

In the Matter Of:  
DTSC WORKSHOP

May 07, 2014

Reported By: Jaimie Hopp CSR No. 13715

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DTSC WORKSHOP  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Wednesday, May 7th, 2014

Reported By: Jaimie Hopp, CSR No. 13751

1 Sacramento, California Wednesday, May 7th, 2014

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3 MS. RUBIN: My name is Marcia Rubin. I'm a  
4 public participation specialist with the Department of  
5 Toxic Substance Control, and I'm going to be facilitating  
6 our meeting today, so I just want to go over a few  
7 housekeeping items and bring work for a discussion today.

8 As you saw, we are in a secured door. Someone  
9 will be able to take you in and out if you need to use the  
10 restroom. If you do need to use the restroom, you can go  
11 down the hall. The ladies' is to right and the men's is  
12 to the left. And it's just -- they're kind of at the end  
13 of the hall. And she'll be able to let out in and out.  
14 So if you need to go, she'll be able to help you with  
15 that. Does anyone need language translation while  
16 we're here?

17 Also, we just want to ask everyone to, you know,  
18 let each other speak -- let each person speak at one time.  
19 Respect what others have to say. Keep your phones off or  
20 on vibrate. If you need to take a call or text, please  
21 step out into the hall.

22 We're going to have Dr. Rob Brushia, the lead on  
23 this topic, give a short presentation, and then we're  
24 going to have a discussion over the three topics that  
25 we're interested in, the priority products, the chemical

1 of concern and the market.

2 So Andre Algazi will be here helping us as well  
3 with some of your questions about policy.

4 With that, I'm going to ask Rob to start our  
5 presentation.

6 DR. BRUSHIA: Thank you all for coming. Good  
7 afternoon. My name is Rob Brushia. I'm a research  
8 scientist with DTSC, and we'll be talking about paint  
9 varnish strippers and methylene chloride.

10 So the topics that I'm going to present, I'm  
11 going to present a real brief overview. It's only going  
12 to take a few minutes. I'm going to talk about the  
13 priority product definition. I'm going to relay to you  
14 some of the factors we considered in coming up with this  
15 product and the chemical consumer product which is  
16 methylene chloride. Say a few words about alternatives  
17 and the market information.

18 So, first, a word about the proposed priority  
19 product definition. As Carl mentioned in the preliminary  
20 part of the meeting today, we went through kind of a  
21 process in developing our -- in coming up with our  
22 proposed priority products and we published online -- many  
23 of you are probably familiar with it -- we published  
24 priority product profiles. In case you aren't familiar  
25 with it, you might want to take a look at our DTSC public

1 web page. You can access the profiles there and read  
2 them.

3 Basically, each of the profiles sets forth our  
4 rationale for selecting the products that we chose.  
5 However, the profiles themselves are not the end of the  
6 story. I think as Carl also mentioned, we're going  
7 through a process right out, and ultimately in order to  
8 have these products regulated, we need to list them in  
9 regulation. So we're embarking on a process right now  
10 engaging in discussions with intrastate (inaudible).

11 THE COURT REPORTER: I'm sorry. Can you please  
12 slow down?

13 DR. BRUSHIA: Sure. And so one of the things  
14 that we've been taking a long look at is the definition or  
15 description that lists these products.

16 In our profile, we had a lot of things listed.  
17 There were surface cleaners, there were paint thinners,  
18 all kinds of things that may contain methylene chloride  
19 were listed. Where that original definition in the  
20 profile came from was the Global Product Classification  
21 system. In fact, it's pretty much verbatim, the  
22 definition that was listed in that particular system, for  
23 the brick code that corresponds to paint thinners.

24 I don't know if everyone is familiar with the  
25 Global Product Classification system. Okay. There is --

1 a system has been put in place. It's our understanding  
2 right now that it's a system that is more and more being  
3 adopted by industry to categorize and classify products  
4 and facilitate communication through supply chains. So  
5 far, a longer number, but not all products, have been  
6 assigned to various categories within that system and been  
7 assigned specific numbers. We were looking at one segment  
8 of that system which is the brick code, which identifies  
9 fairly specific products.

10 And the brick code in the GPC for paint thinners  
11 is going to go right here. So we originally took that  
12 definition right out and stuck it in the profile.

13 Since that time, we have become more aware of the  
14 fact, especially since they're out in California and the  
15 resources board already regulates and prohibits the use of  
16 methylene chloride in a large variety of surface cleaners  
17 and paint thinners. It is not our intent to include  
18 those.

19 We are planning to revise our definition. The  
20 full definition is given right here. If anyone one wants  
21 to come up and take a look at it. It's just a real brief  
22 summary of it. We're not intending to include cleaners at  
23 this point. That's where we're leaning. We're intending  
24 to just include paint or varnish strippers.

25 Yes, sir?

1 MR. RAYMOND: Doug Raymond with WM Barr Company.  
2 Then why would you list it today in Carl's remarks? Why  
3 wouldn't you have changed it? I mean, you've known this  
4 for weeks, and you left it up there, and now when it hits  
5 the public again, we're going to get calls on it saying  
6 they're going after methylene chloride cleaners.

7 DR. BRUSHIA: Yeah. I understand. And the only  
8 thing I can say is it was a mistake. It was an error on  
9 our part because it shouldn't have been in Carl's  
10 presentation. I think what it is is artifact of the fact  
11 that it was in some prior publications, and someone who  
12 was working on slides cut and pasted something and stuck  
13 it in there.

14 MR. RAYMOND: It would be great if it was removed  
15 by the next workshop.

16 DR. BRUSHIA: Okay. It's duly noted.

17 MR. SERIE: Tim Serie with the American Coating  
18 Association. I think that gets at a bigger issue, which  
19 is, when these were released it would appear that these  
20 were final documents. There was nothing in this document  
21 that said draft. It says priority product profile. It  
22 does not say proposed priority product profile. It was  
23 released to the public, and is now on the website. And  
24 it's not in draft form. There's nothing to the effect  
25 that we could comment on this document and even on the

1 classification and the definition.

2 So I think if you can update this as soon as  
3 possible and continue to update it and make sure it's in  
4 draft form.

5 MR. ALGAZI: I don't know if this the right time,  
6 but something that we do want to clarify, and we've been  
7 talking a bit about it, the profiles the not intended to  
8 be -- the whole purpose of the profile is to start this  
9 conversation we're having today. And if that wasn't made  
10 clear, we may want to put some language on the front of it  
11 or something. We don't want to spend a lot of time doing  
12 continuous updates on it, because it's intention is just  
13 to reflect our understanding on March 13th, which is the  
14 date it was released.

15 And I'm hoping there is a way we can sort of  
16 qualify it, label it or something, because I know there  
17 have been -- our intention for that document hasn't been  
18 well understood, and I think that's on us for not making  
19 it clear what it is and what it isn't.

20 DR. BRUSHIA: Can you go -- you can still  
21 continue to the next slide.

22 MS. DE VALENCIA: I just wanted to say --

23 THE COURT REPORTER: I'm sorry. What is your  
24 name?

25 MS. DE VALENCIA: Sorry, Lauren De Valencia,

1 American Coating Association. Maybe at the end of the  
2 workshop process, so you're not duplicating your work, but  
3 at the end doing a press release that goes out stating the  
4 things that are being changed, per the discussion, would  
5 be really helpful for the industry.

6 MR. ALGAZI: So we definitely will be going  
7 public with what's being changed. We're going to have to  
8 chew on the info we get from you and other people. So it  
9 may not been an instantaneous decision. There may be --  
10 like taking the coatings, we can probably clarify sooner.

11 THE GROUP: Cleaners.

12 MR. ALGAZI: Excuse me. And we do want to get  
13 the definition right. And in this case, it's one  
14 chemical. It's less ambiguous for some of the other ones.  
15 There's been discussion about the chemicals and things.

16 DR. BRUSHIA: So as I said, we do intend to  
17 explicitly exclude things that are already regulated by  
18 the air board, for example, that don't belong in this  
19 category. And we'll be doing that.

20 And, again, the definition will also be excluding  
21 things like paints and paint additives.

22 So why methylene chloride, why paint strippers.  
23 Well, the first thing is, we -- as Carl said, we  
24 considered a wide variety of things. We were looking at a  
25 lot of factors that are laid out in the regulations.

1           So in terms of hazard considerations, methylene  
2 chloride has some pretty well -- it's pretty well  
3 characterized, and a lot of authoritative bodies pretty  
4 much agree on these, it's highly volatile. For those of  
5 you that don't know what that means, it readily goes from  
6 its liquid into a gaseous form. It's being used in tight  
7 corridors, it can result in pretty high concentrations of  
8 methylene chloride in the breathing space, and it's  
9 acutely toxic. There have been deaths associated with the  
10 use of this product and stripping operations.

