPIES: In part depending on the
9 responses we get from the comments we receive, we're
10 going to evaluate the next step. Our desire is to
11 issue a draft regulation by early March. However, if
12 we find that there is significant input required and
13 significant -- and significant rewrites, we might
14 entertain the thought of redoing the workshop as you
15 asked.

16 MR. LECLERC: But you made the request. I
17 think -- I'm not sure we're prepared to say yes or no
18 right now. I think we would like to go back and hear
19 what you said if it's really clear to us and seems
20 extremely self-evident, maybe a workshop is not
21 needed. But if it's not self-evident and the solution
22 still is evasive, a workshop, another workshop may be
23 appropriate.

24 MR. SCHUMACHER: Yes, ma'am?

25 MS. DESHILLES: I think what you're --

1 MR. SCHUMACHER: Sorry. Your name again?

2 MS. DESHILLES: Bridgette DeShilles with
3 Integral Consulting.

4 What you're hearing from all of us is issues
5 surrounding perception and interpretation. And you
6 all have the concept of how this reads and how you
7 would, as DTSC, perceive it and interpret it. But
8 this will be a rule and it will be open, as I
9 understand it, to all California sites, not just those
10 regulated by DTSC and also those regulated by the
11 Water Board, local CUPAs, counties, fire departments
12 -- correct me if I am wrong -- but who don't have 30
13 years of experience interpreting these types of
14 decision-making processes.

15 And often we paint in a very different way
16 and very strictly interpret things like this. So I
17 would urge you to be really cognitive of that in
18 revising language here that there will be people,
19 regulators out there other than -- and others,
20 nonregulators, public, other interested parties who
21 need their own interpretation of this. And we have to
22 be really cautious about that.

23 MR. DEPIES: It's actually our intent to
24 solicit input from our brethren. Whether or not we --
25 we've already engaged with at least one agency. Thank

1 you for bringing that up.

2 MR. WHITE: This is Chuck White again. I
3 just want to reiterate what you just said. Because my
4 example earlier of that gun range where they were
5 doing all the sampling and they found levels above 80
6 and there was people, homeowners, that were saying,
7 well, I'm not going to do anything now until they come
8 in and clean up my yard down to 80 parts per million,
9 and that was the screening level for lead.

10 There's a huge amount of misconception out
11 there I think about how this process which is somewhat
12 complicated works to actually set a cleanup level.
13 And I'm worried as she said, I think that the public,
14 if it gets their hands on it without a clear
15 understanding of how this is laid out, there's going
16 to be a lot of misperception out there.

17 MS. LE: Michelle Le, PG&E.

18 Just to kind of piggyback on some of the
19 discussion I just heard, earlier I heard a little bit
20 about note 4 and removing the unrestricted use for
21 residential, for residential screening level. Can you
22 explain again? I didn't understand the ten-foot
23 issue, why it's being -- why the unrestricted is being
24 removed.

25 DR. GETTMANN: So previous versions of note 4

1 when we talked about on residential, it had in
2 parentheses, unrestricted use. There are cases where
3 one may be granted a residential use but contamination
4 may be left at depth.

5 And so there may be some type of restriction
6 put onto them. There's a site, for example, in the
7 East Bay where homes and stuff were allowed to be
8 built but there was a restriction on planting fruit
9 trees until contamination was completely removed, and
10 you couldn't do that. So you still had your
11 residential -- you still were doing the residential
12 use but there was still a restriction on that.

13 So there is some confusion with our note of
14 what exactly was meant -- kind of the thought brought
15 up earlier of unrestricted and residential, do they go
16 hand in hand? Is it automatically if you get
17 residential use, do you automatically have
18 unrestricted use?

19 So to alleviate some of that confusion and
20 the interpretation of that note, we pulled out the
21 unrestricted and we just have a residential. Because
22 that's what note 4 is talking about, a residential
23 scenario and a screening-level scenario.

24 And that then turns it back into that project
25 manager and onto that project of really defining what

1 that project is, where the contamination is located.
2 It's also typically when you do a risk assessment for
3 soil you evaluate the top ten feet because that's what
4 is considered for digging down like a swimming pool
5 for residential. But there may be instances where you
6 maybe, you know, you may go down below ten feet
7 depending on if, you know, somebody comes through and
8 regrades, you know, or removes a bunch of the top soil
9 before they do their building or whatever. So to
10 alleviate some of that confusion out there, we just
11 strictly remove the terminology "unrestricted land
12 use" from our note 4.

13 MR. LECLERC: The notes are supposed to be
14 about risk assessment, not risk management and land
15 use and land use restrictions. It's risk management.

