

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

GREEN RIBBON SCIENCE PANEL  
MEETING

VOLUME II

Cal/EPA HEADQUARTERS  
COASTAL HEARING ROOM, 2ND FLOOR  
1001 I STREET  
SACRAMENTO, CALIFORNIA

FRIDAY, MAY 6, 2011

9:00 A.M.

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Ann Blake, PhD

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Kelly Moran, PhD

Robert Peoples, PhD

Julia Quint, PhD

Julie Schoenung, PhD

Megan R. Schwarzman, MD

Michael P. Wilson, PhD

Julie B. Zimmerman, PhD (via web conference)

DTSC Staff

Odette Madriago, Chief Deputy Director

Kathryn Barwick

Colleen Heck, Senior Staff Counsel

Radhika Majhail

Hortensia Muñiz-Ghazi

Evalia Rodriguez

Jeffrey Wong, PhD

Corey Yep

Also Present

Deborah Raphael  
City and County of San Francisco

Maia Jack, PhD  
Grocery Manufacturers Association

Dawn Koepke  
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1           We will follow that with some clarifying questions  
2 from the panel and then we will go to public comment. And  
3 this is going to be our only public comment period today.  
4 It is going to happen after the staff presentation and  
5 before we go to the panel discussion. So for those people  
6 in the room, Radhika over there will have comment cards. So  
7 as soon as you know you are going to want to make comments  
8 you can go ahead and provide those to her. You might just  
9 want to raise your hand, get her eye, she'll come over and  
10 give you one.

11           And for the webcast, people on the webcast. We  
12 are having a little technical problem with our printer.  
13 What that means is that it takes a little while for us to  
14 get from your comment to the piece of paper that we can read  
15 from into the record.

16           So if you people on the webcast have comments you  
17 may submit them any time between now and the time of the  
18 public comment period. And we will give you some extra time  
19 at the end of that to make sure that we can get all the  
20 comments. You want to submit those comments to the green  
21 chemistry mailbox, [green.chemistry@dtsc.ca.gov](mailto:green.chemistry@dtsc.ca.gov).

22           We will follow the public comment period with a  
23 panel discussion that is going to take up most of the day.  
24 And later this afternoon we are going to finish our  
25 discussion that we started yesterday on the subcommittee

1 process and how that worked.

2 We will go to some next steps and then we will  
3 close the meeting. And I will turn this over to Odette,  
4 thank you.

5 CHIEF DEPUTY DIRECTOR MADRIAGO: Thank you, Kathy.

6 Well, welcome back. I trust that you all had a nice  
7 evening last night and are well rested, at least got some  
8 sleep. Because I think we are going to have a very  
9 invigorating discussion today as we did yesterday. I heard  
10 a lot of positive feedback from a number of you as well as  
11 from the staff about the quality of the discussion today,  
12 which I am very happy with. So with that let's get going; I  
13 am going to turn it over to Bill.

14 CO-CHAIR CARROLL: We also -- I think it is only  
15 fair to introduce ourselves to the rest of the public who is  
16 here and also to the webcast and once again I'll start and  
17 pass to my left. I'm Bill Carroll, Occidental Chemical  
18 Corporation.

19 CO-CHAIR GEISER: Ken Geiser, University of  
20 Massachusetts, Lowell and Bill and I are the two Co-Chairs  
21 at the moment.

22 MS. RAPHAEL: Debbie Raphael.

23 DR. WONG: Jeff Wong, DTSC.

24 PANEL MEMBER BLAKE: Ann Blake, environmental and  
25 public health consultant.

1 PANEL MEMBER McFADDEN: Roger McFadden, Staples.

2 PANEL MEMBER DELANEY: Tod Delaney, First  
3 Environment.

4 PANEL MEMBER DASTON: George Daston, Proctor and  
5 Gamble.

6 PANEL MEMBER MORAN: Kelly Moran, TDC  
7 Environmental.

8 PANEL MEMBER JOHNSON: Dale Johnson, Emiliem and  
9 UC Berkeley.

10 PANEL MEMBER HEINE: Lauren Heine, Clean  
11 Production Action.

12 PANEL MEMBER LIROFF: Richard Liroff, Investor  
13 Environmental Health Network.

14 MS. YEP: Corey Yep, DTSC.

15 MS. MUÑIZ-GHAZI: Hortensia Muñiz, DTSC.

16 MS. HECK: Colleen Heck, DTSC.

17 PANEL MEMBER MALLOY: Tim Malloy, UCLA Law School  
18 and Sustainable Technology and Policy Program.

19 PANEL MEMBER FONG: Art Fong, IBM Corporation.

20 PANEL MEMBER DENISON: Richard Denison,  
21 Environmental Defense Fund.

22 PANEL MEMBER SCHOENUNG: Julie Schoenung,  
23 University of California, Davis.

24 PANEL MEMBER PEOPLES: Bob Peoples, ACS Green  
25 Chemistry Institute.

1 PANEL MEMBER GUTH: Joe Guth, UC Berkeley and  
2 Science and Environmental Health Network.

3 PANEL MEMBER KIRSCHNER: Mike Kirschner, Design  
4 Chain Associates.

5 PANEL MEMBER CHOI: Jae Choi, Avaya.

6 PANEL MEMBER QUINT: Julia Quint, retired  
7 California Department of Public Health.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Odette Madriago,  
9 Department of Toxic Substances Control.

10 CO-CHAIR CARROLL: Very good, thank you. So today  
11 we have a very long day scheduled for you. And we have got  
12 a couple of breaks built in and there's a lunch break as  
13 well. But it is also important to note that it is not  
14 necessarily true that the breaks always fall when you need  
15 them. And so I would encourage you that I would much rather  
16 have your full attention. And if in order to have your full  
17 attention you occasionally need to step out, take a deep  
18 breath and cleanse your mind of what you have been doing  
19 over the course of the last few minutes, please feel free to  
20 do that.

21 At this point I guess we will go ahead and start.  
22 Odette, you are going to talk about the Subcommittee 1 and  
23 2 report and the regulatory concepts. This will include,  
24 for completeness, the discussion that we ended the day with  
25 yesterday, correct?

1 CHIEF DEPUTY DIRECTOR MADRIAGO: Yes. Thank you,  
2 Bill. So if you could all turn your attention again to the  
3 chart that we handed out late yesterday and I will do a  
4 brief re-review to set the context and then we'll go into  
5 some of the nitty gritty options based on the comments we  
6 got from the subcommittee members.

7 So again, the purpose of this chart, which a few  
8 folks asked me to try to put this down on paper, is to show  
9 the interrelationship with how we think about products and  
10 chemicals when we are doing our prioritization. Which also  
11 really gets to how we are integrating the considerations of  
12 hazard and exposure.

13 So we start -- you know, our starting universe is  
14 all those chemicals that exhibit a hazard trait as  
15 identified by OEHHA. That will be a really, really big  
16 list. I don't know that we will ever finitely determine  
17 that because it's a huge list.

18 So then we start with how do we from the very big  
19 universe come up with an initial list that we are calling  
20 Chemicals of Concern. And during the discussion today we  
21 will talk about various options for how we might screen the  
22 chemicals that exhibit hazard traits to come up with this  
23 list of chemicals of concern.

24 You know, one of the things we will be talking  
25 about is that we list on that list all chemicals that are

1 listed by other specified authoritative bodies. And there's  
2 a list of possible ones as one of the attachments.

3           And/or, chemicals that exhibit one of a subset of  
4 the hazard traits. In other words, there will be a number  
5 of hazard traits that OEHHA will identify in their  
6 regulations and it's possible that we'll say that at least  
7 for the first go-around we are going to focus on chemicals  
8 that exhibit this set of hazard traits.

9           So then once we have come up with that initial  
10 large list of chemicals of concern, which as some of you  
11 know people have suggested that we do have a two-tiered  
12 chemical list. This larger list of chemicals of concern  
13 would be to put consumers, manufacturers and the general  
14 public on notice.

15           (Panel Member Michael Wilson entered the  
16 meeting room and joined the panel.)

17           So then the next step is we need to reduce that  
18 down to a smaller, manageable list of priority chemicals  
19 that we will use to determine what products we are going to  
20 focus on for the alternatives assessment process.

21           So how do we do that? Kind of the way we have  
22 been thinking about this in DTSC is that we will  
23 simultaneously be looking at the chemicals themselves as  
24 well as the products that those chemicals are in because  
25 that is where we get at the potential for there to be real

1 exposure to the chemical.

2           So the way I have sort of illustrated it here is  
3 showing three simultaneous screens. The first being what  
4 chemicals are known to be a concern for sensitive receptors.

5 We defined -- one of the subcommittee members defined  
6 sensitive receptors as sensitive subpopulations, sensitive  
7 environmental habitats and sensitive species. So first of  
8 all we are looking at the chemicals that are of particular  
9 concern for those receptors.

10           Then we look at, based upon biomonitoring and  
11 environmental monitoring, what chemicals have been found in  
12 the sensitive receptors? And thirdly, what chemicals are  
13 found in products that are used by or for which there is  
14 likely exposures to sensitive receptors?

15           So kind of using those three screens  
16 simultaneously that sieves down the group of chemicals  
17 somewhat and we have an initial target list of chemicals of  
18 concern for further evaluation as candidates for the  
19 priority chemical list.

20           And so then conceptually the final step of coming  
21 up with the priority chemicals list is application of  
22 various other prioritization factors and a decision-making  
23 process which you all will be talking about later on today.

24           And that will give us the list of priority  
25 chemicals. Which as I indicated in response to a question

1 yesterday, while this list will grow over time because this  
2 is going to be an iterative process, we are not going to  
3 just adopt one list and stop there. We are going to adopt a  
4 list, work that list, expand the list and so on.

5           So over time the list will grow and become quite  
6 robust. But initially I anticipate we will be starting out  
7 with a relatively small list for two reasons. One, there is  
8 the resource limitation that I know I have discussed with  
9 all of you. But also just as importantly, when you are  
10 starting a brand new endeavor like this it is really ground-  
11 breaking. We think it is important that we start out with  
12 something small and manageable to really test the process.  
13 And I'm sure that as we begin to test it we are going to  
14 find that we need to make some tweaks to it. So that would  
15 be the start.

16           So once we have identified our priority chemicals  
17 then we turn our attention again to really focusing on the  
18 products that contain those priority chemicals. And of  
19 course we are looking for consumer products sold in  
20 California that contain the chemicals.

21           And again, conceptually we could apply three  
22 simultaneous screens, very similar to the screens applied  
23 for the chemicals. So we would be looking for products that  
24 are containing priority chemicals that are of concern to  
25 sensitive receptors, products containing priority chemicals

1 that are found in sensitive receptors, and products used by  
2 or with likely exposures to sensitive receptors.

3           So again using these three simultaneous screens we  
4 come down with a somewhat reduced list of target products to  
5 do a more in-depth evaluation to eventually come up with the  
6 smaller list of priority products. And again we would be  
7 applying additional prioritization criteria and the  
8 decision-making process that you will be talking about  
9 today.

10           And as I mentioned yesterday, you will see a  
11 double asterisk next to prioritization criteria, which goes  
12 to one of the footnotes where I have tried to list at least  
13 most of the criteria that one or more subcommittee members  
14 have suggested. I am hoping that nobody's favorite criteria  
15 has been left off this list. At least that was our hope.  
16 So that's the foundation. I hope it serves to give you  
17 something of an idea of how we were thinking about being  
18 able to consider chemicals and products simultaneously but  
19 still coming up with a chemicals list and a products list.

20           So with that I would like to turn our attention to  
21 this paper that if you didn't pull it out yesterday it would  
22 be towards the back of the left hand side of your packet.  
23 AT the top it says Topic 1 and Topic 2 and down at the  
24 bottom it has Primary Decision Points and a little table of  
25 contents.

1           So we are going to start with Section I talking  
2 about Chemical List Tiering and Sequencing; Section II,  
3 Product List Tiering and Sequencing. And while those are  
4 two separate sections I know a lot of you in your heads and  
5 certainly the Department in our head, you know, we see some  
6 connections there.

7           Three is actually the Prioritization Criteria.  
8 And here you are going to find that what is in here is what  
9 I call a menu of hazard exposure and other criteria that,  
10 again, one or more subcommittee members suggested.

11           (Ms. Evalia Rodriguez entered and  
12 took her seat.)

13           CHIEF DEPUTY DIRECTOR MADRIAGO: And then there is  
14 a section that is called Options for Using the Criteria and  
15 in that section I think there is about five or six different  
16 approaches for applying prioritization criteria to come up  
17 with a list. And these are approaches that were suggested  
18 in written comments that we received from members of the  
19 subcommittee.

20           And then finally Section IV addresses the  
21 decision-making process. And this is where we will get into  
22 the discussion that we -- we had a fairly lively discussion  
23 in at least one if not both of the subcommittees regarding  
24 do we use basically a narrative process or do we have some  
25 sort of a more structured decision-making process that might

1 or might not include thresholds. So that is what that  
2 section will be about.

3           There are -- for this particular paper I did  
4 include some attachments which are listed on the back here  
5 and I will be making reference to them as we go through; but  
6 I wanted you to have a list. And again, just a clarifying  
7 reminder, the concepts in here are really intended to try to  
8 capture what we heard in the subcommittee meetings and in  
9 the written reports we got. They do not necessarily  
10 represent DTSC recommendations or perspectives.

11           So let's get into the meat of this. So starting  
12 on page three, Section I. And the objective here is to  
13 specify the procedural steps for developing the prioritized  
14 chemical lists.

15           So starting with the Chemicals of Concern List.  
16 And again just to be clear about what this is. Is that  
17 assuming that we end up with having two lists of chemicals,  
18 a larger list and then a smaller list that we really focus  
19 on. When we refer to Chemical of Concern List we are  
20 talking about the larger list of which the smaller list  
21 would be a subset.

22           So this topic of the Chemicals of Concern List  
23 identified four conceptual options here. And again you all  
24 when you look at this you may come up with additional  
25 options or you may want to suggest tweaks to one or more of

1 these. And I should emphasize that today throughout most of  
2 this, these options are not necessarily an either/or or  
3 mutually exclusive. In some cases they are. But generally  
4 I would say a lot of these when you go through and, you  
5 know, Bill and Ken will lead you through this. Your  
6 response may be, well, I like these two out of the four  
7 options or something like that.

8           So starting with Option 1A. Under this option the  
9 Chemicals of Concern List would actually be defined in the  
10 regulations. In contrast with 1B where we would list  
11 chemicals in the regulations; or 1C where we would list the  
12 criteria and a process in the regulations. So a little bit  
13 more detail.

14           The concept in 1A is the regulations would just  
15 basically state that any chemical that meets these criteria  
16 is deemed to be a Chemical of Concern. And this again is  
17 based upon suggestions from subcommittee members. One  
18 criteria would be: any chemical that is listed on a list of  
19 authoritative bodies lists. And again, this would have to  
20 be as of the effective date of the regulations. And  
21 Attachment 2 has a possible list of authoritative bodies.  
22 Again, this is provided by one of the subcommittee members.

23           Additionally as has been suggested, because these  
24 lists while they are quite robust, there are folks who feel  
25 that there are certain hazard traits that may not be

1 adequately represented on those lists so members also  
2 suggested that we include chemicals on the COC list that  
3 exhibit certain hazard traits and possible examples are  
4 given here. And this again would be based upon reliable  
5 information.

6           And that's a topic that in and of itself we could  
7 spend quite a bit of time discussing and it is something, I  
8 don't know if we want to spend too much time discussing it  
9 today because I think it would take away from what is  
10 already a very complex discussion. But it is something I  
11 think we may want to have as a subject for a future meeting.

12           Now finally (iii) under here. It says: a chemical  
13 that is not listed on one of the listed lists at the time we  
14 adopt the regulations but it is specifically added because  
15 it exhibits a particular hazard trait would automatically go  
16 on there.

17           This is something that just -- I don't want to bog  
18 you down in the regulatory process but just you need to be  
19 aware that when we adopt regulations in California and we  
20 encompass by reference something from another regulation or  
21 another list, it is basically only that referenced document  
22 at the time we adopt the regulations. So there has to be  
23 some sort of certainty. But we could incorporate a concept  
24 of, if it is added to one of those lists because it exhibits  
25 a hazard trait that is something we could build in. To the

1 extent we wanted to go beyond that we would have to revise  
2 the regulations, which is doable.

3           So Option 1B is similar to Option 1A in that it is  
4 based on the premise of using the same definitional criteria  
5 as 1A. But instead of just having a definition in the regs  
6 and saying a chemical that meets this definition is deemed  
7 to be a chemical of concern. We would actually have the  
8 complete list of chemicals in the regulations. Now what you  
9 need to know about this any time we would go to make any  
10 adjustment to that list we would need to go through the  
11 regulatory process again.

12           So option 1C, which frankly is the approach that  
13 the Department took in really all of the iterations that,  
14 you know, we shared last year is rather than defining or  
15 listing the chemicals in the regulations we set forth  
16 prioritization criteria and a process to apply those  
17 criteria to come up with the COC list. And again, the  
18 criteria in the process are something that will be topic for  
19 some of the other sections in today's discussion.

20           Then the fourth option actually is that there  
21 would be no Chemicals of Concern List. that we would just  
22 have a single list, a priority chemicals list, and those  
23 would be the chemicals that we would then focus on to look  
24 at products.

25           So this was -- we talked about this a little bit

1 in our subcommittee discussion and I'm sure you'll, you  
2 know, offer your opinions and recommendations on whether we  
3 should have two versus one list during your comment period.

4 So turning the page. The Priority Chemicals List.

5 And again, if we are to have two lists this would be the  
6 smaller list that would be developed as a subset of the  
7 larger Chemicals of Concern List. And I have laid out three  
8 basic options here.

9 Option 2A would be again the approach that we took  
10 in the various iterations of the regulations last year where  
11 we set out in regulations the criteria and the process for  
12 subsequently developing the list through a listing process  
13 that is set out in the regulations and has a public review  
14 and comment period to it.

15 Option 2B. And again, these -- in particular in  
16 this subject here, these three options. This is a place in  
17 particular where actually all three approaches could be  
18 adopted simultaneously, they are definitely not mutually  
19 exclusive.

20 So Option 2B would say that the regulations, we  
21 would still specify the criteria and the process for  
22 identifying priority chemicals in the future through a  
23 listing process. But at the same time to kind of kick-start  
24 the process in the regulation we could identify specific  
25 priority chemicals to start moving through the rest of the

1 process.

2           And some criteria that folks have suggested for  
3 how we might select those were we to do this would be:  
4 Chemicals for which there is strong evidence that the  
5 chemical poses a potential for public health harm, harm for  
6 sensitive subpopulations and/or environmental harm. And  
7 this could include chemicals that have been identified for  
8 public health and environmental action by other governmental  
9 agencies based upon their own mandates; and chemicals for  
10 which there are known safer chemicals or design  
11 alternatives. So we have got, you know, chemicals that are  
12 known to be a problem and for which there is a known safer  
13 alternative.

14           And I have given some examples here. These  
15 examples came from suggestions offered by members of the  
16 subcommittee.

17           And I have got a footnote here and I have this in  
18 a couple of other ones where I am talking about the product  
19 listing process. You know, there has been a lot of talk  
20 among the panel, I know a lot last year and in some of our  
21 subcommittee meetings about having some sort of a fast-track  
22 process for things that are known to be problems. This  
23 would be an example of how we might do that.

24           So Option 2C. This is a scheduling approach. If  
25 some of you remember it, in our product discussion one of

1 the things we talked about was the process used by the Air  
2 Resources Board for their VOC limits where they set forth  
3 kind of a schedule for application of their limitations.

4           This is a little bit different in that this is a  
5 schedule for reviewing and prioritizing things but the  
6 concept would be that in the regulations we could set forth  
7 a schedule and say -- and put chemicals into classifications  
8 or groups or buckets, whatever you want to call them, and  
9 say, for this bucket we are going to look at chemicals in  
10 this bucket during this time frame, this bucket this time  
11 frame, et cetera.

12           Now, the challenging thing about that is what  
13 criteria would we use to assign chemicals to the schedule?  
14 So there is kind of a menu list here of criteria that we  
15 might use where, you know, you folks, any of you  
16 individually or more want to suggest that we use this kind  
17 of approach.

18           So turning the page and going now to discussion of  
19 the Product List. Again we have Products Under  
20 Consideration List. This is the -- if we have two lists  
21 this would be the larger list from which the smaller,  
22 priority products list would be subset.

23           Option 1A. This is again the concept where we  
24 could actually in the regulation somehow define what a  
25 Product Under Consideration is. This is a pretty broad

1 definition here. It is one that frankly I just threw out  
2 for discussion. But you all, if you even think this is a  
3 worthwhile thing to do, may have other ideas for how you  
4 might define it. And again, the concept of defining is that  
5 you in essence automatically create the list in the  
6 regulations by saying that products that meet a specific  
7 definition are deemed to be Products Under Consideration.

8           Okay, Option 1B would be that we would, again,  
9 include in the regulations the criteria and process to be  
10 set forth in the regulations. And again we will talk about  
11 that later. If this option is chosen the list could be  
12 developed using the same criteria that we would use for the  
13 smaller Priority Product List or using a subset of that  
14 criteria.

15           Or maybe we use a different decision-making  
16 process. So that is something that, you know, as we move  
17 forward if we do end up having two lists, and this really  
18 applies also to the discussion on two chemicals lists as  
19 well as two products lists. And if we are just in the  
20 regulations going to identify the criteria and process for  
21 each of those lists we need to be thinking about what is the  
22 differentiation in criteria and process with a larger list  
23 and a smaller list.

24           And finally Option II(1)C is maybe we don't have  
25 the larger Products Under Consideration List at all. Maybe

1 we just have the single Priority Products List.

2           And I have got a footnote here that we are  
3 particularly asking for you guys to provide some comment and  
4 feedback. Because when we talked about chemicals in the  
5 group, and even when it has been talked about among  
6 stakeholders last year, there seems to be a lot of  
7 perspectives among a variety of interested parties to have  
8 two chemicals lists based upon the fact that the initial  
9 larger list does provide advanced notice to the marketplace,  
10 consumers and the public.

11           Now I didn't -- when we went through the  
12 subcommittee process we did put out the question on  
13 products, do we want one list or two lists. I didn't, in my  
14 recollection or going through my notes, seem to see any  
15 discussion about that. So I haven't gotten any feedback as  
16 to whether or not there is a real benefit to having two  
17 products lists. So I would ask that perhaps if you have  
18 thoughts on that I would like to hear those today.

19           And turning the page. Okay, this deals with now  
20 the Priority Products List. And again, this is the list of  
21 products for which an alternatives assessment will be  
22 required. And the options for this one actually spill over  
23 on two pages so we are looking at pages 6 and 7 and there  
24 are four options.

25           Option 2A, again the approach that we have taken

1 last year is that the regulations would just set out the  
2 criteria and process for identifying the priority products.

3 And Option 2B is that in addition to the criteria  
4 and the process the regulations could set forth an initial  
5 list of priority products. Again this would be a way of  
6 having a type of fast-track to move products forward.

7 Some suggested criteria that we might use to  
8 specify that initial list of priority products in the  
9 regulations are very similar to the ones I talked about for  
10 chemicals. Again, strong evidence that the priority  
11 chemical in the product poses a potential for harm. And the  
12 chemicals/products for which there are known safer chemical  
13 or design alternatives. So again the combined concept of  
14 known harm and no available alternative.

15 One of the -- we talked about an option similar to  
16 this in the subcommittee discussion. and one of the  
17 concerns raised by a couple of panel members in terms of  
18 having this initial list is the concern that we'd just stop  
19 there and wouldn't move forward expeditiously enough to look  
20 at an expanded list. And that was a concern in case we  
21 missed some really critical things in that initial listing.

22 So one of the options for addressing that kind of concern  
23 is that the regulations could have, you know, a deadline or  
24 a schedule for adopting a more expansive, priority products  
25 list.

1           So then option 2C is again -- and this really is  
2 where we kind of bring the chemicals and products process  
3 really together. Is that at the time that we are developing  
4 and adopting the Priority Chemicals List. Because we will  
5 also be looking at the products that those chemicals are  
6 contained in there would be the potential option of listing  
7 some priority products at that time for specific products  
8 that contain one or more of the listed priority chemicals  
9 and that, again, meet the criteria of known harm and known  
10 alternatives. This again is a concept for trying to get at  
11 something that some people recommended in terms of a fast  
12 track.

13           So turning the page to Option 2D. Similar to what  
14 we just talked about with chemicals this would be the  
15 scheduling approach where we would set out in the  
16 regulations -- again we would group products by some sort of  
17 factor and here is a list of possible factors for  
18 considering it.

19           What I think is not on here -- I guess it is kind  
20 of embedded in it. As some of you may remember in one  
21 iteration of the regulations we said that for the first five  
22 years we would look at three different product categories.  
23 So we named the product categories. We didn't necessarily  
24 in the regulations. Though if we had gotten to the point of  
25 the statement of reasons you would have seen the criteria

1 that caused us to choose those particular product  
2 categories. But again, so that's kind of the concept here  
3 is it sets forth for the public and for the manufacturers  
4 sort of a schedule so that they can know when their product  
5 or product category of interest will be evaluated by the  
6 department.

7           So turning the page to page eight. So what I have  
8 been talking about now is really kind of the structure and  
9 the sequencing for actually coming up with a chemical and  
10 products list. So now we turn our attention to what  
11 criteria do we use to prioritize chemicals and products.  
12 And here I didn't, I didn't develop options because really  
13 in this particular section, you know, One, Chemical  
14 Prioritization Criteria and then turning the page, Product  
15 Prioritization Criteria.

16           Because a lot of people, you know, when we talked  
17 about this they would suggest different criteria and they  
18 basically fell under three categories, hazard-related  
19 criteria, exposure-related criteria and then some criteria  
20 that seemed to be more other factors. So I have really just  
21 laid this out as sort of a menu of criteria that may inform  
22 your discussion.

23           I think probably, you know, the plan today that I  
24 think Ken will address this later on is not to spend too  
25 much time in this section other than if you have really

1 strong feelings about there are some here that are  
2 absolutely really the most important to you or you think  
3 there are some here that you think are just really bad  
4 ideas. But we probably -- you know, we could probably take  
5 days just debating this topic.

6           So now I am turning to page 10. Okay, this is --  
7 the subject here is the option for using the criteria for  
8 prioritizing chemicals and product. And I am not going to  
9 read through all of these options. There are six of them;  
10 they go from page 10 to page 12. And this is where a lot of  
11 you had some really creative ideas that we discussed in the  
12 committee.

13           I think all of these actually came out of the  
14 written homework I got from folks. And there's a lot of  
15 overlap or intersections between these six ideas. I frankly  
16 found the easiest way for me to put this forward was pretty  
17 much to take out what you had -- you know, with some little  
18 tweaking refinement or streamlining but to pretty much take  
19 out what you had provided to us in your written comments.

20           So this is where I think Ken may be asking you  
21 later on today if there's one or two of these that you  
22 particularly like or that you may want to tweak. He'll be  
23 asking you for your opinions on that. Or you may have a  
24 seventh or eighth option that isn't at all embodied in these  
25 six approaches here.

1 All right, so turning to page 13. Our very last  
2 subject matter is Section IV, the Decision-Making Process.  
3 And the objective here is to determine the process that will  
4 be used to prioritize and list chemicals and products using  
5 the criteria that were listed in Section III.

6 And I wanted to make here, you'll see in italics  
7 that we talked about we could have two chemicals lists and  
8 two products lists. You know, one of the possible  
9 variations is that we use one type of decision-making  
10 process for the, let's say the larger list, and a different  
11 type of decision-making process for the smaller list. So it  
12 is not necessarily a one-size-fits-all process.

13 So basically, you know, what we talked about and  
14 had a lot of discussion about were some folks liked the  
15 concept of a narrative prioritization approach. Others felt  
16 we needed a more structured approach and sort of a subset of  
17 a structured approach would be the application of  
18 thresholds.

19 So a narrative prioritization standard would be  
20 something along the lines of: DTSC shall give the highest  
21 priority to chemicals and products meeting the following  
22 criteria. And of course we have to select the criteria.

23 Or something along the lines of: DTSC shall  
24 prioritize chemicals and products based on consideration of  
25 the following factors.

1           And I wanted to point out that really the options  
2 that were on page 10 and 13, in my mind at least, are  
3 further examples of what might be considered a narrative  
4 type decision-making process. And we have also attached as  
5 an example a very brief description of the kind of criteria  
6 that the California Air Resources Control Board uses in  
7 their decision-making process as another example of a  
8 narrative-type standard.

9           So Option 4B, this would be the application of  
10 thresholds. There were some folks in the groups that  
11 thought that we should use thresholds to, you know, have a  
12 cutoff line because, you know, we have to figure out a way  
13 to draw the line between, particularly between, for example,  
14 priority chemicals and chemicals of concern. Some folks  
15 thought that thresholds would be helpful to do that.

16           One suggestion was to set the thresholds based  
17 upon the attributes of available, safer alternatives.

18           Other folks recommended we take a look at the  
19 approach used by the Globally Harmonized System and I have  
20 attached a graphic that shows kind of how they approach  
21 that. Now keep in mind that that system is, the objective  
22 of that system is to determine hazard categories for  
23 purposes of hazard labeling. So if we were to go this route  
24 it might be something that we would have to look at tweaking  
25 since our objective is a bit broader.

1           Then another example of thresholds that I have  
2 included as Attachment 5 is the US EPA's Design for the  
3 Environment chart that I'm sure a number of you have seen  
4 before.

5           So the third option here is using some sort of a  
6 matrix or other structured approach. And I am not going to  
7 go into a lot of detail here.

8           There is one that I describe here because it was  
9 described by a particular, one of the subcommittee members.

10          That we use some sort of a sieving process which is sort of  
11 a structured approach. And the particular process that was  
12 suggested was that we start by looking just at chemicals  
13 that exhibit CMRs, PBTs and perhaps other specified hazard  
14 traits. That would be your top sieve.

15          Your next sieve would be: among those look only at  
16 the high potency chemicals.

17          And then your final sieve would be to apply  
18 exposure potential factors to that group. So that is one  
19 possible option.

20          And then I have -- the last four bullets are,  
21 really they are examples of matrixes or structured systems  
22 used by other programs and those are shown graphically in  
23 Attachments 6, 7, 8 and 9. And, you know, I don't know that  
24 there is a suggestion that any of these would be a perfect  
25 fit for our program. They are merely examples for food for

1 thought as we go about this discussion. And I think that  
2 concludes my rather long presentation.

3 CO-CHAIR CARROLL: Really? That's it, there is no  
4 more? Well fine, then that wasn't so bad, was it?

5 I guess at this point we come to everybody's  
6 favorite part of the schedule which is clarifying questions.

7 Once again I would ask you at this point to reserve your  
8 comments and questions to things that would clarify the  
9 options that you heard and try not to get into expressing  
10 opinions about them because there is plenty of time for  
11 that. So let's go ahead for those clarifying questions.  
12 And curiously enough there's lots of takers for this.

13 Bob, I saw yours up first, go ahead.

14 PANEL MEMBER PEOPLES: Okay, thank you, Chair. My  
15 question is referring to an item on page 13 of 13 under  
16 Option 4A. I am not sure I understand the two bullets which  
17 are worded almost identically with the exception of the  
18 words "following criteria" in bullet one and "following  
19 factors" in bullet two. And I am not sure I appreciate the  
20 difference in those.

21 CHIEF DEPUTY DIRECTOR MADRIAGO: And you know  
22 what, I think in terms of the difference the words criteria  
23 and factors, I probably shouldn't have used different words  
24 because I don't think there really is a difference there.

25 And the overall concepts between the two, you are

1 right, there is not a lot of difference. One, there is a  
2 little bit of a difference. And actually if you had -- I'm  
3 trying to -- if you looked at the last two iterations of our  
4 regulations you might have seen this a little bit. But the  
5 second bullet just, it just tells the Department in  
6 prioritizing chemicals and listing them these are the  
7 factors we want you to consider. So you would have like a  
8 full range of factors.

9           The first bullet is saying, telling the  
10 Department, you are going to give highest priority to the  
11 chemicals and products that are meeting these following  
12 criteria. So that concept is probably going to be, you are  
13 going to have a much more reduced list of factors or  
14 criteria.

15           And actually I guess there is a difference between  
16 the words criteria and factors now that I looked at the  
17 structure of this because the first bullet is saying, these  
18 are the criteria that you are going to use; the second  
19 bullet is saying, these are the factors you are going to  
20 consider. So maybe a subtle nuance and it is probably hard  
21 to grasp without seeing exactly what the criteria or factors  
22 would be. But this is just to give you the general idea of  
23 this is what a narrative approach would be as opposed to  
24 something much more structured like these matrixes.

25           PANEL MEMBER PEOPLES: Well that helped, thank

1 you.

2 CO-CHAIR CARROLL: And for future reference, we  
3 are going to use Bob as the example of a clarifying  
4 question. That was well done.

5 Okay, I have a number of people on the list.  
6 We'll start with Joe and then Mike Kirschner and then  
7 Richard, please.

8 PANEL MEMBER GUTH: I didn't make it all the way  
9 to page 13, my question is on page 3.

10 CHIEF DEPUTY DIRECTOR MADRIAGO: I appreciate the  
11 page numbers, by the way.

12 PANEL MEMBER GUTH: I was a little confused about  
13 what you said about, okay, in Option 1A. If the strategy is  
14 to say, chemicals that are on an authoritative body list are  
15 going to be COCs that works for chemicals that are currently  
16 on the authoritative bodies. And then what was the problem  
17 and solution for chemicals that are subsequently added to  
18 those authoritative bodies?

19 CHIEF DEPUTY DIRECTOR MADRIAGO: Well it would be  
20 a two prong approach. And this again is all about trying to  
21 satisfy the clarity standards under the regulations and laws  
22 that govern our rulemaking process.

23 So the first prong approach is we would say in our  
24 initial regulations, when we list those authoritative bodies  
25 we would say: and any chemical that is added to one of those

1 lists because it exhibits a particular hazard trait. And we  
2 would list. So maybe we say: it's added to one of those  
3 lists because it's a CMR or it's a PBT or whatever.

4 Now that is not going to capture every single  
5 change to those lists. I think it would capture a lot of  
6 them. But to the extent that there are other things that  
7 are added to those lists that were not envisioned at the  
8 time we adopt this definition we would have to revise our  
9 regulations.

10 PANEL MEMBER GUTH: You can't say, anything that  
11 is on the list now or added to the list in the future?  
12 Because the authoritative bodies are all directed at, you  
13 know, carcinogens or -- I mean, they have specific missions,  
14 authoritative bodies.

15 CHIEF DEPUTY DIRECTOR MADRIAGO: I'm looking at  
16 Colleen, our attorney.

17 PANEL MEMBER GUTH: Okay.

18 MS. HECK: I'll take a stab at this. The concept  
19 is referred to as perspective incorporation by reference.  
20 It is something that we have struggled with as we keep our  
21 authorization for the RCRA program. And it's, I would say,  
22 casually disfavored by Office of Administrative Law for the  
23 reason Odette stated, it poses problems with the clarity  
24 standard. The members of the interested public don't know  
25 what those future chemicals may be, don't have an

1 opportunity to comment on them coming into a regulatory  
2 regime in California. So there might be exceptional  
3 circumstances under which we could pull that off but it  
4 wouldn't be anything that we would want to make a practice.

