

In the Matter Of:  
DTSC WORKSHOP

**WORKSHOP**

June 04, 2014

Reported By:

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DTSC WORKSHOP  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Wednesday, June 4, 2014

25ed by: Stephanie Leslie, CSR No. 12893

1 Los Angeles, California Wednesday, June 4, 2014

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3 MS. RUBIN: My name is Marcia Rubin, and I'm  
4 here to facilitate the meeting. I think we're all  
5 here. We've got a sign-in sheet going around so we can 10:55  
6 acknowledge everyone who's here, and also so that our  
7 court reporter can take everyone's comments. We will  
8 have the transcripts available. And please, when you  
9 are speaking, state your name and affiliation for her,  
10 at least the first couple of times, so that she can 10:55  
11 make note of who's saying what in what comments so  
12 that, you know, the transcripts are available.

13 We have Rob Brushia, who is going to  
14 present -- he is our lead on this chemical. He's going  
15 to present -- do a ten-minute presentation about the 10:55  
16 methylene chloride, and then we're going to have three  
17 discussion topics, and that's going to be the bulk of  
18 our session, so that, you know, we can interact with  
19 you and learn from you what your interests, concerns,  
20 and knowledge are about this product and, you know, use 10:56  
21 that going forward with our process.

22 Also, André Algazi is here from the DTSC as  
23 well to help with questions on our policy and process.  
24 So he'll be able to field some of your questions as  
25 well. So with that, we'll get started. 10:56

1 MR. BRUSHIA: Okay. Thank you. I don't think 10:56  
2 I need to use the microphone. It's a small enough  
3 audience. And some of you have heard me speak before.

4 So yeah, I'm going to talk about paint and  
5 varnish strippers with methylene chloride. And as Karl 10:56  
6 mentioned in his presentation, this is the final public  
7 workshop in a series of three that we've been holding;  
8 and the intent of this was to engage stakeholders, get  
9 feedback, to help us refine what we're doing; and  
10 that's really what the intent is. We'd like to get 10:57  
11 information from stakeholders that will help us moving  
12 forward.

13 So before I really begin, I just want to --  
14 how do you -- oh. There you go. I went too far.

15 MS. RUBIN: Use the up/down keys, page up. 10:57

16 MR. BRUSHIA: Sorry about that. While she's  
17 doing that, I'll just mention that our profiles that  
18 we're putting up were, as Karl said, a snapshot in  
19 time. And in our Safer Consumer Product regulation,  
20 there's a menu, if you will, of prioritization factors 10:57  
21 that we're supposed to look at when we're evaluating  
22 products and identifying potential priority products.  
23 That is a huge menu of factors. And from that we are  
24 supposed to identify information that pertains to those  
25 factors and summarize that information where we have 10:58

1 information available. And that's what, basically, the 10:58  
2 profiles are.

3 If you go through reading the methylene  
4 chloride profile, each section of the profile refers  
5 back to sections of the regulation. In those sections 10:58  
6 of the regulation are the factors to which that data  
7 that's in that section of the profile applies. So what  
8 the profile is, is not an extensive, exhaustive search  
9 of all of the information available. It is the  
10 information we could find that was publicly available 10:58  
11 pertaining to the factors that we had to consider in  
12 the regulations. That's what it is. In each of the  
13 sections of our priority product profiles, the  
14 information that is presented there is publicly  
15 available information that we could find that pertained 10:59  
16 to each of the prioritization factors in those sections  
17 of the regulation.

18 So what we're going to talk about today -- I'm  
19 going to talk a little bit about the priority product  
20 definition. This has been evolving as we've had these 10:59  
21 workshops and also as we've had feedback from others,  
22 including the Green Ribbon Science Panel. I'm going to  
23 talk about what methylene chloride paint strippers --  
24 what caused us to select this. In particular, I'm  
25 going to look at the hazards that we looked at and t 10:59

1 exposures that we looked at. I'm going to say a couple 10:59  
2 words about potential alternatives and market  
3 information.

4 Page up?

5 MS. RUBIN: Down. 10:59

6 MR. BRUSHIA: Page down.

7 MS. RUBIN: There you go.

8 MR. BRUSHIA: Okay. Thanks.

9 So the definition that we are proposing to use  
10 has been evolving over time. Initially, when we were 10:59  
11 evaluating these products, we were taking a look at the  
12 global product classification system. And that system  
13 we were looking at because the State of Washington used  
14 it to identify products under the Children's Safe  
15 Product Act in Washington, and they were advocating 11:00  
16 that that was a really good system to use to  
17 unambiguously identify products.

18 So we went and looked in that system for  
19 definitions and for brick codes that applied to the  
20 products that we were looking at, and we found one for 11:00  
21 paint strippers that included things like surface  
22 cleaners and graffiti removers. So we literally took  
23 that definition and put it into our profile. Since  
24 then -- we are aware, by the way, that the California  
25 Air Resources Board regulates certain surface cleane 11:00

1 and that, in fact, methylene chloride is prohibited 11:00  
2 from use in a variety of surface cleaners under their  
3 safer consumer product regulation -- or, no, it's a  
4 product regulation designed to reduce emissions from  
5 consumer products or something like that. So we are 11:01  
6 aware of that; okay?

7 And also, our Green Ribbon Science Panel had  
8 some feedback and advised us that surface cleaners were  
9 really a different product than paint strippers, and  
10 that it would expand the scope of the potential 11:01  
11 regulated universe to a really big universe, and that  
12 wasn't our intent. Our intent was to focus on specific  
13 products.

14 So combined with all that feedback and the  
15 knowledge that CARB really doesn't already regulate 11:01  
16 most surface cleaners with methylene chloride, we  
17 decided to refine the product definition. So what I've  
18 put here -- in the earlier versions of this workshop, I  
19 basically had a really brief summary of the definition  
20 here, but folks wanted to see the definition, and we 11:01  
21 had it printed out, and it really was hard for them to  
22 read those, so I put it up here.

23 This is in -- the regulatory concept that's  
24 available on our Web site. This is actually the  
25 definition that's listed there, so you can read it. 11:02

1 Basically, we are now just referring to paint strippers 11:02  
2 and varnish strippers as "a product that contains  
3 methylene chloride and may be marketed, sold, or  
4 described as a paint or varnish stripper designed to  
5 break down paint and varnish to facilitate its removal 11:02  
6 from a surface." And there's some other information  
7 I'll talk about in just a minute.

8 That's really what we're focusing on. We are  
9 so far from the workshops getting the use of the  
10 global -- or of -- the global product classification 11:02  
11 system to identify this product may not be that useful,  
12 and we'd like input on that from you today. The  
13 definition still refers to the brick under which paint  
14 strippers are classified under that system, but we'd  
15 like your feedback of whether or not that is even 11:02  
16 helpful in defining this product.

17 Okay. And as I mentioned, we are aware that  
18 the California Air Resources Board regulates the use of  
19 methylene chloride in a whole variety of surface  
20 cleaners. We will -- our intent would be to exclude 11:02  
21 all of those specifically from this regulation that are  
22 already regulated under CARB's regulation. And we also  
23 would not be covering paints or paint additives. This  
24 strictly would be related to paint strippers.

25 Okay. So why did we look at methylene 11:03

1 chloride? The California Department of Public Health 11:03  
2 has been looking at methylene chloride for a long time,  
3 has a lot of information on their Web site. The hazard  
4 traits of methylene chloride are pretty well  
5 established and pretty well accepted. It's either 11:03  
6 recognized as a likely, known, or probable carcinogen  
7 by a whole variety of authoritative bodies around the  
8 world. It's recognized as a neurotoxin. We know it  
9 can harm skin -- has a potential to harm skin on  
10 contact and damage eyes. And we know -- there are 11:03  
11 studies out there that suggest that "sensitive  
12 subpopulation" might include children; they might  
13 include pregnant women; they also might include people  
14 with respiratory or cardiovascular disease. So those  
15 are some of the hazard considerations that we looked at 11:04  
16 in selecting this chemical and this product, and these  
17 things -- there's a lot more information on these in  
18 our profile that is available on our Web site. Next  
19 page.

20 And then in terms of exposure, we know there's 11:04  
21 been deaths associated with the use of methylene  
22 chloride and paint strippers both in workers and in the  
23 general population. We know, from the Department of  
24 Public Health's previous research efforts, that the  
25 paint strippers with methylene chloride are generall 11:04

1 available in California to consumers. Methylene  
2 chloride is highly volatile, and so that increases the  
3 potential risk of inhalation exposure. I mean, we know  
4 that -- from studies done at Lawrence Berkeley National  
5 Laboratory that its use at home can result in  
6 relatively high localized concentrations in the  
7 breathing space.