16 MS. LE: Right, yeah.

17 DR. GETTMANN: Does that answer your
18 question?

19 MS. LE: It does.

20 DR. GETTMANN: Okay.

21 MR. SCHUMACHER: Go ahead.

22 MR. BELL: David Bell again, Air Force.

23 I have two points. I'm glad you mentioned
24 that it's not going to be retroactive, but I suggest
25 you add clarifying language to why sites could be

1 reopened. You mentioned the five-year review, but as
2 you know there's a process where we have sites under
3 contract and they have a scope of work plan that's
4 been approved. Would that be the -- be current
5 thought of the day and would that be subject to this
6 regulation? This type of clarifying language might
7 need to be addressed.

8 Back to the actual toxicity factors, the way
9 this regulation is written, the most protective but
10 risk-management range, the NCP is designed to be
11 written with risk management of toxicity factors,
12 which is the best science, the most credible and
13 appropriate. That's why IRIS was chosen as the Tier
14 1, quote/unquote, gold standard.

15 Please consider having additional language in
16 here that says that we're not misappropriating funds
17 to do cleanups based on a toxicity factor that's 30
18 years old when there's actually one that's now more
19 recent. That's the way this, the regulation is
20 written as it stands.

21 MR. SCHUMACHER: Response?

22 DR. GETTMANN: Thank you. We will definitely
23 be taking that back and discussing it.

24 Go ahead.

25 MS. GOLDBERG DAY: This is Amy with Arcadis

1 again. With the toxicity, sometimes the most
2 scientifically defensible is not necessarily the
3 lowest. So you're asking us to be below this
4 regardless of the science behind it?

5 MR. DEPIES: Those would be scientifically
6 defensible.

7 MS. MURAI: So you only have these three
8 choices though. So it's only of those three. You
9 don't get to pull in somebody else's number. And we
10 chose these three because they're peer reviewed,
11 because they are federally or OEHHA developed and it
12 would only be after that peer review is complete.

13 MS. GOLDBERG DAY: Sometimes it's not.

14 MS. MURAI: I have heard this. I was under
15 the impression that it actually wasn't a problem for
16 the ones where California's numbers are more
17 protective, but I don't know that for a fact so we can
18 check into that.

19 MS. GOLDBERG DAY: It's not always the case.

20 MS. MURAI: If you have particular ones you
21 want to tell me about, we can check those out. We're
22 more than happy to look at any proposed language or
23 revisions that we all have. And I'd rather use this
24 meeting to the most and get that from you and solicit
25 that from you because we're not adverse to considering

1 revisions.

2 That's the whole point of this meeting is
3 saying, what do you see? What do you have problems
4 with? Why? And thank you for telling us that. And
5 how do you want to see it fixed?

6 Because if we have five different options,
7 it's easier for us to talk about what option you
8 propose and why then to say, well, it was this
9 problem. Maybe this would do it. So --

10 MR. HUME: The point is we're seeking the
11 best science.

12 MS. MURAI: And we believe that the OSWER
13 directive does allow for when it comes down to that
14 cleanup decision, it allows for the best professional
15 judgment and using the best science so that's why we
16 feel we're within the OSWER directive.

17 MR. NARLOCH: How does it do that? Codify
18 it?

19 MR. SCHUMACHER: I'm sorry. Can you stand
20 again and give your name?

21 MR. NARLOCH: How does the remedial project
22 (unintelligible) less protective toxicity document for
23 if it's codified that thou shalt use the most
24 protective value?

25 MS. MURAI: You're very correct. The project

1 manager does not -- well, let me say this. The
2 project managers will do these calculations using the
3 most protective. However the actual cleanup decisions
4 are left to being within the risk management arena and
5 that is within the best professional judgment of the
6 project managers. So I believe the OSWER directive
7 allows more flexibility than what we're looking for
8 but our current and existing program for decades has
9 been to look at what is the most protective and we do
10 look at what's the best science, and so we're looking
11 to anchor what we do have now.

12 MR. NARLOCH: And you'll retain your current
13 policies?

14 MS. MURAI: Yes. And for instance, we had
15 one number that was very old, the PCE number that was
16 used in the screening example but that recently got
17 updated and we're very pleased that OEHHA was able to
18 move that peer review out and complete that
19 evaluation, so that was a major concern of ours.

20 They have not updated the TCE number for
21 trichloroethylene, I think it is. And we would not
22 use that because it is not more protective than IRIS:
23 Those are the two I can remember off the top of my
24 head. The rest I claim lawyer, and I don't know.