5 It is extremely difficult in the regulatory world in which  
6 we live.

7 PANEL MEMBER GUTH: So then if you say that, if  
8 that is your own authoritative body and it's a PBT or a CMR  
9 or whatever then you have to specify those criteria, what  
10 they mean and then demonstrate that they meet those criteria  
11 to add them?

12 MS. HECK: Yes.

13 PANEL MEMBER GUTH: Okay.

14 CO-CHAIR CARROLL: Thank you, Joe. Mike Kirschner  
15 then Richard then Roger.

16 PANEL MEMBER KIRSCHNER: Well Joe asked my  
17 question, thank you. So maybe we could then go through an  
18 example to help clarify it, for me at least. So if the  
19 European Chemicals Agency's list of REACH Substances of Very  
20 High Concern is one of these lists. Every six months things  
21 are added to that list and they give a reason for it.

22 In fact in the latest proposed list there was one  
23 that was already on there and what they changed -- it was  
24 already on the list but they have it on the list because  
25 they wanted to change the criteria for it to add the fact

1 that it's a mutagen. Now if in your regulation you specify  
2 just carcinogens instead of CMRs but then you realize, we  
3 want to take this one in here too, would that require a  
4 regulatory change, for instance?

5 CHIEF DEPUTY DIRECTOR MADRIAGO: Under the  
6 scenario that yo have described if I understand it, yes it  
7 would. But as you can see that kind of the way this is laid  
8 out here it would be fairly, fairly broad. Especially if  
9 you combine the concept of things that are listed on an  
10 authoritative body's list and any other chemical that is not  
11 listed but that reliable information shows that it exhibits  
12 one of a list of hazard traits.

13 PANEL MEMBER KIRSCHNER: Okay, thank you.

14 CO-CHAIR CARROLL: Thanks, Mike. Richard.

15 PANEL MEMBER DENISON: Thanks. A question on page  
16 five. Under Option II(1)A the phrase "in the California  
17 marketplace" appears and I have a couple of questions  
18 relating to that. Does the Department believe that it needs  
19 to, that it can simply state that the regulations apply to a  
20 product that is in the California marketplace? And then  
21 that would be the manufacturer's job to determine -- there  
22 would be a definition of that and that would be the  
23 manufacturer's job to determine whether they are subject to  
24 it or not.

25 Or does this imply that there needs to be

1 knowledge by the Department that the product is in the  
2 California marketplace? And if the latter, doesn't that  
3 imply some type of either reliance on existing information  
4 or some sort of data collection to figure out what products  
5 are in the California marketplace?

6 CHIEF DEPUTY DIRECTOR MADRIAGO: In this  
7 particular context it would be the former. If something is,  
8 you know, if you looked in the regulations there is a  
9 definition that goes along those and it's basically if  
10 something is sold, offered for sale, lease, et cetera in  
11 California it's in the California marketplace. And it is  
12 not something we have to go out and identify and prove.

13 PANEL MEMBER DENISON: So you could identify a  
14 product without necessarily knowing that it is in the  
15 California marketplace. And then if it was -- okay, thanks.

16 CO-CHAIR CARROLL: Thank you, Richard. I have  
17 Roger, Kelly and Dale.

18 PANEL MEMBER McFADDEN: Actually I'll pass, I had  
19 two questions and Joe asked my first one and Richard asked  
20 my second.

21 CO-CHAIR CARROLL: Are we testing clairvoyance  
22 today? (Laughter) Very good, thank you, Roger. And Kelly,  
23 it's yours.

24 PANEL MEMBER MORAN: I have two clarifying  
25 questions about the meaning of being identified as a

1 chemical of concern. Because to respond to the request I  
2 would just like to understand a little bit more. And those  
3 are -- well it's on page three but that first initial  
4 identification of something being a chemical of concern.

5           And what I would like to better understand is, if  
6 a chemical is designated as a chemical of concern does that  
7 legally, the first question is legally does that give the  
8 Department any authorities or automatically create any  
9 obligations just by being listed as a chemical of concern?

10           And then the second question is a policy question?

11           What are the policy considerations that you have heard for  
12 being listed as a chemical of concern? And I heard one of  
13 them today, which would be advanced notice to people who  
14 were using that chemical.

15           CHIEF DEPUTY DIRECTOR MADRIAGO: And that's -- you  
16 know, I don't want to talk about policy considerations other  
17 than what we have talked about within the group because I  
18 would like to keep this within the group discussion.

19           And in terms of the significance of the term  
20 "chemical of concern," that is the term that is in the  
21 statute. So basically all the authorities that are embodied  
22 in the statute for chemicals of concern would, you know, tie  
23 into this.

24           PANEL MEMBER MORAN: So can you -- I guess what  
25 I'm, what I'm struggling --

1 CHIEF DEPUTY DIRECTOR MADRIAGO: I don't want to  
2 get into an in-depth legal analysis so if you have a more  
3 specific question that would be good.

4 PANEL MEMBER MORAN: Yes, does designation as a  
5 chemical of concern in and of itself before being designated  
6 as part of a product that would require an alternatives,  
7 just that first putting it on a list. Does that confer any  
8 authority or obligation legally?

9 MS. HECK: Can I jump in here? It would totally  
10 depend on how we wrote what is or is not triggered by being  
11 identified as such. So the term in and of itself doesn't  
12 confer any duties or obligations unless we were to draft it  
13 in a way that did.

14 PANEL MEMBER MORAN: That clarifies my question,  
15 thank you.

16 CO-CHAIR CARROLL: Very good, thank you, Kelly.  
17 Dale.

18 PANEL MEMBER JOHNSON: So my question is noted on  
19 page three and this is the revision to the regulation. So  
20 do I assume then that everything else that is not designated  
21 to be -- require revision does not require a revision?

22 CHIEF DEPUTY DIRECTOR MADRIAGO: I think that's a  
23 fairly safe assumption. And there might be --

24 PANEL MEMBER JOHNSON: So even on a, let's say a  
25 kind of a phase-in type of approach for the first group of

1 chemicals and then you come in later. That does not require  
2 a revision?

3 CHIEF DEPUTY DIRECTOR MADRIAGO: I don't think it  
4 would. We would probably have to, you know, analyze each  
5 specific, you know, nuance but this would be the big one  
6 where we know for sure that it would require revision to the  
7 regulations. For the most part these others, we do not  
8 believe it would require a revision to the regulations.  
9 Other than, you know, the discussion we had around 1A. You  
10 know, there's parts of that that would require revisions to  
11 the regulations.

12 CO-CHAIR CARROLL: Very good, thank you, Dale. I  
13 have Jae, Mike Wilson, Tim and Richard.

14 PANEL MEMBER CHOI: I think I have two answers  
15 from Mike and Joe but I just want to make sure and ask again  
16 that because that, you know, mess up my options later on.  
17 But in terms of fast-track, for example.

18 So just maybe, you know, restate the questions  
19 here. But in terms of any additional chemical list that  
20 DTSC currently doesn't add to a document and also list of  
21 the priority product, then you want to add later on. It has  
22 to go through legislation process?

23 CHIEF DEPUTY DIRECTOR MADRIAGO: Not necessarily  
24 if we take the approach, embody the approach of specifying  
25 the criteria and the process that we are going to use to

1 list regulations then the listing process itself would not  
2 require adoption of regulations.

3 PANEL MEMBER CHOI: Okay.

4 CHIEF DEPUTY DIRECTOR MADRIAGO: But if we did  
5 something where we had no, where we just listed chemicals or  
6 listed products in the regulations and then had no criteria  
7 or process specified for adding on, then we definitely would  
8 have to adopt new regulations.

9 PANEL MEMBER CHOI: Okay, thank you.

10 CO-CHAIR CARROLL: Thank you, Jae. Mike.

11 PANEL MEMBER WILSON: Thank you, Chair. The  
12 question is having to do with page five, Option II(1)A that  
13 is defining the PUC list to include consumer products in the  
14 California marketplace that contain a priority chemical.  
15 And the question is, does DTSC or any of the BDOs within  
16 California EPA have a data system in place presently to know  
17 if a product is sold in the state of California or not?

18 CHIEF DEPUTY DIRECTOR MADRIAGO: Not at this time.

19 CO-CHAIR CARROLL: Thank you, Mike. Tim.

20 PANEL MEMBER MALLOY: Thank you. I had two  
21 questions, one follows up to Kelly's. I just want to kind  
22 of understand the context. And if this isn't clarifying,  
23 Bill, just tell me and I'll defer it.

24 So the question is, under any of these options,  
25 having been identified as a priority product is the idea

1 that that would at that point automatically trigger the  
2 alternatives analysis obligation or are you thinking that  
3 there would be some further action by the Department that  
4 would then trigger it? Like, you know, so you have got a  
5 list of priority products, now there has to be a call in for  
6 the alternatives analysis to happen.

7 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, being  
8 identified as a priority product would start the  
9 alternatives assessment process. And, you know, we laid out  
10 a process that was, you know, fairly automatic in the last  
11 set of regulations. Now, you know, of course the one little  
12 caveat to that is our very robust discussion of yesterday.  
13 But putting that aside, there would be the requirement to  
14 initiate an alternatives assessment for something that is a  
15 priority product that is sold in California.

16 PANEL MEMBER MALLOY: Okay, thank you. And then  
17 the other question refers to -- it appears in a number of  
18 pages but the example, say page four there is an option  
19 I(2)B and others that talks about, as part of the  
20 prioritization process, thinking about chemicals for which  
21 there is a known safer chemical or design alternative. And  
22 then on page 13 in Option IV-B there is discussion about  
23 setting a threshold based on the attributes of available  
24 safer alternatives.

25 And I guess my question is kind of the chicken and

1 the egg question. So is there -- will there be in these  
2 processes some way of determining whether there are  
3 alternatives for products or chemicals? Obviously this  
4 stuff all happens before alternatives analysis, right? So  
5 is there some -- where would that come from? Are you  
6 envisioning some sort of, I don't know, like informal  
7 assessment of that or formal? I'm just trying to figure out  
8 how these two relate to each other.

9 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, yes. We  
10 would have to have -- there was not a lot of discussion  
11 about how we would determine that in the groups. Obviously  
12 there would have to be criterion research and, you know,  
13 data gathering to support that. And actually there would  
14 probably be a -- you know, I didn't want to get too wordy  
15 here but there probably would be other words that would  
16 describe this such as technologically and economically  
17 viable, safer alternative, functional equivalent, things  
18 like that. But, you know, we would have to have  
19 documentation that that did indeed exist.

20 CO-CHAIR CARROLL: Thank you, Tim. And Odette, I  
21 want to ask a little clarifying question after this  
22 colloquy. Presumably the alternatives assessment process  
23 would start for something that contained a priority chemical  
24 in a priority product, not simply designating a priority  
25 product.

1 CHIEF DEPUTY DIRECTOR MADRIAGO: Yes. But  
2 priority products, something will only be listed as a  
3 priority product if it contains a priority chemical.

4 CO-CHAIR CARROLL: Right and that's the  
5 clarification.

6 CHIEF DEPUTY DIRECTOR MADRIAGO: Now there is,  
7 there is the possibility or at least we are acknowledging  
8 that there is a possibility that we might -- and there are  
9 different ways that you can list products and I think that  
10 will be kind of a case-by-case basis. But so it is  
11 conceivable that we might list as a general product  
12 description something for which an individual manufacturer's  
13 product fell in that but they didn't have the priority  
14 chemical. They would not be subject to the alternatives  
15 assessment.

16 CO-CHAIR CARROLL: And that's the clarity I was  
17 looking for, thank you very much. Richard.

18 PANEL MEMBER DENISON: On page three and then  
19 various other places, like Option 1C uses this concept of  
20 the regulation itself including criteria and a process. And  
21 I guess -- and my apologies if this was something that was  
22 clarified late last year when I was a little bit out of the  
23 loop here on this. But this concept of putting in the  
24 regulation itself criteria and a process. I want to follow  
25 that forward a step.

1           So if you then invoke those criteria and the  
2 process to identify a chemical or a product does the formal  
3 identification of that chemical or product require an  
4 additional regulation or is it an administrative step? And  
5 either way, what is the opportunity or ability for outside  
6 parties to either have input into that process or to  
7 challenge it?

8           CHIEF DEPUTY DIRECTOR MADRIAGO: Okay. We  
9 envision it as, quote, an administrative process to the  
10 extent that it would not be the full-blown regulation. Now  
11 the caveat is that in order to do that, that this initial  
12 set of regulations has to be very specific about the  
13 criteria and the process that we will undertake to list  
14 chemicals in products.

15           The second part of your question. You know, what  
16 we envision and what was in the regulations last year is  
17 that we would, you know, develop the list, have lots of, you  
18 know, backup supporting, explanatory documentation. The  
19 draft list and the backup material would be made available  
20 for public comment, there would be some public workshops.  
21 The feedback would then be taken into consideration in  
22 developing a final list.

23           We also had in the regulations the possibility of  
24 petition. Where people, you know, anybody could petition us  
25 to consider a particular chemical or a chemical product

1 combination with some kind of supporting information. Does  
2 that answer your question?

3 PANEL MEMBER DENISON: I guess I'm wondering about  
4 once that chemical is listed or that product is listed is  
5 the only recourse at that point if someone were to challenge  
6 that to be a judicial process or is there --

7 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, I -- I  
8 mean, you know, they could do that, I suppose. If somebody  
9 were to present additional information that made us rethink  
10 our determination then that would constitute a revision to  
11 the list and we would go through again a reiteration of the  
12 draft change to the list, the public input period and making  
13 a final determination in terms of whether or not to make  
14 that change.

15 PANEL MEMBER DENISON: Okay, okay. I think I  
16 understand, thank you.

17 CO-CHAIR CARROLL: Thank you, Richard. Tim, I  
18 want to be sure, is your flag up or just not down? Thank  
19 you. And I would remind you that we are going to be coming  
20 very -- and I'll get you next. We are going to be coming up  
21 to the public comment period. I don't have any notes that  
22 people want to make public comments. If you do please fill  
23 your cards out and give us, give us the notice of that.

24 Forgive me, I am a little off my game this  
25 morning. I am attempting to run at very close to a lethal

1 concentration of decongestant so if I am a little addled  
2 that. that's the reason. Ann, it's yours.

3 PANEL MEMBER BLAKE: Is that an above de minimis  
4 level of decongestant? (Laughter)

5 CO-CHAIR CARROLL: Yes. Because if it were de  
6 minimis --

7 PANEL MEMBER BLAKE: You would not be functioning.

8 CO-CHAIR CARROLL: My head would be on the desk at  
9 this point.

10 PANEL MEMBER BLAKE: Okay. So this is actually a  
11 response to a clarifying question. Michael, you asked if  
12 there were databases existing. There is one that is for a  
13 subset of information. It's the database run by the  
14 California Department of Public Health in response to the  
15 California Safe Cosmetics Act, which by statute collects  
16 information on CMRs, products with CMRs in them above a  
17 certain volume sold in the state of California. Only  
18 cosmetics, yes. And only CMRs.

19 CO-CHAIR CARROLL: Very good. It looks like the  
20 end of the questions. Very good. We have --

21 PANEL MEMBER McFADDEN: (Waved).

22 CO-CHAIR CARROLL: All right, Roger. You passed  
23 the last time, you get a free pass this time. Go ahead.

24 PANEL MEMBER McFADDEN: Thanks. And this is a  
25 real quick clarification on page six. Yes, page six, Option

1 II(2)B.

2 CHIEF DEPUTY DIRECTOR MADRIAGO: Page six.

3 PANEL MEMBER McFADDEN: Yes.

4 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay.

5 PANEL MEMBER McFADDEN: Page six. And there seems  
6 to be a reoccurring reference to "for which there are known  
7 safer chemical or design alternatives." And I am curious if  
8 that extends into safer product alternatives as well? I am  
9 not sure if I understand that to include safer product  
10 alternatives.

11 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay, I probably  
12 could have used a more clarifying word because that is  
13 actually what I was envisioning.

14 PANEL MEMBER McFADDEN: Okay.

15 CHIEF DEPUTY DIRECTOR MADRIAGO: That there could  
16 be -- for the product if you could find a safer chemical to  
17 use in the product or you could find a different design, it  
18 would eliminate the need for the chemical.

19 PANEL MEMBER McFADDEN: Okay, thank you.

20 CO-CHAIR CARROLL: Very good. And I'll ask one  
21 more time, are there other clarifying questions?

22 Seeing none let's go ahead on to the public  
23 comment period then, please. I know of two comments in the  
24 room and we will clear those first. And Kathy, I will ask  
25 if there is anything on the web but we will -- why don't you

1 go ahead and give the address again and make sure that we  
2 have handled this correctly.

3 MS. BARWICK: Thank you.

4 The address for public comment for the webcast  
5 viewers is green.chemistry@dtsc.ca.gov. Thank you.

6 CO-CHAIR CARROLL: Thank you. I will ask Maia  
7 Jack, please. Three minutes.

8 DR. JACK: I represent the Grocery Manufacturers  
9 Association, GMA. In keeping with the goals of California's  
10 Green Chemistry Initiative of significantly reducing adverse  
11 health and environmental impacts of chemicals used in  
12 commerce by encouraging the redesign of consumer products,  
13 manufacturing processes and approaches, GMA submits that a  
14 science-based approach be employed to identify, prioritize  
15 and evaluate chemicals of concern used in products.

16 This would entail looking at not only hazard but  
17 also potential for exposure to the chemical and use of the  
18 product by targeted subpopulations. So I will address three  
19 issues. The first one is lists and regulations, the second  
20 one is potency thresholds, the third one is prioritization.

21 In terms of lists and regulations, we support a  
22 process over lists being in the regulations. The process  
23 would address most serious chemical concerns for targeted  
24 subpopulations or for environmental end points by  
25 identifying the most likely sources of those chemicals, by

1 listing product categories in the regulations, important  
2 sources of contribution may be overlooked. Also  
3 opportunities for notice and comment for public input will  
4 ensure decisions are made with the best information.

5 In terms of potency thresholds, cutoff values from  
6 systems such as GHS or EPA's Design for the Environment can  
7 help define what a hazardous substance is by classifying  
8 chemicals into categories of decreasing hazard potentials.  
9 Cutoff values will help with prioritizing chemicals based on  
10 levels of concern.

11 In terms of prioritization, we believe it must be  
12 science-based. In order to significantly reduce adverse  
13 impact to health and the environment it is essential to  
14 identify and prioritize those chemical product use scenarios  
15 that are of real concern and contribute most to the adverse  
16 impact and for which a viable alternative would  
17 significantly improve the overall profile to health and the  
18 environment and avoid unintended consequences.

19 GMA recommends that the initial Green Chemistry  
20 Initiative focus should be to identify chemicals known or  
21 reasonably anticipated to be CMRs in humans or PBTs in the  
22 environment based on authoritative sources. The  
23 authoritative sources would need to be characterized and  
24 defined as to what would constitute authoritative. A tiered  
25 approach in identifying chemicals of concern may help

1 maximize limited resources by focusing on those chemicals of  
2 known or presumed hazards first.

3           In order to prioritize chemical uses of concern we  
4 are suggesting a relative ranking approach. Key steps  
5 include: for each of the chemicals on the initial set of  
6 chemicals of concern list, identify product uses from  
7 publicly available information. The second step would be  
8 products are then grouped based on similar features. The  
9 third step would be that a sentinel product for each product  
10 group is identified and represents greatest plausible  
11 exposure scenarios. This step serves as a surrogate for use  
12 in ranking calculations.

13           The fourth step would be that the exposure  
14 scenario from different source contributions, that is from  
15 every chemical sentinel --

16           CO-CHAIR CARROLL: Maia, you need to be wrapping  
17 up, please.

18           DR. JACK: Okay. Every sentinel product  
19 combination is modeled upper bound exposure values and  
20 specific to targeted subpopulations.

21           And finally we would wrap in any exposure through  
22 the environment in the process. So the ranking model  
23 generates relative quantitative ranking from high to low,  
24 considering hazard and exposure and would help identify top  
25 priorities.

1 CO-CHAIR CARROLL: Maia, that's the end of our  
2 time.

3 DR. JACK: Okay, thank you.

4 CO-CHAIR CARROLL: Thank you very much.

5 DR. JACK: Okay.

6 CO-CHAIR CARROLL: Also in the room we have a  
7 comment from Dawn Koepke, please.

8 MS. KOEPKE: Thank you, good morning. Thank you  
9 for the opportunity to address you again.

10 The Green Chemistry Alliance, with whom I would  
11 like to align my comments today, also acknowledges and  
12 supports those made by the Grocery Manufacturers Association  
13 as well. But just really quickly I'd love to just start  
14 with a couple of points relative to what the statute  
15 requires from the Green Chemistry Alliance's perspective  
16 because we think this is important in terms of going forward  
17 in this discussion.

18 It requires DTSC to establish a process to  
19 identify and prioritize chemicals of concern in consumer  
20 products as we know and must consider volume in commerce,  
21 potential for exposure, potential effects on sensitive  
22 subpopulations and use information from authoritative  
23 bodies.

24 What it does not require is establishing a list or  
25 a list of lists. Much less it does not require the

1 evaluation of 100 percent of chemicals in commerce nor does  
2 it require conducting a safety assessment of any product.  
3 We think this is really important to keep these parameters  
4 in mind as we go forward in this discussion.

5           In the interest of time I won't get into the  
6 details further that Maia touched upon relative to our  
7 proposals other than just to say that we really think that  
8 the purpose of the statute and the regulations that would be  
9 implementing the statute is to improve products. It is not  
10 to determine whether or not a particular product is safe.  
11 Products, we believe, on the market are safe.

12           Also the principal mechanism for improvement in  
13 terms of limiting exposure to chemicals of concern as called  
14 out for in the statute include such options as product  
15 redesign, including substitution of safer alternatives, risk  
16 management via the regulatory response actions and avoiding  
17 regrettable substitutions in the process. And we propose  
18 two phases to address these pieces including prioritization  
19 of chemicals of concern and prioritization of the products  
20 containing the chemicals of concern for the alternatives  
21 assessment.

22           We also support Maia's comments relative to a  
23 starting point. I do want to emphasize starting point. We  
24 don't believe that this would be the end of the road but we  
25 do believe that it would be appropriate to start with CMRs

1 and PBTs to get the program off the ground in a resource-  
2 mindful fashion. And based on our assessment relative to  
3 CMRs, we believe that this could bring in as potential  
4 candidates initially almost about 1500 chemicals that are  
5 based on authoritative bodies. And for PBTs, roughly about  
6 160 based on common criteria.

7 I'll just skip ahead if I may. Relative to  
8 products prioritization. I want to be sure that obviously  
9 that product prioritization is science-based and we are  
10 really wanting to see the legislative intent be performed  
11 here that it is DTSC and scientists that are making those  
12 decisions, not the Legislature. That was really the intent  
13 behind the statute and stakeholders coming together is that  
14 we place this in the hands of scientists. We want it to be  
15 science-based.

16 CO-CHAIR CARROLL: Dawn, I need you to wrap up,  
17 please.

18 MS. KOEPKE: You bet. And address the highest  
19 risks first, as we said. Base priorities on quantitative  
20 comparison of hazard and exposure. And make sure that the  
21 process is transparent with all assumptions visible and  
22 public comment opportunity as well. Thank you.

23 CO-CHAIR CARROLL: Thank you very much. Kathy,  
24 anything from the web?

25 MS. BARWICK: Hortensia, nothing?

1 MS. MUÑIZ-GHAZI: No.

2 MS. BARWICK: I don't have anything.

3 CO-CHAIR CARROLL: All right, very good. That  
4 completes the public comment period then. We are a little  
5 bit ahead of schedule. And what I would like to do at this  
6 point is, Ken, to turn it over to you to sort of set up the  
7 way you want to approach discussing these topics and breaks  
8 and so on. I know you have a plan for this.

9 CO-CHAIR GEISER: Thank you, Bill; and thank you,  
10 Bill, for all of the hard work of yesterday. I want to  
11 congratulate you on being a great facilitator for us  
12 yesterday. Although in the end I drew the short straw.  
13 (Laughter). I get the complicated section today.

14 Bill did note at the end of yesterday that we  
15 managed to get through something that was relatively small.  
16 We spent a lot of time on it. I think our perspective, as  
17 Bill and I sat back and looked at the experience of  
18 yesterday, we were really pleased with the level of detail,  
19 the level that we had -- the kind of direct, clear  
20 recommendation that people were able to make. It was  
21 clearly helpful.

22 And I want to congratulate people on really  
23 stating what they felt was the right direction to be going.

24 And then as Bill suggested, modifying it with the nuances  
25 that you brought to it. In some cases actually having a

1 different view than even some on the page but always being  
2 very concrete. And I offer -- I urge you to maintain that  
3 same level of specificity and sort of constructive comment  
4 because I think that's what advancing us forward.

5           And I think what is nice is the tone of it has all  
6 been along that line. I know there are disagreements  
7 amongst us, that's great. In fact there should be  
8 disagreements among us. But the way they were presented  
9 yesterday was terrific, I think, so I am really, I am really  
10 pleased with all of that so congratulations.

11           With that upbeat applause what I would like to  
12 sort of say is what we did yesterday -- what I was trying to  
13 say at the end. What we did yesterday is we were working on  
14 boundaries on the universe of elements that would be  
15 considered under the regulations themselves. And today what  
16 we are doing is now beginning to look at the way in which  
17 you pick within that universe the things that you are going  
18 to take on first and second and third and all.

19           And so it's sort of like, now it's sort of if you  
20 have a sort of a universe, how do you select from the many  
21 things that remain in that universe, the chemicals or the  
22 products with chemicals that are going to be the first  
23 things that the Department is going to be taking up.

24           This morning I -- when Dale met me in the  
25 restaurant I was trying to come up with a metaphor that sort

1 of made sense to me with this kind of positive attitude.  
2 And I was thinking it was kind of like a special needs  
3 teacher arriving into a class of rambunctious kids and  
4 trying to figure out, okay, here is the class. You know,  
5 there's 50 kids in this class and I have got to make a  
6 decision about which of the first ones I am really going to  
7 deal with.

8           And in so doing I can't spend a lot of time doing  
9 enormous amounts of testing and analysis and all because I  
10 am really here to treat these kids. But at the same time I  
11 can't be wrong. I can't spend all my time trying to treat  
12 the ones that actually are doing pretty okay. So how I do  
13 make a decision? How do I make a choice within that arena?

14 I do a lot of teaching through metaphors so if you want a  
15 good metaphor of this think of this as a rambunctious  
16 classroom with a challenge to teacher.

17           Okay. Along that line I would say there are some  
18 things that are general principles that I think are  
19 important. One is that we need to stay positive. We don't  
20 want to get, we don't want to create a process that gets  
21 bogged down with a lot of detail.

22           At the same time we want to be science based. We  
23 want to make sure that the kind of process that the state is  
24 proceeding on really has a basis in real research and what  
25 we do know.

1           We want to stay transparent so that it is very  
2 obvious the way in which processes are designed.

3           And we want to sort of focus on act where you can,  
4 do what you can. We can't do everything. There is too much  
5 to do and there's a lot of unknowns in what we can do but  
6 there are things we can do and I think that should be the  
7 spirit of this.

8           I congratulate Odette for the effort she made this  
9 morning to walk us through this really complicated process  
10 flow system. But I will try to simplify it a bit by saying  
11 if you look at the logic that she used to try to create  
12 options in this. We saw sort of generally although there  
13 were three options and then a no option kind of. And the  
14 options were a listing, either by listing with an  
15 authoritative list or listing with some kind of pre-  
16 determined, specified list as one strategy.

17           A second was the criteria and process strategy  
18 where criteria are set up. You don't actually list  
19 something but you set up the criteria by which you would  
20 identify the rambunctious kids.

21           And the third strategy was really this kind of  
22 scheduling and grouping a bit more abstract idea but an idea  
23 of being able to sort of tier or bin and then select from  
24 those tiers and a process that would be developed.

25           And then of course for each of those there was the

1 idea that maybe you should have two lists or maybe just one  
2 list to work from.

3           So that's sort of, I think if you think about how  
4 you are going to respond to this and you want to stay at the  
5 big level, think about the kind of strategy that makes most  
6 sense to you. Try to offer the Department what yo think is  
7 the most effective way to really try to meet the obligations  
8 of a good, sound transparent process but yet one that  
9 doesn't get bogged down and moves quickly to what the  
10 citizens of California are really expecting out of this  
11 process. So we have from now until really about 4:00 to go  
12 through this. It's a long process. You know, if it was  
13 undergraduates we couldn't do this, right. (Laughter).

14           What I am going to suggest is this. Keep this in  
15 front of you at all times. And, you know, secondly watch  
16 this a lot. If you get lost, here is the Google Map that  
17 allows you to sort of see where you are at any time.

18           But let me just suggest a plan for action for the  
19 rest of the day. We are going to take a break very shortly  
20 but let me suggest a plan that looks something like this.  
21 That when we come back from the break that we will take up  
22 the first area, number one, Section I, which is the Chemical  
23 List Tiering area.

24           At the very top of that what I want to do is leave  
25 a little time for just some general comments on the whole

1 process. You may remember Meg and George yesterday sort of  
2 were pleading a little bit for a little space for some big  
3 comments. And so we'll start with those and then move into  
4 the Chemical List Tiering and Sequencing section. And that  
5 will take us up to lunch. We will then break for lunch.  
6 Come back. Lunch is going to be upstairs, is that right,  
7 Kathy?

8 MS. BARWICK: Yes.

9 CO-CHAIR GEISER: So we won't eat here, we'll go  
10 upstairs. We'll take a nice time for lunch and then come  
11 back and dive into the Product area and spend a good hour,  
12 an hour and 15, 20 minutes on the Product List Tiering and  
13 Sequencing section.

14 We will then take a break and I am not exactly  
15 sure where that break is going to be. We will just have to  
16 sort of feel where it feels right to do that break and come  
17 back to the Prioritization section and the Decision-Making  
18 section. We will try to use that as a block toward the end.

19 As Odette suggested, and I think correctly, we are  
20 not going to spend a lot of time on the lists of possible  
21 ways that you could list those criteria or whatever because  
22 I think what we are looking for there is simply, are we  
23 missing something or can you give us a sense of what you  
24 think are the most important criteria to work from. But we  
25 aren't going to spend a lot of time there.

1           Instead what we are going to spend time on is this  
2 options for using the criteria itself and the decision-  
3 making process. And we will try to close out on that  
4 decision-making process by, I think by about 4:00 so that we  
5 have enough time that Bill and I want to sort of query you  
6 on what you think of the process in total. How did this  
7 process really work. Does that sort of seem like a  
8 reasonable way to get through what is otherwise a pretty  
9 complicated day?

10           (Affirmative responses).

11           CO-CHAIR GEISER: Cool, great. I just wanted to  
12 -- we spoke about this last night and I just wanted to  
13 recognize the people who really are doing all this hard work  
14 behind us. We know Kathy Barwick and Jeff Wong, the retired  
15 Jeff, who have been terrific people really supporting us and  
16 all.

17           But I just wanted to acknowledge the folks down  
18 there at the other end of the table who are really the ones  
19 who are having to listen to all of this and really, you  
20 know, figure out how to plug this into what they know about  
21 the way laws get written or the regulations are written or  
22 all the other things that they have got to be considering as  
23 they try to take our good ideas, very good ideas actually,  
24 (laughter) and plug them into real regulatory effort. And I  
25 want to recognize Colleen Heck; Colleen.

1 MS. HECK: Thank you.

2 CO-CHAIR GEISER: Yes. You are our legal attorney  
3 on this, right?

4 MS. HECK: Yes, that's right.

5 CO-CHAIR GEISER: That's right.

6 MS. HECK: I am part of the reg drafting team  
7 working under Odette's leadership with my colleagues that  
8 you see here and a few others that are working even more  
9 behind the scenes.

10 CO-CHAIR GEISER: Well thank you very much. And  
11 Corey Yep. Corey, yes.

12 MS. YEP: I've been outed.

13 CO-CHAIR GEISER: And Hortensia Muñiz.

14 MS. MUÑIZ-GHAZI: Thank you.

15 CO-CHAIR GEISER: And Evalia Rodriguez.

16 MS. RODRIGUEZ: Thank you.

17 CO-CHAIR GEISER: So just a round of applause for  
18 these good people.

19 (Applause).

20 CO-CHAIR GEISER: let's take about a 10, 15 minute  
21 break and we'll be back.

22 (Off the record at 10:26 a.m.)

23 (On the record at 10:43 a.m.)

24 CO-CHAIR GEISER: Okay, Roger just asked a  
25 question and we don't -- actually the state is not providing

1 here. We in New England have a different view of water than  
2 out here. If people, you know, feel like they need a bit of  
3 refreshment or something there is a little canteen operation  
4 downstairs on the first floor if you are in need of water.  
5 You will have to purchase it but it is downstairs.

6 CHIEF DEPUTY DIRECTOR MADRIAGO: We apologize but  
7 those are the rules.

8 CO-CHAIR GEISER: That's the nature of it here.

9 What I would like to maintain is that quality that  
10 we had yesterday, which was defined by Dale's suggestion  
11 that as people make their statements that they indicate  
12 which of the options they are speaking to. In other words,  
13 I was really very much struck by the discipline with which  
14 people spent yesterday sort of saying, I am in favor of or I  
15 like Option 2A or whatever. It helps a lot to know. It  
16 locates your comments very well. Clearly many people then  
17 offered a nuance to that or a difference or whatever. But  
18 just starting somewhere is really helpful for us to be able  
19 to locate you.

20 Now there was a concern raised with us last night  
21 that began to feel like voting. We are not trying to do  
22 that, I want to make that clear.

23 Secondly, we are asking people not to try to add  
24 things up like how many said this or that. That is not the  
25 intention.. The intention is just to clarify your actual

1 statement. So please try to maintain that rigor as you make  
2 your comments themselves.

3 With that I am going to open this up for sort of  
4 ten minutes or so. If there are general comments on the  
5 entire process that Odette has laid out for us to look at  
6 today. This is not on specifics but on the flow of  
7 chemicals then products. And this is the flow that comes  
8 from the statute but there may be comments and I just would  
9 like to see if there is anything on the larger vision. Art.

10 PANEL MEMBER FONG: Thank you, Ken. The comment  
11 that I have is I was really encouraged by Odette's  
12 perspective in terms of DTSC starting out with a relatively  
13 small list, a combination of chemicals and products and  
14 then, you know, using that to test the whole process. And I  
15 think that is something that a number of us had encouraged  
16 in the past and I think from just, you know, practical  
17 business perspective I think that's what would work. That  
18 was really encouraging, thank you.

19 CO-CHAIR GEISER: Michael.

20 PANEL MEMBER WILSON: Thank you, Chair. I guess I  
21 just wanted to flag three things that I saw in the flow from  
22 beginning to end. I think where we got in trouble last time  
23 was putting into language high standards of evidence that  
24 DTSC would need to meet and requiring DTSC to answer  
25 unanswerable questions is what it felt like to me.

1           And we have gotten, we have come so much, so far  
2 from that. I think this is so much better this approach.  
3 But there is still some of that remaining and I wanted to  
4 flag a couple of those.

5           One was, is the reference to strong evidence that  
6 a chemical or product poses a potential to public health or  
7 environmental or subpopulations. Those two words in  
8 combination I think are problematic and I just want to flag  
9 those.

