

**U. S. ENVIRONMENTAL PROTECTION  
AGENCY**

**OPPTS STAKEHOLDERS MEETING**

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## **WELCOME AND INTRODUCTION**

**Katherine Taylor, Chief, Pesticides and Toxics Branch, U.S. EPA  
Region 9**

*The Welcome and Introduction Speech by Katherine Taylor was recorded on the enclosed cassette. The speech was not transcribed as requested.*

## **EPA's REGULATORY REVIEW INITIATIVE**

**Lynn Goldman, Assistant Administrator, Office of Prevention,  
Pesticides and Toxic Substances**

*The EPA's Regulatory Review Initiative Speech by Lynn Goldman was recorded on the enclosed cassette. The speech was not transcribed as requested.*

## **PESTICIDES BREAKOUT SESSION**

### **40 CFR, 166 EMERGENCY EXEMPTIONS, SECTION 18**

**Jim Jones, EPA Region 9, Acting Branch Chief, Registration Support Branch:** Good Morning. Welcome. I just wanted to open up here and introduce myself. I'm Jim Jones. I'm the Acting Chief of the Registration Support Branch in the (inaudible) Pesticides Program at U.S. EPA. The Registration Support Branch is where Section 18 decisions come through at the EPA.

A couple of things that you've got in front of you that I'd like to sort of go through. There are three things, I believe. One is how to submit written comments. So, if you have written comments that you'd like to submit to the agency, as Lynn (Goldman) said, if you can get them to us as soon as possible. Preferably within the next two weeks. That would be very helpful.

We'll also be recording your comments as you make them here. So, if you feel that you've gotten your point across, you don't need to submit written comments, we'll have recorded them.

Also, you've got in front of you a chart that is a summary of the OPPTS reg review. Which actually includes the third page, I believe, maybe it's the fourth page. Yeah, Section 18, as we all know and love it, is in the world of the bureaucracy, actually, part 166, "Emergency Exemptions." And, as you can see in the comments there, when the EPA people got together to think about changes that could be done for the Section 18 program, there was no consensus. Which is one of the reasons that we decided to come out to talk to people who live with Section 18, to get their input on that. This also includes all of the other regulations that were looked at by the agency.

And, finally, you have a piece of paper that looks like this. Which is, it reiterates the five questions that Lynn asked us. And then, below that, are the key provisions of the code, federal regulations. And then the next page is actually Section 18 of FIFRA, which is the statute under which we're operating. It's pretty brief. And after that, are the seven or eight pages of regulatory text that the agency promulgated several years ago that govern our implementation of the emergency exemption program.



So specifically, this is the regulation that we're most interested in hearing your comments on today. Although, as Lynn (Goldman) said, we are willing to certainly entertain other input on other pesticide regulations. But, we would certainly like to start out the discussion today with feedback from you on the Section 18 program. In particular, the regulations that govern that program.

And, just to sort of recap, the type of questions we're soliciting input on:

- \* What part of the regulations do you find overly burdensome?
- \* Are there unnecessary paperwork requirements?
- \* Is there a better, less burdensome alternative?
- \* Is the regulation written in plain English and easily understandable?
- \* And, does the regulation itself make sense?

So, that being said, I'd actually like to introduce Jim Wells, the Director of California Department of Pesticide and Regulation, who would like to make a few statements before we get rolling. Jim.

**Jim Wells, California Department of Pesticide Regulation (DPR):**

Thanks, Jim. I get this privilege 'cause it's in my back yard. I get extra time at the mike here. I want reiterate what Jack said. We're very pleased that EPA was able to come out and hold a workshop like this and really let people talk straight to 'em about what they think the problems are.

There are people here from California that are a lot more technical than I am that can get into the details of some of the problems that we have and what we'd like to see changed. I won't pretend that I know what rules have to be changed, or exactly what depth these things need to be rule-making, what could be policy, and what could regulation change.

But, there are just a few things that, over the years, in dealing with Section 18 at my level, I've come to see as problems. The amount of detail that we have to put into Section 18's means you have to plan ahead for emergencies. And that's pretty difficult sometimes to do.

We'd like to see a little less detail, a little more flexibility, and maybe more sort of pre-approval with trigger mechanisms, so that you know if you have a certain set of circumstances occur, you're going to need to do it. That doesn't mean you're always gonna have to do it, I mean, sometimes you

need to do it. And the states need more flexibility in deciding when that is without having to wait 50, 60 days to get some kind of approval.

Economic data, the need for economic data over a five year time span is really a problem, because it doesn't account for the wide swings and variation of markets. Especially in some of the vegetable crops, or things like lettuce. You can have tremendous variability, having nothing to do with pest problems, has to do with weather and growing areas, etc.

And if you have to, with a pest problem, fall down below some low point in your value of the crop in order to get a crisis exemption for a pest problem, then you're gonna be way out of whack on years where you've already got a low value and a pest problem on top of that low value. It just doesn't make sense to equate average economic value of a crop over five years with the damage that a pest can cause in any one year.

We think there should be more flexibility in states with reissuance within guidelines, in not having to go through the whole process all over again.

We think that Section 18's need to be used for reduced risk problems. (Inaudible) without reduced risk materials onto the market in certain situations.

And we also think that Section 18's, and we know that EPA's looked at this. Section 18's full utilization in resistance management of Section 18's would be a good idea. And, I think it would get us all toward where we want to go, in terms of reduced risk and producing viable crops.

In general, though, I think a lot of the things that we're gonna talk about, that the technical people from DPR are gonna talk about today, could better serve as guidelines for a program that would be able to allow more flexibility for the states.

What I mean by that is, there isn't any sense in treating a state with a full developed registration program, with full developed toxicology program, with the ability to do some of the things a state like California can do, the same as a state that doesn't have that ability. And we think that for everybody's benefit, in re-inventing government and making things work in an easier fashion, we should be able to get some broad guidelines, some standards set by EPA. And then a program that EPA judges to be capable of

doing it. Should be able to run that program within the guidelines without detailed direction, without detailed approval processes that slow the whole thing down. And, maybe audit periodically to make sure that the state is living up to what they committed to do, that they're within the standards that have been set.

But, it just doesn't make sense to review, to set up such detailed guidelines that every application has to be reviewed in depth by the state that submits it and in depth again by EPA to make sure that everybody did exactly the right thing. And, I think that we have lots of examples to show how well that would work in a state like California.

Beyond that, that all has to do with Section 18's, but that theme is one that I think we want to put forward for re-invention of government in general. There are a lot of areas - groundwater, the state's water management plans, the Coastal Zone Act, endangered species - innumerable instances where the states are carrying out under federal guidance, federal guidelines, and federal programs, where more flexibility for states that are capable of properly utilizing that flexibility should be granted. And let EPA say, "Okay, as long as you do the job within the standards we've set up, state, then we will check you periodically, and as long as you stay on the true path, we won't interfere with you. If you vary from that path, if you don't meet the standards, then you lose some of your flexibility."

Something between the line by line equivalency of the worker protection standard and the sort of 20 years ago the granting of authority under the C and T. Where we know for a fact that in some cases, EPA just finally got so frustrated with the states that they said, "Take it; you can do it."

But, we've come a long ways in 20 years. And, I think somewhere between those two approaches is a viable approach that would:

- \* allow flexibility,
- \* cut down government expense,
- \* cut down the time it takes to make decisions, and
- \* benefit both the public at large and the user groups.

And with that, I will leave the details that know 'em better than me. Thank you.

**Fran Schultz, Moderator:** Good morning, I'd like to introduce myself. I'm Fran Schultz, and I'm just gonna facilitate today. I'm not a subject expert at all, but I'm just gonna maintain the flow of the discussion today.

I'd like to introduce Jake McKinsey, who's gonna be recording comments.

Also, all of the comments are gonna be recorded on a tape recorder today. So what we have up here is just sort of reminders of what the main points that people are making are gonna be. But everything will be recorded verbatim. And, the tape recording will be used to put together the report that will go to the President. And, because of the tape recorder, we're gonna ask that you make your comments at the microphone today, because the microphone is tapped into the tape recorder. So, even though you may have a good voice and be able to project, that's the way we'll get the comments recorded. So, I'd appreciate it if you could do that.

It looks like, given the number of people in the room, if we give everybody four minutes to make comments, and give one person the floor at a time, everybody should have the opportunity to make their oral comments today.

If you have more to say, or if you don't get an opportunity to speak at the mike, or if you don't want to speak at the mike, I also want to reiterate that you can provide written comments. You have two weeks from today to do that. And the address for the written comments is in the package of materials that was on your chair.

You can also, we've left a card on your chair, and if you'd like, if you're in agreement with comments that have been made before you, and you'd just like to record that for the record, we're gonna number the comments as people make them. You can write down the number, and just indicate that you agree with them.

And, if you would, both on your card, on your written comments, and when you step to the mike, if you would introduce yourself and your affiliation, we'd like to have that information.

(inaudible audience question). Ok, no cards on your chair. Ok, I'll pass them around as soon as we start making, as soon as we get to the comments.

All right, I think we can started. And, to make things go faster so that we're use the time most effectively, it's fine to line up at the mike, just so there's no delay in between people speaking. So, we can take it on a first come, first served basis, as soon as you're ready. Somebody's gotta be first.

**Gilbert F. Coelho, Del Monte Fresh Produce:** I'll be first. I'm Gilbert F. Coelho. I'm from Del Monte Fresh Produce. I work for Del Monte in California. I believe in Jim's comments, what he said about the Section 18's. That they need to be less burdensome.

We have materials sometimes, that are being registered for commodity, and we only can use one material. We should be able to use two or three, so we can stop resistance, or have a competitive material out in the field. So, I do think that Section 18's need to be less burdensome, less paperwork, and we do, we have commodities that we need to treat today, not tomorrow. Or not six months from now. So, we do have to cut down the paperwork.

And I'd like to see the federal government turn the EPA regs over the California, or the states. And let California, and I'm from California, let them control it, and let the federal government come and audit what California is doing.

Thank you.

**Jerry Campbell, California Department of Pesticide and Regulation (DPR):** I'm Jerry Campbell from the Department of Pesticide and Regulation, and I'm in charge of the Section 18 process.

And just to add to some of the comments that Jim Wells has made, I'd like to present just a few statistics on Section 18's, and the history in California. We believe that we're able to do the Section 18 process equally as well as the U.S. EPA. We've been working very closely with the U.S. EPA and all their review scientists in the endangered species programs, which we have a very, very good program in California. We've been working quite closely with them over the years, in their scientific reviews of the Section 18 process.

For example, since 1992, we've issued approximately 98 Section 18's. And we're very concerned about public health and the use of products that are not registered. So one of the things that we do in our review is we determine an action level, similar to what a tolerance would be. And in those 98 Section 18's, EPA has accepted 96 of 'em without comment. And, in most cases, our number was actually lower than the number that EPA had picked. So, we feel from that stand point that we're able to scientifically determine that the product can be used safely and would not pose a problem out in the marketplace.

Another area we feel strongly about is the reissuance of Section 18's. The way that the normal process normally goes, the Section 18's are for more than one year. Normally, the three to four year range is not uncommon. We believe that we should have some serious flexibility in reissuing Section 18's.

