

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

GREEN RIBBON SCIENCE PANEL
MEETING

VOLUME II

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

FRIDAY, JULY 15, 2011

8:30 A.M.

EHLERT BUSINESS GROUP

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Also Present

John R. Ulrich
Chemical Industry Council of California
and Green Chemistry Alliance

Davis A. Baltz
Commonweal
and CHANGE Coalition

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1 restroom on the break it is out the door to the left.

2 There is a little lunch spot downstairs so if
3 after the meeting or if you need to get coffee during the
4 break you can get it there.

5 And I will do a very quick agenda review. I think
6 Bill basically just told you what our agenda is this
7 morning, which is to talk about quality assurance for
8 alternatives analysis. And what we'll do is have -- Debbie
9 is going to give a brief welcome this morning and then
10 Odette will present the regulatory concept options paper.
11 We will have some clarifying questions and then we will have
12 public comment. And once again I have these green speaker
13 cards. So if anybody would like one, wants to give a --
14 make a comment to the Science Panel, we can pass those out.

15 For those of you on the web this morning, you may
16 submit comments to green.chemistry@dtsc.ca.gov. And we will
17 take those comments and read them into the meeting for you.
18 and the sooner you put your comments into the mailbox the
19 better, okay.

20 So after we do the public comment we will start
21 our Science Panel discussion and advice.

22 And there will be a break this morning at some
23 point. Bill will be in charge of determining the time of
24 that so you might want to appeal to him if you need one.

25 And we'll have some more discussion and advice and

1 a brief summary of the day's discussion.

2 And then Debbie is going to give her prize to
3 those who have stuck with us through the entire two days and
4 talk about the next steps for our program and for you folks.

5 And we will be done right at noon. I think that's
6 all I need to talk about and I'll hand it over to Debbie.

7 PANEL MEMBER WALLIN: Kathy, I have a question.
8 Yesterday Ken --

9 (Microphone producing feedback.)

10 PANEL MEMBER WALLIN: My question is, not to be
11 confused with Debbie's raffle prize of timeline, but there
12 was timeline as one of the items we discussed yesterday,
13 which I realized yesterday evening that we never got to.

14 CO-CHAIR GEISER: Yes.

15 PANEL MEMBER WALLIN: Are we going to come back to
16 that today or is that something that will be tabled and be
17 independent input to the Department?

18 CO-CHAIR CARROLL: Anne, we can certainly, we can
19 certainly address that today. I think one of the reasons
20 that we didn't hit it very hard is that there didn't seem to
21 be that much pent-up demand for discussion of it. But let's
22 go ahead and make sure that we have a chance to talk about
23 that this morning, I'll handle that.

24 PANEL MEMBER WALLIN: Thanks.

25 DIRECTOR RAPHAEL: It's funny to hear your voice

1 in this sort of echo chamber. Anyway, good morning,
2 everyone. It's nice to see all of you again.

3 I just want to again, reiterate how useful and
4 interesting yesterday's discussion was. We have been
5 together as a group for two years and every time one of you
6 puts your card up to say something I am continually
7 impressed by the thoughtfulness and the usefulness of those
8 comments to our thought process.

9 And I am sure that our staff -- I just want to
10 introduce the bridge team back there. Su and Daphne, can
11 you just raise your hand. Because what they are, they are
12 sitting in the back listening but I want you to understand
13 why they are there and it has to do with that practical
14 element of the charge that we have. They are part of the
15 pollution prevention team and so they are representing their
16 colleagues thinking about, well how do we do this?

17 And our feeling is, the more people that hear this
18 discussion and hear the subtleties and the emphasis that you
19 give in person, the better their understanding will be of
20 the thought process that went into this. And they are going
21 to need to explain that and act on it back when we start to
22 move forward on making this real. So I am thrilled that
23 they are here today and listening. And they were here
24 yesterday too, we just didn't identify what their role was,
25 so I wanted to make sure you understood that.

1 So with that I am going to hand it over to our
2 Chair who will then get us started on the path forward.

3 CO-CHAIR CARROLL: Thank you, Debbie.

4 I want to -- Anne, to your point, we are getting a
5 reading on whether in fact we can have the timeline
6 discussion.

7 PANEL MEMBER WALLIN: Okay.

8 CO-CHAIR CARROLL: Reason 372 for why I should not
9 be in government is, when you post a public agenda and
10 schedule for these sorts of things, you can talk about those
11 things only if it is on the public agenda and we don't have
12 this on the agenda for today. So we are going to get a
13 reading on whether in fact this is an in-bounds discussion.

14 Now, if it is not you are always well within your
15 rights to write your thoughts on this, or for that matter --
16 and I want to digress just for a minute to say, anything
17 that we have talked about or any other topic associated with
18 this, you are always welcome to write down your thoughts and
19 send them to Kathy who will then distribute them to the rest
20 of the group. Kathy should be the choke point for this.
21 But please feel free to weigh in on this topic independently
22 of our discussions, in writing.

23 Okay. So with that said we'll get an idea as to
24 whether we can in fact do that. Odette, I think I am going
25 to stall until you are done talking. Yes, right. We didn't

1 coordinate this very well. But in any event, take a deep
2 breath. It's all yours to set up the discussion.

3 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay, thanks.
4 And I just let Kathy know what our question is so she'll get
5 back to me on it. So good morning.

6 So today we are going to talk about what I have
7 termed as, how to provide for quality assurance for the
8 alternatives assessments. And this has been a very keen
9 issue during the course of last year and I'm sure it will
10 continue to be this year.

11 There's, you know, we anticipate that most of the
12 -- I should say many AAs will be performed by the product
13 manufacturer and that significant portions of the data and
14 the analysis will be subject to trade secret protections.
15 Trade secret is the word we use in California for what
16 everybody else calls CBI.

17 It is also anticipated, as you well know by now,
18 that DTSC, at least in the foreseeable future, is not
19 expected to have significant resources that we can apply to
20 doing in-depth evaluation of the AAs ourselves.

21 So given these two factors there is a lot of
22 discussion among stakeholders and among members of the panel
23 regarding having something in the regulations to provide for
24 review of alternatives assessments by some kind of an
25 independent third part to ensure the quality -- and to give

1 the public and DTSC the assurance of the quality of the
2 alternatives assessment.

3 Now, as we had this discussion in the subcommittee
4 we really focused on three aspects when you're talking about
5 some sort of a third part review. One is the validity of
6 the process used, the second one is the data itself and the
7 third are the conclusions that are reached at the end of the
8 alternatives assessment.

9 So we -- in preparing this paper we broke it down
10 into four topic areas. The first one is the qualification
11 requirements for assessors and validators.

12 The second one is validation requirements for
13 completed alternatives assessments.

14 The third is conflict resolution. And this was
15 actually a topic that we, DTSC, had not anticipated when we
16 put together the topic but it seemed to be very related to
17 this topic and it was of great interest to Subcommittee 3
18 when they had their discussions.

19 And then lastly we ask for some comments on the AA
20 work plan requirements as that might relate to quality
21 assurance.

22 So again I have a few opening notes, not as long
23 as yesterday. First of all I just want to point out that
24 there was a lot of discussion during these subcommittee
25 phone calls regarding the use of some existing certification

1 and validation programs out there. For example, ISO Guide
2 65, ANSI, the GHG validation process.

3 And this paper did not go into in-depth discussion
4 of those processes because we would be getting away from the
5 -- and you don't have time, I don't think, though some of
6 you may want to talk about certain aspects of those that you
7 think are valuable. But I just want to point out that we
8 are aware that as we go into this, whatever approach we
9 decide to take, we may be wanting to piggyback off some of
10 these existing structures.

11 My second note really is a repeat from yesterday,
12 reminding folks about guidance documents. Because again,
13 there was a lot of suggestions that this topic also could be
14 addressed in guidance documents, which it probably could be.

15 But I just want everybody to remember that the guidance
16 documents are recommendations and that only those things
17 specified in the regulations can be mandated and enforced.

18 My third comment here is that some of the
19 subcommittee recommendations that we will be covering in
20 this paper, it's my feeling, probably may not be viable
21 because of the limitation on our resources. But I have
22 included them in here because there was a lot of strong
23 interest in them and so for completeness I wanted to reflect
24 the group's thought. And as I get to these when I go
25 through there I will highlight those that I think may be

1 problematic from that standpoint.

2 You know, finally the caveat that the
3 recommendations in this paper are not DTSC's but are meant
4 to reflect our understanding of what one or more members of
5 the subcommittee recommended.

6 So with that let's turn to the first topic, which
7 are the qualification requirements for people performing
8 assessments or validating assessments performed by others.

9 We actually have three topics under here. The
10 first topics, (1) and (2), (1) talks about requirements for
11 companies that are offering services as third-party
12 validators. And topic (2) are requirements for the
13 individuals that are performing alternatives assessments or
14 validating AAs. And for the most part the options under
15 these two categories are pretty much the same so I'm not --
16 I'm just going to say them once rather than trying to repeat
17 them.

18 So Option A is the concept of specifying
19 requirements and minimum qualifications, either for the
20 company and/or the individual in the regulations. And with
21 the requirement for review or approval by DTSC or an
22 accrediting body is optional.

23 Option B would be some kind of requirement for
24 registration by DTSC itself. And this could be done by the
25 individual or the company by providing information

1 demonstrating their applicable experience and capabilities.

2 And Option C would be the concept of a
3 certification being provided by some sort of certification
4 body, whether it be a new body or bodies, it doesn't have to
5 be just one, that DTSC sets up through the regulations, or
6 somehow trying to use an existing entity such as ANSI to do
7 the certification process.

8 Now under (2) there is another option, this is
9 Option (2)D. It was suggested that actually maybe DTSC not
10 impose any requirements on assessors or third-party
11 assessors and defer the quality assurance to the company or
12 the third party employing the individual. Recognizing that
13 the work of the assessor is going to reflect on the company
14 so the company is itself going to want to ensure the quality
15 of the work.

16 Okay, so turning to page four. This topic, topic
17 (3) deals with should there be requirements for maintaining
18 qualifications after initial certification or whatever is
19 determined to be the initial step for being qualified.

20 One option is the requirement to have continuing
21 education and training in best practices. This could be
22 specified in the regulations. Or if we do have an external
23 certification body perhaps we let that body determine what
24 those requirements would be for the people they are
25 certifying.

1 Option B would be that the frequency -- and again,
2 a lot of these options are not mutually exclusive. So under
3 B, the recertification or re-registration could be at an
4 interval specified in the regulations or again alternatively
5 as specified by the certification body that is certifying
6 the assessor.

7 Option C, there was a suggestion that as part of
8 the recertification process there could be some sort of a
9 desk audit, or less frequently, an onsite audit of the work
10 done. Covering auditing policies and procedures and spot
11 checks were some of the topics discussed.

12 And then D, I think there was the possibility
13 mentioned of maybe not having a recertification requirement
14 once initial qualifications had been demonstrated.

15 So the next topic is validation of completed AAs.
16 And this gets to under what circumstances should there be a
17 requirement for some kind of third-party independent review
18 and validation. And we had a very robust discussion on
19 this. Actually most of these topics in the subcommittee
20 there was -- I think I saw more divergence in perspectives
21 then than I did with some of the topics we discussed
22 yesterday. But very good discussions.

23 So Option A. This would require a third-party
24 validation of all completed alternatives assessments unless
25 the alternatives assessment was itself performed by a third

1 party entity.

2 Option B, which there seemed to be quite a bit of
3 interest in, would propose that if the alternatives
4 assessment is completely transparent. In other words, there
5 are no trade secret claims that apply to it. Then there
6 would not b a requirement for the third-party validation.
7 The idea being that since it is completely transparent that
8 there would be -- the validation would actually occur
9 organically through the public review process. And that's
10 not just public but competitors would be involved in
11 reviewing each other's work as well.

12 But if this is not the case, if certain portions
13 of the alternatives assessment are subject to trade secret
14 protections, the third-party validation would be required
15 for those aspects of the AA that are protected and not
16 available to the public.

17 Option C. The suggestion was made by several
18 members that DTSC establish a technical and scientific
19 review panel. And of course I mentioned our resource
20 limitations. It was suggested this could be a voluntary,
21 non-paid panel and this panel would review all alternatives
22 assessments and then advise DTSC on what actions should be
23 taken. And that somehow there would be public participation
24 involved in this process.

25 And this is one that I have to tell you, even

1 though this would be voluntary and non-paid, I still have
2 some concerns about whether or not we could practically
3 implement this. Because even though the members might be
4 non-paid this would be quite a -- to keep this process going
5 would be very workload intensive for DTSC. So something we
6 have to give an awful lot of thought to.

7 The other thing that I don't think the
8 subcommittee discussed but that you might want to discuss as
9 you are talking about this what does this do to the time
10 frame in terms of moving the AA decisions forward.

11 Then Option D definitely has, I think, some
12 problems from a resource perspective. Under this option it
13 was suggested that DTSC review all of the alternatives
14 assessments and that the voluntary panel would only review
15 DTSC determinations that are appealed. And we'll talk about
16 appeals later when we talk about conflict resolution.

17 Then Option E was a suggestion that some level of
18 assurance could be provided by requiring that each
19 alternatives assessment be signed by a high-level corporate
20 officer. The idea being that that person would, you know,
21 be concerned about what they were putting their signature to
22 and their own personal credibility if not liability.

23 So Section III, this topic is Conflict Resolution.
24 And there are three scenarios that were discussed where
25 this might arise.

1 One is where the manufacturer disagrees with the
2 validation findings.

3 Second is when other persons, whether it's the
4 public, NGOs, academics, competitors wish to appeal an
5 alternatives assessment that's submitted. And this could be
6 an appeal based upon the process used, the data itself or in
7 the conclusion.

8 And the third scenario, which I think we talked
9 about a little bit yesterday, is where there are two or more
10 AAs for the same type of product that differ. And it could
11 be that they differ in the process that's used, it could
12 differ in terms of the hazard traits identified for the
13 chemical or the conclusion.

14 So the options that were discussed. Option A,
15 this would apply to the first two situations where either
16 the manufacturer or somebody else wants to -- where the
17 manufacturer wants to disagree with the validation findings
18 or somebody else wants to disagree with the AA itself.

19 So under Option A, one of these situations, an
20 appeal would be made to a certification body that certified
21 the validator of the alternatives assessment. Now I'm not
22 sure how the funding mechanism would go here but that's just
23 one concept that goes out there.

24 Option B, the technical and scientific review
25 panel that was suggested that DTSC set up could be the

1 appeal body. Appeals would be submitted to them. They
2 would review them and make their decision or make a
3 recommendation to DTSC on how to act on the appeal.

4 A slight variation on this was that the appeal
5 would be made first to DTSC to make a decision on and that
6 this panel would then serve as a second level of appeal.

7 Again, some of these suggestions dealing with
8 conflict resolution we would really have to think long and
9 hard about whether or not it's practical to do these in
10 terms of our resources and other inspirations.

11 Option C, this would be in the case of where there
12 are two or more "conflicting" alternatives assessments. And
13 the suggestion here was that the sponsors of the various AAs
14 would nominate several registered third-party validators for
15 DTSC to choose from. DTSC would choose a validator to
16 review the competing AAs and then make a decision that one
17 of the AAs will be more valid than the other. Or they might
18 conclude that even though they are different they are
19 equally valid.

20 And here there was a discussion of how these
21 review costs would be covered and it was suggested that the
22 review costs be shared equally by the proponents of the
23 alternatives assessment. And again this is something I --
24 we haven't talked about. I don't know if we have the
25 ability to set that up in the regulations. It's something

1 we would have to look into more.

2 And Option D is the, this really gets to the scope
3 of what could be appealed. And the suggestion was maybe we
4 limit appeal to process and data concerns but not an appeal
5 on the AA conclusion itself.

6 And finally I wanted to note, and I think it was
7 Lauren that talked quite a bit -- where is Lauren? There's
8 Lauren. -- about this. That some of this concern about the
9 conflict, particularly with respect to information about
10 chemicals and the hazard traits exhibited by chemicals,
11 could be reduced if we can get a system in place where AA
12 practitioners can share information about the hazard traits
13 of chemicals. So I just wanted to put that out there.

14 So the last topic was the Alternatives Assessment
15 Work Plans. We had some discussion on this. Option A was,
16 don't require a work plan but it could be submitted as an
17 option if somebody, if the manufacturer wanted DTSC to
18 review their approach before they start down the road.

19 Option B was that there should be an AA work plan
20 but we need to keep it simple and flexible to allow for
21 adjustments as it's implemented, And it was suggested that
22 the work plan include the basic AA process that would be
23 followed, the time lines and the qualifications of the
24 individuals that would be performing and/or validating the
25 alternatives assessment,

1 And finally Option C. It was suggested that the
2 level of detail required in the work plan as well as the
3 rigor of DTSC's review could be reduced if the alternatives
4 assessment was going to be performed by a certified
5 assessor. This obviously implies that we would be giving
6 companies choice as to whether or not they used a certified
7 assessor to perform the alternatives assessment.

8 So, that's it.

9 CO-CHAIR CARROLL: Very good, thank you, Odette.

10 And now it's time for everybody's favorite part of
11 the presentation, which is clarifying questions. And I
12 would ask once again that you limit this part of the
13 discussion to questions about what you've heard rather than
14 statements about what you think about what you've heard.
15 Okay, so I see Kelly and Tim.

16 PANEL MEMBER MORAN: I have a question for DTSC.
17 A lot of these things have costs associated with them and
18 some of them are services that would be specific to the
19 person, say, doing something or submitting something. And
20 I'm wondering, does DTSC have under, have you figured out if
21 under the authority you have here, whether you have the
22 authority to charge a fee for a service?