25 MR. NARLOCH: There are other examples of

1 OEHHA toxicity values based on very old science.

2 There are IRIS values (unintelligible).

3 MS. MURAI: Well, you're not automatically
4 choosing OEHHA. I believe you're choosing the more
5 protective of those but certainly it may well be that
6 when it comes to actual risk management decision
7 making, the difference won't make a difference in the
8 remedy. It may be that because the risk range is
9 broad enough, you will get to is that remedy that
10 would have been defensible either way. I don't know
11 because, again, I claim lawyer, but --

12 MR. NARLOCH: There are other issues, for
13 example, the OEHHA clarifies VOCs differently than EPA
14 and DTSC. And recently we have found some errors on
15 OEHHA's toxicity database, brought it to their
16 attention and they agreed that there were errors. My
17 point in that is when you correct things like that,
18 but first of all they got caught and identified and
19 brought to the attention of (unintelligible) but, if
20 there's things like that that are codified, how do
21 you, DTSC, make that right?

22 MS. MURAI: We change the rules. We make an
23 exception. We do a Section 100 or we do a rulemaking
24 to do an appropriate change as necessary. One idea
25 was proposed was that perhaps DTSC should pull the

1 appropriate peer-reviewed materials and numbers out of
2 OEHHA, you know, get the actual first download so we
3 can actually vet everything and then make it something
4 that is on our website. So there's no worry about
5 pulling, inadvertently getting connected to the wrong
6 document in the OEHHA database. Do you think that
7 that would be good or more helpful?

8 MR. NARLOCH: Yeah, very much so.

9 MS. MURAI: Okay. Thank you.

10 MR. STOKER: This is Chris. I think that
11 answers the earlier question of how it changes your
12 workload.

13 MS. MURAI: I'm here for another few years.

14 MR. STOKER: There's the workload.

15 MS. MURAI: It just is --

16 DR. GETTMANN: It would definitely initially
17 change our workload to download these documents and
18 then put it in, then it would just be a maintenance
19 status for that.

20 MR. STOKER: But are you doing -- are you
21 doing the review?

22 MS. MURAI: No.

23 MR. STOKER: So you're cross-checking that
24 actual good science was used for the number that you
25 then recommend? I mean I can use TCE as a perfect

1 example. We all know, everybody in this room knows
2 what's going on with the science right there. So
3 which number do you put on for TCE with the
4 uncertainties and everything else that has gone on
5 with the National Academy of Science, OEHHA's own
6 review, how do you move forward with that number?

7 MS. MURAI: I think the present status is we,
8 for TCE, we use the IRIS value. That's it, I think.
9 Because that gives more protection.

10 DR. GETTMANN: OEHHA has used that value for
11 their Prop 65 program.

12 MR. STOKER: And they also issued a set of
13 comments that they didn't agree with the science that
14 based it.

15 DR. GETTMANN: Yeah, so --

16 MR. STOKER: So I mean now I'm stuck. Did we
17 use good science? You know, your point initially we
18 want to use the best science -- I'm just using that as
19 an example.

20 DR. GETTMANN: No, that makes sense.

21 MR. STOKER: So I'm just saying if you're
22 going to post something on the website and say this is
23 what we recommend but you're also going to do a peer
24 review of it, that it is the most protective and
25 applicable.

1 DR. GETTMANN: Well --

2 MS. MURAI: Well, let's back up a sec because
3 just to be clear and I think everyone knows this,
4 we're not looking to be the most protective ever
5 claimed or ever said. Right? We're only looking at
6 the three values and looking for the most protective
7 among those three values because they have already
8 been peer reviewed.

9 It sounds like there's been some question
10 about past peer review quality for some of these
11 numbers, but even that said we're going to go with
12 what we have in front of us because we need solutions
13 and we need things that work. And it may not be
14 perfect but it's going to at least be a set path
15 forward. And if we have to do fixes, we have to do
16 fixes. But, to us, having a single statewide standard
17 is far better than having differential standards and
18 some people more protective than others statewide.

19 MR. HUME: We appreciate your comments.

20 MR. STOKER: Is it a widespread problem? Are
21 you running into this like, you know, 400 sites in LA
22 and they all have different toxicity values?

23 MR. HUME: Our concern is that it might
24 become a widespread problem.

25 MS. MURAI: It is affecting my workload

1 sufficiently that I'm willing to invest this time on
2 this project to close that concern and hopefully head
3 off that argument in the future.