For example, in 1994, we received 45 requests for Section 18's, we granted about 32 of 'em. So, we're not here to just give Section 18's away willy-nilly. We do take a very serious look at it. However, of the 32, if we were able to reissue Section 18's for more than one year without a lot of extra work at the U.S. EPA, we would not have forwarded 20 of those 32 Section 18's to the U.S. EPA. And of the 20 that we did, naturally, EPA concurred with us that the problem still existed, and that we had adequately developed that problem.

But, what we run into is time frames where we may have problems with plantings or missing seasons in California, and it's not due to any problem with U.S. EPA, it's just that these things come all at the same time at U.S. EPA and here, and we feel that we're able to do that.

So, in that light, I think we can demonstrate that we have the capabilities, scientifically, and otherwise, to support or to control some type of California Section 18 certification type program.

Thank you.

**Jean Marie Peltier, California Pear Advisory Board:** Good morning, my name is Jean Marie Peltier, and I'm the executive director of the California Pear Advisory Board. I'd like to submit comments for the record, and I have

those available here. But I would like to take just a couple of minutes this morning to reiterate and underscore some of the items that were brought up by Jim Wells.

In particular, let me first digress for a second and give a little information about the California pear industry. We've been involved for the last two decades in a formalized, integrated pest management program, in cooperation with the University of California. In addition, we were just recognized this year by Cal EPA as receiving one of the IPM innovator awards. And, we have entered into an environmental stewardship project with Environmental Protection Agency this year. So, we're fighting the good fight.

But, that notwithstanding, we're finding that the regulatory process continues to stymie us in our ability to move ahead in our pest management attempts. In particular, the regulatory process seems to foster a system of a substitution. And, nowhere is that policy more prevalent than it is in the Section 18's process, where of course, as the regulations are currently worded, there can be no alternative materials. That falls in the face of good pest management, which would call for a wide array of materials on which growers can make their pest management decisions.

I would like to underscore what Jim said about using the process to aid us in resistance management. Because without that, we find ourselves using more and more of less efficacious materials. And in the case of some of those materials, they do have more adverse environmental effects.

Which brings me to my second point. Right now, the pear industry in California is struggling with problems with resistance to the one standard material that we're using for treating codling moth, which is an organo-phosphate known as Guthion. In other countries throughout the world, the material of choice to use for combatting codling moth are those class of materials known as insect growth regulators. There's sort of a standard joke that goes around in the industry about the one researcher who has a picture of a toddler on his lap with a Demolin hat. That toddler's now graduated from college, and the material still isn't registered.

Right now, in the Northwest, the Northwest growers have been successful in petitioning EPA for the past two years for a Section 18 registration for a material known as Phenoxycarb for use on scilla. We in California don't

have as much of a problem with scilla, and so right now, at least as we've analyzed the situation, we don't meet the criteria necessary to allow us to apply for a Section 18 for use of Phenoxy carb.

The problem with that is, that we're losing valuable time, vis-a-vis our competitors in the Northwest. And at the same time we're applying a more toxic material, the organo-phosphate, when we know through research throughout the world that the insect growth regulators could play a real role. Not only could they help us in making a shift away from Guthion, but they also could be beneficial in our efforts to move to a pheromone based program, in that we have found through our research, we continue to need materials around the borders of those pheromone confusion plots.

So, we would like to volunteer, or we would like to encourage the EPA, to use us as a test project for testing the limits of the criteria for what we can use for Section 18's.

And would strongly suggest that EPA accept the recommendation to use reduced risk as a criteria for granting Section 18's. We'd be glad to prepare any of the necessary documentation in that regard. And, would be pleased to establish a dialogue with EPA.

Thank you.

**Lynn Goldman, U.S. EPA Region 9, Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances:** (Inaudible) and I know this departs from the four minutes for each commentator format, but I think in the spirit of dialoguing, because I think this is a very interesting proposal.

I think it's fair for all of you to hear some of my initial reactions, and some of the considerations in my mind when I look at this idea of this is a way to use a Section 18 process.

Because what I'm really hearing here is, for me, this is getting back to the minor use pesticide problem. Which is, I'm sure all of you are familiar with, which is that the pesticide registrants often do not support the development of data for registrations for pesticides for minor uses. And, which then leaves us with very limited ranges of alternatives for some purposes and problems, like the Guthion problem that you have. And, I think this is a



problem that needs to be fixed. And I think that we need to be able to register safer alternatives for many of the pesticides that the minor users are stuck with. Or, at least a wider range of alternatives, because of dealing with resistance management. I am not sure that the Section 18 process is the best vehicle for doing that. And, there are a lot of reasons for that, not the least of which is that the Section 18 process is kind of meant to be a release valve from the registration system deals with the routinely needed, year after year needed products.

The Section 18 process deals with the products for which needs arise that weren't predicted, and it provides a different route in order to make the decisions for those more rapidly. These minor use needs are really year after year routine needs and that really we ought to be able to find a way to address through our registration system.

And, I want to solve the problem, but I think I need to hear back from people why the Section 18 process is the best way of solving the problem. And keeping in mind that whatever process we do, will then become available nationwide.

And not all of the states have the very sophisticated panoply of experts that California has for preparing Section 18 requests. Frankly, we have a very good record in California and some other states with virtually every request we approve.

There are other states where a lot of the requests that we receive, we are not able to approve. And I don't think that DPR would be able to approve them either. Because they simply don't meet criteria, they're not pesticides that have data sets even sometimes. Sometimes we don't even know what the risks are.

So, I just wanted to feed that back to let you know some of the issues that would factor in my mind.

And Jim, I don't know if there's anything that you want to add to that, because I think this will be useful in terms of your being able to present a case. And also, perhaps, think of other alternatives. I know that we have other registration alternatives. Such as state registrations. But, I do want you to understand, I do realize this is a problem, that we need to have a way of being able to do approvals for minor uses.

Jim, did you want to add to that?

**Jim Jones:** I've heard comments in two categories.

One, that though were very relevant to Section 18's, such as allowing the state to follow through on the second and the third and maybe the fourth year after EPA granted the first time what the state actually handled.

And then comments about allowing Section 18 to be used for pest resistance. It's a policy call that still is consistent with the emergency nature of what I think that the statute is designed for.

Then I'm hearing, the registration process isn't fast enough and it does not respond to the needs of the community. And those are, to me, just as worthwhile of recording and taking back home as are the Section 18's larger, main issues. I think Lynn is right that there's a registration frustration issue, and some other that I would call more legitimate Section 18 frustration issues, and I'm hearing both of those.

**Elan Miller, California Department of Pesticide and Regulation (DPR):** Certainly there is a frustration as far as the whole registration process. And I guess maybe if we could focus on a potential consistency.

At least in California, we're looking at a new paradigm, if I may use the word, for reduced risk. And, the whole idea of looking at reduced risk, and I guess our point here is, Section 18 is one process. It shouldn't be the process to fix this problem by any matter of means. But, if you're looking at reduced risk materials throughout the system, and looking at that as a focus, why not allow that as part of the consideration, in Section 18's. Just for consistency across the process, not as this is the band-aid, because we agree that's not appropriate. But it's something that should be considered when granting Section 18's.

**Ed Minch, Arizona Department of Agriculture:** I'm Ed Minch. I'm with the Arizona Department of Agriculture, and there's a few points I would like to make about the Section 18 process.

We would like to see an opportunity to utilize Section 18 more actively in resistance management. In other words, instead of having to wait until we have exhausted the last effective mode of action, we would like to be a little more pro-active. If we have situation in which we have a pest, which we have seen develop resistance to other pesticides, and we have reached a point where we have just one remaining effective mode of action, and there's an opportunity to utilize a new mode of action through the Section 18 process, we'd like to see that be approvable.

Another area that is of concern to us is the use of economic crop value in evaluating the legitimacy of an emergency exemption. As Jim Wells indicated, there are a lot of factors which have nothing to do with the pest situation, that can have huge impacts on crop value.

I would suggest that we substitute yield data in lieu of crop value. That still isn't perfect, because there are instances when, if there's an oversupply of a particular crop, that perfectly good crop is left in the field and not even harvested, even though it's been produced, and that won't figure into the yield data. But, it certainly gets a lot closer to what we're really trying to evaluate, and that is the actual damage caused by the pest situation.

And by using yield data, I think we could strip off a lot of these other factors, which often times can either hide pest damage, if the crop value is very high, you may get a good value per acre, even having suffered a lot of loss, and at the same point in time, you may have experienced very little pest damage, but if the crop value is way down, you may have very little economic value per acre in terms of crop value, even with a high yield of a high quality crop. So that really works both ways

And then, my last point would have to do with renewals. Right now, my understanding is, is that when the second and third time around, that you still need to supply the whole package. I think there ought to be some sort of a mechanism put in place, so that when we put in for a renewal, we simply update our situation for the next year, and we can reference what we sent in last year. I know that the Section 18 people at EPA keep these things on file. I think for three years, so the information would be available. It just

seems as though we shouldn't have to send in a two inch stack of paper, which in many cases, 70% is the same paper that we sent in last year.

Thank you.

**Barry Cortez, Chief, Registration Branch, California Department of Pesticide and Regulation (DPR):** I'm Barry Cortez, I'm the Chief of the Registration Branch. I just want to say a couple of things. First of all, I don't have the numbers, but over the years, there have been very, very few new active ingredients issued Section 18's in our state. Recently, we've had some, because of the white fly problem. We've had three or four before that. Now, what that means is, the product we issue Section 18's for, have undergone a thorough evaluation all ready.

So, what I'm asking for is, that you seriously consider authorizing us to issue Section 18's and audit us, as Jim (Wells) had said previously.

Thank you.

**Rick Melnicoe, Western Regional Coordinator, Pesticide Impact Assessment Program, University of California:** I'm Rick Melnicoe, the Western Region IR-4 Pesticide Impact Assessment Program Coordinator. And touching on the minor use issue and the Section 18's process, as Lynn (Goldman) brought up, I think that one possible solution is something that several of us, including Jerry Campbell, discussed last week at a meeting. And that is to allow tolerance or interim tolerance or temporary tolerances based on preliminary GLP conducted field trials.

And what I'm referring to is IR-4 type studies, or IR-4 studies alone, that have done at least a couple of field trials that usually takes our program three or four years to get the tolerance data together. But we often have a field study conducted in one year that maybe it is followed by a couple more the following year.

With those data in mind, in taking a look at the past history, I think you would find that the tolerances that IR-4 has proposed have always been accepted by EPA. I don't think there's ever been a change. And what we can do with these temporary tolerances that get set up is allow 24-C issuance

within a region or nationally. And this, I would suggest, would be for pesticides which already have a food use tolerance. I think it follows on what Barry (Cortez) just mentioned. That the kinds of pesticides that we're looking for to deal with these issues, which in California are almost always in a minor crop situation, are pesticides that are already registered and have that full data base together.

Thank you.

**Alan List, Farmer, Lovelock, Nevada:** My name is Alan List, I kind of feel like a minority. I'm a farmer from Lovelock, Nevada.

My interest in this program deals mostly from one of the crops we raise, which is alfalfa seed. I'm here both representing myself and some of the other growers of alfalfa seed in Nevada and the Pacific Northwest.