11           It's a carcinogen -- it's recognized by different  
12 authoritative bodies as either an known or likely  
13 carcinogen, neurotoxin. It can harm skin on contact. It  
14 can damage the eyes. There are some sensitive  
15 subpopulations, including pregnant women, children,  
16 asthmatics, people with lung and respiratory diseases,  
17 that may be more susceptible than others. That was the  
18 hazard characteristics we considered next.

19           And in terms of exposure, as I mentioned, there  
20 have been documented cases of deaths associated with the  
21 use of paint strippers containing methylene chloride.

22           From CDPH, California Department of Public  
23 Health, they conducted some surveys, and those surveys  
24 suggest, and it's our understanding, that these products  
25 are widely available in California.

1           As I mentioned, methylene chloride is highly  
2 volatile. It's used the homes, can result in high  
3 concentrations of methylene chloride in the air. That  
4 have been deaths of home do-it-yourselfers.

5           Another thing is that -- things that consumers  
6 may commonly turn to in terms of personal protective  
7 equipment, like air purifying respirators, and commonly  
8 used gloves, latex gloves, may not provide adequate  
9 protection against this particular chemical and many  
10 consumers may not know that.

11           It's also our understanding that there appear to  
12 be alternatives, and this is one of the areas where we  
13 have questions of you.

14           The question is: Are there alternatives and are  
15 they feasible? We are interested in finding out what are  
16 the possible alternatives, who manufactures them. We're  
17 interested in hearing, are there any human health or  
18 environmental concerns related to the possible  
19 alternatives.

20           Next line. We, like, don't really know who all  
21 the players in the marketplace are. We don't know many  
22 businesses use these paint strippers. There was a survey  
23 done showing there were approximately 80 large businesses  
24 and up to maybe 500 smaller businesses that might use  
25 this, and that's just, you know, worker use. That's not

1 including the home do-it-yourselfer. We really don't know  
2 for sure what the numbers are.

3 We'd like to know who makes this stuff. Are  
4 there any people in California? Are there any  
5 manufacturers making methylene chloride paint stripper,  
6 because we're not sure about that. How much is actually  
7 being made, and that relates to the first question, or the  
8 question on the previous line. We don't really know what  
9 the market is for this. We think it's widely available,  
10 but we don't qualitatively what we're talking about.

11 Another question is how many retailers, home  
12 do-it-yourselfers stores, who all sell this stuff in  
13 California.

14 And that's pretty much all I have to say about  
15 it. I think most of you have probably looked at our  
16 profile already. We're going to begin the discussion now.

17 As Carl mentioned, we really encourage written  
18 comments, especially if you have data or something you  
19 want us to consider. You can submit it to this e-mail  
20 address given here. And we'd really like to get comments  
21 by June 30th, so we can start moving forward.

22 And now we're going to have some topic questions  
23 and we're going to start the discussion.

24 MS. RUBIN: Before we move on to the topic  
25 questions, are there any clarifying questions about this

1 presentation?

2 MR. RAYMOND: Doug Raymond representing WM Barr.  
3 Your wording of excluding the cleaners is a little vague.  
4 You're saying you are reduce -- you're excluding what CARB  
5 regulates. What about what CARB doesn't regulate? CARB  
6 regulates the general purpose cleaners and the general  
7 purpose degreasers, which use methylene chloride.

8 But say you have a degreaser that says, I only  
9 degrease Widget A. You can use methylene chloride in that  
10 product. Are you going after any cleaners at all, because  
11 that says you're excluding anything under CARB. That  
12 didn't say you're excluding all cleaners.

13 DR. BRUSHIA: First of all, CARB doesn't only  
14 regulate general purpose. It also regulates some pretty  
15 specific, like in electronic cleaners. They're listed in  
16 the regulation.

17 MR. RAYMOND: Right. Like what I just told you,  
18 they don't. They don't go after those.

19 MR. ALGAZI: Do we intend to capture surface  
20 cleaners in general? I think we're trying to talk about  
21 products that tend to remove paints.

22 DR. BRUSHIA: I think that's accurate. And, in  
23 fact, exactly what you're alluding to, we don't know all  
24 there is to know out there. That would be useful  
25 information if you could share more details with us,

1 because we would not try -- I don't believe we want to  
2 regulate the cleaners in any way.

3 I think we want to get -- we have a particular  
4 product in mind that we're looking at, and that's what  
5 Andre is saying. Things designed to chemically remove  
6 paint and --

7 MR. RAYMOND: I just wanted to be clear, because  
8 that's a little vague.

9 DR. BRUSHIA: It is. It's a summary at this  
10 point. We're trying to refine it as we move to forward.  
11 We also don't want to exclude anyone from giving comment  
12 because they think we already answered the question. We  
13 want to hear what folks have to say about it.

14 MR. ALGAZI: We do want the definition. I'm not  
15 if favor of a regulatory definition that has a "includes  
16 but is not limited to" and then some characteristics. I'd  
17 rather, for whatever my opinion is worth, I'm advising my  
18 deciders that I would like our definitions to be -- this  
19 is what it is, and here's how it's defined. Use the terms  
20 that people in the industry understand, so it's not  
21 ambiguous and none of us have to spend a lot of time  
22 understanding the scope of what we're talking about.

23 MR. RAYMOND: On the previous page, that's a good  
24 definition. That's a good start. What you're talking  
25 about there removes all doubt that you're going after any

1 cleaners.

2 DR. BRUSHIA: Take a look at the definition here  
3 at the first top of the page. The only thing in addition  
4 to this it really says is, it would also include things in  
5 that brick.

6 MR. ALGAZI: And I don't know if this is the  
7 right time, is the brick -- referencing the brick helpful  
8 if it includes things we're not capturing? We're thinking  
9 that it still might help direct people to the neighborhood  
10 of what we're talking about. But if it's adding  
11 confusion, maybe we ought not to.

12 Let me get back to the topic.

13 MR. SERIE: Including that list and then leaving  
14 it open-ended, includes this, but is not limited to this  
15 list.

16 MR. ALGAZI: I'm not in favor of --

17 DR. BRUSHIA: Right. Like I said, the profile,  
18 this is the one that we'd like to work from going forward.  
19 We also would like recommendations, suggestions.

20 If there are cleaners, and if it's too vague, and  
21 there are specific cleaners that you're referring to that  
22 you don't think we know about, let us know. We'll take it  
23 into consideration.

24 MR. FRIEDMAN: Randall Friedman with the Navy. I  
25 guess one concern about incorporating the list is that

1 list can change. You have no control over that list. You  
2 can find out, you know, six months too late that the list  
3 changed and you've been operating in violation, and you  
4 were in good faith operating. So I don't know. I have  
5 concerns, when you reference a list, that changes outside  
6 of a regulatory process.

7 MR. ALGAZI: We don't want to have a moving  
8 target. We can't prospectively incorporate somebody's  
9 definition and have any changes to that become  
10 incorporated by reference without doing a new regulation.

11 MR. FRIEDMAN: That's what you are doing when you  
12 incorporate a list, though. Unless you say the list --

13 MR. ALGAZI: If we were to write as amended. I  
14 don't think we would pass muster with the Office of  
15 Administrative Law with regulatory language like that.

16 DR. BRUSHIA: In the past, it hasn't.

17 MR. FRIEDMAN: It's a list as it existed --

18 MR. ALGAZI: We just want to have a  
19 self-contained definition.

20 Are you saying the GS1 itself could change and  
21 that would be a moving target?

22 MR. FRIEDMAN: Yeah, when you reference lists  
23 that weren't designed for California regulation.

24 MR. ALGAZI: That's good input, because we  
25 thought it was helpful, and maybe it's not to mention it.

1 MS. RUBIN: Are we ready to move on to the first  
2 discussion topic?

3 DR. BRUSHIA: I think we sort of moved on.

4 MS. RUBIN: So first the discussion is the  
5 priority product description.

6 MR. ALGAZI: We touched on No. 1 and No. 2.

7 DR. BRUSHIA: No. 3 is a more general open-ended  
8 question. Any other information anyone feels we should  
9 have in relation to this description that might help make  
10 it more clear, more exact would be useful to us.

11 MR. ALGAZI: And this presentation will -- I want  
12 everybody to see what the working definition that we have  
13 on Rob's slide is, so if you have comments, the one in the  
14 profile we're already putting behind us.

15 DR. BRUSHIA: Right. And this is more of what we  
16 were thinking, but, again, the information on the GPC is  
17 part of it.

18 MR. ALGAZI: I want to post it. If you all have  
19 provided your contact information when you signed in, so I  
20 want to make sure that we'll get it to you either by  
21 posting on the Web or through an e-list mailing and also  
22 feel free to peruse.

23 DR. BRUSHIA: So the brick part of that is not  
24 that helpful.

25 MR. ALGAZI: We might, in the explanatory

1 language in the initial statement of reasons, say this is  
2 what we're talking about. We might reference the brick  
3 there just for ...