11:04

11:05

8 Another important factor is that a lot of the  
9 respirators and gloves that are -- latex gloves that  
10 are commonly used don't provide adequate protection  
11 against methylene chloride.

11:05

12 And we know that there are, reportedly, some  
13 alternatives out there. We don't know how effective  
14 they are. That's why there's a question mark out  
15 there.

11:05

16 Can I get the next slide?

17 So some of the questions we're asking are,  
18 really, what are the possible alternatives? There's a  
19 variety of publications available out there in the  
20 public domain that talk about dibasic esters. They  
21 talk about a variety of alcohols. They talk about  
22 physical methods to -- sanding and using heat and so  
23 on. There's a whole slew of those, but we really don't  
24 know how applicable those are to the industry as a  
25 whole, whether or not they're applicable to specific

11:05

11:05

1 products and specific types of situations. We don't 11:05  
2 know, so we're asking for more information on that.  
3 And we really don't know -- for a lot of the ones that  
4 have been proposed as possible alternatives, we don't  
5 know, really, or fully understand what the health 11:06  
6 concerns might be related to those, and are there other  
7 health concerns?

8 In terms of market information, again, we know  
9 some things about methylene chloride in the market in  
10 California, but we don't know everything, and we don't 11:06  
11 have really good quantitative information for some  
12 things we'd like to know. We don't know whether it's  
13 being manufactured in California and, if so, by whom,  
14 and how much. We don't know what the total volume of  
15 sales are in the state or how many retailers may be 11:06  
16 selling it. We don't know how many businesses may be  
17 using it. We know there are some furniture stripping  
18 operations, for example, that may use methylene  
19 chloride paint strippers, so this is some of the  
20 information that we're seeking to get input on. Next. 11:06

21 So we're going to begin the discussion now,  
22 and there's going to be some certain topics for  
23 discussion. Again, as Karl mentioned, we really  
24 encourage you to provide comments in writing to us, if  
25 you can, data, if you have it, that you think we sho 11:07

1 consider. We're asking for it by June 30th. There's 11:07  
2 no hard, set date, but we'd like to get it by the end  
3 because we're going to be moving into the next phase  
4 that Karl talked about, in terms of getting ready to  
5 start a rule-making, and so it would help us to have 11:07  
6 adequate time to look into any information that you  
7 provide, if we could get it by then. There's an e-mail  
8 address here to which you can submit information. And  
9 that's it, so thank you.

10 MS. RUBIN: Okay. So our first topic for 11:07  
11 discussion is the priority product description. Like  
12 we talked about in the earlier sessions, we're trying  
13 to make sure that it's clear and unambiguous, so that's  
14 one of the primary reasons that we need feedback from  
15 people in the industry or who use the product, is so 11:07  
16 that things can be clear and we're not going in the  
17 wrong direction or including something that we don't  
18 want to include.

19 So we'll start with the GPC code. Do you have  
20 questions, comments for Rob or André about the GPC and 11:08  
21 the brick codes and the product characterization?

22 MR. MONIQUE: Mark Monique with Savogran. If  
23 we could just back up a minute. I'm guessing, Rob,  
24 that this -- is the methylene chloride paint stripper  
25 kind of like your baby? Are you, like, the lead per 11:08

1 on it? 11:08

2 MR. BRUSHIA: Well, I'm the person who -- the  
3 technical person. I am.

4 MR. MONIQUE: Okay. What is your background?

5 MR. BRUSHIA: What is my background? 11:08

6 MR. MONIQUE: Yeah. I'm just curious.

7 MR. BRUSHIA: I have a Ph.D. in biochemistry  
8 and molecular biology.

9 MR. MONIQUE: Why not -- the brick code thing  
10 is like -- I've never heard of that before. It sounds 11:08  
11 like something out of Mars to me. Why not just use the  
12 definition that CARB has already established?

13 MR. BRUSHIA: The definition that I showed you  
14 incorporates most of what CARB has in their definition.  
15 So we've actually done that. What we were looking at 11:09  
16 is moving forward -- like I said, the global product  
17 classification system is part of a globally  
18 synchronized system, and Washington -- it was a system  
19 to set up categories and to categorize them, to  
20 actually come up with definitions for specific 11:09  
21 products, and the State of Washington used it to help  
22 identify products.

23 And at the time that we were going through  
24 this, we had communication with the folks in Washington  
25 who implemented the Children's Safe Product Act in 11:09

1 Washington state, and they had to identify products. 11:09  
2 It's an interaction with manufacturers to notify the  
3 State of Washington if their products contain a  
4 chemical of concern as identified by the State of  
5 Washington; okay? 11:10

6 So in order to help unambiguously identify  
7 product, they decided to use that system because the  
8 feedback they got from manufacturers was, This would be  
9 very helpful to us, because if our product has been  
10 assigned to one of these brick codes, we then know 11:10  
11 unambiguously that you're -- you know what we're  
12 talking about and we know what you're talking about.

13 So we initially were looking at using it, but  
14 we know that there are many products for which no brick  
15 code has been assigned, and we know that in some cases 11:10  
16 the definitions that are there don't correspond exactly  
17 to what we may be trying to capture. So that's our  
18 question, is whether or not it's helpful. And if it's  
19 not -- and that seems to be the consensus on this  
20 particular product, is that it might not be very 11:10  
21 helpful. So the CARB definition is there, and there  
22 was some extra there, and that extra part is what we're  
23 talking about possibly, whether or not we meet it.

24 MR. RAYMOND: Doug Raymond, representing W.M.  
25 Barr. Our suggestion is just get rid of it. We'd 11:11

1 rather just have a definition. Because if you referred 11:11  
2 back to another definition, if sometime down the road  
3 that definition changes, we'd have to check it. We'd  
4 have to keep checking it. We just -- it's just a pain.  
5 We don't want that. We want a definition, and that's 11:11  
6 it. And I would suggest, exactly like he did, the CARB  
7 definition is -- we've been using for a decade.

8 MR. BRUSHIA: Okay.

9 MR. RAYMOND: So it's perfectly fine.

10 MR. BRUSHIA: Thank you. I appreciate that. 11:11

11 MR. BRUSKOTTER: My name's Karl Bruskotter,  
12 and I'm with the City of Santa Monica, and I just want  
13 to make sure -- I'm so far reading this to include  
14 graffiti removers.

15 MR. BRUSHIA: Yes -- no. That's what we're 11:11  
16 talking about. We originally -- like I said, that  
17 component was in the global product classification  
18 system, and we were debating whether or not to use  
19 that. The definition was there. When you look at  
20 their definition of "paint stripper," you literally see 11:11  
21 "paint strippers, varnish removers, graffiti removers."  
22 It's actually within the definition.

23 And so we were looking at that definition as a  
24 potential definition; but moving forward, we -- that's  
25 why I said we decided, because of the fact that we 11:12

1 might be capturing more products than we really 11:12  
2 intended to capture, and also because of the fact that  
3 CARB -- CARB's regulations do seem to cover a lot of  
4 those things, surface cleaners, graffiti removers, and  
5 so on, that we would not include in this regulation. 11:12  
6 So that's what I was saying in the beginning, is that  
7 we've defined our definition where it would just  
8 strictly be paint and varnish strippers and not  
9 graffiti removers or surface cleaners.

10 MS. WILLIAMS: Do you want me to go back to 11:12  
11 the definition?

12 MR. ALGAZI: I was going to ask Karl, did you  
13 have a perspective as far as graffiti removers? Do you  
14 think we ought to include them? Do you consider that  
15 they are essentially a paint stripper? 11:12

16 MR. BRUSKOTTER: I think they are a paint  
17 stripper, for sure. It just depends whether that paint  
18 was professionally applied or it's just applied by some  
19 kid that was at a school at the time. But it's on a  
20 surface. 11:13

21 And the brick thing is a little confusing to  
22 me, because when they formulate, the graffiti removers  
23 often do it for porous surfaces and nonporous surfaces,  
24 so the brick sounds like a porous surface to me. But  
25 we use a lot of graffiti removers. And if this 11:13

1 included graffiti removers that were formulated to 11:13  
2 remove paint from surfaces, you know, that would be  
3 great for a lot of cities and counties in the state.

4 MR. ALGAZI: So that's one thing, we would  
5 like to refine the definition -- so if we say it's 11:13  
6 designed or marketed or sold for the purpose of -- I'm  
7 trying to remember exactly what the wording is.

8 MR. BRUSKOTTER: Here. Let me go back.

9 MR. ALGAZI: -- or removing any paint or  
10 varnish from any surface, that may cover it, or do we 11:14  
11 need to mention graffiti removers explicitly, in your  
12 opinion?