I might say, first, we have had a very good relationship with EPA. Our groups have been back to Washington on numerous occasions and been in your offices and have been well received. We've been very happy to work with you.

Some of the changes I'm suggesting have been mentioned before.

I would like to see the determination of the Section 18's made at the state or local level with all of the data being submitted there or gathered there. And a summary of that, and going to the EPA for review and a possible veto of those issuances if they feel that was wrongly done. I'm sure that your agents and people within the states, you know who you're working with and know who you can trust and who you can't. But I think that would speed the process up considerably.

And perhaps further down the line, where you have the specific areas, particular exemption, or a quarantine exemption, public health or crisis, perhaps some of those could be combined. We find that when you justify a Section 18, often times they overlap between the areas. If it's truly an emergency exemption, why go into one of those four areas. You might make, perhaps, a crisis exemption and a regular exemption, or something like that to simplify it. But I think that would get rid of a lot of your regulation if you were to combine some of those.

I might put in a plug too.

We have some of the same problems with minor crops that we talked about earlier. And we do very definitely need a solution to that. And whether that comes through another part of Section 18 or perhaps another set of codes, it's a problem that's only getting worse. And I know that you realize it, and we hope that you're working on that also.

Thank you.

**Ann Katten, California Rural Legal Assistance Foundation:** I'm Ann Katten from California Rural Legal Assistance Foundation. We work with farm workers and are concerned about farm worker health and safety is our predominant concern.

Initially, many years ago, the Section 18 process was looser. It's my understanding. And, it was much abused by manufacturers. And, it wasn't uncommon to have a Section 18 for one product in 40 states at once. And we're afraid that turning major authority back to the states would invite a return to this problem.

Most states don't have anywhere near the level of expertise in toxicology that the Department of Pesticide Regulations in California does. And if states with less expertise are given more autonomy to approve Section 18 registrations, this will put a lot of pressure on California to reduce its standards. And, we fear that would be at great cost to public and worker health.

It's also not realistic in any state, no matter the level of toxicological expertise, to have them do their own economic impacts without an ongoing review process. Because they're simply too close to the problem, and all the political pressures that come with an emergency, whether it's perceived or a real emergency. It's very hard to tell if you're right in the middle of the problem.

That's why we ask that you proceed with a great deal of caution in this. And, we will provide more specific written comments.

**Dick Roan, Regional Manager, Nevada Division of Agriculture:** My name is Dick Roan, I'm the Regional Manager for the Nevada Division of Agriculture.

We feel that we would like EPA to consider the state lead agencies to have the authority to issue Section 18's. Simply from the fact that we feel like we're closer to the problem and we understand what's happening out there better than some bureaucrat out there in Washington, D.C. We think we're closer, we have better knowledge of the problems and the solutions to those problems. And, we'd like to see it move more back to a state basis.

**Lynn Goldman:** (inaudible).

**Dick Roan:** (inaudible).

**Fran Schultz:** Sir, can I ask you to give your comments to the mike so we can record them? Thank you.

**Dick Roan:** It's a known fact California is definitely a leader in pesticide knowledge and regulations. We do not have the agricultural industry that California has, and in a lot of cases probably don't have the expertise. But, I don't think that we would not be opposed to EPA setting up some type of guidelines that we would have to gear our programs to, to be able to have the authority to issue Section 18's.

**Jim Jones:** I could expand on that.

The comments on the idea of the state coming to EPA for first-time exemption, and then the second and the third year, possibly the fourth year, the state would then have the authority to do it itself.

What are people's thoughts on that as opposed to turning over the program to the states exclusively, if the state has the type of people they need to make these decisions?

**Barry Cortez:** This is Barry Cortez again.

On that comment, it's the time factor. That's the big problem. We do a pretty thorough review. And like I said, we already have most of these products already registered. We have tough toxicology laws, tough groundwater laws, and these products have been tested. Okay? Now, to go through the entire process that we go through in California takes a lot longer, I think, than a lot of growers think it should take anyway. The process of issuing a Section 18, that's one of the problems. We think once we're through with it, once we make our determination that yes, it meets the guidelines, and this will be approved by EPA, then we have to go ahead and submit it to EPA. I think for us, in California that, that is really a waste of time.

**Ed Minch:** I'm Ed Minch from the Arizona Department of Agriculture.

I find that to be an interesting idea, and one that I would like to have an opportunity to try sometime.

**Jerry Campbell:** Hi, this is Jerry Campbell from the Department of Pesticide Regulation.

I'd like to comment just a little bit more about some specific issues. And one of them, EPA has on the books on regional Section 18's, but I'm not aware that, that has ever been expanded to any degree. And I think that's an area that would provide some regulatory relief if we developed that concept.

For example, over the last couple of years, California, Arizona and Texas have issued six Section 18's for the same pest for the same products, Capture and Admire, for white fly. They're almost identical. And maybe that would be an area where we could work more closely.

For example, if a particular problem broke out in a particular state, and that problem actually happened somewhere else, not having to go through the full complete review process would really be something that would be helpful. I think it's very consistent with worker protection if we had a, and



we do have, alfalfa seed in California. If we issue a Section 18 for alfalfa seed in California, we could definitely provide the same labeling and the same protection for Nevada, if they asked, if EPA would accept some type of a program like that. And, I think if they had our labeling on our controls, it may solve a lot of the problems right there. So, a regional concept approach would be very helpful.

**Jim Jones:** I think that's something we'd be willing to consider.

Right now, we're trying a regional 18 for a potato blight. Where one state, New York, is basically is doing the basic tox information, and the other states who need the pesticides are, they're simply giving us data on the ecological effects, the environmental effects. Things that may be different from state to state, but one state's handling the toxicology. I think that's something we've tried on a limited basis now.

**Kristopher Mapes, Field Representative, California Pear Growers:** Hi. My name's Kristopher Mapes. I'm a Field Representative for the California Pear Growers.

And, Jean Marie touched on a few of the regulatory concerns we have with Section 18's. But I wanted to talk about, real briefly, some of the internal problems. We've dealt with Section 18's over the last eight years here in California for one specific material.

One of the problems we came up here with in the last two years specifically, has been the fact that EPA has asked us to go out and get comparative data information on materials that have already been deemed inferior to what we're trying to get in terms of the Section 18. To us, it's redundant; it's expensive. These are materials that we have found inferior economically, and in some cases maybe environmentally, not what EPA would like us to have. So in the long run, what I'd like to see is less of us having to go back and look at old materials, and trying to pull up data in that regards.

The other concern I have is the fact that, in the case of where you have a Section 18 in not just one state, but in numerous states, what's happening is when they issue the Section 18's, in the case of California, our climactic conditions might allow for the use of that material prior to some of these

other states, we're pooled with these other states. So if Washington or Michigan or Pennsylvania, their growing season may be different than ours, we're having to conform to what's happening in those states. So, I'd like to see it set on an individual basis, state by state, based on what our growing conditions are.

Thank you.

**Jim Jones:** On your first part, we're right now reviewing the comparative performance requirements in Section 18. What I've heard today is there's a broader concern about the over-all economic requirements we impose, in particular we're looking at the comparative product performance we use in Section 18's now.

**Fran Schultz:** Other comments? Some of you may have come with comments outside the emergency exemptions, and we have time to talk about those to. So, feel free to make any comments that you have.

**Ed Minch:** This is Ed Minch from the Arizona Department of Agriculture.

I'd just like to make one point about special local needs. Sometimes it's useful to have more than one product tied together on the same special local need. And particularly, when you're in a situation where one pesticide company has merged with another one. And as a result, we're talking about simply changing the EPA registration number, but the formulation and the registration sites, and so on and so forth, are identical.

The way that process is set up right now, we have to issue a brand new special local need with a new number for the new product. And, very often, there's still some of the old product out in the channels of trade that we would like to get used up. And so, it would be very nice if we could just simply add the new EPA registration number to the existing local need, and then when product bearing the old number has been used up, we'll just simply phase that out of the label and just gradually transition the same special local need from the old product number to the new product registration number.

Another instance, this may be a little more complicated, is when they've changed their formulation. Like for instance if they're phasing out a 10-G in favor of a 20G. But, it's the same active ingredient and so on, it's gonna have the same sites. Again, we'd like to be able to use this phase-out process, where for an interim period, that special local need has two registration numbers with directions for use of each. In terms of active ingredient, of course, the rates would be the same. The only difference in the use directions would be the rate of product applied to account for the differences in the concentration.

Thank you.

**Fran Schultz:** Thank you. Other comments? Jim, do you have any questions?

**Jim Jones:** A comment back on the issue of delegating down to states versus EPA making an up-front determination the first time. Although I recognize there are a lot of non-Californians here, a very strong California presence that is really anxious to get the 18's delegated to themselves. One of the complexities that will pose to us is making decisions state by state as to who's up for it and who's not up for it. And, those can be very difficult and painful decisions to make, as opposed to having the confidence in the first-time decision with the decision, and then allowing the state in subsequent years to grant the 18's themselves. That, I think, is one of the trade-offs that we'd really have to think about in comparing one approach versus the other one.

**Jerry Campbell:** Jerry Campbell of the Department of Pesticide Regulation, one more time.

To comment on some more ideas on the Section 18 process, we'd like to see at least some flexibility from the EPA in the size, let's say, of Section 18's. We spend as much time on a Section 18 for 75 acres as we do on Section 18 for, state-wide, for 100,000 acres of tomatoes. We believe there might be some level of cut-off on the number of acres that would be a useful tool to all states, basically, and maybe even to the U.S. EPA. Taking a look at the U.S. EPA program right now, they issue experimental use permits for a

limited number of acres and sometimes up to the 1,000's of acres. If we had a cut-off level of, just arbitrarily, let's say, of 5,000 or less, that we had some flexibility on, that would even be a positive step. It's something I think that would reduce some of the work load for everybody.

One of the other areas would be some type of expedited program where EPA has already established action levels. We talked earlier about the issue of tolerances, and one of the problems with why states issue Section 18's is that sometimes the tolerance data has not been reviewed, and that's the only option that we have to bring that product on to market. And, there are no other products. We just celebrated, U.S. EPA just celebrated last week, issuance of tolerance for Prometryn on parsley. There were ten years of Section 18's in California. And finally, the tolerance has been resolved. And I think that actual data from IR-4 has been in EPA for a number of years. And, we realize that it's not just a limited work force, we're not trying to say you've got to drop everything you're doing and do more tolerances, but when they are in there, we think that we should be able to have some flexibility.

So, maybe areas where actions almost have been established, maybe areas where tolerance petitions are in from IR-4, and maybe a limited acreage type of approach, all put together, might be a good option to look at.

**Zidica Lopez: Zineca Agricultural Products:** Hi, I'm Zidica Lopez, and I'm with Zineca Ag Products, and I don't deal with California, actually, I work with a lot of the southern states. So, some of the ideas that were mentioned here, there were a couple of questions that popped up in my mind

And that was, one of the things you talk about, a tier approach. I would assume that if that is done, that EPA would continue to do the ones we're talking about. A totally new A-I that does not have any registrations at all, so that at least some of the original data, they would be the only ones who have it. The states would not have a lot of that data to review.