4 DR. BRUSHIA: Past history?

5 MR. ALGAZI: As a guidepost that we're -- I don't  
6 know or not. We did mention it, but now we're not.

7 MR. FRIEDMAN: Likewise, if they -- looking at  
8 that definition, if something at some point is removed  
9 from that list for whatever reason, it's -- but you still  
10 have an inventory.

11 MR. ALGAZI: I think if we were to reference it,  
12 we would reference it as of some date.

13 DR. BRUSHIA: Right.

14 MR. ALGAZI: All right.

15 MR. SERIE: I mean before we get into the second  
16 topic, can we step back and talk more about the  
17 prioritization factors that were used to identify this  
18 particular product as a proposed priority product?

19 And I think we would echo some of the statements  
20 that were made during the open hearing a few minutes ago  
21 that there's really a lack of focus in this document.  
22 It's putting everything on the board, which is fine, but  
23 you started to focus in on a few issues, but otherwise, in  
24 the priority product profile, you list every single thing  
25 you can think of, and a lot of these are quite speculative

1 and a bit flimsy.

2 If there was some type of executive summary or  
3 during the administration rule-making process, you can  
4 clearly articulate really what the focus of including  
5 methylene chloride, whether that's consumer use, whether  
6 that's a limited or small contractors. It wasn't clear  
7 from this document.

8 It even gets into industrial air pollution and  
9 environmental justice concerns.

10 MR. ALGAZI: Part of that is a function of the --  
11 sort of the paradigm that this regulation is, which is,  
12 one, that it's looking at multi-media impacts.

13 Two, that it's -- we want to address sensitive  
14 subpopulations, so we might say something about work  
15 specifically.

16 And sort of fundamentally the framework isn't one  
17 of risk -- addressing the risks through, for example,  
18 personal protection and things, but trying to ask the  
19 question from the perspective of is there a way to reduce  
20 the hazard, so if somebody is not following what I'm sure  
21 are excellent best practices and whether they be through  
22 OSHA or Cal OSHA or some industry, practice or  
23 certification, we're thinking about the potential for  
24 exposure to people who don't follow those kinds of  
25 practices.

1           So we did sort of throw a lot of desperate  
2 information into the profile, partly because of the  
3 prioritization factors that are laid out in the framework  
4 regulations and trying to touch on as many as we could.

5           And maybe what I'm hearing is it loses some focus  
6 because of that.

7           DR. BRUSHIA: One of the things that the  
8 regulations sets forth is a large number of factors that  
9 we may consider.

10           What these profiles were was an attempt to not  
11 single out any one factor as being more important or less  
12 important than another factor. It is an exercise in  
13 collecting all the information we could related to each of  
14 the factors that is listed out in the regulation. And  
15 that's why each section -- or identifies the sections in  
16 the regulations that we were following along with.

17           So really we weren't saying this is more  
18 important than that, or this factor is more important than  
19 the other. It was setting forth all the information we  
20 could find regarding all the factors that were spelled  
21 out. That's really all it amounts to.

22           MR. FRIEDMAN: And I think there's a fundamental  
23 question here. I remember at the legislative hearings  
24 when the bills were being passed, it was all about lunch  
25 boxes, linen lunch boxes and consumer products.

1           And fundamentally, yes, there's a very different  
2 scenario when somebody unsuspectingly is doing something  
3 in their garage and there's methylene chloride in it,  
4 versus in a regulated industry where in it you have  
5 personal protection, you have OSHA, you have strict  
6 procedures and a need for that.

7           And at some point, you really need to  
8 differentiate between those two universes. Because  
9 they're vastly different, and you just can't compare the  
10 exposure you get in someone's garage with what you get in  
11 an aircraft overhaul facility.

12           MR. ALGAZI: I agree with you. We're not OSHA.  
13 We're not in the business of setting workplace standards,  
14 so we're really -- the framework that we're working in is  
15 taking a broader view, understanding that there are good  
16 practices, people who do this -- work with this kind of  
17 product for a living know how to mitigate the exposures,  
18 so that the risk is lower, and we do recognize that, and  
19 we're not trying to duplicate worker legislation.

20           And, furthermore, we're not presuming that the  
21 outcome of this process would be that it's -- that's there  
22 something better. We're asking the question not --

23           MR. FRIEDMAN: I guess I disagree with you  
24 because not more than 10 minutes ago I heard you say,  
25 well, we're going to be looking at what if they forget to

1 put their respirator on, or what if they don't do that.

2 So you are putting yourself in a position of  
3 being, kind of, a super-OSHA.

4 MR. ALGAZI: I'm not saying that. I'm saying  
5 that's the reason why -- if there were never any  
6 incidences of people being harmed by using or misusing the  
7 products, then it wouldn't be a strong candidate for  
8 consideration as a priority product.

9 My point is that the -- the alternatives  
10 analysis, it's a separate consideration about can you meet  
11 the functional requirements of the product as we're  
12 describing it without using methylene chloride. The  
13 answer may be no, and it may be yes, and it may -- it  
14 depends on what you're using it for.

15 My point is the outcome -- which I don't know  
16 what it would be at this point, we don't know -- could be  
17 any combination of this those. And so we're not assuming  
18 -- we're asking the question. We're not presupposing what  
19 the answer will be, is it necessary. That's all I'm  
20 saying.

21 MR. SERIE: Because so many different impacts are  
22 listed in the priority product profile, I think, as a  
23 great starting point, you should list every single  
24 regulatory program that addresses any of those potential  
25 exposures and impacts.

1           You list a few, but there's OSHA, HAZCOM and  
2 Material Safety Data Sheets. You list the Cal OSHA and  
3 OSHA exposure levels. There's also, the Consumer Product  
4 Safety Commission has a policy on methylene chloride,  
5 Prop 65, the Clean Air Act has -- looks at air emissions,  
6 and it's considered a hazardous air pollutant --

7           MR. ALGAZI: What would be the purpose of that  
8 exercise? What would that do for us if we were to do  
9 that?

10           MR. SERIE: Because you're saying that there are  
11 limitations in all these other regulatory schemes, right,  
12 so you're saying in the worker setting, there could be  
13 limitations and we're still seeing incidents.

14           MR. ALGAZI: I'm not really saying that exactly.  
15 I may not have been very articulate, just that there's  
16 inherently a hazard trait there with methylene chloride,  
17 and if it were possible not to use methylene chloride and  
18 achieve the desired performance, would that not be a  
19 better solution than using it?

20           So the point is to identify all the regulatory  
21 gaps, say here are some regulatory gaps. In fact, the  
22 fact that all these people regulate it supports the fact  
23 that there is a hazard trait there and there's potential  
24 for exposure or there would be no need for those  
25 regulatory programs.

1 MR. SERIE: It's required in the regulations that  
2 you identify all other regulatory programs.

3 MR. ALGAZI: That we don't duplicate them.

4 MR. SERIE: That you consider them when you're  
5 listing the priority products and that you don't duplicate  
6 them, and you have to provide some meaningful protection  
7 above and beyond all these other regulatory schemes.

8 So I would disagree and I believe you do have to  
9 consider all those other regulatory programs, and there's  
10 a lot out there.

11 And just as a starting point, before saying  
12 here's a deficiency and here's an issue we're trying to  
13 address, if you don't provide evidence that there's an  
14 issue that you're trying to address, then we're just going  
15 through this exercise to go through the exercise. And  
16 that's what the priority product listing is all about.

17 MR. ALGAZI: I hear what you're saying. I need  
18 to maybe digest it. I think the issue that -- the two,  
19 kind of, overarching criteria that any product we identify  
20 have to meet is that they contain the chemical of concern,  
21 which has been identified by one of those authoritative  
22 bodies, and that there's potential to exposure to the  
23 chemical from the product. So, so far it meets that, and  
24 there's potential for that exposure to cause or contribute  
25 to significant adverse impact, and that's there too.

1           That's the bar that we're meeting in identifying  
2 this product category.

3           We did want to identify other regulatory  
4 programs. We don't see anybody who is looking at  
5 mitigating -- finding a way to potentially make the  
6 product without the hazard characteristic that methylene  
7 chloride has.

8           So we don't see duplicative regulatory program  
9 there, but if there are regulatory programs we should be  
10 citing, we definitely would like to have a more inclusive  
11 list, if that's what we need to do.

12           MR. RAYMOND: Are we done with the description?

13           MR. ALGAZI: Sure.

14           DR. BRUSHIA: Yeah, I think so.

15           MR. FRIEDMAN: I just wanted to respond. You  
16 know, the example you're using is portraying things as  
17 black and white. Yes, if there was a safe substitute that  
18 perfectly matched the characteristics of what you needed  
19 to use methylene chloride for, of course everyone would  
20 want to use it.