4 MR. LECLERC: It may not be the number of
5 sites but it's certainly the size.

6 MS. MURAI: Yes, and I --

7 MR. STOKER: I heard an earlier comment that
8 indicated why you're doing this.

9 MS. MURAI: Yes. And I'm just --

10 MR. STOKER: Nothing to do with the private,
11 private influence.

12 MS. MURAI: Correct. We just prefer to be
13 able to have a single statewide standard within the
14 state and I prefer to limit my future work on --

15 MR. DEPIES: Consistent with state policies.

16 MS. GOLDBERG DAY: How does this affect PCPs
17 because I've worked on sites multiple chemicals and
18 when it comes to PCPs, DTSC says we want EPA to
19 oversee that. I've had two risk assessments with two
20 different points of departure, one to appease DTSC and
21 one to appease EPA. Same site.

22 MR. LECLERC: Is that Tosco?

23 MS. GOLDBERG DAY: Yes.

24 MR. LECLERC: So cleanups under Tosco are not
25 delegated to the state so --

1 MS. GOLDBERG DAY: So that won't change.

2 DR. GETTMANN: No, no.

3 MR. SCHUMACHER: Go ahead.

4 MR. WHITE: This is Chuck again. I was
5 concerned about the comment that, you know, sometimes
6 there has been errors found in one of these three
7 methods. And I assume it's not widespread but there
8 is -- have you thought about the provision or the
9 possibility of putting a provision to allow variance
10 from these three in the event that some information
11 shows that might be an outlier and be able to consider
12 it? Because without putting these in regulations you
13 have more flexibility than you do if they are in
14 regulations and you talked about doing a Section 100
15 rulemaking as a way of getting around that problem.

16 But it seems to me if there was a process
17 that would allow a variance -- I'm not even sure your
18 existing variance authority in the statute is
19 applicable to this kind of thing, but I would like to
20 hear what your opinion is on that, not necessarily
21 today but at some point in time. But is there a
22 (unintelligible) whatever it is to allow a variance
23 for this kind of thing if necessary.

24 MR. DEPIES: On face value that sounds like
25 an appropriate approach. But on second thought, that

1 puts us in a role of evaluating OEHHA's approach for
2 setting toxicity criteria, which we don't do. So it's
3 something, it's definitely something --

4 MR. LECLERC: It's something to think about.
5 I mean if it has, if somehow in the course of our
6 business we find that this doesn't work for because of
7 errors or some other unforeseen circumstance, is a
8 variance possible?

9 MR. WHITE: Right.

10 MR. LECLERC: We will look at that.

11 MR. WHITE: I was just taking an example
12 where they actually came to you and they both agreed,
13 both OEHHA and the party that there was -- something
14 needed to be resolved or corrected and that kind of
15 situation would seem like it would scream for a
16 variance.

17 MR. LECLERC: Ordinarily a variance can be
18 done with state law.

19 MR. WHITE: Right.

20 MR. LECLERC: Assuming that it's not a
21 federal law there's not -- does not conflict with
22 federal law that we can't provide a variance on.

23 MR. WHITE: Right.

24 MR. LECLERC: But we will look into that.

25 DR. GETTMANN: And I'm not sure what errors

1 that were found that you pointed out and that you had
2 talked to OEHHA, but I know that within HERO we have
3 found -- we have found errors in their database where
4 the number that is reported is not actually the number
5 that's supposed to be reported because their document
6 says something else.

7 So those are errors that we within HERO have
8 actually found and pointed out to them and they are
9 very receptive and say, oh, yeah, that is an error on
10 our part. Things happen or we forgot to upload this
11 or we hadn't gotten around to that. So they've been
12 very receptive to those type of errors that we have
13 found because we have found those errors.

14 MR. BELL: One more quick one. David Bell.
15 Okay. Actually two. It was brought up about cost. I
16 don't know, is there a state regulation to assess
17 fiscal impact?

18 MS. MURAI: That is part of the rulemaking
19 package, yeah.

20 MR. BELL: So that will be forthcoming?

21 MS. MURAI: It would be, yeah, be no change
22 from existing practice. So I'm not quite sure how we
23 do that but that would be part of the rulemaking
24 records.

25 MR. BELL: Schedule -- so you haven't really

1 started the clock. Is there a DTSC rule that you have
2 a year to -- is there a state rule applied when
3 promulgating regulations of one year from the issuance
4 of the draft regulation?

5 MS. MURAI: Which has not happened yet.

6 MR. DEPIES: One year from the draft.

7 MR. BELL: Maybe early March.

8 MS. MURAI: Yes. Depends on what kind of
9 revisions we get and markups we get.

10 MR. WHITE: It also triggers things like 45
11 day public comment period.

12 MS. MURAI: Yes. It's all part of that part
13 2-1, second or third to last leg.

14 MR. BELL: So our best friend PCE just went
15 through peer review.

16 MS. MURAI: Yes.

17 DR. GETTMANN: Yes.

18 MR. BELL: Before that it wasn't peer
19 reviewed and if this was an action we would have
20 been -- I don't know -- peer reviewed?