13 MR. BRUSKOTTER: You know, I guess -- well, I  
14 don't know.

15 MR. ALGAZI: So however we word it, you'd like 11:14  
16 graffiti removers in, it sounds like?

17 MR. BRUSKOTTER: No. I mean, if you're  
18 talking about removing paint from a surface, that's  
19 graffiti remover.

20 MS. RUBIN: Graffiti is paint. 11:14

21 MR. ALGAZI: Right. I understand. Do we need  
22 to include graffiti removers or not? That's really the  
23 crux of the question.

24 MR. MONIQUE: Yes. Mark Monique from  
25 Savogran. There are no graffiti removers sold in 11:14

1 California with methylene chloride because of CARB 11:14  
2 rules.

3 MR. BRUSHIA: That's what I want to say.

4 MR. MONIQUE: So why would you want to throw  
5 more stuff into the bucket? 11:14

6 MR. ALGAZI: We wouldn't.

7 MR. MONIQUE: There aren't any.

8 MR. BRUSHIA: If you look at CARB's  
9 regulations, they specifically call out graffiti  
10 removers, and that's why we're saying they're 11:14  
11 different. They have a different definition under  
12 state law than paint strippers because they also  
13 identify paint and varnish strippers. So it's a  
14 different definition.

15 MS. WILLIAMS: And so our intent is to capture 11:15  
16 those things that CARB does not already capture when it  
17 excludes methylene chloride.

18 MR. BRUSKOTTER: So CARB banned methylene  
19 chloride?

20 MS. WILLIAMS: For graffiti removers. 11:15

21 MR. RAYMOND: Yeah, for a whole variety of  
22 instances.

23 MR. BRUSKOTTER: You know, we were buying some  
24 from the manufacturer that had methylene chloride in it  
25 just a year ago. 11:15

1 MR. RAYMOND: It was banned in 2006. It had 11:15  
2 to be sold, too, by 2009.

3 MS. RUBIN: We would be interested in talking  
4 to you or putting you in touch with the right people  
5 from CARB to talk about enforcement of their -- 11:15

6 MR. BRUSKOTTER: I'll be happy to give you  
7 names.

8 MR. SERIE: Tim Serie with American Coatings  
9 Association.

10 So in looking at the scope -- and you describe 11:15  
11 how you're excluding those products that are already  
12 regulated by CARB -- what considerations do you take  
13 into account when looking at whether something is  
14 already captured by another agency or not? And it  
15 seems you're looking at this outright prohibition or a 11:16  
16 limit on the percentage of the product that can be  
17 included, but there are just so many other regulations  
18 that are out there, and I wanted to try to understand  
19 why those weren't considered when looking at the scope.

20 MS. RUBIN: Can you give us an example? 11:16

21 MR. SERIE: So if you look at -- so CARB  
22 regulates methylene chloride and some cleaning  
23 products; right? And it's a VOC regulation, yet for  
24 human health concerns they've limited the amount of  
25 methylene chloride that can be contained. 11:16

1           When we're looking at occupational exposure, 11:16  
2           for example, Cal/OSHA and federal OSHA have permissible  
3           exposure levels for methylene chloride, and you may  
4           believe that those are inadequate or not protective  
5           enough. 11:17

6           MR. ALGAZI: We don't.

7           MR. SERIE: But they still -- okay. But  
8           that's still a consideration in looking at that  
9           regulatory overlap. So is that issue something that  
10          should be addressed under this regulatory framework, or 11:17  
11          is that something that should be addressed by  
12          petitioning Cal/OSHA? I'm just trying to understand  
13          the thought process of when you think something is  
14          captured under a regulation or --

15          MR. ALGAZI: I'll start, and then if somebody 11:17  
16          else wants to chime in --

17          So with regard to this particular question of  
18          the graffiti remover, we did not want to include in  
19          this definition something that essentially is not -- or  
20          should not be in the market. So there's no need to 11:17  
21          call out something that isn't sold in California. We  
22          want to only include in the scope of the product  
23          definition things that we know exist in the market in  
24          California. So that was the rationale. I actually --  
25          as somebody -- as -- maybe it was Doug, whoever -- j 11:18

1 pointed out that CARB banned the methylene chloride in 11:18  
2 graffiti removers. I had forgotten that. So that was  
3 the rationale for that.

4 With regard to the -- and I understand your  
5 point that you would like to see, essentially, a 11:18  
6 discussion of all regulation of the chemical in the  
7 product by whoever it might be that would apply. In  
8 the case of the occupational -- the PELs and things  
9 like that, we aren't taking the perspective that those  
10 aren't protective or not adequate per se. It's, 11:18  
11 rather, that under the sort of paradigm of this  
12 program, if the product could be reformulated to, you  
13 know, reduce or eliminate methylene chloride and still  
14 do the job, that would be a way of mitigating the risk  
15 posed by exposure to methylene chloride. 11:19

16 Another way is to set a permissible exposure  
17 limit or to require the use of personal protection. So  
18 we don't see the fact that an agency whose purview is  
19 protecting workers has set a level based on risk, and  
20 that we're asking manufacturers and other responsible 11:19  
21 entities to look at and evaluate the possibility of  
22 reformulating or making the product differently without  
23 having to use this chemical, as overlapping or  
24 conflicting. We look at them as two different ways of  
25 trying to address risk. 11:19

1 MR. SERIE: Yeah. I struggle with that, 11:19  
2 because if you look at the regulatory responses -- I  
3 mean, if you identify that as one of the key  
4 prioritization criteria for exposure and what is  
5 significant or widespread impacts, and then you say, 11:20  
6 Look. We're not looking to overlap or duplicate any  
7 other regulations that are out there, but then if you  
8 look at the list of regulatory responses, you see  
9 overlap with everything. You see overlap with OSHA.  
10 You see overlap with the Consumer Product Safety 11:20  
11 Commission. You see overlap with the Globally  
12 Harmonized System for Classification and Labeling of  
13 Hazards. So when will that regulatory overlap -- and I  
14 know it needs to be considered in the listing process,  
15 but will that be considered again in the regulatory 11:20  
16 response process?

17 MR. ALGAZI: We have considered the fact that  
18 there are safety -- that there are occupational  
19 exposure limits, and we've discussed them in the  
20 profile, so -- 11:20

21 MR. SERIE: But I -- I mean, the regulations  
22 really require -- and I know this is just the first  
23 step. And you still have to put together that  
24 regulatory package, but they require really an  
25 exhaustive look at all other California and federal 11:21

1 regulations and even treatises that address these same 11:21  
2 issues. And so I think that is a fundamental  
3 consideration in the listing process before it's even  
4 listed, to go through and look at every single  
5 regulation that's out there, link it back with the 11:21  
6 potential exposure and impacts that you cite in the  
7 priority product profile and the listing process, and  
8 then identify where there are gaps or where there are  
9 shortcomings. And it's laid out in the regulations.  
10 It's even required by the enabling bill, so -- 11:21

11 MR. ALGAZI: I hear what you're saying. We're  
12 certainly listening, and we'll consider what you're  
13 saying. In my mind it's a different -- I'm getting a  
14 little tongue-tied here, but --

15 MR. SERIE: No. I understand what you're 11:21  
16 saying. And Karl mentioned that in the hearing, that  
17 you believe it's a fundamentally different approach to  
18 regulating these products. But then you look at the  
19 regulatory responses again, and it's not fundamentally  
20 different, or it may not be fundamentally different. 11:22

21 MR. ALGAZI: So your point is, if we got to a  
22 regulatory response, one of them might be, you know,  
23 mandating PPE or something?

24 MR. SERIE: Well, no. They're two points. In  
25 the listing process you have to consider that. It's 11:22

1 laid out in the regulations. If there are any 11:22  
2 overlapping, duplicative, inconsistent regulations out  
3 there, that has to be considered, and you have to  
4 demonstrate that these regulations will meaningfully  
5 enhance the protection of public health and the 11:22  
6 environment. So that's step one of the listing  
7 process.

8 Then you go through the AA process and then  
9 into the regulatory response. And again, you have to  
10 consider regulatory overlap, duplication or 11:22  
11 inconsistencies, too. So I'm wondering how that's  
12 being considered in the listing process.

13 MR. ALGAZI: So I think we view that we have  
14 considered it, and the fact that there are documented  
15 cases of injury despite the existence of standards sort 11:22  
16 of goes to that point.

17 MR. SERIE: So -- but then the position would  
18 be that there are existing regulations in place, but  
19 they're inadequate?