21           In the real world it's going to be shades of  
22 gray. And in those shades of gray, I think it's  
23 important, especially we heard earlier about the public  
24 perception and information getting out -- I think if  
25 information gets out that all of the State of California

1 has identified all these terrible hazards and exposure  
2 pathways for methylene chloride and neglected to include  
3 in that all the dozens of protections already built into  
4 the system, especially for industrial workers, you get  
5 what happened -- what people are talking about what  
6 happened earlier, is people not understanding, gee, there  
7 is this terrible product out there, nobody is doing  
8 anything about it, and there's a rush to judgment at that  
9 point.

10 That isn't appropriate.

11 MR. ALGAZI: I hear what you're saying, and I  
12 heard what the spray foam people were saying as well, and  
13 we've had some other conversations with them. I think we  
14 need to think about communicating more clearly two things  
15 about the products that we're identifying, one, the  
16 listing of the product as priority product is not the same  
17 thing as saying that it cannot be used safely. We're not  
18 making that assertion, nor are we saying that some other  
19 -- that we have evaluated alternatives and that determined  
20 that they're safer, because that's what the whole process  
21 we're kicking off is.

22 If people are -- if our messaging is conveying  
23 that, I think we need to recalibrate it because that's not  
24 what we want to be saying. We're not -- where I'm coming  
25 from with regard to Tim's point about identifying all

1 these other regulatory programs, I don't disagree that  
2 those are relevant and they're protective. That's not  
3 really the point of this process to say let's find -- the  
4 fact that we've seen cases of people being harmed indicate  
5 that however great these programs are, however great the  
6 labels on the packages are, some people are doing stupid  
7 things maybe and getting harmed.

8           So, therefore, wouldn't it be nice if there were  
9 a way to make the product that met at least some of  
10 these -- the other thing is some of these -- performance  
11 requirements without having to use the chemical. The other  
12 thing is, how you frame it if you're affected by it, how  
13 you decide on the relevant factors when you're doing the  
14 alternatives analysis, it's up to the manufacturer or the  
15 responsible entity.

16           So performance requirements are front and center  
17 there. We're not -- a process doesn't require that an  
18 alternative be chosen that doesn't work or that doesn't  
19 meet the performance requirements for the product.

20           This is a different issue, which is the fact that  
21 we've identified this product chemical combination.  
22 People are jumping to conclusions about what that means  
23 and doesn't mean. That may not be what we intend, I  
24 think.

25           MR. RAYMOND: And I believe you're exactly right.

1 What we have to look at is this is a totally different  
2 regulatory scheme than people are used to.

3 I can tell you that I've had a couple of  
4 customers call me as soon as this came out and said, when  
5 will the product be banned; how much longer do I have to  
6 sell it? And they knew this process was coming.

7 So if the manufacturer thinks that, I think we  
8 just have to be a lot more careful on how it's worded, and  
9 I'm not saying it's all on you. People don't read to the  
10 end. They don't read everything. They read like what  
11 they do in the newspaper, they read the headline and say  
12 that's it.

13 But what I'd like to get to is, you know, what  
14 disturbs me a little bit is what you were talking about a  
15 little bit ago, is you don't know where this is sold. You  
16 don't know how much of this is sold. You know that  
17 there's some exposure, but to be put on this list, I would  
18 have thought you would have looked all that up and you  
19 would have found all that before we got to this.

20 Because, quite frankly, I've been working with  
21 CARB for the last 25 years. I've been working with this  
22 since you guys started with it. In no way -- if I was a  
23 betting person -- would I have bet that you would have  
24 picked this product first, because, yes, methylene  
25 chloride has hazards. But the amount of people that use

1 paint stripper is fairly insignificant compared to a lot  
2 of other products that are used that have hazards.

3 And now that you've done it, we have to go  
4 through it, but what I'm saying is, I think you guys need  
5 to step back a little bit. One point is the industrial  
6 use of it. I think the industrial use of it is probably  
7 very, very safe because everybody has so many restrictions  
8 on using it.

9 Now, going to the home use, I would just say, how  
10 many people in this room have ever used a paint stripper?  
11 I've used it, but if you went out to the general public, I  
12 would bet it's 1 in 10 that actually use it. I think the  
13 bar that you were talking about is the significant  
14 exposure. I think that is in question. I think it is a  
15 real big question, and I don't think you have the answers  
16 from what the questions he asked for.

17 MR. ALGAZI: Fair points, and I do want to say we  
18 don't have zero idea on who the players are. We don't  
19 have a clear picture.

20 MR. RAYMOND: We're just here to have a  
21 discussion, but what I'm saying is, I don't think the  
22 exposure is anywhere near as much as you guy thinks it is.  
23 I don't know what you guys think. I don't think it's  
24 anywhere near that.

25 MR. ALGAZI: One of the things that our director,

1 Debbie Raphael, says when she speaks about this program is  
2 it's not about -- so it's not about picking the worst or  
3 the highest or the most. And reason why it isn't is  
4 because there are an indefinite number of products on the  
5 market that we can choose from. And depending on the  
6 criteria and how you weight them, you are going to come up  
7 with a different answer.

8           The perspective of this program is that -- it's a  
9 losing game to try and pick the worst. Instead, we set  
10 these, sort of, criteria that more, sort of, I don't know  
11 what the right word is, narrative or something, where it's  
12 like, is there a yes, no? Is there a chemical present  
13 that's a candidate chemical? Does the chemical have a  
14 hazard trait?

15           That's why it's instructed in that way rather  
16 than, here are the ultimate rankings. Here's how we're  
17 going to score --

18           MR. RAYMOND: I'd like to make two points, Debbie  
19 is gone. That doesn't matter anymore.

20           MR. ALGAZI: I still work for her today.

21           MR. RAYMOND: She'll be gone here soon. Second,  
22 is, I just think you need to take a step back and look at  
23 the significant exposure, because I've heard you state  
24 that, significant exposure. And, unfortunately, there  
25 have been some people that have died. But go and look at

1 how many people died in this state in car accidents or how  
2 many people drowned. There's a lot of people that do  
3 silly things in your state. And you don't think that the  
4 misuse of a product should be the reason that it's brought  
5 up.

6 But, I mean, and obviously we're going to put all  
7 these comments in writing, but what I'd like to get to is  
8 some of your questions and stuff like that, because I  
9 believe there's information out there that you guys can  
10 get on that stuff.

11 MR. ALGAZI: Okay. Good.

12 DR. BRUSHIA: Those sources would be very  
13 valuable to us.

14 MS. RUBIN: I think on that note, we're ready to  
15 move on to discuss the chemical of concern itself and the  
16 alternatives.

17 MR. ALGAZI: Does anybody have anything they'd  
18 like to say about other chemicals that are used for paint  
19 stripping and what their pros and cons functionally,  
20 hazard-wise?

21 MR. RAYMOND: Are they commercially available,  
22 yes. Are they -- can they replace this chemical, no.  
23 Because if they could, they'd be being sold. And  
24 methylene chloride strippers are the predominate stripper  
25 in the category. The rest of them --

1 MR. ALGAZI: Because they work better; is that  
2 right?

3 MR. RAYMOND: Absolutely. They work on all  
4 situations, and they work a lot quicker than everything  
5 else.

6 MR. FRIEDMAN: And, again, it's not a question of  
7 other chemicals, but when I started working for the Navy,  
8 we would take aircraft in a hangar and spray the whole  
9 aircraft with predominately methylene chloride, and have  
10 people in suits and air-supplied suits. All the airframes  
11 now are, it's plastic media blasting, it's alternative  
12 processes. There still are situations where we have to  
13 use the methylene chloride.

14 So I think also, you're not being expansive  
15 enough, because industry has spent a lot of effort in  
16 looking for safe alternatives and implemented them, and I  
17 think, frankly, industry should get the credit for that,  
18 to look at things. We have to worry about things like the  
19 viability of airframes on doing carrier landings, and it  
20 is an amount of stress that other airframes don't have to  
21 go through. And that's a huge criteria in what's  
22 acceptable or what isn't.

23 Even within that, we have drastically reduced the  
24 amount of methylene chloride we used. I hope that when  
25 you look at this you look at it more expansively to not

1 just other chemicals, but other processes and give  
2 industry the credit for that.

3 MR. ALGAZI: And just for clarification, the  
4 alternatives analysis is not limited to a plug in another  
5 chemical. Things like, different way of physical process  
6 in this case would be an alternative, but not other uses.

7 What I'm thinking, which I'm guessing were we  
8 just to play this through and list it as we've defined it,  
9 and people were to do alternative analyses, the answer  
10 would be sometimes yes, and sometimes no, and sometimes  
11 there could be, yes, there is an alternative and it's  
12 already been implemented for the particular application.

13 MR. FRIEDMAN: I would hate to see a situation  
14 down the road where, again, things are treated black and  
15 white, and you have a document that says industry  
16 maintains there are no acceptable alternatives for this  
17 chemical, and it makes industries look like the bad guys,  
18 when, in fact, again, for us maybe 90, 95 percent of  
19 our -- we have found an alternative for, and we've  
20 implemented it for a number of years.

