

In the Matter Of:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

**WORKSHOP**

May 07, 2014

Reported By: Sharon Lancaster CSR 5468

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WORKSHOP on 05/07/2014

<p>1 STATE OF CALIFORNIA 2 DEPARTMENT OF TOXIC SUBSTANCES CONTROL 3 --oOo-- 4 5 6 7 8 9 DTSC PRIORITY PRODUCT WORKSHOP ON 10 Children's Foam Padded Sleeping Products 11 May 7, 2014 12 13 14 15 REPORTER'S TRANSCRIPT OF PROCEEDINGS 16 Byron Sher Auditorium, 2nd Floor 17 1001 I Street 18 Sacramento, California 95814 19 20 21 Reported by: Sharon Lancaster, CSR 5468 22 23 24 REGAL COURT REPORTING 25 321 N. Rampart Street, Suite 250 Orange, California 92826 (866) 228-2685</p>	<p>1 Sacramento, California Wednesday, May 7, 2014 2 (1:47 p.m.) 3 4 MS. MAURER: Good morning. Welcome, again. 5 My name is Mary Sue Maurer. I'm with the 6 Department of Toxic Substance Control. And here with us 7 today is our staff scientist, Christine Papagni, and one of 8 our scientist supervisors, Lisa Qualiaroli. And we're going 9 to quickly take a look at what's going to happen in this 10 room for the next hour and a half. 11 Christine is going to present about a 10-minute 12 PowerPoint presentation about the product, in particular, 13 children's foam padded sleeping products. And I'm going to 14 ask you just to wait and maybe take notes on what your 15 questions might be, and we'll start off with them at the 16 end. 17 And then we also have -- Christine will be going 18 over in her presentation three very specific topic areas 19 that we're going to be asking for input from you. We want 20 to hear your ideas, your suggestions, any questions you 21 have. And that's why we're here, is to learn as much as we 22 can. 23 We have a few ground rules. We're lucky, this 24 is a smaller setting, a smaller workshop, but one person at 25 a time. In particular, it will assist the court reporter in</p>
<p>1 DTSC PRESENTERS: 2 CHRISTINE PAPAGNI 3 LISA QUAGLIAROLI 4 MARY SUE MAURER 5 6 WORKSHOP PARTICIPANTS: 7 SHANNON MCKINNEY 8 Assembly for Environmental Safety &amp; Toxic Materials 9 ERIC SCIULLO 10 Department of Toxic Substances Control 11 GREG BRORBY 12 ToxStrategies, Inc. 13 TOM WOOD 14 Cooper Tire Company 15 BINA BOTTS 16 Goodyear Tire Company 17 BILL ALLAYAUD 18 Californians for a Healthy and Green Economy 19 GENE LIVINGSTON 20 American Cleaning Institute 21 DEVON ANDERSON 22 Retail Industry Leaders Association 23 JENNIFER GIBBONS 24 Toy Industry Association 25 JEFF WONG, DTSC</p>	<p>1 making a record. 2 You did sign in. But when you do have a 3 question, if you could just "Hi, it's Mary Sue, and I was 4 wondering," or "I think," et cetera, so she can make a note 5 of it. 6 Respect all viewpoints. You look like a very 7 nice group of people here. But if things get heated or 8 there's different perspectives, sometimes things can get a 9 little tense. So we'll just be respectful at all times. 10 And if you have a phone, if you could text and take your 11 calls outside. 12 I put the email address up here. Again, we're 13 asking for your comments, any suggestions, any data that you 14 have could be emailed to us. We're trying to make this 15 process as electronic as possible. And so this is probably 16 the best way to communicate any afterthoughts, and we want 17 to be sure that we get them while they're here. 18 All right. Bathrooms, we passed on the way in. 19 And without further ado -- I'll be facilitating 20 when it gets to the question part -- but I'm going to turn 21 it over to Christine right now. 22 MS. PAPAGNI: Mary Sue, because it's such a small 23 group, can you say your name and who you're with. 24 MS. MCKINNEY: Yes. I'm Shannon McKinney. I'm 25 with the Assembly for Environmental Safety and Toxic</p>

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<p>1 Materials Committee. 2 MS. GIBBONS: Jennifer Gibbons, with the Toy 3 Industry Association. 4 MS. ANDERSON: Devon Anderson, political solutions 5 for the Retail Industry Leaders Association. 6 MR. LIVINGSTON: And I'm Gene Livingston, with 7 Greenberg Traurig on behalf of the American Cleaning 8 Institute. 9 MR. ALLAYAUD: I'm Bill Allayaud, representing the 10 CHANGE Coalition, which is Californians for a Healthy and 11 Green Economy, and there's like 35 of us in that coalition. 12 And I work for the Environmental Working Group here in 13 Sacramento. 14 MR. BRORBY: Greg Broby, with ToxStrategies. 15 MR. WOOD: I'm Tom Wood from Cooper Tire and 16 Rubber Company. 17 MS. BOTTS: Bina Botts from Goodyear Tire and 18 Rubber. 19 MR. SCIULLO: I'm Eric Sciullo. I'm a 20 toxicologist with DTSC. 21 MS. MAURER: And Eric, you worked on this 22 particular product as well. So he's here to help answer any 23 questions you may have about it. All right. 24 MS. PAPAGNI: Well, as Mary Sue introduced me 25 already, I'm Christine Papagni, and I will be discussing the</p> <p style="text-align: right;">5</p>	<p>1 nap mats, pads on cots for sleeping, different travel beds, 2 portable crib pads. 3 Worth noting, we recently added co-sleepers and 4 bedside sleepers, which were not on the profile that are 5 listed online, but they meet DTSC's intention for this 6 product category so they're included here. 7 As already stated, the chemical TDCPP is an 8 additive chemical flame retardant. And most of you already 9 knows it's added to polyurethane foam. 10 What's excluded from this category description are 11 mattresses, as defined by the Consumer Product Safety 12 Commission in 1632 and 1633. Also furniture, which is 13 covered by the requirements of the California Technical 14 Bulletin 117. And car seats, which are covered by the 15 Federal Motor Vehicle Safety Standards, Standard Number 302. 16 MR. ALLAYAUD: When do we ask questions? 17 MS. PAPAGNI: At the end of this brief 18 presentation. 19 Do you have a question you would like to ask now? 20 MR. ALLAYAUD: Well, about that particular one 21 thing. 22 MS. PAPAGNI: Car seats? 23 MR. ALLAYAUD: Yeah. 24 MS. PAPAGNI: Okay. Can we hold that question? 25 And then we'll go through all those together as a group.</p> <p style="text-align: right;">7</p>
<p>1 rationale. And most of you may or may not have read the 2 product profile that's online. But this is a brief summary 3 of the profile that's already made public. And I'll be 4 discussing children's foam padded sleeping products that 5 contain Tris 1,3 dichloroisopropyl phosphate -- very long 6 name. So we typically call it "TDCPP." It's also commonly 7 known as "chlorinated tris." But because there's some 8 confusion in the media regarding which chemical is 9 chlorinated tris, we're sticking to TDCPP so it's clear. 10 So today the topics we'll be discussing, both in 11 this presentation and together as a group, are the Priority 12 Product description and what's excluded from that 13 description; the chemical of concern TDCPP, hazards 14 associated with that; exposure considerations we looked at 15 before we proposed this Priority Product; potential 16 alternatives and what you may think of those; and market 17 information, which we have; and what you might be willing to 18 share with us. 19 There is a variety of different foam padded 20 products that fall into this category. Here we have a few 21 pictures, you know, play yard, a portable bassinet, and a 22 travel bed. 23 On the tables before you there is a sheet that has 24 a definition for each of the products that are listed under 25 this category of foam padded sleeping products; for example,</p> <p style="text-align: right;">6</p>	<p>1 MR. ALLAYAUD: Sure. 2 MS. PAPAGNI: All right. Thanks. 3 There are certain hazards which have been 4 attributed to TDCPP, most notably carcinogenicity. It's 5 listed as a known carcinogen by the State of California in 6 Prop 65. 7 Research studies have demonstrated other hazards, 8 for example, environmental toxicity is demonstrated by 9 embryo development disruption. Reproductive toxicity has 10 been noted in a few studies, especially with male 11 reproductive toxicities. And kidney and liver damage is 12 also worth noting. 13 Children are considered a sensitive subpopulation, 14 as are day care workers. So that played a role in terms of 15 potentially listing this as a Priority Product. 16 Exposure considerations, we looked at. There's 17 multiple routes of exposure, thermal exposure, inhalation, 18 ingestion. As most of you are aware, TDCPP is not 19 chemically bonded to polyurethane foam, so it's relatively 20 volatilizing as expending volatiles and it is known to absorb 21 to dust. 22 TDCPP has been widely detected in research in 23 homes, offices and day care facilities. In fact, there is 24 one study of day care facilities that TDCPP was in higher 25 concentrations in the facilities with nap mats versus those</p> <p style="text-align: right;">8</p>