20 MR. ALGAZI: Because human behavior being what 11:23  
21 it is -- it requires somebody to do something.

22 MR. SERIE: So DTSC's authority would  
23 supersede Cal/OSHA's authority?

24 MR. ALGAZI: Not at all. Not at all. Anyway,  
25 I don't want to -- Meredith has a response. 11:23

1 MS. WILLIAMS: I do want to point out that the 11:23  
2 Cal/OSHA's authority is limited. If you do look at  
3 methylene chloride and the number of places it can be  
4 purchased and the number of places it can be used,  
5 Cal/OSHA's authority is only a piece of the pie. And 11:23  
6 we are looking at the larger universe of use of the  
7 product.

8 And so yes, I think André's laid it out quite  
9 well, that we do, in fact, think that we've considered  
10 the other regulatory authorities and will continue to 11:23  
11 do so, and it will show up in the original statement of  
12 reasons that we give to the regulatory package. But  
13 fundamentally, there's a larger universe that, for  
14 instance, Cal/OSHA does not address.

15 MR. ALGAZI: The gentleman in the brown coat 11:24  
16 first. Or was it the lady in the blue? I don't know.

17 MS. RUBIN: Actually, the woman in the red  
18 coat was first, so we're going to take her.

19 MS. BLACKMON-BHAGAT: I'm Traci again. I had  
20 a quick question about the definition. Whenever I see 11:24  
21 the word "paint," I don't know if that word means spray  
22 paint and coatings or if the State considers a  
23 difference between those three.

24 MR. ALGAZI: Do we need to define what we mean  
25 by "paint"? 11:24

1 MS. BLACKMON-BHAGAT: Yes. 11:24

2 MR. BRUSHIA: Well, if you go back to the  
3 definition, it says "designed to remove" -- if you  
4 go --

5 MS. RUBIN: Do you want me to go back? 11:24

6 MR. BRUSHIA: Yes. Can you go back to the  
7 definition again? Sorry. I guess I'm going to put one  
8 of these closer to the other if we ever have to use  
9 this slide.

10 "May be marketed as a paint or varnish 11:25  
11 stripper designed to break down paint or varnish or to  
12 facilitate its removal from a surface." So that's how  
13 the CARB regulation currently reads. So it doesn't  
14 matter how the paint or -- what was it? Stop. Wait.  
15 Go back. 11:25

16 MS. RUBIN: Sorry.

17 MR. BRUSHIA: -- the paint or varnish -- it  
18 doesn't matter how it was applied to the surface,  
19 whether it was sprayed on or painted on.

20 MR. ALGAZI: But Traci's, I think, arguing 11:25  
21 that maybe it would be helpful to spell out --

22 MS. BLACKMON-BHAGAT: If the spray paint is  
23 not considered a paint, or if a coating is not  
24 considered a paint, then --

25 MR. BRUSHIA: Actually, that's a use issue, 25 11:25

1 and it doesn't really have to do with how the product 11:25  
2 can be marketed or sold. The product that we're  
3 talking about and how it's sold is what we're concerned  
4 with. How people use it is sort of secondary to what  
5 the product is and what its intended use is and how 11:25  
6 it's being marketed and sold. So if it's sold as a  
7 paint or varnish stripper, that's what we're concerned  
8 with. People may use it however they use it, but that  
9 doesn't really impact how the product was marketed or  
10 sold. Do you understand what I'm saying? 11:26

11 MS. BLACKMON-BHAGAT: Yes.

12 MR. BRUSHIA: So it doesn't really matter what  
13 they're using it on. They could use it on almost  
14 anything. It just depends on how it was marketed and  
15 sold to them. 11:26

16 MS. RUBIN: Okay. So we're going to spend  
17 five more minutes on this discussion topic and then  
18 move on to the next two. And if we finish those  
19 earlier, we can come back to further discuss the  
20 definition, but I want to try to get your questions in, 11:26  
21 so --

22 MR. NORMAN: Well, mine, really, follows what  
23 they were talking about. Caffey, C-a-f-f-e-y, Norman  
24 with the law firm of Squire, Patton & Boggs.

25 MS. RUBIN: Did you have a comment about th 11:26

1 definition? 11:26

2 MS. JONES: My discussion was more on this  
3 issue of the regulatory aspects. Kathy Jones.

4 MR. ALGAZI: We do have some time allotted at  
5 the end for other things people would like to talk 11:27  
6 about.

7 MS. JONES: Okay. So our second discussion of  
8 topic is the chemical of concern and alternatives. So  
9 first of all, we want to know if there are other  
10 candidate chemicals in this product that could be 11:27  
11 considered. Are there functionally acceptable  
12 alternatives to this product? You know, are they on  
13 the market? Are they being developed? Do they require  
14 the use of a replacement? And if you do know of  
15 replacement chemicals that you've considered in the 11:27  
16 past, why haven't you used them, kind of thing? So  
17 does anyone --

18 MR. MONIQUE: Mark Monique, Savogran. I  
19 wanted to follow up on -- I think it was the gentleman  
20 from the general session, from the adhesives council, 11:27  
21 that was talking about candidate chemicals that later  
22 come back to bite you in the behind. And we're located  
23 in Massachusetts, and, you know, we live with the  
24 Toxics Use Reduction Act, which I'm guessing -- you've  
25 probably talked to those folks out there. 11:28

1 MR. BRUSHIA: Uh-huh. In fact, one of their 11:28  
2 top folks is part of our Green Ribbon Science Panel.

3 MR. MONIQUE: Okay. Early on in that program,  
4 as part of our toxics use reduction plan, we adopted  
5 n-methylpyrrolidone as one of our options in our plan 11:28  
6 to -- you know, as an alternative to methylene chloride  
7 products. And we began marketing a product with NMP in  
8 it.

9 Well, wouldn't you know, you know -- I don't  
10 know if it was three, four, five years down the road -- 11:28  
11 all of a sudden NMP gets added to the TURA list. So  
12 there goes our toxics use reduction plan. That  
13 alternative that we were using, you know, as part of  
14 our plan gets blown out of the water. So those things  
15 do happen. 11:29

16 MR. BRUSHIA: We are aware of NMP, and we are  
17 aware that those things do happen. NMP is a chemical  
18 that is also on our candidate list -- I just wanted to  
19 say that -- but it's not on our initial candidate list.  
20 Karl mentioned in his talk how we -- the regulations 11:29  
21 actually narrow the scope of what we can consider,  
22 because they require a chemical to be on both one of  
23 those exposure factor lists and one of the hazard  
24 lists, and NMP was only on one side of that, so we  
25 couldn't name it now. But we are aware of it, and 11:29

1 there are concerns with its use that have developed 11:30  
2 over time.

3 What we are specifically talking about in  
4 terms of this product -- by the way, methylene  
5 chloride -- it could also be argued methylene chloride 11:30  
6 paint stripper is not the same product as NMP paint  
7 stripper. What we're talking about are paint strippers  
8 containing methylene chloride that may also contain  
9 other chemicals that we are unaware of that may be  
10 problematic chemicals that maybe we should include if 11:30  
11 we did list methylene chloride in paint strippers right  
12 now so that we wouldn't be coming back to  
13 manufacturers.

14 For example, we weren't aware that Chemical X  
15 was in there also, and we find out downstream, after 11:30  
16 manufacturers have already done the methylene chloride  
17 alternatives assessment, okay, and then we come back  
18 and say, Well, wait a minute. Now we know this  
19 chemical is in there, too, and we have to redo it.  
20 That's what we're trying to avoid. We're trying to 11:30  
21 find out, are there any other chemicals in there that  
22 are of concern, and if so, what they are. We know that  
23 methylene chloride paint strippers' concentrations are  
24 very high, typically. I mean, that's the major  
25 chemical, typically. 11:31

1 MR. MONIQUE: That's not true. 11:31

2 MR. BRUSHIA: Really? For most of them?

3 MR. MONIQUE: No. We have a product that --  
4 in fact, our most popular product only has 25 percent  
5 of methylene chloride in it. 11:31

6 MR. BRUSHIA: Okay. Well, see, this is  
7 exactly the kind of information we need. And what's  
8 the filler? I mean, there's 75 percent --

9 MR. MONIQUE: Well, it's not a filler. The  
10 other constituents all play a role in stripping the 11:31  
11 paint. You have to remember, these products are used  
12 by people who aren't going to know if they're stripping  
13 an oil-based paint or a latex paint. They don't have  
14 that kind of know-how, so the products have to be able  
15 to strip a wide variety of coatings. So we formulate 11:31  
16 them with different ingredients to make sure that we  
17 can hit all those different types of coatings.