21 Again, it's a question of not treating it as  
22 black and white, but letting us have the credit for  
23 already having done the substitution and the analysis and  
24 not just the black and white version that says, no,  
25 there's no substitute.

1           MR. ALGAZI: One thing about that, the framework  
2 regulations, the alternative analysis will be public minus  
3 any redacted trade secret information. So we aren't going  
4 to be filtering things out that you don't need us to as  
5 far as the alternatives that you may already have  
6 implemented.

7           MR. SERIE: I just had one question about the  
8 alternative section in the profile.

9           So I understand that in the regulations it  
10 requires you to look at different alternatives when you're  
11 listing a product, but you start to draw conclusions about  
12 some of those alternatives as well. And with  
13 N-methylpyrrolidone, for example, you already say that  
14 DTSC does not recognize it as a safer alternative. And  
15 that's premature, in our opinion, because we haven't gone  
16 through this entire process, and that's the goal of the  
17 program is to go through the alternative analysis, allow  
18 different companies to weigh these different options, and  
19 then make that determination at the end.

20           So we would ask that some of that language be  
21 removed and leave it open. And perhaps it isn't a safer  
22 alternative and perhaps it is. But drawing those types of  
23 conclusions at this early of a stage when we haven't even  
24 finalized the priority products, I think that's something  
25 we should think about.

1           We appreciate the list of different alternatives  
2 that you've been considering and the opportunity to add to  
3 that list of alternatives, but we want the process to play  
4 out like it's supposed to.

5           MR. ALGAZI: Point taken.

6           Anybody have anything they want to say about the  
7 hazards associated with alternatives or not particularly?

8           Anybody have anything they'd like to say more  
9 about chemicals or should I move on?

10           At the end, they will be, sort of, an open  
11 agenda, if somebody wants to talk about something that's  
12 not one of our questions.

13           MS. RUBIN: So our third topic for discussion  
14 today is the market information that we have and that you  
15 all have. And we've already discussed some of the effects  
16 that it's having in the industry. Now is a good time to  
17 bring that forward. If you all would like to contribute  
18 to that, the market, it sounds like you have a significant  
19 amount of information on it.

20           MR. ALGAZI: So our, sort of, understanding is  
21 this is a very common, maybe the predominate paint  
22 stripper for general use. A particular -- so I think one  
23 of the things that I'm interested in knowing about is --  
24 I'm starting to understand that, after having some  
25 conversations with some folks, that there are paint

1 strippers that are sold to the public and there are sort  
2 of specialty paint strippers that are used in very  
3 specific applications. I don't know if the ones in -- if  
4 the ones used for aircraft are specifically formulated for  
5 aircraft or if it's just the same one I would buy at Ace,

6 MR. FRIEDMAN: I'd have to check to see. I  
7 haven't gone shopping.

8 MR. ALGAZI: Would there be any value in us  
9 describing the product category more broadly, more  
10 narrowly or breaking it out by different types?

11 MR. RAYMOND: No. I would say, the ones that you  
12 have for the retail market is you'll have a good, better  
13 or best. And that would all depend mainly on the price.  
14 You know, the more the price, the more, you know -- the  
15 better, the faster the product works and the more it will  
16 work on.

17 But most of the methylene chloride products would  
18 have some degree of methylene chloride in all of them. I  
19 mean, they might have a little bit more in the higher  
20 supplied ones.

21 As far as where they're sold, you can find them  
22 in automotive shops. You can find them in  
23 do-it-yourselfers, you can find it in hardware stores.  
24 You're not going to find them in grocery stores and stuff  
25 like that. And what you're going to find is you've got

1 distributors, industrial distributors that would sell it  
2 to people like the Navy, or they will sell it to  
3 manufacturers or stuff like that. And those products  
4 would be -- you're going to find a lot of the  
5 smaller-sized ones for consumer and obviously bigger-sized  
6 ones in the industrial, and I don't think it's that  
7 varied.

8 MR. ALGAZI: In terms of the formulation, just a  
9 bigger container or smaller container?

10 MR. RAYMOND: Right. There's going to be a  
11 difference in how much methylene chloride --

12 DR. BRUSHIA: Yeah, I think CDPH had some stuff  
13 on their website about -- they looked at a bunch of  
14 different ones. They listed ranges of concentrations for  
15 a bunch of different brands. They were pretty widely  
16 variant.

17 MR. RAYMOND: Those are probably, my guess would  
18 be they're on price or they're on substrate, depending on  
19 what you're stripping.

20 MR. ALGAZI: Did you have some summary data --  
21 what are we -- as far as numbers and manufacturers and  
22 things --

23 DR. BRUSHIA: Numbers of manufacturers of  
24 material, we had a list of a few we found online. It was  
25 only about 16 or 17. And that's in the United States. We

1 don't know if that's --

2 MR. RAYMOND: There's probably not a lot.

3 Now, when I say probably not a lot, there's  
4 probably not a lot of significant manufacturers. There  
5 might be some out there that make one or two products. I  
6 would say, you tell me if I'm wrong, that I would say  
7 there's probably only a handful of significant ones.

8 MR. ALGAZI: Uh-huh.

9 MR. RAYMOND: It's not a product that a lot of  
10 people are in.

11 MR. ALGAZI: We heard about the spray  
12 polyurethane foams there were about four or five  
13 manufacturers of the methylene diisocyanate and about 20  
14 to 25 system houses that make the product with it. Is  
15 that kind of "ballparky" what we're talking about for this  
16 product? There's probably fewer suppliers of methylene  
17 chloride.

18 MR. RAYMOND: There's probably fewer and there's  
19 probably three to four. And then there's probably -- like  
20 the 16 manufacturers you found, I wouldn't say they're all  
21 significant suppliers. I would say there's probably three  
22 or four significant suppliers, and then the rest of them  
23 will have a short line or have one or two products. A lot  
24 of people have one or two products. It just rounds out  
25 their line that they're selling.

1           And you wanted to know about the sales, I think  
2 the best place is -- did you go look up the California Air  
3 Resources Board survey?

4           MR. ALGAZI: Yeah, in fact we did.

5           MR. RAYMOND: That should list you all the  
6 manufacturers.

7           MR. ALGAZI: They didn't provide us with that,  
8 and that would list -- is that in California or --

9           MR. RAYMOND: No.

10          DR. BRUSHIA: I think the last time we did a  
11 survey was a few years ago.

12          MR. RAYMOND: 2006. It's probably not changed  
13 from that. If anything, it's probably been reduced in  
14 manufacturers because there's been more pressure on  
15 methylene chloride. So you'd be able to find a lot of  
16 that information there, and then you'd also be able to  
17 find how much was sold.

18          MR. ALGAZI: We did have those figures, but like  
19 I said, they were so old that we were reluctant to rely on  
20 them.

21          MR. ALGAZI: I think they're kicking off a new  
22 survey; right.

23          DR. BRUSHIA: Yes, they are. It's going to be at  
24 least another year before they get that information.

25          MR. ALGAZI: So the paint strippers are

1 distributed through -- they may go to retail, they may go  
2 to specialized industrial use through a distributor, and  
3 so they are a number of industries that would use, that I  
4 imagine, and contractors would use them on sites and then  
5 people in furniture and automotive, and things like that.

6 So the number of people formulating the product  
7 we think is fewer than two dozen.

8 MR. RAYMOND: Absolutely.

9 MR. ALGAZI: Well, that's actually what we had.  
10 If nobody has anything to add to those three, we will just  
11 open the floor, I think.

12 MS. RUBIN: Is there anything further you all  
13 would like to know, how to contribute?

14 MR. RAYMOND: My only general comment is, the way  
15 you've set this up is very, very difficult for people that  
16 are in two different -- I'm supposed to be in the foam  
17 today. I needed to be here but I also needed to be there.  
18 So setting this up this way made it very, very difficult  
19 to cover this workshop. I'm from Ohio.

20 MR. ALGAZI: We appreciate that. We didn't think  
21 there would be that many, but maybe that's not a good  
22 assumption.

23 MR. RAYMOND: I think there are some association  
24 people that might have wanted to go to both too.

25 MR. SERIE: Yeah.

1 MR. RAYMOND: Is there any way I can get that  
2 information from that one?

3 MR. ALGAZI: We have a court reporter in that  
4 room and --

5 MR. RAYMOND: How long will it be --

6 MR. ALGAZI: It doesn't take very long. It's  
7 generally a quick turnaround after the event.

8 THE COURT REPORTER: It should be 10 business  
9 days.

10 MR. RAYMOND: That's quite a time.

11 MR. ALGAZI: I'll ask and find out.

12 MR. KLINENBERG: Hi. Ed Klinenberg with  
13 California Industrial Hygiene Council. Just a quick  
14 clarification: With the alternative analysis, are you  
15 strictly looking at chemical alternatives, alternative  
16 chemical pathways or just risks? One thing with methylene  
17 chloride I've seen when I'm working at the logistic  
18 centers, when they made the transition from chemical  
19 stripping to mechanical stripping, we saw a big rise in  
20 muscular skeletal disorders, because replacing chemical  
21 stripping --

22 MR. ALGAZI: Because of the particulates in  
23 inhalation exposure.

24 MR. KLINENBERG: No, basically you're using  
25 high-pressured water in some cases, and people are holding

1 their head up, you've got increased muscular skeletal  
2 disorders.