10           The second is hinging DTSC's action on answering  
11 an unanswerable question. And there are several of those in  
12 there. One of them for example is demonstrating evidence  
13 about the extent of externalized costs of a product in use  
14 in commerce. An example that's in the text is "health care  
15 costs associated with the use of a product." Unanswerable  
16 question.

17           And then the third is just what I think is sort of  
18 a bifurcation having to do with the hinging action on the  
19 existence of safer alternatives. That I think where we are  
20 going to run into trouble is where that language is on the  
21 chemical side as compared to the product side. And I guess  
22 this is sort of a broad theme that runs through the text  
23 around safer alternatives. And I think that that makes  
24 sense on the product side but it is problematic on the  
25 chemical side because of the multiple applications of single

1 substances. Thank you.

2 CO-CHAIR GEISER: Thank you, Michael. Before  
3 Lauren and Meg I am just asking, do you have any response to  
4 the whole thing, the big picture? Any further responses to  
5 the entire plan that is laid out here.

6 PANEL MEMBER SCHWARZMAN: The question was, are  
7 aspects of the plan in play? Not elements of it, not steps  
8 in the plan but just sort of these --

9 CO-CHAIR GEISER: If you have a comment go ahead  
10 and make it. I'll tell you whether you're on or not.

11 PANEL MEMBER SCHWARZMAN: Okay, you can cut me  
12 off. I guess part of it is a little bit to take off on what  
13 I just heard Mike say about the unanswerable questions. And  
14 I hadn't heard it described that way before; I think it's  
15 useful. And maybe we should just think about if there are  
16 ways that the Department can structure the program to allow,  
17 to be allowed to consider multiple factors that may be hard  
18 questions to answer, rather than being required to answer  
19 those questions before taking action.

20 So how is that kind of evidence used, I think is  
21 an interesting way to think about it so that we are  
22 permitting some creative information use where it exists  
23 without requiring DTSC to answer unanswerable questions  
24 before taking action. So that was one thought just based on  
25 what I heard Mike say.

1           And the other over-arching thought is this issue  
2 of keeping in mind that the ultimate goal of this  
3 prioritization process of naming a priority chemical in a  
4 priority product is to initiate the alternatives assessment  
5 process. And so -- and all of this as actions that come  
6 from that potentially.

7           And so I also had a real hesitation with the  
8 availability of a suitable alternative being a limiting  
9 factor. I think it may be where you are considering  
10 products, it may be really useful to find those as low-  
11 hanging fruit that have available alternatives and it is so  
12 use-specific that it has to be on the product side.

13           But to use that as a limiting factor for choosing  
14 priorities I would hesitate from. So to keep that frame of  
15 what we are trying to do is bring products with chemicals  
16 that are of concern to the Department into the alternatives  
17 assessment process as framing what we are trying to  
18 accomplish here in a larger sense.

19           CO-CHAIR GEISER: Joe.

20           PANEL MEMBER GUTH: Thank you, Chair. The concern  
21 that I want to articulate that I think runs all the way  
22 through here is a sort of undecided question and it was a  
23 big issue in the last set of regs that came out in November.

24           And that is the one of the extent to which DTSC is going to  
25 attempt to rank chemicals with a high degree of specificity

1 really in terms of how -- on the chemical side, you know,  
2 how serious the concern is. And the same, I guess the same  
3 on the product side. So that, you know, in an attempt to  
4 identify, you know, the worst problem.

5           And I really would urge DTSC to avoid putting  
6 themselves in a box as I think it did in the last set of  
7 regs where a defense to the identification of a priority  
8 chemical is that, oh, there is a worse one, you know. You  
9 got it wrong. And the reason is, first of all, it's  
10 impossible to do this. The data gaps are just, you know,  
11 unbelievable. There are judgments required all along the  
12 way that can be disputed and will be disputed by the  
13 chemical or the product that emerges from that test.

14           So I think I really would urge DTSC to not put  
15 itself in that box by creating the expectation that that is  
16 what it is going to do in these regulations. Instead I  
17 think these criteria and factors can be used to identify  
18 chemicals that are serious problems. And if we want the  
19 Department to be addressing serious problems they don't have  
20 to be defensible as the worst problem, they have to be a  
21 serious problem.

22           We want it to do that and we want industry to be  
23 working on serious problems. But they don't have to be  
24 defensible as the worst. So I guess the -- that's it.

25           CO-CHAIR GEISER: So I'm hearing, I'm hearing sort

1 of a plea to keep things fairly flexible, don't lock things  
2 down really tight.

3 PANEL MEMBER GUTH: You know, if a cop stops you  
4 for speeding it is not a defense to say, somebody over there  
5 is going faster, why are you bothering me, right?

6 CO-CHAIR GEISER: Okay.

7 PANEL MEMBER GUTH: But DTSC can put itself in the  
8 box where that is a defense and I really urge it not to.

9 CO-CHAIR GEISER: Okay, I have Rich and Lauren and  
10 Kelly and Ann. And I think that will be enough of this and  
11 then we will dig into the chemical listing. Richard.

12 PANEL MEMBER DENISON: Thanks, Ken. I was going  
13 to wait to do this later but since it has come up three  
14 times now I think maybe -- I really want to urge that we  
15 have a -- devote some discussion to this question of the  
16 role of a -- as a criterion for prioritization of the  
17 availability of alternatives. And I think there's 12 or 13  
18 instances of it being invoked in this document so it's a  
19 permeating issue. Let me just say I am, I think this is  
20 very much of a potential to be a fatal flaw. And I am very  
21 concerned about this, especially it is invoking as a general  
22 prioritization criterion. And let me just say why.

23 First of all, I think it is very weird to have as  
24 a criterion for deciding whether a chemical and product is  
25 subject to an alternatives assessment the criterion that

1 there is an available alternative. I don't quite get that.

2 But second it begs all kinds of questions about  
3 who decides, how do they decide, what is safer, what is an  
4 alternative? All kinds of questions that need to get  
5 grappled with but certainly they are going to have to be  
6 grappled with at the alternatives assessment stage. And the  
7 question becomes then, what is done in advance of that to  
8 invoke that criterion.

9 Third and most critical. I think we have to think  
10 through what this means. It means that the only chemicals  
11 ion products that ever get prioritized and therefore on a  
12 path toward any kind of regulatory response are those for  
13 which alternatives exist. That's the way it's written. It  
14 says that the only chemicals and products that get  
15 prioritized are those for which an alternative exists. And  
16 that is the triggering event, the prioritization step is the  
17 triggering event that puts that product into the  
18 alternatives assessment, which is necessary to get it to a  
19 regulatory response.

20 So let's suppose there is a chemical for which  
21 there is no alternative, in a product for which there is no  
22 alternative, and yet there are all kinds of regulatory steps  
23 that could be taken to reduce the concerns with that  
24 product. You'll never get to them because it never got  
25 prioritized because there wasn't a viable alternative to it.

1           Now if this were something where we were talking  
2 about an absolutely critical use of a chemical and there  
3 were criteria for identifying those uses it would be one  
4 thing. But let's say we have a fragrance. You know, the  
5 tenth fragrance in a line of products that becomes a  
6 chemical of concern. And the question then becomes, is  
7 there an alternative to that fragrance in order to get that  
8 chemical down the road in this process.

9           You know, I just think we have to think through  
10 what the consequences of this are. And what it reminds me  
11 more than anything of, is the fatal flaw in TSCA Section 6  
12 which basically requires EPA to show that there are viable  
13 alternatives to each and every use of a chemical it proposes  
14 to ban. That's what the courts used to throw out the  
15 asbestos decision in 1991. So I very much worry that we are  
16 replicating that with this concept.

17           CHIEF DEPUTY DIRECTOR MADRIAGO: Let me make a  
18 clarifying comment. I can understand how you might see that  
19 we would be limiting it to just chemicals or products to  
20 which there are safer alternatives. But actually the  
21 concepts that I heard in the subcommittees and that I tried  
22 to replicate here was that you would use that for the fast-  
23 track. That it would not be the only track for a chemical  
24 or a product to get listed.

25           And so what is important to keep in mind as you go

1 through these options more specifically is, again, these  
2 options are not mutually exclusive. So you could pick two  
3 or three of them and add them together. I just want to say  
4 that. Keep that in mind as you are going through these in  
5 detail.

6 PANEL MEMBER DENISON: Well just two reactions to  
7 that, Odette. One is the word "and" in all these  
8 formulations implies that it has to be both, strong evidence  
9 of concern and. And I understand you were talking about --

10 CHIEF DEPUTY DIRECTOR MADRIAGO: Only for the fast  
11 track.

12 PANEL MEMBER DENISON: -- that in the fast-track  
13 concept.

14 CHIEF DEPUTY DIRECTOR MADRIAGO: Only for the fast  
15 track.

16 PANEL MEMBER DENISON: But I might very well argue  
17 that some of the most fast track priorities for me would be  
18 ones for which there are not currently alternatives. So I  
19 want to first say that I think that is a concern even in a  
20 fast track context.

21 But second, that this criterion is invoked  
22 throughout this document, even in context that have nothing  
23 to do with a fast track. Now if that "and" were an "or" for  
24 the fast track context, maybe that's something to look at.

25 CO-CHAIR GEISER: Thank you, Richard. And I

1 believe Lauren is next.

2           PANEL MEMBER HEINE: Thank you. Odette, I think  
3 you did a fabulous job pulling together the issues and  
4 laying them out in a way that really lets us work through  
5 them.

6           At the big pie level what I find myself struggling  
7 with is wanting initial flexibility in the process to really  
8 use some piloting and early development work to kind of  
9 define the criteria that need to be applied to the bigger  
10 system. And so a lot of these options lay out either very  
11 restrictive/prescriptive approaches for DTSC versus the  
12 flexibility to decide what's hazardous, what's not, and to  
13 use factors to make decisions.

14           So I find myself wanting the flexibility initially  
15 and thinking that down the road there will be less need for  
16 that flexibility because there will be more understanding of  
17 the process and how to do this. And so I am very torn  
18 because I don't want to lock in too soon because I am sure  
19 we are going to be changing the regs frequently if we lock  
20 in too quickly. So I will probably err on the side of  
21 flexibility with all of our decisions here.

22           And this relates to the other issue that I think  
23 George raised yesterday is, how many chemicals are we  
24 talking about too? If we are talking about ten a year, a  
25 hundred a year, a thousand, that does really determine --

1 and how many products a year can we do? Because that really  
2 changes everything when you think about, you know, a small  
3 number versus a massive number. And so that would be very  
4 helpful too.

5           And then finally my last point, and maybe you  
6 could address the number question is the idea of lists by  
7 authoritative bodies. I see that as a bit of a can of worms  
8 because who decides what authoritative is? I know in the  
9 Walmart CIP network group California Prop 65 was not  
10 considered authoritative. I don't believe that would be  
11 true in California. (Laughter) So who decides that, right?

12       So I think there are other ways of using authoritative  
13 lists and they are a form of information.

14           You can -- if you are defining what a carcinogen  
15 is, one of the strategies EPA has designed for the  
16 environment is to use authoritative lists as flagging lists.

17       It helps you to narrow down the set of chemicals you would  
18 call carcinogens if you pulled together a set of lists that  
19 identified carcinogens but you still have responsibility to  
20 determine if it is or is not a carcinogen.

21           You might disagree with one of those authoritative  
22 lists and you might have more chemicals that aren't on those  
23 authoritative lists. So I view authoritative lists as a  
24 tool to support DTSC and OEHHA in identifying carcinogens  
25 but not to restrict them in terms of what -- because

1 authoritative lists, in my mind they are very important but  
2 sometimes they are too little too late. They are about  
3 chemicals we know a lot about and historically and it  
4 doesn't really get at the new design of chemicals where you  
5 might be able to use modeling tools, structure end logs, to  
6 look at some of the new chemicals that are emerging and to  
7 make sure you aren't creating new carcinogens.

8           So I would like to make a pitch for thinking of  
9 other ways to use authoritative lists and again ask the  
10 question about how do we instill flexibility and how does  
11 that relate to the numbers?

12           CHIEF DEPUTY DIRECTOR MADRIAGO: Well, I mean, you  
13 can certainly have, you know, flexibility. And going along  
14 the lines of your suggestion of starting out with a lot of  
15 flexibility and maybe later on make it more streamlined. I  
16 know we would have to think about that. That might require  
17 actually that we would have a regulation change to do that,  
18 I don't know. It would really depend upon the specifics.

19           In terms of numbers I am not going to give you  
20 anything really concrete. But I will say we do have two  
21 lists of chemicals. I would envision the list of chemicals  
22 of concern as being extremely robust. Just how robust I  
23 don't know but certainly I would think in the hundreds if  
24 not larger than that.

25           The priority chemical list. The one that we then

1 really focus in on to identify the products that contain  
2 those chemicals, that will be a much, you know -- smaller  
3 initially again -- a much smaller list. It will get added  
4 to each year. And I know everybody would like a magic  
5 number. I don't have a magic number for you but I would say  
6 I would certainly think the first time going around it is  
7 definitely going to be below 50 and probably somewhere more  
8 than 10. But where in there I don't know. And that is just  
9 my own personal thing, I'm just throwing it out there.

10 CO-CHAIR GEISER: Thank you, Odette. So I have  
11 Kelly and Ann.

12 PANEL MEMBER MORAN: Odette, I know we were going  
13 to do that flow chart thing later but I think it actually,  
14 the things I want to say about it are building right off the  
15 conversation we are having now.

16 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay. So Kelly  
17 has a flow chart concept she would like to share with you.  
18 And staff has copies so we are going to pass it around for  
19 you.

20 PANEL MEMBER MORAN: Yes. I have been thinking a  
21 lot about this framework question and I appreciate that Ken  
22 offered the time now in our schedule to talk about this  
23 because I keep getting stuck on how this works. And I drew  
24 a little chart last night and I am so thrilled that the  
25 staff were able to reproduce it. I understand it will be

1 posted on the website soon for those who are not in the  
2 room.

3           The idea of this is while it might be a suggestion  
4 for how to construct the process, the more the idea of it  
5 was to show that there's a number of different ways of using  
6 some of the things that we are thinking about like the  
7 alternatives piece. So first I will just walk you through  
8 what's here so that you can understand what I am thinking  
9 about.

10           One of the issues we talked about is complexity  
11 and I am trying to think about simplification. So DTSC will  
12 do a number of things to figure out what its lists of  
13 chemicals and products are. And in this I am actually not  
14 trying to predetermine exactly how many lists and all the  
15 rest of that stuff. But the blocks on the left, the orange  
16 blocks and the green block, those are the kinds of things  
17 that DTSC would be doing to come up with the chemicals and  
18 products, and we talked about those before.

19           The green one, DTSC's own work. That is actually  
20 where I think all of the prioritization from scratch thing  
21 kind of comes in. So I see that as distinct from things  
22 that the public would provide or other agencies. The water  
23 boards know what some of the pollutants are that are  
24 problems, they know some of the products attached to those.  
25    There's other folks who do that in other agencies. So they

1 can just ship that right in.

2           As you will find out later, I think that the  
3 criteria should be narrative and we can decide whatever  
4 criteria they are. But all of that stuff DTSC could put  
5 through a set of criteria.

6           And then I actually personally think it should --  
7 that the chemical list and the product list should all come  
8 out at the same time because that deals with a lot of the  
9 problems that we are having here in the conversation. And  
10 specifically the product chemical combinations could come  
11 out as a "here is what we are proposing to do in the next  
12 few years." And then there would be public input. And so  
13 public input could cover a whole variety of factors.

14           In making these lists there is a set of scientific  
15 judgments but then there is also balancing with societal  
16 economic resources, other kinds of things. Here is an  
17 opportunity to do something right now because there is some  
18 other thing that is happening in this area. That is the  
19 kind of stuff that DTSC would try to collect through  
20 preliminary public input and then really flesh out through  
21 that public comment period before it would finalize the  
22 list.

23           So I am putting this here because I have been very  
24 troubled with the idea that there would be some like numeric  
25 screening system from scratch would be the only way that

1 chemicals could be done; but that is really not the case.  
2 But a numeric screening system or some sort of very robust,  
3 scientific prioritization system would be something that  
4 would be part of coming up with what's there.

5           And so I think having us talk about it and advise  
6 the Department on next steps, taking input from -- I heard  
7 the stakeholders today talk about how that process might  
8 work and so forth, would be a very important and viable  
9 thing for us to do. But I feel very strongly that that kind  
10 of system shouldn't be written into the regulations. And  
11 specifically shouldn't be written into the regulations as a  
12 sole way of coming up with a chemical list and that program  
13 in terms of products that would be selected, the chemical  
14 combinations that would into alternatives assessments.

15           So I think that that's the basic framework. But  
16 it puts the criteria in a little different light and how  
17 that information comes forward. And I'm doing that so that  
18 everyone doesn't -- you know, like the alternatives piece.  
19 Then it becomes one of multiple things that the Department  
20 can consider but it is not something that would preclude the  
21 consideration of things.

22           It would allow them to say, here is a smaller  
23 problem that we can solve. We know there is a solution to  
24 it, let's run it through the process. And also say, here is  
25 a bigger problem. We don't know exactly what the solution

1 is. And we'll have a blend of those in our work program.  
2 This doesn't preclude fast tracking, a lot of other things.  
3 There's a lot of stuff you could do with this framework.  
4 But I am just sort of putting it out there to think about as  
5 we converse today.

6 CO-CHAIR GEISER: Kelly, thank you. Here is my  
7 suggestion of what to do with this because it is sort of, it  
8 is big and sort of a kind of a different way of thinking  
9 about this. When we talk about the chemicals in this next  
10 section you bring this up again and show us how it would  
11 work there and then when we talk about the products; so that  
12 people can engage in the situation of looking at what the  
13 Department is presenting as well if that would be all right.

14 PANEL MEMBER MORAN: Thank you very much, I  
15 appreciate you letting me do that.

16 CO-CHAIR GEISER: Thank you, thank you.

17 PANEL MEMBER MORAN: And I want to thank the  
18 staff.

19 CO-CHAIR GEISER: This is along the lines of the  
20 big picture. Yes, thank you. Ann.

21 PANEL MEMBER BLAKE: All right. Well I am in this  
22 interesting position of having my thoughts evolve as we have  
23 talked and I think I am where you were yesterday, Bill,  
24 where you said everything has been said but not by everybody  
25 yet so I am going to try and give this a slightly different

1 twist. I wanted to echo several of the things that were  
2 brought up, particularly by Meg and Mike, about my struggle  
3 with --

4 I was really thrilled to see some things that have  
5 not been included in regulations before such as externalized  
6 costs and then that was immediately tempered by, what's the  
7 metric for that and how do we do that? So actually, Kelly,  
8 I think you have helped me frame that a little bit more.  
9 That, you know, that there is the scientific piece that we  
10 separate from the societal input that could involve, you  
11 know, maybe some unanswerable questions and maybe some  
12 answerable ones.

13 The other piece that Richard Denison of course has  
14 taken the words out of my mouth and put it much more  
15 articulately is the concern about having the availability of  
16 a viable alternative be a limiting factor. And I think that  
17 there may be a potential solution here which is to simply  
18 unhook that as a limiting criterion.

19 And I guess more broadly, as a former regulator  
20 within this agency, I would caution us to think about while  
21 we do this, while we have this great big picture vision, do  
22 keep in mind to not be limited by what is implementable now  
23 but do keep in mind what is implementable, at least  
24 initially. And maybe this goes back to the question of  
25 flexibility versus, you know, starting with a more limited

1 process and then building in flexibility into the  
2 regulations.

3 I had one last thought on that. And in that  
4 implementable piece, implementable versus broad vision,  
5 going back to the idea of viable alternatives. I would like  
6 to add my little piece of this which is that these regs were  
7 designed not just to publicize alternatives that were  
8 already on the market but what we would hope for is that it  
9 was driving innovation for those places where there wasn't a  
10 viable alternative available for a chemical of concern and a  
11 product of concern.

12 And that's the theme that I see over-arching  
13 through these regulations and potential regulations and I  
14 would like to have that incorporated somehow. How do we  
15 drive innovation for viable alternatives for problems that  
16 we are identifying?

17 CO-CHAIR GEISER: Thank you, Ann. And thank you  
18 all for putting -- I am going to move us along at this  
19 point. Thank you very much for everybody's input into  
20 looking at a little bit bigger picture. Hopefully that gave  
21 us a chance to say some things that we might not have been  
22 able to peg. And certainly in Kelly's case, peg into one of  
23 these slots.

24 But I would like to move us now to one of these  
25 areas. I would like to focus on Section I. And here we are

1 being asked to consider how chemicals of concern are  
2 established. We have four different options. And I would  
3 like to spend now until lunch sort of on these four options  
4 or their variance as you see it. How would you advise the  
5 Department? We have already heard a little bit on some of  
6 this already but we're -- the floor is open to you. Michael  
7 and then Bill.

8           PANEL MEMBER WILSON: Thank you, Chair. I guess  
9 my -- I favor Option 1A and I would flip it around a little  
10 bit here though.

11           Looking at sub-point (i) that the chemicals listed  
12 on any of the list of authoritative bodies as of the  
13 effective date of the regulation and includes chemicals  
14 identified by OEHHA. And I wouldn't constrain it to  
15 chemicals that exhibit an OEHHA-identified hazard trait.  
16 Actually that seems to open it up almost infinitely. But it  
17 would rely on OEHHA. Sort of along the lines of what Lauren  
18 has said that the lists of authoritative bodies give us a  
19 starting place and they rely on an extraordinary amount of  
20 scientific work that has been done and yet they also might  
21 be old news to some extent.

22           And so I think that what we need to do under this  
23 section is rely on those lists. Let's not place it upon  
24 DTSC to reestablish and re-till all of that work. Rely on  
25 those lists and also give us a vehicle for making those

1 evergreen and relying on the expertise of OEHHA in doing  
2 that. Thank you.

3 CO-CHAIR GEISER: Thank you, Michael.

4 CHIEF DEPUTY DIRECTOR MADRIAGO: Mike, could you  
5 be a little bit more clear about what you see as the add-on  
6 that OEHHA would do. I'm just a little confused.

7 PANEL MEMBER WILSON: For sure, yes. I think  
8 OEHHA would be able to take a list of authoritative bodies  
9 and move from there. And they have identified chemicals of  
10 emerging concern, for example. There is no list of  
11 endocrine disrupting substances, for example, listed by  
12 authoritative bodies. And there are a number of others that  
13 in OEHHA's process, you know, they have sort of laid out a  
14 whole pallet of potential, of end points and hazard traits  
15 and so forth. But I suspect that if asked they could  
16 identify those that DTSC should begin to address initially.  
17 Sort of in addition to those listed on authoritative bodies.

18 CO-CHAIR GEISER: Thank you. Bill.

19 CO-CHAIR CARROLL: Thank you, Chair. First of  
20 all, perhaps I have misread the document. I wanted to get  
21 an oar in the water on the OEHHA hazard traits. I found  
22 that to be a singularly useless document.

23 To describe 300 or so hazard traits I am not sure  
24 of much use to this process and I would hope that DTSC would  
25 be able to winnow that list somewhat to find some things

1 that would be a bit more, a bit more useful. I saw the  
2 document as simply being a list of everything that might  
3 possibly be a hazard trait under any circumstance  
4 whatsoever. And frankly, I don't find water solubility to  
5 be particularly threatening. But that's just me.

6 In terms of the options that we have. I am not a  
7 big fan of the list of lists and my reason goes to  
8 transparency and consistency. Because in adopting a list of  
9 lists you are adopting whatever the logic flow was that led  
10 to that list. And in some cases it is a more rigorous logic  
11 flow and in other cases it is not.

12 But by simply adopting the list of lists, first of  
13 all -- and this has been mentioned but I'll mention it again  
14 -- you are incorporating whatever has been done up to that  
15 point. At the same time you are implying that you would  
16 incorporate whatever would be done by those bodies going  
17 forward. And to me that removes from the transparency and  
18 consistency from what you would hope to have in this kind of  
19 a process.

20 It also runs the risk of including stuff that  
21 everybody knows. And having been at the point of the lance  
22 of stuff that everybody knows for a good part of my career I  
23 would urge us not to do that. I would urge us to drive our  
24 criteria in a different fashion and have DTSC have criteria  
25 that it can point to and say, this is what is important for

1 this process.

2           And so I guess what that says is that from my  
3 perspective I prefer something that looks like Option 1C in  
4 that you are deriving criteria, you are deriving a process.

5       It's transparent, it's debatable, it's not arbitrary. And  
6 I think it leads more reasonably from chemicals of concern  
7 into priority chemicals because presumably you would be  
8 using the same kind of criteria except sharpening your focus  
9 for priority chemicals versus chemicals of concern.

10           With that said I acknowledge that there may well  
11 be the need to consider special situations and recognizing  
12 that there would be a process in essence for a petition for  
13 those special situations and I acknowledge that that's  
14 probably going to have to be a part of this.

15           But it seems to me that the fewer times that you  
16 have to use expert judgment to get to something the more  
17 transparent and reliable and defensible the process is and  
18 that's sort of the direction that I would go in if I were  
19 sitting in your chair. Thank you, Chair.

20           CO-CHAIR GEISER: Thank you, Co-Chair. I have  
21 Art, Kelly, Julia, Julie and Meg. Art.

22           PANEL MEMBER FONG: Thank you, Ken. I actually --  
23 looking at the various options I want to highlight Option 1C  
24 as, at least appearing to me, as offering the greatest  
25 flexibility to handle emerging risk. To such that it would

1 be able to keep up with the pace of potentially very fast-  
2 paced innovations in the state of California. Thank you.

3 CO-CHAIR GEISER: Kelly.

4 PANEL MEMBER MORAN: Thank you. I am actually  
5 going to agree with Bill and Art, which will surprise some  
6 people here.

7 PANEL MEMBER FONG: Well don't do that again,  
8 please. (Laughter)

9 PANEL MEMBER MORAN: And I want to tell you why.  
10 The whole purpose of a list of chemicals separated from the  
11 products that they are in is still a little murky to me.  
12 And how -- I know we need to have a list of products with  
13 chemicals in them that are going to be subject to  
14 alternatives analysis. And the extent to which we list  
15 chemicals beyond there depends on the purpose of this list  
16 and we haven't quite filled that out. So that's something  
17 that for me is actually really important to figure out what  
18 kind of process is developed there.

19 The purpose I have heard very well articulated is  
20 that the state has an obligation, I think it is incumbent on  
21 the state to get some notice to the market to stimulate  
22 innovation. That there are things that are really on the  
23 radar screen that maybe we are not ready to proceed with the  
24 alternatives assessment but we need to give notice to folks  
25 that these are the ones that are really high on the radar

1 screen. So that's a purpose I have really heard but I can't  
2 really comment on the details on how long that should be  
3 until I have a better -- and you really need to think that  
4 out. That's a policy question as to how that goes.

5 The reason I don't like 1A is that we tend to want  
6 to focus in on CMRs and PBTs. And now I am going to use  
7 some product example other than brake pads for Bill's --  
8 (Laughter). I have actually got a whole slew of them. But  
9 there are a number of --

10 CO-CHAIR GEISER: Would we know that?

11 PANEL MEMBER MORAN: There's a number of targeted  
12 problems. So for example, there is poly-aromatic  
13 hydrocarbons in pavement sealants that are running off into  
14 creeks and causing harm to aquatic organisms.

15 There are these solvents in the toilet additives,  
16 I mentioned those on our subcommittee call, that are put  
17 into mobile home toilets and then you go to a campground and  
18 you empty your mobile home toilet into a septic system and  
19 it pollutes the water and causes a drinking water problem.

20 There's formaldehyde in some furniture. That's  
21 mostly been dealt with but that's another example.

22 Important water pollution problems still exist  
23 with copper and Zinc and there's products associated with  
24 those.

25 These are not glamorous things. They are not PBTs

1 for the most part. So Option 1C, the framework process,  
2 seems to me to be a better way of coming up with a mix of  
3 different things where we have got really different  
4 challenges.

5           And now I am going to draw you back to the little  
6 chart as Ken suggested and point out that my thinking about  
7 how that process might look in 1C would be that DTSC would  
8 be doing that consultation and taking that input, the  
9 petition-type input and any other public input as well as  
10 doing its own thinking and to use all of that together to  
11 come up with what these lists are. So it's criteria here;  
12 we'll talk about later what those criteria are. But I  
13 actually see that as the process that would be used that  
14 would allow for the balancing a lot of different things.

15           CO-CHAIR GEISER: Thank you. Julia. I did get it  
16 confused, Julia then Julie.

17           PANEL MEMBER QUINT: I'm going to go with a blend  
18 of I guess it's 1A or I(1)A and then Option 1C or I(1)C.  
19 And the reasons is, is because first for the chemicals. I,  
20 unlike my esteemed co-chair, I found the hazard trait  
21 document that OEHHA produced very, very helpful having, you  
22 know, in my role as a toxicologist of having to look at  
23 toxicological data.

24           And I think this should be a very -- when we look  
25 at chemicals I feel very strongly that we need to have the

1 hazard traits. it is also a part of the regulation -- I  
2 mean the legislation as far as I know. That the chemicals  
3 of concern be somewhat hazard trait based. And I think we  
4 should use --

5           So in that document you have a definition of the  
6 various, you know, toxicological traits with end points.  
7 And I think also you have -- for those I would limit it to  
8 the strongest evidence criteria. I think the suggestive  
9 evidence criteria gets you down into the weeds a little bit  
10 and harder to defend in terms of the chemicals that meet  
11 those criteria.

12           I think authoritative bodies should be limited to  
13 the definition of authoritative organizations in the hazard  
14 trait document because those are the bodies that government  
15 agencies use. And some of the ones in the list and one of  
16 the attachments are not that well vetted and are not used by  
17 government agencies so I think that's a good guidepost. In  
18 the hazard trait documents it does include several, for the  
19 strong criteria, lists, existing lists. So I think it  
20 incorporates that concept as well.

21           But as Kelly said, and I do believe this, the big  
22 reason we are listing these chemicals is because we want to  
23 get to the chemicals in consumer products. In the hazard  
24 trait document there are few exposure potential hazard  
25 traits. Persistence, bioaccumulation. But it isn't, it

1 doesn't have a lot of the things that I would consider  
2 important in looking, in terms of choosing chemicals for  
3 their potential to cause harm to either health or the  
4 environment in consumer products and there's a laundry list  
5 of the factors. Everybody has mentioned their favorite one.

6           But what you want is to list a chemical that will  
7 have the potential for harm, for me, in the -- for health or  
8 the environment. So it goes beyond persistence and some of  
9 the other well-known hazard potential -- I mean, exposure  
10 potential hazard traits. It goes to concentration, it goes  
11 to, you know, what is the form of that chemical in the  
12 consumer product if it's, you know. It could be asbestos  
13 but if it is not a fiber and not in dust form it is not  
14 going to be a hazard or something like that. So I think you  
15 have to use an iterative process to get to that.

16           And I think that flexibility, as several people  
17 have mentioned, is very important. Because, you know, you  
18 will take a number of those factors. Once you get the  
19 chemical and then you have the product you are going to have  
20 to make, as much as we hate, expert judgment. You are going  
21 to have to define your criteria and some of these factors.  
22 But then you are just going to have to use some form of  
23 judgment about how these things come together. And I think  
24 if you have that rationale, it's documented, it's  
25 transparent, it's subject to public review and comment, I

1 think that that's the best you can do in this situation.

2           And I just want to comment one small comment on  
3 the safer alternatives. I know in the context in which it  
4 was discussed in some of the committees I think there was a  
5 concern that there are existing safer alternatives that have  
6 been identified through the great pollution prevention  
7 efforts of DTSC and EPA that are not being used currently.  
8 I mean, that people are still in certain parts of California  
9 not using water-based auto brake cleaners. And they are  
10 available and in use in Southern California, not in use in  
11 the rest of the state.

12           So one of the things that we could do for the low  
13 hanging fast track or whatever is to make sure that people  
14 aren't using things for which we have already determined  
15 through these very expansive programs that preceded this  
16 effort that people are using things that they could use and  
17 that are being used by regulation in certain parts of the  
18 state. Thank you.

19           CO-CHAIR GEISER: Julia, thank you. And I would  
20 just like to also urge as people speak, think about this  
21 issue of fast track versus slower, a longer term kind of  
22 thing. That was very helpful as well. Julie.

23           PANEL MEMBER SCHOENUNG: Thank you. I would like  
24 to try to remind us that right now we are talking about the  
25 larger list of chemicals of concern and not the priority

1 chemicals. And so as I have listened to people I have kind  
2 of flip-flopped back and forth as they go -- they make a  
3 good point and then I go, well but that would be great for  
4 the priority chemicals, maybe we don't need that for the  
5 chemicals of concern.

6 And so I have gone back and forth between also 1A  
7 and 1C. And I liked 1A when I started and I still like 1A.

8 I think it simplifies things to be able to just set a  
9 definition but add enough flexibility that we can add things  
10 to it and use OEHHA's or DTSC's judgment to say, this also  
11 needs to be on the list. I just think that we want that  
12 list to be comprehensive and we want it to be determined in  
13 a fairly simple but identifiable way, transparent way.

14 And then move more towards using criteria for  
15 decision-making for the priority chemicals where we need to  
16 narrow the list. But again, you know, echoing what others  
17 have said, trying to keep that as flexible as possible. I  
18 find keeping that flexibility here is really in 1A. That  
19 you keep a little bit more flexibility in 1A to use the  
20 list, to use what we know, to use OEHHA and use others and  
21 use the other agencies. Anybody that defines anything  
22 should go in this general list of chemicals of concern.

23 And I would also comment on a few things that  
24 people have stated in terms of, you know, using CMRs and  
25 PBTs, that's old news. It's old news to you in this room.

1 It's not old news to a lot of our design engineers and  
2 people who are making decisions about what to use or they  
3 wouldn't be there.

4 I mean, many of them just really don't know that  
5 these things have cancer potential. And so I think really  
6 putting those out there and saying yes, we know these are  
7 there. Why do you have to put lead in every alloy out  
8 there? You know, there are reasons why we add lead to many,  
9 many, many, many alloys, can you find a different way? And  
10 really I don't think you want to ignore those. Thank you.

11 CO-CHAIR GEISER: Thank you. I have Meg, Joe and  
12 Michael. And then what I am going to do is sort of add the  
13 prioritization, the next page as we go. So Meg.

14 PANEL MEMBER SCHWARZMAN: I also started with  
15 Option 1A and want to put this out for discussion. Not  
16 because I am necessarily wedded to this but I am starting to  
17 entertain the idea of 1D. And the reason is that when I am  
18 thinking about what is the purpose of a list of COCs, it is  
19 to identify the universe of chemicals from which we might  
20 select, the Department will select priority chemicals. And  
21 I wonder if similar to the discussion that was presaged  
22 about products, whether there is a role for defining that  
23 universe in the regulation rather than creating a list? As  
24 a staunch supporter previously up until now of two lists I  
25 am still struggling with this but to kind of open the

1 conversation up a little bit.

2           It is not clear to me then how you provide the  
3 market signals or the sort of pre-warning that I hear  
4 businesses need. I don't know from personal experience so I  
5 don't know quite how to address that problem. And to me the  
6 success of that also depends on, as Ken said, to address  
7 this issue of the need for a fast track. I really  
8 appreciated the inclusion of that in here and I think the  
9 success of defining a universe of chemicals but not having a  
10 list depends on having that ability to quickly name, quickly  
11 identify, jump start the priority chemical list.