18 MR. BRUSHIA: I see. See, that's exactly what  
19 we're getting at, is we want to tell if, within the  
20 methylene chloride-based strippers -- if other 11:31  
21 chemicals of concern that are on our initial list are  
22 there, that we should be bringing them to people's  
23 attention to take a look at now while they're also  
24 looking at methylene chloride. So that's the intent of  
25 this question. 11:32

1 MR. ALGAZI: Going once? Going twice? 11:32

2 MS. RUBIN: Anyone else? Okay. We can move  
3 on to our third discussion topic.

4 MR. SERIE: Oh. Sorry. I didn't know we were  
5 jumping past No. 2. In looking at the priority product 11:32

6 profile and how you consider some of the  
7 alternatives -- we sort of discussed this at the  
8 workshop before, how we don't want to predetermine the  
9 outcome, but, of course, we want to consider whether  
10 alternatives are available. 11:32

11 So we just want to make sure it's very clear  
12 if, in the listing process, you're considering  
13 potential alternatives and that weighs into whether or  
14 not you're going to list methylene chloride, but that  
15 we're not making any statements about whether an 11:32  
16 alternative is safer or not, or about what should be  
17 used, because then that sort of seeps into the  
18 alternative analysis, which is the next step in the  
19 process.

20 MR. ALGAZI: And I do remember we talked about 11:33  
21 this in the Sacramento workshop.

22 MR. SERIE: Uh-huh.

23 MR. ALGAZI: And one of the -- that  
24 conversation -- it came into play when we tried to add  
25 that clarifying page that we inserted right after th 11:33

1 title page of each of the profiles on the Web site, 11:33  
2 which is, we haven't made a determination about the  
3 alternatives. So we're trying to -- notwithstanding  
4 other statements in the profile, that was what we  
5 understood at the time, on March 13th, and then we've 11:33  
6 added that page to hopefully help clarify that.

7 MR. SERIE: Thank you.

8 MR. MONIQUE: I've got one more question. On  
9 the priority product profile, page 14, it goes into  
10 quite a bit about NMP. 11:33

11 MR. BRUSHIA: Oh, yes.

12 MR. MONIQUE: And it does state that the  
13 agency doesn't recognize NMP as a safer alternative.  
14 What was the point of putting all that language in  
15 there? 11:34

16 MR. BRUSHIA: Well, NMP is on our candidate  
17 list, and we wanted to bring attention to  
18 manufacturers -- oh.

19 MS. WILLIAMS: Okay. So the actual thing is  
20 NMP is not on our candidate list. We actually made a 11:34  
21 mistake when we implemented the regulations, and we  
22 pointed to the wrong list when we made a reference to  
23 the list that contained NMP. We are in the process of  
24 correcting that mistake, but this was some language  
25 to -- before that correction's been in place to give 11:34

1 people a heads-up that NMP is -- it will be on our list 11:34  
2 within the next six months, and so we wanted to --

3 MR. MONIQUE: So this language is going to  
4 change on here?

5 MS. WILLIAMS: Pardon? 11:34

6 MR. MONIQUE: This page 14 is going to be  
7 amended?

8 MS. WILLIAMS: I don't know, because I don't  
9 have it in front of me, and I can't say. But the short  
10 answer is that NMP will be on our list, and, therefore, 11:35  
11 it will not be considered an alternative.

12 MR. MONIQUE: But aren't you -- by having this  
13 language on page 14, aren't you predetermining an  
14 alternative analysis in saying that NMP is not  
15 acceptable? 11:35

16 MS. WILLIAMS: In some sense, yes, because NMP  
17 is -- it was almost a clerical error because NMP was  
18 not on our chemical candidates list in the first place.

19 MR. RAYMOND: Doug Raymond, representing  
20 W.M. Barr. So I have a question. If your product, or 11:35  
21 your candidate chemical, is methylene chloride -- if we  
22 were to take our paint strippers right now and switch  
23 them to NMP before you do your regulatory process, we'd  
24 be out of the process?

25 MS. WILLIAMS: That's correct. 11:35

1 MR. RAYMOND: Okay. 11:36

2 MR. MONIQUE: I'm not following that.

3 MR. RAYMOND: If you went and switched out  
4 methylene chloride right now to NMP, you would not be  
5 in the process anymore. 11:36

6 MR. MONIQUE: So NMP is an acceptable  
7 substitute for methylene chloride?

8 MR. RAYMOND: No, it's not. But if you change  
9 it before they do the regulation, then it wouldn't be  
10 caught. 11:36

11 MR. BRUSHIA: Well, it still wouldn't merit  
12 the same even after the regulation was done -- if it  
13 was an NMP-based paint stripper not containing  
14 methylene chloride, it wouldn't be in our purview at  
15 all. 11:36

16 MS. WILLIAMS: At the moment.

17 MR. BRUSHIA: Right, unless we at some point  
18 added NMP to the list.

19 MS. WILLIAMS: Which we will. That red  
20 package is done. 11:36

21 MR. NORMAN: But even when you add it to the  
22 list, the point remains. You've identified the  
23 priority product, methylene chloride-based paint  
24 stripper, not NMP. You'd have to start a new process  
25 for NMP if you want to capture that. 11:36

1 MR. BRUSHIA: That is absolutely correct. 11:37

2 MR. ALGAZI: It could come into play down the  
3 road, keeping in mind that the alternative analysis  
4 requirements wouldn't start to apply to responsible  
5 entities until late 2015 at the earliest or 2016; so at 11:37  
6 that point, if they hadn't already made the switch and  
7 were trying to evaluate alternatives to methylene  
8 chloride, at that point it would be a candidate  
9 chemical, so the alternatives analysis requirement  
10 would be triggered if you wanted to make the switch at 11:37  
11 that time, I think.

12 MR. SERIE: So switch it now.

13 MR. MONIQUE: So that could gain us ten years?

14 MR. SERIE: Oh, yeah.

15 MR. NORMAN: But you'd lose methylene 11:37  
16 chloride. Your paint stripper wouldn't work.

17 MR. MONIQUE: It's California. I expect it  
18 not to work.

19 MR. BRUSHIA: Well, we do want to point out  
20 that the alternatives analysis has many possible 11:38  
21 outcomes. Whether or not you lose methylene chloride  
22 depends on the specific circumstances. The  
23 alternatives analysis doesn't mandate that you switch.  
24 The alternatives analysis mandates that you take a look  
25 at whether or not it's possible; you take a reasonab 11:38

1 look at whether or not there is something safer that 11:38  
2 you could switch.

3 MR. ALGAZI: That would do the job.

4 MR. BRUSHIA: But there may be reasons why  
5 that's not accurate, in which case the regulatory 11:38  
6 response actions may come into play, and something may  
7 be done to enhance the safety of the product; but the  
8 first step would be, as André mentioned, reducing the  
9 inherent risk by preferably switching out the more  
10 hazardous chemical with a less hazardous one. But the 11:38  
11 outcome is going to be dependent on each manufacturer,  
12 their clientele, the technical specifications they have  
13 to meet. I mean, that's going to be potentially  
14 specific to each manufacturer.

15 MS. WILLIAMS: Okay. So there's -- and as 11:38  
16 Rob's pointing out, there's quite a variety of  
17 alternatives that could be presented to us; and then  
18 based on those individual alternatives that are  
19 proposed, we would have quite a variety of regulatory  
20 responses that are responsible. That is not 11:39  
21 predetermined.

22 MS. BLACKMON-BHAGAT: I have another question.  
23 Will a product come up more than once? So will paint  
24 varnish come up again because it had another --

25 MR. BRUSHIA: Paint and varnish strippers, 11:39

1 mean? 11:39

2 MS. BLACKMON-BHAGAT: Yes. Will paint and  
3 varnish strippers come up again?

4 MR. BRUSHIA: Well, the products -- you have  
5 to look at how our regulations define the product. 11:39  
6 It's a product chemical combination of the priority  
7 products; okay? So when we name a specific chemical in  
8 a specific product, that's a specific product. If you  
9 move to another product that's formulated in a  
10 different way -- I mean, if they didn't -- if it wasn't 11:39  
11 contained within that first definition, then it's a  
12 separate product. We would have to list it separately.

13 MR. ALGAZI: We could do that.

14 MR. BRUSHIA: Yes. And it's determined how we  
15 define that product in the beginning. So we 11:39  
16 conceivably could list a product down the road, but  
17 that's what we're trying to avoid doing. We don't want  
18 to do that if at all possible.