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<p>1 without nap mats. And it has been recently detected in a 2 study of children's hand wipe samples. Of the children who 3 were tested in that study, 96 percent of the children had 4 TDCPP on their hands.</p> <p>5 TDCPP has also been found in the San Francisco Bay 6 Area water and sediment. It's been detected in streams all 7 across the U.S. in studies and has been seen in birds and 8 fish.</p> <p>9 And why sleeping products? Well, as you know, 10 TDCPP is a flame retardant that is found in a variety of 11 different children products. Children spend many hours 12 sleeping on these different products; hence, they are 13 exposed to TDCPP through dust inhalation while sleeping, 14 through dermal absorption and, most especially, 15 hand-to-mouth behavior affects their exposure. And also of 16 importance, currently there's no regulatory requirement in 17 the U.S. or California for chemical flame retardants in 18 these children's foam padded sleeping products.</p> <p>19 So are there alternatives? Maybe.</p> <p>20 Are they necessary? You know, there are no 21 federal requirements for flame retardants in California or 22 the U.S. in the foam padded products. You could potentially 23 use a different chemical flame retardant or, essentially, 24 eliminate the chemical flame retardants altogether. This is 25 a decision needed to be made by the individual</p> <p style="text-align: right;">9</p>	<p>1 the '70s?</p> <p>2 MR. ALLAYAUD: Yeah.</p> <p>3 MR. SCIULLO: That was actually brominated tris. 4 That was banned. And they replaced it with the chlorinated 5 tris.</p> <p>6 MR. ALLAYAUD: In pajamas as well as in these 7 sleep mats?</p> <p>8 MR. SCIULLO: Well, I don't know exactly where it 9 went after that. It may have went into clothing products. 10 But, I mean, our focus in this case, we're on the nap and 11 the bed-related products.</p> <p>12 MR. ALLAYAUD: Right.</p> <p>13 My second question was on --</p> <p>14 MS. PAPAGNI: Just to further elaborate. In the 15 '70s, TDCPP was voluntarily withdrawn from the children's 16 pajamas because it was also of concern. So it was never 17 officially banned because the children's pajama 18 manufacturers voluntarily withdrew it.</p> <p>19 MR. ALLAYAUD: You said TDCPP was voluntarily 20 withdrawn. But that's chlorinated.</p> <p>21 MS. PAPAGNI: Right. But the brominated tris was 22 banned.</p> <p>23 MR. ALLAYAUD: Got it. By the State of California 24 or nationally?</p> <p>25 MR. SCIULLO: I think it was nationally.</p> <p style="text-align: right;">11</p>
<p>1 manufacturers.</p> <p>2 So the market information that we do have, which 3 is minimal, is we know that TDCPP currently is a high 4 production volume chemical in the U.S., as indicated by 5 USEPA. There is approximately 10 to 50 million pounds a 6 year produced in the U.S.</p> <p>7 As far as we're aware, there's only one U.S. 8 manufacturer currently that produces TDCPP. And we are 9 aware that there may be a few in China. So any information 10 you would be willing to provide about that would be greatly 11 appreciated. TDCPP is one of the most widely used flame 12 retardants in polyurethane foam that we're aware of. And 13 it's also widely used in children's products.</p> <p>14 So that's the end of the summary presentation for 15 today. And I will turn it back over to Mary Sue.</p> <p>16 MS. MAURER: So that was the rationale for 17 selecting this product.</p> <p>18 Any questions about the selection of the product?</p> <p>19 MR. ALLAYAUD: Is this the same "tris" that was 20 banned in children's pajamas?</p> <p>21 MS. PAPAGNI: Yes.</p> <p>22 MR. ALLAYAUD: But there's no rule about where 23 else it went then?</p> <p>24 MS. PAPAGNI: Correct.</p> <p>25 MR. SCIULLO: I'm sorry. Are you talking about</p> <p style="text-align: right;">10</p>	<p>1 MR. ALLAYAUD: Sorry. I'm new to this policy 2 stuff in the last few years.</p> <p>3 MS. PAPAGNI: No, that's okay. These are good 4 questions.</p> <p>5 So, chlorinated tris was voluntarily withdrawn. 6 They replaced brominated tris -- which was banned -- with 7 chlorinated tris, TDCPP. And there was concern about that 8 as well, so they went ahead and voluntarily withdrew it.</p> <p>9 MR. ALLAYAUD: Got it. Where is that one 10 manufacturer? Can you name the name or the state where 11 they're located?</p> <p>12 MS. PAPAGNI: It's ICL North America. And I 13 believe that the headquarters is in St. Louis, Missouri. 14 And they have manufacturing plants throughout California. I 15 don't know the exact locations. I believe they're in the 16 states of Washington, California, New York, maybe close to 17 Chicago.</p> <p>18 MR. ALLAYAUD: They manufacture the chemical or 19 manufacture the products that have the chemical?</p> <p>20 MS. PAPAGNI: That manufacture TDCPP. 21 So which manufacturing locations specifically 22 makes TDCPP by ICL, I can't tell you that today. If you 23 would like to know, you can email us at the Safer Consumer 24 Products email address.</p> <p>25 MR. ALLAYAUD: The way the system is supposed to</p> <p style="text-align: right;">12</p>

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<p>1 work, the new program, is that it doesn't matter so much 2 where the chemical comes from; it's the product and working 3 with the person retailing that product -- not retailer -- 4 but the manufacturer of the product have retail say take it 5 out or show us why not or the alternative. 6 MS. PAPAGNI: Ultimately, it would come down to 7 who's manufacturing the pads that are in each of these 8 products. So who manufactures the nap cot with the foam, 9 who manufactures the foam in a portable crib. 10 MR. ALLAYAUD: Right. 11 My last question was on the car seats. So that 12 would be like the little infant car carriers we used to have 13 for our kid. And we still have the big one that she sits in 14 now because she's still only a certain height. 15 MS. PAPAGNI: Right. It could be in any of them. 16 MR. ALLAYAUD: Those might have foam in them with 17 flame retardant? 18 MS. PAPAGNI: Correct. 19 MR. ALLAYAUD: But you just went for sleeping, not 20 that. And can I ask why? 21 MS. PAPAGNI: Well, there's a few reasons. 22 Partially, those aren't marketed for sleeping. 23 The main reason is there are actual federal 24 regulations for flame retardancy that they have to meet for 25 car seats, and so it's a little different than the sleeping</p> <p style="text-align: right;">13</p>	<p>1 probably describe those better than I can. But it's a 2 Global Product Classification system that, to my 3 understanding -- and, again, I think he would know better 4 than I would -- that businesses use to categorize their 5 products. 6 MR. LIVINGSTON: Right. They can refer to one of 7 the classifications or, like, in the brick and everybody 8 knows what they're talking about. And so when you're 9 dealing with internationally -- 10 MS. PAPAGNI: It's like a number that is a product 11 category? 12 MR. LIVINGSTON: Right. Well, it's a little more 13 than that. 14 But there's four levels. There's a segment, a 15 family, a class, and then a brick, and the "brick" is the 16 product itself. So I don't know whether that helps. 17 MS. MCKINNEY: Yeah, I'd just never heard that 18 before. 19 MS. QUAGLIAROLI: And that was a good question. 20 There's all different people from different areas, you 21 know, and representing consumers and environmentalists and 22 industries. 23 MS. PAPAGNI: I was glad that you're attending 24 this workshop today, because you mentioned that in the main 25 discussion. And so for the other two proposed products,</p> <p style="text-align: right;">15</p>
<p>1 products. 2 Whereas, with the sleeping products, there are no 3 federal or state requirements for the chemical flame 4 retardants. With the car seats, there are. 5 MR. ALLAYAUD: Okay. That's a clear line. 6 MS. PAPAGNI: Right. And that's where the 7 differentiation is. 8 MR. ALLAYAUD: Got it. 9 MS. MAURER: Any other questions on the rationale 10 of why this product was selected or the types of products 11 within the category? 12 Okay. And if they come up, feel free to answer. 13 So we have three topics. The first topic 14 Christine touched on is the description of the product or 15 the different products in it and what was included or 16 excluded in the definitions, the characterization of the 17 product, and are there any other considerations we should 18 know about regarding the particulars of this product. 19 So this is the first of three topics that we're 20 throwing out to you to respond to or help us gain more 21 information. 22 MS. MCKINNEY: I have a question. And I'm sorry 23 if you described this or it just didn't sink in. But can 24 you explain what GPC and GS1 bricks are? 25 MS. PAPAGNI: Well, in all honesty, Gene can</p> <p style="text-align: right;">14</p>	<p>1 they did use GPC codes. 2 For the sleeping products, it's more of a category 3 with, you know, I'd say, different products that fall into 4 that category. So there was no one or two brick code that 5 captured them all, which is why we don't use them, at least 6 initially, but may use them in rulemaking, if we go that 7 far. So if there are brick codes that you or anyone else 8 suggests we use for the different products, that would be 9 helpful. 10 So on your tables, you have a list of the 11 definitions that we have initially drafted. And so if you 12 have comments on any of these definitions of the individual 13 products listed under the category, or if you have GPC brick 14 codes that you think would be appropriate, that's 15 information we'd like to receive. 16 MR. LIVINGSTON: I'm Gene Livingston. So my 17 client, the American Cleaning Institute, we're not into this 18 product at all. But this product profile, in particular, 19 gave us an opportunity to talk about the GS1 system, and so 20 that's one of the reasons that I came here. 21 And so you've got two questions in that first one: 22 Are the definitions and terms clear as to which products are 23 included? And I think the answer is: Probably not. I 24 think it's more clear about what's excluded. 25 MS. PAPAGNI: Okay.</p> <p style="text-align: right;">16</p>