21 MS. MURAI: It might have been peer reviewed.

22 DR. GETTMANN: It was peer reviewed. It had
23 been peer reviewed before by OEHHA. The value was
24 from 1991 that was a peer-reviewed value. There were
25 comments and everything with that. And then IRIS went

1 through and did their own peer review more recently
2 and released their value in 2012.

3 Since the 1991 value was released there was
4 another study that was done and the IRIS value relies
5 heavily or uses that study to derive toxicity
6 criteria. OEHHA has since gone through, looked at
7 that 1996 study, did their analysis and derived a new
8 toxicity criteria for inhalation. It's basically the
9 same value as before, you know, very slight
10 difference, but they did take a look at all of the new
11 science that had come out since they had done their
12 1991 study.

13 MS. MURAI: And OEHHA actually ran the newer
14 study's data through their model so like the IRIS
15 number, all the data is now considered and it just --
16 it essentially reaffirmed the OEHHA number.

17 MR. DEPIES: The earlier numbers.

18 MS. MURAI: So it was very, very close. It
19 was like --

20 DR. GETTMANN: The old number was 6.1-6 to
21 per micrograms per meter cubed. The new number is
22 5.9. So it's again basically the same value for
23 purposes if anybody that's worried that it's going to
24 affect their sites, it doesn't.

25 MR. SCHUMACHER: In the far back, come

1 forward if you would. And your name also and
2 affiliation?

3 MS. KOEPKE: Hi, Dawn Koepke, McHugh Koepke
4 and Associates on behalf of California Council for
5 Environmental and Economic Balance. And I apologize.
6 I had a conflict and I arrived late. But on behalf of
7 those I represent, I recommend there being a longer
8 extended comment period. Considering the holidays,
9 personal travel, both for myself and my members,
10 additional time would be greatly appreciated.

11 Further, given the extensive comments I know
12 you received today and I'm starting to hear just
13 verbally from my members, it would be really helpful
14 and I think certainly beneficial for all of us to have
15 the opportunity to see revised drafts prior to going
16 into the formal rulemaking stage to give some
17 additional time to deal with some of these concerns,
18 particularly, you know, around the inconsistency with
19 being subject to seeing and view the regulation and
20 what the intent was versus the regulating community
21 and how they perceive the changes to be beyond what
22 they have contemplated. With that, again, we urge a
23 longer comment period. We would be happy to put in a
24 formal written request for that. Thank you and we
25 will follow up.

1 DR. GETTMANN: I have a quick question. I
2 mean we have heard it multiple times from many people
3 for a longer comment period. Would anybody care to
4 give us a -- if we would extend it to the end of
5 January, how -- what is it that you guys are looking
6 for for a revised comment period? How long?

7 MS. KOEPKE: I can't speak for others. I
8 think to the end of January would be very helpful.

9 DR. GETTMANN: Okay.

10 MS. KOEPKE: I think at least for myself and
11 my members, I think we would be able to meet that
12 deadline.

13 DR. GETTMANN: Okay.

14 MS. KOEPKE: Just with, again, the holidays,
15 an additional couple of weeks would be very helpful.

16 DR. GETTMANN: Okay.

17 MR. UMENHOFER: Tom Umenhofer. I would
18 concur with that. That would be very helpful,
19 particularly since if you would give us kind of your
20 thoughts on when you may be coming out with a draft.

21 DR. GETTMANN: Right.

22 MR. SCHUMACHER: Any other comments about
23 extending the comment period? No?

24 MR. WHITE: The other issue was, okay, when
25 is the formal comment period and you guys go back

1 behind closed doors and recraft some language, will
2 you commit to being able to do that informally for the
3 next iterations?

4 MR. LECLERC: I don't think we'll commit to
5 that. I think we can commit to the end of January for
6 comments to be able to craft this, but I think going
7 back out again for informal workshop affects our time
8 line substantially. I think that's something that we
9 do need to go back and think about because it's a much
10 more substantial ask than an extension. So I think we
11 can certainly grant extension to this informal part.

12 MR. WHITE: Take it under consideration.

13 MR. LECLERC: Yes, absolutely.

14 MS. KOEPKE: We would welcome the opportunity
15 to extend, even if it's not a full formal workshop as
16 is the case right now, given the opportunity to see a
17 revision based on the conversations today, I mean,
18 understanding that you're going to see the written
19 comments on the current draft, we have got -- from
20 what we have seen based on today that maybe there is
21 some difference of, you know, perspective about what
22 it says and doesn't say and to work on even in a kind
23 of formal comment period closing such as that could
24 provide an opportunity to see the revised draft, even
25 if just an initial, and still meet that timeline. So

1 I would concur with that point. Thank you.

2 MR. UMENHOFER: Again just to -- Tom
3 Umenhofer. Again, to reinforce that as I can tell you
4 as I stand here today because I'll be at least
5 providing comments for our association, those are
6 along the lines of the comments they're going to have
7 for clarity, pretty much what you heard today.