And the other concern that kind of surfaced in my mind was when you start giving it up to states, and I think there's a lot of good reasons to do so. But, with the possibility of states then adding on their own additional requirements specific to that state, and that's always something that, I think, for companies, it's a hard thing to deal with, because you're now not only

dealing with regulations for EPA requirements, but you're then dealing with a lot of additional stuff being tacked on by individual states.

Those are just some comments or things that popped to my mind.

**Fran Schultz:** Do you have a question? Should she stay at the mike?

**Lynn Goldman:** I haven't heard very many comments along this line, but it's another thing that I think we could use some feedback on.

I think it's important to remember the history of the Section 18 program and how we got where we are today, as we move forward into the future. One of the reasons why the program is operated in such a stringent fashion today is that there is a history of, probably about ten years ago, or even more, when Section 18's were almost never denied by the agency and by some of the states. And it may have been different for some of the states in this room. I don't want to generalize about every state. But, there were literally hundreds of approvals that would be processed every year, and this led to a series of investigations by Congress, by the Inspector General. And what they found, in fact, was that the Section 18 process had become a way of getting around the registration system. And that in fact, some of the industry folks who did not have registrations were using it even as a marketing tool. Going out and trying to encourage people to apply for Section 18's as a way of bypassing the registration system.

Our challenge today, I think, we want to make the process a more reasonable process. We want to build in more flexibilities.

And, we want to give states more responsibilities, when they have shown that they can handle them. It's very important. Every year, all of the states have more expertise in this area than they did before, and we are not in the position that we were in 25 years ago where EPA had almost all the expertise, and there wasn't expertise in the states.

But the challenge is, how do we move forward and do that without returning to some of the mistakes that happened in the past? And, in particular, how do we do this in a way where we maintain the integrity of the registration program, maintain the strict reviews of the health and environmental data?

And, this is not meant at all to reflect on the expertise in individual states, because we have to look at a policy that will be workable for the whole country.

And, I heard some ideas here that I think are really good. That we may be able to establish categories like repeat Section 18's. Pesticides that already have food use registrations, as opposed to novel and new pesticides. That there may be ways to make cuts on this. But, I think that it would be a perverse outcome of this if the results of our invention would be to encourage the use of the Section 18's process in lieu of trying to get registrations. That's something we don't want to do.

We want to continue to provide a strong incentive for the companies to develop the data that are needed for registrations. And in particular, for the critical needs that happen year after year after year, as opposed to the white fly kind of invasion problem that we had no way of predicting. And obviously, from what I've heard today, we do need to have a different process for addressing, because this is a national emergency, not just a local one.

So, I wanted to throw those considerations in, and I guess also remind you of the history. It's certainly something that I have to think about very carefully in making these decisions.

**Jean Marie Peltier:** Jean Marie Peltier of the Pear Advisory Board. I wanted to address a question to you, Lynn (Goldman), and to you, Jim (Jones), perhaps.

I think that Jim Wells raised an interesting idea. Not to beat this dead little pony of the idea of reduced risk, but in talking about using that as one of the criteria for moving into an 18. I believe what he suggested was that maybe along with taking a look at the economic risk, we do an evaluation in the case of a reduced risk Section 18, of the over-all environmental risk. And, I'm wondering if taking that into consideration, you'd think that this idea of moving with reduced risk might fit the criteria of an 18 with regard to over-all environmental degradation.

**Lynn Goldman:** My first thought on hearing the idea that it's really worthwhile of serious consideration. We've been trying to figure out how to incorporate our reduced rate risk policy into everything that we do. Why not, within the context of Section 18's? I think it's a very interesting idea.

**Elan Miller:** Elan Miller with the Department of Pesticide Regulation. As far as Lynn's question on being interesting.

Obviously, various states have various expertise, and we may be somewhat of an anomaly in California with the kind of program we have.

But I would like EPA to definitely consider the thought of a tiered approach, and certainly making those decisions aren't necessarily popular, but EPA does that all the time, make unpopular decisions. That's your job. We feel the same way many times.

We would hope you would certainly consider California's whole program, but since we're only talking about Section 18 here, and maybe we're bridging into other things. I don't want our comments to come across as this is the only way to deal with the minor crop problem, and that's what I think Lynn (Goldman) was trying to get at.

We need to deal with that issue in a more complete fashion through the whole registration, streamlining efforts. And in that regard, the emphasis that we've been placing on California with looking at harmonizing with EPA, I think, is again, another very good avenue we can deal with this, so we can get away with the potential of the Section 18 process.

And I agree, digressing to where it was many years ago, we don't want to be in that situation again.

But in looking at the whole registration process federally, and looking at minor crops, our harmonization effort with EPA is just one step in that direction. And certainly there is probably a couple other states, just not a whole lot of other states, that have the same infrastructure we do in dealing with registration and evaluation of toxicity data and environmental data like California does. But, I would like to emphasize, and I know there's been a lot of support at Lynn's level and throughout EPA, but, if we were to be able to achieve what we wanted through our MOU, and we were to come to an

agreement on how you all you reviewing data, and how we in California are reviewing data, I really think we're going to get to the point where we can be doing things for you, you can be doing things for us. And what that does for many people in this room, as far as the whole system, is it reduces backlogs, it may increase 2 times the time it takes to get things registered federally.

Certainly it may come down to a very short period of time in California to get things registered. Because if, for example, we've already done the full data reviews and done the registration and made the recommendation to you at EPA that this should be registered federally, and we'd only do that for crops that are applicable to California, but that's a whole lot of different crops. We may not do it for soybeans for you and a few others, but that, in essence, would mean that EPA could look at a federal registration and, because we've done the reviews, we would register after our posting periods, etc., very quickly in California.

So, whatever emphasis we can put on harmonization, and I know there has been, but I think we have a ways to go to be able to meet the deadlines Jack Pandle had suggested this morning. We really need to focus on that. Because, once again, the whole system has to be looked at. Section 18's can not be used as a band-aid to deal with all our woes of getting reduced products on the market faster, and dealing with problems we've had with chemicals that are out there now, and phasing in new ones.

**Jim Jones:** My comment about making determinations about which states have good programs and which states aren't, isn't about avoiding hard decisions. Making that determination for 50 states takes a lot of resources. And a couple of them are going to be real easy. California will be real easy. A state that I know begins with an "A" is going to be real easy the other way.

But the other 48. Making the determination for the other 48 states could take a remarkable amount of resources that the agency, resources that can be taken away from other things. Something like saying the first year the agency makes it, the next couple years the state is allowed to, is a much easier, there's very few resources involved in making a determination like that. So I was more focusing on it could be a costly process than an avoidance of hard decision process.



**Elan Miller:** This is Elan Miller again.

I might suggest why not move forward with the first year and some of the other things were talking about. Maybe an acreage limitation and all that. And then in the mean time, maybe put the burden on us to petition you. And prove to you that we can do what we need to do to get the job done. Throw that back at the state, so you don't end up forming some gigantic bureaucratic infrastructure to filter through all this stuff. Instead, make the changes streamlined for the nation, and then those states that wanna take the initiative to try to, say, "We can do this for you," then go ahead and let us petition you and provide the information you need to make that determination.

Thank you.

**Alan List:** I think one thing, Alan List is my name again. One thing I think we're overlooking here is the interrelationship between the states. And while I come from a small state, particularly with alfalfa seed. When we're dealing with a problem, we're dealing with California and Washington and Oregon and Idaho and Montana and other states. And the data and the information that we derive comes together from a number of different sources. And in what's supposed to be an information age, this gets around very quickly. And we share expertise with a lot of other people.

So when the EPA, looking at guidelines in dealing with other states, it's in a sense, certainly California comes to the front as a huge state with a lot of resources and a lot of abilities. But the rest of us aren't just kinda, you know, step-cousins or something out there. We do have access to this same information. And while you're dealing with different agencies, it's a common body of knowledge that you're dealing with when you're dealing with any state.

**Jim Stratton, Interim Director, California EPA, Office of Environmental Health Hazard Assessment:** Good Morning. My name is Jim Stratton. I'm the Interim Director of the Office of Environmental Health Hazard Assessment, one of the departments in the California EPA. Along

with the Department of Pesticide Regulation, we have joint and mutual responsibility for worker health and safety. DPR is the enforcement agency and we work with them to jointly develop the health and safety regulations for pesticide applicators and field workers, etcetera.

And listening to the discussions this morning, it does seem like an awful lot of attention is being focused on Section 18 as a quick fix for some of the larger problems with the regular registration process. I know that U.S. EPA is aware of this, but I'll just, for the public input part of the record, point out that a couple of years ago U.S. EPA paid for the Keystone Center to convene a pesticide food safety dialog. And a number of, I thought, pretty good ideas, surfaced in those discussions about how the registration process overall could be improved.

In terms of the minor crop uses and some of the other issues, the basic problem is that the incentives for both government and the registrants are, unfortunately, all too often, set up in the wrong direction. So that, because of the difficulty of the cancellation process, government is reluctant to approve something until they're certain it's gonna be safe. And registrants, having once gotten product on the market, knowing that it's difficult to get replacement products on the market, are reluctant to give up the ones they have. And the growers are standing on the sidelines saying we need the tools. And they view the loss of an old tool, before the new has come on, as a problem for their business activities.

I would encourage U.S. EPA to take a look both at their statutory authority and the way in which they've set up the regulations for the registration process, to see if there isn't some interim conditional registration process by which, it amounts to what's sorta an easy on/easy off process for materials that have not yet had the full pesticide registration database developed, submitted, reviewed and approved. That would allow things, that on initial screen, appear to be safer, appear to be acceptable substitutes for the older, riskier pesticides, that are already in the marketplace, with the understanding on the part of both government, the growers, and the registrants, that if problems do turn up, either in use or in the continued review and generation of some of the other longer costlier data in the registration process, that the material would then be withdrawn from the market. But that would solve the minor use problem. It would solve a lot of the Section 18 issues and still provide the reassurance to both government and the public and other things,

that if health and safety issues do turn up in the registration review process, that the appropriate adjustments and the utilization can be made.

The other thing I might observe is that in California, we have what we call or refer to as “Minimal Exposure” regulations that we implement under the Restricted Materials portion of the California system. And that is meant to address, not only acute toxicity, but some of the chronic toxicity issues that have turned up on pesticides. And by minimal use, we mean, typically, closed system applications, differences in the re-entry intervals, and other kinds of controls that are intended to minimize exposure to workers while the material is still capable of causing harm.

It may be that for some of the materials, for relatively small uses that normally would be considered for Section 18's, that if they are approved under what amounted to minimal use restrictions, government would have to worry less about whether somehow they're letting chemical with unknown or uncertain toxicity into the marketplace because the exposures would be minimized. That's another thing, I think, to think about in terms of your regulatory implementation.

And I need to go in a few minutes, but if there are any questions or you want me to amplify on these thoughts, I'd be happy to.

Thank you.

**Jerry Campbell:** This is Jerry Campbell of the Department of Pesticide Regulation, one more time. As a common sense approach, we heard that this morning.