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<p>1 MR. LIVINGSTON: And my assumption -- although the 2 profile doesn't say this, and it gets us into another 3 area -- I assume that one reason you excluded the products 4 you excluded is because they are otherwise regulated, and 5 anything you would do would be duplicative, potentially in 6 conflict or supercede. The profile doesn't make that 7 explicit, but that was kind of the assumption that we had. 8 And it seemed like, for the future you might want 9 to really address that issue, because it's a big issue, I 10 think, among the regulated community in terms of whether 11 there's duplication or whether something that DTSC might do 12 will supersede. And so to address that, I think would be an 13 important addition. 14 MS. PAPAGNI: In this case, it wasn't necessarily 15 an issue of duplication. It was more an issue of the 16 sleeping products we did include do not have regulatory 17 requirements which would cause them to put in chemical flame 18 retardants. Whereas, with certain mattresses, mattresses in 19 certain types of cribs, mattresses that, you know, children 20 sleep on, bed mattresses, there are actual requirements for 21 flame retardancy which are often met by chemical flame 22 retardants. 23 So it's not that we couldn't list those. But at 24 least with these, the "is it necessary" question is 25 certainly a little more obvious.</p> <p style="text-align: right;">17</p>	<p>1 MS. PAPAGNI: Well, we did have somebody from the 2 toy manufacturing association. 3 MR. LIVINGSTON: Yes, Jennifer. 4 MS. PAPAGNI: Is that the lady who stepped out? 5 MR. LIVINGSTON: Yeah. 6 MS. PAPAGNI: Because she may actually -- and some 7 of you may -- I'm just personally not aware of which GPC 8 codes -- there were some where they might fit. But it was 9 kind of vague, in all honesty. But, you know, I don't 10 manufacture play yards or nap cots, or you know. 11 MR. LIVINGSTON: Well, there's baby playpens, and 12 there is a brick for that. There is a brick for baby 13 carriers, baby carry cots and baskets and cradles is the 14 rest of that. There's a baby cot mattress brick. And I 15 don't need to go through these here, but -- 16 MS. PAPAGNI: You actually them listed with you? 17 MR. LIVINGSTON: Yes. 18 MS. PAPAGNI: Oh, that would be great if you'd be 19 willing to share them. 20 MR. LIVINGSTON: I'll have to send it to you 21 electronically. 22 MS. PAPAGNI: Okay. Perfect. 23 MR. LIVINGSTON: I can do that. 24 And so the reason I'm here is to just urge you to 25 use that system to the maximum extent you can. And I</p> <p style="text-align: right;">19</p>
<p>1 MR. LIVINGSTON: Right. Right. 2 Just a point on the mattresses. I represent the 3 mattress industry, and they were -- basically, we initially 4 negotiated a standard here in California and then took that 5 nationally to the CPSC, which is what -- and there are no 6 mattresses that contain any chemicals to bring about flame 7 retardancy. That's all done with fibers and fabrics now. 8 So just -- 9 MS. PAPAGNI: Which is good to hear. And I've 10 mostly heard that. But I've, unfortunately, also heard 11 conflicting information. And so there are other folks who 12 have told me that there are chemical flame retardants put 13 into some mattresses. So... 14 MR. LIVINGSTON: Okay. My client says no. 15 So, that's interesting that -- so, the reason you 16 exclude them is not because you wanted to avoid a duplicate 17 regulation, but because you thought that the regulation 18 answered the "is it necessary" question? 19 MS. PAPAGNI: Correct. 20 MR. LIVINGSTON: Okay. And then in terms of what 21 is included, I guess that gets into the second category 22 some. And I understand it. It's a very difficult category, 23 and I'm not an expert in this category by any means. But 24 there are some brick codes. Whether they line up with your 25 products, you know, maybe not. But there's not one or two.</p> <p style="text-align: right;">18</p>	<p>1 recognize that here is not necessarily a perfect fit, but 2 it's very important. And the fact that you added 3 co-sleepers and one other category, I think indicates kind 4 of the ambiguity of the -- I hesitate to use the word 5 category. 6 And so that's one of the things I wanted to ask 7 you about as well. Karl said that in the three-year work 8 plan, you're going to use categories. And in terms of the 9 GS1 system, you have segment, family, class, and brick. 10 MS. PAPAGNI: Right. 11 MR. LIVINGSTON: And so is the class the 12 equivalent of your category, or what is a category? 13 MS. PAPAGNI: I just may have misused the word 14 "category," in all honesty. Because the proposed Priority 15 Product is children's foam padded sleeping products. 16 So we're trying to define what that means by 17 listing what individual -- you know, what all the different 18 foam padded sleeping products are to, you know, clear up the 19 ambiguity. 20 So if anyone else has comments about what could -- 21 or could be included to clear up the ambiguity in the 22 products, that would help us. 23 MS. QUAGLIAROLI: I did want to address just one 24 thing, and correct me if I get it wrong. 25 But the work plan is going to be focused on</p> <p style="text-align: right;">20</p>

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<p>1 categories, and within those categories we're going to start 2 looking at products. The first -- the three we just went 3 over were specifically products. So it's a different sort 4 of thing. So the categories aren't necessarily going to 5 line up with -- 6 MR. LIVINGSTON: With the GS1 system. 7 MS. QUALIAROLI: Yes. But once they narrow down 8 into those categories for the products, then we're certainly 9 going to be considering how to classify them very, very 10 specifically. 11 MR. LIVINGSTON: So will the work plan ultimately 12 then have products or will it -- 13 MS. QUAGLAROLI: They are working on it. Well, 14 actually, you're probably part of it. So I don't want to 15 kind of, you know, blow any big surprises. But I think 16 there's going to be kind of a combination of both, 17 potentially. But I don't really know. Because they're 18 developing it as we speak. There's going to be another 19 workshop coming up. I believe they said late summer. 20 MR. LIVINGSTON: Late summer, they said. 21 MS. QUAGLAROLI: Yeah. So you'll be seeing more 22 and more about that as the summer progresses. 23 MS. BOTTS: I have a question. I'm sorry. 24 But this is going back to -- it's not exactly what 25 we were talking about -- the items that were excluded</p> <p style="text-align: right;">21</p>	<p>1 are really high. And then we, obviously, take that to a 2 very -- you know, we consider it very, very important. And 3 that's the main priority of our product is safety; right? 4 And so I just was thinking there's other 5 industries also, I'm sure, that has more safety 6 requirements. 7 MS. QUAGLIAROLI: Anyone else on number one? 8 MR. ALLAYAUD: Well, I think I heard part of the 9 answer what GPC GS1 stands for. So it's a Global Product 10 Classification; right? 11 MS. PAPAGNI: Yes. 12 MR. LIVINGSTON: Yes. 13 MR. ALLAYAUD: And then GS1, is it, means what? 14 In a phone call the other day, we're all going, 15 "What does this mean?" And no one knew. I could have 16 Googled it. 17 MR. LIVINGSTON: Well, it's just global system, 18 isn't it? 19 MR. ALLAYAUD: Global system 1? 20 So that's not an "L"? 21 MS. PAPAGNI: Global system 1. Sorry, that's not 22 really my background. 23 MS. QUAGLAROLI: Just a clarification. Could 24 everybody please remember to state your name for the court 25 reporter.</p> <p style="text-align: right;">23</p>
<p>1 because there's other federal regulations and state 2 regulations and whatnot. 3 What if it's not a federal regulation but an 4 industry standard or something that's considered a safety 5 regulation? You know, because sometimes the government 6 regulates to a certain point, but the industry will decide, 7 for its own requirements, it wants to meet a certain extra 8 level of safety or whatever. 9 How would that be taken into consideration? 10 MS. PAPAGNI: At least currently, industry 11 standards wouldn't be considered a regulatory requirement, 12 and so it would not be an exclusion. 13 So, for example, if it was an industry standard to 14 include chemical flame retardants, regardless of the 15 product, that would not make it an exclusion from a Priority 16 Product. 17 MS. BOTTS: Okay. Because it's not -- you know, 18 there is regulatory requirements. Because a lot of times 19 you decide, you know, it may not be that you have to include 20 a chemical, but you have to meet a certain flame retardancy. 21 MS. PAPAGNI: Right. 22 MS. QUAGLIAROLI: Do you have an example that you 23 wanted to give? 24 MS. BOTTS: Oh, I was just thinking other -- I 25 mean, well, okay. I'm with tires, and safety regulations</p> <p style="text-align: right;">22</p>	<p>1 MR. ALLAYAUD: Yes. I'm Bill with EWG. 2 THE REPORTER: You're the guy closest to me. 3 (Laughter.) I think there is a list going around. 4 MS. MAURER: Would it help you to see the list? 5 THE REPORTER: Yes, it would. Thank you. 6 MS. PAPAGNI: All right. 7 Any other questions on number 2? If not, we'll go 8 down to number 3. Any other considerations for this 9 description that we used? 10 MR. LIVINGSTON: Define "descriptions." 11 MS. PAPAGNI: So, for example, are there sleeping 12 products that fall within this proposed Priority Products 13 that you think maybe we should have included and didn't 14 include, or vice-versa? 15 MS. MCKINNEY: The only thing I can think of -- I 16 have two small children, so this has been a topic in my mind 17 for a while. And I know that it's a product that is not 18 necessarily manufactured for sleeping, but I think a lot of 19 children do sleep on it, are the mats that are also like a 20 gym. I know that most of those are manufactured, and they 21 say they comply with the old TB-117. And, therefore, I'm 22 guessing that they have some kind of flame retardant 23 chemical in them. 24 I know that they are not manufactured specifically 25 for sleeping, but a lot of people use them for a sleeping</p> <p style="text-align: right;">24</p>