12           Maybe doing something like this. Having a  
13 regulatory definition of the universe of chemicals that  
14 would be drawn on for priority chemicals would help maintain  
15 some of the flexibility that Lauren is talking about that I  
16 appreciate. And it could potentially draw on authoritative  
17 body lists as a source of that universe but it doesn't set a  
18 list that is comprised of authoritative body lists.

19           I am interested in what Mike suggested about  
20 having OEHHA identify the additional chemicals that could  
21 fall into that universe in addition to the authoritative  
22 bodies because I see great utility in the OEHHA document.  
23 My interpretation of that document was not that it was  
24 creating a list of all of the hazard traits that define a  
25 chemical of concern. My strong understanding of that

1 document is that it is saying, as OEHHA was charged to under  
2 the statute, what are the attributes of a chemical that we  
3 would want to know about to help us understand its relative  
4 hazard.

5           And that to me is a very useful document because  
6 it is a framework. And it doesn't mean that anything that  
7 has a tick mark in a box that is in a category there  
8 constitutes a chemical of high concern; I would say the  
9 contrary. I think that undermines the utility of the  
10 document if you see it that way. So I am interested in the  
11 idea of assigning OEHHA the job of working from their end  
12 points document to identify, you know, to expand the  
13 universe beyond authoritative body lists.

14           And I am just toying with this idea of what does  
15 it mean to not have a chemical of concern list. Partly  
16 because the universe of chemicals that we are talking about  
17 to populate a chemical of concern list is potentially so  
18 large that does that really serve as a useful signal to  
19 business? So if that is the goal of making that list, maybe  
20 we are not accomplishing that goal.

21           I'll stop there because I may be muddying the  
22 water but -- I guess I had one other thought which is  
23 another reason potentially to avoid the process of setting  
24 up a list of chemicals of concern is that depending on how  
25 its done, that could become the disputed step and that would

1 be a shame.

2 CO-CHAIR GEISER: Okay. Joe.

3 PANEL MEMBER GUTH: I want to ask if I could, Bill  
4 and Art and Kelly, to just, you know, explain. Or maybe you  
5 can answer this question because I am not quite -- I want to  
6 make sure I understand what you ere saying. Are you  
7 suggesting that DTSC should not rely on an authoritative  
8 body designation? Let's say IARC, you know, has identified  
9 a chemical as a carcinogen, all right. That DTSC should not  
10 rely on such a designation to designate that chemical as a  
11 COC but instead should make its own determination. Go  
12 through a process, get all the data and make its own de novo  
13 determination that then is subject to some kind of process.  
14 Is that what you are, is that what you are suggesting? Is  
15 that what 1C is suggesting?

16 CO-CHAIR GEISER: I think -- Bill, do you want to  
17 respond to that?

18 CO-CHAIR CARROLL: Sure, I can respond for me.  
19 The answer is no, that is not necessarily the case. There  
20 are innumerable lists out there by presumably authoritative  
21 bodies. And as others have noted in this room, it is all  
22 about the definition in the detail.

23 To me a list of carcinogens like that, like IARC.  
24 Okay, that is an authoritative body, that is a place that  
25 yo would go for information and you could be informed by

1 that. But there are other lists of bad chemicals that are  
2 by presumably or possibly not authoritative bodies that you  
3 might incorporate.

4 My whole point is, if you go out for a list of  
5 carcinogens and you say, here are lists that inform our  
6 knowledge bout carcinogens then that's a useful thing to do.

7 So no, I am not saying you wouldn't use IARC or you  
8 wouldn't use EPA. On the other hand, that's not all the  
9 lists that are out there that operate in this space. I hope  
10 that clarifies things.

11 PANEL MEMBER GUTH: Well, not quite. I mean,  
12 okay, I agree we need to be careful about what lists we are  
13 going to consider as authoritative bodies. And some may be  
14 more reliable than others and that is worthy of  
15 consideration. But assuming we have a set of authoritative  
16 bodies that is, you know, we will consider to be, you know,  
17 authoritative and as a useful process. I mean, is it okay  
18 in that circumstance for DTSC to rely on those designations  
19 from those bodies without doing its own separate  
20 determination?

21 CO-CHAIR GEISER: This can go on. But I'd rather  
22 you kind of said what you think.

23 PANEL MEMBER GUTH: Okay.

24 CO-CHAIR GEISER: And not query others.

25 PANEL MEMBER GUTH: Well I'm just talking -- okay,

1 fine, good enough. I just think if that is the implication,  
2 that DTSC needs to make its own and -- make their own  
3 determinations I think that is just, I guess I would object  
4 to that. Because it takes years to make every one of those,  
5 to do every one of those, absolutely years.

6 OEHHA has been able to add very few chemicals to  
7 the Prop 65 list through its own de novo decision-making  
8 process. And it takes for each one of them, it's torturous.

9 And so I think that I would advocate DTSC relying on a set  
10 of authoritative bodies that would obviously take some  
11 thought, for identifying COCs.

12 CO-CHAIR CARROLL: Chair, I really need to respond  
13 to this.

14 CO-CHAIR GEISER: You can respond.

15 CO-CHAIR CARROLL: I think -- Joe, I appreciate  
16 the example that you picked; let me give you another  
17 example. When you call something a PBT that involves three  
18 different definitions. And different organizations have  
19 different definitions of what is P, what is B and what is T.  
20 so when you incorporate different lists of PBTs you have  
21 possibly incorporated different definitions into your own.  
22 And my point is, particularly for something like that, you  
23 would do better to go back to first principles and define  
24 what is P, what is B and what is T in order to create your  
25 list. Does that help the clarity?

1 PANEL MEMBER GUTH: (Nodded).

2 CO-CHAIR CARROLL: Thank you, Chair.

3 CO-CHAIR GEISER: All right, I am going to  
4 continue one with Michael here.

5 PANEL MEMBER KIRSCHNER: Thank you, Ken. I think  
6 what I have to say has already really been said. I am more  
7 in the 1C camp for a couple of reasons. One is that it is  
8 what the -- it is closest I think to what the statute says  
9 has to be done to create a process. But I don't see how  
10 that excludes 1A either. The process will define how CofCs  
11 are -- COCs, not certificates of compliance, I'm sorry. My  
12 other little world there. (Laughter).

13 How COCs are selected and that's where you can  
14 put, well here's the authoritative bodies that we define --  
15 here is how we will select authoritative bodies. And here  
16 is how we will select substances off of those lists to  
17 include as proposed COCs that go through the public process.

18 So if we go through a step-by-step process and  
19 define that step-by-step process we will come out, I think,  
20 with the same end result but give ourselves, give DTSC much  
21 more flexibility in how that is actually done and not  
22 require going back to a regulatory process to revise the  
23 regulation every time, you know, somebody makes a stupid  
24 entry in a list we don't like that we have to incorporate.

25 My specific example of that is another California

1 law, which Colleen said isn't what we do but it is. In the  
2 California e-waste law it calls out explicitly, incorporates  
3 explicitly the European Union RoHS directive 2002/95/EC.  
4 Whatever they do there we do here in California. I don't  
5 get to vote on what they do in Brussels. I really want to  
6 avoid that sort of incorporation here. I don't -- you know,  
7 I'm not a lawyer so I don't know if that is legally  
8 defensible.

9 CHIEF DEPUTY DIRECTOR MADRIAGO: There is a  
10 difference. The reference to RoHS is in our statutes passed  
11 by the Legislature and not the regulation and the standard  
12 is much looser for statutes than regs.

13 PANEL MEMBER KIRSCHNER: Okay, good. Let' not do  
14 that in the reg then.

15 CO-CHAIR GEISER: Okay, what I would like to do at  
16 this point, I know that there is a conversation that is kind  
17 of hanging there but I would like to move us to add to this  
18 conversation the next page, which is really the page dealing  
19 with prioritization. And here we have a set of three  
20 options again, yes. One having to do with criteria, another  
21 again an initial list and another again a schedule and  
22 grouping process.

23 Now if people want to continue to talk about the  
24 first in order to talk about the second, that' fine. But I  
25 would like you to pay attention to this as well in your

1 comments because we want to try to give some advice on how  
2 do you prioritize from -- if there are two lists how do you  
3 prioritize from the first list into the second list. And I  
4 see Kelly and Lauren. Oh, it was Dale, I'm sorry. Dale and  
5 then Lauren. And Joe, is yours up? Ann, okay. Yes, Dale.

6 PANEL MEMBER JOHNSON: Yes, because I was, you  
7 know, I was actually going to comment on One before I  
8 actually got into the other one.

9 CO-CHAIR GEISER: You now have liberty to comment  
10 on both.

11 PANEL MEMBER JOHNSON: Yeah, okay, so I'll comment  
12 on both, hopefully. So 1A and 1C, I see them -- the way I  
13 read it, they could be exactly the same thing. The only  
14 difference is that, you know, one defines a list and the  
15 other one defines criteria. And you could use the exact  
16 same criteria that you use to define the list. So my  
17 original thought on this was that your ability to have some  
18 flexibility on the front end of this is quite good because I  
19 think that allows you move into the fast track type of  
20 approach easier from a regulatory standpoint.

21 The one thing that I wanted to be clear on with C  
22 is that this does not put an undue type of process in DTSC  
23 that they have to start over on something and use resources  
24 in kind of a risk evaluation that somebody has already done.  
25 So I think my opinion on 1C is that the criteria be used

1 that has been defined more or less in 1A. Do don't start  
2 over, use that type of thing, but keep it in a flexible way  
3 that it is criteria rather than a list on the front end. So  
4 you essentially end up with the same thing but more  
5 flexible.

6 Now I have to look at the next page, which I  
7 haven't read here since 5:00 o'clock this morning so on that  
8 one I think I'll pass right at this point. (Laughter).

9 CO-CHAIR GEISER: Thank you, Dale. Lauren.

10 PANEL MEMBER HEINE: Thanks, Ken. I am going to  
11 address the prior point and just empathizing with Megan's  
12 comments about whether to think about -- what is the value  
13 of the larger list other than to note that it clearly has a  
14 porous boundary. But there is value in defining what is on  
15 that list because I think that signal will allow people to  
16 begin generating data and clarifying things. And that is  
17 very important.

18 I know in my work with Green Screen people will  
19 identify, say use a model to identify aquatic toxicity and  
20 perhaps it's high. Someone will, say a manufacturer feels  
21 that it is not aquatically toxic so they'll go out and test.

22 And so by giving a signal, having specified chemicals will  
23 drive the generation of needed data and show you where it's  
24 worthwhile to invest in testing and where it is not and I  
25 think that's an important thing. If you don't specify a

1 chemical then it is going to be hard to know what to try to  
2 prove and disprove. Because a lot of the data that are out  
3 there are old and sometimes it's time to update key end  
4 points.

5 And I am not ready to comment on the next one.

6 CO-CHAIR GEISER: Okay, I have Ann and then Julie  
7 and Julia.

8 PANEL MEMBER BLAKE: I read this late last night  
9 after a couple of beers and some wine; I'm not sure that was  
10 helpful or not.

11 And I think I am still struggling with I don't  
12 really get the idea of why we have a chemicals of concern  
13 list and a priority chemicals list. And as I have been  
14 sitting here I am thinking of it kind of parallel to the  
15 REACH substances of very high concern list. So these are  
16 all the chemicals that could potentially meet those criteria  
17 but are not necessarily the ones we take action on,  
18 particularly not what ECHA is taking action on.

19 So I guess that is the way I'm thinking of it now,  
20 sort of following on what Lauren said that the chemicals of  
21 concern list defines the broader universe and defines the  
22 criteria about which we are concerned.

23 But what we really want to take action on, and  
24 moving on to the next page, to page four, the way I saw  
25 these options for priority chemicals, I actually saw Option

1 I(2)B as sort of the first phase and then Option I(2)C as  
2 where we went from there. So thank you, Odette, this  
3 morning for saying that these were not mutually exclusive  
4 but I actually saw that as a flow.

5 Did I have something else? Well, whatever it was  
6 it's gone now so we will let it go.

7 CO-CHAIR GEISER: Julie.

8 PANEL MEMBER SCHOENUNG: Ken, tell me if I am at  
9 the wrong stage but my comment is with regard to the  
10 decision tree related to going from chemicals of concern to  
11 priority chemicals. Is that fair game at this point?

12 CO-CHAIR GEISER: That's fine.

13 PANEL MEMBER SCHOENUNG: Okay. I guess I see,  
14 really I see four lists for chemicals on here if you follow  
15 the flow diagram, there's the OEHHA list and then the  
16 chemicals of concern list. And I guess my question is in  
17 regard to going from the chemicals of concern to priority  
18 chemicals. On this diagram we have the screens, sensitive  
19 receptors, which is not as far as I can see, in the options  
20 that go with priority chemical list definition. Part of  
21 that confuses me I guess so maybe that was almost a  
22 clarifying question to start.

23 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay. And I can  
24 see why you're confused. You need to understand this is a  
25 very, very high conceptual level of a way of thinking at a

1 very high level. This stuff is much more down in the weeds.  
2 And this was really intended more not so much to mirror the  
3 procedural options that are laid out here but to show how  
4 you might simultaneously think about chemicals and their  
5 hazards and the products those chemicals are in and the  
6 exposure risks.

7 PANEL MEMBER SCHOENUNG: Okay.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: So yes, don't try  
9 to align this specifically with what you see here because it  
10 will confuse you.

11 PANEL MEMBER SCHOENUNG: Okay. So then my comment  
12 in following that is I think I agree with Ann, I lean  
13 towards B to get the fast track items that we can identify  
14 quickly and then move towards a scheduling of looking at  
15 these other screens. And I like the idea of having some  
16 screens that are always applied. That you know these are  
17 definitely what gives you priority. But then I want to make  
18 sure that that's not the only way we prioritize. That we  
19 don't pre-define five or six or ten criteria and say that  
20 only chemicals that pass all ten will move on.

21 I think it is important that we have the  
22 flexibility to say, okay, if it is this one definitely, if  
23 it is this one definitely, but if it is these other two or  
24 three or four, maybe or if in combination definitely. I  
25 mean, I don't want to make it more complex than necessary

1 but I just, my main point is that I don't want to have too  
2 rigid of a screening process that they must pass all of this  
3 before it goes to the next step.

4 CHIEF DEPUTY DIRECTOR MADRIAGO: So the comment  
5 you are just making is relative to the scheduling option?

6 PANEL MEMBER SCHOENUNG: Yeah, basically.

7 CHIEF DEPUTY DIRECTOR MADRIAGO: And these  
8 actually -- and maybe I should have been more clear. I was  
9 hoping to get some input on which one or two of these people  
10 would recommend that we use for grouping things for  
11 scheduling. That was what I was hoping to get.

12 PANEL MEMBER JOHNSON: Of these listed here.

13 CHIEF DEPUTY DIRECTOR MADRIAGO: Yes. I tossed  
14 these out as examples of approaches you might take to group  
15 chemicals. It certainly wasn't -- it could have been clear  
16 or meant that something had to pass all of these in order to  
17 be scheduled.

18 CO-CHAIR GEISER: Julia.

19 PANEL MEMBER QUINT: I guess Option 1B would be,  
20 of these options would be the one that I favor. But again,  
21 so my priority --

22 CO-CHAIR GEISER: I'm sorry, are you saying 2B?

23 PANEL MEMBER QUINT: I'm sorry, where are we?

24 CO-CHAIR GEISER: On prioritization.

25 PANEL MEMBER QUINT: I(2)B.

1 CO-CHAIR GEISER: Yes, I(2)B, yes.

2 PANEL MEMBER QUINT: There are so many numbers.

3 CO-CHAIR GEISER: I know.

4 PANEL MEMBER QUINT: Yes, I(2)B.

5 CO-CHAIR GEISER: Try to stay with it. Watch  
6 those numbers, though.

7 PANEL MEMBER QUINT: Yes, I know, I got the  
8 little --

9 CO-CHAIR GEISER: Yes, thank you.

10 PANEL MEMBER QUINT: Okay, I(2)B. And first I  
11 started with the hazard traits because I think it is really  
12 important to define what each of these things means, you  
13 know, and I think that is done in the OEHHA hazard trait  
14 document. And I picked -- so I had a subset to begin with a  
15 larger list and then in prioritizing I went to a smaller,  
16 you know, I took only hazard traits from that.

17 And I chose the ones that would be more relevant  
18 to sensitive subpopulations in my opinion. And those that  
19 would have, you know, chronic toxicity, things that you  
20 wouldn't see right away, that kind of rationale went into  
21 it. And hazard traits for which there was either a low or  
22 no threshold for toxicity, so that would be your  
23 carcinogens.

24 And so in addition to the ones that we have been  
25 talking about it was carcinogenicity with transplacental

1 carcinogenicity being highlighted because that would affect  
2 the developing fetus. Developmental toxicity, reproductive  
3 toxicity, endocrine toxicity, epigenetic toxicity,  
4 genotoxicity with the stipulation that it be the Category I  
5 and II of the GHS, which I think is the heritable mutations.

6 And then bioaccumulation and environmental persistence.

7 But then after you get through those hazard traits  
8 I think it is very important to go immediately into the  
9 potential for exposure in further prioritizing the  
10 chemicals. Because again, it is the chemicals in the  
11 consumer products that we are concerned about and there are  
12 a number of ways. And that one is where you don't have as  
13 much guidance from the hazard trait document aside from  
14 those that are listed as exposure potential traits and you  
15 have to go to another more -- the factor list I think as --  
16 maybe that Odette, how she refers to it. All those  
17 different factors that people listed. So that would be my  
18 opinion.

19 CO-CHAIR GEISER: Thank you. I have Kelly, Tim,  
20 Ann, Richard.

21 PANEL MEMBER MORAN: Briefly. I am limiting my  
22 comments here to number two, the priority chemicals list.  
23 It would be my recommendation to the Department that there  
24 not be, this process not be separated from the products  
25 because exposure risk is such an important piece of

1 prioritization.

2           And therefore when I look at the big flow chart,  
3 the colored flow chart that we received yesterday, after the  
4 yellow box that says chemicals of concern, I would recommend  
5 that that next section be collapsed so there is just one --  
6 instead of screening chemicals and then screening products  
7 that that all be done together. And that simplifies, it  
8 reduces the burden. It also really I think increase the  
9 clarity. There is all this uncertainty and it all becomes  
10 more clear if you start thinking about it in that way.

11           In terms of the criteria, I still recommend that  
12 the criteria be the harm and exposure but also consideration  
13 of other factors and we talked about what some of that would  
14 be. That all of that together be pulled together as part of  
15 this prioritization exercise of chemicals and products  
16 rather than starting, just doing everything in isolation.  
17 Because people just don't make decisions that way.

18           CHIEF DEPUTY DIRECTOR MADRIAGO: So let me ask for  
19 clarification here.

20           PANEL MEMBER MORAN: Absolutely.

21           CHIEF DEPUTY DIRECTOR MADRIAGO: And I am jumping  
22 ahead a little bit into the products. But since you jumped  
23 there I want to get clarification. So if I hear you  
24 correctly, we would develop the priority chemical and  
25 priority product lists simultaneously and we would not

1 develop a larger products under consideration list.

2 PANEL MEMBER MORAN: Exactly. And we'll come back  
3 and talk about that.

4 CHIEF DEPUTY DIRECTOR MADRIAGO: All right.

5 PANEL MEMBER MORAN: But that is what I'm  
6 thinking. And then since Ken asked us to comment on fast  
7 track and I previously didn't, I think that fits in with  
8 this. The way that fast tracking might occur would actually  
9 be through the process of developing the regulation. Asking  
10 for the input, what those initial categories would be. I  
11 think the Department could learn a lot about what those  
12 selection criteria are by actually going through that  
13 exercise. I'll stop.

14 CO-CHAIR GEISER: Okay, let's see, Tim, Ann,  
15 Richard, Mike and Lauren and then I am going to ask whether  
16 we want to break for lunch.

17 CHIEF DEPUTY DIRECTOR MADRIAGO: I think we need  
18 to break pretty promptly at noon because they are preparing  
19 a lunch upstairs.

20 CO-CHAIR GEISER: Okay. Well then I am going to  
21 ask those of you I just mentioned to be brief.

22 PANEL MEMBER MALLOY: Maybe we could pick up after  
23 lunch. Because that was like nine people and it's four  
24 minutes.

25 CO-CHAIR GEISER: Well let me ask Odette. Are you

1 clear we should break at this point?

2 CHIEF DEPUTY DIRECTOR MADRIAGO: I would say we  
3 should break within the next ten minutes.

4 CO-CHAIR GEISER: Well let's just, I can  
5 arbitrarily suggest then Tim, Ann and Richard and then if  
6 Mike and Lauren will hold for after lunch. Okay.

7 PANEL MEMBER MALLOY: Thank you.

8 CO-CHAIR GEISER: So Tim.

9 PANEL MEMBER MALLOY: Thank you for that, Ken,  
10 appreciate it. So I am going back to the first one about  
11 the chemicals of concern list. I don't see actually a big  
12 functional difference between 1A and 1C because 1A to a  
13 certain extent you get that definition of the hazard traits  
14 plus being listed. Okay, you've got that. But then it's  
15 got (ii) which is essentially the same thing as 1C with  
16 fewer criteria, There is only one criterion, I guess, and  
17 that would be reliable information of some additional hazard  
18 traits. So to me that looks kind of like a process but just  
19 with fewer parts to it.

20 So having said that I tend to feel if it can be  
21 done I'd prefer 1B, which would be let's just do it. If you  
22 can identify what chemicals for which there is reliable  
23 information, if they fall within the additional hazard  
24 traits that you ought to get it done. And the main reason I  
25 have for that is a timing constraint. I think if you create

1 a criteria and a process in the regulations followed by  
2 another criteria and process and then another and then  
3 another, you are never going to get going. You are going to  
4 be just wrapped up in this.

5           And I think -- I agree with, I think it was maybe  
6 Julie who said, hey, let's remember this is just the first  
7 step. So cast a broad net, don't worry about being so  
8 selective at this point.

9           And as to the question about whether there should  
10 be no COC list or should be a list. I think there should be  
11 a list because at least in Option 1D, Option 1D doesn't  
12 suggest that you wouldn't go through the analytical  
13 enterprise of starting out with a larger set and weaning  
14 them down, just that you wouldn't have it a formal process.

15           And my view is, look, if you are going to be going  
16 through that analytical enterprise anyhow you might as well  
17 make it transparent and let people see what you are doing.  
18 And then proceed on to the next part of it which would be  
19 your priority chemicals on page four.

20           And with respect to that I wanted to add another  
21 option. I think it would actually make sense here to start  
22 out with a list, a small list of obvious chemicals that  
23 ought to be priority chemicals right now. I think that  
24 probably you could develop a list of chemicals that are  
25 pretty obvious that we ought to be addressing. That has the

1 benefit of getting the process jump started as opposed to  
2 yet another round of conversations about, should these  
3 chemicals be included or not be included.

4 I mean, lead is just one that jumps out to me.  
5 What are waiting for? We know there's lots of alternatives,  
6 we know it's widely used, we know it's really bad. Why  
7 wouldn't you just pick that and maybe a few others and say,  
8 these are our starting point of priority chemicals. And  
9 then in addition to that then I would have a process for  
10 listing additional groups. I would have a set of criteria  
11 and so forth for doing that. So I guess for those I would  
12 go with Option 2A. But I would add on to that a schedule  
13 and a numerical requirement that you would do a minimum of  
14 so many a year or so many every two years or something like  
15 that. Kind of hold your feet to the fire.

16 And I would also include a fast tracking  
17 provision. But I agree heartedly with Richard and what  
18 other folks have said about that notion of the alternatives.

19 I think it makes sense to fast track things if you know  
20 there's alternatives so you want to move that one up but not  
21 at the expense of not dealing with other chemicals.

22 So if there is no, if there is no impact on our  
23 ability to go after chemicals that are really harmful,  
24 whether or not they have got known alternatives, then I  
25 would be all in favor of fast tracking those with known

1 alternatives. The thing I worry about is, look, you are  
2 either going to do an alternatives assessment or you're not  
3 so I think that was an issue that had also been raised.

4 And I guess, yeah, that's it. I had some stuff on  
5 products but I'll hold off.

6 CO-CHAIR GEISER: Ann.

7 PANEL MEMBER BLAKE: It's always hard to go after  
8 Tim and attempt to be brief. So I remembered what it was  
9 that I was talking about last time and in the interim Kelly  
10 developed it a little further.

11 What I liked about Option 1(2)C is that it is  
12 starting to get into the products process. And then I think  
13 I want to echo what Kelly says which is, these two pieces  
14 should not be separated. That the prioritization of  
15 chemicals really, because you are starting to look at  
16 exposure proxies here, costs and hazards, are really related  
17 to products. So I would strongly suggest that those two go  
18 together because doing chemicals in isolation doesn't make a  
19 whole lot of sense at this stage.

20 The other thing that I started to see here is that  
21 in Option I(2)B we have sort of collapsed because we are  
22 saying, strong evidence that the chemical poses potential  
23 for public health harm. It kind of collapses all the sub-  
24 criteria that you are talking about under I(2)C. And I  
25 agree with Kelly that I think going through the fast track

1 process with a handful of chemicals will help the Department  
2 really identify what those criteria area and clarify what it  
3 is that makes a chemical of concern and a product of  
4 concern.

5 CO-CHAIR GEISER: And last is Richard.

6 PANEL MEMBER DENISON: Thanks. I do support two  
7 lists. I think that it is really a blend of 1A and 1C that  
8 we should be using. And I do agree with Bill that there  
9 needs to be some rationalization around lists, especially  
10 lists that are multiple lists for the same set of criteria.

11 DTSC should be charged with rationalizing its selection of  
12 lists and either picking one of those and justifying why or  
13 understanding and providing a justification for why more  
14 than one PBT list, for example, is being used.

15 I do think that I agree with what Ann just said to  
16 some degree on the prioritization. To my mind if you use,  
17 you ought to use the kinds of criteria that are in 1(2)C(i),  
18 would be very much taken into account in identifying  
19 priority chemicals. And then any sort of scheduling of  
20 those would, in my view, best rely on a range of exposure  
21 type surrogates or measures, which are many of the rest of  
22 the factors there. Some of which are product oriented and  
23 some of which are broader so I'm a little bit --

24 I like in one way the concept of collapsing those  
25 two steps but I think it may leave out things, for example,

1 products -- I mean chemicals that are found in house dust  
2 where there is not necessarily yet a link to the products.  
3 So I worry that that may skip over some considerations that  
4 would lead to more investigation about what products may be  
5 contributing to those sources of exposure.

6 I just want to say one last thing about the fast  
7 track because I have made my point about the known safer  
8 alternatives thing. I do want to argue that one might  
9 equally prioritize for fast track chemicals for which there  
10 are not known alternatives; for two reasons, not just one.  
11 One is the next step is an alternatives analysis, which  
12 might very well identify alternatives. And the second is,  
13 without that you could not invoke regulatory measures that  
14 may very well address much of a concern about that chemical  
15 that don't rely on or require the availability of an  
16 alternative to do so. So I just wanted to clarify why I'm  
17 concerned about that as a criterion. Thanks.

18 CO-CHAIR GEISER: No that was good, Richard, thank  
19 you. And in order, in the business of clarifying Bill asked  
20 if he could make a clarifying statement.

21 CO-CHAIR CARROLL: Thank you. I do want to make a  
22 clarifying statement about the OEHHA document. My remark  
23 was a little sharp. It's a marvelous, exhaustive document  
24 that is a list of a large number of traits. But what I was  
25 reacting to was language that we had in I(1)A and that we

1 have used in this group before about including all chemicals  
2 that exhibit an OEHHA identified hazard trait. In that  
3 sense there is no discriminator there. There are 300 traits  
4 and I defy you to find any chemical that doesn't exhibit at  
5 least one of those traits. That was my point. Thank you,  
6 Chair.

7 CO-CHAIR GEISER: Thank you.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Maybe I should  
9 clarify. I wasn't really envisioning developing a list of  
10 chemicals that identify a hazard trait. It was more  
11 acknowledging that we view the statute as saying we should  
12 not be looking at any chemical that does not exhibit at  
13 least one of those hazard traits.

14 CO-CHAIR CARROLL: I appreciate that, thank you.

15 CO-CHAIR GEISER: Okay, that was an intense hour.  
16 We have a couple of people, Mike and Lauren, hanging on  
17 over lunch. I just want to say a couple of things that I  
18 asked people to pay attention to because they are going to  
19 continue into the next, into what happens after lunch and  
20 then we are going to take up products.

21 One of the things we are hearing some people say  
22 is that consideration of chemicals and products ought to be  
23 very tightly if not merged and people ought to think about  
24 how they want to respond to that idea.

25 And secondly, some people are pushing very hard

1 around fast-tracking. What does that really mean? Should  
2 we be identifying a list of chemicals right out front?  
3 People ought to pay attention to that too as we go.

4 So as you think about it over lunch please think  
5 about those but don't talk about it. And we are planning an  
6 hour and 15 minutes for lunch and I am going to turn this  
7 over to Kathy to tell us where to go. I am going to suggest  
8 that people try to be back here by about ten after so that  
9 we can start at 1:15. Don't assume 1:15 means, that's about  
10 the time to leisurely start back. Please try to be here by  
11 that point. Kathy, do you want to tell us what we're doing?

12 MS. BARWICK: Sure. We are going to go -- the  
13 panel members going to go upstairs to the 25th floor and  
14 Odette and I will be going up there with you. You can't get  
15 in without one of us so we will herd you all up there.

16 CHIEF DEPUTY DIRECTOR MADRIAGO: And let me  
17 recommend that if you would like to use the restroom before  
18 lunch that you either use these restrooms, or once you get  
19 up to the 25th floor there are restrooms in the hallway  
20 before you enter the secure zone.

21 CO-CHAIR GEISER: In other words, there's no  
22 restrooms after the secured zone. Take warning.

23 (Laughter).

24 (Off the record at 12:08 p.m.  
25 for a lunch break.)



1 looking at some scheduling with the Chairs and with us and  
2 not wanting to, you know, prolong this process too much in  
3 terms of getting your input for our regulations, it looks  
4 like we are tentatively going to have the next meeting on  
5 July 14th and 15th with the 14th being a full day and the  
6 15th being a half day. If we don't have it by then we won't  
7 be able to have it until fall and that could really  
8 jeopardize our ability to get the input that we need from  
9 the panel for the regulatory process.

10 PANEL MEMBER PEOPLES: Is that date sort of set at  
11 this point or are you still tentative on it?

12 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, I would say  
13 it's close to being set. I mean, we talked among ourselves  
14 about various options and we don't see a lot of options.

15 So now having said that I think what I heard is a  
16 lot of folks yesterday in our meeting here as well as last  
17 night, while you had suggestions for improvement, seemed to  
18 like the approach we have used with subcommittees. So your  
19 Chairs I'm sure would like to hear some more feedback.

20 But assuming you are going to go forward with that  
21 we will start very quickly after the Chairs and I have a  
22 phone call next week to put out information on the next set  
23 of subcommittees and solicit your interest in participation.

24 We still have to talk about exactly the specific topics but  
25 I can tell you this, they will all relate to the

1 alternatives assessment process this time around.

2           So I think that's all the specifics I have for now  
3 unless there is something you want to share.

4           CO-CHAIR GEISER: Richard.

5           PANEL MEMBER DENISON: Odette, did you say all day  
6 the first day and half day the second day?

7           CHIEF DEPUTY DIRECTOR MADRIAGO: Yes.

8           PANEL MEMBER DENISON: Would you consider the  
9 opposite?

10          CHIEF DEPUTY DIRECTOR MADRIAGO: Well.

11          PANEL MEMBER DENISON: No?

12          CHIEF DEPUTY DIRECTOR MADRIAGO: While this is not  
13 a voting group I guess we could take a show of hands. But I  
14 have to tell you, I have had a lot of people say that doing  
15 it that way would be a lot easier, having the half day the  
16 second day.

17          PANEL MEMBER DENISON: It depends partly where you  
18 live.

19          CHIEF DEPUTY DIRECTOR MADRIAGO: Well, I mean,  
20 these are people who live back in the area where you live.

21          PANEL MEMBER DENISON: If it starts midday I can  
22 fly out that day.

23          CHIEF DEPUTY DIRECTOR MADRIAGO: I guess they want  
24 to get home the night of the second day.

25          PANEL MEMBER DENISON: Right, I know, I know.

1 (Off microphone discussion about traveling.)

2 CO-CHAIR GEISER: It's just Richard organizes his  
3 holidays out in California around these times. (Laughter).

4 All right, this is still tentative so even  
5 Richard, just try to respect that. It may change but that's  
6 as close as we could come at the moment.

7 Okay, so we are back to our detailed responses to  
8 the options put forward by the Department and Odette's work  
9 here.

10 PANEL MEMBER BLAKE: I had a question about the  
11 rulemaking schedule, if we could talk about that just  
12 briefly. What the schedule looks like and how that meeting  
13 -- not too long.

14 CHIEF DEPUTY DIRECTOR MADRIAGO: I don't have a  
15 lot of specifics to give you at this time. What I can tell  
16 you, you all have probably heard it is, a number of folks in  
17 the Legislature really want us to get this done fairly  
18 quickly. They also want to make sure that we get, you know,  
19 adequate and substantial input from the panel.

20 What I don't know yet because, you know, we are in  
21 the early days of, you know, of a new administration and so  
22 we have not gotten the perspective yet of the new governor's  
23 office in terms of what thoughts, if any, they have on the  
24 time frame within which they would like us to wrap this up.

25 But, you know, I am concerned as are the co-chairs that we

1 make sure that we have adequate time to get, you know, the  
2 input. And I'm, you know, concerned if we delay it to fall  
3 that could become problematic potentially.

4 CO-CHAIR GEISER: Okay. So what we would like to  
5 do is finish out the conversation that we cut short this  
6 morning on the chemicals and we'll take a few more comments  
7 on that. And then I would like to move to the sections  
8 dealing with -- the product area and particularly the  
9 products under consideration and the priority products.

10 We have had one request and that is just because  
11 it is sort of filtering through. As you try to indicate the  
12 area that you are speaking to you might also want to note a  
13 page number so that people can try to follow along. And I  
14 believe we have Mike and Lauren who yet wanted to speak to  
15 this question, to the issues having to do with  
16 prioritization of chemicals. And I think I have Mike first.

17 PANEL MEMBER WILSON: Thank you, Chair. So I am  
18 looking at the chart that was handed out early. One of the  
19 things that I had proposed in my work group note was  
20 essentially a chemicals of concern universe without a  
21 prioritization of chemicals of concern.

22 And I think this -- sort of responding to Kelly's  
23 point in that one of the, one of the problems that I have  
24 run into in thinking about how do you prioritize chemicals  
25 of concern are two. One that it makes us, it forces us to

1 some extent to make irrational tradeoffs. So to prioritize  
2 a carcinogen over a neurotoxicant over a developmental  
3 toxicant and so forth.

4           And the other is that there are multiple uses for  
5 single chemicals in commerce and some of those uses might be  
6 essential and of little public health consequence. Some of  
7 them may be of great consequence from the same chemical.  
8 And so that's where I think using your term, Bill, get  
9 wrapped around the axle on that, on the problem, on the  
10 challenge of prioritizing chemicals of concern.