23 CHIEF DEPUTY DIRECTOR MADRIAGO: No, we don't.

24 PANEL MEMBER MORAN: So even if it's a service
25 directly to someone the statute doesn't allow you to charge.

1 CHIEF DEPUTY DIRECTOR MADRIAGO: That's correct.

2 PANEL MEMBER MORAN: Oh dear. Thank you.

3 CO-CHAIR CARROLL: I'm sorry, I wasn't paying
4 attention. Tim, it's yours.

5 PANEL MEMBER MALLOY: It's okay, thank you. I had
6 just two short questions. page 3, Section I, the first
7 option, requirements for third party companies. I wasn't
8 sure, Odette, were you saying that down below there there's
9 an Option D that relates to requirements for individuals
10 performing or validating AAs? Does that Option D also apply
11 to requirements for third party companies offering services
12 or is that not part of that?

13 CHIEF DEPUTY DIRECTOR MADRIAGO: It wasn't
14 intended to be part of that. I suppose you could do a
15 variation on that in that you do not with the prior
16 requirements for third parties but that the manufacturer
17 hiring the third party, they would probably be concerned
18 about the third party's experience and capabilities.

19 PANEL MEMBER MALLOY: Thanks. I wasn't looking
20 for like, you know, to change anything. I just didn't know
21 if it was included or not included.

22 And then the other question was on page 5, Option
23 II-C where it says that the Technical and scientific Review
24 Panel would review all AAs and advise DTSC on what action
25 should be taken. Does that -- the referenced action there,

1 doe that mean actions taken in terms of supplementing or
2 changing the AA or was it also intended to reach beyond that
3 to suggestions about what the response action ought to be?

4 CHIEF DEPUTY DIRECTOR MADRIAGO: I have to tell
5 you, this was one area where we didn't get a lot of
6 specifics from the subcommittee in terms of what they were
7 envisioning. And I actually think probably different people
8 had different ideas in terms of what the term "action"
9 meant. So this is probably something that to the extent you
10 want to explore this option would be good to have some
11 discussion around.

12 PANEL MEMBER MALLOY: Thank you.

13 CO-CHAIR CARROLL: Thank you, Odette. I have now
14 Lauren, Dale and Joe. And for those of you on the web,
15 we'll have public comment after the clarifying questions.
16 If you have comments please get them in now so we know, we
17 know about them. Thank you. Lauren, it's yours.

18 PANEL MEMBER HEINE: Thank you, Chair. I have a
19 question about the work plan and the timing of the work plan
20 and how defined it is in the regulations. I could imagine
21 that the work plan could be part of the AA. I guess I'm
22 confused. Is the work plan to define how you will move
23 forward with an AA or is the work plan to say what you plan
24 to do based on the AA and how defined is that in the
25 regulations?

1 CHIEF DEPUTY DIRECTOR MADRIAGO: The concept for
2 the work plan is indeed more of an upfront thing. This is
3 how we are planning to conduct the AA, this is what we are
4 going to look at. This is maybe the range of alternatives
5 we are going to look at.

6 And in terms of how defined, that's part of the
7 discussion here in terms of the level of detail and the
8 scope of the work plan and how much we want to specify in
9 the regulations. That's what we're trying to make, get some
10 recommendations on.

11 PANEL MEMBER HEINE: Is there flexibility around
12 the work plan in terms of if it were, if someone were to
13 come with you and say, I am not going to do an AA, I am
14 going to redesign my product and here is my plan. And it's
15 not a plan to do an AA but it's a plan to make a product
16 change. Is that something that could be acceptable as well?

17 CHIEF DEPUTY DIRECTOR MADRIAGO: Well going back
18 to the, you know, the basis of the statute, you know. That
19 the statute requires us to set up a process for conducting
20 alternatives assessments. And as we discussed yesterday,
21 there are certain things that have to be considered in the
22 alternatives assessment. Now the statute itself does not
23 require a work plan so that's why we have a lot of
24 flexibility in what we do or don't say in the regulations
25 about the work plan.

1 But in terms of your question of coming to us with
2 a work plan for not doing an alternatives assessment. I
3 think, you know, once your product has been captured as
4 something requiring an alternatives assessment I am not sure
5 that that would be an option. I'd have to think about that
6 one.

7 CO-CHAIR CARROLL: Thank you, Lauren, please lower
8 your flag. The only flag I see remaining now is Dale. It's
9 yours.

10 PANEL MEMBER JOHNSON: So you mentioned the -- By
11 the way, first of all, having been a member of this
12 particular subcommittee, this is just a really terrific,
13 easy to understand outline of what we talked about. Put
14 everything on the table as we were trying to do, rather than
15 -- and just so easy to do this, this was really a great job.

16 So the question I have then is the -- you
17 mentioned the review panel would potentially be too resource
18 intensive. Does that mean every time the resource panel was
19 mentioned in the document? And the other part of that, are
20 there other areas that are too resource-intensive that you
21 could identify?

22 CHIEF DEPUTY DIRECTOR MADRIAGO: In response to
23 your first question, I think -- are we off, Kathy? (Thought
24 microphone was off.)

25 MS. BARWICK: I had to turn it down.

1 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay. I think it
2 probably would. I mean, a lot of the details were not
3 fleshed out in terms of how this panel would work. But just
4 my general experience is that when you have a panel of any
5 kind, even the panel we have here today, there's, you know,
6 a lot of behinds the scenes and in front of the scenes work
7 that goes on to make that panel functional and make it
8 meaningful. So I would say, yes. You know, there's, you
9 know, resource implications for any kind of panel.

10 The other areas are where it was suggested that
11 DTSC itself do -- either review alternatives assessments or
12 review appeals. Those are clearly areas that I think, you
13 know, not knowing what the volume would be, could require a
14 lot of resources.

15 CO-CHAIR CARROLL: Very good, thank you, Dale. I
16 see no other requests for questions at this point so let's
17 go ahead and move on.

18 This brings us to the point in the agenda where we
19 have public comment. I have two speaker comment cards. Are
20 there other people in the room who would like to speak other
21 than these two?

22 (No response).

23 CO-CHAIR CARROLL: No? All right, then I'll take
24 them in the order that they were received. First John
25 Ulrich. John, you have three minutes.

1 MR. ULRICH: Thank you, Chair. (Microphone not
2 on.) Thank you, Chair. My name is John Ulrich; I am the
3 Executive Director of the Chemical Industry Council. I am
4 also the co-chair of the Green Chemistry Alliance along with
5 my Co-Chair Dawn Saunders Koepke. Dawn addressed you
6 yesterday.

7 The Green Chemistry Alliance acknowledges that
8 there are circumstances under which third-party
9 certifications of alternatives assessment is warranted.
10 However, we also note that the third-party certification is
11 not identified per se in the enabling legislation.

12 GCA strongly opposes mandatory for all
13 alternatives assessments. However, we believe that there
14 are certain circumstances, limited circumstances under which
15 it is appropriate. For instance --

16 (Mr. Ulrich adjusting microphone.)

17 MR. ULRICH: Excuse me, this is very much annoying
18 me with my bifocals. I can't see my paper at the same time.
19 Can you hear me now?

20 (Affirmative responses.)

21 MR. ULRICH: All right, thank you. Excuse me.

22 For those instances when the chemical of concern
23 in the product where a company lacks the internal resources
24 to perform satisfactorily, DTSC will have an opportunity to
25 review and perhaps identify that a third-party certification

1 is necessary.

2 It also determines that in the performance of the
3 alternatives assessment, if a manufacturer is grossly
4 defective in terms of its ability to perform the
5 alternatives assessment that it might have to be redone and
6 redone by a third-party certifier.

7 The over-arching issue relative to third-party
8 certification is that it can quickly become a major program
9 in and of itself. Other programs in California requiring
10 third-party certifications for manufacturers have suffered
11 from delays, expensive training, certifications and
12 complexity.

13 AB 1879 specifically requires life cycle analysis,
14 which adds immeasurably to the complexity of performing a
15 third-party certification. It's unlikely that any
16 individual possesses the full range of technical skills and
17 knowledge necessary to conduct unaided an alternatives
18 assessment. Since the AA also considers product
19 performance, market acceptability and customer preferences
20 it is unlikely that any third party consultant will have the
21 full range of expertise to provide judgment on critical
22 aspects of the process.

23 The Green Chemistry Alliance originally proposed a
24 work plan and we believe the work plan is an integral part.
25 We believe it should set out basic research objectives,

1 methodologies, mileposts along the way. It is also intended
2 as a living document, which would enable a company to come
3 back in and review with DTSC any changes in the protocol or
4 any changes that the research on the alternatives assessment
5 might dictate.

6 The document if sanctioned, in other words if it
7 was an approved work plan, would require the manufacturer to
8 come in and talk about any changes as a consequence.

9 CO-CHAIR CARROLL: John, I need you to be wrapping
10 up.

11 MR. ULRICH: Thank you. I'm just right now.

12 In other words, put some teeth into the work plan
13 and allow the flexibility in the alternatives assessment.
14 Allow the choice of the right tools at the right time and
15 that will be very good. Thank you very much.

16 CO-CHAIR CARROLL: Thank you very much.

17 The next commentor, Davis Baltz, please. Thank
18 you, sir, you have three minutes.

19 MR. BALTZ: Thank you, Chair. I'm Davis Baltz
20 with Commonweal and the CHANGE coalition.

21 Let's remember that the Green Chemistry Initiative
22 in California was launched in part because not enough
23 information is available to the marketplace about chemicals
24 so that informed decisions can be made by consumers and
25 downstream users of chemicals.

1 Ideally these regs, to the greatest degree
2 possible, must build these data gaps so the market starts to
3 act to retire chemicals of concern before a regulatory
4 response forces the net of commerce.

5 Expensive CBI or trade secret provisions will make
6 even a good alternatives assessment process inaccessible to
7 the public. Without significant public participation the
8 conduct of the alternatives assessments will become a closed
9 conversation between industry with a vested interest in the
10 outcome, and the Department. If the evaluation of
11 alternatives assessments happens behind closed doors the
12 public and other stakeholder will not have confidence that
13 the program is reaching its full potential.

14 So to address this there should be two prongs
15 embedded in the regs from our view. First, the alternatives
16 assessments should be made public with an opportunity to
17 comment about their conclusions as well an appropriate
18 regulatory response. And second, incentives should be built
19 into the regs that encourage the upfront provision of
20 information about chemicals, health and safety impacts.

21 The Green Ribbon Science Panel has not to date
22 been asked to provide input on trade secrets, perhaps
23 because this may be considered a quote/unquote "science
24 question." But transparency and public participation will
25 bring the best science from all sources forward so the

1 alternatives assessment process can be open and transparent
2 and an integral part so that the best scientific decisions
3 are made.

4 So in conclusions, if Debbie's intent to make
5 these regulations meaningful in addition to practical and
6 legally defensible, let's include transparency and public
7 participation. Otherwise it will not be something that the
8 public can have confidence will be meaningful. So thanks
9 for the chance to comment.

10 CO-CHAIR CARROLL: Thank you, sir.

11 Kathy, do we have any comments from the web?

12 MS. BARWICK: No.

13 CO-CHAIR CARROLL: Then that closes the public
14 comment period and we can move on to our discussion.

15 I guess we decided to -- this is the earlier
16 topic. That discussion of timeline, because it was on the
17 agenda for this meeting, is probably in bounds for our
18 discussion today. I would like to get a sense of the crowd
19 as to when you would like to take this on. Do you want to
20 go right into the topic as we have it in front of us or
21 would you like to pick up comments on timeline first?

22 I guess my preference is to hold the discussion
23 that we have for today together and if we want to make
24 comments on the timeline issue let's get them out of the way
25 first. Is that agreeable to you all?

1 (Affirmative responses.)

2 CO-CHAIR CARROLL: Fine. Let's go ahead and
3 handle that.

4 Then let me ask the question. Going back to
5 Section II of the discussion from yesterday.

6 CHIEF DEPUTY DIRECTOR MADRIAGO: Page 12.

7 CO-CHAIR CARROLL: Yes, page 12. You have four
8 options with respect to the timeline. And when we are
9 talking about the timeline issue here, we mean the timeline
10 for completion of the AA, not the timeline for regulations.

11 I can see where you might have some confusion there. But
12 the timeline for completion of the AA and the process for
13 doing so. Do any of you have thoughts that you would like
14 to offer on this topic at this time? Kelly, go ahead,
15 please.

16 PANEL MEMBER MORAN: Like Anne I am interested in
17 this topic. I have some experience with the implementation
18 of other laws that gives me some pause on this. And when I
19 first looked at this I said, well it makes sense that we
20 should be looking at work plans. We should be trying to
21 figure out, you know, how long it might take to implement a
22 work plan. That's how people would normally look at if
23 you're a consultant and you do this all the time. So you
24 write your work plan and then figure out the schedule of the
25 plan and get that all done. So that's how you would

1 normally approach this.

2 But I have seen that that has not worked for
3 pesticide law implementation. And I have had a whole series
4 of experiences of working with DPR on the reevaluation of
5 pyrethroids and also on other pesticide-related work where
6 the work plan process is just broken.

7 And I am very concerned that that could happen
8 here with enough of the companies. What happens is the work
9 plan comes in, it's not very good. The Department doesn't
10 have any funding for the staff to review the work plan so
11 people don't have time to get the work plans done.

12 The people submitting the work plans keep a
13 schedule off of the Department's decision on work plans so
14 therefore nothing happens until the Department makes a
15 decision. Which if you're the company makes sense because
16 you want to know if the Department is okay with it before
17 you start doing it. And the end result is that it takes a
18 really long time and then the work plan is no good so then
19 there is a whole other area. And you wind up with paralysis
20 by analysis before you even start doing the work.

21 And that, that concerns me because of its resource
22 intensiveness and the schedule implications. Further, I
23 think that trying to do a custom schedule with each AA
24 submitter will just overwhelm the Department and it creates
25 a non-level playing field among the various -- if you're a

1 business and your competitors have three years to do their
2 work plans and might continue to sell a product that is
3 slightly cheaper but causes more pollution and you're
4 saying, I'm going to go do the good product, you actually
5 want to make your competitors make that change at the same
6 time.

7 All of those things make me advise the Department
8 that it should be thinking about a timeline that it
9 establishes to the point of calling for maybe -- when it
10 identifies the product chemical combination it should be
11 establishing the time frames based on that.

12 And it will certainly, as it puts out its
13 proposals for that, be soliciting input from the public and
14 from the companies at that time. So do it all at once at
15 that point so there's an actual decision point and it's an
16 informed decision.

17 CO-CHAIR CARROLL: Thank you, Kelly. Michael.

18 PANEL MEMBER KIRSCHNER: Kelly stole my thunder.
19 Plus I agree that that's the right time, in my mind, to
20 assign the duration allowed for the AA is when you identify
21 the chemical of concern in the product. Because there's
22 going to be a lot of analysis and that's also going to be a
23 stakeholder process to identify.

24 As the chemicals of concern in product are floated
25 for review the timeline for the AA is floated as well. And

1 you get feedback in response and that solves, you know. As
2 Kelly said, that solves the problem of either having
3 something that is cast in concrete in the regulation, which
4 you don't want because they can take, depending on the
5 situation, varying lengths of time of course. And one for
6 each manufacturer is also not a practical situation.

7 On the other hand, the issue of a manufacturer
8 finishing one early. How do you deal with that? How do you
9 deal with -- do you wait until everybody's is in or do you
10 let the ones who complete it quickest, their's reviewed and
11 off they go? A little competitive advantage, perhaps, for
12 those who get, get it out first.

13 On the other hand, the timeline -- no, I'll just
14 leave it at that, thanks.

15 CO-CHAIR CARROLL: Thanks, Mike. Anne.

16 PANEL MEMBER WALLIN: I think I'm good with what
17 Kelly and Michael said. I'm a little bit confused because
18 it was almost like they were talking about some of the
19 upfront versus when the AA itself is going to be done, which
20 is a little bit of what I thought this was about.

21 I do think one of the other factors not mentioned
22 and I think there's -- I'm having a bit of a difficulty
23 distinguishing some of the nuances between all of these.
24 But in Option II-B one of the things to consider about how
25 long it's going to take to get this AA done is how robust is

1 it going to be. And we had a lot of discussion yesterday
2 about how rigorous the data needs to be around various
3 factors. And obviously the more rigorous it needs to be for
4 the more factors the more time it's going to take to come
5 together.

6 The other thing not mentioned here and I am
7 supportive, that there needs to be some sort of timeline
8 that manufacturers are held to. But I think there also
9 needs to be a timeline that the agency is held to, the
10 Department is held to in terms of the response. I think the
11 point is, let's get something done. And if there is going
12 to be an action let's take action, let's not just sort of
13 spin in some sort of whirlpool for an undefined period of
14 time.

15 CO-CHAIR CARROLL: Thank you, Anne. Dale.

16 PANEL MEMBER JOHNSON: I actually see more than
17 one timeline here. So, for instance, the list of the
18 chemicals of concern is issued and then there is the time
19 for the manufacturers or whoever to identify products that
20 have those chemicals of concern in them. So there's a
21 period of time. And it's probably a timeline that may be
22 established in the regulations. Once the list is out you
23 have a certain amount of time to identify your products. So
24 that's, you know, that's one kind of timeline.

25 And then, and then there's the timeline when

1 somebody makes a submission that occurs. So the submission,
2 you know, we've looked at different ways to make submissions
3 and then this -- one of the options in Subcommittee 3 is
4 that submission could come as a work plan. Then the work
5 plan then puts the whole AA on the clock right at that
6 point. As soon as the work plan is submitted it puts it on
7 the clock. Then the timeline then is developed by the group
8 that is doing the AA, in my opinion. So whether it's third
9 party, whether it's the manufacturer, whatever it is, the
10 timeline is set up that way within the scope of an
11 acceptable timeline to finish.

12 So what I think -- you know, to summarize what I'm
13 saying. There is the initial timeline to respond to "does
14 your product contain a chemical of concern?" And that can
15 be a very specific thing. Let's just say it's a year or
16 something like that just to put a number on it. And then
17 when the work plan comes in you have a designated time
18 period of when that can be done. And then the manufacturer
19 deals with that and states with the work plan that is being
20 submitted, here is the timeline it's going to be done in.
21 So you deal with it that way.