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<p>1 type of mat. They have a little bit of foam in them. 2 MS. PAPAGNI: So you're suggesting we had gym mats 3 to the list? 4 MS. MCKINLEY: Yeah. Or considering that. 5 MS. QUAGLIAROLI: That's a good point. They may 6 not be marketed as a sleeping pad, but they're used as one. 7 Can you think of any other -- 8 MS. MCKINLEY: And children spend many many 9 hours -- some people have their kids -- I don't know if it's 10 many hours. I know at the day care in our office, the kids 11 are on those kind of all day long. 12 (Mr. Wong joined the meeting.) 13 MS. QUAGLIAROLI: Welcome. 14 Anything else on number 3 in the first group of 15 topic questions? 16 Okay, good. Why don't we go to the -- 17 MS. MCKINLEY: If we think of something later, can 18 we ask you? 19 MS. QUAGLIAROLI: Absolutely. You can ask any 20 other questions or thoughts as we move forward. 21 MS. MAURER: Okay. 22 Topic 2: Chemical of concern and alternatives. 23 And number 1: Are there other candidates or 24 chemicals in this product that you suggest be considered? 25 And number 2: Are there functionally acceptable</p> <p style="text-align: right;">25</p>	<p>1 This is Bill again, with EWG. 2 Say, there were two or three more -- one more 3 that's the second most commonly used. Why not just do it 4 the same time? Because you have the product manufacturer 5 and you're dealing with them. Because otherwise, we'll just 6 do like they did with the pajamas, and we'll be back to 7 three, four years now going, well, let's go to the next 8 flame retardant in all these products. 9 I know you guys have limited staff. But that's a 10 good question, isn't it? 11 MS. PAPAGNI: Yes. 12 MR. LIVINGSTON: It's a great question. 13 MS. PAPAGNI: Honestly, it's a great question. 14 You partially answered it by, yes, we have limited staff. 15 This is a new program, and there were decisions made about 16 which products we would be starting with. 17 MR. ALLAYAUD: Yeah, I can understand. But you've 18 got them in the door right now for this one. So come on. 19 MR. SCIULLO: It is a great question. I think 20 right now, we wanted to stand behind the toxicology first 21 with what's known. And TDCPP has the most established 22 toxicology relative to the others that are out there. And 23 we wanted to have a strong foundation with the science 24 initially. 25 But, I mean, it's a good discussion. And I think</p> <p style="text-align: right;">27</p>
<p>1 alternatives to the Priority Product? 2 MS. MCKINLEY: How did you select, I guess, this 3 particular flame retardant chemical? Is it the one that 4 most often comes up in these products, or are there other 5 are -- you know, are there a wide range of flame retardant 6 chemicals often found in these products? So I guess that 7 would help me ask more specific questions. 8 MS. PAPAGNI: There are other chemical flame 9 retardants that are used in these products. This particular 10 one is the one that's most widely seen in children's 11 products, in the research. 12 MR. SCIULLO: And it has the most well-established 13 toxic-related endpoints. 14 MR. ALLAYAUD: Yeah, I was going to ask a similar 15 one. Say, there are two or three others that have known bad 16 effects on kids. But yet you would say, well, we're not 17 dealing with those yet, because this one is just more clear, 18 it's more -- you know, why not deal with two or three more 19 if they're common, too? 20 MS. MCKINLEY: Or all of them. 21 MR. ALLAYAUD: Because it's the most common. 22 MS. PAPAGNI: And there is the potential that 23 we'll look at others in our -- you know, add them to the 24 three-year work plan, and look at them in the next round. 25 MR. ALLAYAUD: But let's look at this practically.</p> <p style="text-align: right;">26</p>	<p>1 if we go to the original question of: Is it necessary, as 2 opposed to necessarily, well, let's do a substitution, I 3 mean, that would probably be a better path forward. But at 4 the same time, we didn't want to limit manufacturers in 5 terms of what options they had initially. 6 You can't really say that some of the others are 7 as toxic as TDCPP at this time either. 8 MR. ALLAYAUD: They're endocrine destructors but 9 don't cause cancer, so we'll let those kids be exposed to 10 those for another five or ten years. 11 MR. SCIULLO: I mean, ultimately we still have to 12 like rely on the scientific data that's there. And the data 13 that's related to the other flame retardants is somewhat 14 specious compared to the TDCPP. 15 MR. ALLAYAUD: Specious or not as convincing? 16 "Specious" sounds like false. 17 MR. SCIULLO: Well, it's -- it's not false. It's 18 just limited, you know. I would say -- maybe we should use 19 a better word. 20 So it's limited, the data, relative to TDCPP. 21 I mean, there are some studies for some of the 22 others, like V6 and some of the other analogs. And you're 23 right, you don't want to get in this whack-a-mole kind of 24 approach, where you knock one chemical down and then you 25 have to address another chemical substitution, like they did</p> <p style="text-align: right;">28</p>

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<p>1 with the brominated and then the chlorinated. But I think 2 since, as Christine pointed out, this is kind of the initial 3 phase, and we're trying to put our focus on those that 4 really have established toxic endpoints. 5 MR. ALLAYAUD: And you know the story that came 6 out about -- it's been a month now -- by the Senate for 7 Environmental Health tested baby bottles that said "BPA 8 free." Did you see that story? 9 Because I know at one point baby bottles might 10 have been a candidate product, but then the Butler Bill in 11 the legislature said "no BPA in baby bottles." So they went 12 and tested like 35 of them. They have all kinds of 13 endocrine disrupting chemicals. And not every one tested 14 actually positive; some reacted with acids and milk and all 15 this. Some were pretty darn stable. But they found out 16 that they've substituted usually BPS, bisphenol sulfate, 17 which is an endocrine destructor, which happens to be more 18 powerful and lasts in the body longer. BPA is actually 19 excreted faster than BPS. 20 So there's the regrettable substitution thing. So 21 I'm thinking why, when you have all these things in the 22 drawer now, we're going let's not just mess around here? 23 MS. PAPAGNI: So part of the process, though, 24 includes Alternatives Analysis, in an effort to avoid 25 regrettable substitutions.</p> <p style="text-align: right;">29</p>	<p>1 MR. ALLAYAUD: And they might say, yes, it's the 2 only thing that stops kids from lighting on fire. Which is 3 what they were arguing in the legislature until recently. 4 But anyway. 5 MS. PAPAGNI: Right. And if that's the position 6 they choose, then the obvious option for them would be 7 going -- drafting an Alternatives Analysis and going through 8 that process. 9 MR. ALLAYAUD: In which then you might get to the 10 X and Y, the other chemicals. 11 MS. PAPAGNI: Correct. 12 MR. ALLAYAUD: And they'd have to show that it's 13 not a regrettable substitution; right? 14 MS. PAPAGNI: Yes. 15 MR. ALLAYAUD: So at that point you could get to 16 some of the chemicals that you aren't -- 17 MS. QUAGLAROLI: And, Christine, correct me if I'm 18 wrong. If those other chemicals are already on our list, 19 then they may well be considered regrettable substitutions? 20 MR. ALLAYAUD: Good question. 21 MS. PAPAGNI: Well, this is where the regs get a 22 little tricky. And there's a few people in the room who are 23 familiar with regs. 24 One of the options -- if a manufacturer or a 25 responsible entity chooses not to do an alternative</p> <p style="text-align: right;">31</p>
<p>1 MR. ALLAYAUD: So run me through that with TDCPP 2 and these products. They'll say, okay, we admit we have it 3 in there, and we're going to use this other chemical 4 instead. And you can guys could say nix? 5 MS. PAPAGNI: Well, there's a whole process they 6 have to go through, in all honesty. 7 So if this product goes through rulemaking and is 8 listed as a Priority Product, then responsible entities and 9 manufacturers of these products have options. One of the 10 options is to conduct an Alternatives Analysis, where they 11 can evaluate the other chemical flame retardants for safety 12 and provide data which, you know, shows the toxic profile of 13 each of those potential substitutes. Other options could 14 include simply removing the chemical TDCPP from their 15 products. That is an option. 16 MR. ALLAYAUD: As I remember the process -- I was 17 involved in the regs, but it's been a couple years. So what 18 they have to go through first: Is it necessary? Do you 19 need a flame retardant, period? 20 And they say, yes, a T -- you know, Y that goes 21 no, hey, we'll take them all out, or, yes, we're going to 22 substitute X for Y. Is that how it goes? I can't quite 23 remember. 24 MS. QUAGLAROLI: It's about TDCPP. So the first 25 question is: Is TDCPP necessary?</p> <p style="text-align: right;">30</p>	<p>1 analysis, they do have an option to replace the chemical 2 with a chemical that is already currently used in industry 3 for that purpose, but not -- my understanding -- and, again, 4 I don't have the regs in front of me, so I don't really want 5 to stick my foot in it too far. There are certain caveats 6 in which they can and cannot pick certain chemicals. 7 And so if you want a more detailed answer, I would 8 recommend that you email us so we can give you a firm 9 answer. So I don't -- I don't have the regs in front of me, 10 so I don't want to answer incorrectly. 11 MS. QUAGLIAROLI: And we'll be looking at that in 12 June, when we have more workshops, on the three-year process 13 and Alternatives Analysis. 14 MS. PAPAGNI: Well, the work plan -- some of this 15 will get discussed more at the work plan workshop. But I 16 believe that's not until late summer or October. 17 MR. ALLAYAUD: The next ones are on this same 18 format, hopefully, in LA; right? 19 MS. PAPAGNI: Right. The next two workshops are 20 specifically on the proposed Priority Product. There is one 21 in Oakland on May 28 and another one in L.A. on June 4th, 22 upcoming. 23 MR. ALLAYAUD: Back to that one point. So if it 24 was -- if the chemical they say we're going to substitute is 25 already on your list of about 1300 chemicals, could they do</p> <p style="text-align: right;">32</p>