8 MR. LECLERC: We appreciate that.

9 MS. MURAI: Yes, thank you.

10 DR. GETTMANN: Thank you.

11 MR. SCHUMACHER: Okay. Now we're going to
12 move into something new. The standard. We're going
13 to have a little break first and five or ten-minute
14 break. What do people think? Ten minute break?
15 Okay. Come back about five of, five of 3. Okay?
16 Thank you, all.

17 (Break taken.)

18 MR. SCHUMACHER: Take your seats, please.

19 We will have Vivian Murai start us off with a
20 little introduction to the narrative standard and what
21 we're looking for in our discussions on this topic.

22 MS. MURAI: So, hi. Thanks again for meeting
23 with us on this. And here's another time where we
24 saying, okay, give us all your thoughts. Another way
25 that we could achieve the same but better -- I hate to

1 say better -- but more protective level, we would
2 essentially -- we're trying to do the same thing,
3 require that where more protective the OEHHA level be
4 able to trump IRIS.

5 And one way to do that and have it apply to
6 federal NPL site, federally owned NPL site, would be
7 to promulgate a narrative standard. So it would be
8 the narrative equivalent of an MCL. We're not looking
9 in any way with either version of our reg to trump
10 MCLs. We're looking to stay to the side of MCLs.
11 MCLs would still apply for cleanups in water.

12 But where we're talking about soil, indoor
13 air, you know, with the regular stuff that you would
14 encounter in a 6.5, sorry, Chapter 6.5 of the Health
15 and Safety Code or Chapter 6.8 for cleanup, we would
16 be looking to impose this narrative standard that
17 would be based on the use of the more protective
18 toxicity criteria. So the goal is the same but
19 another way to achieve it and have it potentially
20 apply to the federally owned NPL site would be to have
21 a narrative standard.

22 I think what's been passed out has been
23 either an excerpt of or the entire Water Board
24 resolution 92-49 and that is publicly available. I
25 believe I found it using Google the other day so there

1 are two different handouts coming around but they are
2 of the same document. The section 3G which is at the
3 bottom it looks like page 6 but if you have only the
4 two pager, it's the back side.

5 MR. DEPIES: It says page 6 on your document,
6 the page you're looking at.

7 MS. MURAI: Yeah. 3G has been deemed to be a
8 requirement that would apply to a cleanup at an NPL
9 site. And so it is an example of -- it's the example
10 we have of what a narrative standard would be.

11 And so we figure industry has dealt with this
12 narrative standard and they might actually know how
13 they would want to see ours if we were to introduce it
14 by a narrative standard instead of through this select
15 the most protective of the tox criteria below.

16 And it's also possible this is going to be a
17 really short discussion because it would take a lot
18 more pondering, which I felt it did on my part, and
19 but we wanted to pose the idea so that if you have
20 thoughts already brewing about it we could benefit
21 from them and have a chance to propose that.

22 MR. WHITE: By 3G are you referring to that
23 paragraph that is G, "Ensure that dischargers..."

24 MS. MURAI: Yes. If you're on the two pager,
25 the part where it says -- 3 is not on there.

1 MR. WHITE: I see.

2 MS. MURAI: Because you only have a 2. You
3 have page 1 and page 6 of the resolution.

4 MR. WHITE: Got it. Thank you.

5 MS. MURAI: Thank you for asking so it's
6 clear to everyone.

7 MR. DEPIES: Can you state that clearly for
8 the webcast?

9 MS. MURAI: If you're looking at Resolution
10 92-49 from the Water Board and I Googled Water Board
11 Resolution 92-49, is a public document and I believe
12 you should be able to find it.

13 I believe it's also on the Water Board's
14 ca.gov site and we apologize to the webcast folks that
15 we're not having -- we could have it up on the screen
16 but we kind of thought folks here couldn't read it
17 anyway. So -- but we're looking at page 6 of that PDF
18 and the section with the capital G as in George that
19 has been deemed in prior cleanups to be a requirement
20 that applies. And so we would be looking to emulate
21 that, have it apply to a federal NPL site.

22 Is that enough?

23 MR. DEPIES: Right. One little
24 clarification. When you Google it, it also comes up
25 in the first ten or so pages as the hearing, summary

1 of the hearing, so for those who Google it you have to
2 dig deeper into the PDF that shows up on the website
3 until you get to the actual resolution that was
4 adopted in October of 1996. Then go to subsection G
5 on page 6. I just remembered that when I called it up
6 this morning.