3 Then you have the power of what the chemicals can  
4 do, which have to be made up of chemical means.

5 MR. ALGAZI: That's one I don't know the answer  
6 to. I think you could -- there are the factors that you  
7 can -- depends on -- the person doing the alternatives  
8 analysis would identify the relevant factors for the  
9 particular product chemical combination that they're  
10 looking at. I don't recall that there was one  
11 specifically muscular skeletal. I don't know if that one  
12 was included, but I don't know that you couldn't include  
13 it in evaluating -- that would be a trade-off, wouldn't  
14 it, between the two approaches to removing paint.

15 MR. KLINENBERG: Right.

16 MR. ALGAZI: I will have to -- maybe if I could  
17 get your business card and get back to you with an answer  
18 on that.

19 MR. SERIE: I think there's other environmental  
20 trade-offs, because some of the other alternatives, you're  
21 having to use more of it.

22 So if you think about the life cycle and  
23 environmental impacts of using, let's say, a quart of  
24 methylene chloride base paint stripper versus one of the  
25 alternatives that may require two times or four times as

1 much of the material. I think it's something that should  
2 go into the alternative analysis.

3 MR. ALGAZI: So, again, I think that's  
4 appropriate to go into the alternatives analysis. And,  
5 again, we don't assume that the outcome of the analysis  
6 would be -- we found something to replace methylene  
7 chloride. We -- the point is, if we knew that, we  
8 wouldn't be asking the question. So is it necessary,  
9 maybe, yes.

10 MR. RAYMOND: Or maybe no.

11 MR. ALGAZI: Or maybe no.

12 If anybody has any other questions or comments or  
13 feedback, welcome them now. If you want to run to the SPF  
14 workshop, you can do that.

15 MR. SERIE: On the duplications, you mentioned  
16 there are certain CARB regulations that you believe that  
17 this could potentially duplicate. Those are outright bans  
18 on the use of methylene chloride based on strippers or  
19 cleaners or products.

20 MR. ALGAZI: We don't want to include those  
21 products.

22 MR. SERIE: Given the range of regulatory  
23 responses that are in the regulatory framework, it seems  
24 there is the potential to overlap depending on the  
25 regulatory response.

1           So if it is a worker health and safety issue,  
2 there's potential overlap with Federal OSHA and Cal OSHA.  
3 If it is a consumer product labeling issue, there's  
4 potential overlap with Prop 65, with safety commission  
5 requirements for methylene chloride.

6           So I'm grappling with what you consider  
7 duplicative versus what you consider -- what you describe  
8 is a larger look at these products and not just getting  
9 into the single media approach or into health impacts for  
10 a certain population.

11           MR. ALGAZI: We wouldn't be -- if and when we got  
12 to the point of choosing a regulatory response, I agree  
13 with you that I can envision that we can be duplicating if  
14 we were to choose certain regulatory responses. At that  
15 point when we were making that decision, we wouldn't  
16 choose one -- I don't think we can choose one that was  
17 duplicative -- that somebody else has already imposed.

18           At this point, the ramifications of this list, if  
19 we continue it through the process and adopt the  
20 regulation, are to notify and do the alternatives  
21 analysis. The -- any regulatory response, whatever it  
22 might be, if anything, we don't know what it is yet. So I  
23 don't think there's anything duplicative yet.

24           And I agree. I take your point that  
25 hypothetically, it could happen if we weren't careful.

1 DR. BRUSHIA: And whatever regulatory response,  
2 if we did impose one, would be totally be dependent on a  
3 lot more interaction with specific manufacturers, because  
4 by that time, we would have engaged in an alternative  
5 analysis discussing the outcome and so forth. All those  
6 factors would have to be weighed in on ultimately what was  
7 done.

8 MR. SERIE: And it's my understanding that those  
9 regulatory responses could be manufacturer and  
10 product-specific. Is that correct?

11 DR. BRUSHIA: It could be.

12 MR. ALGAZI: It would depend on the individual  
13 alternative analysis that we're looking at. So if the --  
14 hypothetically, if there are 18 people who formulate a  
15 paint stripper and they decided to throw their lot in  
16 together and do one alternative analysis, and they came to  
17 the same conclusion, evaluated the same alternatives,  
18 using the same relevant factors, the regulatory response  
19 might be the same.

20 If there are one or smaller groups that chose  
21 different factors, came to different conclusions, then it  
22 could be -- I'm just completely making up --  
23 hypothetically. And one of them could be some augmented  
24 labeling and the other one could be, I don't know,  
25 end-of-life takeback of excess product, hypothetically,

1 depending on factors that were chosen and the alternative  
2 that was looked at and what the outcome was.

3 MR. FRIEDMAN: That raises a question. Is your  
4 expectation in this process in every individual user who  
5 has something slightly different, has to do their own  
6 alternative analysis and essentially justify their use of  
7 it?

8 DR. BRUSHIA: It's not the user at all.

9 MR. ALGAZI: It's really on the manufacturer  
10 first and on the person bringing it into the state of  
11 California.

12 MR. FRIEDMAN: How is some manufacturer -- how  
13 are we supposed to rely on a manufacturer to articulate  
14 and advocate for our unique use?

15 MR. ALGAZI: I would talk with your manufacturer.

16 MR. FRIEDMAN: Frankly, that's not how we do  
17 business. We are not going to be dependent --

18 MR. ALGAZI: Let's put it this way, if you're in  
19 the Air Force --

20 MR. FRIEDMAN: Navy.

21 MR. ALGAZI: Navy, excuse me. I'm sorry.

22 MR. FRIEDMAN: We don't have runways. We have  
23 ships.

24 MR. ALGAZI: And you have a product specification  
25 that says that the product has to be able to remove this

1 kind of coating from this kind of surface in this amount  
2 of time, using this kind of equipment and you're a big  
3 buyer, I think your business is likely going to be  
4 important to somebody, and that they would list those  
5 requirements as part of the functional requirements of the  
6 product. So I don't know how you can guarantee that other  
7 than talking with them.

8 MR. FRIEDMAN: We, contractually, we just can't  
9 go to a vendor and say we need you to do something.

10 MR. ALGAZI: You do have specs for what you need;  
11 right?

12 MR. FRIEDMAN: Certainly. But we have multiple  
13 vendors who can fill those specs, and we can't give the  
14 appearance of playing favorites. We can't create a  
15 situation where one particular vendor might say, we're  
16 going to gain advantage of the next bid because we're  
17 doing this.

18 MR. ALGAZI: Then being on record as saying we  
19 need our products to meet certain specifications and  
20 telling us now, and if you want to write us something so  
21 that it's -- that we know about it.

22 MR. FRIEDMAN: I understand that. But that  
23 doesn't guarantee that someone will come in and do the  
24 work.

25 MR. ALGAZI: I understand.

1 MR. FRIEDMAN: And then what are we supposed to  
2 do then? How you will handle -- if no vendor steps  
3 forward, how do you handle that?

4 MR. ALGAZI: I can't answer that question right  
5 now. I don't know. It's hypothetical.

6 MR. FRIEDMAN: Are we precluded from submitting  
7 something?

8 MR. ALGAZI: Submitting what?

9 Mr. FRIEDMAN: An alternatives analysis.

10 MR. SERIE: When you're a victim of the  
11 regulations, you're still considered a responsible entity.

12 MR. ALGAZI: So if the Navy is purchasing and  
13 bringing it in -- the regulation -- applicability is  
14 worded in terms of putting something into the stream of  
15 commerce or something like that in California. And so  
16 it's probably not the Navy --

17 MR. ALGAZI: It's a hierarchy of manufacturer,  
18 importer and retailer. If you're an importer, you can  
19 potentially be --

20 MR. ALGAZI: I will ask about that. I can't  
21 personally answer that off the top of my head. I will  
22 look into it for you.

23 MR. FRIEDMAN: Yes. The a very fundamental  
24 question is who submits information. Who speaks for us in  
25 this process and --

1 MR. ALGAZI: So the big buyer with very specific  
2 specifications, but you're not a responsible --

3 MR. FRIEDMAN: I understand, but I hope --

4 MR. ALGAZI: I'm paraphrasing what you're saying.

5 MR. FRIEDMAN: The Federal Acquisition law is so  
6 complex that we are very limited to the types of contact  
7 we can have; otherwise, you get bid protests and all sorts  
8 of other issues.

9 MR. ALGAZI: Let me ask around.

10 DR. BRUSHIA: But, at the same time, you have  
11 manufacturers that are meeting your technical  
12 specifications; correct?