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<p>1 it or not? I didn't listen well enough. 2 MS. PAPAGNI: Jeff, could you answer that question 3 for us? This is Jeff Wong. 4 MR. ALLAYAUD: He should introduce himself. 5 MR. WONG: I'm Jeff Wong with DTSC. 6 MS. PAPAGNI: Thank you, Jeff. 7 So, Bill, can you repeat your question? 8 MR. ALLAYAUD: So say they're using chemical X, 9 this one is TDCPP, and they say it's not necessary, but 10 flame retardancy is, so we're going to go to the next 11 chemical, but it's on the list already of the chemical of 12 concern. 13 Can they use it and justify it, or can they not 14 use it because it's already a chemical of concern? 15 MR. WONG: Okay. So, the best way that I 16 understand is that they can use it if it's on the list. But 17 they suffer from potential liability that in the next 18 go-around that we'll choose that chemical as a chemical and 19 product accommodation and a product of concern. 20 So you can actually stay -- in my best 21 understanding, you can stay with the product chemical 22 combination and provide a justification, hoping that the 23 regulatory response will be in your favor. 24 If you decide to choose something else and that 25 too is on the list, then, again, you hope that the</p> <p style="text-align: right;">33</p>	<p>1 fully today. 2 MR. ALLAYAUD: Could you do it at one of the next 3 two workshops in Oakland and L.A.? Because the people I 4 represent, we wanted this very question answered. 5 MS. PAPAGNI: Right. And I understand that. And 6 I can bring that comment up to the folks who make those 7 decisions. 8 In the meantime, what I'm going to suggest -- 9 because you will get an answer -- is if you send that 10 question to the email address up there, you will get the 11 correct answer. 12 MR. ALLAYAUD: Thank you. 13 MS. PAPAGNI: Whether or not they address it at 14 upcoming workshops, they may or may not. Because there's 15 been several meetings already to discuss the regulations and 16 to discuss the process. So we're really trying to focus on 17 the current proposed Priority Products. 18 MR. ALLAYAUD: Yeah. And I apologize. Because 19 it's not feeling real to me, after looking at regs for three 20 years. Here we are with products and trying to understand 21 how it would work. So I apologize. 22 MS. PAPAGNI: Yes, I know. 23 MS. QUAGLIAROLI: Are there other comments or 24 questions on number 1? 25 We'll look at number 2, about the products again</p> <p style="text-align: right;">35</p>
<p>1 regulatory response is in your favor. And the regulatory 2 response could assign you another liability farther down the 3 road, saying, well, okay, you can go for it, but we're going 4 to implement a huge R&amp;D plan that says you're going to have 5 to develop three-year toxicity data, on and on and on. 6 That's under the authority of the regulations. 7 And I'm just speculating here because, again, the 8 regulation that -- and Gene here is everyone's attorney -- 9 it provides us authority. But, again, that's just the limit 10 of our authority, and within it is a set of processes that 11 the Department has great discretion, and we'll make those 12 decisions case by case, fact driven. 13 MR. ALLAYAUD: It sounds like your answer was: 14 Yes, we'll go to whack-a-mole versus wait -- you can say you 15 want to substitute it, but as far of that substitution you 16 have to show us right now, not years from now when we do 17 this whole process again. 18 Which is it? Is my question clear? 19 MS. PAPAGNI: Yes. Well, for today, we're trying 20 to keep the focus specifically on this product and not on 21 the process. So I'm not trying to dodge your question, but 22 I really want to make sure we give you the correct answer. 23 Okay? 24 MR. ALLAYAUD: Okay. 25 MS. PAPAGNI: And I'm not prepared to answer that</p> <p style="text-align: right;">34</p>	<p>1 and chemical alternatives. 2 MS. PAPAGNI: So is there anyone here who's 3 related to the toy manufacturing or children's sleeping 4 products industry? 5 The one person who was loosely related left. Or 6 she may be coming back, I don't know. But I keep waiting 7 for her to come back, because I would think that she would 8 have comments on some of these questions. 9 MR. ALLAYAUD: 2-C is what I've been asking about, 10 kind of. Because they say, well, this isn't substituting a 11 chemical, it's substituting a product. Right? A functional 12 alternative to this product. 13 MS. PAPAGNI: Right. 14 MR. ALLAYAUD: But that other product might have a 15 different chemical. 16 MS. PAPAGNI: Correct. And there are hazards 17 associated with some of the alternative chemicals that we're 18 aware of, and so we're interested in hearing what other 19 folks have to say in terms of if they think alternatives are 20 necessary or if they think there's alternatives which they 21 consider better or worse. 22 MS. MAURER: Do you have a question? 23 MS. MCKINLEY: I'm just going back to the first 24 one then. 25 Is your comment, Bill -- and I think this would be</p> <p style="text-align: right;">36</p>

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<p>1 my comment, too, or what my initial question was. I'm 2 sorry. Back to number one. Is that we should be 3 considering the other potential alternatives in regards to 4 regrettable substitutions as we're looking at these things. 5 Should we be suggesting looking at other types of 6 chemicals? I mean, I'm sure -- I haven't looked at the list 7 in a couple of years, or whenever it came out, a year and a 8 half ago. But I know a lot of the other flame retardant 9 chemicals are listed on those lists, and I think we should 10 really be considering those more. 11 MS. PAPAGNI: And we really appreciate that 12 comment, and it's noted. There will be discussions about 13 that. 14 MS. MCKINLEY: And I'm sure that's kind of the 15 answer to D, we know the replacement. The flame retardant 16 chemicals, most of them are listed. Or a lot of them are. 17 MS. PAPAGNI: So we know which ones we're aware 18 of; right? So we were curious to see which ones folks who 19 were actually involved in the industry -- what they think. 20 But, unfortunately, it seems like those of you present don't 21 have comments. That's okay. 22 MS. QUAGLIAROLI: I'm sure we'll hear from them at 23 some point. 24 Did you want to add anything, Bill? 25 MR. ALLAYAUD: Well, just the answer to number</p> <p style="text-align: right;">37</p>	<p>1 are involved in the supply chain for manufacturing the 2 Priority Product? 3 And this is where input from manufacturers and 4 retailers would be helpful here, too. What are their 5 thoughts about the product. 6 MS. PAPAGNI: Right. 7 MS. MCKINLEY: I can tell you from a consumer's 8 point of view what it's like, but -- 9 MS. QUAGLIAROLI: Absolutely. 10 MS. MCKINLEY: Well, I mean, I just know I have 11 two -- I have a three-and-a-half-year-old and an 12 11-month-old. And in searching for products that actually 13 don't have flame retardant chemicals was something I was 14 really looking to find. 15 Most of these products, up until recently, have 16 tags that would say that they are compliant with TB-117 and 17 indicating that they have flame retardant chemicals in them. 18 THE REPORTER: Slower, please. 19 MS. MCKINLEY: Oh. Sorry. 20 Most of the products had tags on them, indicating 21 that the product was compliant with TB-117, Technical 22 Bulletin 117, and indicating that they have some type of 23 flame retardant chemical in them in order to comply. And, 24 as we know, that has changed. 25 However, none of these products even fell</p> <p style="text-align: right;">39</p>
<p>1 one, if you've asked it, and the answer is: No, we're going 2 to do one at a time. We just made that suggestion there are 3 other chemicals. And you said, no, we're dealing with 4 TDCPP. 5 MS. PAPAGNI: Well, I can't currently say that the 6 answer is no. All I can say is the current proposed product 7 is TDCPP in children's foam padded products. 8 So I'm not saying that, no, we won't consider 9 adding those other chemicals. But currently that's not our 10 plan. 11 MS. MCKINLEY: They're just gathering feedback, I 12 think, right now. 13 MS. PAPAGNI: Right. We're gathering feedback. 14 MR. SCIULLO: Yes. If you think those other 15 chemicals should be included, definitely write -- include it 16 as part of your comments to DTSC. 17 MR. ALLAYAUD: Got it. 18 MS. PAPAGNI: So that's why we're gathering 19 feedback. Because right now, these are all proposed. 20 MR. ALLAYAUD: Got it. 21 MS. QUAGLIAROLI: All right. Should we go to 22 topic 3? And this is the last group of questions related to 23 the market. 24 What is the market presence of the product? How 25 is the product marketed or sold? What types of businesses</p> <p style="text-align: right;">38</p>	<p>1 underneath that regulation to begin with. So that was 2 always very confusing to me when they would say they needed 3 to comply. But it did seem that almost every product that 4 you tried to find would have a tag that said it was 5 compliant with TB-117 throughout all these product tags. I 6 mean, I don't know if it's all of them, but throughout a lot 7 of them. 8 So from a consumer's standpoint, it seems to be in 9 every product that you're trying to buy, unless you can go 10 to very high-end products that are specially-made products 11 that are not marketed to the general public. 12 MS. QUAGLIAROLI: I'm just curious. Did you ever 13 see any Prop 65 warnings? 14 MS. MCKINLEY: They do, but not in -- the Prop 65 15 warnings, I think sometimes it's difficult to tell what 16 products they adhere to, because a lot of times they'll have 17 them on a desk in the front of the store or on the shelf. 18 MS. QUAGLIAROLI: But not the product themselves? 19 MS. MCKINLEY: I didn't notice it as much as 20 TB-117. I'm sure they probably were there, but... 21 MR. ALLAYAUD: Well, shouldn't they have a Prop 65 22 warning? Because you said -- 23 MS. PAPAGNI: Right. TDCPP is listed as a Prop 65 24 carcinogen. 25 MR. ALLAYAUD: Right.</p> <p style="text-align: right;">40</p>