11           And so I guess I would like to sort of propose  
12 here that we think, that we contemplate the idea of  
13 developing a list of established chemicals of concern based  
14 on lists by specified authoritative bodies. Again  
15 responding to your point, Bill. And chemicals that are  
16 identified by OEHHA.

17           And that we consider moving from there directly to  
18 consumer products and consumer products that are sold in the  
19 state of California that contain chemicals of concern and  
20 that we prioritize from that point and based on a number of  
21 the factors that are described in the products section of  
22 this document that have to do with exposure and sensitive  
23 subpopulations and so forth, as used in the state of  
24 California.

25           And that there would be a fast track process that

1 occurs at the product stage. And it is very likely we might  
2 want to have a fast track process as well at the chemical of  
3 concern stage as well. So I am advocating sort of a  
4 simplified version here.

5           And I guess the two last things on this was that  
6 one of the things that has concerned me is that as we move  
7 from chemicals of concern and then try to identify a  
8 universe of priority chemicals within that we potentially  
9 engender a lot of push back from industries and companies,  
10 businesses and so forth, that are using a chemical in  
11 potentially thousands of applications.

12           And I think we want to avoid that and move in a  
13 more targeted direction into products. There is some  
14 tradeoffs here because we don't always know where the  
15 substances are coming from, if they are coming from  
16 products. So that's something I want to, you know, sort of  
17 ask the Committee to deliberate over. But I guess I am  
18 putting this out as a thought, as a proposal, and that the  
19 final piece of it is that this is without question going to  
20 require some form of data requirement, data call-in, from  
21 manufacturers who are selling products in the state of  
22 California and what those products contain.

23           CO-CHAIR GEISER: Thank you, Michael.

24           PANEL MEMBER SCHWARZMAN: A question?

25           CO-CHAIR GEISER: To Michael?

1 PANEL MEMBER SCHWARZMAN: Yes.

2 CO-CHAIR GEISER: Quick.

3 PANEL MEMBER SCHWARZMAN: About what I just heard.

4 When you say move straight to products from chemicals of  
5 concern. Would you suggest doing that in batches or  
6 something? How is that?

7 PANEL MEMBER WILSON: I think that makes sense  
8 because the chemicals of concern universe could be fairly  
9 large and to do all of those all at once for all products  
10 sold in California does seem unrealistic. And so it would  
11 make sense to move through batches of products over a  
12 scheduled time.

13 CO-CHAIR GEISER: Okay. I have at this point --

14 PANEL MEMBER SCHWARZMAN: (Overlapping) sense of  
15 prioritization? Oh no.

16 PANEL MEMBER WILSON: That would be at the product  
17 stage, yeah.

18 CO-CHAIR GEISER: I have Lauren and Joe and  
19 Richard. I am then going to move us to the products area.  
20 We need to move on in the schedule and already you can see  
21 people are wanting to talk about this relationship to  
22 products. So Lauren, next.

23 PANEL MEMBER HEINE: Thank you, Ken. My comment  
24 relates to products as well. I think riffing off what Kelly  
25 said about it's hard to consider the chemical outside of the

1 product. However, I went to -- I was at an exposure  
2 assessment workshop where the discussion was about how  
3 chemicals that are persistent and bioaccumulative are good  
4 indicators for exposure in the environment.

5 But the proxy for exposure to humans is how the  
6 chemical is used in a product. So it may be that at times  
7 certain hazard characteristics of the chemical only are very  
8 key for its use in whatever type of application and other  
9 times when a chemical is really, should be prioritized based  
10 primarily on its use in a product.

11 So getting back to the flexibility idea for DTSC.  
12 It seems there are going to be times when they might want  
13 to come into the problem from the chemical side. Other  
14 times they might want to come at it from the product side.  
15 And that product, and then that product may be determined  
16 based on how that product is used. Is there a particular  
17 exposure potential associated with that or those other  
18 attributes that does that product bring with it a large  
19 volume or whatever. So I think again that flexibility to be  
20 able to identify priority products through the chemical  
21 lens, through the product lens or even through some exposure  
22 pathway lens.

23 CO-CHAIR GEISER: Okay. Joe.

24 PANEL MEMBER GUTH: This is a quick comment on the  
25 first issue, whether the two lists, a list of chemicals of

1 concern and priority chemicals should be developed  
2 concurrently or sequentially.

3 I started turning over in my mind there might be  
4 some merit to having them done concurrently. And that would  
5 be, it's just a little -- we had -- the opening question  
6 today really was. what is the significance of a chemical  
7 being designated a chemical of concern? We have a lot of  
8 chemicals designated that. I think it gets portrayed out to  
9 the public and to industry as that DTSC is going to regulate  
10 all products that contain all these thousands of chemicals.

11 And it just becomes a large, you know. That's a huge  
12 implication that generates a lot of concern in society. And  
13 so it may be useful to designate at that time, well here are  
14 actually the chemicals that are, the priority chemicals that  
15 we are actually going to move forward to doing something  
16 about. It's a much smaller, more contained universe that  
17 might not generate as much concern in a broader society.  
18 All right.

19 So maybe I should just -- this kind of relates to  
20 product comments. Should I just jump into that or do you  
21 want to --

22 CO-CHAIR GEISER: Why don't you hang on to that.

23 PANEL MEMBER GUTH: Okay.

24 CO-CHAIR GEISER: Let me try to get through this  
25 and then we'll open up the whole products discussion.

1 Richard.

2 PANEL MEMBER DENISON: Well, mine is sort of  
3 bridging also.

4 CO-CHAIR GEISER: And Bob, is yours as well or is  
5 yours specific?

6 PANEL MEMBER PEOPLES: It's also --

7 CO-CHAIR GEISER: Why don't we move into the  
8 products and then be able to pull these two things together.  
9 Let's check out then the fact that at this point the floor  
10 would be open to also considering issues having to do with  
11 the listing of products and this would pay attention to  
12 pages five and six. We have options, we have three options  
13 under the third, under page five on products under  
14 consideration and then we have one, two, three, four options  
15 under priority products. And again, what we have here is  
16 the same pattern that we saw with the chemicals. That is,  
17 there are criteria ones, there are listing ones and there's  
18 ones having to do with process.

19 So at this point you may want to speak to how do  
20 you, what kind of advice would you give the Department about  
21 products under consideration. Should there be such a list  
22 and how? Secondly, how would you think about prioritizing  
23 those products? But also reflecting back on how that  
24 relates to how you think about prioritizing chemicals. So I  
25 am going to take the people in line there but others may

1 want to join in. So it would be Joe, Richard and then Bob.

2 PANEL MEMBER GUTH: All right, thank you, thank  
3 you, Chair. One implication of my suggestion of trying to  
4 identify priority chemicals at the same time as chemicals of  
5 concern is that I do think it should be linked to products.

6 Obviously, we should be designating priority chemicals as  
7 those that we know are involved in products where there is a  
8 lot of exposure and so there's a lot of moving parts there.

9 I think the implication of designating a priority  
10 chemical is that any product that has that chemical in it is  
11 going to be one -- the manufacturers of that are obviously  
12 going to be concerned. I mean, all of a sudden this is this  
13 first option, II(1)A. I mean, on some level as soon as a  
14 priority chemical is identified every product that contains  
15 that chemical is going to, that manufacturer is going to  
16 feel like, well, there are potential, there are potential  
17 implications for their product.

18 But the Department doesn't have all the  
19 information that it needs to know what all the products are  
20 that contain a priority chemical and there is going to have  
21 to be a data call-in at some point. And I don't think you  
22 can really do that early on just at the stage of even  
23 designating it as a priority chemical.

24 So I guess I would suggest the option of trying to  
25 identify priority chemicals at the same time as chemicals of

1 concern based on some information that they are, there are  
2 products that use that chemical. And then do a data call-in  
3 for the products that use that chemical and use that as part  
4 of identifying the priority products is what I would  
5 suggest.

6           Then to just refer back to my first comment today.  
7 I would also, in terms of doing that prioritization, I  
8 would really urge avoiding trying to identify the worst  
9 product or the, you know, and to rank them too seriously.  
10 Just pick serious ones. Thank you.

11           CO-CHAIR GEISER: Richard.

12           PANEL MEMBER DENISON: Well, so a lot of what I  
13 was going to say I think Joe just stole. But it really is,  
14 I think, the gorilla in the room that we need to deal with.

15           There's a huge gap here in moving from chemicals to  
16 products because we really don't have a very good handle on  
17 where those chemicals are used and what products, therefore,  
18 ought to be identified as being either under consideration  
19 or prioritized.

20           And so I do think this process has got to be  
21 rationalized through better information. And so the  
22 question is, where at what point in the process does that  
23 come in. Because I have sympathy and I lean toward the idea  
24 of trying to collapse this to some degree the way Mike and  
25 Kelly have both been talking. But how do you collapse it,

1 to which products, if you don't know the range of products  
2 in which those chemicals are used?

3           And I can hear the industry now because I have  
4 been hearing them in Washington and all kinds of other  
5 contexts saying, you can't identify something unless you  
6 know the whole range and you're picking, and you know you're  
7 picking the top at the top of the list, the highest concern.

8           And while I agree with Joe's comment about not  
9 having that be rigidly applied, it seems to me the only way  
10 you can do a decent prioritization process for products is  
11 to have a feel for what the range of products are you are  
12 dealing with. So then the question is, do you apply that at  
13 the chemical of concern list to a large list or do you apply  
14 it once you prioritize chemicals to a smaller list? And  
15 maybe you do that as somebody just said, in batches.

16           I guess my view would be you identify a pretty  
17 large chemicals of concern list. And that you have no  
18 choice but to prioritize those. And then to use that more  
19 focused list as the basis for a data call-in to companies to  
20 identify which products they use those chemicals in. And  
21 that information is the basis for the prioritization of the  
22 products. And I don't know that you necessarily need a  
23 products under consideration step in that. You could  
24 actually move right to the priority products.

25           CO-CHAIR GEISER: Can you just follow that out,

1 Richard and then in considering how you would prioritize the  
2 products, which of these options would you speak to mostly?

3 If I follow what you sort of said, you laid out a sequence.

4 PANEL MEMBER DENISON: So you mean page six?

5 CO-CHAIR GEISER: Yes.

6 PANEL MEMBER DENISON: Well, I took to heart that  
7 these are not mutually exclusive. And I kind of think you  
8 need all of these. You could have an initial list, which is  
9 2B, as well as a process for expanding that list over time,  
10 which I read to be 2A. And 2C I've got to read again. I  
11 can't quite remember the gist for that.

12 CO-CHAIR GEISER: Okay, all right. What I am  
13 doing is asking you, even as you deviate from the general  
14 framework that is here, try to refer to this because it is  
15 going to help the state people here try to respond to it.  
16 So I have at the moment Bob, Kelly, Tim and Jae. Bob.

17 PANEL MEMBER PEOPLES: Thank you, Ken. The first  
18 thing I want to acknowledge, it was nice to have a lunch  
19 break because my brain was hurting; but it hurts again. So  
20 I have been kind of grappling with this idea. You know,  
21 this is a very complex process but how can it be simplified  
22 in a way that you could get started and then get feedback  
23 from the system to enable you to advance it going forward?  
24 And I do think that Mike Wilson said something earlier this  
25 morning about trying to avoid re-tilling, to the extent that

1 that can be done.

2           So I thought to myself, the concept of chemicals  
3 of concern, regardless of their source or the list you go  
4 to, is known to everybody in the manufacturing community so  
5 there will be no surprises there. So maybe it's not worth  
6 worrying about going through a process of identifying  
7 chemicals of concern. There's plenty of them out there to  
8 focus on and really have the priority chemicals that we go  
9 through a process of selecting from that list. So don't  
10 worry about creating this one de novo, let's go with what's  
11 out there and select from that the priorities. So I think I  
12 am moving toward one list on that side of the equation.

13           And then I do have a question and that is --  
14 because I am getting confused about what the statute  
15 requires. And the question is, does the statute require a  
16 list of products of concern explicitly?

17           CHIEF DEPUTY DIRECTOR MADRIAGO: It says it  
18 requires us to establish a process to identify and  
19 prioritize chemicals of concern.

20           PANEL MEMBER PEOPLES: Yes, chemicals of concern  
21 but not products.

22           PANEL MEMBER MALLOY: Excuse me, it says chemicals  
23 of concern in consumer products.

24           CHIEF DEPUTY DIRECTOR MADRIAGO: In consumer  
25 products, yes.

1 PANEL MEMBER PEOPLES: In consumer products.

2 CHIEF DEPUTY DIRECTOR MADRIAGO: I'm sorry, I  
3 didn't hear you correctly. And remember, alternatives  
4 assessments are focused on a product.

5 PANEL MEMBER PEOPLES: I realize that. So you  
6 have got to get to the point of identifying which products  
7 at some point.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Right.

9 PANEL MEMBER PEOPLES: But you're not, the statute  
10 doesn't require you to create in and of itself a list of  
11 products explicitly.

12 CHIEF DEPUTY DIRECTOR MADRIAGO: Correct.

13 PANEL MEMBER PEOPLES: So kind of where I'm going  
14 with that is that if you could come up with agreement on a  
15 set of priority chemicals and then ask the manufacturers to  
16 self-nominate based on their knowledge of what's in their  
17 products, then the industry creates the list of products for  
18 you containing priority chemicals and then you would create  
19 the process for DTSC to go through the prioritization of  
20 that list of products.

21 So now you are enrolling the manufacturing  
22 community to an extent as a partner in the process as  
23 opposed to making it adversarial. And you are taking  
24 advantage of their resources to create the list for you, the  
25 first list of products for you based on priority chemical

1 content.

2 CO-CHAIR GEISER: And how would you prioritize the  
3 products itself at that point?

4 PANEL MEMBER PEOPLES: Well, I'm where Dennis is  
5 on that. I've got to go back through this list now because  
6 I am not sure I am comfortable saying what that should be  
7 yet. I was still grappling with the bigger context.

8 CO-CHAIR GEISER: Okay. Then I am leaving you and  
9 Richard both to reread this and come up with that, okay?

10 PANEL MEMBER PEOPLES: Right, right, fair enough.

11 CO-CHAIR GEISER: Kelly.

12 PANEL MEMBER MORAN: I hope I'll be brief here.  
13 Under products under consideration I don't see a need for a  
14 products under consideration list. I think it actually  
15 creates more problems than it solves. It creates a lot of  
16 controversy that is potentially unnecessary and all kinds of  
17 risks and problems without helping any. I actually think  
18 that -- actually I wrote myself a note and now I can't see  
19 what it says. Okay.

20 So going over to the next page on six and seven.  
21 I actually, like Richard, actually think that all of these  
22 have merit so I kind of want to moosh them all together. In  
23 that none of them is exactly what I was thinking about but  
24 the ideas of having criteria, putting an initial few based  
25 on input and learning from that input process and decision

1 process how to create those criteria, are really good. And  
2 the ability to lay out a work program is I think really  
3 important. And I how I think that plays out, I'm going to  
4 go back to the little, the little sheet I handed out.

5 I would see that all of these various inputs on  
6 the left and the criteria that we'll still get to play  
7 together. So I am actually not real fond of the bulleted  
8 criteria under 2B, 2C and so forth. I think that the whole  
9 set of criteria should be used in figuring those things out.  
10 There would be -- develop the list of chemicals and  
11 products.

12 And I actually see the product/chemical  
13 combinations being a work program because DTSC isn't going  
14 to start everything at once. They are going to want to have  
15 conversations in sequence. So I actually think that DTSC  
16 should be proposing a schedule. Here is what we are going  
17 to do in the next two years, here is our sequence of events.

18 This is similar to what ARB did when it was going through  
19 those product regulations. And putting that out for comment  
20 so that you can get input not only on the contents of it but  
21 also on the sequence of events and how you proceed with  
22 doing things. So that is where the schedule part fits in.

23 I also wanted to respond to that question of  
24 chemical versus product. Which I think is a really good  
25 comment and explain how I saw that in framing up this. I

1 used the word chemical list because I am still not sure what  
2 that list is and what it's called and I can see we are all  
3 kind of struggling with that a little bit. But for some  
4 product/chemical combinations we know the product that the  
5 chemical is in that we are worried about. And a lot of  
6 those are the kinds of examples that I always talk about. I  
7 know about this problem, it's with this product, we view  
8 this as farther along the chain.

9           But much of you talked particularly about human  
10 exposures indoors. Where we have chemical, maybe it's  
11 appearing in people, it's appearing in house dust, but we  
12 are not sure which product it is attributable to. I  
13 actually think that is a perfect place to be putting it on  
14 the chemical list because that tells people, this is a  
15 signal, we are concerned about this.

16           If there are one or more products that we know  
17 enough about that we think it's worth putting it in the work  
18 program we should do that. But if we don't then the  
19 Department is basically saying, this is a place we are going  
20 to get that other information and I would be thrilled if it  
21 could be done in partnership with industry and generate  
22 information that we trust. But I would see that as how the  
23 process would work. Then the Department would have to  
24 decide in each work program if it had the kind of  
25 information it needed to make that decision and move forward

1 or how it was going to group those products.

2 CO-CHAIR GEISER: Thank you, Kelly. So Tim would  
3 be next.

4 PANEL MEMBER MALLOY: Thank you. I wanted to  
5 first address the question of conflating products with  
6 chemical prioritization. And I would say I am skeptical of  
7 the approach that you would have a large -- I think what  
8 Mike was saying, you have a large list and then do a data  
9 call-in and find out all the products that use the  
10 particular chemicals, if I'm getting that right.

11 I think one of the major things to be worried  
12 about in this program is thinking about getting it off the  
13 ground and moving without getting too tied up with this  
14 notion that you are going to have the perfect, most  
15 comprehensive system. Because the road to regulatory action  
16 is strewn with the wreckage of programs that have tried to  
17 do that. I think it is better to be a little less, go with  
18 a little less finer resolution but get to a -- by resolution  
19 I mean, you know, focus how rigorous you're going to be.

20 So what I would suggest instead is that you  
21 identify a list of priority chemicals based on all the stuff  
22 that we have talked about before and I would say you would  
23 want to try and keep that fairly small, at least at the  
24 outset. And rather than trying to get specific data about  
25 particular products that every chemical is in. I think

1 while we don't know a lot about every product and what is in  
2 it. I think we tend, we do tend to know about how, what  
3 chemicals tend to be used for.

4           So what I would say is, instead of trying to make  
5 it product-specific think about product uses of chemicals  
6 and then use some type of method, maybe similar to what they  
7 did in Canada where they looked at particular kinds of  
8 consumer uses or kinds of industrial uses of chemicals, and  
9 come up with a rough, a rough mechanism by which you could  
10 use those generic notions of how chemicals tend to be used,  
11 different chemicals tend to be used.

12           To use that to get that linkage to the human  
13 exposure aspect of it. You know, the product use aspect of  
14 it. You know, things like relative volumes and the type of  
15 use. Is it, you know, likely to be an inhalation problem or  
16 so on and so forth. It is based on what we tend to know  
17 they are used for.

18           And then once you have developed that now you have  
19 got a list of chemicals, you have got a kind of a rough  
20 sense of product use. Now I think that's the time to  
21 identify, to do a call-in of data for the chemicals and the  
22 types of chemical uses that you are thinking about.

23           I am skeptical about a voluntary program. And not  
24 necessarily because I think businesses acting in good faith  
25 would not respond to that; I think many would, some would

1 not. But I am trying to be positive here, not just  
2 negative. But I think, you know, positively thinking there  
3 is going to be a lot of companies that don't know what's in  
4 -- and in a voluntary system they might not be inclined to  
5 try and go out and test or be very rigorous about  
6 backtracking.

7           So I think you really at this point in a  
8 regulatory program you want to have a mandatory call-in  
9 assuming you have the authority for that. And you ought to  
10 also have some fairly straightforward information about  
11 what's to be required in terms of testing and knowledge  
12 requirements and investigation of what's in your product.  
13 And then once you get that, get the data call-in, now engage  
14 in the criteria in the prioritization.

15           Now I know Ken you are going to say to me now,  
16 okay, now how would you prioritize them. And trying to be  
17 responsive to my co-chair -- I guess you're my chair, you're  
18 not my co-chair, you're his co-chair. But you are  
19 something, you are an authority figure to me.

20           CO-CHAIR GEISER: Something.

21           PANEL MEMBER MALLOY: You're an authoritative  
22 body. (Laughter).

23           CO-CHAIR GEISER: Thank you.

24           PANEL MEMBER MALLOY: So here is what I would do  
25 on the prioritization. I'm vague, I am going to be vague

1 because the options are vague and I think it's suitable at  
2 this point to still be vague. But I would say I agree with  
3 Option 2A which is, use of criteria and process. I think  
4 that makes a lot of sense to be discussed later.

5 I also agree with 2B. I realize now reading this  
6 closely that I misread the 2B for chemicals. Now I realize  
7 that what 2B is saying is, actually create an initial list  
8 that goes into the regs. And I had presented that like my  
9 brilliant addition when in fact it was already there. so it  
10 is not my brilliant addition, it is just evidence that my  
11 addition was brilliant. (Laughter).

12 So I would say 2B but I would add the kind of, the  
13 Denison adjustment which would be on page six under (i)  
14 where it says: "and (ii) Chemicals/products for which there  
15 are safer alternatives." I would put "or."

16 I would also support 2C with this notion of that  
17 there could be a petition to add things. Because as I said,  
18 this process I'm talking about is fairly rough and so there  
19 may be something that doesn't get picked up so there ought  
20 to be an opportunity for petitions.

21 I don't think there is a need to have DTSC on its  
22 own initiative in 2C because, one, I would think that under  
23 2B if they had an initial list they would also have the  
24 ability to amend that initial list through a regulatory  
25 action. And I would think if 2C was going to be implemented

1 that would likely be through some type of regulatory action.

2 So I am not sure you really need to include DTSC in 2C.

3 And then lastly, I also like the idea on the next  
4 page of 2D, which is to create a list. Other people have  
5 said this. But again I would say that this should be a  
6 numerical obligation. So in the sense of every year at a  
7 periodic basis, you know, you have to update your list to  
8 include a certain number more of priority products.

9 I am somewhat neutral about the criteria would be  
10 for what those have to be or whether there would even be a  
11 criteria or whether that would just be discretionary. What  
12 I am most interested in is since I am supporting a smaller  
13 list up front to be trackable that there should be a fairly  
14 straightforward obligation to add to that list so that we  
15 don't just do five and then that's the end of the program.  
16 Thank you.

17 CO-CHAIR GEISER: Thank you Tim and that was  
18 helpful, both in terms of giving a bigger or different way  
19 to think about it but also tying it back to how do you think  
20 about the prioritization. And at this point I have Jae,  
21 Bill and Meg so Jae would be next.

22 PANEL MEMBER CHOI: Thank you, Chair. I cannot be  
23 as articulate as a lawyer but let me start from page five.  
24 I'd like to see the Option II(1)B. It is good because it  
25 starts with smaller priority products. Yet I would like to

1 suggest to maybe add Option 2C. Especially I like the  
2 priority product list can be developed by DTSC. And there  
3 will be, I think to my mind, reinforcing option II(1)B.

4           And then page six and seven. I guess Tim already  
5 articulated. My option could be Option II(2)B. I like, you  
6 know, this has all the initial list priority products  
7 including known harm and known safer alternative. And then  
8 this Option II(2)B could be reinforced by bringing in Option  
9 II(2)D.

10           So my comments about, you know, the chemical  
11 versus product, it sounds like chicken and egg. So either  
12 we kill chicken or we have to break egg. (Laughter). So  
13 what I mean by that, yesterday afternoon and this morning we  
14 talked about something like formulated product versus  
15 assembled product. That already indicates to us which way  
16 we have to go. It means that we have to create both but it  
17 could be started from assembled product.

18           And also I think either Bill or Odette this  
19 morning talking about the priority products contained  
20 priority chemicals. so in terms of, you know, I really  
21 don't see any values either collapsing or not collapsing on  
22 this really. It really doesn't make much sense to me either  
23 way. But the important thing is that we need to start, like  
24 for example, list the consumer product list from CARB, for  
25 example. I saw pages of a consumer product list there. So

1 start from there, select product and then select the  
2 chemicals from there. The reason I am suggesting that is  
3 that it is a smaller list yet we can start very quick.

4 CO-CHAIR GEISER: Interesting, interesting.

5 Okay, then Kelly. Let's see. No, no, Meg. Where  
6 am I? All right, Jae. Bill, I'm sorry. Bill.

7 CO-CHAIR CARROLL: I'm being punished for my  
8 earlier intervention. Thank you, Chair.

9 Ultimately where we get to, I think, is situations  
10 of concern that are combinations of materials in products.  
11 And while my own personal discomfort is to go right straight  
12 for those things because there are so many specific  
13 situations that it would be difficult to identify them, but  
14 in the end that is what you are looking for.

15 This is why I think at least as a start, the idea  
16 of going to chemicals of concern and prioritizing and  
17 products of concern and prioritizing is useful as a first  
18 cut, modulated by the opportunity to add special situations  
19 if there are important things that you have missed.

20 But there are a couple of things and Jae started  
21 to touch on this. To me the products area is  
22 extraordinarily more difficult to deal with because of the  
23 complexity of the products space, even if all you do is  
24 consider the difference between formulated products and  
25 fabricated products. They are entirely, if you will,

1 different exposure modes, both for individuals and for the  
2 environment, or at least they can be.

3           And it is one of the reasons why, at least to some  
4 extent I think you have to have some kind of criteria in a  
5 process that says, here is how we are going to consider  
6 either or both of these and here is, here is the way we are  
7 going to bound the problem initially.

8           The other question that I had, I guess it is a  
9 question is, what is the difference in scope between  
10 products under consideration and priority products? Asked  
11 another way, how narrow is your list of priority products?  
12 Is a priority product a toy or is it Roller Barbie? It's  
13 how specific does that product get. And I guess in  
14 answering that question it probably becomes useful to have a  
15 products under consideration category that is far broader  
16 that signals the general direction that you're going,  
17 whether it is for a fabricated article or for a formulation.

18           So for example, you know, the category of  
19 detergent is one thing. But then how narrow do you get?  
20 Does it narrow down to dishwashing detergent or shampoo?  
21 And so in a way I am not answering the question, I am just  
22 saying that you have to figure out what the scope is for  
23 your priority product. And then utilize your products under  
24 consideration as sort of a generalized category that allows  
25 you to narrow it to a manageable scope for those products.

1 And I apologize for those diffuse thoughts, Chair. Thank  
2 you very much.

3 CO-CHAIR GEISER: Meg.

4 PANEL MEMBER SCHWARZMAN: Thanks. I am not  
5 convinced that we have been hearing a lot of different  
6 ideas; I more feel like I am hearing slightly different  
7 versions or emphases on quite a similar process. And I  
8 wanted in a way to see if I could summarize that for a  
9 moment and there might be differences, but into something  
10 that actually is quite close to some of the proposals here  
11 for the Department that would be the actual recommendation  
12 of what is done. And I think actually it also maps fairly  
13 closely to Kelly's diagram.

14 So if we were -- this question of, is there one or  
15 two lists of chemicals that then goes to products? In a  
16 sense I think it has been coming out as basically two lists.

17 Even what I heard Mike of your suggestion that we straight  
18 from chemicals of concern to products. Because that has to  
19 be batched, right? You don't go all at once from however  
20 many, over 1,000 chemicals of concern.

21 So looking at Kelly's diagram for a moment and  
22 referencing page six, Option 2B or 2C I would say because  
23 there are differences between but they entail basically the  
24 same process. There's consultation with other agencies or  
25 petitions and there's also DTSC's own selection from

1 authoritative body lists or OEHHA's recommendations.

2           And that is the chemicals of concern in a sense is  
3 identifying that chemicals of concern list. And the  
4 prioritization process comes through what Kelly has here as  
5 a narrative criteria.

6           And I would insert at that point an arrow from  
7 what I am hearing, which is the moment of data call-in where  
8 the Department has said, okay, gathering all of this  
9 information. Here are the chemicals that we are  
10 prioritizing and we need to know what products those are in.

11           And there was a plea for that to be mandatory  
12 based on the supply chain, which is a way I haven't  
13 necessarily thought of it before but that that's -- for all  
14 of the manufacturers and producers who we have heard about  
15 in these two days, not knowing what is in their products.  
16 That actually empowers those businesses to query their  
17 supply chain. Whereas if it's voluntary I don't see where  
18 that ability comes from. So a data call-in comes at that  
19 level and then that enables the subsequent steps of  
20 prioritizing products, of setting priority products.

21           I differ from Bill respectfully that I don't see  
22 -- and I have heard this a bit, the role of a products under  
23 consideration. To me the goal of what I am hearing you say  
24 could be accomplished through setting priority products. So  
25 choosing categories where you are saying toys or something.

1 And then I don't see how you can get to Roller Barbie  
2 without a data call-in. so you had to -- you can't name  
3 individual products without knowing what is in them. So to  
4 me, you can actually accomplish that same goal as I see it  
5 by the process of prioritizing products rather than setting  
6 two categories.

7 Finally, I tried to make that more specific but  
8 I'm afraid it just got more general. But in any case, in  
9 looking at Option II(2)D on page seven because we have  
10 talked about -- I think everybody has agreed that some of  
11 these factors listed here are helpful in thinking about how  
12 you prioritize products. This is sort of some of the ways  
13 of categorizing them. Some that I would pick out as helpful  
14 and that I have heard picked out previously is identifying  
15 the highest volume or the products that contain the most of  
16 the chemical and also those that are used by or anticipated  
17 to be used by sensitive subpopulations.

18 And I don't think I have to reiterate the removing  
19 the "and" from the -- and changing it to an "or" we all  
20 agree about that. And there was one final thing that I have  
21 forgotten. In any case I'll end there.

22 CO-CHAIR GEISER: Okay. Now I have Julie,  
23 Michael, Bob and Richard. So Julie.

24 PANEL MEMBER SCHOENUNG: Thank you. I just have a  
25 few things that I want to say. One is to echo Kelly's

1 comment that I see on pages six and seven these different  
2 criteria for identifying which products would be prioritized  
3 under B and which under C and which under D. I agree that  
4 that really shouldn't be there on this page. That's the  
5 next topic is which are going to be the criteria for  
6 prioritization. And I would think you would want them to be  
7 uniform, whether it's a low-hanging fruit that we know about  
8 or one that the public suggests or ones that we look at on a  
9 scheduled nature. I would think you would want some  
10 consistency amongst those. So I just wanted to echo that.

11           And on the question or debate about one or two  
12 lists of chemicals. The chemical of concern versus priority  
13 chemicals. The suggestion for expediency from Bob that we  
14 should do the priority chemicals because that is what we are  
15 really interested in moving forward with.

16           I don't see a reason why you can't do it first and  
17 still do a more broad chemical of concern list subsequent  
18 really to the priority list. Since we kind of know which  
19 ones we want to prioritize based on just the knowledge base  
20 that we have here and in the Department. That we could do  
21 the broader list with more consultation and more debate  
22 about which list to use or not use and working with OEHHA.  
23 It could be subsequent.

24           CO-CHAIR GEISER: Michael.

25           PANEL MEMBER KIRSCHNER: Thank you, Ken. Just a

1 question and a couple of points. The question is around the  
2 call for a data call-in. I've heard it several times here.

3 If that's a regulatory requirement does DTSC have the  
4 authority to do that?

5 CHIEF DEPUTY DIRECTOR MADRIAGO: It's kind of a  
6 complicated question; I don't want to spend a lot of time  
7 doing the legal analysis on it. But at a minimum, once  
8 something has been determined to be a chemical of concern,  
9 if calling in data is necessary to the prioritization, both  
10 of the chemicals and then prioritization of the chemicals in  
11 the products. As long as it is necessary to those things  
12 that are mandated by the statute then yes.

13 PANEL MEMBER KIRSCHNER: Okay, good. Because then  
14 you actually might be able to get that information. Because  
15 if manufacturers have a legal regulatory reason to go back  
16 to their supply chain and get that information then they  
17 actually do have a chance of beating their suppliers up with  
18 that, getting the data.

19 So just a couple of points. Bill's point. I want  
20 to kind of expand on Bill's point about fabricated versus  
21 formulated products and how you -- you talked Bill to one  
22 way of treating them differently and I want to bring another  
23 way of treating them differently. And that is that the  
24 formulators are chemists and chemical engineers; they have  
25 chemical knowledge. Fabricators not always; in fact not

1 often. So there's a knowledge, a distinct knowledge  
2 difference.

3           The fabricators are going to say, well, I want to  
4 create this thing and it has these mechanical properties, go  
5 build it. And they are not going to specify that you have  
6 to use a specific grade of steel or a specific ABS plastic.

7           They are going to tell you they want it to be purple and  
8 have this sort of mechanical property and go figure out how  
9 to do it. So fundamentally they keep themselves in the dark  
10 that way about chemical identity.

11           That said, if we can get back to the point here.  
12 I think -- this section is kind of difficult for me because  
13 I see products as being basically the vehicles for these  
14 chemicals to -- and if you by picking chemicals you are --  
15 chemicals of concern or priority chemicals, you are  
16 implicitly selecting or defining that there is a product  
17 under consideration class. And it's at that point that you  
18 do have to do this data call-in and really --

19           So the PUC is essentially, it's already done, you  
20 know. That happens. To identify the priority products, the  
21 ones you want to really want to focus on that are the source  
22 of the exposure, the source of the pollutant, whatever it  
23 is. So from that perspective I don't have a -- well, I  
24 guess my selection for page five is 1C. No list, it's  
25 implicit in the chemicals, priority chemicals. And then you

1 have to figure out what it is because a priori you may not  
2 know. You just may not know, you know. There is no  
3 guarantee that you will know.

4           And the second -- I agree with a number of the  
5 comments that B, C and D are not options; I think A is the  
6 option to, again, just define the process in the, in the  
7 regulation. I don't want a list of initial priority  
8 products because that implies the chemical list. And I  
9 don't want a list to be defined in the regulation either, I  
10 want the process to be defined. So by not wanting a  
11 chemical list in the process I can't have a priority product  
12 list either. Thank you.

13           CO-CHAIR GEISER: I think, Michael, you sort of  
14 hit on it. And that is, I think what we had as a simple, a  
15 fairly simple and straightforward logic to the way that  
16 Odette had laid this out and it was to define a set of  
17 chemicals and then define a set of products. Given that,  
18 there was a hierarchy of decisions in which you then could  
19 make decisions about prioritization.

20           The problem I think that has happened here is as  
21 we have begun to bring the chemical and product stuff  
22 together it is making it hard then to stay within that same  
23 hierarchy of decision-making by deciding simple things like  
24 this.

25           So what I am going to do here is ask maybe Bob and

1 Richard and Mike to speak but then I am going to, maybe  
2 going to turn this back to Odette and ask her if she can  
3 give us a little guidance on what does she need, given the  
4 way the conversation has gone. Can she give us a little  
5 guidance on what would help her and her staff at this point.

6 But let me just start with Bob.

7 PANEL MEMBER PEOPLES: So I feel like I'm a little  
8 bit schizophrenic because I am going from the weeds to the  
9 50,000 foot trying to put it all into perspective; and I  
10 don't think I am alone on that. But I want to go back to  
11 something that Tim said because when I talked earlier about,  
12 you know, trying to enroll the manufacturers in a  
13 partnership to secure some of this, I may not have said the  
14 word but you used the word, you were skeptical of voluntary.