19 MS. WILLIAMS: And I think the likelihood of  
20 that, for better or for worse, in that first selection 11:40  
21 of products when we were constrained to 153  
22 chemicals -- it's more likely that we would have to  
23 revisit that for the full 1100 chemicals later on than  
24 naming something or name a product category in the work  
25 plan. 11:40

1           So the work plan names broader product 11:40  
2 categories. It allows us to talk about -- and we  
3 haven't decided that we're going to do this, but we  
4 could talk about families of chemicals that have  
5 similar structures, et cetera. So it will allow us to 11:40  
6 forecast the consideration of groupings in a more  
7 holistic way than we can in this first group of  
8 products. And so the likelihood of us going back and  
9 back to the same product -- not priority product,  
10 because a priority product inherently -- is inherently 11:40  
11 associated with a specific chemical, but the likelihood  
12 becomes lower as we move on.

13           MR. SERIE: I was just going to make a point,  
14 going off of what Mark said. There's also the burden  
15 not just associated with the regulatory response, but 11:41  
16 associated with the alternatives analysis. So some  
17 manufacturers may choose, before that priority product  
18 is finalized and triggers the regulatory response, to  
19 phase out and use something else to avoid even the  
20 alternatives analysis, especially for small or 11:41  
21 medium-sized enterprises.

22           MR. BRUSHIA: Correct. That's true. Yes.

23           MR. NORMAN: Yeah. I'm curious about -- I  
24 believe you will find a number -- I believe there will  
25 be alternative assessments provided to you, and at 11:41

1 least some of those will say that there is no effective 11:41  
2 alternative to methylene chloride for many types of  
3 applications. But equally, I imagine you will receive  
4 other alternatives assessments, perhaps submitted by  
5 manufacturers of alternative products, that say they 11:42  
6 are very effective. They can't both be true. How are  
7 you going to determine which one is true? Because  
8 that's pretty important.

9 MR. BRUSHIA: Well, we don't take alternatives  
10 assessments from alternative manufacturers unless 11:42  
11 they're submitting one for a methylene chloride-based  
12 paint stripper that they manufacture.

13 MR. NORMAN: They'll be able to do that;  
14 right? I mean, a lot of manufacturers have maybe one  
15 methylene chloride-based product in their line. 11:42  
16 They'll say, Let's get rid of this in California, and  
17 let's demonstrate that this other product is --

18 MR. BRUSHIA: Well, that would be the first  
19 thing, is they would have to be within the regulatory  
20 purview of this listing, and they would have to be 11:42  
21 submitting the analysis of a product they make.

22 But, again, it's specific to each  
23 manufacturer. And so, for example, there may be a  
24 manufacturer that's making methylene chloride paint  
25 stripper for a specific market that's, you know, 11:43

1 industrial or something in nature that needs to meet a 11:43  
2 certain specification, and certain chemicals might not  
3 allow them to do that, whereas one manufacturer may be  
4 making something for home applications that they can  
5 use a different chemical because it will allow them to 11:43  
6 meet the specification they need for that market. So  
7 there's differences for the manufacturers themselves.  
8 It's up to the manufacturers to look at that and make  
9 those determinations.

10 MR. NORMAN: Well, assume a manufacturer gives 11:43  
11 you an alternatives analysis; the only thing that's  
12 really good for antique dealers is methylene  
13 chloride -- it has a wide variety of substrates -- and  
14 somebody else comes in and says, "I'm getting rid of my  
15 methylene chloride. I've got something that works just 11:43  
16 as well on antiques." That's what some would say.

17 Now, how do you determine which is right? I  
18 mean, you do need to determine which is right, don't  
19 you?

20 MR. ALGAZI: The regulatory response could be 11:44  
21 different for each manufacturer in that scenario. We  
22 wouldn't -- we might have a conversation with the one  
23 who said you have to use methylene chloride for this  
24 particular segment or this particular user just to say,  
25 you know, there's this other alternatives analysis t 11:44

1 has identified that says differently from what you're 11:44  
2 saying, and so we might initiate a conversation about  
3 that and understand, you know, what's different between  
4 the two. So that might inform the regulatory response.

5 But we wouldn't necessarily -- so it's possible that 11:44  
6 one manufacturer might find that there isn't an  
7 alternative, and another might find that there is.

8 MR. NORMAN: I guess what I'm getting at is,  
9 would you consider testing? There's a way to answer  
10 that question. 11:44

11 MR. ALGAZI: Oh. I see what you're saying.  
12 Right.

13 MR. NORMAN: You know?

14 MR. MONIQUE: I guess the broader question is:  
15 How do you prevent an alternative formulator from 11:45  
16 gaming the system for commercial purposes?

17 MR. NORMAN: Which is what they're all going  
18 to do. That's what you've created.

19 MR. DURRUTY: Luis Durruty, City of  
20 Los Angeles. Basically you're saying, who has the 11:45  
21 burden of proof?

22 MR. NORMAN: Yeah. You're going to get a  
23 bunch of people saying everything.

24 MS. JONES: This is Kathy Jones, and I'm with  
25 a consulting firm. So I guess my ultimate question 11:45

1 becomes, how the heck do you enforce this? If you've 11:45  
2 got one manufacturer who you've approved that says it's  
3 fine to use on antique products and you've got another  
4 manufacturer that says you can use a substitute, and  
5 you've got another company that's using a product, how 11:45  
6 are you going to know which is okay, and how is it  
7 going to be enforced?

8 MR. ALGAZI: The alternatives analysis will  
9 determine the regulatory response. So we might have  
10 Manufacturer A that determines for our particular -- I 11:46  
11 think the alternatives analysis says, We have customers  
12 that need these performance criteria, and we've  
13 analyzed this alternative; and either we can't find an  
14 alternative that can meet the criteria, or it's not  
15 safe, or whatever it might be, so our regulatory 11:46  
16 response proposes to continue to use and potentially --  
17 I don't want to make something up, but restrict it to  
18 certain types of uses or something. I don't know.

19 So the other user -- the other manufacturer  
20 might say, I've got this other thing that works great. 11:46  
21 The hazard traits are less. And so the regulatory  
22 response for that one might be, Okay. Have at it. You  
23 can switch it out, and you don't need to restrict the  
24 use. This is entirely hypothetical, and this isn't a  
25 real example, so it really would depend on each 11:47

1 alternatives analysis, what the regulatory response 11:47  
2 might eventually be. And so it might be that both  
3 products continue to be sold.

4 MS. JONES: I clearly understand that. My  
5 question is: How is that enforced when somebody's 11:47  
6 using the wrong thing for the wrong application? Or  
7 further, as far as someone that goes to Arizona and  
8 buys a product for a small company because I know this  
9 product is sold there and it's okay there, and I bring  
10 it in here -- I'm not selling it to anybody. I'm using 11:47  
11 it.

12 MR. ALGAZI: So it has to do with being put  
13 into the stream of commerce in California. That's our  
14 authority under this program. So if somebody's not  
15 doing that, then we don't have the authority to 11:47  
16 intervene with that.

17 MS. RUBIN: Okay. I think the gentleman in  
18 the back is first, and then Kathy, and then Traci.

19 MR. BRADY: My name's Andrew Brady from Alston  
20 & Bird. This follows up on the question following the 11:47  
21 regulatory response. What is the agency's opinion  
22 about, you know, once you -- once you make a regulatory  
23 response and you say, you know, for instance, you know,  
24 Limit the use to X uses? What is the finality of that  
25 going to be? Is the company going to be locked in a 11:48

1 eternal relationship with DTSC where five years down 11:48  
2 the line you might want to tinker with that and you  
3 might have some new ideas of what can be done? Are you  
4 going to be coming back to those who initially had a  
5 regulatory response and demand some additional actions? 11:48

6 MR. ALGAZI: I'm not an expert on this. Maybe  
7 Meredith has a different perspective. But I think the  
8 regulatory response might be, take some sort of an  
9 agreement between us and the responsible entity along  
10 the lines of the consent order that we use in our 11:48  
11 enforcement program. So I think that it could be  
12 renegotiated, potentially, if circumstances change. Is  
13 that not right or --

14 MS. WILLIAMS: No. That sounds -- that sounds  
15 about how I'd answer it. 11:49

16 MR. ALGAZI: So I don't think the vision for  
17 the regulatory response would be to sort of be  
18 something that is -- we wouldn't start by unilaterally  
19 imposing it. It would be, ideally, something that  
20 would come out of a dialogue with a responsible entity 11:49  
21 based on the alternatives analysis.