7 MS. MURAI: Okay. So I don't see hands
8 shooting up into the air with exuberance.

9 MR. DEPIES: If you're not prepared to do it
10 here, again if you could provide any, we would love
11 any input you have in the form of comments or just
12 informal email to me.

13 MS. LE: Michelle Le, PG&E again. So is the
14 thought that you would go through the regulatory
15 process with regulations or amend this?

16 MS. MURAI: These are two alternative
17 regulations that we would put through. It would have
18 to be formally promulgated to be able to apply to the
19 federally owned land so it would have to be a reg or a
20 statute regardless. It's just a matter of what form
21 it takes, whether it would take the form of --

22 DR. GETTMANN: You said something about amend
23 this. This, what has been handed out, is strictly an
24 example that we're working off of. So there would be
25 no amending any of this.

1 MS. MURAI: The Water Board document.

2 DR. GETTMANN: Yeah, this is the Water
3 Board's document. We're using this as an example to
4 start to face ours so the regulation would be DTSC's
5 narrative standard, not -- you know, this is just an
6 example.

7 MR. DEPIES: It's our first alternate is what
8 we handed out and put on the website. And our second
9 alternate alternative would be a form of the
10 resolution the way it's been written in the
11 resolution.

12 MS. MURAI: Ours would be a narrative
13 standard that would be our own and it would be
14 analogous to the Water Board resolution. We would not
15 change the Water Board resolution.

16 MR. LECLERC: It would be completely
17 independent of 92-49.

18 DR. GETTMANN: Yeah.

19 MS. MURAI: Exactly. It's just that we know
20 92-49, the section 3G has been accepted as binding on
21 a federal NPL site and so this would be an example of
22 one that has worked before. So we would be seeking to
23 follow in its footsteps.

24 MR. HUME: It wouldn't be chaptered in the
25 same place.

1 MS. MURAI: No, because it's not chaptered
2 because it's not a reg.

3 MR. DEPIES: Yeah, this is a resolution.

4 MS. MURAI: Yes, because we don't have a
5 board; at least not yet.

6 MR. SCHUMACHER: Is it clear for you?

7 MS. LE: Yes, thank you.

8 MR. SCHUMACHER: Okay. Anybody else, do you
9 have any -- I don't see a whole lot of hands
10 obviously. This is giving you something to chew on.

11 MS. MURAI: Again, like Kevin said, all
12 comments and ideas are welcome because it's always
13 easier to edit than to draft. If we have examples to
14 mesh together that can often be helpful.

15 MR. DEPIES: That includes seeking
16 clarification. Just send me an email asking for some
17 clarification of what we presented here. I'll respond
18 as well as I can.

19 MR. NARLOCH: Bruce Narloch. Do you consider
20 benefits to the narrative approach versus the
21 regulation?

22 MS. MURAI: The benefit, assuming we could
23 actually come up with one, with language that would be
24 clear enough, the benefit would be that it is more
25 clearly applicable to federal NPL sites under US EPA

1 guidance and it might potentially be less of an
2 argument for those sites to have it apply. The effect
3 we would aim to have be exactly the same as the draft
4 discussion draft that we've already provided. Our
5 mission is no different.

6 MR. SCHUMACHER: And the process would be the
7 same.

8 MS. MURAI: Correct.

9 MR. LECLERC: It would be a draft regulation,
10 but it would look different.

11 MS. MURAI: It would just be a different
12 form. Same ideas, same crux.

13 MR. SCHUMACHER: Same process.

14 MS. MURAI: Yes.

15 MR. SCHUMACHER: Okay. Yes, ma'am? Your
16 name again?

17 MS. KOEPKE: Dawn Koepke again. So to
18 clarify, it would be a draft regulation and would
19 model this language. My comments before about wanting
20 to see perhaps a revision of the draft as one of the
21 steps before you go to rulemaking would be helpful to
22 see if that was an approach that you're seriously
23 looking at to see that actually fleshed out in DTSC's
24 purpose.

25 MR. DEPIES: If we make substantial changes,

1 we will certainly evaluate putting it out there for
2 another review.