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1 MS. PAPAGNI: So it should -- if a product has  
2 this chemical, it should be labeled.  
3 MR. BRORBY: Not if -- my name is Greg Brorby.  
4 Not if you can show that the exposure is below the  
5 safe harbor limits. So that eliminates the requirement for  
6 a warning.  
7 MS. PAPAGNI: Correct.  
8 So there is no significant risk level of the -- in  
9 the profile. I think it's 5.2 micrograms per liter. I  
10 think. I would have to double check. So that's the level  
11 he's referring to.  
12 But if it's above that level, then legally, yes,  
13 it has to have a Prop 65 label. Whether it has -- or  
14 whether it does or doesn't is a legal issue. But it's  
15 legally supposed to.  
16 MR. SCIULLO: Yes, it's 5.4 micrograms for that.  
17 MS. MCKINLEY: And I can't remember if the  
18 toxicity might have a specific label. Because TB-117, I  
19 think, has a very specific type of a label.  
20 Are the Prop 65 labels the same type of label that  
21 you would recommend?  
22 MR. ALLAYAUD: I know WEHA is considering  
23 revamping that whole labeling thing right now.  
24 MS. BOTTS: What is the minimum threshold for this  
25 process, if any, that includes it at all?

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1 MS. PAPAGNI: Okay. So, for this process, we did  
2 not include a minimum threshold per se. There is what's  
3 called an AAT. And, again, I don't have the regs in front  
4 of me. But in general, there's no regulatory threshold for  
5 this process. For certain products, they might be assigned  
6 what's called an AAT, which is the practical quantitation  
7 limit at which the chemical can be detected. And if there  
8 is an AAT, it would be in place during the rulemaking.  
9 MS. BOTTS: Okay. So that would be included when  
10 the priority status was listed?  
11 MS. PAPAGNI: When it was listed through  
12 rulemaking.  
13 (Ms. Gibbons rejoined the meeting.)  
14 MS. QUAGLIAROLI: I'm sorry. You're with the toy  
15 industry, and you stepped out of the room. We were kind of  
16 unsure whether you had any thoughts about this product, the  
17 ones that were included, excluded, are we missing anything  
18 or...  
19 MS. GIBBONS: NO. I mean, I think that Gene  
20 touched on some points about the bricks and there being some  
21 confusion.  
22 MS. QUAGLIAROLI: Because you deal international;  
23 right?  
24 MS. GIBBONS: Right. To our knowledge, we don't  
25 actually have any members who are making any of the included

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1 products that utilize TDCPP, so...  
2 MS. QUAGLIAROLI: Did you want some input along  
3 any other lines?  
4 MS. PAPAGNI: Well, I can back up. I mean, given  
5 that she is from the toy industry and she stated that they  
6 don't actually make any of the sleeping products -- I mean,  
7 she may or may not be able to answer some of these  
8 questions.  
9 But in terms of the folks in the room, at least,  
10 you're the only one associated with the trade association.  
11 Is that correct?  
12 MS. QUAGLIAROLI: There was one product that was  
13 raised --  
14 MS. GIBBONS: Well, the retail industry leaders  
15 and then you guys also, obviously, from the retail side. I  
16 mean, we do have manufacturers who -- you know, some of  
17 their product categories might fall into these -- into  
18 what's covered. But, again, nobody is using TDCPP for any  
19 of them.  
20 So, you know, we're very interested in the process  
21 and all that. But I don't actually have any specific  
22 comments beyond, I think, echoing what Gene brought up in  
23 the public session -- I don't know if it was stated in  
24 here -- about the bricks and just making sure that that is  
25 clear so people know --

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1 MS. PAPAGNI: And Gene said he would provide those  
2 brick codes to us. So, thank you. That will be very  
3 helpful.  
4 MS. MAURER: Okay. Anything else, on any topics  
5 whatsoever?  
6 It's about 2:40. We had until 3:20.  
7 MR. LIVINGSTON: Mary Sue, can I -- I'm Gene.  
8 I wanted to say something about number three. I  
9 can't provide you information because I don't know anything  
10 about this industry, really. But it raises kind of an  
11 interesting process question. And I know you're focused  
12 only on this product.  
13 But when we get around to actually adopt the  
14 regulation on this product, then the expectation is that  
15 manufacturers are going to step forward and say, "I have  
16 products with this chemical in it. And if the manufacturers  
17 don't, then you're going to go to the importers. And if the  
18 importers don't, you're going to go to the retailers.  
19 And so my question is: How are you going to do  
20 that? And I know that this -- I'll just put it on the table  
21 for your consideration. Because, you know, how long are you  
22 going to wait for a manufacturer to step up before you go to  
23 the importers? You know, what triggers that movement or  
24 what triggers the movement to the retailers?  
25 MS. QUAGLIAROLI: I can tell you that we're still

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<p>1 working that out, you know. We just got rolling last 2 October; we're building our data system. That particular 3 issue came up today with respect to how do we build the data 4 system to kind of help us understand or warn us or, you 5 know, automate some of this. And, frankly, we just haven't 6 gotten there yet, about how long we wait, how do we know -- 7 how do we know there are people out there who haven't 8 notified us? How do we know? How do we back up? How do we 9 get beyond international, to the international borders 10 beyond our own? How do we identify proof the people who 11 are? 12 There is a lot of that, "how do you reach out and 13 make this program happen" that we just haven't gotten there 14 yet. We're talking about it. At that point, we bring in 15 the enforcement folks that have been allocated to the 16 program and start talking to them about how we go about 17 doing that, how do we follow the bread crumbs back. 18 MR. LIVINGSTON: If you go to the retailers early 19 in the process, they're going to say "Wait. Why are you 20 picking on me?" 21 MS. QUAGLAROLI: No, no. You don't start with 22 those guys. 23 But your question is a really good one, is: When 24 do you that? And that -- you know, we're a year and a half 25 from having the rulemaking done, which means 2015 might be</p> <p style="text-align: right;">45</p>	<p>1 have any ideas, feel free. We're still trying to do that. 2 MS. MAURER: Any other questions that you might 3 have? Yes. 4 MR. BRORBY: I have a question that's unrelated to 5 those topics. I'm Greg Brorby. Thank you. 6 So, my question has to do with this product but 7 also with the process going forward and how the Department 8 considers exposure, not just whether the exposure pathway is 9 complete. You know, you just said that you could detect the 10 chemical on the kids' hands. But we can detect tiny tiny 11 amounts now. That's just the way technology is and is 12 going. 13 Where in the process or in the process does it 14 think about what is that exposure's relative significance? 15 Is that exposure enough to cause a potential problem, or did 16 we just find the molecule? 17 MS. PAPAGNI: That's a good question. 18 The way that the regulations are written, it's 19 kind of written broadly. So significant adverse impacts 20 either on human health or the environment and the potential 21 for exposure. So it's not necessarily just that you could 22 detect it, but we do have to show that there is the 23 potential for exposure, and there is a variety of ways in 24 which we can do that. 25 And so I know you're hoping that I can give you a</p> <p style="text-align: right;">47</p>
<p>1 the first time we're expecting somebody to notify us. And 2 how long do you wait before somebody didn't answer your 3 request to come to the party? Right. So we're working on 4 that. 5 MR. LIVINGSTON: Okay. Fine. 6 MS. QUAGLAROLI: And I just want to say that the 7 SCP Website is going to be updated as we work through these 8 things. So there's going to be information being added on a 9 fairly regular basis. We're going to try to get as much up 10 there as possible so that all stakeholders can see where 11 we're at and how we're implementing the stages of the 12 program. 13 But because it's such a big program and because we 14 have so few staff, we're really really concentrating on a 15 stepwise progress. So right now, we're focused on getting 16 the rulemakings done, getting the data system up to the 17 point where we can actually accept comments online for the 18 rulemaking, where we can accept petitions. And then the 19 next year, the second phase is going to be A.A., third phase 20 is going to be regulatory response. And so we have it all 21 kind of set up; it's like a three-year implementation. So, 22 yes, you're in year three. 23 MR. LIVINGSTON: Well, that's good. I'm usually 24 behind. 25 MS. QUAGLAROLI: You're thinking ahead. So if you</p> <p style="text-align: right;">46</p>	<p>1 clear X, Y, Z kind of answer. And the way that the 2 regulations are written, we kind of have broad discretion. 3 MR. BRORBY: Can you just describe a little bit in 4 this case what that process was for -- 5 MS. PAPAGNI: For TDCPP? 6 MR. BRORBY: Mm-hmm. 7 MS. PAPAGNI: So for TDCPP, it's clearly in the 8 product. Right? And it clearly is in dust. And there has 9 been studies shown that it is semi-volatile and actually 10 comes out of the polyurethane foam. And it's also been 11 shown that it's in day care centers, it's in homes, it's in 12 offices, and it's been shown to be found on children's 13 hands. 14 So did we clearly show that it was from the nap 15 mat to the hands? Possibly not. But there is enough 16 exposure information to provide the link. 17 MR. BRORBY: Okay. So what I heard was that you 18 can find it -- we can find it in the environment. 19 My question is: Are you asking -- is what we're 20 finding relevant in terms of hazard, in terms of potential 21 risk? It's connecting -- I can find those molecules on the 22 hands, and we know that kids put hands in their mouth. 23 The question is: Are those molecules significant 24 in terms of those children's health? 25 MS. PAPAGNI: Yes. And the way that these</p> <p style="text-align: right;">48</p>