13 MR. FRIEDMAN: With certainty. But we can't --  
14 what you're saying is, unless they go through the expense  
15 and effort of this alternatives analysis, our concerns  
16 don't get into the process.

17 MR. ALGAZI: Your concern ultimately is that  
18 manufacturers won't opt to do this. They'll say never  
19 mind. I'm not going to sell the product and then you  
20 can't find what you need.

21 MR. FRIEDMAN: Yeah, and then you are bound by  
22 some regulation to say, well, nothing was submitted;  
23 therefore, you know ...

24 MR. ALGAZI: No sale in California.

25 MR. FRIEDMAN: Yeah.

1 MR. ALGAZI: I hear you.

2 MR. EMLY: Brian Emly [phonetic], DTSC. Isn't  
3 the Navy part of the public? In terms of making comments.

4 MR. ALGAZI: Yes, of course you're part of the  
5 public and you can make comments and it will go into the  
6 record.

7 MR. FRIEDMAN: Right. But if there's no  
8 alternatives analysis.

9 MR. ALGAZI: That's a public document, and  
10 there's a process for commenting on the alternative  
11 analysis. So I think that's the answer. Thank you,  
12 Brian.

13 MR. FRIEDMAN: Can we via public comments say  
14 that I just happen to have an alternatives analysis  
15 that --

16 MR. ALGAZI: Or you would comment on the one  
17 submitted by manufacturer.

18 Your concern is nobody would do one?

19 MR. FRIEDMAN: No, I'm concerned -- we cannot --  
20 we can't run a military agency on the potential assumption  
21 that some manufacturer may or may not, at an appropriate  
22 time, go participate in a very long and complicated and  
23 expensive process.

24 MR. SERIE: A lot of our members have  
25 indicated -- I shouldn't say a lot; we have a handful --

1 concern about the same access to effective products, but  
2 those that do, a few have indicated that they're going to  
3 exit the California marketplace. They're not going to go  
4 through the alternative analysis. They're smaller  
5 companies, limited product lines, and they, frankly, don't  
6 have the time and resources to go through the alternatives  
7 analysis.

8           You're probably going to see some of those  
9 vendors close up shop in California.

10           MR. FRIEDMAN: You mean, by close up shop,  
11 stop --

12           MR. SERIE: They'll stop selling this particular  
13 product.

14           MR. FRIEDMAN: Right.

15           MR. ALGAZI: So it is a public comment, public  
16 process. The alternatives analysis are posted minus --

17           MR. FRIEDMAN: I guess I still would like an  
18 answer to the specific question that is, are we precluded  
19 from doing our alternatives analysis?

20           MR. ALGAZI: And I don't see why you couldn't do  
21 one. How it would be weighed, I need to check into that.

22           MR. FRIEDMAN: What would the process be for --

23           MR. ALGAZI: The regulations are framed in terms  
24 of responsible entities. I'm not sure how to answer the  
25 question. I will ask.

1 MR. FRIEDMAN: Given that you just said that,  
2 some of these people may just decide, you know, okay, Navy  
3 you do all that work. We have a sister facility in  
4 Virginia. You can do the work there, I guess, as far as  
5 they're concerned and tell the 4,000 people in North  
6 Island -- sorry.

7 MR. ALGAZI: And your purchasing is in-state?  
8 You wouldn't buy it in California?

9 MR. FRIEDMAN: I don't know who -- it could be  
10 anywhere in the U.S. where it's purchased, and then put it  
11 in transportation to California. I would be surprised if  
12 it's physically purchased in California as opposed to  
13 shipped to California.

14 MR. ALGAZI: I'm not sure how that would play  
15 out, but perhaps if it was put into the stream of commerce  
16 somewhere else, not in California, once you purchased it,  
17 maybe it wouldn't apply.

18 MR. FRIEDMAN: We can arrange that.

19 MR. ALGAZI: Our authority stops at the state  
20 line.

21 DR. BRUSHIA: I think our regulations explicitly  
22 exclude things that aren't put into commerce here.  
23 Transportation through is not --

24 MR. ALGAZI: Imported implies that they're being  
25 imported for sale.

1 DR. BRUSHIA: Right. I believe so, but let's not  
2 get ahead of ourselves; we should probably ask our legal  
3 team.

4 MR. ALGAZI: And do you mind putting it in  
5 writing so I can make sure I don't miss your point?

6 MR. FRIEDMAN: Sure. And I'll put that second  
7 point in writing too. I'm sure you can give us some  
8 Arizona or Nevada vendors.

9 MR. ALGAZI: I didn't suggest that.

10 Does anyone have anything else they'd like to  
11 comment?

12 MS. QUINONEZ: Nicole Quinonez. I just wanted to  
13 go back a little ways when you were talking about the  
14 alternatives analysis and the potential regulatory  
15 response, and you mentioned you had two options that if a  
16 group comes together and does one, that could be a  
17 regulatory response. Also, if you do separate -- you can  
18 have a specific regulatory response. Does it also show  
19 that you could look at those different ones and decide I  
20 like this alternative better and --

21 THE COURT REPORTER: I'm sorry. I couldn't hear  
22 that.

23 MS. QUINONEZ: Sorry. Isn't there a third option  
24 that the regulatory response could be -- we have these  
25 different alternative analyses, and we like this option

1 the best, so we're going to have the whole community do  
2 this one way that this one company came up with.

3 MR. ALGAZI: So my understanding of that and  
4 I'm -- Rob and I are in the products research part of the  
5 program. But my understanding of that is that it wouldn't  
6 be a matter of us imposing a regulatory response on other  
7 people who have done separate alternatives analyses  
8 because somebody had identified one that we liked. I  
9 think it would be more a case of -- in one case somebody  
10 had said -- identified an alternative that was safer by  
11 the criteria they identified, and others say there's no  
12 alternative. And in that case, we might have a  
13 conversation with the other people to say other people  
14 have found alternatives that could be a proprietary  
15 alternative.

16 So I don't believe we would just impose the  
17 regulatory response.

18 MR. ALGAZI: I don't believe that is a regulatory  
19 response in the menu to actually mandate someone used  
20 something over another. It's part of the outcome,  
21 ultimately, of the alternatives assessment. We have to  
22 take a look at what they're concluding on their product  
23 sold to their customers for their particular needs.

24 It could be different. It could be that their  
25 product really can't have an alternative because they need

1 it for some specific process or something. But we  
2 wouldn't mandate it. We would look at what they concluded  
3 in the alternative, then we would choose from the  
4 regulatory response option menu and then depending on  
5 their actions with them.

6 MS. QUINONEZ: Also when there are alternatives  
7 presented for anything regulated, there is a public  
8 participation process where people are allowed to comment,  
9 and their comments are taken into consideration in the  
10 decision. It's not just our decision.

11 So we're not -- like he said, you don't just look  
12 at it, and we like this the best, and that's the way it  
13 is.

14 DR. BRUSHIA: It's not an option.

15 MS. QUINONEZ: You wouldn't necessarily mandate  
16 you have to use this chemical. But you could say we were  
17 no longer -- we're banning this chemical from use in  
18 California, and there's one company that identified an  
19 alternative, so everybody is going to have to go there by  
20 default. It's not that the regulatory response is that  
21 everybody go use this chemical.

22 MR. ALGAZI: So I think what you're saying, and  
23 correct me if I'm wrong, a hypothetical scenario is, one  
24 manufacturer finds a safer alternative that works just as  
25 well. It's proprietary, so nobody else knows what it is.

1 But based on the fact that one person has -- you're  
2 asking, would we say, okay, chemical banned because --

3 MS. QUINONEZ: I guess I'm saying, apart from  
4 having a very specific regulatory response for each AA,  
5 you could choose to have one regulatory response for a  
6 product regardless of what each AA kind of presents.

7 MR. ALGAZI: Maybe --

8 DR. BRUSHIA: I'm not sure of that because the  
9 whole process is so connected with the steps in front of  
10 it.

11 MR. ALGAZI: One thing I can say about that is  
12 the way the regulatory responses are applied is intended  
13 to be case by case to the particular alternatives  
14 analysis.

15 And for that reason, despite the word  
16 "regulatory," it is not adopted as a regulation, because  
17 it's not a general standard that's applied. And so if we  
18 were to do what you're describing, I think it would be a  
19 general standard, and it would require adoption through  
20 rule making, not to --

21 MR. SERIE: Doesn't the regulatory response have  
22 to go through a rule making?

23 MR. ALGAZI: No.

24 DR. BRUSHIA: It has to go through a process,  
25 though.

1 MR. ALGAZI: It's a case by case -- it's sort of  
2 more like --

3 MR. SERIE: A permit?

4 MR. ALGAZI: A permit is -- I'm not an attorney,  
5 but, in general, if it's a -- if it's a discretionary  
6 decision, it has to go through sequence A, but unless it's  
7 a general standard, it doesn't have to go the  
8 Administrative Procedure Act as a regulation.