22 And I can't say that I could actually identify
23 what that timeline should be, the second one. But you
24 should be able, I think you should be able to come up with
25 just a period and you deal with that as a flexible time

1 period.

2 CO-CHAIR CARROLL: Thank you, Dale. Joe, I see
3 yours.

4 PANEL MEMBER GUTH: Thank you, Chair. I want to
5 just advocate for a version of a standardized timeline with
6 a set of regs. If there's exceptional circumstances that it
7 can't be met for some reason then there could be a provision
8 for, you know, a petition or negotiation or a request for
9 exemption that extends the time.

10 I just think that the Department is so limited in
11 resources that if you ask you to determine for every AA what
12 the timeline ought to be and get into negotiations is not
13 the best use of limited Department resources. I really
14 think we need to be on the clock to get these things done in
15 a timely way.

16 CO-CHAIR CARROLL: Thank you, Joe. Dale, your
17 flag is still up; were you asking for the floor again?

18 (Panel Member Johnson turned his name tent.)

19 CO-CHAIR CARROLL: I take that as a no.

20 I don't see any other flags -- Tim, go ahead,
21 please.

22 PANEL MEMBER MALLOY: It just struck me listening
23 to the first set of comments and then Joe's that there's
24 kind of like this over-arching kind of environment in which
25 this decision has to be made and that's like the structure

1 of how the AAs are going to be done. So, for example,
2 yesterday I think Bob had made the suggestion that, gee, you
3 ought to start out small, you should have -- the regs should
4 maybe just do one or two. I think that's what you were
5 suggesting.

6 Don't try and come up with a regulation that, you
7 know, essentially creates a tidal wave of AAs coming in.
8 With the goal of, you know, within a few years or whatever
9 getting all these alternatives assessments done and so on
10 and so forth. But rather you could have kind of a --
11 ratchet it up and start with just a few. Get some
12 experience, react to that experience. I don't know if
13 that's exactly what you were saying but I got a sense that
14 that's what you were talking about.

15 And if that's the way you went then I think the
16 notion of negotiating a timeline on an individual basis
17 makes a lot of sense, right, because you're reflecting the
18 notion that DTSC has limited resources. So if you are only
19 doing a few to gain experience you have got the resources to
20 negotiate time frames and so on and so forth.

21 But if the approach you take instead is that we
22 are going to bring this program up to speed quickly and
23 we're going to basically have kind of a retail approach to
24 it where you're just kind of churning out AAs as quickly as
25 possible then I think it's right, you're not in a position

1 where you can, for each one sit down and decide, negotiate a
2 time frame and so on and so forth. In which case I think
3 you have to be much more, much more -- create default
4 timelines along the way.

5 Joe suggests one that does it from the very start.
6 These guys were suggesting doing it as you identify each
7 product, so on and so forth. Which is not really negotiated
8 but there's some room for interaction with the group. So I
9 think the decision really about how you set up really
10 depends on what your framework of the program is.

11 CO-CHAIR CARROLL: Thank you, Tim. I don't see
12 any other flags. Bob, you're reaching. Reaching, reaching,
13 reaching.

14 PANEL MEMBER PEOPLES: Yeah.

15 CO-CHAIR CARROLL: Okay, go ahead.

16 PANEL MEMBER PEOPLES: But I already put it down
17 for the future. I was thinking about what Anne said in
18 terms of there is a reciprocal relationship here. There is
19 the expectation about the timeline on the part of the
20 submitters but also on the responsiveness of the Agency to
21 close the loop in a timely manner.

22 So I am wondering if there is a mechanism by which
23 a response window is created that if the Agency can't
24 respond within that time frame the de facto answer is that
25 work plan goes forward and people can get on with what they

1 need to do. And so considering the limitations of the staff
2 the first thing is to look to make sure that there is not
3 some glaring exception to the plan that would say, hey, time
4 out, we need to talk about this. The result being, we're
5 going to let this one go through. Knowing that, we don't
6 want perfect to be the enemy of good enough so we get on
7 with the program.

8 CO-CHAIR CARROLL: Thank you, Bob. And seeing no
9 more flags I am going to draw this a close and I am going to
10 take the Chair's prerogative to make a comment myself.

11 The real question here is, what do you want to
12 require in the regulations? And I think what you ought to
13 put in the regulations is that the Department has the
14 opportunity to create a timeline. But I think what you
15 don't want to put in the regulations is a specific timeline
16 associated with it because I do think that you are going to
17 have a bit of launch and learn associated with this as to
18 how long it takes to do these things.

19 But in the end I am compelled by the idea that
20 there does need to be a timeline for everyone in this. I am
21 just, I am just leery of saying in the regs, it's going to
22 be six months, it's going to be a year or something of this
23 variety. But I do think that the regs should empower the
24 Department to create that timeline from beginning to end.

25 Okay, good, thank you very much for that. Then

1 let's work our way back to Step 1.

2 MS. BARWICK: Bill, while you are organized there
3 I want to remind our speakers, panel members. When you make
4 a comment please speak directly into the mic. Some people
5 are heard well on the webcast and some not so well. Just a
6 little reminder.

7 CO-CHAIR CARROLL: Bringing us back, I guess, to
8 page three of topic number three, Section I. There are
9 three subsections to Section I. And I guess from my
10 perspective it makes sense to open all three for comments
11 because they are all pretty much interrelated.

12 One of the things that I would like you to
13 consider as you consider your comments here. There was a
14 distinction drawn between requirements for companies
15 offering services versus individuals performing AAs. And I
16 would like you to consider as you make your comments whether
17 that's a legitimate distinction or whether these sort of
18 requirements don't devolve to the individual in anything.
19 And if you see it differently than that please make the case
20 for why you would do things differently for a company versus
21 for an individual. So who would like the floor? Okay, I
22 have Ken and Tod.

23 CO-CHAIR GEISER: Thank you, Chair. I am a very
24 strong proponent of the idea of third-party or some kind of
25 simplified way of organizing review of the alternatives

1 assessment. And I actually -- I'll say this in context in a
2 minute. I don't see much value in doing it by company; I do
3 see a strong value in doing it by individual. And this
4 comes from my own experience in Massachusetts.

5 To be quite frank, I was involved very early on in
6 drafting of the state's so-called worker right-to-know
7 legislation scores of years ago. And we did not attend to
8 the fact that the law would create a market of private
9 behavior as many consultants attempted to provide firms with
10 the information about chemicals in the right-to-know, that
11 became part of the right-to-know system. It was chaotic,
12 there was no control of what was going on, there was a lot
13 of sort of sham-like stuff going on in the market.

14 And I learned a lesson which is that when you
15 write a regulation like this or when you write regulations
16 like this you tend to create a market, a market for the
17 private sector to respond and there are a lot of good, great
18 people out there who are going to move forward to provide
19 services and alternatives assessments, either individually
20 within companies or outside of companies as part of a
21 consulting system. I contrast that with the fact that the
22 Department has very little, limited resources for being able
23 to manage that, what's going on out there in that market. I
24 just worry greatly, in fact significantly, that that is
25 going to lead to a lot of trouble.

1 And my solution to that is that there be a
2 certified body of individuals who are not state agents but a
3 part of the private sector who actually are engaged in doing
4 -- either doing alternatives assessments or in reviewing and
5 auditing, validating alternatives assessments. Those people
6 need to be certified. And a certification process is a way
7 of regulating that market and allowing that market to
8 perform effectively such that there is a certain level of
9 quality and a certain level of understanding of who is able
10 to do these kind of services -- firms in that in California
11 effectively.

12 Our experience of course in writing the law, the
13 Toxics Use Reduction Act, was built then on my experience of
14 having failed with the worker right-to-know law. And so we
15 build in a very strong system of how this would work. We
16 create these things called Toxics Use Reduction Planners.
17 Planners must be trained by the Institute, they have to go
18 through the training program. They have to pass a license
19 -- they have to pass an exam and they have to be licensed
20 and they have to be recertified every two years.

21 Now that is much more rigorous than probably
22 necessary here but it is, in fact, one of the reasons why
23 the program has been so successful. Because we actually
24 not, we don't have -- rely simply on a cadre of some 20 to
25 24 people who actually run the program in Massachusetts. We

1 actually rely on a program of about 200 to 300 people who
2 actually make the program work. But a large number of those
3 people are in the private sector but they are working in
4 close collaboration with the Department, with the agencies,
5 to make sure that the plans which are required under the law
6 actually meet the obligations of the law and are done with a
7 certain amount of quality and that there is a fair
8 relationship between the members in that market as they
9 provide their services.

10 What I -- The reason I don't think a company makes
11 any sense is because people change companies so you don't --
12 you may somehow certify a company but then how do you know
13 that that company is actually always carrying things out the
14 same way? Individuals is what you want. What you want is
15 people that you can really trust who the Department knows,
16 who the Department sees, who are working with the Department
17 in some kind of continuing education system or whatever.

18 Where you're building relationships between the
19 Department and those people who are actually on the ground
20 helping to do alternatives assessments and also validating
21 alternatives assessments. Out there in a way that builds a
22 much more effective way to make sure that there's quality
23 work going on. Such that when the Department actually has
24 to review alternatives assessments it's reviewing things
25 that actually already have been fairly well vetted in a

1 private sector way.

2 And so I really like the idea and feel strongly
3 that the way to do this is to certify a group of
4 individuals. But we are actually sort of doing the work of
5 really making these alternatives assessments meet the high
6 quality standards that I think we would want to see them
7 have without sort of rigidly sort of having a very tough --
8 because the market itself will adjust and find innovative
9 ways to work through to make these kind of alternatives
10 assessments really work.

11 I maybe have some further comments on this but
12 those are my opening comments.

13 CHIEF DEPUTY DIRECTOR MADRIAGO: Ken, can I ask a
14 quick question?

15 CO-CHAIR GEISER: Yes.

16 CHIEF DEPUTY DIRECTOR MADRIAGO: The program in
17 Massachusetts, the actual certification of the individuals
18 is done by the, by the Institute. Is that?

19 CO-CHAIR GEISER: No.

20 CHIEF DEPUTY DIRECTOR MADRIAGO: No, okay.

21 CO-CHAIR GEISER: The certification is actually
22 done by the state. What the Institute does is to do the
23 training and we help to organize the exam that they will
24 have to do. But the exam is given by the state, typically.
25 We actually also do the notification. So what that means,

1 they all get together once every year for continuing
2 education to trade stories, talk about what's going on.
3 What did they learn? What went wrong in the alternatives
4 and what was going right? It's always a great, it's the
5 best moment for the program for truly trying to understand
6 what we all -- we hear about problems well in advance.

7 CHIEF DEPUTY DIRECTOR MADRIAGO: Okay.

8 PANEL MEMBER JOHNSON: Can I just ask a clarifying
9 question?

10 CO-CHAIR CARROLL: Yes, go ahead.

11 PANEL MEMBER JOHNSON: Ken, so in that particular
12 scenario can the individual be employed -- let's say to use
13 an example from yesterday. Can that individual be an
14 employee of Procter & Gamble, for instance?

15 CO-CHAIR GEISER: Yes, we have two ways you can be
16 certified. You are either in the firm and you're doing it
17 as a planner inside the firm or you are doing it out in the
18 private market, yes.

19 CO-CHAIR CARROLL: Thank you, Ken.

20 Let's review what we've got here. I have Tod,
21 Lauren, Mike and Anne. Tod, it's yours.

22 PANEL MEMBER DELANEY: Thank you, Chair. As usual
23 I don't speak very much at these things but today I will.
24 And I will take the opposite side that has just been
25 promoted from the standpoint that we are currently working,

1 and I should say this from the standpoint of a validator/
2 verifier. We are currently working in the state of
3 California under both Option (1)A and (1)C.

4 Whereas under the California Air Resources Program
5 we are being credited and work is verified directly under a
6 state program that is the devolving. And quite frankly, if
7 I had my druthers on that I would never go through a state
8 program because you cannot change the requirements that are
9 in the law very quickly.

10 Whereas the other point that we're working in
11 California, doing the same kind of validation/verification
12 work on greenhouse gases for both offset projects and for
13 inventories, we're working under an ANSI program that is
14 based on an international standard. And what that does is
15 it gives the programs, it would give you a lot of
16 flexibility in terms of setting up what the requirements
17 are. You would be part of basically the organization more
18 at a management level saying what you wanted. But then ANSI
19 then takes care of all the other things in terms of the
20 certification and the requirements and the testing of my
21 employees and the testing and all the other things that we
22 have to do to meet it.

23 And so assuming that you are going to have a
24 verification program of some type I would certainly
25 recommend that you go by the C way. And that's just because

1 of the flexibility it would give you, the experience is out
2 there in terms of setting these things up. The regulations
3 for the procedures are there and there's a lot of people out
4 in the world that work under that now and work under the
5 Guide 65.

6 But reacting to the other part in terms of it
7 really should be a company. One of the things that we found
8 in doing the greenhouse gas work, that no single individual
9 in our firm can basically do a complete validation/
10 verification except for a fairly simple corporation because
11 you need different expertise.

12 And under the new operating standards that we have
13 under ISO, under the 14065 standards, it's really a team.
14 You have a team that's essentially certified or accredited
15 to out and do the work. That team then goes and does it.
16 That team has to have certain competencies in order to be
17 able to do that and that's under another standard. These
18 standards are very easily changed to meet the requirements
19 of this particular program. And what that does, again, is
20 it gives consistency because all of the firms that are
21 accredited through this have to do the same thing. We are
22 all monitored on a yearly basis and we have to be re-
23 accredited. The firm has to be re-accredited every, I guess
24 every three years.

25 The other thing that we have to have is we have to

1 have is we have to have errors and omissions insurance in
2 case we screw up of about \$5 million. And so this is
3 something -- that's not something that you can put on
4 individual doing this kind of work, it's something that you
5 put on a corporation that's responsible. You have to have
6 the individuals certified, and they can be certified through
7 whatever program you set up.

8 So I would really like to have, if we are going to
9 go with validation/verification, I would really like the
10 organization, DTSC, to at least look at this because it
11 would give you the flexibility that you are not going to
12 have if you try to put into the regulation. We are trying
13 to change some things in the ARB's regulations right now.
14 In fact right next door they're having a workshop on what
15 some of the new regulations are going to be and it's almost
16 impossible to get those done.

17 And of the things that we found out when we set up
18 this verification program through ANSI, which has been now
19 operating about three years, we have to change things just
20 about every time we meet in order to make sure that we've
21 got everything covered that we couldn't have thought about
22 until the process got started. So thank you.

23 CO-CHAIR CARROLL: Tod, now I have a clarifying
24 question.

25 PANEL MEMBER DELANEY: Yes.

1 CO-CHAIR CARROLL: In essence what I hear you
2 saying is that there is some certification process both for
3 an individual and for a company.

4 PANEL MEMBER DELANEY: That's correct.

5 CO-CHAIR CARROLL: Conducted by a third-party
6 consensus/standard setting organization like ANSI or the
7 like.

8 PANEL MEMBER DELANEY: Correct.

9 CO-CHAIR CARROLL: That's correct?

10 PANEL MEMBER DELANEY: That's correct.

11 CO-CHAIR CARROLL: Okay, good, thank you.

12 PANEL MEMBER DELANEY: And the important part
13 about that, Chair, is that not only does it come through
14 ANSI but DTSC would have the ability to say what specific
15 requirements they would want over and above whatever was put
16 out by the certification body as a standard method for doing
17 things.

18 CO-CHAIR CARROLL: Very good, thank you for the
19 clarification. Lauren.

20 PANEL MEMBER HEINE: Thank you, Chair. I'm
21 thinking about some interesting connections between Ken and
22 Tod and what John Ulrich said.

23 I'd like to step back for just a moment and think
24 about the AA. We're talking about an individual or an
25 organization doing an AA but the AA may include parts A

1 through M. And as John noted, it's unlikely that any one
2 individual has expertise in every one of those pieces. So I
3 could imagine -- and then we're breaking this down into
4 people who are assessors and provide you information on
5 their energy consumption or on your chemical hazard or on
6 your water use. And then you have the validators who would
7 either validators who would either validate that information
8 or validate that you have a plan.

9 So I am imagining a kind of hybrid where there are
10 numerous experts out in the world who could provide you
11 information on your carbon footprint or on your hazard
12 assessment or your water footprint or whatever it may be.
13 And then there might be the validators who take that expert
14 information and validate that it's in a plan that would be
15 acceptable to DTSC.

16 I could imagine a scenario where the experts are
17 not certified or they could be certified, either way. I
18 think you could go either way. I think the validators must
19 be certified and must be trained because they are the ones
20 who are validating that yes, this information has been
21 pulled together. Yes, we think this is quality information,
22 whether it's hazard assessment or carbon footprint. And
23 yes, it's in a format that meets the requirements of DTSC.

24 So I think that allows, that sort of addresses was
25 Tod was saying because there could be a universe of experts

1 constantly evolving new information on how do you measure
2 water impact, how you measure energy impact. But at the
3 same time those people who are validating how that
4 information got to you are very much certified, trained,
5 updated by the state of California or whatever framework
6 makes sense. So it's important, I think, to clarify that
7 distinction.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Let me ask you a
9 clarifying question. So we've talked a little bit about the
10 fact that no one individual is going to have the experience
11 and capabilities to all the (A)-(M) factors. What about the
12 validator? Do you see the validator as being somebody who
13 could validate all aspects of the AA or do you think that
14 has to be a team approach?

15 PANEL MEMBER HEINE: It depends I think. That's a
16 really good question. You'd want the validator to at least
17 be able to know if the work that was done by the assessor is
18 of adequate quality. And so that would sort of beg the idea
19 that maybe even those assessors are registered. You'd want
20 them to have enough expertise to at least know that the work
21 was done in a quality way. But if -- if that proves to be
22 impossible then maybe you would need multiple validators as
23 well. But as I envision it, I think that you could
24 potentially have the validators as a little more of higher
25 level review of a plan that's based on expert work.