22 MR. NORMAN: As a consolation, the interim  
23 consent orders for all these companies have been -- you  
24 know, I may have to move to California because it  
25 sounds like a good business for lawyers. 11:49

1           But I wanted to follow up on the example of 11:49  
2           the antiques, because I'm just trying to understand how  
3           this thing works. So one company may decide that  
4           nothing really is as suitable as a replacement for  
5           methylene chloride strippers for antiques. And would 11:50  
6           it then sell its product with that specification? And  
7           is that the kind of thing you're looking to see, where  
8           you get -- the end use is specified? Then, of course,  
9           your question arises, how the hell would you enforce  
10          that? That's another question. But what I'm really 11:50  
11         first asking is --

12           MR. ALGAZI: So, in other words, if somebody  
13          is marketing it for something else --

14           MR. NORMAN: They're marketing it for --  
15          saying, "This is antiques," and they've demonstrated to 11:50  
16          you, in their assessment, nothing else works.

17           MS. WILLIAMS: So I just want to answer this  
18          from kind of the highest level, fundamental operating  
19          principles of the program, which is, we have a goal of  
20          making regulations that are practically, meaningful, 11:50  
21          and legally defensible. And some of the scenarios that  
22          you're raising are not necessarily practical.

23           And so that is a challenge for the department.  
24          The department is going to have to dig into appropriate  
25          regulatory responses, appropriate enforcement. Thos 11:51

1 procedures and processes aren't established yet, but 11:51  
2 those are the litmus tests we'll use to decide whether  
3 or not our response and our enforcement actions make  
4 sense.

5 MS. BLACKMON-BHAGAT: And getting back to 11:51  
6 this gentleman's question, what if that one company  
7 does have an alternative but it's proprietary and  
8 nobody else can use it? So there is a real alternative  
9 out there, but nobody else has a hand on it, and now  
10 everybody else is saying, You know what, I can't find 11:51  
11 an alternative. And they're not telling a lie. They  
12 just can't find one. This guy's cornered the market on  
13 it. What about that?

14 MR. MONIQUE: It has an effect on consumers 11:51  
15 because all of a sudden they're going to be able to  
16 charge whatever they want to charge because there's  
17 going to be no competition in the marketplace.

18 MS. WILLIAMS: I think that's a very realistic  
19 scenario. If we know that there is a safer alternative  
20 out there, if it's proven and credible, and if it can 11:52  
21 be manufactured in production, and, again, if it's  
22 practical and legally defensible, that could be an  
23 alternative, and then the industry is really jammed up  
24 in terms of having to negotiate licensing agreements,  
25 having to try to find a way to continue to research 11:52

1 identify alternatives. That's a possibility. 11:52

2 MR. NORMAN: But having -- being mindful of  
3 all that's been said, am I still -- is it correct to  
4 think that you're looking sort of -- one of your  
5 regulatory responses might be to identify particular 11:52  
6 uses, since that's what I think you're telling me.  
7 Your alternatives analysis is going to focus on uses?

8 MR. ALGAZI: One of the regulatory responses  
9 that's identified in the framework regulations is  
10 restrictions on use, so I would read that to be -- it 11:53  
11 could be something like that.

12 MS. BLACKMON-BHAGAT: Well, I have a client  
13 that once they get to this stage, they want everything  
14 to be confidential. They don't want anything  
15 published. So any of that that they do is not -- they 11:53  
16 don't want anything --

17 MR. ALGAZI: So in that case the alternatives  
18 analysis, assuming -- there's an article that talks  
19 about confidential business information. So the  
20 general default is that the alternatives analyses are 11:53  
21 public documents, but then stuff that is confidential  
22 would be redacted. So somebody would say, We've  
23 identified blank, and that would be what would be  
24 available publicly.

25 MS. RUBIN: Is there anything else about th 11:53

1 alternatives that anyone would like to discuss? No? 11:54

2 Okay. So we'll move on to our third  
3 discussion topic of today, and that's market  
4 information. So we want to start off with the  
5 presence -- the market presence of the priority 11:54

6 product. Where is it marketed? You know, who uses it?  
7 Where is it available? How much, you know -- not just  
8 businesses, but, obviously, with paint stripper there's  
9 a DIY aspect to it -- and looking at who the  
10 manufacturers are, where they're located. 11:54

11 MR. MONIQUE: Mark Monique, Savogran. Like I  
12 said before, a lot of these companies are small  
13 businesses, so you're not going to get a lot of this  
14 information. But when CARB adopted the 50 percent VOC  
15 limit for methylene chloride, the industry had an 11:54  
16 obligation -- I don't know, it might have been a  
17 five-year obligation -- to complete a survey every  
18 year, so they probably have a lot of the data of how  
19 much is sold on this thing, so you might want to go  
20 back and get that. 11:55

21 MR. BRUSHIA: Yes. We've actually talked with  
22 them about that. It is available. We've had that  
23 discussion before in the past. We were initially  
24 unsure of how reflective that data was, because the  
25 last time that was taken was 2006. 11:55

1 MR. MONIQUE: Yeah, but you're not going to 11:55  
2 find anything else out there. Nothing.

3 MR. BRUSHIA: That's what we've heard.

4 MR. SERIE: 2011 was the last time they had to  
5 report, so -- I think it was 2011. 11:55

6 MR. MONIQUE: Yeah. It ran out, expired. It  
7 was a five-year period. That would be right, because  
8 the regulation in 2005 was a 50 percent VOC limit, and  
9 it was five years after that, so --

10 MR. BRUSHIA: But isn't methylene chloride 11:56  
11 actually excluded from the definition of VOC limit --

12 MR. MONIQUE: Right.

13 MR. BRUSHIA: It's excluded from the VOC  
14 definition, so the 50 percent limit doesn't apply, does  
15 it, to methylene chloride? 11:56

16 MR. MONIQUE: We use it to meet the  
17 50 percent.

18 MR. BRUSHIA: Oh. I see. I understand what  
19 you're saying.

20 MR. MONIQUE: We are actually involved in the 11:56  
21 50 percent. And that's why -- the broader scope of  
22 this whole thing is they don't allow methylene chloride  
23 and adhesive removers, they don't allow graffiti  
24 removers, but they let us continue to use paint remover  
25 because we needed that to be able to manufacture a 11:56

1 product that met the 50 percent VOC limit, because they 11:56  
2 were very scared that the manufacturers would start  
3 putting in a lot more acetone into their product. So  
4 all of a sudden you went from a chronic hazard to an  
5 acute hazard. So they were very mindful of that 11:57  
6 process, and that's why we are -- continued to be  
7 allowed to formulate products with methylene chloride,  
8 because they didn't want that acute hazard.

9 MR. SERIE: And you should also ask CARB --  
10 time flies, but it was two or three years ago that they 11:57  
11 did another review on methylene chloride. Then we went  
12 in and talked to them. So there was data that we had  
13 then that they had gotten from somewhere, so it's not  
14 that old.

15 MR. BRUSHIA: Data on -- 11:57

16 MR. SERIE: On paint strippers.

17 MR. BRUSHIA: You mean on the market share  
18 information?

19 MR. SERIE: Yeah. Let me see what year that  
20 was. 11:57

21 MR. BRUSHIA: We did talk to CARB, and we had  
22 meetings with them, but we'll have more meetings with  
23 them to make sure we have all the most up-to-date --

24 MR. SERIE: 2010 we went in and talked to them  
25 about -- they were looking at regulating methylene 11:57

1 chloride in paint strippers again. So it was four 11:58  
2 years ago, but they had done some work on paint  
3 strippers, and they decided to drop it. They initially  
4 put it in their list to go after it again, and then  
5 they dropped it. 11:58

6 MR. ALGAZI: So this would be something that  
7 eventually down the road might come up in the -- stage  
8 one of the alternatives analysis, where the responsible  
9 entity is required to identify the functional  
10 performance and legal requirements of the product that 11:58  
11 must be met by the alternatives. So it sounds like it  
12 could come into play if there was a requirement to  
13 limit the VOC limit to X, and that it's being used for  
14 that purpose. That would be something to mention in  
15 that. 11:58

16 MR. SERIE: Useful.

17 MS. RUBIN: Any other questions? Comments?

18 MR. SERIE: I don't have anything else on  
19 market, but when will the transcripts be ready? Are  
20 they ready from the first one yet? 11:59

21 MR. ALGAZI: I think so. I need to follow up,  
22 because there was some information the court reporter  
23 needed from me, and I was sick, so I did provide the  
24 information to her, so I think it should be available.

25 MR. SERIE: Okay. How do we get that? 11:59

1 MR. ALGAZI: I'm going to post that. We're 11:59  
2 going to ask to have it posted on the Web site. So  
3 when I get back to the office on Friday, I'll look into  
4 that narrative.