15 And I agree with you. I did have mandatory in my notes but  
16 I may not have said it so if I didn't I apologize so just a  
17 point of clarification on that.

18 And then I was, you know, thinking about all these  
19 lists and stuff. I'm wondering if we could let the concept  
20 of chemicals of concern and product of concern lists be an  
21 internal work product of DTSC which informs the dialogue to  
22 get to the final priority products for consideration.

23 Because at the end of the day, what matters is you have got  
24 a set of chemicals that you are concerned about and you know  
25 they are being delivered through this product platform.

1           So how do we get to the essence of what we are  
2 trying to attack here. So maybe we can, you know, simplify  
3 some of the bureaucracy or the codified mandates by saying,  
4 some of this is work product, internal work product, which  
5 could be shared as part of a dialogue but it doesn't have to  
6 be so rigorously codified in your, in your regs.

7           And then I looked at the diagrams and I do have  
8 two observations about the diagrams. One made me smile.  
9 But the diagram from Kelly is like the 60,000 foot in my  
10 mind and the one we handed out earlier, which is a little  
11 bit more complicated, to me, if you go back to the comment I  
12 just made about internal work product, this becomes -- the  
13 green box over here becomes the internal work product. So  
14 that makes it a little easier to do all this.

15           My final observation, which I hope will make you  
16 smile, is that when you go through this whole flow I tend to  
17 think that once you get to the point of something that is of  
18 concern, that is sort of a red flag, right? But I found it  
19 interesting that the box is green. (Laughter). I just  
20 thought -- maybe green is not the right color to confuse  
21 somebody that is looking at this list because it is not okay  
22 to be down here, right? Just an observation.

23           CHIEF DEPUTY DIRECTOR MADRIAGO: It's a matter of  
24 what shows up better. Red background you lose the print.

25           CO-CHAIR GEISER: It was green for opportunity.

1 (Laughter and groans). Okay, Richard.

2 PANEL MEMBER DENISON: Thanks. I just wanted to  
3 get back to this issue of data needs. It does seem to me  
4 that there are going to be certain cases probably where we  
5 already know enough about the products in which chemicals of  
6 concern are used to identify them and those could be  
7 elements for fast tracking it seems to me.

8 I do think there is going to be some resistance to  
9 that. To say, well why are you picking on me if you don't  
10 know all the uses and you don't know that mine is the most  
11 highest priority, the highest priority among them. And I'll  
12 guarantee you that kind of argument is going to be heard.  
13 There will be some cases where I think that decision can be  
14 made based on existing information and defended probably.

15 But beyond that, it seems to me there's only two  
16 other choices. One is to have a theoretical construct where  
17 DTSC says, if any of these chemicals, priority chemicals  
18 were to be used in any of these products, we would be very  
19 concerned and think they should be targets for alternatives  
20 assessment. And then have the industry fill in the blank  
21 and say, yes we do or no we don't use them. Or the other  
22 way. And I think that's --

23 So it's possible that DTSC could come up with a  
24 list of priority products that is based on if the chemical  
25 were in one of these products it would be, you know, it

1 would meet the criteria. But I don't think anybody is going  
2 to want that. So it does seem to me that the only other  
3 option at that point is to build a data call-in here at some  
4 point.

5 I think, you know, you could take a very broad  
6 approach to that and do it early in the process. There is  
7 going to be a lot of resistance I think politically to that.

8 And I think it makes more sense to get to a point where you  
9 have a list of chemicals you have prioritized and apply the  
10 data call-in at that point. You may have some things you  
11 have been able to siphon off before that for a fast track  
12 approach but that data call-in then is the primary basis for  
13 setting the stage for moving forward from there.

14 CO-CHAIR GEISER: For those of you who are putting  
15 out some of these interesting new combo ideas, I think a  
16 challenge to you a bit is, you know, to think about how the  
17 regulated community is going to respond to that. In some  
18 ways it sounds pretty interesting, these combination of  
19 chemical and products. But maybe think about it from the  
20 regulated community's point of view too. Which often asks,  
21 you know, I need real clarity. I need very detailed,  
22 specific clarity or I can't do this. So Mike, I guess  
23 that's a little bit of a challenge to you.

24 PANEL MEMBER WILSON: Well I think -- sort of  
25 picking up on what Richard said. That a data call-in, I

1 think it does make sense to have a priority set of chemicals  
2 -- of priority chemicals within chemicals of concern to  
3 narrow that universe and I think get to your question of how  
4 do you send a very clear and fairly well bounded message to  
5 the market that this is the universe of chemicals, priority  
6 chemicals, that we are concerned about in products sold in  
7 the state of California. And, you know, we have heard that  
8 from a number of people around --

9           You know, this really critical piece that is  
10 missing from the flow chart is at what point does this data  
11 call-in happen. And I think, you know, Mike Kirschner  
12 raised a really interesting point on the power of this. And  
13 we have known this for quite some time that manufacturers of  
14 products and formulated products have a very difficult time  
15 getting information on the, you know, what's contained in  
16 their products. And it is often difficult to get that out  
17 of the supply chain and their suppliers are reluctant to  
18 give it to them. And sometimes it is only through the power  
19 of their market share that they can get that information.

20           And so what we are doing here is providing a  
21 vehicle for companies to really improve their operations,  
22 improve the transparency and information in their supply  
23 chains and giving them a tool to do that. And so I guess I  
24 am -- I want to make this an intentional -- encourage this  
25 to be an intentional part of this discussion. I think

1 that's Richard's point about the gorilla in the room. That  
2 we have to address this question of a data call-in. If we  
3 don't do that the product side is going to be lost to us  
4 ultimately

5           And I'll just close. I think there are five  
6 things that are going to be needed in that. The first being  
7 the identity of the product sold in the state. The second  
8 being the identity and proportion of priority chemicals that  
9 are in that product. Third, the number of units of those  
10 products intended for sale in the state. The fourth being  
11 the intended use. And then it would be very helpful for us  
12 to know the manufacturer's expected end of life disposition  
13 of that product. Those five information points.

14           CO-CHAIR GEISER: Okay, thank you, Michael.

15           Is it fair, Odette, to ask you at this point to  
16 sort of say what would you like? We have kind of muddied  
17 the water here. It sounds creative but it would be useful  
18 for us to tell us what you need from this body now.

19           CHIEF DEPUTY DIRECTOR MADRIAGO: Actually I have  
20 been kind of intrigued by, you know, some different new sets  
21 of ideas and the combinations so actually it has been  
22 helpful.

23           In terms of -- and I am looking at the entire rest  
24 of this page in terms of where I think we could most  
25 benefit. In terms of where we are talking about now in

1 Section II, the one area where guidance would be appreciated  
2 that I haven't really gotten specific guidance. And if you  
3 don't have specific ideas right now that's fine. But what I  
4 would ask is that if you come up with them that, you know,  
5 as individual members you send us, you know, an email or a  
6 note. And that is this idea of scheduling, whether it be  
7 for chemicals or products.

8           If you are one of the people who sees value in  
9 that. You know, I have got a long list of possible ways to  
10 divvy up the group for scheduling. So I think we could  
11 really use some recommendations on, your thoughts on how we  
12 would do that scheduling divvying up. So that's one area.

13           Then I'm thinking in the interest of time I would  
14 next recommend we skip to page 10 and look at pages 10  
15 through 12, which are some of the options that some of you  
16 put forward for applying the criteria to prioritize  
17 chemicals. And then I would like to ensure that we have a  
18 brief period of time to go to page 13, which is the  
19 decision-making process, and talk about this whole issue of  
20 the narrative versus a more structured approach.

21           CO-CHAIR GEISER: Thank you.

22           CHIEF DEPUTY DIRECTOR MADRIAGO: Does that help?

23           CO-CHAIR GEISER: Yes, that does help, that does  
24 help. So here is my suggestion. I have on the agenda at  
25 this point Dale, Lauren, Joe, Ann. Anyone else? Is that

1 Kelly? Kelly. Why don't we take the rest of you and then  
2 look at whether we want to take a bit of a break and come  
3 back and then pick up some of these other pages that Odette  
4 just suggested. Does that make sense to people?

5 Okay, that would mean then we would turn to Dale.

6 PANEL MEMBER JOHNSON: Okay. Well this is  
7 starting to sound like creative problem solving that I teach  
8 in two courses. And when you do that you always start and  
9 you flip it around and solve the problem backwards. That's  
10 something you learn in science, you learn in business school  
11 and everything else.

12 So in this particular case in doing that as you go  
13 through you tend not to get into a linear approach to  
14 getting somewhere. Because when you flip it around what you  
15 see is that the end product that you are trying to do, you  
16 never get there when you use a linear approach.

17 And so in this particular case I think, correct me  
18 if I'm wrong, I think the end product is alternative  
19 assessment. And then stimulating the industry and everybody  
20 else to get into this creative and innovative alternative  
21 assessment. So applying this in these particular trees like  
22 this gives -- probably delays that up to three years or  
23 more and you possibly never get there.

24 And so now you go back and say, well how do you  
25 get there, you know. What's the fastest way to get there?

1 Because what you would like to do is get to that stage as  
2 fast as possible, learn from that stage, flip it around  
3 backwards and then see how you can get to that particular  
4 stage faster with the products that actually count.

5           So what Julie was saying, which is part of that  
6 is, you don't do it in a linear fashion. You know, you do  
7 the chemicals of concern and the products of concern at the  
8 same time as you are doing the other. If you are going to  
9 do two lists you do them at the same time so that you get  
10 those things in there the fastest. They are probably the  
11 ones that you already know.

12           And so what you would like to do is get those into  
13 alternative assessment as fast as possible. And I don't  
14 think that's a big --

15           THE REPORTER: We've lost you.

16           PANEL MEMBER JOHNSON: You've lost me? Okay. Am  
17 I back?

18           THE REPORTER: Yes.

19           PANEL MEMBER JOHNSON: So I don't think that's  
20 that big of a task in terms of understanding what are the  
21 most important ones to get there and, you know, how do you  
22 actually do it. Because personally I would like to see -- I  
23 think the alternatives assessment is going to be a  
24 relatively rigorous type of thing to get through.

25           It's going to take some trial and error approaches

1 to actually get there and to see how it works. So that --  
2 And what you want to do is you want to do it on the ones  
3 that are the most important first. And then learn from  
4 those and then go back and then start -- and then as you're  
5 doing it you're percolating the other ones to get to that  
6 particular approach.

7 I just do not like a linear approach to get there  
8 because I don't think you'll ever get there. So that's it.

9 CO-CHAIR GEISER: Lauren.

10 PANEL MEMBER HEINE: Thank you. I'm intrigued by  
11 the data call-in idea and sort of tracking this to some  
12 things that are already happening in the marketplace such as  
13 in response to RoHS and such as in response to retailer  
14 requirements whereby manufacturers are using software tools  
15 to get disclosure on formulations and components all the way  
16 down their supply chain and then having these components  
17 screened against lists.

18 So that while they may not see the composition of  
19 certain components in their own products they will know that  
20 those components have been screened against certain lists.  
21 So I think the timing is really good. These tools are  
22 emerging in Europe and the US that really are allowing  
23 people to have greater insight into their own products using  
24 tools that benchmark their products against these lists.  
25 And I think that is a very important innovation that is sort

1 of already emerging.

2           And I just would encourage while I think I like  
3 the idea of a data call-in maybe I'm compromising too soon.

4       But the idea where there could be an opportunity for sort  
5 of a third party role in terms of screening the supply chain  
6 for chemicals of concern to help manufacturers know what is  
7 in their own supply chains.

8           CO-CHAIR GEISER: Next would be Joe.

9           PANEL MEMBER GUTH: Okay. Non-linear, does that  
10 mean jumping around? (Laughter). Never mind.

11          PANEL MEMBER JOHNSON: No, it means being  
12 innovative.

13          PANEL MEMBER GUTH: Okay. Okay. So I -- I think  
14 there is a lot of appeal to this idea of doing a data call-  
15 in once we identify a chemical as a priority chemical. Do a  
16 data call-in, find out what products contain that chemical.

17               So I'm thinking about the issue of well now should  
18 that list of products become a products under consideration  
19 list that's then publicly available, I guess. So I'm  
20 thinking about that. I'm really of two minds, Tim, or  
21 whoever started this. (Laughing).

22          MS. HECK: Art.

23          PANEL MEMBER GUTH: On the one hand, on the one  
24 hand I would tend to advocate, yes, it should be public.  
25 There's a public process. DTSC is doing a data call-in.

1 The results of that ought to be made publicly available.  
2 There are a couple of things that happen. One is, you know,  
3 is informing the market. So even if a product doesn't  
4 become a priority product there is incentive for  
5 manufacturers to start moving away from using of that  
6 priority chemical. There are -- So, you know, there is some  
7 appeal to that.

8           On the other hand I think in an earlier set of  
9 regulations -- I mean, what that can cause is manufacturers  
10 will say just, you know, regrettable substitution problem  
11 just to get themselves right out of the regulation. And  
12 DTSC had a very elaborate scheme set in place to keep people  
13 from doing that. If they did a substitution they had to  
14 notify the department and there were all these -- it becomes  
15 a very -- it became a very burdensome thing on its own.

16           And then another, another -- and then another  
17 thing is I think there will be a lot of CVI concerns with  
18 information that comes in on this data call-in. Probably  
19 most of it will be CVI. And that is going to not be  
20 something that can be disclosed under the authority of the  
21 statute I guess we sort of need to hear about that. Then it  
22 is not going to be disclosable, you know, anyway.

23           So that leaves the other side of my mind. Maybe  
24 it would be best to just not have, to not even attempt to  
25 make that list publicly available. But I don't know.

1 That's -- I don't know how to resolve that right now.

2 CO-CHAIR GEISER: Okay. As I said I am trying to  
3 move toward a break here. I have Ann and Kelly and now I  
4 also have Mike, Michael and Meg. So I am going to ask  
5 people to be short. Ann.

6 PANEL MEMBER BLAKE: You always say that right  
7 before me. (Laughter).

8 So I am struggling here a little bit because I am  
9 trying to spin this as positively as I can but I think what  
10 I have is a potentially cautionary tale. I am all for a  
11 data call-in also but we do have a cautionary tale in the  
12 state of California around consumer products.

13 And at the risk of having this be my Kelly brake  
14 pad equivalent I am going to bring the California Safe  
15 Cosmetics Act back up again because that was a mandatory  
16 data call-in. It was for a defined set of hazard traits for  
17 a subset of consumer products. And there are some things  
18 that we could learn from that so I would point people  
19 towards the California department -- the Department towards  
20 the California Department of Public Health and some of the  
21 lessons learned from that.

22 We got both under-reporting and over-reporting and  
23 sort of the distracting reporting. Like look over here,  
24 something shiny but really not that relevant.

25 So under-reporting, there were things that we

1 expected to see that were not reported in products;  
2 formaldehyde was a big one. In the over here something  
3 shiny, for those of you who know this product, for this  
4 chemical this is sort of appropriate, titanium dioxide was  
5 reported by everybody. The exposure was not all that  
6 relevant for consumer products. So those are the kinds of  
7 things that I wanted to flag.

8           So trying to flip this more positive. On the  
9 positive side of this, it did make the landscape pretty  
10 clear for a very small number of hazard traits and a  
11 sizeable chunk of products but a relatively limited number  
12 of types of products and it also showed the data gaps and  
13 some of the concerns that came up. So you may get some  
14 things that are reported like the titanium dioxide issue  
15 that is in virtually every product that is reported but it  
16 turns out to not be an exposure issue. So you are already  
17 starting to tackle that chemical in a product conjunction.  
18 So I will just leave it at that.

19           CO-CHAIR GEISER: Kelly.

20           PANEL MEMBER MORAN: All right. I have got three  
21 brief points. First I just want to echo what Dale said  
22 about the linear decisions and how that doesn't really work.  
23 My experience with that is that every time we try to work,  
24 everyone wants to argue about the early points because they  
25 are all playing it out to the end. And it is so much more

1 efficient if you just work your way through it and get to  
2 the end and say, here is what we come to based on the linear  
3 thinking process that we did.

4           In terms of scheduling I want to respond to  
5 Odette's request that we provide some feedback on that. And  
6 my feedback is that I think that the Department should be  
7 laying out a work program for initiation of alternative  
8 assessments and that they should be revisiting that.

9           And so the regulations might say, not less  
10 frequently than every so many years the Department will  
11 issue an updated work program.

12           And in that way the Department would be providing  
13 scheduling. So rather than laying out a set of criteria and  
14 having to do some other thing in scheduling, that would just  
15 be encompassed right in the same set of things that the  
16 Department was seeking comment on. That would be very  
17 efficient.

18           So that's, so basically the idea is that the  
19 Department gets all the information and applies the  
20 criteria, proposes the list, the work program with the  
21 products and chemicals and out of that it may decide, a data  
22 call-in, I'm not going to comment on that specifically, but  
23 then it will, every so often, update its work program.

24           And this is what ARB did. And so that offers the  
25 opportunity to change and modify and amend the work program

1 every so many years recognizing that the work program might  
2 be short. Just the first one might just cover the next  
3 couple of years.

4 And then subsequently may look out further into  
5 the future to help signal the industry that this is coming.  
6 And there would be considerations given to how that's going  
7 to work best based on experience. And you have a question  
8 for me.

9 CHIEF DEPUTY DIRECTOR MADRIAGO: I think I  
10 understand what you're saying. I'd have to think about this  
11 some. But I think we're still going to have to articulate  
12 what the criteria and thought process will be for divvying  
13 up things into bins.

14 Even if we do the divvying up in the listing  
15 process itself rather than the regulations --

16 PANEL MEMBER MORAN: Yeah --

17 CHIEF DEPUTY DIRECTOR MADRIAGO: -- so I just --

18 PANEL MEMBER MORAN: -- I actually wouldn't  
19 recognize --

20 CHIEF DEPUTY DIRECTOR MADRIAGO: -- I keep pushing  
21 you guys back there to that hard decision --

22 PANEL MEMBER MORAN: -- yeah. I'm actually not  
23 thinking about divvying into bins. I would be thinking that  
24 you would pick priority products -- chemicals, products with  
25 priority chemicals in them and you'd be saying, we're going

1 to do this one and this one and this one and your order  
2 would, your sequencing would be based on practical  
3 operational considerations.

4 And you'd be asking for public comment on that, on  
5 the sequence of events as well as what's in there.

6 But I would not, I'd, I'm not at, my comments do  
7 not suggest that you would take future groups of chemicals,  
8 put them into bins and be exploring them and that would be  
9 part of this kind of work program; the work program that I,  
10 the scheduling that I'm thinking about anyway would just be,  
11 here's a list of products that we're going to call on, start  
12 on, the alternatives assessment process today and in three  
13 months, in six months, in nine months, you know, whatever.

14 Okay. So that's a quandary that I thought so the  
15 third one I'll just say very quickly. This kind of  
16 transitions us to the next thing.

17 Bob Peoples was thinking, exactly, the way I was  
18 thinking when I colored that little green box over here on  
19 the chart.

20 And I wanted to thank him for bringing that up. I  
21 think a lot of the stuff we're about to start talking about  
22 and some we have already talked about belongs into DTSC's  
23 own work and not necessarily, you know, in fact, not written  
24 into the regulations.

25 So that's something to think about as we go into

1 the next set of discussions.

2 CO-CHAIR GEISER: Michael -- short.

3 PANEL MEMBER KIRSCHNER: Yes. This will be short.

4 I just want to address Joe's point here about the cautionary  
5 tales about the data call-in and public and CVI issues,  
6 perhaps give some thought, ideas on how to address that.

7 Because I too worry if that becomes public. And I  
8 know the manufacturers are too.

9 A couple of ways around this. You don't have to  
10 have manufacturers provide you with the identities of  
11 specific products. They can provide a product class, use a  
12 harmonized system code, UNSPSC codes, something like that.

13 Give, there are standard codes, customs and trade  
14 tariff codes that could possibly be used.

15 That will give you a class of products. And  
16 that's really what you want. You don't want specific  
17 products.

18 In addition, your being a chemicals agency, one  
19 additional, potentially useful piece of information is the  
20 use of that chemical in that product. How was this chemical  
21 used?

22 European Chemicals Agency has devised a standard  
23 method for defining chemical uses which could be very useful  
24 for that.

25 And would say that those two pieces of information

1 should be what you ask the manufacturers for. Is, what  
2 class of product in this in and what is the use?

3 Both can be done in standard forms.

4 CO-CHAIR GEISER: Meg.

5 PANEL MEMBER SCHWARZMAN: This is quite brief and  
6 also in response to what Joe said. I appreciate your  
7 willingness to stick your neck out and play with an idea  
8 about whether there should be this PUC List.

9 No, I just, I can -- what popped to mind is an  
10 example that might, that you alluded to in a sense. Is so,  
11 say, you identify a priority chemical and then you have this  
12 call-in that says what products in this in?

13 And then you were sort of supposing, what if you  
14 make that a PUC List. And seeing the trap of, well somebody  
15 just switches out of that chemical and then they're no  
16 longer on the PUC List.

17 And I think that's what sort of sinks that idea  
18 ultimately which is kind of where you were going with it I  
19 think.

20 The example of BPA in thermal paper. So there's a  
21 use of a chemical that nobody would have flagged right away  
22 as a leading source of exposure. Who knows yet if it's  
23 really the leading one. But it looks like it's probably  
24 fairly significant volume anyway.

25 And there are many makers or there's at least one

1 maker of thermal paper who has a BPA-free paper but it just  
2 has BPS in it.

3           And so if that kind of thermal paper with BPA in  
4 it was on the priority chemical, was on the PUC List and  
5 then using BPS gets you off the PUC List then we're not  
6 doing the alternatives analysis that we want to be done.

7           So instead you say, okay, there's BPA in thermal  
8 paper now. Let's do an alternatives analysis. Oh, there's  
9 BPS, there's this, there's that, there's a different UV  
10 technology, whatever.

11           So that's my sort of vote, example for a vote  
12 against that. But thank you for putting it forward because  
13 it made me think of it.

14           CO-CHAIR GEISER: Okay. So, for those of you who  
15 may be a little lost in what has happened in the last, in  
16 the last, say, half hour here; what has happened is that, I  
17 think, that a distinction that we made early on and that the  
18 Co-Chairs and all were involved in making was that we could  
19 handle the chemical issues separate from the product issue.

20           It worked fine as long we kept the subgroups apart  
21 (Laughter). And what has happened here is we've brought  
22 people -- and actually, Debbie had forewarned about this.

23           She said it when we debriefed ourselves. She  
24 said, it's been a little bit hard to talk about the  
25 products, without, they kept wanting to slip back to talking

1 about the chemicals. Although it didn't happen the way.

2           The chemicals people didn't want to necessarily  
3 talk about the products. It had a one-way linear kind of  
4 relationship.

5           But bringing it together, what has happened, I  
6 think, is we've begun to realize that these two things are  
7 very closely integrated.

8           And in order both for really -- for moving quickly  
9 as well as for moving effectively, it may be that we want to  
10 find ways to unite these more closely.

11           And then there's call-in thing which became a kind  
12 of tool in the middle of it all and people wanted to kind of  
13 talk about, well how a data call-in could help to clarify  
14 what chemicals are in what products and then generate a list  
15 of products automatically from that tool.

16           So I think that's where we kind of went. It  
17 wasn't necessarily following the discreet pattern here.  
18 But for those of you who were lost I think that's what,  
19 where we're getting to.

20           So why don't we take a little break here. We're  
21 going to do a little confab here and Odette has given us an  
22 idea of what she would like us to still focus on in the  
23 latter part of the afternoon but I think we all deserve a  
24 good 15 minute break.

25           (Off the record at 2:40 p.m.)

1 (On the record at 2:58 p.m.)

2 CO-CHAIR GEISER: Okay, welcome back. So, welcome  
3 back now to creative brainstorming here. What we've, Odette  
4 has spoken to us about what she would like to spend some  
5 time on here.

6 It has to do with the sections that start on page  
7 10. Start on page 10 and go through to the end which is  
8 page 13.

9 Now what you're going to see if you look at what  
10 is known as Section III. There are a set of options for  
11 using criteria to prioritize chemicals in products.

12 And if you were like some of us and tried to  
13 create some logic about what these different options are, it  
14 made it difficult because some of them cross each other and  
15 some of them seem to be overlapping and all.

16 And that's because what Odette did is she took  
17 clusters of these from the actual subcommittee reports and  
18 plugged them in here.

19 And they are, they aren't necessarily intended to  
20 be completely distinct.

21 And what she would like and feels like the staff  
22 would be most advantaged, is if we spent like maybe 10 to 15  
23 minutes just looking at this section which is really six  
24 options. But also just sort of being creative about this.

25 And then we will move to the last section which

1 really, she has questions here that really do need to be  
2 answered which have to do with the actual decision making  
3 process.

4           So what I would like to suggest to you is this  
5 next section is kind of a light and enjoyable section of  
6 (laughter) sort of your own fancy thinking about these  
7 approaches or these ways of thinking about using the  
8 criteria to prioritize chemicals in products.

9           And they range, I don't know, Odette do you want  
10 to say anything about giving us a little start on any of  
11 these that just -- or do you want us just to look at them?

12           CHIEF DEPUTY DIRECTOR MADRIAGO: I don't think I  
13 have anything to add that Ken hasn't said. I basically, I  
14 was challenged to trying to sort through these.

15           And so, I frankly, for the most part just kind of  
16 picked them up out of your written comments; maybe tweak  
17 them a little bit but not very much, so.

18           CO-CHAIR GEISER: So take a minute. Look at these  
19 or take a couple of minutes and look at these and do these  
20 stimulate a way that you say, no, I really like this one  
21 called 3C and here's why and all.

22           Sorry, I have Rich's card up.

23           PANEL MEMBER LIROFF: Yeah.

24           CO-CHAIR GEISER: Rich.

25           PANEL MEMBER LIROFF: Thank you Chair. Yeah, this

1 is the fun section of the discussion today (laughter), I  
2 hope.

3 I'd like to pick up in starting this discussion  
4 looking at some of the suggested data points that are on, in  
5 Section III, Option 3, 3A and B. I see references to  
6 products that contain PCs identified as PBTs, reference to  
7 credible evidence that the product contains a PC, that kind  
8 of thing.

9 At the risk of incurring the wrath of the Chair  
10 I'd like to pick up on a comment that Lauren offered at the  
11 end of the last discussion section in the context of the  
12 data call-in.

13 Because I think we got stuck on that a little bit.  
14 And I think we ought to be thinking a little bit more about  
15 how readily we can get some information. What sort of  
16 private sector solutions there are to getting the  
17 information we need.

18 Because if in fact there are some less-cumbersome  
19 private sector solutions that are out there to a government  
20 data call-in, we might be able to cut through this whole  
21 issue of how do we pick, how do we identify priority  
22 products?

23 Lauren was very guarded. She didn't mention any  
24 trade names. She didn't mention any specific retailers and  
25 supply chains and the like. But the reality is that there

1 are systems that are out there that currently have  
2 information on PBTs, CMRs that are based on authorized body  
3 lists, however one defines, authorized bodies. And we've  
4 all discussed that there are different authorized bodies.

5           And I guess my suggestion would be that in, as we  
6 brainstorm what criteria we want to use, we keep in the back  
7 of our minds the fact that there are private sector  
8 solutions that are out there.

9           And, perhaps, there is some very, very creative  
10 ways in which the state of California can either itself tap  
11 into these solutions or, in the alternative, encourage more  
12 players in the private sector to tap into these solutions  
13 because the kinds of costs in gathering data, in identifying  
14 priority products and the like can be substantially driven  
15 down because the reality is that those data have already  
16 been gathered.

17           And I'm just going to stop there. Thank you very  
18 much Chair.

19           CO-CHAIR GEISER: Is there any reason why you  
20 don't want to list some of these sources? Are we, are they  
21 so secret that we --

22           PANEL MEMBER LIROFF: No. I mean out there  
23 there's Green Works okay. And Walmart and all the  
24 suppliers, the major suppliers to Walmart put their  
25 information there.

1           There's BOMcheck Lauren mentioned to me that has  
2 to do with RoHS in Europe. You know, I was sitting here at  
3 the end of the table trying to figure out, I've been quiet  
4 all day, I've been trying to figure out, well how do I plug  
5 into this conversation about data call-ins and priority  
6 setting.

7           And I was sitting here thinking to myself, well  
8 you know what, if I walk into a Walmart store they've got  
9 the systems so I'll mention them by name. You know, they  
10 sell into all these American households.

11           They sell consumer products. And I was thinking  
12 to myself, you know, we have in the peer reviewed literature  
13 all these studies of household dust and that kind of thing  
14 and inferences being drawn about sources of, consumer  
15 sources of brominated flame retardants and PBC and that kind  
16 of stuff; the reality is that if one wants to pursue, maybe  
17 it's an overstatement to say the reality is, I think that  
18 one can get a strong leg up in terms of trying to figure out  
19 what the priority sources of products are and that are  
20 sources of priority chemicals of concern.

21           And one can organize assessments of alternatives  
22 based on a ton of data that are already sitting out there in  
23 software systems.

24           And one could even say, okay, how much of this  
25 stuff is sold in stores in California? Boom. And then go

1 from there.

2 And, hopefully, just really move things along  
3 because what I'm, I think we're all struggling. We have  
4 been struggling in all these meetings.

5 How do we get a workable system? And  
6 understandably because it's a regulatory system, you know,  
7 you have to dot all the "i"s, cross all the "t"s, make sure  
8 the Legislature is satisfied, that kind of stuff while all  
9 the while there are people who want to do the right thing in  
10 the private sector who, in fact, are gathering data and  
11 looking systematically. Staples is just, you know, the most  
12 recent of those. And Roger could talk about his examples.

13 And it seems to me that if we think about those  
14 private sector examples we can try to figure out, okay,  
15 which of these criteria-based systems seem to work best.  
16 Thank you.

17 CO-CHAIR GEISER: Thank you. So what I'm going to  
18 do is I've got Art and Roger and then Tim, Richard and  
19 Kelly. So, Art.

20 PANEL MEMBER FONG: Just a brief follow up to  
21 Richard's comment about using private sector tools and  
22 systems that are already in place.

23 I think one of the benefits of doing that is  
24 you're going to be able to get information on chemicals  
25 that, in fact, would be of interest because we're not

1 collecting information on just random chemicals but  
2 specifically on chemicals that may be regulated and some  
3 other types of actions such as RoHS or REACH.

4           So, in fact, those chemicals are likely going to  
5 be the priority chemicals under this particular effort. So,  
6 in fact, I think that's an excellent idea and it, in fact,  
7 will give you the kind of information that would be useful  
8 for moving us forward. Thank you.

9           CO-CHAIR GEISER: Roger.

10           PANEL MEMBER McFADDEN: Thank you. I think we  
11 might be demonstrating why large retailers today are feeling  
12 they need to become chemical management experts and what  
13 some have called, quasi-regulatory people, which I have a  
14 challenge with in businesses today because that's not that  
15 core business.

16           That's not what they're about. But they're being  
17 driven to that because of this huge demand from their boss,  
18 the consumer, people who buy things wanting to know.

19           And irrespective of why they want to know it or  
20 anything else, these large businesses throughout the United  
21 States including California are compelled to have to answer  
22 the question.

23           And so maybe this is demonstrating why that's  
24 happening. I would hope that we can by leveraging the  
25 private sector and what the private sector has been either

1 forced to do or done on their own for whatever reason; could  
2 be used constructively with this regulatory process that  
3 you're going through here to find a meaningful solution to  
4 this because it's so important to be able to do that.

5           And so, it's my belief that if there might be a  
6 way that DTSC could engage, not here, not in this forum, but  
7 to engage the private sector in those places where they have  
8 been, have been forced to go or have gone on their own might  
9 be useful to look at some tools, some ways to do this.

10           Because there have been some large companies today  
11 who have found a way to identify a list of chemicals in  
12 their own, sometimes not so linear way or, but nevertheless,  
13 they are always based on the demand, and to Art's point,  
14 those chemicals are in products. They're already known to  
15 be there. They're either regulations that are driving that  
16 of sometimes it's customers who can regulate just as much by  
17 driving it.

18           And maybe that's a good place to begin to, you  
19 know, look at some ways to identify some of these, at least,  
20 beginning lists that I would agree need to be manageable.

21           The size of those, the scope of this needs to be  
22 manageable. How do I know? Because when you're in a  
23 business you have to manage that too.

24           So you can't just take the 5, 10, 15 thousand  
25 chemicals within a supply chain and instantly create a

1 process by which you manage all of that. It just can't be  
2 done anymore than you could manage that many products at one  
3 time at the start.

4           So I think I feel your pain. But I wonder if  
5 maybe there isn't a way to begin to get the private sector  
6 engaged a little more.

7           CHIEF DEPUTY DIRECTOR MADRIAGO: Well, let me just  
8 make a very quick request. Those of you who have ideas  
9 about the sources I would sure appreciate it if you'd send  
10 me an email or something along those lines.

11           CO-CHAIR GEISER: Okay. So what we've heard there  
12 is, as several people say, that there are these private  
13 information sources and private experiences that the state  
14 should review and sort of think about that. So, we maybe,  
15 don't need to beat heavily on that. That point has been  
16 made.

17           So what I have here now, is, and again, I'm trying  
18 to focus a little bit on these various options that, of how  
19 to use criteria to help prioritize. And I have Tim,  
20 Richard, Kelly and Rich -- Michael, Michael, sorry.

21           So that would be Tim.

22           PANEL MEMBER MALLOY: I just wanted to note,  
23 Richard actually had his thing up before I did. So I don't  
24 want to like -- Okay. So, I just wanted to, if I may, I  
25 wanted to add one word about this call-in notion. It's

1 relevant. Can I do that or --

2 CO-CHAIR GEISER: If you keep it short because --

3 PANEL MEMBER MALLOY: It's very short. I would  
4 just like to -- I appreciated Anne's comments about the  
5 cautionary tale and Joe's points. And I just wanted to, to,  
6 I think, and also Richard's points about the private  
7 sources; and I would just like to emphasize -- I'm a big  
8 supporter.

9 In fact, I think the call-in of some design and  
10 magnitude is going to be inevitable and necessary. So, I  
11 feel that very strongly.

12 But I think all these points are also very  
13 relevant in that what's already out there and available  
14 ought to be integrated with whatever goes on in terms of a  
15 call-in.

16 But on the other hand I'd also, you know, issues  
17 like CVI and regrettable substitution, I think those are  
18 more kind of tactical issues associated with a call-in and  
19 those are implementation issues.

20 I don't think that they are things that should  
21 guide whether there is a call-in or not. I mean you can fix  
22 stuff like that, regrettable substitution. You don't have  
23 to ask people what they're using now in their product. You  
24 could ask them if it's in their product now or has been in  
25 the last two years.

1           And now you've got even better information because  
2 now you have an indication of what people have switched out.  
3 And so maybe that helps you with your alternatives analysis.

4           So that's all I'll say about that. But on the  
5 prioritization stuff; I had to kind of, kind of think of it,  
6 synthesize these options and I came out with a number of  
7 dimensions on which they differ and what seemed to be  
8 driving them.

9           And one dimension seemed to be a balancing  
10 approach versus a threshold approach.

11           So, you know, the option on page 10, Option 3A  
12 seems to be a threshold approach. You have to, if all of  
13 these things are true then you prioritized whereas Option  
14 3C, at least as I read it seems to be a balancing approach.