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<p>1 regulations are written, we aren't specifically doing risk 2 assessment, which is the question you're asking. 3 But the fact that it has already been listed -- so 4 the first set of chemicals, if it was listed on a hazard 5 trait authoritative body list, such as the California Prop 6 65 list, and an exposure list, that was enough to provide 7 evidence of harm. 8 MR. BRORBY: Does the regulation allow you to do a 9 risk assessment if you chose to? 10 MS. PAPAGNI: Well, then that would be on the -- 11 it would be the responsible entity who would be -- have the 12 responsibility of doing risk assessment as part of the 13 Alternatives Analysis. So there's nothing that prevents us 14 from doing the risk assessment, but it's not part of the 15 regulatory process. 16 MS. GIBBONS: Can risk also be considered during 17 this process of the workshop as the regulations are becoming 18 finalized, if that was provided -- 19 MS. PAPAGNI: Can you -- I mean, yes, risk is 20 considered. But I guess your question sounds a little vague 21 to me. Can you be more specific? 22 MS. GIBBONS: Well, when we have argued for 23 consideration of risk during the development of the 24 regulations, it was stated that, yes, it could be considered 25 by the Department in the listing of the products, but that</p> <p style="text-align: right;">49</p>	<p>1 MS. QUAGLAROLI: Yes. We're in an information 2 gathering phase. And, again, the public comment period for 3 the rulemaking is another opportunity potentially to submit 4 what you've already submitted. But if you want to get it on 5 the record, then that's the place to do it. 6 But this is -- we're looking for information that 7 we don't have, to make sure that we've characterized this 8 product properly. So that when we go forward for 9 rulemaking, we can be clear to the State of California what 10 we mean, so that people who are in know they're in, people 11 who are out know they're out. 12 So anything that you feel is important for us to 13 know would be good. 14 MR. LIVINGSTON: I have a question. It's more a 15 matter of curiosity about the product. It goes some to the 16 point that Shannon made earlier about, are there 17 polyurethane sleep products that do not contain any flame 18 retardant? 19 MS. PAPAGNI: I would say probably yes. 20 So, you know, there has been numerous studies, 21 research studies. So in some of the products they found 22 flame retardants, and in some of the products they didn't 23 find flame retardants. 24 But as you indicated, you know, with chemical 25 analysis, just because they didn't find it, it could be</p> <p style="text-align: right;">51</p>
<p>1 there would be an opportunity for industry to present any 2 information related to risk during this phase. 3 MS. PAPAGNI: Right. And this would be the time 4 and the opportunity in terms of providing feedback. If any 5 industry representative have risk assessments that they have 6 done regarding TDCPP or polyurethane foam in children's 7 products, this would be a good opportunity to provide that 8 to the Department. 9 MS. GIBBONS: And that was my question. Because 10 that's what we had been told, that this would be an 11 opportunity for industry to not only present that but for 12 DTSC to consider it. So this is, in fact, that. 13 MS. PAPAGNI: Well, the ultimate time will be 14 during the rulemaking public workshops, in all honesty. But 15 you're welcome to provide it now, before we get to that 16 point. Right. 17 MS. QUAGLAROLI: I was -- the rulemaking is kind 18 of funny. So if you send it in now, you may have to send it 19 in during rulemaking as well. I just want to make sure 20 that's clear. But really, the parties -- geez, what am I 21 trying to say? We'll consider all data submitted to us. 22 You know, it is part of what we're looking for. 23 MS. GIBBONS: And I'm asking as part of a larger 24 process question for moving forward, not because I actually 25 have specific information on this. Just to be clear.</p> <p style="text-align: right;">50</p>	<p>1 there below the product casing limit, but less likely. 2 Usually flame retardants are put in in percentage 3 levels. So if it's in there at least with an intended 4 purpose of it being in there, it's likely that they would 5 detect it. 6 MR. LIVINGSTON: Yeah, I saw that in a profile. 7 I was just curious about in characterizing the 8 market, I guess, is it your thought that the volume of 9 polyurethane pads without flame retardants is a very small 10 part of the market or the bulk of the market? 11 MS. PAPAGNI: I don't particularly have that data, 12 is what I can tell you. There's no requirement for the 13 flame retardant to be in there. So my guess is they're 14 making products without the flame retardant. They are not 15 required to put it in. It's more cost effective not to put 16 it in. 17 But I don't manufacture the products, nor do I 18 have the data. I don't have the data that shows which 19 percentage have the flame retardants versus which don't have 20 the flame retardants. 21 MR. LIVINGSTON: This hasn't gained the kind of 22 notoriety that, as Bill talked about on BPA, where you get a 23 product that says "contains no BPA." Nobody is doing these 24 labels with "no flame retardant" yet. Gotcha. Okay. 25 MS. MCKINLEY: Well, some of the high-end</p> <p style="text-align: right;">52</p>

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<p>1 companies, I think, are starting to, but more like nursing 2 pillows and other things which were specifically excluded 3 from TB-117. But I think some baby companies and other 4 companies are starting to realize that there is a consumer 5 demand for products without flame retardant chemicals, so 6 it's starting to be marketed.</p> <p>7 MS. PAPAGNI: And I have seen products out there 8 that are marketed as not having chemical flame retardants. 9 But which percentage, I don't know.</p> <p>10 MR. LIVINGSTON: I was just curious.</p> <p>11 MS. PAPAGNI: That's a good question. I actually 12 wish I had that answer, honestly. That's part of the reason 13 you're asking questions today. I was kind of hoping one of 14 you might be able to answer that question.</p> <p>15 MR. LIVINGSTON: You just drew the bad deck with 16 us.</p> <p>17 MS. PAPAGNI: No. Honestly, we drew a very 18 friendly, interactive gang.</p> <p>19 MR. LIVINGSTON: But we don't know anything.</p> <p>20 MS. QUAGLIAROLI: I have a general question. 21 You're calling it sleeping product products; right? 22 "Sleeping." But there was one example of a product that was 23 not a sleeping product, like for a gym. And I just heard a 24 nursing pillow.</p> <p>25 Are you restricting yourself by calling it</p> <p style="text-align: right;">53</p>	<p>1 thought it was at one point. But my wife said, oh, she 2 loves it so much. I mean, she lounged on that thing. She 3 didn't necessarily nap on it, but there you go. Foam-filled 4 child furniture that they may fall asleep on. She may have 5 fallen asleep on it. I don't remember anymore. And it's 6 that thick, and the sides were that high. So it probably 7 had ten times the flame retardant chemical -- if it had 8 it -- than a little mat that gets put in a crib.</p> <p>9 MS. PAPAGNI: And possibly -- and until recently, 10 the way that the Technical Bulletin 117 was written, a lot 11 more manufacturers were putting chemical flame retardants in 12 furniture. They were -- it was the easiest way for them to 13 meet the flame retardants.</p> <p>14 MR. ALLAYAUD: But I'm thinking that that thing 15 isn't even considered furniture. It's a toy like thing. 16 It's a toy piece of furniture that little kids go, look, I 17 have my own -- like a boy with a lawnmower or car.</p> <p>18 MS. PAPAGNI: Right. But the thing is, because 19 it's not my field, from a regulatory standpoint, I don't 20 know if that would be technically considered furniture or 21 not.</p> <p>22 MS. GIBBONS: It's not considered regulatory. I 23 can tell you that. I don't know whether it is considered.</p> <p>24 MS. PAPAGNI: My point is there is an organization 25 that does oversee flame retardants in furniture, and they</p> <p style="text-align: right;">55</p>
<p>1 sleeping? Could it just be padding or -- I don't know. As 2 you proceed through these workshops, you might identify 3 other products that are very similar to that that are used 4 in other ways.</p> <p>5 MS. PAPAGNI: Right. And that's a good comment. 6 And if folks have non-sleeping products that they think 7 should be included, then this would be a good time to 8 provide that feedback to us.</p> <p>9 MR. ALLAYAUD: Isn't it because once you start 10 this, you say, oh, let's add another product -- you can't do 11 that. That's the cumbersome part of this process; right?</p> <p>12 MS. PAPAGNI: Well, we haven't gone to rulemaking 13 yet. So at this stage, this is a proposed Priority Product.</p> <p>14 MR. ALLAYAUD: Now you could add it. But once you 15 start to list the regulations of these products, game over.</p> <p>16 MS. PAPAGNI: Exactly. Yes.</p> <p>17 MR. ALLAYAUD: So this is a good comment right 18 now.</p> <p>19 MS. PAPAGNI: Yes. Exactly.</p> <p>20 MS. QUAGLIAROLI: I put down the gym mats, and the 21 nursing pillow. Foam products, children's foam products.</p> <p>22 MS. MAURER: And we're wide open to any other 23 comments or questions. We have another 20 minutes.</p> <p>24 MR. ALLAYAUD: Somebody gave my daughter a little 25 chair to sit in that was filled with foam, for sure. I</p> <p style="text-align: right;">54</p>	<p>1 have, you know, fairly clear definitions on what is and what 2 isn't furniture. And to them, that might be furniture.</p> <p>3 MR. ALLAYAUD: I don't know. I would consider it 4 a toy. But it's like one of these be like mommy or daddy 5 things, which could slip through the cracks because it's not 6 furniture, but it's not a toy, and it's something they could 7 fall asleep on.</p> <p>8 MS. QUAGLIAROLI: And that's something we could 9 research for sure. So if you want to send us a photo of it?</p> <p>10 MR. ALLAYAUD: You know, I'm not sure we still 11 have it. We might.</p> <p>12 MS. PAPAGNI: The good thing is is the Technical 13 Bulletin 117 was rewritten. And so upcoming, hopefully, 14 most of the furniture coming out won't have chemical flame 15 retardants.</p> <p>16 MR. ALLAYAUD: I understand. And there is a bill 17 that would allow the manufacturer to have that on his label 18 for marketing purposes, yeah.</p> <p>19 But, again, this child's chair may not be 20 considered furniture. I would bet it wasn't.</p> <p>21 MS. QUAGLIAROLI: We'll look into that. It might 22 be an easy one to --</p> <p>23 MR. ALLAYAUD: I bet you. Because it was probably 24 sold in Toys R Us or something. It's not sold in Macy's 25 furniture. Right? Who's going to buy a little --</p> <p style="text-align: right;">56</p>