5 MS. WILLIAMS: I would recommend that we 11:59  
6 e-mail everybody who registered.

7 MR. ALGAZI: Okay. We can do it that way.

8 MS. WILLIAMS: At least folks who registered  
9 will get it.

10 MR. MONIQUE: The second question: Are all 11:59  
11 these slides up on the --

12 MR. BRUSHIA: Yes, they were. The only  
13 change -- the slides haven't changed on the Web site.  
14 The only change is that we actually took the full  
15 definition out of the regulatory concept -- that is on 11:59  
16 the Web site also -- and put it in there where it just  
17 was a summary. Otherwise --

18 MR. MONIQUE: I haven't looked in a while, so  
19 I just wanted to know if all that is there.

20 MR. BRUSKOTTER: Karl Bruskotter with City of 12:00  
21 Santa Monica. So you showed the link earlier to submit  
22 comments by the end of the month.

23 MR. BRUSHIA: The e-mail?

24 MR. BRUSKOTTER: Yeah, the e-mail. So we  
25 could answer these questions in the comments? 12:00

1 MR. BRUSHIA: Yes. If you have any 12:00  
2 information -- and not just restricted to this  
3 information. If you have any information --

4 MR. BRUSKOTTER: We do. We have a lot,  
5 because we're in the middle of doing a GHS training and 12:00  
6 even looking at things that are pitched to us that we  
7 might turn down because we figured they're too toxic,  
8 and we can get you a bunch of that information.

9 MR. BRUSHIA: Sure. Anything. Yeah. And we  
10 are monitoring that. We are reading the e-mails we 12:00  
11 receive --

12 MR. MONIQUE: Okay. Great.

13 MR. BRUSHIA: -- and keeping them in our  
14 record for -- so --

15 MS. RUBIN: So if there are no more comments 12:00  
16 or questions about the market information on this  
17 product, if you have any other questions or comments  
18 regarding the process -- yes?

19 MR. NORMAN: Back to the one we had on the  
20 other regulation, I was curious why you put that poster 12:01  
21 up there, but it relates -- we're starting to get into  
22 this issue. I think it was focused primarily on OSHA.  
23 But -- I don't know if it's come to your attention, but  
24 your first profile did not mention the CPSC regulation,  
25 household products containing methylene chloride, wh 12:01

1 is actually the most important of the regulations you 12:01  
2 deal with. And that language there is directly out of  
3 that notice.

4 But, of course, by policy it has to be that  
5 all household products including methylene chloride, 12:01  
6 including paint strippers -- have to have some of that  
7 language, not all. And the language relates to how to  
8 use the product safely, to ensure adequate ventilation,  
9 what have you. It was intended to address chronic  
10 hazard, but -- and I guess my point of saying all 12:02  
11 this -- well, there's two points, really.

12 One is, there may be -- depending on what it  
13 is that you're trying to achieve, which I still don't  
14 perfectly understand -- but if you were trying  
15 primarily to address the issue of the eight or ten 12:02  
16 deaths over the last decade of people that were  
17 stripping bathtubs and other things without adequate  
18 ventilation, both in an occupational and a consumer  
19 setting -- one approach to that might be to expand  
20 what's -- for CPSC to expand what it has done, address 12:02  
21 not just chronic hazards, but, you know, acute hazards.

22 And, of course, that's something we've had  
23 conversations with CPSC about doing. The Federal  
24 Hazardous Substances Act has some language in that that  
25 if cautionary labeling is added to address a risk, t 12:03

1 that is the approach that has to be taken. And it's 12:03  
2 only if that is shown that that is not adequate that  
3 you go to some further step, like a ban under the  
4 Federal Hazardous Substances Act. So anyway, I just  
5 wanted to throw that out and see to what extent that 12:03  
6 factored into your thinking.

7 MR. BRUSHIA: Well, we're aware of the CPSC's  
8 stuff, but what we -- there have been deaths associated  
9 with the use of this material, and so we're not -- and  
10 in some of those cases, labeling information was 12:03  
11 available, indicating how the product should be used  
12 with ventilation, yet the deaths still occurred. So  
13 we've considered it.

14 And again, we don't think that -- it's like  
15 André was talking about the OSHA stuff earlier, in that 12:04  
16 we don't necessarily think we're conflicting with it.  
17 We think we're asking for manufacturers to step back  
18 and take a step before those steps need to be taken.  
19 It's kind of like along the lines of mandating the  
20 personal protective equipment. That's designed to 12:04  
21 address a risk and minimize the risk to the person  
22 who's using it, potentially exposed.

23 What we're asking is to minimize the inherent  
24 risk in the product itself by getting rid of the  
25 chemical that's the problem and hopefully substituti 12:04

1 in something, if possible, that has less inherent risk 12:04  
2 associated with it. So it's sort of the same argument,  
3 I think, that André talked about earlier in terms of  
4 the OSHA consideration. Does that kind of answer your  
5 question or -- 12:05

6 MR. ALGAZI: So your point is that this label  
7 that we have here, as an example, was developed, and  
8 it's required based on chronic exposure to the product.  
9 And this is --

10 MR. NORMAN: Correct. 12:05

11 MR. ALGAZI: -- a device that is designed to  
12 mitigate or prevent that issue, but not necessarily --

13 MR. NORMAN: Chronically. Right.

14 MR. ALGAZI: -- but not necessarily the acute,  
15 which is what is happening in the case of these people 12:05  
16 being --

17 MR. NORMAN: Correct. So if there is a  
18 problem with these deaths, resolving -- in using these  
19 methylene chloride-based strippers in enclosed spaces,  
20 it may be that that is a way to address that problem. 12:05

21 MR. ALGAZI: And I think that would be  
22 complementary to asking, you know, is there a way to  
23 make an effective paint stripper without methylene  
24 chloride or not? And in the interim, or if the answer  
25 is no, what you're saying would go hand in hand at 12:06

1 helping to enhance protection of people using the 12:06  
2 product.

3 MR. SERIE: And I think that makes sense  
4 during the later phases. But going back to -- we're  
5 still in the listing process, still going through 12:06  
6 whether you're ultimately going to list methylene  
7 chloride-based paint strippers -- and you, of course,  
8 have to go through all the different steps that are  
9 laid out in regulations. And one of those steps is  
10 considering the scope of other California state and 12:06  
11 federal laws and applicable regulations that address  
12 the candidate chemical and the product and the extent  
13 to which these provide adequate protections in terms of  
14 adverse impacts and exposure pathways. So you have to  
15 go through that process and analyze those and then 12:06  
16 ultimately determine that the listing would  
17 meaningfully enhance protection of public health or the  
18 environment. So that has to be number 1. I understand  
19 your point that you're saying this is fundamentally  
20 different than other regulatory schemes that are 12:07  
21 looking to address risks or just limited potential  
22 hazards, whether it's chronic or acute, but they  
23 still -- all these other regulations still address the  
24 potential exposures and adverse impact.

25 MR. ALGAZI: So in the case of Mr. Norman's 12:07

1 example, we could say CPSC mandates the labeling of 12:07  
2 products with methylene chloride based on chronic  
3 exposure, and that's inadequate because blah, blah,  
4 something along those lines?

5 MR. MONIQUE: And then explain why this would 12:07  
6 address those shortcomings. I mean, in order to list,  
7 you have to provide that justification. And, you know,  
8 there's a lot of different impacts that you listed, but  
9 I think you have to go statute by statute, regulation  
10 by regulation that address those. If you're going to 12:08  
11 use the Clean Water Act, the Clean Air Act, they all  
12 address certain aspects of the impacts and exposure  
13 that you list in the priority products. We're  
14 certainly happy to provide that information and just a  
15 list of areas where we see there could be potential 12:08  
16 overlap or inconsistencies.

17 MR. NORMAN: By way of adding to that, there  
18 are some EPA regulations -- the NESHAP, N-E-S-H-A-P, I  
19 think.

20 MR. ALGAZI: That's an acronym of an acronym. 12:08  
21 I always thought that was funny.

22 MS. RUBIN: Any further comments? Questions?  
23 No? Okay. Then we're going to wrap up.

24 As we mentioned before, please submit any  
25 information, comments, questions that you have to th 12:08

1 e-mail address. The responses are, like, pretty 12:09  
2 timely, and everything is, you know, being -- it's on  
3 an accelerated time line, it was discussed earlier in  
4 the first session, so, you know, whatever you have,  
5 we'd love to hear. Thank you. 12:09

6 (End of proceedings at 12:09 p.m.)

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CERTIFICATE  
OF  
CERTIFIED SHORTHAND REPORTER  
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The undersigned Certified Shorthand Reporter  
of the State of California does hereby certify:

That the foregoing Proceeding was taken before  
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That the testimony and all objections made at  
the time of the Proceeding were recorded  
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proceedings thereof.

In witness whereof, I have subscribed my name,  
this date: June 19, 2014.



STEPHANIE LESLIE, CSR No. 12893

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