15           You're going to look at all these factors and  
16 you're going to develop a prioritization by, you know,  
17 trading off or in some measure between those. And, I guess,  
18 what I would say is I tend to kind of trend more towards a  
19 balancing approach.

20           One thing I noticed about the threshold approach  
21 is that they seem to be relatively single dimensional.

22           So a number of them seem to be focused almost  
23 exclusively on exposure-related issues as opposed to hazard-  
24 related issues.

25           And so in a balancing approach I think as in C,

1 although I may not like sign up for all those factors, I  
2 think it is important to take into account the hazard or  
3 exposure issues and so on and so forth.

4           So I guess I would say I would be very supportive,  
5 more supportive of a balancing approach rather than a  
6 threshold approach.

7           Within that I'd like to just say a couple of  
8 things about particular things. So Mike had before  
9 expressed skepticism about externalized costs and, you know,  
10 the unanswerable questions. And I think we, I would  
11 emphasize, you want to be careful about that because if you  
12 have these criteria that are either too vaguely defined or  
13 too broadly defined it's going to foul up the process, slow  
14 things down.

15           Although I think that it is possible perhaps to  
16 identify meaningful surrogates for things like externalized  
17 costs and such meaning, you're not trying to actually do a  
18 quantification of what the health costs associated with a  
19 particular chemical is or the clean up costs.

20           But I think you can identify some rough  
21 differences between products based on available information  
22 about, you know, say you kind of have a qualitative sense,  
23 orders-of-magnitude sense between those.

24           So I would still encourage the use of things like  
25 what is the actual impact, you know, in terms of like, how,

1 you know, the health care costs and, you know, harm to the  
2 environment in terms of actually, you know, public monies  
3 being spent on dealing with these external, externalities.

4           So I still think it's valid but I think you've got  
5 to be careful about what you come up with.

6           The other thing is I really continue to be very  
7 concerned about this use of whether there's a safer  
8 alternative or not being a prioritization particularly in  
9 the threshold approach where essentially if you don't meet  
10 that you're not getting, going to get prioritized, at least  
11 the way it reads right now in 3A.

12           For example, so, and I don't think I have to beat  
13 that dead horse but, this it rears its head again here.

14           So I think I get, I hadn't thought about that but,  
15 you know. And I guess that is basically, I had here a note  
16 that says, single versus multiple and I don't remember what  
17 that meant so -- if somebody can figure it out I add that as  
18 well (laughter).

19           Otherwise I withdraw it.

20           PANEL MEMBER GUTH: Is that, is that talking about  
21 your mind (laughter).

22           PANEL MEMBER MALLOY: Oh, it's the multiple  
23 personality problem, right. Yeah. All right --

24           CO-CHAIR GEISER: Thank --

25           PANEL MEMBER MALLOY: -- so, thank you.

1 CO-CHAIR GEISER: Thank you Tim. And it was quite  
2 responsive. So, thank you. Richard.

3 PANEL MEMBER DENISON: Thanks. I will speak to  
4 the prioritization criteria but, before I do so I really do,  
5 I'm all for leveraging what's going on in the private  
6 sector.

7 But I think, frankly, Rich you really glossed over  
8 a number of major limitations to what even Walmart is doing.

9 It's only formulated products. Walmart cannot  
10 know what those chemicals are. That is a highly proprietary  
11 black box system. And the notion that that would be able to  
12 be translated into this context I think is really a stretch.

13 So if that, I think the connection here is if that  
14 companies have already had to submit that kind of  
15 information into that system it should be that much easier  
16 for them to submit it into this kind of a system.

17 So the, but in that respect I agree with you. But  
18 I think, I think we should not overstate and the level at  
19 which these exercises are going on.

20 So, okay. Prioritization criteria. It seems to  
21 me and maybe I'm missing something here. But all of the  
22 criteria that are sprinkled throughout here that are hazard-  
23 based I really don't quite understand.

24 To me at this point you're already dealing with  
25 chemicals that have been prioritized based on hazard

1 information among other things.

2           And it seems to me that the step of prioritizing  
3 products really is, ought to be driven by exposure.

4           And it ought to be driven by who is being exposed  
5 or what is being exposed and the expectation of the  
6 likelihood and the nature of that exposure.

7           So factors around route of exposure, vulnerable  
8 populations et cetera ought to be driving, the main drivers  
9 of the prioritization process.

10           And that's because the hazard aspects of this -- I  
11 just think it's going to be weird if you're then, somebody  
12 said this earlier, you're pitting a neurotoxicant against a  
13 carcinogen and that ought to be done in a prioritization  
14 process it seems to me for the chemicals, so.

15           CO-CHAIR GEISER: Great, thank you. So Kelly  
16 would be next.

17           PANEL MEMBER MORAN: Thank you Chair. Just to get  
18 back to Richard. The reason I think that hazard is actually  
19 important here is that we're talking about a process that  
20 would prioritize both chemicals and products.

21           And so, hazard and exposure, because at, we've  
22 been having this conversation about chemicals and products  
23 and considering it together and so forth and at least I'm  
24 personally thinking about these criteria as criteria that  
25 we'd use to prioritize chemicals as well as products because

1 we're so linking the chemical and product prioritization  
2 process.

3 That said, I think that, and I can see you  
4 reacting because I actually think that said, that we decided  
5 that there, I think that the conversation has also said, we  
6 may have a longer list of chemicals where we're thinking  
7 about hazard.

8 So both of these things are true. What you said  
9 is true to the extent that there's a longer list of  
10 chemicals where we're worried about hazard but the whole  
11 conversation, we keep coming back to the fact that hazard  
12 and exposure are linked or coming up with the, what products  
13 are going to get to be part of having an alternatives  
14 assessment.

15 I mean I think that was the outcome of a lot of  
16 our discussion today.

17 PANEL MEMBER DENISON: Can I respond?

18 PANEL MEMBER MORAN: Before I go on it's up to you  
19 if you want to do that or not.

20 CO-CHAIR GEISER: Some clarification of that --

21 PANEL MEMBER DENISON: Ken, it gets to your  
22 summary at the end of the last, before our break which I  
23 actually respectfully disagree with.

24 I do not think that what we've done is to collapse  
25 chemicals and products. I think what we have done if we've

1 done at all is to collapse the two steps of the product  
2 system together, the PUC versus priority product.

3 But to my mind, if anything, by talking about  
4 where the data call-in might come in et cetera we actually  
5 created an, if anything, a firmer delineation between the  
6 chemical side and the product side.

7 And I know you disagree Kelly but that's how I see  
8 it. So when I look at these criterion it says, priority 1  
9 products, okay. That's what I'm reacting to. Page 10.

10 Give highest priority to products, to products, to  
11 products --

12 CO-CHAIR GEISER: No, we're on 10, we're on 10.  
13 Ten and yeah -- All right, let me ask, let me give the  
14 floor back to Kelly to respond to that.

15 PANEL MEMBER MORAN: Yeah. I think I'm just going  
16 to move on because I'm sensing some disagreement. But I  
17 don't think there's really as much disagreement as Richard  
18 thinks there is.

19 So with that I think I'll, given the hour and our  
20 goal of moving on I think I'm going to do that.

21 And I want to share what Tim pointed out and kind  
22 of re-emphasize that there are, these criteria are kind of  
23 apples and oranges. They're screening criteria and, you  
24 know, threshold kind of things. And there's balancing  
25 criteria.

1           And I too am a proponent of balancing criteria for  
2 the prioritization process both for chemicals and for  
3 products containing those priority chemicals.

4           And I'd also want to point out that I think that  
5 some of the screening criteria and numeric processes, some  
6 of the attachment and so forth, that all falls in the green  
7 box on my little flow chart.

8           So I don't want to dismiss those. And no one  
9 should take my comments as saying, those things are not  
10 important or valid approaches for prioritization.

11           So, I, they are a very big conversation in and of  
12 themselves frankly. But in terms of writing into  
13 regulations I think that the science is one piece of the  
14 decision making and that there are other factors that are  
15 part of the decision making.

16           And that's why a balancing approach is such a good  
17 one. Because if you think about how we make decisions we go  
18 through what, we might go through a logical process to make  
19 a decision but we often wind up making a decision that we'd  
20 get that logical outcome and we say, all we really want to  
21 do the other thing.

22           And why is that? It's because of other factors  
23 that play into our decision making other than just pure  
24 logic.

25           And that's just how people are. And that's how we

1 need to be. We need to consider all of those different  
2 factors in doing that.

3           So that said, I know that there will be at least a  
4 couple of screening criteria for DTSC because the  
5 regulations or the law requires them. It requires that  
6 unless there's a hazard trait it can't be a chemical of  
7 concern and you can't be doing it.

8           So that's the screening criterion and I think  
9 there's another one which is that the overlapping regulation  
10 piece -- actually winds up being a screening criterion too.

11           But I would urge DTSC to focus more on the  
12 balancing criteria for these things. And C actually came  
13 out of my, of a proposal of mine and it's been a little  
14 reworked.

15           And further, our discussions today have informed  
16 how I thought about it. So if I were to write it this  
17 afternoon it would be different than how I wrote it when I  
18 said it to Odette.

19           And that's one of the things that's really great  
20 about this group. Because everybody sees things in  
21 different ways.

22           So I know Odette will come with something  
23 different.

24           So I'll just say a couple things about it. One is  
25 that in evaluating a set of balancing criteria I think

1 balancing criteria do need to be narrative in nature and  
2 that will play out in the, when we have the next discussion.

3 But I just don't think that there is any other way of doing  
4 it.

5 And I also think that the Department needs to be  
6 able to make decisions on the basis of a weight of evidence  
7 determination.

8 So it should not have to go do a risk assessment  
9 to figure out all the various balancing criteria. It should  
10 be saying, what's the evidence we have in front of us, how  
11 do we balance the various criteria based on the weight of  
12 evidence.

13 And that weight of evidence approach is very  
14 common in the water world. And I know it's embodied in  
15 regulatory approaches elsewhere. So I'm hopeful that that  
16 would also work here.

17 And then finally, to the extent that I'm looking  
18 at 3C, the threat to human health and the environment, what  
19 this was trying to get at and the bullets below it which I  
20 had actually represented a little differently, extent to  
21 which the chemical of chemical ingredient exhibits one or  
22 more hazard traits, you know, how really harmful, toxic is  
23 it and the potential for an extent of human exposure, you  
24 know, with, if we have monitoring aid or something like  
25 that.

1           Can we really prove this is a problem? We can't  
2 always, all the time. So I think it's actually really  
3 important that the Department be able to also consider  
4 exposure trends.

5           This is skyrocketing and the weight of the  
6 evidence is that it's not so great.

7           And then volume is there not because I wanted to  
8 put it there but it's actually a statutorily required  
9 consideration.

10           So --

11           CO-CHAIR GEISER: Thank --

12           PANEL MEMBER MORAN: -- and then, just also, the  
13 sub-population thing I would present that very differently  
14 than is presented in this bullet. And I did so to Odette.

15           So I guess I won't go into this here.

16           The last thing I'll say is that the cost and  
17 alternatives and information received from the public, these  
18 are actually the social and environmental balancing factors.

19           And I don't think I've worded them very well.

20           But what I would suggest that you all react to  
21 instead of the specifics of that is this approach of  
22 balancing criteria and narrative standards, these kinds of  
23 ideas in setting the priorities.

24           CO-CHAIR GEISER: I think that is the way Tim was  
25 laying it out as well, yeah. Michael.

1           PANEL MEMBER WILSON: Thank you. I think it's  
2 essential that we deal with the hazards side at the chemical  
3 of concern and this whole process of prioritizing chemicals.

4           So we end up with a list of priority chemicals.  
5 That's going to be hazard-based. And I think, you know, as  
6 Richard has said, the next question then is, is there a  
7 question of, has to do with exposure and use in California.

8           And so, you know, in terms of, I think, you know,  
9 Kelly with all due respect to the challenge and the need to  
10 have a balanced approach we have, we're looking at a  
11 situation where we have 164 million pounds of just of  
12 formulated products sold everyday in California, 10 year old  
13 data.

14           In hundreds of thousands of, if not millions of  
15 products, and so I don't think we have the luxury to engage  
16 in that kind of deliberation at this point.

17           And so I would, I think that what DTSC has  
18 proposed here in the various options, the one that gives us  
19 sort of quantifiable and answerable questions around  
20 exposure is the, is 3D.

21           And I would, I would amend the opening sentence.  
22 "Give highest priority to products needing any one of the  
23 following criteria". And I would strike, "and" at the end,  
24 of course, of that set of bullets.

25           I think Option F, Option E, C are all enter into

1 questions that in various ways are unanswerable. And the  
2 Option A of further classifying Priority 1 and Priority 2  
3 products enters into another potential quibbling and I don't  
4 think it's actually necessary.

5           So I think 3D is fine and, you know, the Swedish  
6 Chemical and, product registry has been doing this for 35  
7 years. They've dealt with CVI questions. They've been able  
8 to track the increase or the decline of hazardous products  
9 on the market.

10           And so, there are workable models for the data  
11 call-in issue.

12           We also are gathering data at the County level  
13 with CUPAs. And so, and that's been very important in the  
14 state of California.

15           So, and I guess, the last piece of this is that  
16 there may be a way for us to use some of the TSCA inventory  
17 update rule data looking at priority chemicals that appear  
18 in the IUR in specific industrial classifications and that  
19 that may be a vehicle for a fast track approach, if you will  
20 that would parallel a potential data call-in approach.

21           CO-CHAIR GEISER: Thank you. Okay, I have  
22 Richard, Meg, Roger, Bill, Joe and Tim. And then I think  
23 we're going to try to shift to this last topic that Odette  
24 wants us to look at. So, Richard.

25           PANEL MEMBER LIROFF: So Kelly cautioned not to

1 take the cost language in 3C too literally. But I notice  
2 that the externalized costs, there's reference to  
3 externalized costs in 3E as well.

4 And I simply want to second the comment that Mike  
5 made earlier about unanswerable questions.

6 I mean, if you just look at the literature trying  
7 to estimate what the costs are from chemical exposures the  
8 analyses, most recent of which was published within the last  
9 few years, are just terribly, terribly gross.

10 And except in the, in some unique cases like  
11 asbestos where there's a clear relationship between a  
12 particular chemical and a particular disease, it's really,  
13 really difficult to figure out what the external cost is  
14 from exposure to a particular chemical let alone chemicals  
15 in particular products.

16 So I would just know about, I agree with Mike  
17 also. My preference is for 3D. And I would just not  
18 mention externalized costs in, and if one were going the  
19 balancing route just forget about externalized costs.

20 They're not manageable or meaningful.

21 CO-CHAIR GEISER: Meg.

22 PANEL MEMBER SCHWARZMAN: Thanks. I guess I see  
23 some compatibility between 3C and 3D on page 11, aspects of  
24 3C.

25 So, to back up for one sec; I think I want to, in

1 general support the notion that we're not setting thresholds  
2 and choosing first priority, second priority, identifying  
3 highest priority. We've talked a lot already about the  
4 pitfalls of that.

5           And therefore I like some of the more general  
6 language like, Option 3C, "use the following factors to  
7 prioritize products" because we're then, that's, that's, or  
8 some of the amendments that Mike made to the intro sentence  
9 or phrase on 3D because it's outlining what factors should  
10 be considered not, choose the ones that are the highest on  
11 these criteria.

12           So that's just in general. I also think I would  
13 weigh in on the side of the primary place that hazard is  
14 considered is in, Designating Priority Chemicals, and then  
15 when we're looking at products we're really getting the  
16 opportunity to say, where is it that these chemicals would  
17 pose the greatest risk?

18           And I feel like, talk about expediency, you know.  
19 It's like this task is big enough. And that's, that's the  
20 only way that I can see through it.

21           And maybe that's my limited vision.

22           In terms of the prioritization criteria I see  
23 three things under 3C that I like and could imagine as  
24 categories.

25           And they're under the first bullet, the first

1 large bullet. One is the potential for human and  
2 environmental exposure. That's a very, very general  
3 statement. And I think specifics for it are usefully  
4 elaborated in 3D.

5           So 3D has a whole bunch of bullet points about how  
6 you understand the potential and extent of human exposure  
7 and environmental exposure.

8           So I think the two are not incompatible in that  
9 sense. The two other things that I like that I see in that  
10 first bullet of 3C are also then considering volume.

11           And then the next bullet is the target. So that's  
12 getting more towards use. And the target that was selected  
13 here is sensitive subpopulations. So that's the way that  
14 it's used. And some of that is in 3D too.

15           So in my mind it helped to organize it into sort  
16 of, potential for exposure and the details are elaborated in  
17 some of the bullets on 3D. The second is the volume of use.

18           And the third is aspects of the target and how it's used.

19           It was organizing that was helpful to me.

20           Finally, I just want to circle back to the whole  
21 reason for doing this which is to tee a product up for  
22 entering the alternatives assessment stage and therefore any  
23 subsequent steps like, asking for more data or requiring  
24 labelling or asking for, you know, issuing a challenge to  
25 reward reformulation.

1           And given that I would strike the full last bullet  
2 on Option 3C. I cannot see why public urgency, difficulty  
3 reformulating, whatever, should limit what goes to  
4 alternatives assessment. To me that could limit or that  
5 could help direct what happens after alternatives assessment  
6 but it should not modulate what goes or modify what goes  
7 into alternatives assessment.

8           CO-CHAIR GEISER: Roger.

9           PANEL MEMBER McFADDEN: Thank you. I find myself  
10 wanting to use the potato head approach to this, kind of  
11 picking and choosing from various ones and, you know,  
12 putting them together but I'll, you know, refrain from that  
13 too much.

14           But the one that I am most attracted to would be  
15 the Option 3D. And with the logic used in 3, 3A because I  
16 think there's some correlation between those two even though  
17 they're trying to get to similar end points.

18           And I think that the A gives some logic of how you  
19 get there kind of the piece-by-piece to get there.

20           I also would, you know, the issue of my comments  
21 because I made comments and responded to the questions  
22 Odette, please know I tried to set aside my personal biases  
23 and biases so a lot of that was issued as I am today in an  
24 effort to try to answer and help guide where you're going.

25           It doesn't necessarily mean that I have to agree

1 or disagree. It's just simply giving my best advice from my  
2 knowledge base. So I think that's important to note here.  
3 That I'm not trying to, you know, pass value judgements upon  
4 things here. Just trying to give good, you know, ideas.

5           This issue of highest hazard I think is important.  
6 I think it's important to figure out how to we, you know,  
7 how do you manage this. Businesses today, as I mentioned  
8 earlier, who are trying to wrestle with this are trying to  
9 wrestle with it from a manageable, you know, set of things  
10 to deal with.

11           And I think high hazard is a good place to try to  
12 get at. Things that are brought to the attention and also  
13 have been identified as high hazard.

14           So I kind of find myself leaning towards those  
15 two.

16           CO-CHAIR GEISER: Thank you. Bill.

17           CO-CHAIR CARROLL: Thank you Chair. In looking at  
18 pages 10, 11 and 12 you have six options. Five of those  
19 options refer to products assuming that you've already  
20 picked priority chemicals, one of which talks about picking  
21 priority chemicals.

22           And so in a way this section is kind of a mixed  
23 bag that is fed by the two previous pages. And I think  
24 that's kind of what, where Joe was when he was asking about  
25 page eight.

1           I want to take both of those cases just for a  
2 minute. Obviously, in Options A through E there are a  
3 number of tools that you could bring together into any total  
4 structure.

5           I see Options 3D and 3D as being, containing many  
6 of the similar kinds of tools. They have the same sort of  
7 aspects. And they kind of get at my approach to this if I  
8 were sitting in Odette's chair.

9           And that is, as Meg points out the product aspect  
10 of this is trying to get at exposure. And you probably are  
11 going to want to find those products that present the  
12 opportunities for the greatest exposure to humans or the  
13 environment.

14           And many of the things that are listed here at  
15 least stand a chance at taking you down the road toward  
16 getting to those things. And that's why you really want to  
17 pick those products if you, as you're winnowing them.

18           We haven't said much about how you pick priority  
19 chemicals because we've kind of, at least in these  
20 discussions, it seems to me sort of centered on CMRs, PBTs  
21 and so on. That sort of comes to the head of the list.

22           But at some point or another even if you pick  
23 that, even if that's where you go; then, after you go there  
24 you're going to have to decide where you go next.

25           And there are, you know, there are page after

1 page, after page of approaches to that that follow these  
2 pages that came out of the discussions.

3           And I think at some point or another, and Kelly I  
4 think you already weighed in against this but respectfully I  
5 disagree. You're going to have to develop some kind of  
6 multi-varied analysis that takes into account a number of  
7 different kinds of end points.

8           And you may very well want to consider them  
9 together in terms of creating priorities.

10           So for example, you may want to take some of the  
11 sort of bucketized systems that you have here. Don't take  
12 GHS as the exact example. But there you at least have  
13 classes that come in a number of different categories that  
14 would allow you to compare lots of things in a similar way  
15 at the same time.

16           And at some point or another you're going to get  
17 to that. And I'm reacting to that simply because in this  
18 section we're discussing Chair there is at least one point  
19 of deciding where you get the chemicals. And at some point  
20 or another we're going to have to have or someone is going  
21 to have to have that discussion in a more developed fashion.

22 Thank you Chair.

23           CO-CHAIR GEISER: Next would be Joe.

24           PANEL MEMBER GUTH: Thank you. Heather, one of  
25 the comments on scheduling? Was that one of her subjects?

1 Okay.

2 I have a quick comment on that then just to jump  
3 back to that really quick.

4 You know, these look like, on page -- sorry about  
5 that, this will be really fast. Seven --

6 CO-CHAIR GEISER: Seven.

7 PANEL MEMBER GUTH: -- you know, these sort of  
8 look more like criteria then, because a lot of, some  
9 chemicals will fall into a lot of these.

10 You know, so they're not really exclusive. And I  
11 guess, so -- all of these look like good considerations  
12 except maybe whether there's another safer alternatives.

13 But I worry a little bit a schedule that would  
14 really be formalized because, what are there, eight, there  
15 are eight here, is it going to take a few months, are you  
16 going to get some public comment or back and forth on that.

17 That could take, is that six months is that,  
18 that's years to go through a schedule if it's done like  
19 that.

20 So I guess I would be worried about that and think  
21 that maybe these considerations could be taken into account  
22 but not necessarily sequentially according to a formal  
23 schedule.

24 All right. On these criteria. A lot of these are  
25 good criteria. They are relevant to whether a product

1 containing a priority chemical presents a significant threat  
2 to human health and the environment.

3 I think to the extent that there is information  
4 about these why not consider it? I don't think the  
5 Department should undertake to have to do analyses and  
6 answer unanswerable questions, gather data, do things that  
7 become impossible and burdensome and time consuming.

8 And I think this goes to the overall point that,  
9 you know, prioritization, finding the highest risk is really  
10 not what this should be about. It should be finding, the  
11 statute AB 1879 calls for DTSC to be significantly reducing  
12 adverse health and environmental impacts.

13 So if you can use any of these criteria to  
14 identify a significant adverse health or environmental  
15 impact that seems like it's good enough to move ahead on.

16 I mean, that's it. Thank you.

17 CO-CHAIR GEISER: Okay. Then I would have Tim and  
18 then Julie is our last -- Dale.

19 PANEL MEMBER MALLOY: Thank you. I just wanted to  
20 make a couple of points about some of the things that I  
21 heard. And I want to say, I agree with Richard about this  
22 that I respectfully disagree with your characterization, at  
23 least where I thought I was at the end of that last one.

24 I was actually wondering how come we weren't  
25 talking about pages eight and nine. And now I realize, well

1 maybe it's because we'd made a judgement that that was no  
2 longer relevant. That these things are now going to be  
3 conflated.

4           Now I'm realizing maybe that's what was going on.  
5       So I agree with Richard. I feel there is a distinction and  
6 should be a distinction between the chemical and then the  
7 product, there's an overlap that you have to take into  
8 account I think. But I wouldn't totally conflate them.

9           The other thing though is, this discussion about  
10 whether hazard should be taken into account for product  
11 prioritization. And I guess, you know, I guess it depends.

12       It just seems to me that when you get to the product level  
13 it's not as if you can look at your prioritization of  
14 chemicals whether they're ranked or not ranked.

15           I guess it's even more of an issue if they're not  
16 ranked but if whether they're ranked or not ranked I guess  
17 products are going to have different hazard profiles, right.

18           Because it's not as if they're going to have one  
19 hazard trait -- a chemical in them. They might have three  
20 or four different priority chemicals in them and different  
21 formulations could have different sets of chemicals.

22           So I would think you'd still want to see what are  
23 the mixes of priority chemicals in the product in order to  
24 prioritize the product, right.

25           So, you know, if a chemical has got lead in it and

1 it's used in large volumes I might say, well golly, you  
2 know, we ought to take care of that right away.

3 But then if there's one that has lead used in very  
4 small volumes but it also has four other priority chemicals,  
5 that one might jump up. And that's not based on an  
6 exposure. That's based on a hazard profile.

7 So that's why I felt like that hazard was really  
8 important to include in here, quite apart from whether, how  
9 you use the prioritization of chemicals themselves to answer  
10 that.

11 I'm a big supporter of using the balancing and I  
12 think I guess I'm a little confused about what narrative  
13 standards means.

14 I got a little nervous Kelly when you said, you  
15 know, we often have sets of narrative, of standards and then  
16 when we make the decision we come out with a different  
17 result. And that's because there's other factors we were  
18 thinking about and we have to be open to that.

19 And I'm like, you know when I'm making personal  
20 decisions I'm okay with that. But when the government is  
21 making the decision about when to, whether to do something  
22 I'm very uncomfortable with there being kind of a, kind of  
23 an omnibus, unnamed other narrative standard that just kind  
24 of takes into account other things they hadn't articulated.

25 So when I think about these narrative standards I

1 think they should be specified standards. So if there's  
2 something that's important that ought to be considered it  
3 ought to be articulated.

4           And even if it's narrative it ought to be  
5 articulated in a rigorous way, not a kind of fuzzy, loosey-  
6 goosey way. That's a technical legal term (laughter) for --  
7 I can explain it to you later afterwards but.

8           So, and I'll have more to say about this when we  
9 get to decision making process because I tend to be very,  
10 very skeptical of narrative decision making processes that  
11 don't have some kind of formalized overlay on them.

12           And then lastly, I just wanted to say, Option 3D I  
13 take, that makes, all those things make sense to me. I just  
14 get a little worried whether depending on how you  
15 characterize each of these; I'm wondering what wouldn't be  
16 included.

17           If you got these priority chemicals you get a  
18 bunch of products that people use the chemicals in and then  
19 I look at this list and like, you know, are they widely,  
20 frequently used, might sub-sensitive, subpopulations come  
21 into contact with them. Are they just intended to be  
22 dispersed from the container? Things like that.

23           I just wonder whether the, just focussing on these  
24 things would just end up with a fairly large list -- that it  
25 wouldn't be, there wouldn't be enough prioritization if

1 that's all you're looking at. That might not be the case  
2 depending on what you set the bullet items at, specified  
3 concentrations and specified volumes.

4 But I just kind of felt like there needed to be  
5 more dimensions of analysis in order to really get at  
6 whether you're really concerned about a particular product  
7 than just those things.

8 And that may not be enough of a sieve to get  
9 things through, to capture all the things I think people  
10 might be worried about in terms of chemicals. Thank you.

11 CO-CHAIR GEISER: Thanks Tim. Julie.

12 PANEL MEMBER SCHOENUNG: Thank you. I'd like to  
13 go back to the lists that were identified in the scheduling  
14 pages but not related to the scheduling topic but related to  
15 our prioritization criteria. Because when I went back and  
16 looked at these as everybody has talking because when I  
17 looked at pages 10, 11 and 12 I got overwhelmed and went,  
18 these sound the same, they're not quite the same, which ones  
19 do I agree with, which ones do I not agree with.

20 But when I look at the list that Odette very  
21 nicely put together for the scheduling criteria it's much  
22 more succinct.

23 So page four is for the chemicals and page seven  
24 is for the products. And there's a lot of overlap. Many of  
25 them are the same or very similar just changing from

1 chemical to product. But, you know, except that the  
2 chemicals are more based on hazard and the product is more  
3 based on exposure which many people have reiterated.

4           And here I like that fact that it's not just a  
5 list of items but, for instance, it's actually saying, is  
6 there a presence of the chemical.

7           And then the one in terms of the unanswerable  
8 questions is the last one on each of these lists. Chemicals  
9 known to significantly contribute to externalized costs.

10           So you're not being asked to actually quantify the  
11 costs and compare them on a relative basis but for a  
12 chemical that is known to contribute whether because it's  
13 been banned from a landfill or other reasons that that would  
14 give you a priority for that chemical. Or if that chemical  
15 or that product has been banned from a landfill, you know,  
16 that would give you a priority, highlighted priority for  
17 that product.

18           So I think you actually already digested pages  
19 eight through eleven for us by putting together these two  
20 lists which might need to be massaged a little bit.

21           But I think that this is actually a very nice list  
22 and I would add that it should in some way be a balancing  
23 list not an all of these but an, or, and then maybe the more  
24 of these there are or something. But there needs to be some  
25 way of balancing and trading these off with each other.

1 Thank you.

2 CO-CHAIR GEISER: Okay. Last. It would be Dale.

3 PANEL MEMBER JOHNSON: Thanks. So I see a  
4 difference between identifying and prioritizing.

5 And I'll just talk about prioritizing specifically  
6 because typically in prioritizing what you're doing is  
7 establishing a certain number of criteria and you'd like to  
8 keep them at 10 or less so that you can actually understand  
9 them.

10 And then you're rank ordering things. You're  
11 using them to rank order not to actually give a quantitative  
12 end point but to rank order things so you can prioritize  
13 them. And that's the process of prioritizing.

14 And so you can, you know, you can take these  
15 various lists and come up with the 10 most critical things  
16 that would, you'd be able to rank order things.

17 And then when you rank order you then select from  
18 that, which are the most important, the top 10, the top 20,  
19 whatever it is you do.

20 But you don't have to give them a particular score  
21 or identify, you know, doing an identification process that  
22 way.

23 CO-CHAIR GEISER: That is helpful. Thank you.

24 All right. Very good. Well actually that was a very good  
25 discussion on something that was somewhat ill-formed but I

1 think very good comments, very good comments.

2           Let's spend the last 15 minutes here, if we could,  
3 and turn to what would be for you all or for us all would be  
4 page 13. And 13 lays out decision making process used to  
5 prioritize and list chemicals and products using the  
6 criteria and suggests three different approaches.

7           One is a narrative approach which, as you can see,  
8 is just using criteria. A second would develop from a set  
9 of thresholds. And a third is more of a structured process  
10 that kind of integrates both with a matrix that --

11           So I guess I'd be interested in your assistance on  
12 these three options. Kelly.

13           PANEL MEMBER MORAN: I'm in favor of Option 1. I  
14 think that B and C particularly C or so Option A. And B and  
15 C are things that DTSC might use internally in this little  
16 green box over here on the flow chart.

17           But A is really the only practical approach that  
18 the Department could really use to compare all the various  
19 factors that it's going to have to use in its decision  
20 making.

21           And with that I want to mention a couple of other  
22 things. Joe said something really important. The statute  
23 doesn't actually provide us, or we would really like, it  
24 would be much easier for us to have this conversation if the  
25 statute had provided us with a set of criteria that the

1 Department would use.

2 And buried in the middle of it it says, the goals  
3 of this article of significantly reducing adverse health and  
4 environmental impacts of chemicals used in commerce. And  
5 that's Section 25255.

6 And to me it, just something to think about is  
7 really what these criterion need to do is reflect those  
8 goals of significantly reducing adverse health and  
9 environmental impacts of chemicals used in commerce.

10 So in constructing that I just realized that that  
11 might be something to look to. It's not as good as a whole  
12 set of them but at least it's something to point at even  
13 though it's not in the right section. It clarifies that  
14 that's the goal.

15 And then just one minor remark on costs. I'm  
16 hearing a lot of different views on costs. And I'm  
17 recognizing that a lot of that has to do with which part of  
18 the world you work in.

19 If you work in the human health world,  
20 externalized costs are exceedingly hard to estimate. And  
21 I'm keenly aware of that. And that's actually why I was  
22 pulling back on my list and saying, it shouldn't be a  
23 screening criterion.

24 But I think it's very, very important that the  
25 Department be allowed to, in fact required to, have as one

1 of many balancing criteria consider those costs. And the  
2 reason for that is that those costs are very, very important  
3 for our state.

4           And Bill is going to give me a hard time for  
5 talking about brake pads (laughter). A lot of why that --  
6 the phase out became law was not, you know, I went in and  
7 talked to lots of legislatures and lots of decision makers  
8 about this and although I could show them the little video  
9 of the salmon and talk to them about the effects on the  
10 future of the salmon population in California, they were,  
11 their eyes got big when I told them, it will cost over 100  
12 billion dollars for municipalities to treat that copper out  
13 urban runoff. And they're required to do that under the  
14 Clean Water Act.

15           So that's the thing. The 100 billion dollars is  
16 why that is law today.

17           And the same thing is true with disposal costs for  
18 local governments are incurring for hazardous wastes.  
19 That's another one where there's huge dollar values  
20 associated with that.

21           The Department should and needs to be considering  
22 those kinds of costs. What we need to do is structure the  
23 regulations. This is where Odette needs to be very clever  
24 and the team to structure in such a way that that can be  
25 considered without excluding things.

1           So that's why balancing criteria are important.

2 Thank you.

3           CO-CHAIR GEISER: Other comments here on trying to  
4 be helpful on -- anybody disagree that this narrative  
5 process is not a good thing? Bob.

6           PANEL MEMBER PEOPLES: Yeah, I think I'm still  
7 trying to get my mind around this one as well. But clearly  
8 when you're dealing with the complexities and the unknowns  
9 in defining a path forward, the narrative process is  
10 essential and required to get there.

11           But I also think that when you're trying to assess  
12 impacts of a variety of end points I think a hybrid model  
13 may work here.

14           At the end of the day I think the narrative guides  
15 the final analysis and decision. But you need to have some,  
16 I'll use the word, quantitative. And I don't mean it in  
17 such a rigorous sense but you need some kind of analytical  
18 process that you can, if nothing else, document to help  
19 support, you know, how you got through the narrative process  
20 to get where you're going. That's my thought.

21           CO-CHAIR GEISER: Tim.

22           PANEL MEMBER MALLOY: I wanted to agree with what  
23 Bob just said. We've been doing a lot of work looking at  
24 different decision, different approaches to aid in decision  
25 making. So it's not kind of a quantitative, put in some

1 numbers, black box and you get a number out at the other  
2 end. But rather, decision-aiding tools that help in  
3 situations where you've got multiple criteria like this and  
4 who knows how many, you know, different chemicals that  
5 you're going to be looking at at one time.

6           So the work by cognitive psychologists make it  
7 clear that we are wildly irrational when we try to do a  
8 narrative process, you know a qualitative narrative process  
9 with a bunch of different criterion numbers of alternatives.  
10 That it's hard to keep all that in your head at once.

11           And what a number of these decision-aid tools do  
12 is to kind of, you identify, you know, how important each of  
13 these narrative, however you define the criteria; how  
14 important they are to you relative to each other.