1 CO-CHAIR CARROLL: I'm going to break my process a
2 minute because, Tod, you wanted to clarify.

3 PANEL MEMBER DELANEY: Yes, this is just a
4 clarification with the question that Odette was asking. The
5 way it's currently done, the way we do it in the greenhouse
6 gas area now is there is a lead verifier that actually signs
7 off. That lead verifier could use any competent individual
8 as part of that team to provide that person with the
9 information but the lead verifier actually signs off on it.
10 So it really is -- it's a hybrid but it works.

11 CO-CHAIR CARROLL: Very good, thank you, Tod.
12 Okay, I have Mike, Anne, Tim and Kelly.

13 PANEL MEMBER KIRSCHNER: I'm going to talk about
14 an analogous situation and it kind of combines what Tod and
15 Lauren are saying. The situation is safety of electrical
16 electronic products. Actually it's probably much broader
17 than that because there are these things called nationally
18 recognized testing laboratories by OSHA. And they certify
19 these laboratories to be able to have the equipment and the
20 expertise to validate that products meet safety
21 requirements.

22 In the electronics world the safety requirements
23 are specified by industry standards. In the US particularly
24 those standards aren't necessarily regulations. In other
25 countries the standards are pointed to by regulations. Not

1 in all situations, I should say, in the US. But the way
2 that those are met is that the manufacturer understands the
3 requirements, they address those requirements, they bring
4 the product to a lab.

5 The lab, the nationally recognized testing lab
6 has, as Tod indicated, a lead, somebody who manages the
7 program. There is no one person there typically that
8 understands every aspect of safety. You know, there's
9 thermal aspects, there's mechanical aspects, there's
10 electrical aspects, physical aspects, all kinds of crazy
11 things. The standards are very thick and very long and very
12 complex. But you can manage a team within the testing lab
13 to validate each of the sections that requires validation.
14 Yes, the company did this, did that, blah-blah-blah.

15 So getting something certified, you know, UL
16 listed for instance, by one of these nationally recognized
17 test labs, is an interactive process between the lab and the
18 manufacturer. The manufacturer -- the lab may have a
19 question. The manufacturer will answer that question or say
20 well here, we'll make this change to the product, fix it,
21 resubmit it and you can continue the evaluation. At the end
22 of it the certified lab either, you know, approves the
23 product or not. If they approve it then it goes, it's free
24 to go to market.

25 If we view this process as analogous it is a

1 safety issue. Essentially it's health and environment, not
2 necessarily the more physical safety issues that
3 historically you have had to address.

4 I think there's a model, albeit at a national
5 level and to some degree an international level because
6 these safety standards have become international. There was
7 such a drive for harmonization across the world that they
8 became international. You would have situations otherwise
9 where LA had a specific requirement and San Francisco had a
10 specific requirement. Literally, I'm not kidding. So
11 that's kind of where we are today with California having a
12 specific requirement. But just the same the model is there.

13 CO-CHAIR CARROLL: Thank you, Michael. So then I
14 have Anne and Tim and Kelly.

15 PANEL MEMBER WALLIN: I'm struggling a little bit
16 with this. And I really like Tod's comments and I think
17 there is a lot we can learn from the greenhouse gas area and
18 I would encourage you to do that.

19 Ken obviously has been to the school of hard
20 knocks here more than once so I am giving myself pause to
21 try and advocate against some of what he is saying but I am
22 struggling quite a bit on how this is going to work in terms
23 of certifying individuals.

24 And my issue is that we haven't -- I guess I
25 haven't had the impression that this is going to be a very

1 standardized way of doing the AA. We have talked about
2 things like maybe we would agree that certain kinds of
3 existing standards that were out there would meet an AA like
4 a Cradle to Cradle or a Design for the Environment Green
5 Screen. And so now when you talk about trying to certify
6 individuals what are you going to certify them against?

7 Are you better off leading some of that back to
8 the organization. If they're going to say, well I am going
9 to perform this in accordance with Cradle to Cradle or Green
10 Screen. And is it not better to leave that certification to
11 that body that owns that standard and is responsible for
12 maintaining its integrity?

13 One of the other models maybe to look at is
14 Professional Engineer. Again, it could go down this path of
15 like what they have done in Massachusetts or like a
16 Professional Engineer. That is an enormous task that the
17 state is going to take on. Whether you outsource that to a
18 contractor to run it for you, you're now developing a
19 program, you've got to develop the test, you've got to
20 develop the education, you've got to develop the training.

21 And so given some of the other comments that
22 Odette had around this I guess I would just be cautious
23 about whether that's the path you want to head down or
24 whether you want to empower certain organizations or bless
25 certain organizations that their process meets what the

1 statute requires for an AA. And I guess I'll stop there
2 because I think my next comment is kind of out of bounds for
3 this section. Thank you, Chair.

4 CO-CHAIR CARROLL: Thank you, Anne. Tim.

5 PANEL MEMBER MALLOY: Thank you. The technical
6 aspects of all this is outside of my expertise and I am
7 really appreciating what I'm learning from all of the things
8 that people have said. This is just fascinating to me.

9 What I wanted to kind of talk about is less
10 technical and is more on the notion of the difference
11 between assessing and validation and how the qualifications
12 or the requirements might be different. And it got me
13 thinking about what is the purpose of having what we are
14 calling a validator, what I really think of as an auditor.

15 So there's two reasons you might have something
16 like validation/auditing certification. One is to assure
17 competence. To help people who may internally not have the
18 abilities or to provide support to even companies that do
19 have some expertise but not all. The other reason you might
20 do something, and particularly with an audit, is to provide
21 kind of oversight to the process. And that's where this
22 brings me.

23 I think the auditor/validator serves a different
24 purpose than what you see in some of these other programs in
25 the sense that the AA essentially in the big picture serves

1 as input to a regulatory response.

2 And I think DTSC, industry, all of us have been
3 put in this impossible position by circumstances in the way
4 this statute was drafted in which you have been given this
5 really resource-intensive, complicated program to do with no
6 resources to do it, essentially. No funding ability.

7 So how do you react to that where you have
8 inadequate resources, from what I am hearing, to do a
9 substantive review of these AAs. And yet the AAs form the
10 basis of some regulatory response for which you are going to
11 be accountable. So how do you deal with that?

12 And I think one suggestion that various had, and I
13 was one of them, was that essentially one way of dealing
14 with this, and it is certainly not the best way, is kind of
15 a second- or third-best solution in the real world in which
16 we live, is to privatize or outsource some of that
17 substantive review.

18 And that's what an auditor does, right? So the
19 auditor, in my mind, is serving, is essentially -- and this
20 kind of goes a little bit to what Ken was talking about,
21 about having 300 people rather than 20, but I think in a
22 different context. In the context of making regulatory
23 decisions, which is not part of what's going on in
24 Massachusetts.

25 (Panel Member Wallin exited the meeting room.)

1 PANEL MEMBER MALLOY: Now if you're going to do
2 that, I think -- and I think that may be the only way of
3 providing some level of substantive review, that's going to
4 require independence of these auditors, which is not really
5 way out in what I see as the qualification requirements.

6 So building upon Anne Wallin's point. This made
7 me think more about, you know, financial audits where you
8 are required to have a third-party outside auditor for
9 public companies audit the books and be able to certify that
10 they have been done in accordance with GAAP or some external
11 certification. I see kind of a similar framework here.

12 That gives me a lot of pause because like we all know what
13 happened in the financial industry with respect to third-
14 party auditors, right?

15 But maybe we learn a little bit from that. And
16 there are things to be learned. For example, the separation
17 of the auditing function from the consulting function. So
18 for example, one thing to draw from that is you might have a
19 requirement that the people, the firm or the individuals who
20 are doing the auditing may not be engaged in actually doing
21 alternatives assessments for the companies, right. There
22 may be separate requirements with respect to financial
23 interest in the companies, what the other business linkages
24 with the client are.

25 So I think it's dangerous, uncharted waters to be

1 outsourcing regulatory responsibilities in this way. It may
2 be the only way to go. But if that's the case then I think
3 the certification requirements for auditors have to be very
4 kind of carefully crafted to try and ensure that you get
5 that level of independence drawing upon the experience that,
6 you know, that we've gotten from the failures in other
7 areas.

8 And I'll just tell you talking about, you know,
9 experience. I haven't had experience in certifications but
10 I used to practice; I used to be a tax lawyer. There's
11 plenty of situations where somebody asked me or other folks
12 in my firm to provide a tax opinion that was supposed to be
13 an outside third-party, objective review and we were asked
14 to write that for a client for whom we did other services.
15 And I will tell you from the internal dynamics of the firm
16 it makes a big difference if you have got other connections
17 with them. I mean, that's just the reality of it so you've
18 got to take that into account.

19 Specifics, I don't have real specifics to add here
20 because I hadn't really kind of spent a lot of time thinking
21 about that. But I think many people who have experience in
22 this on the panel might be able to provide some further
23 input. And I'll undertake to provide some further input in
24 terms of like what's done in other areas for an auditor if
25 that's something that you think would be helpful. Thank you.

1 CO-CHAIR CARROLL: Thank you, Tim. Tod, I see
2 your flag. I'm going to ask -- I'm going to put you in line
3 after -- I'm sorry, good point. (Microphone not on.)

4 I see your flag. I'm going to put you in line
5 after Kelly because there may be an opportunity to rebut or
6 add to a number of things --

7 PANEL MEMBER DELANEY: It was really
8 clarification.

9 CO-CHAIR CARROLL: But let me get you afterwards.
10 Kelly, it's yours.

11 PANEL MEMBER MORAN: Thank you very much, Chair.

12 One of the things that I think you're hearing in
13 this conversation is that there's a number of examples of
14 these kinds of -- that could be analogous here. And it may
15 be helpful for the Department to actually collect some
16 information about those examples and to do some review and
17 actually put that down on a chart or something. I think
18 that that is one of the things I'm hearing.

19 Another example is that the Water Board actually
20 teamed with the California Stormwater Quality Association to
21 establish a program for the certification of preparers for
22 the construction of stormwater pollution prevention plans
23 and there's a consideration for a similar certification for
24 industrial stormwater pollution plans that are required in
25 the statewide comments. That process took about a year to

1 set up. I think what actually helped the Department to get
2 some sense of how long it took, how hard it was, how the
3 decision was made, what the costs are, what's involved in
4 the training.

5 Those examples are just one piece of what would be
6 here. But it was surprising to me how quickly it was able
7 to be established and done and how the State chose to work
8 with this association that was considered trustworthy and
9 technically capable of ensuring the quality. Those kinds of
10 things I think are things the Department probably wants to
11 think about here. I would also really encourage exploring
12 what kind of partner organizations might be out there and I
13 know that that has happened in the past. But as this grows
14 I think it is going to be important through this if you're
15 starting to think about that.

16 And with that regard I actually want to look
17 around the room at the folks who are here and the members
18 who may not be in the room. We all are going to have a role
19 in making something like this happen. Because no matter
20 what organization takes it on they are going to need the
21 professionals and experts in this field. And folks who are
22 really trusted, trusted by our larger communities, trusted
23 by the state, should be part of it. So this is not a
24 theoretical discussion for us here. So I am kind of putting
25 out the plea that we really need to be thinking about that

1 and considering whether we ourselves are going to be part of
2 making it happen.

3 So with that I'll go ahead to the main parts of my
4 comments. I am being very practical about this. I have
5 some agreement with both Ken and Tod. Ken's arguments call
6 me though because I have had a number of experiences where
7 the principal or partner in a firm left and even though that
8 firm had a certification, for example, to do a laboratory
9 analysis or something else, the skill was lost and the
10 quality of the work went away.

11 So I think that there is a way around that,
12 however, which is that there may be -- in fact I there
13 should be consideration given to different types of
14 certification. That there may be the need to have some
15 topic area certification perhaps and that certification for
16 someone who has got the breadth of capacity to be able to
17 not necessarily do every analysis but be able to manage and
18 review those. And that certification level may end up being
19 the same certification level that would be given to someone
20 who would serve as an auditor.

21 And I do want to, I think Tim didn't actually mean
22 to say that those people who served as auditors shouldn't do
23 AAs. Maybe not for the same firm. But I actually think
24 it's really important that if there is an auditor role that
25 the auditors be people who actually do AAs. Because if they

1 don't then they won't be able to understand the practicality
2 of that.

3 With regard to how the Department structures this.
4 Given that the Department doesn't have a fee for service
5 authority I think under the statute it seems to me the only
6 way it can do this is through accrediting one or more
7 organizations to provide this. And so I think we are all
8 kind of talking about that model because we are accepting
9 that that's how it would go.

10 And the Department is going to be looking for
11 organizations that are trusted by all and they're going to
12 need to put some words in the regs for that. And I keep
13 thinking about ensuring quality, ensuring transparency and
14 ensuring accountability as being important criteria for
15 that.

16 The organization for accountability I think is
17 really going to need to have periodic review of assessors
18 like actually auditing assessments that are done, so have a
19 mechanism for that. And the ability to revoke that
20 "approved" stamp or whatever it is that they are putting
21 there. Because that's what makes the motivation for the
22 professionalism and the quality of the firm.

23 I think it has to be national in scale. And we've
24 heard much, a lot about the fact that a lot of the
25 manufacturers that sell into California, the folks who are

1 doing this may not be in California. I think it also might
2 be a really important point about how it might eventually be
3 international in scale. So we really need to not be looking
4 at a California organization but rather a way of doing this
5 that occurs on a national level. And that doesn't mean all
6 the training and everything else has to be offered
7 nationally. We could do continuing education and
8 certification of courses. There's a lot of models for that
9 that already exist.

10 I think there's a huge interest in this among our
11 profession for making this happen. It won't grow the
12 practice. It's one of the things that will actually have
13 the intent of the Green Chemistry Initiative. A lot more
14 people will probably get certified than actually submit
15 things to DTSC. So it's just hugely important that way. I
16 think continuing education and re-certification are going to
17 be important pieces of that.

18 And finally, because what we are talking about
19 isn't simple, that as the process proceeds some thought be
20 given to having a grace period before which there might be a
21 set of qualifications that are required. Then the
22 certification will take effect. But you may have to start
23 with something less than you want here to allow us to
24 develop it. And that I'm not sure about so that's also
25 something to think about. The stormwater thing was able to

1 be timed so that it worked out. And there will be some
2 timing in the selection of products and so forth. But I
3 don't know if those are going to mesh perfectly. So those
4 are my thoughts, thank you.

5 CO-CHAIR CARROLL: Thank you, Kelly. We are now a
6 little past five after ten. I have two people asking to
7 speak at this point, Tod and Joe, and I'd like to make a
8 comment at the end. I want to clear the next topic before
9 we get to our break. So just so that you manage your own
10 time versus when to take a break. So that's why I think
11 what I'd like to do is close the conversation after the two
12 people who have asked for the floor plus a short
13 intervention on my part then we'll move on to the next
14 topic. Is that acceptable to you all?

15 (Affirmative responses.)

16 CO-CHAIR CARROLL: Very good. Tod, the floor is
17 yours.

18 PANEL MEMBER DELANEY: Thank you, Chair. Just to
19 go to Tim's questions with regards to conflict of interest.
20 In both the program that we operate under here under the
21 state of California and under the ANSI program, that's
22 probably the strongest part of what we have to go through
23 and what the firm has to go through. And it was originally
24 set up just because of the financial problems that happened
25 here. And since really in the greenhouse gas program,

1 especially in offsets, we're dealing with tons which are
2 then turned into money. So the conflict of interest things
3 are there.

4 And also there were the provisions that we were
5 talking about, Kelly, with regards to getting the program up
6 and running because, obviously, nobody has the
7 qualifications that we specifically want for certain things
8 that we are going to call these people. And so that they
9 get grandfathered in because they have the education and the
10 work experience and the other thing. And then over a period
11 of time these other ones come in.

12 So a lot of these, especially the competency
13 requirements for each of the things, DTSC would be
14 specifying to the accrediting body what they would see that
15 they would want plus maybe this group would be providing
16 some of that information. And then the outside body would
17 ensure they really ought to credit these folks so that they
18 would be competent to be in the program.

19 CO-CHAIR CARROLL: Thank you, Tod. Joe.

20 PANEL MEMBER GUTH: We heard Mr. Ulrich pretty
21 strong industry opposition to third party review. And I
22 think that's probably, that's an accurate expression about
23 how a law gets reviewed and that's where we're going to be
24 when the regs are rolled out.

25 But I think that Tim is right. That what's

1 happening here, because of the lack of resources in your own
2 statute, DTSC is going to have to outsource what is
3 essentially a government function to the private sector.
4 And that all the safeguards that Tim mentioned and more are
5 going to be required for two purposes. One, for it to
6 actually work, to reach substantive decisions that are not,
7 you know, corrupted by financial interests, financial
8 interests that someone is going to have in the outcome.

9 And secondly, and this is my main point. I think
10 I would urge the Department to consider the importance of
11 public perception on the quality of the program. People are
12 going to have to look at this program and trust it. Which
13 is separate from the substantive decisions.

14 PANEL MEMBER JOHNSON: Could I just ask?

15 CO-CHAIR CARROLL: Go ahead, Dale.

16 PANEL MEMBER JOHNSON: Joe, could you address the
17 trade secret part of it, since you are very familiar with
18 that.

19 PANEL MEMBER GUTH: Well just very briefly; I
20 think we're going to get into that in the next section.
21 Yeah, I expect trade secrets and confidential business
22 information claims to be extensive in the AAs. I think they
23 will cover the products that are involved, the alternatives,
24 the identification of alternatives, their technical
25 functioning. Possibly even, you know, their impacts on

1 human health and environment.

2 I mean, I think that these AAs are not going to be
3 reviewable by the public in any meaningful way or by
4 competitors, by anybody outside the process. That's what I
5 would expect. That highlights the need for a system that
6 will actually reach good decisions and be trusted.

7 CO-CHAIR CARROLL: Okay, thanks very much. I'd
8 like to make a bit of an intervention here myself.

9 We've talked about what I see as a continuum
10 between registration of industry certification. And most of
11 the discussion here has been toward the certification side.