3 MS. KOEPKE: But as far as this narrative,
4 that language would practically mirror this language?

5 MR. DEPIES: "Mirror" would be strong.

6 MS. MURAI: "Mirror" would be strong because
7 then it would kind of be pointless. The -- we don't
8 know what it looks like now because we have with other
9 obligations been unable to put it together and we
10 thought that we had a lot of expertise that might show
11 up and might help us figure out if that would even be
12 worth doing. It is an idea that's been posed to us
13 that we should consider it because it is clearly
14 contemplated as applicable requirement be under
15 federal guidance so we felt we ought to consider it.
16 But we don't. I don't know exactly what it would look
17 like. The idea would be the same. The gist would be
18 the same. The application would be the same because
19 we're still only selecting for one number within, you
20 know, the whole risk assessment calculations. So the
21 idea is the same. Achieving that level of protection
22 is the same.

23 MS. KOEPKE: Thank you.

24 MR. SCHUMACHER: Okay?

25 MR. STOKER: Chris Stoker again.

1 My first stake, having you know just perused
2 these things is that a narrative provides you more
3 flexibility to address many of the nuances that we've
4 talked about with regards to each one of the sections.
5 Instead of having a single section which was action
6 levels, treating levels, remediation goals, points of
7 departure, those are all, as we discussed and I don't
8 want to go over it again -- but those are all four
9 separate things that in a narrative could actually be
10 discussed and defined and set forward in a narrative
11 in preamble to the narrative.

12 So I think, you know, in writing the
13 narrative, like the Water Board has done here you can
14 define what the waters are, you can define what the --
15 you can alleviate some of the confusion by having the
16 ability to have the definition sections and structure
17 of narrative.

18 I still think you have to be very precise
19 with the language, though, as we've discussed earlier.
20 But at least it gives you the ability to set that
21 forward in an inclusive document so that you can find
22 it all in one location.

23 MR. SCHUMACHER: I think that's helpful. I
24 see a hand going up. Quick and curious. Yes, sir?

25 MR. BELL: David Bell, Air Force.

1 If I review the document that the Water Board
2 and the Air Force put together on potential ARARs for
3 groundwater, surface water remediation and
4 specifically looked at 92-49, it's not universal
5 agreement that it's applicable in ARAR.

6 MS. MURAI: No, only section 3G, I believe as
7 EPA said, would qualify. Certain parts of the
8 resolution I believe they found to be procedural but
9 the substantive cleanup portion, I believe was Section
10 3G.

11 MR. BELL: Okay.

12 MS. MURAI: So I think that's why we're
13 focusing on this page 6. But not that there aren't
14 other points of disagreement to be had.

15 MR. BELL: Right. And also we divide our
16 world into NPL and non-NPL so you might want to really
17 make sure that you cover the bases.

18 MS. MURAI: Well, for us we would have it
19 cover all cleanup sites in California, so because of
20 that -- well, it would be all hazardous waste which is
21 our 6.5 and then 6.8, which is our state Superfund.

22 Then any other cleanup programs we have that
23 say do it under 6.8 would also be covered because if
24 you do it under 6.8, that's how you do it under 6.8.
25 So our coverage would be pretty extensive. We would

1 not be talking NPL or non-NPL in the narrative scheme.
2 I believe it's just that that's -- that's where we
3 would potentially have, I believe, any pushback on it
4 applying.

5 MR. BELL: Goes back to earlier discussion,
6 state regs apply to cleanup, those ARARs and those are
7 applicable to cleanup standards, so we have to be
8 really clear.

9 MR. SCHUMACHER: Anybody else?

10 MR. DEPIES: You know, on that note of what
11 you just brought up, David, is another alternative
12 we're contemplating is actually writing into the
13 regulation the IRIS or in this case OEHHA toxicity
14 criteria specifically so they're actually included in
15 the regulation. It's our intent that that meets then
16 that requirement described. The complexity with that
17 is the toxicity criteria change and so that would
18 require update in the regulation on a regular basis.
19 It's just something we're considering.

20 MR. LECLERC: I would like to thank everybody
21 for coming today, and please share your written
22 comments with Kevin so that we can take your input and
23 take the next step. And so we'll be accepting these
24 informal comments until the end of January. And then
25 in the meantime we'll be regrouping, thinking about do

1 we want to have another workshop, or do we want to go
2 straight to regulation? And we'll have a mailing
3 list, so we will be able to get back to everybody when
4 we make that decision.

5 MR. SCHUMACHER: Thank you.

6 (The workshop concluded.)

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REPORTER'S CERTIFICATE

I, Thomas Lange, a Certified Shorthand Reporter of the State of California, do hereby certify that the foregoing transcript was produced by me from an audio recording of the foregoing proceedings, and said recording was transcribed to the best of my ability.

I further certify that I am not of counsel or attorney for either or any of the parties or organizations involved in said matter, nor in any way interested in the outcome of the matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, 2016.

Thomas Lange

THOMAS J. LANGE
Certified Shorthand Reporter
State of California
Certificate No. 4689

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