15           You identify some form of, qualitatively, you  
16 identify how well each of these, these chemicals do in your  
17 narrative, right. So it's not as if you were to assign a  
18 number to how well something does, say it's hazard or  
19 externalized costs or whatever, but some qualitative sense  
20 of, this is a very high cost, this is a very low cost.

21           I mean you could scale it all different ways to  
22 capture qualitatively where you are. And what these  
23 decisions tools allow you to do is you can see that, kind of  
24 that ordering that Dale was talking about but they also  
25 provide you with kind of an explanation about, why did this

1 come out the way -- what, you could actually look at graphic  
2 representations of which factors moved this chemical up the  
3 chain as opposed to other chemicals.

4           And you can also play around with kind of a  
5 sensitivity analysis to see just how robust your  
6 prioritization actually was.

7           You know, if one factor were more important to you  
8 than another would that change your outcome?

9           So it's useful kind of as a check on yourself to  
10 see, am I really, am I weighting things the way I think I'm  
11 weighting them or is there something else that's driving my  
12 decision?

13           It's also helpful as a tool to assist groups to  
14 identify where their discrepancies are. And it, you know,  
15 so it could either internally or externally it could assist  
16 DTSC, I think, in terms of identifying where the differences  
17 are in how people may prioritize one thing or another and  
18 then focus the conversation on that particular issue rather  
19 than kind of being at sea, not understanding how you came  
20 out different ways.

21           So that' why I'm really supportive of some form of  
22 a hybrid approach which would be driven by a series of  
23 fairly well articulated narrative standards but would be  
24 assisted by some type of mechanism to help you work with  
25 those standards and your assessment of those standards.

1 CO-CHAIR GEISER: I have Meg, Richard, Bill and  
2 Julie -- and Joe.

3 PANEL MEMBER SCHWARZMAN: Thanks. And Tim just  
4 teed me up very well by explaining how all those tools can  
5 work and how useful they would be.

6 And my inclination is to have the robust narrative  
7 standard the way that Tim just articulated it as what goes  
8 into the regulation.

9 And then the tools for that decision making  
10 shouldn't be skipped by the Department. But you won't skip  
11 them. But I can't see why they need to be spelled out, why  
12 the specific methods to carry this prioritization out, why  
13 the tools that have to be used should be spelled out in the  
14 regulation.

15 Because to me with everything that we've been  
16 talking about, about pick some priority chemicals, do the  
17 first shot at products, see what goes into alternatives  
18 analysis, see what comes out of it, see what that tells you  
19 about what's important; it only seems to paralyze the  
20 Department if you start fixing in the regulation that you're  
21 supposed to use this kind of five step matrix to choose your  
22 priorities.

23 So I think the Department is well aware of the  
24 need for the tools to carry this out and will keep looking  
25 for more tools. And Tim just described very clearly how

1 they can help, not just with making the decision but with  
2 kind of feedback on that decision internally and externally.

3 But there, keep that process moving forward in  
4 terms of the way that you implement this rather than what  
5 you write into the regulation as the goal and the basic  
6 directive for the prioritization process is my  
7 recommendation.

8 CO-CHAIR GEISER: Richard.

9 PANEL MEMBER DENISON: Thanks. I completely agree  
10 with both Tim and Meg on this. I do think that in the  
11 documentation that the Department needs to ultimately  
12 present to justify the decisions it's made. The kinds of  
13 tools that are listed here may well have a useful role.

14 So to me there's two levels of application of  
15 these kinds of tools.

16 One is in a specific attribute. So if you have  
17 good information on these chemicals for their, you know,  
18 acute toxicity to aquatic organisms, using GHS criteria to  
19 help interpret and bend that information is absolutely a  
20 useful way to go.

21 GHS criteria don't cover everything. So you  
22 couldn't use that across the board. So some other tool  
23 might also be useful.

24 Those are kind of the individual attributes. Then  
25 you have what Tim, I think, is talking about. Is, how do

1 you start putting them together and thinking about them  
2 more, in a more integrated manner. And that is a value  
3 judgement.

4 I mean, there's no question about that. There's  
5 no scientific basis for deciding whether, you know,  
6 attribute X is more important than attribute Y. It's a  
7 value judgement.

8 And that value, these tools help make those value  
9 judgements more transparent and more accountable if you  
10 will. So they have a role.

11 But I, and then I finally agree that the  
12 regulation itself, really the narrative sort of standard  
13 approach here, is really what should be in the regulation.  
14 And the rest of it comes in the documentation when decisions  
15 are actually made under the regulation to justify how they  
16 were made.

17 CO-CHAIR GEISER: Bill.

18 CO-CHAIR CARROLL: I guess it's useful to listen  
19 to your colleagues in this. And I think I'm in kind of the  
20 same place as to what we've heard.

21 But I want say it my way and see if it meets that.

22 If I were to sit down and approach this problem I would  
23 want to do my prioritization by finding things that, within  
24 the parameters given would get to the highest priority both  
25 in terms of chemicals and in terms of products.

1           One way I imagine doing that would be in sort of a  
2 sieving procedure where you were able to characterize  
3 materials as, you know, low, medium, high or, you know, four  
4 categories or whatever on either of these two axes.

5           And then I'd want to find what fell into the  
6 highest priorities.

7           And then what I might do and this might get to the  
8 narrative part of the standard. I would take what that  
9 brought me to and say, does this make sense? And have I, in  
10 fact, identified first of all, have I identified a set that  
11 has anything in it or not?

12           Second, is this a set that really does have some  
13 importance?

14           And then if it passed both of those cases, and I  
15 realize those are a bit qualitative, I probably would look  
16 at the size of what I have and I'd go to what Dale suggested  
17 and say, okay, so how many of these do I want to bite off at  
18 any one time and create something that looks like a seriatim  
19 and start from there.

20           Now, I'm not sure how you write that in a reg.  
21 And I'm not sure what goes into the regulation. And I'm not  
22 sure what is the decision tool but if you sent me off into a  
23 room with a 64 page blue book to write up the way I would  
24 approach it and made me come back and give you the answer,  
25 that's approximately where I'd go. Thank you Chair.

1 CO-CHAIR GEISER: Okay. Odette would like to --

2 CHIEF DEPUTY DIRECTOR MADRIAGO: So my esteemed  
3 attorney just whispered something in my ear which I guess I  
4 was trying to ignore and not bring up but I think maybe I  
5 better.

6 We have something in California called the concept  
7 of an underground regulation which is illegal. And if we  
8 were to use the approach that many of you have suggested of  
9 listing in the regulation a narrative approach but then  
10 using some kind of a structured approach on a consistent  
11 basis to arrive at our decision, there's, we may be in a  
12 very gray area legally.

13 So without having to discuss that in a lot of  
14 detail I just want to put forward a question for you to  
15 opine upon and that questions is, in the event the  
16 Department were to determine that we couldn't use a  
17 structured process without spelling it out in the  
18 regulations, what would you want us to do?

19 CO-CHAIR GEISER: Do you want Bill, do you want to  
20 take a moment on that?

21 CO-CHAIR CARROLL: My reaction is, spell it out.  
22 People are going to ask anyway. And if you're using that  
23 process at some point or another you're going to wind up  
24 discussing it. Decide what you want to do and then spell it  
25 out. It'll be out for notice and comment. You may get, you

1 know, some modifications that are helpful.

2 I wouldn't for a moment suggest that this needs to  
3 be, you know, a secret way of doing this determination.

4 CO-CHAIR GEISER: Okay, I have at this point,  
5 Julie, Joe, Lauren, Tim, Kelly.

6 PANEL MEMBER SCHOENUNG: Well Odette just changed  
7 the playing field of what I was going to say. Because I was  
8 just going to echo. I wasn't about to put my card down  
9 because I felt like everything had been said.

10 But, I guess in response to the attorney and the  
11 comments, my fear would be I don't think you know what that  
12 structured approach is going to be until you try it.

13 And I don't think that if you wait until you  
14 figure out what that structured approach is going to be and  
15 to finalize the regs, that's going to take, that's just  
16 really hard.

17 Until you start trying tools and figure out which  
18 tools help you to prioritize on one attribute and on  
19 multiple attributes as Richard nicely articulated, maybe at  
20 some point it can be added to the regulations once you can  
21 define a specific process.

22 But I don't think it would be an under-the-rug  
23 type of thing because you're going to be trying things for  
24 quite some time to see what works.

25 CO-CHAIR GEISER: Joe.

1           PANEL MEMBER GUTH: Yeah, I would agree with both  
2 those comments on the issue Odette raised.

3           I want to just, I'm thinking about what's going to  
4 happen here is that, you know, some small number of  
5 chemicals tend to, 50 chemicals are going to be, I guess,  
6 identified as priority chemicals. But there's a much larger  
7 number presumably of priority chemicals that are eventually  
8 going to be identified under the regulations.

9           And so I'm just thinking about, I mean so that  
10 puts the Department, I think, in a position of trying to  
11 identify criteria that can lead to identification of a  
12 fairly large number of chemicals as priority chemicals  
13 potentially.

14           But then as sort of a separate justification for  
15 why these 10 or why these 50; in other words, I could see  
16 the temptation to create a very stringent set of criteria at  
17 the outset here because you're only thinking, you know, we  
18 want 10 or 50. But the danger then is that, well then,  
19 you're done because now we've identified, you know, all the  
20 chemicals that are priority chemicals.

21           You don't want to do that. So I'm just, you know,  
22 urging not to do that (laughter).

23           CO-CHAIR GEISER: Okay, Lauren.

24           PANEL MEMBER HEINE: Thank you. A couple of  
25 comments about -- I agree with Richard's comments around the

1 specific attributes and the use of a structured hazard  
2 classification approach.

3           And I think the US EPA's Design for the  
4 Environment model is very good. It's actually inclusive of  
5 GHS. So you have GHS and DFE. DFE includes all of GHS and  
6 then adds criteria based on EPA test methods and criteria  
7 for those that aren't included in GHS. It's not inclusive  
8 of every possible hazard attribute. But it's quite  
9 extensive.

10           So I would encourage you to make every effort to  
11 harmonize with national and international systems because at  
12 least at the hazard classification level there needs to be a  
13 common language, what you do with something that's a high  
14 aquatic toxicant or a moderate carcinogen or whatever is  
15 going to vary and that's subjective in value base but at  
16 least being able to identify, classify things the same way.

17           That's, of course, the goal of the globally non-  
18 harmonized system (laughter). So -- and the second point is  
19 that for the sake of simplicity it's sort of ironic how far  
20 this is going beyond the idea of risk.

21           In my world there's been a lot of overtime.  
22 There's been a sort of arguments with the hazard versus  
23 risks and now we've got the hazard piece we're talking about  
24 and we're talking about exposure and we're talking about  
25 going well beyond exposure into the prioritization.

1           So maybe just to keep it simple to think about  
2 we've got the hazard identification piece and then to really  
3 sort of limit to exposure at least in this initially  
4 wouldn't be and I think I'm echoing some of what Richard was  
5 saying and or to try to keep it a little bit simpler so we  
6 can get started.

7           And thirdly, this exercise is starting to look a  
8 little bit like an alternatives assessment in its own right.

9           So I think we have to be careful not to do an alternatives  
10 assessment in the prioritization process.

11           However, it's also important to kind of compare  
12 apples and oranges. So whatever you set as a basis for  
13 prioritization should be replicable in the alternatives  
14 assessment process.

15           So I'm not sure that provides an answer but just  
16 to keep that in mind. Thank you.

17           CO-CHAIR GEISER: Okay, Tim and it would be useful  
18 if Tim you could answer Odette's question as well there.

19           PANEL MEMBER MALLOY: The answer is yes.

20 (Laughter) No, I'm sorry. It's late. I'm tired.

21           So I did have a real answer to that which is I  
22 think from a, Meg's point was well taken which is, you know,  
23 to the extent you can be flexible about your use of the  
24 whatever decision-aid tool you're using so that you can, as  
25 you learn, you might want to change or use something

1 different. And if it's kind of built into regulations  
2 that's harder to do.

3           So it would be nice if you weren't, I think, kind  
4 of forced to do that. But to the extent that the law  
5 requires it, I think the value of this kind of tool would be  
6 such that it would make sense to put it into a regulation if  
7 the alternative to that was that you didn't use it at all.

8           So that's, but I think that's a policy judgement  
9 is too. And you would have to kind of assess how useful you  
10 think the tool is.

11           I had two other things I wanted to throw in.

12           One was, I really agree with Richard's point about  
13 the subjective. Look, there's value judgements that are  
14 made. So, you know, as you look at whatever, if you end up  
15 with a set, if you're using balancing kind of along the  
16 lines that Kelly had talked about or a different set my view  
17 is you really, whether you're using a decision-aid tool or  
18 not, you should have a very clear identification of what the  
19 relative of importance of each of those criteria you're  
20 looking at or balancing measures you're looking at are in  
21 order to make kind of consistent decisions across time and  
22 also to have decisions that are essentially transparent and  
23 defensible and so on and so forth.

24           So whether you use a decision-aid tool or not I  
25 think you should have a, in a sense a weighting or an

1 articulation of the relative importance of these, and then  
2 what if you do use a decision-aid tool that valuing, that  
3 subjective value should be incorporated and can be  
4 incorporated into it. But they're not, you know, you don't  
5 have to use a tool if you want to do it.

6 But no matter how you do it I'm really strongly in  
7 support of being very clear about the relative importance of  
8 these things.

9 There's lots of environmental programs where  
10 there's a set of criteria given to the agency and told to  
11 balance these factors without any guidance on which are  
12 important or not. I think that makes the job harder for the  
13 people implementing that program but it also it allows those  
14 programs to operate fairly arbitrarily over time because  
15 there's no guiding principles in terms of how important  
16 certain things are or aren't.

17 And I just, your point about, gee this starts to  
18 look a lot like alternatives assessment; I think you're  
19 absolutely right. Although I think the reason it looks like  
20 alternatives assessment is not the substance, that is and  
21 shouldn't be the substance, that is, if the criteria, the  
22 substantive criteria for decision need not be the same I  
23 think.

24 I think the reason they're similar is because both  
25 are, they're both the same type of decision. That is a

1 decision made in which you have to judge various  
2 alternatives across a variety of different criteria.

3           In the prioritization I think the criteria might  
4 be very different than what you might look at in an  
5 alternatives assessment because I think in an alternatives  
6 assessment you're going to be thinking about things that are  
7 specific to the product and the alternatives you are looking  
8 at and it would be things probably like technical  
9 feasibility and costs and other stuff that might not be  
10 relevant at all to prioritization of chemicals across, you  
11 know, which ones should you start with.

12           CO-CHAIR GEISER: Tim.

13           PANEL MEMBER MALLOY: Okay, I got you.

14           CO-CHAIR GEISER: I'm going to have to -- I am  
15 going to try to cut people a little bit here because we are  
16 closing in on the end of the time here and people are  
17 starting to drop a lot of cards here. What at the moment I  
18 have is Kelly, Bob, Richard, Roger then Dale. Who else? Am  
19 I missing anyone? Okay. And I will ask people to try to be  
20 short. Kelly.

21           PANEL MEMBER MORAN: Okay. And I am going to  
22 limit my comments to responding to the question about  
23 structured approach. The problem is that there is no  
24 scientifically sound prioritization process that includes  
25 all of the end points that you need to consider. It is not

1 just human health but also the environment. It is not just  
2 the water environment, the air environment, all the wildlife  
3 that is out there. So there is not something that you could  
4 put there even if you wanted to. And for that, I think that  
5 is the fundamental reason that this couldn't work.

6           And beyond that, my professional experience is  
7 that the Department will -- or my advice based on my  
8 professional experience is that multiple systems work better  
9 in making selections rather than one.

10           I actually just gave a paper last year at the  
11 American Chemical Society conference on a variety of  
12 different pesticide prioritization methods and the pros and  
13 cons of those. One of my primary conclusions was that there  
14 are benefits to -- I reviewed multiple different systems and  
15 there were benefits to using most of them and actually  
16 thinking about them in combination.

17           So finally to get around this another thing you  
18 might think about would be that when the Department is  
19 approaching what it does in the green box here that it might  
20 be looking for public input. It might also be soliciting  
21 the advice of the Science Panel. Because I think the  
22 science in this area is actually moving very rapidly and so  
23 that each time the Department does this exercise it is  
24 probably going to be bringing in new kinds of processes and  
25 tools. Thank you.

1 CO-CHAIR GEISER: And Bob, you're not up.

2 PANEL MEMBER PEOPLES: I dropped it.

3 CO-CHAIR GEISER: Okay.

4 PANEL MEMBER PEOPLES: I didn't want to be one of  
5 those people who said it in another way but said it still.

6 CO-CHAIR GEISER: Thank you. Thank you, we  
7 recognize that. Richard.

8 PANEL MEMBER DENISON: Thanks a lot, Bob, for  
9 setting me up. I actually have two questions really. The  
10 CARB Attachment 3 here. I am curious whether that is  
11 actually written in regulation. Because it lays out a  
12 decision-making process essentially. And it is quite  
13 specific but I am curious whether it's drawn from the  
14 regulation or if it is more detailed here and more generally  
15 described in the regulation.

16 And the second question really is, when one says  
17 you have to lay out the process in the -- you can't have a,  
18 what did you call it, a clandestine, an underground  
19 regulation. At what level of detail are we talking about?  
20 Could it indicate that the Department will use, you know,  
21 tools to rank chemicals based on individual attributes as  
22 well as decision tools to rank across attributes. Is it  
23 that level of detail that you would need to describe or  
24 would you have to literally say, we are going to use the GHS  
25 for this, we are going to use, you know, whatever for what.

1 CHIEF DEPUTY DIRECTOR MADRIAGO: I think it's --

2 MS. HECK: Let me just try to answer that if I  
3 could, Richard. It might help to understand the purpose of  
4 this underground reg prohibition, which is if the government  
5 puts out to the world that these are the rules, this is how  
6 we are going to operate and this is the effect that the  
7 rules have on the regulated community, that the public has  
8 the right to know that those are really the rules. There is  
9 no sort of separate set-aside books that we are really  
10 operating under. So the devil is in the details.

11 If you know that the hybrid approach includes we  
12 will take the narrative standard and then modify it in every  
13 case, or we retain the right to do so based on GHS for  
14 example, then yes, that would be the kind of thing you would  
15 put in regulation.

16 But it is certainly appropriate and lawful for  
17 agencies to say, and we did in the last two iterations of  
18 the regs, we are going to use a narrative standard, non-  
19 weighted list of criteria as long as that list is  
20 exhaustive. You get into problems if you say, here is most  
21 of what we are thinking but there's other things that we  
22 want to retain to ourselves to have the right to think about  
23 that we are not putting out there. As soon as you do that  
24 not only is it bad practice and bad government, it will not  
25 be approved by the Office of Administrative Law for the

1 reasons I just said.

2 CHIEF DEPUTY DIRECTOR MADRIAGO: Colleen, do you  
3 remember, is that in the regs or is that something the  
4 statute authorizes them to adopt?

5 MS. HECK: I'm afraid I don't know.

6 CHIEF DEPUTY DIRECTOR MADRIAGO: I don't remember  
7 off the top of my head.

8 CO-CHAIR GEISER: Okay, Richard is that?

9 PANEL MEMBER DENISON: (Nodded).

10 CO-CHAIR GEISER: Okay, thank you. So then Roger  
11 and Dale will be the last speaker.

12 PANEL MEMBER McFADDEN: I like the narrative. I  
13 think it makes a lot of sense. But I also would like to  
14 toss my hat into the ring for EPA's Design for the  
15 Environment Program; and not to adopt it but to look  
16 carefully at that model.

17 There has been huge growth in that particular  
18 sector. They get good kind of interface with industry  
19 there. There seems to be some comfort there of sharing  
20 information in that program, which is kind of amazing when  
21 you think about it. But I believe the last time I heard it  
22 was 2500 products have just gone through their cleaning  
23 products sector alone just in that small sector.

24 Full disclosure is required. They do this high,  
25 medium, low. And they have really expanded, as Lauren said,

1 to being much more transparent. Their non-transparency had  
2 to do I think with their complication of how they interfaced  
3 with businesses and they kind of upped the ante here  
4 recently by requiring more disclosure, which has created  
5 some conflict there but it might be worth looking at.

6 But I think the narrative makes a lot of sense.  
7 Thank you.

8 CO-CHAIR GEISER: Dale.

9 PANEL MEMBER JOHNSON: Well one of the things we  
10 know in the computational field is that tools will come and  
11 go. There will be draft tools, there will be proof of  
12 concept tools and there will be new tools that emerge very  
13 rapidly and over time.

14 And so one of the ways to actually deal with that  
15 is to not define tools per se within a regulation but have  
16 criteria that can be modified by tools and new tools over  
17 time.

18 So you establish the criteria and then within each  
19 criteria you can actually modify it so it responds in a  
20 different type of way. So it can respond -- you know, just  
21 think of setting a standard as you will see through some of  
22 these of a certain LC-50 or a certain type of criteria. So  
23 you modify it in relationship to a quantitative thing that  
24 emerges as being more important.

25 So my suggestion is don't define the tools but be

1 very -- define the criteria in a way that can be modified by  
2 new tools.

3 CHIEF DEPUTY DIRECTOR MADRIAGO: If you want to  
4 take some time to give us a written example of how we might  
5 do that that might help.

6 PANEL MEMBER JOHNSON: Yeah, I will give you a  
7 written example.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Thank you.

9 CO-CHAIR GEISER: All right. Well, that brings us  
10 to full closure on a long block of material. I actually  
11 found this last discussion to be pretty substantive and  
12 pretty direct. And amazingly so given that it is the end of  
13 the long day. And I can hear, I can feel the low energy in  
14 the room. But I really thank you all for staying with it  
15 and giving such good advice and all.

16 We did want to do a brief review right here at the  
17 end so we have a few minutes left here actually, probably  
18 about 20 minutes, to just take a look at the process that we  
19 launched here with your permission several months ago which  
20 involved these set of phone calls and then moving toward a  
21 meeting like this. And I am going to turn this over to Bill  
22 to kind of walk us through that and just sort of see where  
23 you all are.

24 CO-CHAIR CARROLL: Thank you, Chair. And once  
25 again thank you for expertly taking us through some very

1 complex things over the course of the day. This was not  
2 easy to do, thank you very much.

3 CO-CHAIR GEISER: Thank you.

4 CO-CHAIR CARROLL: I would like to sort of start  
5 this by just maybe getting a sense of the room about the  
6 overall process that we went through with respect to  
7 creating subcommittees, giving them problems, having  
8 conference calls. Investing that amount of time, in some  
9 cases asking you to do homework, and then evaluating that  
10 and using it to formulate what you had at the meeting.

11 Can I just kind of see heads nod or shake as to  
12 whether you think this is good or not. And I kind of get  
13 the sense of the room that you liked having the opportunity  
14 to spend more time on the problems than we were able to give  
15 you during the course of one of these meetings. I don't see  
16 much disagreement there.

17 So I guess then if that's the case you would be  
18 okay if we took that process forward from here and did so  
19 again. I guess since we sort of talked about what the  
20 schedule was going to be we have already tipped our hands  
21 that we kind of -- I guess there is no big surprise there  
22 left anymore but it is an important validation.

23 Let me ask this and this is a case where I would  
24 like each of you that feels you need to. Are there  
25 important process modifications that you would suggest in

1 this that we ought to take into account? Lauren, your hand  
2 went up too quickly.

3 PANEL MEMBER HEINE: I found the short notice of  
4 the phone calls difficult to deal with with respect to  
5 scheduling. I was wondering if there could be maybe more  
6 flexibility if you can't, if you can't make the assigned  
7 meetings for one group could there be some flexibility to  
8 switch groups or something like that?

9 It's just that if they are -- the dates -- I mean,  
10 it came up really fast. The dates were assigned. And if  
11 you couldn't -- you're assigned to a group but if you  
12 couldn't make it you're out of luck. So why not have a  
13 little flexibility to say, okay, I can't be in group one, I  
14 think I'll switch to group two because I can make that call.

15 CO-CHAIR CARROLL: Well you are really not going  
16 to like what we are doing next.

17 PANEL MEMBER HEINE: Uh-oh.

18 CO-CHAIR CARROLL: I'm sorry. Go ahead, Odette.

19 CHIEF DEPUTY DIRECTOR MADRIAGO: Well I think you  
20 said kind of two things I need to address. It is going to  
21 be something of a compressed time frame again because that  
22 is the only way we can meet our need to do this meeting in  
23 mid-July and not postpone it until September.

24 CO-CHAIR CARROLL: But with that said, there may  
25 be some opportunity. The next set of problems that I

1 imagine that we are going to work on, the sort of things we  
2 kicked around, I think there is a chance that each of you  
3 might be less invested in one problem over the other than  
4 you might have been in the first three.

5           Because I sense that because there were strong  
6 preferences about being engaged in one of those three first  
7 questions that it was either something that you had  
8 expertise in or a passion for. And my sense is that the  
9 next three may be of a more equal weighting so you won't  
10 feel so particularly comfortable being in one versus the  
11 other so there may be more of an opportunity for that kind  
12 of flexibility, Lauren.

13           CHIEF DEPUTY DIRECTOR MADRIAGO: And so we will  
14 try to take that more into consideration. But make sure  
15 when you respond to Kathy's solicitation that you tell us  
16 what the availability is. Because the challenge we have is,  
17 once we public notice these calls we can't make changes  
18 because of the Bagley-Keene rules.

19           CO-CHAIR CARROLL: Kelly and then Meg, please.

20           PANEL MEMBER MORAN: Just that I know that the  
21 Chairs and the staff have taken into consideration the  
22 comments we made yesterday so there is no need to repeat  
23 them.

24           I actually had a question for Odette. You all  
25 have asked us what we thought about this and I guess I am

1 just wondering if you have anything you would want to  
2 express to us. And specifically based on what has happened  
3 here if there is anything that you could tell us that would  
4 help us better help the Department. So be more efficient  
5 and effective with our time and your time as we go through  
6 the next round.

7 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, I think  
8 it's probably a combination between you and us. You know, I  
9 think we want to strive to get out the preparatory materials  
10 farther in advance on our part, then ask you all on your  
11 part to really have, you know, studied them and be prepared  
12 to come to even the first phone call with very specific,  
13 focused, organized, you know, recommendations.

14 One of the lessons that we all learned is that  
15 having the written homework from each of you was really the  
16 way to go. And we will try to provide, we are going to work  
17 with the scheduling but try to provide you with a little  
18 more time to get, not a lot but a little bit more time to  
19 get the written homework in.

20 And then I am going to strive to get, provide a  
21 little more time to get the materials for the full meeting  
22 in July out to you so again you can do a lot of pre-study  
23 and really come to this -- I mean, you guys came very  
24 prepared, I am very impressed. But, you know, if I get it  
25 out to you farther in advance you can be even more prepared.

1 CO-CHAIR CARROLL: Meg and then Dale, please.

2 PANEL MEMBER SCHWARZMAN: So one clarifying  
3 question. Were you saying then, are you able to notify us  
4 at the time that you ask us to select our group what -- the  
5 dates of the calls?

6 CHIEF DEPUTY DIRECTOR MADRIAGO: Yes.

7 PANEL MEMBER SCHWARZMAN: Great. And then just to  
8 circle back with my request from the beginning of the day  
9 yesterday. There were some small, opening, objective  
10 statements at the top of the assembled options that you put  
11 together for us. And maybe two more sentences than that but  
12 not hugely extensive. If in addition to a list of questions  
13 it could include that sort of summary, here is what we are  
14 trying to accomplish and now here are the questions we have  
15 about it. I would find that really helpful.

16 CO-CHAIR CARROLL: Very good, thank you, Meg. Go  
17 ahead, Dale.

18 PANEL MEMBER JOHNSON: Yeah. Is there anything  
19 else that you can't do in relationship to the regulations?  
20 So today near the end we learned of the underground process.  
21 Is there anything else that relates to all of the stuff  
22 that we're doing that can't be done?

23 Because I kind of, I kind of was referring to that  
24 in the beginning of the day when I asked about, you know, do  
25 you have to revise the regulations if you do this? So

1 everything else, you don't have to revise the regulations  
2 because that little word isn't in there. But now, is there  
3 anything else that can't be done?

4 PANEL MEMBER GUTH: Can you tell us what you have  
5 in mind, Dale? (Laughter)

6 PANEL MEMBER JOHNSON: No, I -- No because, you  
7 know, because you don't want to sit and do a lot of thinking  
8 and, you know, going in a certain direction and then come to  
9 the realization you can't do that.

10 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay. There  
11 probably are a lot of things, it's really sort of a case-by-  
12 case then you have to answer it. If you really want to get  
13 down into the nitty-gritty weeds I think we posted, and we  
14 could certainly email to you, I think it was for  
15 Subcommittee 2 for their second phone call, some attachments  
16 that showed the state regulatory process and constraints,  
17 which you can read. But it really is a case-by-case thing  
18 and it really takes, you know, people who have had years of  
19 experience, and in particular attorneys to address this.

20 But what I do want to say and say it quickly is,  
21 the next time we will be talking about the alternatives  
22 assessment process. And so we do have some constraints  
23 there, which we are trying to look for creative ways around.

24 And that is the statute, first of all, that says,  
25 we can't impose regulatory responses until after

1 alternatives assessments have been done. And it defines  
2 alternatives assessment in what some people might consider a  
3 Cadillac version. And a lot of people said they would like  
4 to use some sort of tiered approach and we are trying to  
5 think of creative ways that we could do that.

6 CO-CHAIR CARROLL: Ken.

7 CO-CHAIR GEISER: This is a question to you all.  
8 One of the things we did is, as you obviously know, we upped  
9 the workload of this Committee, of this Panel. We have put  
10 extra work time in, we have asked you to rearrange your  
11 schedule not only for the meeting but now for several phone  
12 calls. And now we are also asking, hopefully -- I think we  
13 are finding that the homework stuff was very valuable. So I  
14 guess, you know, I should -- I'm just curious. Is anybody  
15 feeling that it is getting too stressful? Are we asking too  
16 much of you all?

17 PANEL MEMBER GUTH: A salary increase. (Laughter)

18 CO-CHAIR GEISER: I mean, I take note of the fact  
19 that this is a voluntary effort.

20 PANEL MEMBER DENISON: Maybe we could get some  
21 water next time.

22 MS. BARWICK: We'll work on that, Richard.

23 CO-CHAIR CARROLL: The demands just keep going up,  
24 don't they?

25 CHIEF DEPUTY DIRECTOR MADRIAGO: We are going to

1 buy more of our environmentally friendly pitchers so we  
2 can --

3 CO-CHAIR GEISER: All you're getting, you're  
4 getting a lot of thank yous from us. And, you know, I hope  
5 that you understand how much we are all appreciating your  
6 time.

7 PANEL MEMBER JOHNSON: I think the thing is we  
8 want to contribute to something that works; that's the main  
9 thing.

10 PANEL MEMBER SCHWARZMAN: That's what I was going  
11 to say, Ken, is basically that I think previously we were  
12 asked questions that we couldn't answer because there wasn't  
13 the appropriate way to deliberate and think about it and  
14 have the discussions and go back and look stuff up and then  
15 come back and answer in a meaningful way. So that was  
16 frustrating. And I think we are all willing to do the work  
17 because at this point it feels like we can see how it  
18 translates into providing answers and being helpful to the  
19 Department.

20 CO-CHAIR CARROLL: Joe, go ahead.

21 PANEL MEMBER GUTH: Well on that point, what  
22 happens now? Is the Department going to make some decisions  
23 on these three issues and come up with a proposal that, I  
24 don't know, maybe we'll react to or is it just going to, you  
25 know. We'll see it when the regs are proposed or?

1 CHIEF DEPUTY DIRECTOR MADRIAGO: Well, as you may  
2 remember I think we discussed this briefly in our  
3 teleconference back in February.

4 You know, the input we get from all of you is, you  
5 know, one of several sources of input. We will be going  
6 through a series of meetings with our stakeholders and they  
7 will be providing us with input. Then the other factor of  
8 the input is sort of, you know, the policy decisions that  
9 are made, you know, within the Department and others in the  
10 administration.

11 So we will have to meld that all together and then  
12 there will be at some point draft regulations which you all  
13 will have a chance to and I hope that you will give us  
14 individual comments on those.

15 CO-CHAIR CARROLL: Bob.

16 PANEL MEMBER PEOPLES: Yes. So in the interest of  
17 personal full disclosure I admit to having limited volatile  
18 RAM. And so what I really mean by that is not only is all  
19 this stuff rather complex intellectually but everybody here  
20 has a multitude other things that they are responsible for.

21 So, you know, I just want to express my thanks but  
22 also a commendation to the staff for putting together a  
23 document like this that sort of distills the essence out of  
24 some really complex gobbledy-gook at times. And that makes  
25 it possible to come back and reengage after you have been

1 gone and your RAM is already emptied. And, you know, be  
2 able to contribute. That is for me personally but I often  
3 find I am not the only one. So I want to acknowledge that  
4 it was really helpful.

5 CO-CHAIR CARROLL: Absolutely.

6 (Applause)

7 CO-CHAIR CARROLL: Well, okay. Then I'm --

8 Roger, I'm sorry, go ahead. I apologize. See,  
9 the problem was, the problem was you didn't have your name  
10 side out and I just saw the blank side so I didn't know  
11 whether you really wanted to talk or not. Go ahead.

12 PANEL MEMBER McFADDEN: No problem. My comment is  
13 related to the written responses to the questions were just  
14 excellent, I thought, but it would have been very useful for  
15 me to read Jae's and some of the others in advance. Because  
16 it would have first of all prepared me better for this  
17 meeting if I would have been able to read it and, you know,  
18 factor it into this small brain I have ahead of time and  
19 maybe to share back and forth. So from that standpoint.

20 And I know that might be a time issue, Odette, and  
21 I absolutely appreciate that. But if there were any way to  
22 get that done earlier that would really be great.

23 CO-CHAIR CARROLL: Thank you, Roger.

24 CHIEF DEPUTY DIRECTOR MADRIAGO: That should not  
25 be a problem.

1 CO-CHAIR CARROLL: Tim, did you have yours up?

2 PANEL MEMBER MALLOY: I was just wondering if  
3 anybody was driving to the airport after the meeting and I  
4 thought this would be a good way.

5 CO-CHAIR CARROLL: Yes, this is a wonderful time  
6 to ask that question while you have, while you have everyone  
7 here. So I assume that others will handle this with Tim  
8 off-line. (Laughter).

9 I think that pretty much brings us to the end of  
10 this particular odyssey. Do we want to talk at all about  
11 the schedule, Odette? We are going to attempt to kick off  
12 the next round of this before the end of May, correct?

13 CHIEF DEPUTY DIRECTOR MADRIAGO: Correct. So you  
14 and Ken and I and Kathy will talk sometime next week.

15 CO-CHAIR CARROLL: And we will give you as much  
16 notice as we can pursuant to, pursuant to the suggestions  
17 that you made. Kathy.

18 MS. BARWICK: I just want to remind people to  
19 leave your name tags and your table tents right where they  
20 are and we'll come around and -- we don't want to make new  
21 ones every time.

22 CO-CHAIR CARROLL: And with that, unless there is  
23 other for the good of the group, I want to thank you once  
24 again for your engagement over a very intense day and a  
25 0half. It was tremendously intellectually stimulating, the



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

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of May, 2011.

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