12 And I have to say that some of this discussion gives me a
13 bit of free floating anxiety for a couple of reasons.

14 One is, because I don't exactly understand how
15 this would be implemented my impression is it sounds very
16 complex. And one of the things that concerns me about this
17 process is that I think this is somewhat different from some
18 of the things that have been brought up for analogies. I
19 don't see this as being the same kind of thing as financial
20 analysis or accounting. I think it's much more qualitative
21 in many ways than it is quantitative the way an accounting
22 system is.

23 And what worries me particularly about this is the
24 more complex you make this system -- I believe there is, I
25 believe there is an inverse relationship between the

1 complexity of the system and the desire of people to be
2 involved. People have expressed the desire to keep people
3 in to do these AAs in order to provide information to
4 someone.

5 The more complex you make this system the more you
6 will drive people to make substitutions so they don't get in
7 this process. So I would simply offer that you may find
8 that to be a counterbalancing influence in terms of the
9 program that you put together. To understand the complexity
10 of what you are asking people to do and the size of the wall
11 that you are building in terms of people wanting to
12 participate in it.

13 Going to the certification and training aspect of
14 it. Recognizing that if the training is outsourced, any
15 organization that conducts the training does so with a point
16 of view because I am not sure that there are absolute
17 standards to which things are taught. And so at the very
18 least if that is to be done there has to be a multiplicity
19 of providers of that sort of training who are certified to
20 do it so that you aren't simply seeing one proprietary or
21 quasi-proprietary point of view as to how you go about this.

22 And in terms of testing if testing is done.
23 That's something that also has to be somewhat point of view
24 neutral. And it may ultimately wind up having to be
25 something that the state does rather than to be outsourced

1 to any individual organization.

2 So I am just a -- I'm a bit concerned about the
3 overhead associated with training and testing and deeply
4 concerned about the complexity of the program that you
5 devise and how many people you actually keep in it.

6 Okay, that's my remark and thank you for listening
7 to that. Let's go ahead and move on to Section II if we
8 could, please. This is the validation of completed AAs. I
9 would like to allocate about a half-hour's worth of time to
10 this if we could. I don't want to truncate the discussion.

11 I want to make sure that we get our points out but I want
12 you to recognize that we do have a limited period of time
13 that we can work this morning.

14 So with respect to validation. We kind of touched
15 this topic a little bit in the previous discussion. Who
16 would like the floor? Joe, I think that makes sense, go
17 ahead.

18 PANEL MEMBER GUTH: So just building, I guess, on
19 the comment that I just made and to touch on Dale's
20 question. So this is all -- I mean, I really do think that
21 the CBI and trade secret issues are going to be driving many
22 of these AAs into a process that is just not reviewable by
23 the public. As a lawyer I have worked with intellectual
24 property --

25 THE REPORTER: Is your microphone on?

1 PANEL MEMBER GUTH: Am I on?

2 MS. BARWICK: Get right on the mic.

3 PANEL MEMBER GUTH: Okay. I have worked as an
4 intellectual property lawyer and I think that the default
5 position is going to be for companies to claim CBI and trade
6 secrets. I mean, why not? And it will extend to
7 everything. It may even include algorithms that are used,
8 you know, by assessors. I mean, why not? It's all CBI
9 probably. I mean, people are, I think already they are
10 developing algorithms and keeping them as trade secrets
11 internally.

12 So I think it's going to be very sensitive and
13 it's one of the reasons -- it's one of the things that's
14 leading us to a process -- and we're going to see later, you
15 know, it's going to be quite an extensive process I think to
16 have one that can be trusted, whether it can be appealed,
17 ways to resolve conflicts between different AAs, all the
18 things that are coming up later. And that's going to make
19 it expensive because the user is going to have to pay for
20 that.

21 So a solution came up as we were talking about
22 this in the subcommittee which was, well, maybe, maybe we
23 could create a separate track and that's what Option II-B
24 evaluates. That's the one I want to mention in a little
25 bit. And that would be to create a second option where a

1 separate way to do this, which would be a much simpler track
2 where more responsibility could rely on companies. I think
3 you still need to have certification, still need to have
4 competent assessors.

5 But what if there were no CBIs, no trade secret
6 claims in an AA so it was completely transparent? So then
7 it may very well be possible to have a much simpler process.

8 To have the assessors do it, put it out into a domain so
9 people can see it, competitors, the public, academics. Have
10 more transparent access to such an AA.

11 And then maybe you don't need to have all these
12 safeguards that we have been talking about or a much lower
13 level. Which would be much cheaper, much less expensive,
14 much less extensive. So the tradeoff here that was
15 suggested in this would have a simpler, cheaper, less
16 burdensome process for situations where a company does not
17 claim any CBI or trade secret in the AA.

18 So it kind of puts companies a little bit to the
19 test of, well, is the CBI really valuable, you know? So
20 it's not just a default, oh yeah, stamp everything CBI. I
21 mean, it's just so easy to do right now, that's what will
22 happen. So it could be adjusted a little bit because there
23 are some costs and expenses associated with that.

24 And I think we have seen in other circumstances
25 that many times where it is a cheap and easy default, CBI

1 trade secrets get claimed. But if there is some expense
2 associated with it, it gets rethought and maybe it's not so
3 important. So that would be, that would be the proposal.
4 And I think that, I think that there is support for that
5 tradeoff, I can't really speak for everybody of course, but
6 in the -- in the NGOs and in the academic community.

7 CO-CHAIR CARROLL: Thank you, Joe. Dale.

8 PANEL MEMBER JOHNSON: I think we're kind of
9 dropping out II-C, the kind of a technical review panel,
10 because that became too resource-intensive.

11 CO-CHAIR CARROLL: Dale, I think you could speak
12 to that if you'd like.

13 PANEL MEMBER JOHNSON: Yeah, okay. Well, one of
14 the things -- because actually I was the one who was
15 proposing that in the subcommittee. What I was attempting
16 to do in that was to simplify the process and get it where
17 it was kind of standardized in a certain way that would then
18 reduce the resources coming from DTSC. And I didn't take
19 into consideration that it would be resource-intensive.
20 Having, you know, sat on some of those panels, you know, you
21 get the information and it becomes relatively
22 straightforward.

23 So I think what it boils down to then is how many,
24 how many times does a third party actually review the thing
25 before it's approved? I think that's where we have gotten

1 down into this particular process. So if, in fact as we
2 were discussing previously, if a third party is involved in
3 it, the third party is certified and does the -- you know,
4 does the actual review of the AA, then this particular part
5 of it, the question boils down to, do you get another third
6 party in to review it after that?

7 And so my feeling -- you know, I have actually
8 done a 180 on this as we are sitting here this morning as to
9 what I originally proposed. So I am thinking that, you
10 know, based on these other discussions a third party,
11 certified comes in and does this. Then DTSC then takes
12 action on it. And then somebody else in our committee said,
13 it actually gets into the public forum at that point and
14 there's a lot of, a lot of debate that goes on. So I think
15 if it's a certified third party doing the process as the
16 process is going on you don't need another third party to do
17 it. And then my panel has disintegrated into -- actually,
18 I'll drive my panel home.

19 (Laughter.)

20 CO-CHAIR CARROLL: Thanks very much, Dale. It's
21 nice to know there's a service component in what you're
22 doing here as well.

23 I have Tod, Tim and Art.

24 PANEL MEMBER DELANEY: Is that for me?

25 CO-CHAIR CARROLL: Yes.

1 PANEL MEMBER DELANEY: Okay, thank you. Mine will
2 be very simple. Just to support what Joseph had put out,
3 which is the II-B one. And there's a lot, at least in the
4 standards development world, that's going on now, especially
5 in the carbon footprinting standard that will be coming out
6 maybe in about a year from the International Standards
7 Organization. This is exactly the way it is set up also.

8 If you -- and because there is a lot of life cycle
9 and trade information, trade secrets with regards to the
10 gate-to-gate of what is produced by various manufacturers.
11 So the way it has been set up, the way we set it up is
12 exactly like II-B and that has gotten a lot of traction with
13 industry. And also the NGOs like it because they are going
14 to be able to see a lot more information. So it's a good, a
15 good way out.

16 CO-CHAIR CARROLL: Thank you, Tod. I have Tim,
17 Art, Kelly, Roger and Bob.

18 PANEL MEMBER MALLOY: Thank you. There's just
19 like so much meat to this short page. I think this is
20 really -- somebody said how well-developed this stuff was.
21 It's concise and it's really laid out well. I had a couple
22 of comments starting with II-B.

23 I like the general approach that Joe laid out
24 about trying to create incentives to not evoke trade secret
25 claims. The concern I have is some of the underlying

1 assumption. I mentioned a little bit of this yesterday.
2 One underlying assumption is that if you have transparency
3 then there's going to be a very vibrant and extensive public
4 review and comment period that's inevitable and that
5 that's going to come through things.

6 Honestly, I don't think that's -- experience has
7 shown that that doesn't actually happen when you have
8 programs like this. I talked a little bit about Title V
9 yesterday where depending on how you structure the program
10 if there's a lot of AAs the folks that you're depending on
11 to engage in the public comment review from the NGO and
12 consumer and community-based groups, they are not going to
13 be able to deal with that. And that's what happened in
14 Title V, that's what happens in a lot of permitting programs
15 like this.

16 In terms of the competition kind of driving it. I
17 think, yeah, that's valid, that could happen. But there's
18 also a lot of history in the world of regulation about where
19 competition was set up that firms actually have a much
20 greater interest in maintaining the status quo. So there is
21 either an implicit or even explicit kind of move among the
22 industry players for nobody to step forward and kind of push
23 things but rather they want to maintain the status quo. So
24 I'm not sure that if we do that -- I do like the idea, I
25 just have some real concerns about that.

1 But I do think this underlying notion of, you've
2 got to figure out a way to dis-incentivize the use of trade
3 secrets is right. I think there's a number of ways of doing
4 it. It seemed like there was a comment or note somewhere in
5 here that talked about, well could we translate the
6 information into kind of like hazard information. I think
7 maybe it was Lauren who said there might be mechanisms to
8 extract the relevant information and to parse away
9 proprietary information so that it's usable.

10 The other issue about algorithms, folks using
11 algorithms, you know, won't want to share those so they'll
12 claim trade secret. Well one way around that is to say, you
13 can't be certified if your -- if the algorithm that you are
14 using is claimed as trade secret. Maybe that would drive
15 people away from certification. My guess is it wouldn't if
16 there was a large enough market out there. The other
17 approach is one we have been talking about, which is whether
18 DTSC should establish some default standards or suite of
19 standards or algorithms that could be used, in which case
20 that gets rid of that problem.

21 On this other one about the technical, the
22 scientific review panel, II-C and II-D. I think that's got
23 actually a lot of value to it, although I agree that the
24 resource issues are a concern. But let me make a suggestion
25 about maybe a different manifestation of that, which would

1 be, if you take the view that this program out to be rolled
2 out in stages and therefore ought to start with two or three
3 or a couple of chemical product uses. Do AAs on those first
4 to gain traction and understanding.

5 One could imagine that what you do is you would
6 create a technical scientific review panel for those
7 original ones, right. So this would not be every AA gets
8 reviewed but the initial few get reviewed by this panel. So
9 that would help with those particular AAs but it also would
10 help in terms of developing in an environment where you have
11 got lots of different stakeholders interacting and
12 developing some kind of more generalized notions about what
13 AAs ought to look like.

14 You know, you might set up a separate technical
15 scientific review panel. You might even, you know, for this
16 thing out of your existing Green Ribbon Science Panel.
17 There's lots of very knowledgeable folks on here. And for
18 the areas for which maybe you needed more information I
19 think you probably have the discretion and ability to add
20 more people. Maybe get rid of a few people. You know, get
21 rid of the lawyers.

22 (Laughter.)

23 PANEL MEMBER MALLOY: But I'm just thinking, I
24 think this has a lot of value, even if it's not something of
25 a permanent part of the program. It has -- I think it has a

1 great deal of value.

2 And then the last thing I just wanted to say on
3 Option II-B. I am very supportive of the notion that you
4 need accountability within the company. In New Jersey we
5 call it the designated felon rule.

6 (Laughter.)

7 PANEL MEMBER MALLOY: It's also in the federal
8 standard and California has in a lot of permitting where
9 when somebody submits an application or in Title V when you
10 submit a compliance certification, a high ranking corporate
11 official has to say, you know, I reviewed this and I have in
12 place a reasonable system to assure that this has been done
13 in compliance with the law and I certify this under penalty
14 of perjury.

15 And that's where the designated felon part comes
16 in. And I have to tell you, I did Title V permitting
17 applications as, you know, a practitioner and it got the
18 attention of upper level management. People really asked
19 questions when they knew when they signed this they were
20 saying they were involved in the process, even as an
21 oversight role. And I would actually expand II-B to say,
22 you should have the company that is submitting the AA have a
23 high level corporate officer sign.

24 And with respect to an auditor. The auditors when
25 they do an audit or the assessors -- and maybe Tod this is

1 already part of their standards. They should be certifying
2 under whatever, some standard, that they have done it
3 according to this. And if they don't, if they haven't done
4 it in that way there ought to be consequences that flow from
5 that. Maybe with respect to their certification, also with
6 respect to perjury. So thanks for your patience with my
7 comments.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: Can I ask a
9 clarifying question here?

10 CO-CHAIR CARROLL: Certainly.

11 CHIEF DEPUTY DIRECTOR MADRIAGO: Or maybe it's not
12 clarifying. Yeah, it is. I would like some comments from
13 those of you who are intrigued by the idea of the panel and
14 certainly what Tim has suggested in terms of maybe just
15 doing it on the critical few might be more doable. But know
16 that the ideas that were suggested largely included having
17 some kind of public participation along with the review
18 panel.

19 I am unclear how do we do that, given that I do
20 expect there to be, you know, trade secret claims that will,
21 at least some of them be approved by the Department. And I
22 would think for the panel to be able to review they are
23 going to have to have access to everything that's in the AA.

24 And of course there have to be some provisions where they
25 keep that all secret. But how do we -- how do you see that

1 working?

2 CO-CHAIR CARROLL: Are you asking Tim that or?

3 CHIEF DEPUTY DIRECTOR MADRIAGO: I am asking
4 anybody, anybody who might have thoughts on it.

5 CO-CHAIR CARROLL: So why don't we ask people to
6 embed that in their comments if they have a point of view on
7 that.

8 CHIEF DEPUTY DIRECTOR MADRIAGO: That would be
9 great.

10 CO-CHAIR CARROLL: Let's go ahead with the order
11 then. Art.

12 PANEL MEMBER FONG: Thank you, Chair. I am
13 actually -- you know, I know that there are some systems to
14 -- something today where a third party's validation or
15 certification for all completed alternatives assessments.
16 And so I liked Joe's approach. Either doing, having
17 certification or having the flexibility of making your
18 alternatives assessments really transparent. I like the
19 flexibility.

20 But I was thinking. There might be some way to
21 overcome some of the resistance to Option II-A, you know,
22 requiring third-party certification of all completed
23 alternatives assessments. So I think that some of the
24 questions that we might want to ask and, you know, have DTSC
25 specify is what actually would constitute certification. So

1 I think if, you know, the industry would know that, then
2 that would overcome some of the resistance. So, you know,
3 what are the standards by which an alternatives assessment
4 would be certified?

5 CO-CHAIR CARROLL: You mean validated.

6 PANEL MEMBER FONG: I'm sorry, thank you, Chair.

7 So I think that might, you know, be helpful.

8 And in terms of Option II-B, I agree with Joe and
9 Tim's points. And also what you said about to evaluate an
10 open process and it goes on and on. I think a concern --
11 some of the concerns might be how that might, you know, that
12 process might delay the introduction of safer products into
13 California commerce and also how that might actually block
14 innovation. So I think having, you know, very specific
15 timelines from DTSC in terms of their response is really
16 important.

17 And in Option II-C. I just, you know, I don't see
18 that can work unless -- because what are the qualifications
19 for these, you know, volunteer non-paid members for the
20 scientific review panel? Because highly qualified people
21 are going to have pretty high, you know, time demands. So
22 how are you going to get these people to attend?

23 Ideally, I mean, we can get an army of Julia
24 Quints, that would be great. But other than that I don't
25 see how that's going to work. So that's just some of the

1 comments and just suggestions on how to overcome some of
2 these -- for getting -- for the requirement of validation of
3 completed alternatives assessments. Thank you.

4 CO-CHAIR CARROLL: Thank you, Art. I was just
5 struggling for a moment with the visual of an army of Julia
6 Quints.

7 (Laughter.)

8 CO-CHAIR CARROLL: We are now at 10:32. I see I
9 still have three flags and I'd like to have a little bit of
10 time at the end. I'd like to try to wind this down no later
11 than a quarter of 11:00 if we can so please modulate your
12 comments accordingly. Kelly, it's yours.

13 PANEL MEMBER MORAN: Thank you; I shouldn't take
14 too long. I think in terms of the planning situation,
15 although I understand the industry concerns about the scope
16 and nature and so forth of the third-party validation I
17 can't see how DTSC could handle this budget-wise and
18 actually do this work and get a reasonable amount done --
19 for dealing with these without the third-party validation.
20 So I see it as an essential thing.

21 If it were possible for the Department to charge a
22 fee and bring on additional staff and really fully fund a
23 comprehensive review I might feel differently about that.
24 But at this point, under this structure I wouldn't -- I
25 heard the industry's concerns and I think what Art suggested

1 is a really good path forward for it's trying to reduce some
2 of that uncertainty and fear. Because I can understand why
3 you'd look at those and say, it could cost a fortune and
4 there would be all kinds of problems. But I think if it's
5 well-defined that it ought to be a workable and not
6 unreasonable burden.

7 On the II-B, what Joe raised. I'd still want to
8 think about that. But I would like to point out that the
9 Department had a really bad experience with trying to get
10 public review SB 14 plans. And part of that was that they
11 weren't like up on the web so everyone could easily grab
12 that and part of that was that there were just so many of
13 them and it was really overwhelming for the environmental
14 community.