One of the things I'd like to encourage EPA to do is take a look at maybe structuring the Section 18 process and maybe a couple of tiers. For example, there are a lot of materials that we have registered at both U.S. EPA and here that we have to issue Section 18's for. And just as an example, a product may be registered for walnuts and someone needs to put it on almonds. There really isn't any more environmental concerns. There isn't any more worker protection concerns based on those two crops. But we treat that the same as a Section 18 for a material which we have no data, for which there are no tolerances, for which we are not aware. So, I think even a tiered structure would be very useful.

We just went through a situation, as one more example, where we had a Section 18 for head lettuce and we were trying to get a Section 18 for leaf lettuce. Now, both of those crops are grown in the same acre sometimes, and right next to each other, with the same pest. And we were driven out on the first year on the leaf lettuce because we were unable to show the economics. And we've heard a lot about the economics, but I think I'd rather parallel the situation. There are a lot of Section 18's that are being registered for crops that if we had the perfect world would be grouped together. And maybe we can come up with a different level and that would definitely speed up the process at both places. Thank you.

**Lynn Goldman:** I'll speak from back here. But in the context of Section 18's, I've heard a couple of contents about the economic analyses. And frankly, I think that's an issue that cuts through our entire pesticide program at the EPA. Because our statute, the language of the statute, has been interpreted to require risk benefit balancing and the need to always be able to do that balancing.

And it sounds as if many of you have been involved in one way or another in either providing data for the economic analyses or even preparing them for requests. And I am interested in, although it goes a little bit beyond the Section 18 process, any suggestions or ideas that you might have about that. I think it might be one way we can improve our overall process. I certainly sometimes feel that if I had better economic data, that, that would be helpful in terms of making decisions, because often it seems frankly very squishy.

**Ann Katten:** Ann Katten, CRLA Foundation. I just wanted to reflect on a previous comment that we wouldn't be happy with the California Minimal Exposure pesticide regulation, not to belabor it, being used under Section 18. Because we feel that it largely requires some protective equipment, which we feel doesn't always work as it is supposed to, even if it used as it's supposed to. And then it requires education of the workers, which is good, but if you economically really need a job, even if you're told that a pesticide may cause cancer or reproductive harm, you know, if you really need a job, you're going to take the job anyway. So we think that's a very limited value. So we would not support at all, that. We would not see that as an added protection.

**Paula Basson:** Any other comments? Any comments or questions from EPA?

**Jim Jones:** Are we gonna sort of wrap up now, or do we want to. (inaudible audience comment) Okay. Okay. I heard a lot of very good useful comments and I think that they'll get a lot of consideration over the next few months

So just sort of in brief summary:

- \* Encouraging the Agency to look at a tiered approach for how we implement the entire program, including giving the states more autonomy as well as flexibility.
- \* Consider allowing resistance as a criterion in granting a Section 18.
- \* As well as allowing safer determinations as a criteria granting a Section 18.
- \* Regional Section 18's.
- \* And then also, heard a fair bit about the economic requirements of the program.

But those are just some of the things that I captured as I was taking notes myself. And I think that there are probably a whole lot more than we've got here, and even more on the tape. And I just wanted to express my appreciation for all of you for taking the time to come and letting us know about what it is about the program that you think can be done better. Thanks.

**Fran Schultz:** Thank you very much for your comments. We were scheduled to get back together at ten of twelve for the big group. But given that we're sort of expediting our schedule, I'm not sure. Do you know? (inaudible audience comment) Okay. Okay. All right, thank you.

## **ASBESTOS BREAKOUT SESSION**

### **40 CFR, 763 Sub part E - AHERA**

**Don Lanier, Toxics Program Officer:** Ladies and gentlemen, trickle down is in effect, we are now getting down to the meat and potatoes. And so let's get organized to move on here, if you will, please. I'm Don Lanier from Region 9 EPA, and for a number of you in the room, it's for me a reunion. It's been a pleasure to work with you in the past, and it's really a pleasure to see you here today. And today's the time when you guys talk, and Lanier listens, and EPA listens. So, as was mentioned earlier, we are recording the entire session, and our mission from Region 9 is to get a report, a verbatim report of this, back to headquarters by next Tuesday morning. So we've got a challenge ahead of us. But in order to assist us in doing that we need your valuable input. And in order to do that, we have a number of people here who are going to assist and facilitate and work our way through the AHERA regulation and some other things that hopefully you want to talk about with regards to asbestos. And to lead this off, I'd like to introduce to you, those of you who do not know him, Brian Cook, who's the Chief of the Field Programs Branch or Section, I believe it is. back east. and headquarters EPA, is here as our expert from the headquarters within the beltway and under the flag pole, wherever you want to put him. And he will take it from here. And we also have from Region 9, Pat Marovilla, who is our technical person on the staff at Region 9. And we also have a facilitator in the form of Paula Basson who will help us keep order in the room. So with that said, let me turn it over to Brian.

**Brian Cook, U.S. EPA Headquarters, Chief of the Field Program Section, Chemical Management Division, OPPTS:** Thanks, Don, I'm not sure I'm an expert, but I guess I will agree that I am from Washington, I guess. I work with Lynn. I'm manager. My group is responsible for a lot of the asbestos and lead regulations that are coming out of Washington these days. And I wanna welcome you all here also.

Some of the things that we're handing out, will kind of explain where we are right now, in taking a look at some of our asbestos regulations. Looking for provisions that we can take out of the code of federal regulations. Things that we can change to make it more easier to follow the regs. But we're really here to day to hear some more ideas from you. This is the second

meeting that I've been to with Lynn. We were in Tampa on Tuesday, in the Environmental Information Association meeting, and got a lot of information there from sort of the contractors' side of the abatement industry.

And today on the West Coast, we want to hear what your ideas are on any parts of the asbestos regulations that you have to follow. Parts that you think aren't working well, and parts that are working really well that you would not like to see changed. But our goal is to make some changes to these regulations. Some may have to be done by amendments to the regulations. Others perhaps can just be done by ah policy changes.

So I'm just gonna turn this over to Paula, I guess, who will facilitate the morning and lead you through the process. And please feel free to give to us all the information, good and bad, that you want to, here today verbally. And also, as Lynn said, within the next two weeks, if possible, in writing. If you can't give us things in the next two weeks in writing, that does not mean that we're not going to use it. This will be an ongoing process. And we hope over the next few months to make a lot of recommendations, to make some changes to our asbestos regs. So, while that two week time is kinda nice to get it into an official report to the President, it's certainly not a drop dead date that we plan to ignore things after that, 'cause this will be an ongoing process.

So with that I guess I'll turn it over to Paula, thank you.

**Paula Basson, Moderator:** Boy, this is tough for me. I mean I can hardly see over this podium. And I don't know if I can live up to the billing of being a bouncer that kinda sounded like what my role was. As a facilitator, actually I'm not at all familiar with this program. I work in the hazardous waste program. So if you have any hazardous waste comments, you can see me afterwards. But my role here is to try to help you get through the agenda in the time that we've got. We've got until 12:00 o'clock. And there are several areas that we thought would be useful to cover. So let met explain what those are in my layman's role here with the AHERA regs.

First of all, we thought general local education agency responsibilities, that's a segment of the reg to get comments on, response actions, operations and

maintenance, periodic surveillance and re-inspections, management plans and model accreditation plan.

So what we thought was, we would divide the morning into segments, and ask for comments on each of those different parts of the AHERA regs. Is this something that makes sense to you? Is that something that would work for folks? Sounds like it. I can hear a few heads nodding out there.

So what we will try to do given the time that we have, is we'll start out trying to spend about 20 minutes on each of these segments, and see how that goes. I don't know which ones might be more or less controversial to you, so we'll play that by ear as we go along.

The other thing that was mentioned is we are recording this session and, I'll tell ya, the recording is beyond me. It's some fancy system where you talk into that microphone and somewhere it's getting recorded. So, what we need to do is have folks line up at the microphone if you want to comment on the different portions of the regs. And we'd also like you to give your name and your affiliation, because I understand we have a lot of different types of folks here who work with different aspects of the regs. And if you could take maybe one or two minutes for your comments, if you have really lengthy comments, it would probably be more helpful to get them in writing. But if you could just try to boil it down to a couple minutes, so that we give everybody a chance to speak. And then if we find that there aren't that many of you who want to comment, then we could certainly expand the amount of time for comments. I think that's it, for getting started here.

So the first, Pat has put up the first segment of the regs, the general LEA responsibilities. How many folks might want to comment on that.? Are there people who have comments? Well, I guess you can just go right on up to the microphone. Doesn't look like a crowd for this one.

**Steve Somsen, Risk Manager, Oakland Unified School District:** I'm Steve Somsen, the Risk Manager for Oakland Unified Schools. And, of course, our concern as an educational agency is the safety of our children, and the public.

That the notification that goes out to the public to the parents and what not doesn't seem to be meaningful, other than to otherwise alarm people that there's a problem. In certain agencies, problems, well, certain populations



of certain areas, tend to be alarmed more easily. Press seems to focus on things more intensely, headlines are made, parents are alarmed. And as a result public agencies spend a lot of needless time trying to reassure parents that their children really are safe. Yes, there may be asbestos in your school, but, it really is safe. It really is being maintained in a proper fashion. So I just think the parental notification aspects is a bit burdensome. And I'd like to see that changed. And I'd like to see that reduced.

If I could go on with one other comment, and I understand the focus of this meeting is not to question the necessity for AHERA. However, somebody needs to hear. I don't think AHERA is completely necessary at all. I spent my 26 years in loss prevention, risk management insurance, safety and health. I've been trained in asbestos, both as inspection and management planning. That doesn't mean I'm a great expert. I know just enough to be dangerous probably.

However, through my background in claims management, there may be some epidemiological studies that show some relationships. But when we go to look at the actual problem, I evaluate the claims that I see. And over the last eight years I've looked at over 35,000 claims. I'm not talking AHERA or asbestos claims, I'm talking claims in general, both workers compensation and liability, both. In all 35,000 claims, I have seen two, only two, alleging an asbestos relationship. And in both of those claims, the relationship to a school was non-existent. So my first question is, is it even necessary? That's all.

**Paula Basson:** I think we have, headquarters has some clarifying questions for you. Could you.

**Brian Cook:** I'd like to ask you a question.

**Steve Somsen:** Go right ahead.

**Brian Cook:** Notification, you want to reduce it. Would you get rid of it completely, or what kind of reduction would you think would be appropriate?

**Steve Somsen:** I think the maintenance of the management plans or information at the site would be sufficient. Leave them available for public inspection, but do away with notification.

**Brian Cook:** Completely do away, okay, with that part of it.

**Jim Campbell, Environmental Specialist, Mt. Diablo School District:** Good morning. My name is Jim Campbell. I'm the Environmental Specialist with the Mt. Diablo School Unified School District in Concord, CA. And continuing, for a moment, on the issue of notifications, I would tend to support Oakland's position on notifications, simply because they become confusing to the reader. On the one hand, we're telling our teachers, our employees, that the U.S. EPA says there is no level of asbestos exposure at which you are safe. Now, we turn around and almost contradict that, by putting out a notification that says we have a management plan in place that identifies asbestos. Tells you where it is, but don't worry about it because we have it under control with our operations and maintenance program. We have the material repaired, enclosed, encapsulated, or removed, as is necessary. But asbestos is indeed alive and well in your school district. Now if they remember the first comment that we made, which they are very likely to, that there is no level of asbestos at which you are safe, then we're raising an unnecessary red flag with this notification.