9 That rule-making law specifically applies to when  
10 we're adopting a standard that's generally applicable to  
11 people. And so I haven't heard -- and I can find out more  
12 specifically -- but I haven't heard us talking about  
13 imposing a regulatory response across the board on  
14 everybody through a regulatory adoption. Not to say  
15 that's off the table.

16 DR. BRUSHIA: I heard it might be like the form  
17 of a consent agreement with specific companies, like,  
18 okay, we accept your AA results, then would this be an  
19 appropriate regulatory response and come to an agreement  
20 on it.

21 MR. SERIE: I think there's fear that it can  
22 create this inconsistent landscape whereby different  
23 companies are regulated differently by the agency. If we  
24 don't have that general across-the-board standard, taking  
25 into account all the alternative analyses.

1 MR. ALGAZI: It could be, if there were different  
2 analyses evaluating different relevant factors and coming  
3 to different conclusions, then it could change the outcome  
4 for each individual.

5 In fact, if I'm not mistaken, even if there are  
6 a group of companies collaborating on the alternative  
7 analysis, each one submits it individually at the end of  
8 the day.

9 MS. ANTOL: Jean Antol, Bridgeston. An  
10 association couldn't do that on behalf those --

11 MR. ALGAZI: It probably could, but I think it  
12 would need to be submitted specifically for each.

13 DR. BRUSHIA: At one time there was a provision  
14 in there that would allow a trade association to do it.  
15 But I think then the responsible entity from the  
16 manufacturer would have to sign off on it. But, again, I  
17 think that was in there at one time, but it's been a while  
18 since I looked at it.

19 MR. ALGAZI: If there is a question that we're  
20 not answering, if you give me your card or e-mail at safer  
21 consumer products at DTSC, I will personally check and  
22 make sure we get you an answer.

23 MS. RUBIN: And we are soliciting written  
24 comments until June 30th. So, please, if there's  
25 something you take away from here that you think of in a

1 week or two weeks, please continue to contribute.

2 MR. ALGAZI: And you think of it on July 2nd, go  
3 ahead and send it in. It's not like a hard deadline.  
4 It's just because we want to have some time to chew on it  
5 and consider it. Especially, if we are going to be  
6 changing regulatory concepts or rewording things, we need  
7 to vet it through a bunch of folks here.

8 MS. RUBIN: There's been a lot of valuable  
9 feedback and contribution. We'd like to make sure we  
10 capture it.

11 MR. SERIE: Those public comments will inform  
12 both the listing and the rule-making board, but also go  
13 back to the priority product profile and go into the  
14 provision of the priority product profile.

15 MR. ALGAZI: So, definitely, if there is data  
16 that we need that we didn't consider or factual things  
17 that you can -- especially documents that this is not, you  
18 know, we got something for some reason wrong, then we want  
19 to know so we can -- we want to -- ideally put some kind  
20 of language or disclaimer on the profile. That's where  
21 I'm thinking personally right now, that this is a snapshot  
22 in time. This is not a definitive document. It's not a  
23 regulatory document. It's not an endorsement of any  
24 alternative, things like that.

25 I'm hearing that people are taking the profiles

1 and saying, well, here's the black mark on product X. I  
2 have product Y. We're not saying product Y is better or  
3 safer. I know that's not the intention of the profile.

4 MR. SERIE: I think with the clearing of the  
5 definition too. There's still folks wondering whether  
6 they're covered by it or not.

7 MR. ALGAZI: We need to talk about -- with regard  
8 to -- again, real-time changes to our thinking. It is  
9 dynamic right now. We're getting more information from  
10 you folks.

11 DR. BRUSHIA: We have two more workshops.

12 MR. ALGAZI: And so whether we real-time change  
13 it or maybe just put some kind of disclaimer on there, and  
14 after the final workshop, say here's where we're coming  
15 from now.

16 At some point we're going to be formally  
17 publishing our regulatory proposal. Now is the time to  
18 have this kind of conversation when we can have give and  
19 take instead of thank you for your comment.

20 Ms. RUBIN: Do you want to address, kind of, the  
21 next steps from the workshops?

22 MR. ALGAZI: Sure. Today is May 7th, so, again,  
23 we've asked for the next seven, eight weeks, if people  
24 have comments, written are helpful. You're welcome to our  
25 subsequent workshops.

1           The next one is in Oakland at the Harris Building  
2 in downtown Oakland on Wednesday, May 28th. And the final  
3 one is at the L.A. County Chamber of Commerce on June 4th,  
4 which is also a Wednesday.

5           Written comments, again, shoot for around  
6 June 30th. Ideally, we're going to be taking all the  
7 people's comments and feedback into consideration. Rob  
8 and I and colleagues will be digesting, summarizing,  
9 weighing, and then making some recommendations to our  
10 management on changes, potentially, refinements to make  
11 sure we get it right, make sure that the product  
12 categories are defined in a way that makes sense that  
13 includes what we want it to and not what we don't want it  
14 to, things like that.

15           We will be working on coming up with our  
16 regulatory language and supporting documents during the  
17 summer and early fall and anticipate having something  
18 ready for public notice in the, sort of, fourth quarter of  
19 the calendar year sometime. I can't be more specific than  
20 that.

21           There are a lot of other documents we need to put  
22 together in addition to the text and the initial state of  
23 reasons. We have to run our proposed regulation through  
24 the Environmental Policy Council, which is a body composed  
25 of the heads of all the boards and departments. That's

1 a -- likely a public meeting of some kind. I think they  
2 do have to do it in a public meeting. We have to do, at  
3 least, go through the initial studies or CEQA, likely, or  
4 maybe it's exempt. I haven't determined that yet. As  
5 well, a fiscal and economic impact statement needs to be  
6 drafted.

7 There are a number of things that are going to  
8 take some time. And then sometime in that fourth quarter,  
9 the calendar year, we'll will likely go up with public  
10 notice, and we'll have a hearing. So we will be taking  
11 formal testimony at the hearing, written comments, all of  
12 which are considered and responded to in finalizing the  
13 regulations.

14 DR. BRUSHIA: And concurrent with all that, the  
15 work plan is going to be -- the draft work plan is going  
16 to be to released over the summer at some point and have  
17 one or two hearings on that, I believe, or workshops.

18 MR. ALGAZI: We have at least one workshop.

19 MR. SERIE: At those workshops, will you give  
20 stakeholders and an idea of what type of product will be  
21 included in the three-year work plan?

22 MR. ALGAZI: I think we'll likely have some  
23 proposed categories of products that we're considering for  
24 conclusion in the three-year work plan. So if you're not  
25 already -- if you're interested in following this, I would

1 suggest -- if you're not already with our e-list, I  
2 recommend doing that. We are going to be noticing all  
3 these workshops though the e-list. You can also find out  
4 by monitoring our website.

5 So we will be likely -- I think there'll be some  
6 kind of draft document released prior to the public  
7 workshop, and then we'll be taking comments, going back  
8 and revising finalizing that document.

9 DR. BRUSHIA: It was my understanding that it may  
10 released at the Science Hall meeting. That is what I  
11 heard at this point. Don't quote me on it.

12 MR. ALGAZI: So definitely I'm thinking that your  
13 industries would be interested in following that as well.  
14 I encourage you to sign up for the e-list, come to the  
15 workshops. And we'll maybe see some of you in Oakland and  
16 Los Angeles.

17 Any other questions we can answer?

18 MS. QUINONEZ: Do you have a lot of people  
19 attending right now, the other two that you know of,  
20 because I know for some of us, we can't travel together.

21 DR. BRUSHIA: About the same, I thought.

22 MR. ALGAZI: About the same for Oakland. We've  
23 got a report this morning from James, the guy that's been  
24 tracking it, I think we had 50 signed up, something like  
25 that, for the spray foam, and 20 each for the methylene

1 chloride paint strippers and the padded products.

2           And I counted people sitting in the room, and it  
3 seemed like there were 75-ish, including DTSC. So we  
4 think it's going to be comparable. And it's totally  
5 understandable, people have to travel. We will be  
6 publishing the transcripts, and we will be considering  
7 written comments as well. And we've met with people who  
8 want to talk with us individually. There are  
9 opportunities to provide input other than coming to the  
10 workshop. But I'd love to see you there if you can make  
11 it.

12           MS. DE VALENCIA: One other question: In  
13 digesting all the information that you're getting from  
14 these workshops, if you find that you need to have another  
15 discussion, is that an option during the summertime?

16           MR. ALGAZI: In fact, Carl -- I don't know if  
17 anybody caught that, but we actually would -- if we got  
18 something interesting and compelling, we'd like to reach  
19 out to you and ask to talk to you.

20           MS. DE VALENCIA: Okay.

21           MR. ALGAZI: Thanks again.

22           (End of proceedings at 3:11 p.m.)

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Dated: 5/14/2014

  
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Certified Shorthand Reporter  
CSR No. 13751

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