15 I think we will see competitor interest here. I
16 think Tim's a little more dismal than I am to that. I am
17 very optimistic that companies are going to rise to the
18 challenge of finding alternatives. And then they are going
19 to want to protect their market share by providing their
20 input to DTSC on this.

21 But the bottom line for me on this whole
22 scientific panel and all this stuff is, are we really
23 appealing the AA or the Department's decision? And I think
24 the active thing here is the Department's decision and
25 regulatory response, what are the next steps? That decision

1 is the thing and I think there's a little process question
2 to be worked out in consultation with your lawyers as to how
3 to handle that. I really am not clear that there is value
4 in having folks appealing the AA and doing a whole round on
5 the AA before we ever get to a decision.

6 The Department's decision may be, well let's do
7 this regulatory thing and we want some more work on an AA.
8 That decision might be appealed. Or we want more work on
9 the AA and we aren't going to require any regulatory thing.
10 That decision might be appealed. But just gyrating around
11 on the AA, I don't think that brings value. So that's just
12 something to think about.

13 I think in terms of a review panel, if there is a
14 function for that, and I'm still thinking about that. That
15 if the initial one that Tim suggests and perhaps using a
16 subset of the Green Ribbon Science Panel might be a good
17 initial phase thing.

18 And I am also very concerned about the whole
19 appeal process. A great reason for that is that I have seen
20 other examples where, again, it just delays action. If you
21 bring anything it becomes such a burden. And the best
22 example of that is the EPA pesticide cancellation process.
23 The EPA has the authority to cancel a pesticide that poses
24 unreasonable risk to public health and the environment.

25 And they never use that authority because it is so

1 burdensome for them to get through that process. They have
2 to go to a science panel then their administrator, then it
3 can be appealed to court. So they basically find they never
4 can implement that authority. And I am really worried about
5 creating a structure here that is analogous. That is just
6 so burdensome that DTSC actually winds up not being able to
7 use the very authority that was provided to it by the
8 legislation. Thank you.

9 CO-CHAIR CARROLL: Thank you, Kelly. I have
10 Roger, Bob and Lauren and then I'd like to wind this down at
11 that point, please. Roger.

12 PANEL MEMBER McFADDEN: Thank you, Chair. There
13 is no doubt that validation is going to be needed here
14 somewhere within this process. To Joe's point, some will
15 claim CBI to use it as an off-ramp. At the same time some
16 will use full disclosure or full transparency as a shortcut.
17 In both cases it would strike me that validation is
18 important.

19 Because what is full disclosure? What is full
20 transparency? It is -- are we accepting -- does DTSC accept
21 that what is disclosed is full disclosure? And if you allow
22 that organization or that company to use that as a shortcut
23 and to reward them for that, it could be that you will
24 encourage them to appear to have full disclosure when in
25 reality maybe it's not there. So without validation there

1 may not be a way to know that.

2 And also this idea of research, drafting,
3 assessing and auditing. Those are kind of the four things I
4 think about here. That is, someone in your organization has
5 to research to be able to talk about those 13 things. And
6 it may require a lot of different people like Tod had
7 suggested. Then there is the drafter who drafts. So they
8 take the research and then they draft to that. So they
9 write the response. And then you have an assessor who has
10 to assess what has been written. And editor or whatever who
11 assesses it. And then there is the auditor. And I think at
12 each level of that there is a different -- you could have a
13 kind of certification if you will.

14 Maybe you don't need certification externally for
15 researchers and drafters because businesses will do that
16 internally to be sure that they get a good bank for the buck
17 so they don't have to go back and do it again. But then
18 when you get to the assessment and to the auditing piece it
19 strikes me that there needs to be some measure of
20 certification there.

21 I think it's a mixture of these. I can't see one
22 of these options, to me the scientist, that fit perfectly.
23 I think, if you really think about it, there's two or three
24 of these maybe pieced together. Including the last one,
25 which I think Tim so eloquently suggested in the

1 accountability piece. Holding someone from the organization
2 at a pretty high level to be accountable. Thank you.

3 CO-CHAIR CARROLL: Thank you, Roger. Bob.

4 PANEL MEMBER PEOPLES: Thank you, Chair. Wow, I
5 agree with many of the things that have been said here so I
6 really kind of want to reinforce a thought or two. First of
7 all, I'm reminded of the statement that was made by a former
8 president that was related to the idea of trust but verify,
9 okay. And I think that we are talking about an element of
10 trust but verify here so we are talking now about how do we
11 implement the verification part of this process.

12 I think it's fair to assume good intent and an
13 example I want to give you is a California, a very large
14 California global corporation is on a mission to eliminate,
15 you know, chemicals of concern from their workplace. And
16 they asked suppliers to fill out very elaborate detailed
17 forms and then they had some hired consultants look over
18 that material to help guide their judgment.

19 And it turns out that with all of the integrity of
20 an honest response a company was completely unaware that
21 they as a supplier of a final product, call it a piece of
22 furniture, did not know upstream three steps up a chemical
23 of concern was employed in the process and in the product.
24 So when they filled out the form they said, we don't
25 formaldehyde or whatever it was. But to the person who was

1 doing the checking it was really obvious that in fact it was
2 there and these people were caught totally off guard.

3 So there's got to be a mechanized -- a mechanism
4 to allow for that type of eventuality. And I don't think it
5 should necessarily be punitive so you can encourage people
6 to come forward and acknowledge when this kind of thing
7 happens. So that's sort of one part.

8 The second is that -- and I think Roger just said
9 it in and I wrote it in my notes as I was listening to all
10 this. Odette, you have on the front of all of these
11 worksheets, "many options are not mutually exclusive." So I
12 think, you know, whether we use the word "option" or
13 "component" or "element A, B, C" I think several of these
14 things are really valuable in a number of applications,
15 particularly in this one.

16 I really like the idea of Option B where there is
17 an incentive, and maybe you say an element of reward, to be
18 completely transparent. And the marketplace will deal with
19 the analysis and the veracity of that information in its
20 normal mechanism going forward.

21 You know, as the guy on Subcommittee 3 that threw
22 out the Option E here I really appreciate Tim's pragmatic
23 experience on that. Because at the end of the day, you
24 know, I know from my corporate experience that those
25 signatures don't get put on the document until somebody is

1 pretty darn convinced that you have run all the traps and
2 you're pretty sure that the data is reliable, accurate and
3 defensible. So I really think that this is a strong
4 component for this particular section of the regs for
5 consideration going forward.

6 And I believe that -- hang on one second here.
7 Yeah, I think that pretty much covers my observations.
8 Thank you, Chair.

9 CO-CHAIR CARROLL: Thank you, Bob. Nice socks, by
10 the way. Lauren.

11 (Laughter.)

12 PANEL MEMBER HEINE: Thank you, Chair. He's just
13 trying to outdo Art.

14 I wanted to address Odette's question of this
15 deciding panel and the transparency and touch on something
16 that Kelly said about are the appeals intended to appeal
17 elements of the AA or the decision of DTSC.

18 I think a technical and scientific review panel
19 could be very useful in terms of appealing elements of the
20 AA. But I think it would be back-level rather than
21 reviewing a specific product assessment; it might be looking
22 at the various methods that were used within the AA. So the
23 scientific review panel might be assessing the algorithm
24 that went into looking at a carbon footprint or assessing
25 the approach that was used in assessing the chemical

1 toxicity, things like that. So the scientific review panel
2 could be very helpful in sort of fleshing out the science
3 behind the tools and the approaches used in an AA.

4 And also some specifics. I was saving my comments
5 because I think that the technical panel could be very
6 useful for conflict resolution. And that could be specific
7 to chemicals in product toxicity between 10 and 100 or
8 between 1 and 10. Those are questions that reasonable
9 toxicologists will disagree on.

10 And so having a scientific body make a decision,
11 that's been very important say with EPA's Design for the
12 Environment where two different companies are qualified to
13 do assessment work for a product. And sometimes they come
14 up with different answers for the same chemical and then
15 there's an arbiter. Somebody who says, no, we are going to
16 go with this value because there are 300 tests for it. And
17 you could go one way or the other but they pick one. So now
18 everybody can move forward because you have got an agreed-
19 upon point to work. And you don't have to revisit it again,
20 it's been decided by an expert body.

21 CO-CHAIR CARROLL: Thank you, Lauren. Joe, you
22 wanted a short intervention here.

23 PANEL MEMBER GUTH: Yes, just very quickly.
24 You've heard the transparency track develop. I think it
25 probably would be appropriate to have some mechanism for,

1 for input into the AA to actually have an impact on the AA.

2 In other words, maybe an appeal to DTSC. Hey, there's a
3 problem here or there's an error made. Or comments filed
4 with DTSC before it makes -- decides on a response action.
5 There's got to be some kind of mechanism for actually
6 incorporating review by other parties into the substance.

7 CO-CHAIR CARROLL: Thank you, Joe. And I would
8 like to take the opportunity here as well. It seems to me
9 that the validation issue is comprised really of three
10 components, transparency, information quality and analytical
11 correctness. And let me take the things in this order.

12 I think Joe's idea of something of a roller bar
13 for a totally transparent AA is a good one. The question
14 always has been how you deal with a CBI that's incorporated
15 in this. I personally think this is a less complex problem,
16 at least since we are all talking hypotheticals at this point.

17 I think it's a less complex problem than it's made out to
18 be and here is a solution I would readily propose.

19 Most of the CBIs that you're going to be talking
20 about, I think, would go to the identity of the material.
21 But remember, the hazard information, at least I suspect
22 hazard information, would not be CBI. So the numbers would
23 be there but the identity would be vaguely described. So
24 instead of saying, dodecylamine you might say an aliphatic
25 amine of greater than six carbons or something of this

1 variety in way of masking that. But that would be the level
2 of what CBI would be.

3 A way of dealing with that would be, in the case
4 of claiming CBI our requirement would be to engage a third
5 party to, in essence, validate that what you have said here
6 is representative and correct. That in fact what you were
7 talking about is an aliphatic amine of greater than six
8 carbons and the number that's produced there is correct.

9 It's sort of, it's sort of the same thing as if we
10 were, if we were cutting cards. And I cut the cards, I have
11 to beat a six of spades, I know the card I'm looking at and
12 I say yeah, it's bigger than a six of spades. Now you
13 wouldn't trust that. But if you sent somebody over to look
14 over my shoulder and say, yeah it is, then you at least
15 validated to that extent that the information that's
16 produced there is accurate to what's been represented. So
17 you might consider that.

18 The second thing, with respect to information
19 quality. And we had the discussion in the subcommittee
20 about the concept of checkers checking checkers. And that's
21 on the way to throw quality into a situation.

22 One of the things that you might consider,
23 particularly if you go to the extent of having this cadre of
24 certified practitioners, is that there is the same kind of
25 obligation to your profession in this area that you have as

1 a professional in any other area. And that is, to act as
2 volunteer peer reviewers of publications in your area. And
3 of course as ACS we rely on this. We have peer review
4 publications and people volunteer as peer reviewers because
5 they know they are going to be publishing as well.

6 And there may be an opportunity to create not the
7 kind of panel that goes through and rechecks all the
8 calculations and in essence redoes the AA. But reviews it
9 in the sense that a reviewer does, which is to say yeah,
10 that looks like it makes sense to me. Yeah, that's
11 essentially accurate. No, this needs more work, this isn't
12 clear to me.

13 And you might be able to do that with what amount
14 to volunteer peer reviewers. Not a set panel but a rotating
15 set of peer reviewers. You could even imagine that the
16 people who propose the AA might propose reviewers in the
17 same way that someone who publishes an article proposes
18 people who could act as peer reviewers for it.

19 The third thing is, analytical correctness. And
20 this is a place where I hope we don't get to. Because as
21 Lauren points out, it is entirely possible that you'd have
22 two different numbers, for example, for the same commodity.

23 Or you have two different ways of doing the analysis.

24 There isn't going to be, I think, one correct
25 answer for any of these AAs. I think there are going to be

1 different points of view and different ways of bringing the
2 analysis together. The question is, has it been done
3 rationally, does it make sense, does it hold together? So I
4 am not so concerned about getting the right answer because I
5 am worried that in many cases there may not be a single
6 right answer. And thank you for the opportunity to
7 intervene.

8 We are now at 10 minutes of 11:00. We have two
9 topics left to talk about and then we have an opportunity
10 for the director to take us a little bit through what our
11 time mark might be going forward.

12 So what I'd like to do is bring you back -- I
13 think you can still have 15 minutes. If I could bring you
14 back at 5 minutes after 11:00 by this clock and I promise I
15 will have you out of here by noon.

16 (Off the record at 10:50 a.m.)

17 (On the record at 11:05 a.m.)

18 CO-CHAIR CARROLL: All right, why don't we go
19 ahead and take our seats for those of you who are the
20 bitter-enders in the crowd. I know we have -- I think we
21 have managed to drive off Ann and Bruce and we are going to
22 very quickly after this drive off Ken. I appreciate the
23 fact that you schedule a meeting until 12:00 o'clock and
24 everyone gets their planes for 11:00. That's something of a
25 referendum on the discussion that you're having.

1 Here is what we're going to -- here is where we're
2 going to go for the next, the next few minutes. We have two
3 more topics that we have to discuss, the conflict resolution
4 and the work plans. Then there is the summary. I don't
5 intend to take 15 minutes to summarize the day but I want to
6 telegraph this to Odette. I would like her to use at least
7 a part of that time to talk about what she's heard, things
8 that she hasn't heard, if there are other comments that
9 she'd like to have from us on areas up to this point and use
10 that as sort of a final, a final process check, Odette. And
11 then after that, Debbie, the floor will be yours and we'll
12 adjourn after that.

13 So let's go ahead and go on to Section III,
14 Conflict Resolution. And Odette has teed this up for you
15 and I would open the floor anyone who would like to make a
16 comment. Lauren, go ahead.

17 PANEL MEMBER HEINE: I'll make it a comment since
18 Ken and I will need to leave relatively soon.

19 (Laughter.)

20 CO-CHAIR CARROLL: This would be voting with your
21 feet, Lauren, be careful what you say. Go ahead.

22 PANEL MEMBER HEINE: About the idea of conflict
23 resolution. And I think it builds on something that you
24 said, actually, about the idea of peer review versus
25 validation. That those are -- peer review has been a pretty

1 successful approach. We have been talking a lot about
2 validation, having some body or some body of people do the
3 checking work versus having sort of a system by which public
4 review can provide a sort of validation. That's where the
5 transparency idea comes in.

6 And then I think there's another, a middle ground
7 where maybe it's not the entire public has review -- is
8 doing the review because not the entire public has the
9 expertise but where you have a set of peer reviewers who
10 validate information.

11 And again I think that we need to break down the
12 AA into the (A)-(M) parts. That I think we're going to find
13 that different organizations of people have different areas
14 of expertise, whether it's hazards or carbon footprint or
15 water. And that there may be ways of building systems. And
16 this addresses the note whereby you could have, for example,
17 a shared chemical database to which competent individuals
18 have access.

19 And by the act of sharing the data and they are
20 constantly improving and populating information on chemicals
21 that they look at. And then by using the same data when
22 they disagree they can talk about it and -- or they can use
23 something like a scientific expert or OEHHA to break a tie.

24 You know, if your product toxicity is between 10 and 100 or
25 between 1 and 10. There is a way of sharing, I think, the

1 building blocks of an AA and really thinking through what
2 are the building blocks and what parts of those are discrete
3 and what parts of that can be shared that does not really
4 affect trade secrets.

5 As Bill, you were saying, you could share
6 information on the toxicity of a chemical without sharing
7 that that chemical is in a certain product. And I think
8 that's written into the regulations too because you've got
9 this sort of -- the product information -- the chemical
10 information helps ideas.

11 So I just wanted to point that out that -- and I'm
12 not going to make a specific recommendation here but the
13 idea is to look for building blocks and look for ways of
14 using a shared system to provide the kind of peer review
15 that will validate information and allow people to address
16 new information as it comes up. Because as we know, REACH
17 is in place and new data are coming out every day.

18 An assessment, for example, of a chemical might
19 become outdated six months from now. So there needs to be a
20 living process whereby information can be updated. And I
21 think the best way to do that is to make it as open as
22 possible and allow for a process of people to say no, that
23 estimated value should be replaced with this test result,
24 you know, as things move forward.

25 So I am not saying exactly how to do it but just

1 to keep in mind that it's possible to build a shared
2 platform on peers who can keep updating it so that DTSC --
3 no one organization or body is responsible for that amount
4 of work, which will be overwhelming. And my experience with
5 tools like CleanGredients and things like that is that you
6 can build a living database with checks and balances in it
7 that allows for transparency.

8 CO-CHAIR CARROLL: Thank you, Lauren. Ken then
9 arbitrarily Dale and Kelly. Sorry.

10 CO-CHAIR GEISER: Thank you, Chair. So I guess my
11 understanding is the technical and scientific review panel
12 was initiated by Dale. For the general kinds of reviews
13 that we have spoken about before I do think it is too much
14 to ask this panel to carry all of that and much more
15 attracted to the idea of trying to work with these certified
16 assessors and validators out in the actual market for it.

17 But on this issue, on the issue of conflict
18 resolution, on the issue of really trying to deal with
19 different alternatives assessments or different, the reviews
20 for the alternatives assessment, finding conflict and I'm
21 sure that we will see these kinds of things. Here I think a
22 technical and science review panel makes sense and one that
23 is sort of contracted by the Department to actually do
24 these.

25 And the way we do it in the Toxics Use Reduction

1 Program, there is a science review panel that is managed by,
2 in this case, the Institute. That conflicts come to that
3 panel. And the way we divide it up is the science panel
4 must make a recommendation based on science, on the science
5 and technical questions.

6 But they do not have the ultimate recommendation.

7 It comes back to the Institute then to consider the
8 economics and other policy implications of that decision and
9 then makes a recommendation to the State. And the reason
10 for that is we wanted to make sure that the science panel
11 really focused only on the science questions and was free of
12 having to look at what the consequences of their decision
13 would be.