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1 MS. QUAGLAROLI: Well, did it have the tag saying  
2 never never never take this tag off?  
3 MR. ALLAYAUD: I don't know. I'm diligent, but  
4 not super diligent.  
5 MS. QUAGLAROLI: We will absolutely look into  
6 that.  
7 So, do you want to start talking about next steps?  
8 MS. MAURER: Yes.  
9 MS. PAPAGNI: So, do we have any last questions?  
10 If not, we'll talk about what we have upcoming,  
11 which Karl already talked about. But just to wrap it up so  
12 you know where we're headed.  
13 Well, here. How to comment? Which Mary Sue has  
14 already graciously put that email address up there. But in  
15 case you haven't written it down, make sure you write down  
16 the Safer Consumer Products email address in case you have  
17 upcoming comments and questions. And we are hoping to  
18 receive them by June 30th.  
19 And so our next steps. Karl already talked about  
20 how we drafted the initial Priority Products list starting  
21 March 13th. We're currently in the middle of doing our  
22 public workshops to get feedback, basically, comments,  
23 questions about each of the three products.  
24 Our projected timeline: Rulemaking, hopefully is  
25 going to begin late 2014. That is our goal. And we will be

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1 having an official public comment and public hearing at that  
2 time. And our hope is to have a final Priority Products  
3 list adopted through rulemaking one year later. So late  
4 2015 is our goal.  
5 And after that, the regulatory process will begin.  
6 And so at that time, responsible entities have up to 60 days  
7 after rulemaking to notify the Department if they  
8 manufacture that type of product. By then, I'm sure I can  
9 more clearly answer your question as to, you know, if they  
10 don't respond within 60 days, then what is the time frame  
11 within which to go look into the importers and the retailers  
12 and the assemblers?  
13 And at that point, a preliminary A.A. report would  
14 be due from responsible entities within 180 days after  
15 notification.  
16 MR. ALLAYAUD: I just have an observation. It's  
17 rhetorical.  
18 But I know Debbie always said it will legally  
19 defensible, is one of the things. And in the big room  
20 people were saying, "Words you put in your press release are  
21 criminal." You know, I assume your lawyers looked at the  
22 press release as well as these draft things. So I'm not  
23 saying he was right or wrong. It's just, here we are after  
24 four years, and they're saying just what you put in there is  
25 criminal. Like, we're going to sue you because you're

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1 ruining our business.  
2 You don't have to comment on that.  
3 MS. PAPAGNI: I won't.  
4 MS. MAURER: Well, thank you all for coming. And  
5 there are two upcoming workshops that --  
6 Oh, we have one last question.  
7 MS. BOTTS: Sorry. This is on the process again.  
8 When you say "rulemaking," what exactly is  
9 entailed in rulemaking as stated there?  
10 MS. QUAGLAROLI: Sure. Rulemaking is part of the  
11 Administrative Procedures Act, and there's a lot of steps  
12 that the Department will have to do to implement  
13 regulations.  
14 So the first step is noticing to the world at  
15 large that we're proposing to adopt these regulations. And  
16 part of that notice is a statement of reason that kind of  
17 spells out why we think we should be doing this, and it  
18 provides the proposed text. And you, the general public,  
19 can see all the supporting documents, you're allowed to  
20 make -- there is a 45-day public comment period where the  
21 Department is to collect your comments and then, in general,  
22 respond to them within the record.  
23 The comments may or may not cause significant or  
24 minor changes to the proposed text. If there are  
25 significant changes, then we have to go out for another

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1 shorter comment period to make sure everybody can see the  
2 proposed changes in the initial text and the rationale for  
3 that. And it's all kind of bundled into a rulemaking  
4 package that has a lot of required parts to satisfy the  
5 Office of Administrative Law that we have done our due  
6 diligence, followed all the rules with respect to proposing  
7 and adopting the regulation.  
8 So at the end of potentially two comment periods,  
9 we will then notice again that we have now adopted these  
10 regulations and they are in effect on whatever date. It  
11 might be immediate, it might be six months, however it goes.  
12 I'm not really sure how this will go. I'm pretty sure it  
13 will be pretty immediate.  
14 MS. BOTTS: It's part of that other official --  
15 MS. QUAGLAROLI: It's a very formal process  
16 where -- and I can see that there's a public hearing set up  
17 there. And a public hearing is not like a workshop. The  
18 public stands up and make statements, the statements are  
19 collected, it goes into the record, you know.  
20 Whether or not we're going to have workshops prior  
21 to this again, I'm not entirely sure. But that's outside of  
22 the formal process. So it's a formal process that is driven  
23 by the Administrative Procedures Act that all state  
24 departments have to follow to adopt regulations and  
25 implement laws. And that will be blasted out. If you're on

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1 our E-list -- we have a list serve; right?  
2 MS. PAPAGNI: Yes.  
3 MS. QUAGLAROLI: So if you're not on it, you know,  
4 we will be sending information out via that, via the  
5 Website, via press releases. It's clearly benefitted by  
6 lots of people. So there will be ample notice. And all  
7 three products are probably going to go out practically at  
8 the same time.  
9 MS. MAURER: And to get on that E-list, you go to  
10 DTSC's Website. There is a Safer Consumer Products bullet  
11 to hit, and it will give you an option to sign up for the  
12 E-list. And you'll get the notifications automatically,  
13 anything related to this program. And the Website also has  
14 the two upcoming workshops. If you know of anyone that  
15 would be interested or could provide us more data or ideas,  
16 please pass it on and let me them know so we can collect  
17 more information.  
18 Thank you. Thank you all for coming.  
19 MS. PAPAGNI: Yes, thank you all for coming.  
20 (TIME ENDED: 3:03 P.M.)  
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1 REPORTER'S CERTIFICATE  
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4 I, SHARON LANCASTER, CSR NO. 5468, Certified  
5 Shorthand Reporter, certify:  
6 That the foregoing proceedings were taken before  
7 me at the time and place therein set forth;  
8 That the aforementioned proceedings were recorded  
9 stenographically by me and were thereafter transcribed under  
10 my direction;  
11 That the foregoing is a true and correct  
12 transcript of my shorthand notes so taken.  
13 I further certify that I am not a relative or  
14 employee of any attorney or of any of the parties, nor  
15 financially interested in the action.  
16 I declare under penalty of perjury under the laws  
17 of California that the foregoing is true and correct.  
18 Dated: June 3, 2014.  
19  
20  
21  
22 ***Sharon Lancaster***  
23 SHARON LANCASTER, C.S.R. NO. 5468  
24  
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DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
WORKSHOP on 05/07/2014

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