I believe the notification needs to be restricted to providing notification to vendors who come on our sites, where asbestos is on that site, and that they are likely to disturb it if they do certain things. I certainly think that that's germane to the issue and that shouldn't be eliminated. But the annual notification that goes to parents, to teachers, and to user groups, I believe, is unnecessary, contradictory, and to some degree, very confusing.

**Ken Schipper, CAL, Inc.:** I had kind of a quick comment to the notification issue. I'm Ken Schipper, from CAL Incorporated. And CAL's a training, consulting, abatement, remediation firm for lead, asbestos, UST's, and so on. Over the last two year period, we've been doing a series of trainings for the Department of the Navy for their asbestos managers all around the United States.

And, just out of curiosity, I've kind of done an informal poll at each of the classes asking them how many of them that have children in schools, have seen the annual notification form that they're supposed to receive? And I usually ask them first how many of you have grade school kids? And I may get 10, 15, 20% of the group. And then I ask the question, how many of you have seen the actual notifications? And typically, about a maximum of 5% have actually seen them. Or, you know, looked for 'em, or recognized 'em, or anything. So I think one of the practical realities is, is that almost all of those notifications go unnoticed.

**John Nolan, Washoe County School District, Reno:** I guess I have a comment. I'm John Nolan with Washoe County School District in Reno. We have 73 schools.

On the notification issue, I guess I'm comin', I have a different attitude about it. I put out the notifications every year. And I think they're valuable. I think the only thing that will make your program work, when it comes to asbestos, is if the public or somebody else shows an interest in it. Because I've seen that over the five year period. I've even been to classes where I've heard the asbestos manager say that the AHERA law has been lessened, which is ridiculous.

So I would say that I welcome any parent involvement in our asbestos program. And I think it's helpful and needed. And otherwise it's gonna , unless you guys start enforcing your regulation a little bit more and showing up at all the school districts, without some parent involvement, you might as well not have it. Thanks.

**Alex Hernandez, Diocese of Oakland:** Yeah, Alex Hernandez from the Diocese of Oakland. And I just want to comment the same thing. I think the notifications are good, at least for teachers and employees. Because, you know, we do our own surveillances. Every six months, there's a different teacher. And they are hanging up things in the friable ceilings. And nailing and doing this and that. If you don't keep on after them and notify them and make sure that they know, even if the book is in the secretary's desk. You tell them that "Don't you know that is a friable ceiling?" "Nobody told me."

It might be all right, parents and so on, that might not be necessary. Because, true, you never get any feedback from them, and they might never be aware. But certainly from people working there. You know, even the janitors are getting once a year, but even then, you know, them and teachers and anyone working there should get notified.

**Jim McCabe, Bureau of Indian Affairs, Gallup, NM:** I'm Jim McCabe with the Bureau of Indian Affairs out of Gallup, New Mexico. I know a lot of you think that's region out of, not out of 9, but at the Indian Reservation, we are out of region 9. I think our biggest problem is, who actually is the LEA? The first problem there, I mean the first one on the list to appoint and train a designated person. They can't agree on who is that person. The language allows for a lot of argument. Is it the superintendent of schools? Is it the principal? Is it the maintenance foreman? And then, when you get down to, even some solicitors' opinions, they claim that by definition in LEA cannot be a human person. It has to be a school board or. It just doesn't indicate who that individual, that entity is.

As a result of that, we're not getting any of the training that's going on. Nobody wants to take that responsibility for getting the people trained. They don't want to send out notices, because they're not the person. It's a very vague, as far as we can see. I mean, we've got memos flying back and forth from the solicitor's office, back and forth, and they all raise more questions. It just, you know, as a result of all that, we're gettin' memos, letters and everything that cites us for failing to do all the things that we're supposed to do. I got some letters over there that have at least ten citations listed down from EPA Region 9. Now that we have 'em, what do we do with 'em? Who's going to be responsible for implementing all that? See, we don't know. We gotta get that item cleared up and spelled out as to who is that designated person. Thank you.

**Paula Basson:** Do you have an answer to that?

**Don Lanier:** I just have a response for Jim. This is Don Lanier from EPA Region 9. I recognize that, I think we do at Region 9, that there is an issue here between, within BIA and within our own arrangement, for carrying out the AHERA requirements within BIA schools on the Navajo Nation that

need to be worked out. I would fully agree with what Jim is saying in this regard. We recognize that we need to assist BIA in doing this. To include the specific identification of who's responsible is the LEA. So yes, that is a problem. I agree with him.

**Paula Basson:** Are there any other comments on LEA responsibilities?

**Jack Townsley, Asbestos Consultant, J.H.Townsley Co. Inc.:** I'm Jack Townsley, and I'm an asbestos consultant. And I'd like to make a general comment, in that with the new OSHA regulations, somewhere out in limbo, but going to come down on us one of these days, there's a lot of duplication between the AHERA regulations and the OSHA regulations. And I really think it is incumbent on both agencies to get their acts together and to coordinate the regulation so that they read the same.

For instance, training custodial and maintenance staff. Under the new OSHA regulations, that will affect schools. And, it will completely change the training methods which are going to be required. Just as one example, as far as, I know you don't want to talk about whether asbestos is really a carcinogen or not, but I can't help but pass the earlier statement made by one of the previous speakers. We have in our custodial and maintenance staffs, we still have a lot of asbestos abnormalities being shown up under health screening. And I would agree, that on the notifications, the notifications to parents, for the most part in the re-inspections that I'm doing, I'm finding that they're not being done. Or if they're being done, they're being done in very perfunctory way, non-specific way. And so, I don't see any problem with those being eliminated. However, the training of the custodial staffs, the maintenance staffs, and the notifications of those staffs, is still a very important responsibility.

**Brian Cook:** On the overlap issue. We've realized in the last six months that has been an increasing problem with a lot of the regs coming out of OSHA and EPA. Actually, sometime in April, I guess, there was a hearing on Capitol Hill about EPA and OSHA regulatory overlap with asbestos, and a potential for it happening with lead. And since that time, within the last month, EPA and OSHA have been meeting regularly to try to avoid that. And that's probably one of our biggest priorities right now, is to avoid all

that overlap and that duplication and the confusion that is out there on asbestos, and to avoid it even happening with some of our new lead rules.

**Jack Townsley:** We could even get air and toxics together, maybe.

**Ed Kennedy, Environmental Audit Association:** My name is Ed Kennedy, with Executive Environmental Management. I've had at least 20 years of experience working in and around schools. And we're talking about LEA responsibilities. And in getting out and walking through a number of different schools out there, I'm finding that, unfortunately, most of the LEA's are unable, or at least not able, to stay and maintain compliance with the regulations and their responsibilities. And in spending time and talking with them, one of the biggest issues for them, is the cost involved with maintaining this type of a program in their facilities. And, if I had something to say on behalf of my schools, that I work with, it would be that some type of funding or monetary relief, for the maintenance of these programs, especially AHERA, that are in place in schools, would be a tremendous benefit. And, I'm not exactly sure how that would come into play. But for them, and on their behalf, their dollars as tight as they are, to maintain a program like this is almost prohibitive, and frankly it just doesn't get done on a large scale. Thanks.

**Unknown Speaker:** If I could follow on to the cost comment. Mr. Kennedy, thank you. Oakland Schools is spending an excess of \$350,000 this year in AHERA activities. These are dollars that are scarce in school districts with dwindling resources. Teachers that haven't had pay raises in five years. Facilities that haven't been improved in 20 years. A school district that can't even build a new school. Overcrowding. Schools that are bursting at the seams. And yet we have to spend \$350,000 this year to comply with federal regulations, with no hope of getting the money back. It's a tough, tough thing to swallow.

**Tom Wise, Sierra Nevada Asbestos Consultants Inc.:** I guess I should have sat down, I just spilled his water all over him. My name's Tom Wise, and I would not have intended to comment on this. I'm a consultant in Nevada. I've worked for, and continue to work for and train, several school

districts, work with school districts. And, as a training provider and a management plan writer and a consultant that deals with abatement, I find that we're more effective following the green book regulation or green book guidance document when we write a management plan, which obviously EPA is aware of, was drafted years later than the original AHERA regulation. It was to the point, short, fairly well organized, put the responsibility on the owner, or suggest that the responsibility for the owner is to appoint an asbestos program manager, who hopefully has some authority.

My problem on the true management of asbestos in place from the point of view of protecting people is, if you appoint an asbestos program manager who is a janitor, who has no authority and no budget, no responsibility, you have done nothing but create a man who's going to go home and have stress, or a woman. If you appoint an asbestos program manager high enough up the ladder to know that he can get into big trouble, and he can control budgets, and he can go to the school board and say "I have to do this. If I don't do this I go to jail, and then you get to come in and find somebody else to do it." You can control your asbestos with a make-sense approach. So, my comment is not to refute things, but to say the make-sense, boil it down, simple communication, that is, put somebody in charge, and don't scare the parents to death unless you need to do that to get somebody to take responsibility, is a better way to do it.

I agree with a lot of the comments here that sending out blind notices to people who don't know what they are reading or why they are reading it, is not the best way to do it. What's happened is, if you have to do it that way, that may force the management back up line. But really truly putting somebody in charge of the program, who has training and understanding of their responsibility and liability, and in passing that training down as necessary, will help manage asbestos employees.

**Paula Basson:** Okay. Why don't we move on to the second. Did you have one more? Okay, then we'll move on to the second segment and if, I think we will have time at the end to cover anything you might think of during the meeting.

**Farshid Salamati, Environmental Innovations Corp.:** My name is Farshid Salamati from Environmental Innovations. And on behalf of Tom's advise regarding some extra cost because of some rules and regulations that we have in asbestos, AHERA or some implementation that I know is coming from OSHA, it required lots of training and lots of this and that, that should be done by consultants and trained people. The school district cannot do by their own people. That they have also training. This makes a lot of this project very costly for schools. And I want to say, yes, there is some way the school can do it by their own people. But, once in awhile, they need to be supervised by the outside consultant, to not to have lots of conflict of interest or something like that. But, mainly, especially this coming summer, next summer, there will be a lots of school projects, and those costs is maybe is not necessary. Maybe it can be go to half of that. But with existing rule and regulation, those costs are really high. Thank you.

**Paula Basson:** Okay. The next segment of the regulations concerns response actions. Do we have folks that wanna comment on that segment?

**Ed Kennedy:** Hi. Ed Kennedy, Executive Environmental Management. I wanted to address a couple of areas that I've identified just over the time, as being gray areas, in our mind, in response actions. And that, to some extent, has been addressed by NESHAPS under the roofing materials. One of the major issues for schools is flooring materials. It happens to be just about the largest expenditure, on an ongoing basis, in schools. Although occasionally there's larger expenditures for thermal system installation, or fire-proofing, or things like that. But on ongoing basis, floor tiles, primarily floor tiles, pose a major expense on an ongoing basis. And I think there's need to address those in somewhat the same manner that roofing materials have been addressed, and considering them as a little different category than fire-proofing or thermal system installation in methods of abatement that are specified under AHERA.