14 And so if you do do it I would urge that you keep
15 the science and technical issue very cleanly separated from
16 the policy and economic implications of a decision.

17 CO-CHAIR CARROLL: Thank you, Ken. Dale.

18 PANEL MEMBER JOHNSON: Yeah, just to talk about
19 the peer review process. So for instance -- and it is not
20 necessarily analogous with the peer review of a journal
21 article or even a grant because when we do that you rarely
22 have to state your conflict of interest. So you review
23 articles, you're going to review grants within your own
24 area. And quite frequently it's a conflict of interest but
25 it's never stated that way.

1 However, when you get into the kind of process
2 that's decision-based. And essentially what you're saying,
3 Ken, is just keep it on the scientific part. But also it is
4 not a conflict of interest because it is scientific
5 expertise. When you get into a decision process that's --
6 where you are going to make recommendations on a decision,
7 then you have to be able to state your conflicts of interest
8 in that particular case. So that's kind of the difference.

9 One of the things that I was thinking of when Joe
10 was mentioning the, kind of the accelerated, transparent
11 track versus maybe a CBI track. And the fact that we got
12 into the discussion where DTSC cannot charge a fee for
13 certain types of things, it cannot add a certain burden onto
14 the CBI track in that particular aspect.

15 But what you could do, I think, and you have to
16 check this. I think that to dis-incentivize the CBI track a
17 little bit you could actually attach a scientific or a
18 review board on to that process. That the manufacturer then
19 would have to establish that board and pay for the cost of
20 that board to actually be part of the process to keep it
21 CBI. So it kind of gets it out of the idea that you have to
22 charge a fee through the regulations but then there's a cost
23 to it that goes to the manufacturer who is doing that.

24 CO-CHAIR CARROLL: Thank you, Dale. Kelly and
25 then I have Tim.

1 PANEL MEMBER MORAN: I'm just going to comment on
2 a couple of aspects of this. First, I have heard a bunch of
3 discussion of the validation that kind of goes to this piece
4 too. I guess I had been envisioning more of a peer review
5 process but not a volunteer one. I think this is going to
6 be way too big of a job for professionals to take on as a
7 volunteer thing.

8 But I had been envisioning that the approach that
9 the validator/reviewer would take would be more analogous to
10 that of a peer review rather than actually redoing every
11 calculation in the thing. And actually this is something
12 the Department, the level of and scope of this is exactly
13 what Art, I think, is thinking about. You know, what does
14 this entail, will help make this conversation more valid.

15 Part of the peer review process is that when you
16 are publishing a paper you'll get back a set of comments and
17 the editor of the journal will make a decision, the paper is
18 suitable for publication; the paper is suitable for
19 publication with revisions, the most common; the paper is
20 not suitable for publication. And just like that process I
21 would expect that the person who prepared the AA would
22 receive back a, this AA needs to be fixed and then re-
23 reviewed; this AA needs some minor corrections that you
24 could make and then submit the whole along with the review
25 to the Department; or this AA is good to go as is, in

1 probably some instances. So I would expect that would help
2 deal with some of this conflict problem.

3 In terms how to think about and approach the
4 differences among AAs. One thing I'd just encourage the
5 Department to think about is the fact that it will have the
6 benefit of receiving all of the AAs for a product chemical
7 combination. Hopefully at once if you set the schedule at
8 once. Then you can look at them all together and figure out
9 what's going on. And although there may be differences in
10 methodology, do those differences matter? Do they matter in
11 terms of the regulatory decision you're going to make and
12 what's going to happen going forward.

13 And then finally, I was kind of hoping somebody
14 from OEHHA would be here. There has been some discussion
15 about differences in the hazard information. And that
16 concerns me a lot because I guess I had been anticipating
17 that the hazard information would be, would be finding its
18 way into the clearinghouse and in fact that OEHHA would be
19 the arbiter of what are the right numbers and when there was
20 any dispute in numbers that those should be the numbers that
21 go into the clearinghouse.

22 So I guess I'd encourage that the Department and
23 OEHHA have some conversations around that aspect because I
24 am worried about exactly that kind of thing. And that
25 should be able to be figured out up front because you don't

1 really want assessors and companies making decisions and
2 then finding out that the number was wrong. Thank you.

3 CO-CHAIR CARROLL: Thank you, Kelly. Flags down
4 if you are not asking for the floor, please. Tim and I will
5 make a short comment afterwards if there are no other
6 requests for the floor. Tim, go ahead.

7 PANEL MEMBER MALLOY: Thank you. When I think
8 about Section III and conflict resolution I come to it with
9 the notion of that the AA is input to a regulatory decision.
10 That's what makes it different than peer review of journals
11 and other types of actions. And I worry about all these
12 conflict resolutions. All of them, really is -- it goes to
13 some of the concerns you've heard about, you know delaying
14 and extending the amount of time.

15 And I think there is not really a need to have a
16 conflict resolution on an AA. I kind of conceptualize the
17 AAs in a sense like, you know, a permit application. Or
18 maybe a better analogy would be a feasibility study, RIFS in
19 a Superfund context. Where a party is doing the analysis,
20 it's going to inform regulatory decision. You don't appeal
21 the RIFS, it's the party's best effort in accordance with a
22 work plan that has been approved to put together the
23 information that supports the decision that the agency has
24 to make. So it's not as if you appeal or don't appeal the
25 RIFS.

1 Now there are a couple of things that you can do
2 to try and resolve differences in advance of the regulatory
3 decision being made but I think you want to be careful to
4 not turn those into mini-litigations which could hold
5 everything up. So here's a couple of things I think we
6 could draw experience from other scenarios.

7 One would be, I think it's really important to
8 give people the opportunity to provide comments on the AA.
9 So if the manufacturer disagrees with the validation
10 findings, I think Kelly is right. I mean, they're going to
11 have an opportunity before they submit everything.

12 (Feedback is heard.)

13 PANEL MEMBER MALLOY: Perhaps someone disagrees
14 with me.

15 (Laughter.)

16 PANEL MEMBER MALLOY: They're going to have the
17 opportunity before they submit everything, I think to
18 respond to it. So maybe they are going to make the changes
19 the auditor suggests, in which case there is no conflict.
20 If there is a conflict well gee, they'll submit the audit
21 and they'll submit their report. And I think there comes a
22 point where DTSC has to make the decision with input from
23 other parties. So they'll have the input from the
24 manufacturer, they'll have the input from the auditor. They
25 should have input from the public, from NGOs, so on and so

1 forth.

2 But I think there comes a point where it's not,
3 you know, the idea that you would go to, you know, the
4 certifying body to make a substantive decision or that, you
5 know, DTSC would hear an appeal and that a science panel
6 would be a second level of appeal, to me seems to be over-
7 proceduralizing this.

8 And instead what you should have is the submission
9 with all of the comments coming in and then DTSC should move
10 on and make their regulatory decision. They may accept some
11 of what's in the AA, they may reject it. They may require
12 changes to it. But I don't think you need to have a very
13 complex, a very complex conflict resolution that there is
14 some room for kind of organic interactions with people.

15 I say all this, though, with this overlying caveat
16 which is, I am not sure where -- since we don't have the
17 structure set out I don't know where all this fits in to the
18 Administrative Procedure Act generally in California. Some
19 statutes say with permit reviews there is a set internal
20 conflict resolution process. Is this, is this a regulation
21 the way we think about -- it says a regulatory response I
22 think.

23 So what will come out of DTSC? Is it a, is it a
24 regulation? Is it going to be an approval of, you know,
25 continued -- I am not exactly sure what it is. And

1 generally speaking there's different routes of review for a
2 permitting decision, which this feels like, and a more
3 sector-based regulation of general applicability, which I
4 guess this could be. You know, it's not clear to me what
5 form it's going to take. So that's my only caveat on this
6 whole thing which is, you have to put it into the legal
7 context. Until you decide what your regulatory response,
8 what kind of animal it is, it's hard to kind of assess what
9 formal legal APA review would be required.

10 CO-CHAIR CARROLL: Thank you, Tim. Lauren.

11 PANEL MEMBER HEINE: Thank you. I would be very
12 interested in an update on the chemical information
13 clearinghouse or the toxics information clearinghouse.
14 Because when we spoke about it last time my understanding
15 was that it will be a compilation of resources and a link to
16 data sources and maybe a compilation of data from various
17 sources.

18 Alternatively, if it is a place where those data
19 are evaluated and classified with -- say there's 300 values
20 for one chemical end point and then OEHHA makes a decision
21 and puts that decision into the clearinghouse. And then --
22 that could be a very useful tool. But I have never heard
23 that DTSC was going that route. And then that would also be
24 a very valuable tool for assessors who are using this. So I
25 think getting some clarity on the role because that would be

1 a very fundamental tool toward doing the AAs.

2 CO-CHAIR CARROLL: Odette, you want to comment on
3 that?

4 CHIEF DEPUTY DIRECTOR MADRIAGO: Very quickly.
5 And I can't get too far down in the weeds because I am not
6 that knowledgeable and I don't see any of our people who are
7 working on the clearinghouse in the room. But my
8 understanding is that it's the latter. That it will be a
9 compilation of information.

10 CO-CHAIR CARROLL: But not curated?

11 CHIEF DEPUTY DIRECTOR MADRIAGO: I don't think so
12 but I don't want to swear to that.

13 PANEL MEMBER JOHNSON: I think it's curated from
14 the source.

15 CHIEF DEPUTY DIRECTOR MADRIAGO: I think we do
16 have a staff person who knows a little bit more about this
17 than I do, Su Patel. Very quickly answer the question.
18 Thank you, Su.

19 MS. PATEL: I'll try to be quick. The information
20 that you have -- this is Su Patel. What you said is
21 correct, we are trying to get -- the idea is to get all the
22 information in there. The idea of curating or evaluating
23 the data by OEHHA, we haven't talked it in those terms.

24 And I'm hesitating because the way the statute is
25 written, the way the mandate is, that we build it upon the

1 recommendations made by OEHHA. So they are going to define
2 what the hazard traits are, what the end points are and what
3 needs to be in there. But it's an interesting idea and I'll
4 bring it back to my team.

5 PANEL MEMBER HEINE: Thank you.

6 CO-CHAIR CARROLL: Thank you, Su. Roger and then
7 I'll take a crack and we'll move on.

8 PANEL MEMBER McFADDEN: Thank you, Chair. This is
9 just a question and it is this idea of appeal. Because
10 somewhere here there needs to be the idea, even in peer
11 review, that when one of my peers reviews what I've said it
12 doesn't end there. I have an opportunity to respond to the
13 peer review. So I'm concerned that if there isn't a clear
14 appeal, some level in this, then it seems like maybe DTSC is
15 shutting off the dialogue somewhere.

16 I am curious and maybe this is a question more for
17 you, Odette, and DTSC. Is there an appeal process for the
18 regulatory response? Because it strikes me that maybe
19 that's where the appeal happens is at the regulatory
20 response level rather than before but I am not certain on
21 that. I am just curious, is there an opportunity for a
22 company to appeal the regulatory response other than through
23 the legal courts?

24 CHIEF DEPUTY DIRECTOR MADRIAGO: And I can really
25 only answer that by telling you what was in the last draft

1 of the regulations because we haven't talked about how we
2 are going to address that going forward. But as I recall it
3 was in the last draft; maybe both of the last two drafts, I
4 can't remember. That there was a process. I don't know if
5 I would call it an appeal process but it was an opportunity
6 for public comment on the post-regulatory responses.

7 PANEL MEMBER McFADDEN: That's all I had.

8 CO-CHAIR CARROLL: Thank you, Roger. I would like
9 to make a comment here. I am, I think, the person most
10 responsible for having had this in here and it's primarily
11 because of my own personal definition of entropy, which is:
12 left to themselves things tend to go to hell.

13 (Laughter.)

14 CO-CHAIR CARROLL: This is one of my concerns. We
15 have talked in this room a lot about "the AA." It is my
16 hypothesis that particularly if you're talking about things
17 that are popular or controversial that you have more than
18 one AA. And I am going back to what I think was in one of
19 the earlier straw versions of the regulations, the
20 discussion of publicly available alternatives assessments.
21 In other words, things that have already been done.

22 Allowing that in itself means that you are going
23 to have at least more than one approach. You can have, you
24 could have manufacturers doing this. But let's imagine you
25 have a situation where a manufacturer is comparing two

1 materials and one of them is the chemical of concern in the
2 product of concern and the other would be the alternative.

3 Well, if you don't make that alternative then
4 you're going to be doing the evaluation of it. And you may
5 have a point of view in terms of doing the AA as to what's
6 important and how it's done. I suspect that the
7 manufacturer of the alternate material will also have a
8 point of view and at the very least would comment if not
9 taking the opportunity to do a full AA comparing exactly
10 those same two things. And I'm just guessing you might get
11 different results.

12 So the point is, you may have a multiplicity of
13 AAs that compare the same things and come to different
14 conclusions. And my first question is, what gets considered
15 in that process? What's the decision-making process among
16 these AAs? Do you accept one in whole cloth, do you take
17 pieces from various ones? How do you know what's compelling
18 information in order to make the decision? So that was the
19 first place where perhaps it's not conflict resolution but
20 it is certainly information rationalization that will have
21 to take place when a decision is made.

22 Then the discussion was about, okay, so is there
23 an appeal after the decision gets made about what the remedy
24 is, about what gets done? And I suspect that it would
25 really be good to either that build that into the process or

1 to say yes, there is dispute resolution, it's called the
2 courts. That's another, that's another approach you could
3 take.

4 But I think -- I guess I am urging the Department
5 to anticipate that decisions made that have the kind of
6 economic impact that these might have depending on what they
7 are, you probably should game through the what-ifs when you
8 get to the end of it and think about either what kind of
9 discussion or appeal you want to allow for that or to at
10 least understand that not every decision made will be 100
11 percent popular.

12 So that's my thought. Ann, go ahead.

13 PANEL MEMBER BLAKE: I have been sitting here sort
14 of struggling with how -- exactly the position that you have
15 outlined. What you do in the face of a multiplicity and
16 what sort of resources the Department would need in order to
17 do that.

18 And that to me is the appeal of the technical and
19 scientific review panel, but I am having trouble trying to
20 picture how you would structure it, whether it needs to be
21 flexible so that you can bring in resources around specific
22 controversial issues or whether it needs to be something
23 that's established --

24 (Co-Chair Geiser and Panel Member Heine
25 exited the meeting room.)

1 PANEL MEMBER BLAKE: -- established and set with a
2 certain level of expertise or being able to bring in
3 expertise as you need it. So that's -- one model that I
4 have been thinking of is the NSF third-party standard
5 organization which has a committee, an oversight committee
6 with an obvious, not a conflict of interest but a declared
7 interest for public health. So that's one possibility, you
8 could just have someone that has a defined interest as a
9 resource for the Department to vet decisions. And maybe
10 some hybrid of where you could bring in resources to deal
11 with specific controversies around the multiplicity of AAs
12 as they come up.

13 CO-CHAIR CARROLL: Thank you, Ann. Tim, are you
14 still, is your flag up?

15 PANEL MEMBER MALLOY: This is up.

16 (Laughter.)

17 CO-CHAIR CARROLL: Okay. I didn't know whether it
18 was a residual up from before or --

19 PANEL MEMBER MALLOY: I appreciate the
20 categorization, it's very precise.

21 Your comments. I wanted to respond to your
22 comments because it's kind of the way I think about it too,
23 although I come to a different place ultimately. Which is,
24 I keep thinking about the AA as input and a multiplicity of
25 AAs is a multiplicity of input. But I feel like the central

1 function of the agency is to take all that input and then
2 make a decision.

3 So the regulatory response will not necessarily be
4 picking one AA versus another but rather looking at all the
5 information you gain about what one person says is a viable
6 alternative, perhaps what other people say are not, inviting
7 the public comment. But at some point it becomes the
8 responsibility of the government in a regulatory program to
9 make the decision. And I think using the AAs as input,
10 providing public -- opportunity for public comment on those,
11 gives lots of opportunity for people to have their say and
12 then the government has to make a decision.

13 What happens after that in terms of when the
14 response action, whatever form that takes, what happens.
15 And you're right, I think that has to be resolved. Because
16 if it were -- if we were saying, okay, Company A submits an
17 AA, their competitors submit AAs, whatever. But we're going
18 to make a regulatory response just for Company A and a
19 different one perhaps for Company B.

20 I don't know, that's like a permit. And typically
21 in permitting you go to an administrative hearing board
22 first and they listen and hear what all the parties have to
23 say and it's a first cut, make a decision about whether that
24 permit stands or not. And then if somebody really wants to
25 push it it goes to the courts, right? So one could see that

1 as being an appropriate framework that could be set up in
2 the statute.

3 The other kind of framework is, and you know,
4 think about like CARB and some of their air toxics control
5 measures. Whether or not they're looking at consumer uses
6 of different products. The other approach is you have a
7 regulation that gets issued. And that one, there is not an
8 internal hearing board that hears that. That one goes to
9 the courts. You challenge a regulation in the courts and
10 there is not kind of a stopping or way point before you get
11 there. And you could structure this that way.

12 And I think you have to make the decision -- well,
13 that's where I get to this. I don't know -- since I don't
14 know what a regulatory response is I am not sure what under
15 the APA would be the requirements there but somebody ought
16 to think that one through I think. But I wouldn't build
17 into the regulations yet another layer before each of those
18 that creates so many things. So I was just responding to
19 your thoughts.

20 CO-CHAIR CARROLL: I appreciate it, thank you.
21 Okay, so here's what I've got. I have Mike, Dale, Joe and
22 Kelly and we are now at 11:34. So I am going to honor all
23 four of those requests for the floor and I am going to put
24 you on a one minute clock.

25 PANEL MEMBER MORAN: Are we --

1 CO-CHAIR CARROLL: You're pointing at something.

2 PANEL MEMBER MORAN: I put my flag up to talk
3 about work plans.

4 CO-CHAIR CARROLL: We're going to get there.

5 PANEL MEMBER MORAN: Okay, I'll put mine back
6 down.

7 CO-CHAIR CARROLL: I want to close this topic down
8 and then I -- that's why I wanted to save some time for work
9 plans. Okay, so Mike, one minute please.

10 PANEL MEMBER KIRSCHNER: Okay. Well, Tim got to
11 the point that I wanted to make and that is that you will
12 have -- for any chemical of concern product category you
13 will have a multiplicity of manufacturers, competitors
14 producing AAs for their own product. And it needs to be
15 clarified, obviously, whether the regulatory response is for
16 each manufacturer, each AA or for the group.

17 I believe you will have different situations for
18 each manufacturer that could very well result in different
19 regulatory responses for each AA. The general AAs that are
20 received in that situation like from NGOs or from academics,
21 if they want to point them at a particular situation perhaps
22 they could be pointed at a particular manufacturer's
23 situation or it can be used globally. But I just want to
24 make sure that that is something that needs to be considered
25 because otherwise, as Tim said, this could get a little out

1 of hand.

2 CO-CHAIR CARROLL: Thank you, Mike. Dale, one
3 minute, please.

4 PANEL MEMBER JOHNSON: I don't think you have to
5 limit your idea that there could be a single AA result,
6 let's say for two identical products. One manufacturer
7 could submit one that makes a substitution that's valid.
8 Another manufacturer could submit another one that's a
9 different type of substitution but it is valid in itself as
10 it stands alone.

11 Where the conflict will come is that the first
12 manufacturer submits an AA and makes a substitution and
13 doesn't actually deal with all of the issues that could have
14 been dealt with. The second manufacturer comes in and deals
15 with all the issues and comes to the conclusion, which could
16 be valid based on that, that a substitution doesn't need to
17 be made. So that's where, that's where I see some conflict
18 coming in.

19 But then in that particular aspect there is an
20 appeal process. The first manufacturer could come back and
21 say, not considering that particular decision then we are
22 going to resubmit and look at this thing in a slightly
23 different way. It gets complex but I don't think you
24 necessarily have to think that there's only going to be one
25 solution for every chemical of concern within a product.

1 CO-CHAIR CARROLL: This is starting to sound like
2 REACH to me. I smell SEPs coming next. Joe.

3 PANEL MEMBER GUTH: I think, if I understand, Tim
4 has been suggesting that maybe DTSC is going to have to make
5 a decision about some of these things at the end of the day
6 and then maybe it should just incorporate or fold all those
7 decisions into the response action. Would add a separate
8 appeal process for the AA, if I understood.

9 I guess I think that sounds a little awkward.
10 That if there's an AA that the Department sees an error in,
11 let's say. To not clarify that you could say, this was from
12 the AA, here's how the AA needs to be, and then base a
13 response action on that. That seemed awkward.

14 I think we need to have -- where there's a problem
15 or a clarification or a change in the AA there needs to be,
16 I think that needs to be spelled out explicitly and separate
17 from the regulatory response to that AA.

18 CO-CHAIR CARROLL: Thank you, Joe. At this point
19 I would like to move on to the section on work plans. And I
20 remind you that we had at least a bit of this discussion
21 yesterday from the perspective of the qualitative versus
22 quantitative or preliminary versus final discussion
23 yesterday. And you want to modulate your discussion on work
24 plans with some of that that we heard yesterday.

25 Joe, is your flag up for here?

1 PANEL MEMBER GUTH: (Lowered name tent.)

2 CO-CHAIR CARROLL: Okay. Then I see Kelly, and
3 the floor is yours, and then Ann.

4 PANEL MEMBER MORAN: Here I just want to be brief.

5 I understood why -- I think I can understand why the
6 Department was interested in work plans and I understood
7 that the Alliance also expressed an interest in work plans.
8 But I am very hesitant on this. I actually think that the
9 Department should be looking at alternative approaches to
10 address the needs because of the funding situation. This is
11 one of those -- my experience with pesticides has really
12 made me very nervous about this and having the resources to
13 do it.

14 When you're reviewing a work plan you are actually
15 looking for what's not there. And that's the hardest kind
16 of review, what isn't there. And especially if you are
17 being asked to bless it, that's a hard review. That takes a
18 while, it takes a lot of skill. This isn't an absorbable
19 cost and it could a huge amount of delay.

20 So I'm actually -- and I'm really worried about
21 the idea of some sort of default approval because I think
22 that that would give a person who submitted it a false
23 confidence that it was real. That the Department actually
24 believed in it. Then they would go ahead and work on that
25 and they'd turn in the report and the Department would say,

1 oh no, this isn't an appropriate way of dealing with it.

2 So I think we have to look towards methodology
3 approvals through our certification process, the assessor
4 training, all that kind of thing. We really have to be
5 looking at some other ways of making sure that people are
6 using the right methodologies as long as we are in this
7 funding situation. So thank you.

8 CO-CHAIR CARROLL: Great, thank you. Ann.

9 PANEL MEMBER BLAKE: So I am not sure if this is a
10 helpful thing but I would think that you would also want to
11 look within your own experience to SB 14. It's been a while
12 since I've looked at SB 14 so I'm sort of deferring to Kathy
13 who is the expert on that and taught me about it. But the
14 experience of work plans, both pluses and minuses of how
15 that worked in terms of work plan review and how much work
16 and effort that has been. Kelly has put her flag back up
17 again.

18 PANEL MEMBER MORAN: Oh. (Lowered name tent.)

19 PANEL MEMBER BLAKE: And so just to look at that
20 since you have got a lot of experience over time within the
21 Department. See if that's something that could be
22 applicable from lessons learned from that program.

23 CO-CHAIR CARROLL: Great, thank you, Ann. Bob and
24 Tim.

25 PANEL MEMBER PEOPLES: I appreciate all the

1 concerns about limitations of resources. And I think that
2 my comment is consistent with Kelly's from the point of view
3 that this to me may be an area where the burden could be
4 shifted to the submitter. And that could be done by putting
5 some effort up front into outlining a template which has
6 comprehensive content for considerations.

7 And then the folks conducting the assessments are
8 responsible for, you know, submitting all that information
9 through all the elements, however you want to describe this
10 thing. Then the efforts can be expended on the analysis and
11 reviews of the AAs and the decision-making process that has
12 to be done to, you know, make your recommendations.

13 CO-CHAIR CARROLL: Thank you, Bob. Tim.

14 PANEL MEMBER MALLOY: I agree with all the
15 concerns I have heard about resources but I also believe
16 that the work plan portion of it is scoping out the problem
17 of what you are going to do. I think that's really the
18 critical part because you don't want to be having a
19 completed AA and then somebody say, oh, but what about this,
20 right? And again I go back to my Superfund experience with
21 RIFs. Scoping a work plan for those was kind of the most
22 sensitive part and the part that people really paid
23 attention to so I think it's really important to have that.

24 One suggestion I would make is, you know, in terms
25 of AA review we talk about the notion of an auditor kind of

1 serving as a surrogate substantive reviewer for the
2 Department, given those resource constraints.

3 One way of addressing the resource problem and
4 also providing some perhaps level of continuity in the
5 performance of an AA would be to say, you have to develop a
6 work plan according to certain criteria that are in the regs
7 and the work plan has to be reviewed by an auditor who would
8 provide comments on it, certify the work plan.

9 The submitter could decide to make the changes in
10 accordance with what the auditor suggests or decide to move
11 forward not making those changes. But at least they are on
12 notice that when the AA comes through, when the auditor --
13 when an auditor reviews it, one of the things they may get
14 back was that the auditor says, look, I can't certify this
15 as being done in accordance with the regulations, so on and
16 so forth, because you didn't do this and you were warned
17 about doing this in the scoping plan.

18 So I think maybe we could have kind of the review
19 of the work plan kind of along with the same analog of
20 substantive regulatory review by including the auditor in
21 that portion -- at two segments, at work plan development
22 and then at AA review.

23 CO-CHAIR CARROLL: Thank you, Tim. I have Mike
24 and Roger and I am going to close the discussion at that
25 point. Mike.

1 PANEL MEMBER KIRSCHNER: Just real quick. The
2 manufacturer is going to write a work plan anyway. They
3 have to write a project plan, period. So whether it gets
4 submitted is really the issue and reviewed. So if there's
5 adequate guidance from DTSC on what the AA should contain
6 the plan would necessarily need to reflect that. So I am
7 not really convinced that it needs to be submitted for
8 review.

9 CO-CHAIR CARROLL: Great, thank you, Mile. Roger,
10 the last comment is yours.

11 PANEL MEMBER McFADDEN: Thank you, Chair. I would
12 agree with Michael on that. Work plans are critically
13 important and will be used within businesses because that's
14 just the way we do things. We want to lay out the scope of
15 the project and that's what we'll do.

16 What could be helpful, though, would be if there
17 were some type of a template or some type of kind of
18 checklist of what should be included in the work plan. It
19 doesn't have to be too specific but that could, you know,
20 reduce the cost of those resources that need to be used to
21 look at the work plan. So that might be something to
22 consider, thanks.

23 CO-CHAIR CARROLL: Thank you Roger.

24 PANEL MEMBER JOHNSON: Can I just make one?

25 CO-CHAIR CARROLL: Very quickly. Go ahead, Dale.

1 PANEL MEMBER JOHNSON: And what you have
2 described, what Bob described also was the concept of Option
3 B. And that was that there was a template, there was this
4 process that would be easy for DTSC to actually get it. But
5 then additionally it puts it on the clock. Once it's
6 submitted it puts it on the clock. So it doesn't go through
7 a real detailed --

8 CO-CHAIR CARROLL: Thank you. Odette, I would
9 like to call on you for a short review of whether there are
10 gaps in things that you needed and a review of the process
11 the last two days, please.

12 CHIEF DEPUTY DIRECTOR MADRIAGO: This is going to
13 be very short because I know everybody really wants to hear
14 from Debbie instead of me. And also because there is so
15 much here it's really hard to hit on everything.

16 I think the comments have been really specific,
17 which I appreciate. I mean, there are a few areas. And one
18 that jumps out for me is tradeoffs. Where I think we got
19 some good guidance in terms of how maybe to approach that
20 but not -- still there's an awful lot of thought that needs
21 to be gone into in terms of how to deal with tradeoffs.

22 And as I think I said in the opening remarks
23 today, that in contrast to the subject we discussed
24 yesterday, I saw in the subcommittee conversations a lot
25 more divergence in views and perspectives. And I think I,

1 you know, I heard that here today so that's why I don't
2 really want to spend a lot of time going through each of
3 these and saying, we heard this or we heard that, because I
4 would have to make sure I've covered all the bases.

5 So if it's okay I would just like to close with
6 that and thank you all very much. I and the staff have
7 really enjoyed and appreciated you all working with us on
8 this latest round of subcommittees. This is going to be
9 very valuable for us so thank you.

10 CO-CHAIR CARROLL: Thank you, Odette. And thank
11 you to you and all of the staff for the great work that was
12 done to set this meeting up. We couldn't have had the kind
13 of productive discussion that we had without the template
14 and work product that you brought forward, thank you very
15 much. All right, Madam Director, it's yours.

16 DIRECTOR RAPHAEL: All right, thank you. Thank
17 you, Chair.

18 So I want to start by thanking some people who
19 also we could not have done this without and that is our
20 Department of General Services and Thomas Properties. So if
21 you look around the room there are people operating cameras
22 and doing webcast work. And I think the over and above
23 piece that they had to do was move rooms. So, you know,
24 they set us up so beautifully yesterday and then were
25 notified, oops, you know, we're going to have to move. So

1 thank you for that.

2 You know, if all we did was reach out to the
3 people who couldn't make it to Sacramento that would be a
4 real shortfall in terms of public process. So I think it's
5 critical that what goes on in this room is not secret and
6 isolated but is accessible to anyone who wants to
7 participate. And without you in the room making that happen
8 that couldn't exist. So you have a very important role in
9 democracy, in public process and I appreciate that.

10 So I am going to quote Dawn Koepke here. And I
11 quite her often because it's become my mantra and my thought
12 in terms of moving forward. When she said to me over lunch,
13 "You know, we are not starting over, we're starting fresh."

14 And there's some real significance to that difference
15 statement. When you start over you throw everything out the
16 window and you really are starting from ground zero.

17 And because we are not doing that because we have
18 had an amazingly productive two years, whether it's been
19 with the Wiki and the frustrations of that or with this
20 panel meeting and all the pages and pages of comments that
21 have come in and the hours of work of the reg team. A lot
22 has happened before today. And so because of that that has
23 a big impact on timeline.

24 So I tend to think of life in terms of blessings
25 and curses. So the fact is the blessing and the curse is we

1 already violated the law. So the law said that we needed to
2 be done by January 1 and we missed that deadline. So the
3 blessing of that is that it gives us tremendous freedom to
4 do this right. The possible curse is it could go on
5 forever. And so what we have done as a team is try and set
6 up a realistic timeline for doing it right.

7 And so what I am going to announce is a single
8 date and then you guys can extrapolate from there how it
9 moves forward to do it right. So the single date is mid-
10 October. So in mid-October there will be for public review
11 informal regs. And that actually is fairly ambitious. And
12 yet it's doable because we are not starting over.

13 So we have been getting a tremendous amount of
14 input all along and in mid-October there is going to be
15 something for you to see that really, I hope, answers some
16 of the questions that are out here in terms of what are our
17 expectations. What is scope? You will know what is scope
18 at that point. You will know what we mean by iterative.
19 You will have -- you will have many questions answered.
20 However, there will be some flexibility built in as we then
21 get to the real, the formal regs.

22 So what will happen is mid-October those draft
23 regs, those informal regs come out. And then I want to, we
24 want to have another meeting face to face with the panel to
25 go over them. What are the consequences of what you see?

1 So it's, you know, really what Odette has done in her
2 framework is put out various options. We will have selected
3 options so you can really see the thinking and how we have
4 taken into account what you have said.

5 Between now and mid-October we will be holding
6 some stakeholder meetings to go outside of science. And I
7 think this was something that was mentioned by Ken and
8 others about that a review panel needs to know the
9 difference between scientific review and other issue
10 reviews. And so we are going to be meeting with specific
11 stakeholders to really get at some of the issues that were
12 not covered here and appropriately not covered here. And
13 that input will also flavor what comes out the other end.

14 So what we are looking at, and this is where you
15 guys need to get your pencils out. November 14th and 15th.
16 That's a Thursday and a Friday. No, Monday and a Tuesday.
17 Monday and a Tuesday, yes, sorry. It's a Monday and a
18 Tuesday, November 14th is Monday. So I apologize to all of
19 you who are traveling and that means you're going to travel
20 on a Sunday but this is what we needed to have happen to get
21 a full day and a half.

22 Because there's sort of structural requirements
23 for these meetings, whether it's public -- you know, public
24 comments and other pieces that necessitate doing things
25 outside of listening from you, we need to have a day and a

1 half. So November 14th and 15th is when we will meet again
2 to discuss those informal regs. And really that --

3 And then in terms of beyond that, we take into
4 account what we hear from people. We do formal reg writing
5 and then the calendar goes from there. So I can say that to
6 the best of my ability there will not be 15 day comment
7 periods. That, you know, one of the lessons learned is
8 people want to have time to review, knowing that the longer
9 the comment period the longer the process. So there is, you
10 know.

11 I do not -- I want this done right. We, everyone
12 in this room wants it done right. I think you can sense
13 that we're getting close. That we are narrowing down some
14 of the options here. And by having practical and meaningful
15 and legally defensible as our guiding principles it helps us
16 hone in what we can and can't do.

17 And I really appreciate the fact that that
18 practical element has come up again and again today and
19 yesterday. That hearing you say, okay, in my perfect world
20 DTSC would do all this. And I understand that we're not
21 there and therefore we're looking at something else as a
22 model. Hearing you verbalize that and then modify your
23 recommendations based on that is incredibly helpful to us.
24 Because then what it tells us is, knowing your limited
25 resources what's acceptable, what makes sense.

1 And, you know, as David Baltz said in his
2 comments. It has to be meaningful. And so we need to make
3 sure, you know, on our end, that we are doing something
4 interesting, meaningful and understandable to the people of
5 California. And that is what I am fully expecting you will
6 see in mid-October. So with that, that's all I have to say.

7 CO-CHAIR CARROLL: Thank you, Debbie. So we'll
8 look forward to getting together again in mid-November in
9 Sacramento. And I hope that you are going to be providing
10 the same kind of weather as you have for this --

11 (Laughter.)

12 CO-CHAIR CARROLL: I need to turn it over to Kathy
13 Barwick for the B-K reminder if nothing else. I guess B-K
14 in this case is Barwick, comma, Kathy.

15 MS. BARWICK: Actually I was going to start with
16 that but I have two other things I want to tell you very
17 quickly. Of course you all know the rules with discussing
18 panel business outside of the meeting so I trust that that
19 will continue to be observed.

20 For those of you that are requesting travel
21 support. I will send the form out this afternoon.

22 And finally, there is another meeting here in this
23 room at one o'clock and we need to clear out of here as soon
24 as possible. So if anyone has any lingering conversations
25 let's move them out there. Not about panel business.

1 So thank you very much, I'll turn it back over to
2 Bill.

3 CO-CHAIR CARROLL: Thank you.

4 PANEL MEMBER JOHNSON: Turn these -- do we --

5 MS. BARWICK: Oh. Leave your stuff on the table,
6 I'll collect it.

7 CO-CHAIR CARROLL: All right.

8 MS. BARWICK: And take everything else.

9 CO-CHAIR CARROLL: And with that thank you all
10 very much for your time, your engagement. I have enjoyed
11 the interaction with all of you. Travel safe and I look
12 forward to seeing you in November. And without objection we
13 are adjourned.

14 (Whereupon, the Green Ribbon Science Panel
15 Meeting was adjourned at 11:54 p.m.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, a Certified Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Toxic Substances Control Green Ribbon Science Panel Meeting; that I thereafter transcribed it into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of August, 2011.

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