For example, rather than having to clear an area where floor tile has been removed with TEM, allowing the use of PCM on such a clearance. We've just seen over time, that there's not high levels generated from removing floor tile, especially when the controls are in place. That would save an incredible amount of money for districts, not having to use TEM clearance for expanses of floor tile removal. The other type of consideration, and I



don't have all the practices in place, but would be to consider some type of an initial exposure assessment, similar to the OSHA regulations, prior to removing floor tile. And if an exposure assessment was done in a removal area, then the controls would be greatly relaxed. Again, that would reduce the amount of costs that schools are currently spending. And so, I think there are a number of gray areas, and that being one of the primary ones I think should be looked at. Thank you.

**Jim Campbell:** Mt. Diablo Unified School District, and I would like to touch just briefly on the TEM requirement that Mr. Kennedy alluded to a moment ago, and indeed, that is a very burdensome expense for school districts. To illustrate an example, our district, Mt. Diablo, is currently involved in asbestos removal projects for this coming summer, that will run somewhere in the neighborhood of \$750,000. We have no intention of removing asbestos. That isn't what drives our projects. What drives our projects is to replace floors and to upgrade heating systems. The asbestos in and of itself, for the most part, was intact asbestos, and really didn't need attention. So there is considerable expense involved there. A great deal of that expense, I would say close to \$200,000 of it, will be spent on the analytical process. That is the taking of and analyzing of, transmission electron microscopy samples that we are required to do under the current regulation. We're required, as you know, better than I, to have a set of 13 samples for each area that we clear. That translates to a very burdensome expense.

If we could look at the whole issue of non-friable materials, floor tile being the biggest, of course, but transite sheeting being another one that we have to deal with, and look at the historical data that is available to the EPA. And say that we don't really see any high levels of TEM samples for non-friable materials, and to reduce that requirement or amend that requirement to PCM, or to some other means of guaranteeing that we have provided a safe environment for those people who come back to the room, or to the area. I think that you would go a long way towards establishing a regulation which is less burdensome to the school districts who have no money, and as somebody said a few minutes ago, we don't have this kind of money, we want to pay teachers salaries and so on, and we can't even do that, that I think we'd go a long way toward developing a regulation which worked to the advantage of both the public's protection and the school districts' or

other businesses' ability to manage their situation in a less cost burdensome fashion.

**John Nolan:** John Nolan, Wahsoe County School District. I'd like to make a suggestion regarding the TEM AHERA clearance protocol. I'd like to see 'em do away with the requirement of the outside five samples. Or at least give the ability to do, that assuming that we're not going to use the outside samples to lower the fiber level inside the containment. Our specs are written such that we will not let a contractor use the outside samples to lower the fiber level inside. If you want to require area sampling to verify that outside the containment isn't being contaminated you can require that. The problem being is that if you go to labs and ask 'em how many people are having the five samples outside analyzed, the regulation lets you not analysis the outside five samples. But it doesn't let you not take the outside five if you're not going to use them. It's my contention that if you tell the contractor that he can't use the outside samples to get to clearance levels, and tell him it's his problem how he is going to maintain the air, his make up air. The whole idea behind the five outside samples is so that you give a contractor a chance to say, "Well, this area is contaminated, and all the asbestos fibers inside my containment are coming outside." Our specs are written so that it says, "Well, that's kind of tough. If you wanna filter your air outside, then you filter it. If you don't, then you are still gonna clear the containment at a clearance level." And I would like to see you guys do that.

My problem with PCM clearances on a floor tile job is, it's very difficult to get to PCM clearances on a large scale unless the contractor is doing all his pre-cleaning properly. And a good majority aren't doing that. And the problem I have with PCM analysis would be that I could see jobs being delayed trying to get to clearance levels. And I think that our district, apparently we're in a different situation. We don't have, our priorities aren't based upon, when it comes to our funding, maybe because we have a different mechanism to get our funding for our asbestos program, I kinda get frustrated when I hear teachers getting mad at me because I find asbestos or asbestos fiber releases, and then the issue of money comes into account. When we're there to train and to educate children, I don't understand how people can dismiss the fact that we may be training them in a facility with high fiber levels. And, I just can't understand that. We're in the business of providing training, education, we should be concerned enough for the children to provide a safe environment for 'em to learn in. And the children

don't have the choice on what school they're going to go to, and the parents don't have the right to look at air monitoring results in advance, so. But I would like to see you re-evaluate that five outside samples. I think you can get the same by at least giving us the option of not taking 'em and maintainin' a clearance levels inside the containment. Thanks.

**Farshid Salamati:** Farshid Salamati, Environmental Innovations. Regarding this TEM sample. I have a comment that the cost of TEM regarding some of the operation area of clearance sample for some area that especially is floor mastic, those type of non-friable material. I have a comment that taking a PCM sample, simultaneously taking 20% to 30% TEM sample next to the PCM sample, and then analyzing the PCM sample that cannot recognize the fibers between asbestos fibers and other fibers, and if the level was high, and somebody was concerned about real fibers, then analyze the TEM sample. That's my comment. Thank you.

**Ken Schipper:** Ken Schipper, Cal Incorporated. Just kind of one of those "rubber meets the road" issues that keeps coming up in all the refresher courses is, how do we accomplish aggressive sampling in an area such as a dirt crawl space? It's just practically not gonna happen because you're just gonna overload filters. And there's no out for that, built into the regulation that says aggressive sampling when you do it.

**Jim Campbell:** Jim Campbell, Mt. Diablo Unified School District, reluctant to come up here twice on the same subject. But I just wanted to assure the gentleman from Nevada that California is not insensitive to the needs of students and staff. Indeed, even though we don't have the money, we do spend the money, to do these removal projects, to mitigate these fiber releases. And what we're talking about is trying to work together with the EPA to develop something that is less burdensome. We talked, or the gentleman from Washoe County spoke a little bit about pre-cleaning methods, and contractors having to clean the area better, if we wanna pass a PCM clearance, and I applaud that. I applaud that. I don't permit, after having done a visual inspection, any set of air samples to start, until the area is visually clean, 'til there is no visible dust debris or anything else left in the area. Even though contractors would have you believe that, go ahead and sample the air, it doesn't matter if there are a few pieces of tile on the floor,

we can pass the clearance and then you're safe, Mr. LEA, you're okay. You protected your students and staff and we know that that's an illogical response.

**Mike Lyssy, Pacific Environmental Co.:** My name is Mike Lyssy. I'm with Pacific Environmental. Just another idea about the TEM samples. If we can't do away with TEM's and floor tile, maybe we could set a threshold limit. Of a, I don't know how we could come up with it, but make it more than 260 or 160 square feet for floor tile, because it really makes it cost prohibitive on smaller projects.

**Dan Napier, DNA Industrial Hygiene:** Hi. I'm Dan Napier, the company's DNA, and I'm one of those schizophrenic people that's a lot of experience with OSHA, and experience with EPA. I am a microscopist, I'm not an electron microscopist. I think that there's a tremendous amount of confusion. And as I read the regulations, I thought maybe I got on a time warp this morning, 'cause I don't think it's 1987. But that's what the regulations I got were. But, my understanding of reviewing the ASHARA regulations is that, some of the language that said, "shall," as regards to TEM, has been changed to "should."

The other issue is that TEM and phase contrast are completely different. They're not relatable. Phase contrast is designed for ideas of how, and what kind of personal protective equipment, the laborers doing the work should be using. And typically, PCM doesn't find any fibers with floor tile. The literature, the ethical literature has a quite a bit of studies where looking at floor tile with TEM, using a, I think, a red buffer, which is one of the more coarse buffers, you come up with high levels of fibers. So, there ends the issue of friable and non-friable, because a floor tile that's quote quote non-friable, is easily made friable with something as simple as a buffer. So you have a janitor exposing himself to levels that are only visible under TEM. Because if you tried to use PCM or phase contrast in that environment, you will find nothing. So. And the other part of it is, we don't have any toxicology on what those issues are. And I think people have forgotten, in the views of some of these things, as to what's important and what's happening. This fiber length argument, that's not built on good toxicological data, that's built on the ability of a microscope to see that. And it doesn't make much sense to then turn around and say, well we're

gonna rely on this for toxicological data. Or we can say now we protected the employees, or the people working in the school district. I would like to see a clarification of that, what PCM is appropriate for and what TEM is appropriate for.

As far as the background samples, I've seen abuses on both sides. I was involved in a government contract where the inside TEM's came back non-detectable, but the agency said, "Well, we want you to do the outside samples and make damn sure they are undetectable." And we said, "Well, are you talking about trying to find whether there's air asbestos outside? The other side of the coin, in Colorado Springs, we're in a situation where the outside air in Colorado Springs normally doesn't pass quote quote clearance. So those were critical to take outside and those are the real reason for the outside samples, is what's ambient? If your ambient is point zero zero eight, and you do a clearance inside of a work area, and you're below zero zero eight, well, gee, it must be clear. I think people loose sight of that from a, just a pure scientific direction. I think that some of the intent of this is good, but in practice it gets distorted, and people forget what these two methods are for.

**Paula Basson:** Is that it for response actions? Okay, why don't we move into comments on operations and maintenance? Anybody have comments on this section? I find it hard to believe that our regs are perfect for something. Oh, I see! Nobody understands them, so that's why. Well, how about if we move on then to periodic surveillance and re-inspections. At least we have somebody who understands this one enough to comment on it, right?

**Jim Sharp, Hazard Management Services, Modesto:** My name is Jim Sharp, I'm with Hazard Management Services in Modesto, I'm a consultant. And, we agree with several people here, and with the tone of the conversations at Tampa, that the six month surveillances do not serve their purpose. We have over 200 school districts as our clients. We find that about 10% of them actually do the six month surveillances. Many of them dry lab them, as evidenced by copies of the exact same data, from six months to six months. And indeed, I think that most of the school districts spend their time looking at the easy things. The floor tiles, the transite pipes, the transite ceiling panels, etc., etc. And do not spend the time, it they

indeed do their six month inspections, looking at the difficult locations, like attics and basements. Indeed, in one school district in southern California, a very large school district, it is their policy, during six months inspections, not to look in basements and attics, because it takes too much time. And besides there's nobody there.

I believe that if you eliminated the need for re-inspecting non-friables or resurveilling non-friables that you would get more looks at the TSI, and the sprayed on acoustical, and the fire-proofing. There has to some emphasis to get the school districts, or some motivations to get the school districts out there doing their six month surveillances, and that only come from EPA or from badgering by consultants like us. But, in order to get them out there and looking at the things that count, I think that we should eliminate the need for looking at non-friables, on a six month basis, and getting them to look at TSI, straight-on acoustical, and fire-proofing. For the things that can really cause an exposure.

And indeed, if you go out and do a six month inspection, and you see some damaged floor tile, what the hell does that mean? If there's been an exposure, it's six months to a week old, and you can not protect human health and the environment by noting that a floor tile has been broken or that some mastic has become eroded away. Or the crack is in a piece of TSI panel, I mean transite paneling. So, it doesn't really serve a purpose to do the six month inspections on non-friables. And I think, we'd get a better job out of the school districts, if we limited these six month surveillances to TSI, straight-on, and fire-proofing.

**Jack Townsley:** Jack Townsley again, consultant. Several school districts have asked me, and have hired me to do their six month surveillances because they haven't been doing them. And, my experience is that six months is too often. I would think at the most, once a year. And, maybe the answer would be to make re-inspections every two years by an accredited inspector. When I do the six month surveillances in a district, on average, probably in 10% of the schools, the most that I will find is maybe one ding on a pipe elbow somewhere. Throughout a district of 10, 20 schools. So, there's not a large of incidence of problems arising. And, this is one of the things, that in some school districts who've tried to do it right, I look in their management plan, and now we are, what, seven years into AHERA, and those little sheets of paper on six month surveillances are gettin' pretty thick.

And, there's no way that you can really go through them and make any sense out of 'em. And, it just seems, that seems to be burdensome and unnecessary. So, some solution, some addressing of that problem.

**Jim Wilson, ACC Environmental:** Jim Wilson, ACC Environmental. I want to echo what both Jim and Jack said about the re-inspections. And, I also believe that the six months period of time is too much. Or too often, for them to happen.

Also, though, just kinda going back to the O and M training, I did come up with something. I do know a little bit about it. I think it goes hand in hand with surveillance of your materials. If you do proper training, part of the training is informing people what the materials are, where they are in the schools, the kind of condition you're supposed to keep them in. We're talkin' about custodians and maintenance folks, engineers, who are doing the work on this material on a daily basis. Therefore, they are in contact with this material all the time. My feeling is, is that training is really key to much of operations and maintenance programs. If you don't have good training, if you don't implement it, if you don't do it annually, if you don't make the individuals aware of these situations, then these other things are very, very unlikely to fall in place. I understand also, that is a tremendous burden on school districts to fund training and to do all of these things, so I think we have to look at the training requirements. Of how we provide them, and what kind of things have to happen in that regard.

**John Nolan:** John Nolan, Washoe County School District. I'll try to make a statement now without attackin' anybody. I do things a little different with our periodic surveillance. We have a full-time inspector that I've staggered my re-inspection schedules, and we don't have a deadline every three years. We re-inspect based on that schedule. So, we're never facing that three year re-inspection. But, we also perform the same inspection that we do on a re-inspection for our periodic inspection, by a certified inspector. I have that ability because I have a person full-time to do it. And with the change in the work load, I've been able to do that.

My problem goes back to my first statement, is that six months can pass, I can go have a conference with the principal and tell him how important it is that we have a management plan, and if we're not careful, the EPA's gonna

show up at the office and ask for the management plan, and we better know where it's at. Six months later I can go back and they've lost the management plan in six months.

We're also in a different situation, our school district. 'Cause we passed a 60 million dollar bond. So all the sudden, we're doing unbelievable amounts of work with contractors that I'm tryin' to keep a handle on. Providing disturbance permits. They're not following 'em. And, we're finding things pretty much every six months that need to be fixed. Things that probably should've been reported right away. I guess the more time we spend in the school, the more emphasis is put on the staff to recognize that they have to report these things to us. So, I agree with the idea of not having to re-inspect the non-friable materials, 'cause I agree it doesn't serve much purpose. But, the friables I do. I just have a real problem with saying that we're not gonna revisit our schools often enough to make it, the emphasis placed on it. Otherwise, we'll find things that people will stop enforcing the regulations, our regulations, our internal regulations, that we don't disturb asbestos. And we'll start finding things that people have disturbed asbestos when they shouldn't have. Thanks.

**Steve Somsen:** I salute my wealthy Nevada brethren. Again, Oakland Schools, Steve Somsen. I would propose a reduction of the surveillance frequency to at best once a year. And, I concur with the comments to reduce it to the friable and what not. I completely concur. As far as the three year re-inspection goes, again, I'm dealing with a school district that's spending \$350,000.00 this year just on re-inspection. Let alone, trying to take care of maintenance needs. We just don't have that kind of money. And it's a matter of economic reality. And again, I take it back to the perspective of cost-effectiveness. What is the health effect that's going on in our schools? How have our children been affected? How have our employees been affected? How has the public been affected? And again, I come back to 35,000 claims, with two asbestos claims out of that, and none of those were directly related to the schools whatsoever. It's not cost-effective. We need to reduce the cost impact on schools. I'm suggesting a reduction to at least once every five years.

**Ed Kennedy:** Ed Kennedy, Executive Environmental Management. Again, wanted to concur the comments of several speakers regarding the frequency



of the six month surveillance and the concept that that's probably more often than is necessary to ensure health and safety of the employees and occupants. Primarily, in light of the fact that schools also are required to have an O and M program in place, which educates occupants of the buildings to be aware of any damage or deterioration of materials in the areas in which they were. So, if that's in place, the concept of again having to walk through every six months is probably superfluous. Annually probably would be sufficient.

I think to accomplish what we're looking for in the light of having a supervisor of someone at a higher level aware of exactly what condition materials are in their facilities. This concept of looking at non-friables, or perhaps, term it "Category I Miscellaneous Materials," would eliminate a fair amount of effort that's already being spent to little or no response, frankly. And unfortunately, with, again, in my experience in going through numerous schools, the six month surveillance is just not happening. It's not occurring now, and schools are in a place of being in non-compliance, and perhaps that would be an area where we could be less burdensome on them. Thank you.

**LaVerne Garnenez, Navaho Asbestos Program:** Hi. My name is LaVerne Garnenez, I'm with the Navaho Asbestos Program. I'm listening to everybody on the other side, you know, the LEA side, and they're all sayin' it doesn't work, there's no money, and it's just too often. I agree. You know, I do most of the inspections for AHERA compliance, and I know they're not being done. And when they are being done, they're just being duplicated from, you know, from the previous inspection. Mainly because they're being done by individuals who aren't thoroughly trained to do them. It's not like the re-inspection which requires an accredited inspector, so often, when they are done, they're done incorrectly and just to save time. And, I agree that maybe it would be best to reduce the number of periodic inspections. Maybe up to one year, maybe done every year. And, to focus on the friable asbestos-containing materials. Because most of these re-inspection reports, I don't review, you know. I'm looking to see if they are done, but I really don't go through them to see what has been happening with the asbestos. And I'm sure that's what the schools aren't doing either.

**Catherine Jones, Self Insurance (SISK):** My name is Katherine Jones, and I work for a self insurance JPA in Kern County. And we represent 123 school districts. And we manage their AHERA program for them as part of the service they receive through our program

And I've heard a couple of people come up here and say that the six month inspections aren't being done, that the school district personnel are losing their management plans, that nobody's looking at them, nobody's doing it correctly. I don't think those are valid arguments to throw away the requirements to do that. I think that there is value in having that in place. There is value in seeing that these inspections are done. I can assure you in 123 school districts that are in our program, these six month inspections are done.

My main concern is the value in doing in them. We go out, and our school districts maintain their management plans. We go out and we look at this stuff every six months. Nothing changes. Nothing. So we're going out there, school people are going out there, they are, the ones that are doing it, they are looking at their materials. But the value in doing that is not significant, because the materials don't change. It's really just an exercise in time. So if we're looking at what is the value of it, doing periodic surveillance does have a benefit. There is value. Occasionally materials do change and you need to make a note of that. But they're not changing every six months. There's not enough going on with those materials that warrants somebody going out there, spending enormous amounts of time to look and say, "No, it has not changed."

And I really support the argument that the surveillance should be limited to the friable materials only. Cause the non-friable materials really don't every change. So, you're gonna pick those up on the three year re-inspection. If that's left in place.

**Don Benning, Sacramento City School District:** My name is Don Benning, and I'm with the Sacramento City School District. I'm a first-line supervisor, I'm not an administrator, so maybe I have a little different angle on this. I also spent 14 years as a pipe insulator. And, I come from a family of pipe insulators. And, I know what asbestos can do. And I've been real close to those people who've had these diseases.

So, with that in mind, we have a real, we have one of the largest school districts. We have a lot of older buildings as most of the school districts do in this area. And, as some of you will remember, in 1988 we had one of our major high schools closed. And I know the political and the problems that were related to the closing of that high school.

I'd like to speak to this issue of re-inspections and surveillances. I would like to see you make it so that the surveillances are done only to friable materials. I think that, that would greatly decrease the amount of work. I am in favor of the three year inspections if they're done well. Perhaps in the future, if we all have a good data base and a good understanding of where our materials are and what condition they are, maybe in the future, of providing a longer space between the re-inspections. I think that, you know, maybe after the next re-inspection, make it five years. Something like that. Put a little bit of length.

We've had a lot of good luck with just plain educating people. Educating teachers, educating administrators, and that sort of thing.

Also, I'm kind of disappointed you didn't have this here available. It's the EPA Asbestos Hazard Emergency Response Action. It's the inspection guideline manual. Has a lot of good information in it. Maybe you can give out how we can get this, but I read through this, it's real good. And it really would be helpful for every school district to have one of these. Thank you.

**Paula Basson:** Should we move on to the next topic, which is "Management Plans?"

**Jim Sharp:** Jim Sharp from the Hazard Management Services. My only comment on management plans is the necessity, or concerning the necessity, of having complete copies of the management plan at every site. I strongly believe that the plan ought to be present at each site, as it was formulated in 1988 or 89, so that people that come into the site that are going to do some work there can look at the plan and determine where the asbestos is.

I object, and most of the school districts that are clients object to the fact that a copy of every annual notice has to go to every single site and be included in the plan. A copy of every six month's surveillance has to be sent to the

site and included in the plan. And, all of the other extraneous training documents that say that this custodian received his training on such and such a date by watching a video or attending a training session. Those must be copied and sent to every single site. I just don't think that number one, that it's done. And number two, that it is necessary to be able to assess where the asbestos is in a school. And really, the only people that look at that plan at a school are those that might be doing some maintenance for the maintenance department, or that might be an outside contractor coming on site that's concerned about the location of asbestos.

So I think all these extraneous record keepings are not necessary at each site. I think they should be added only to the district site and kept up to date there.

**Paula Basson:** Is that it for comments on management plans? Okay, the last topic that we had was model accreditation plans. Comments on those?

**Jim Campbell:** I have some real concerns as to my colleagues that I've spoken to in public schools. An example belonging to a JPA that encompasses 20 school districts in Contra Costa County. Most of the people that are on those committees are the designated persons, the accredited persons in their district, who do little or nothing with asbestos all year long, other than to go out and hire Mr. Kennedy, Mr. Sharp, Mr. Salamati, or somebody like that to do the work for them. Yet they maintain that accreditation.

And our complaint is that year after year after year we go back for a day long session at the University of California in Berkeley, in my case, and, not to discredit the UC Extension program. Cause they do a fine job. They turn back flips trying to find something new, but there isn't anything new. And I think that whole issue of how we are recertified each year needs to be readdressed. Perhaps the recertification needs to be done on an individual basis. Anything that is new is sent to the certificant. And maybe to cover the cost of it, we send in 25, 50 bucks in an open test book or something, to indicate that yes, indeed, we are up on this.

But the business of having to take a day to go this recertification program seems to me to be very wasteful. It's probably a money maker for the providers, and I'm sure they don't like hearing what I'm, but it just seems to

me to be superfluous to go through that, or at least not to be an eight hour session. Now, if there are new things each year, and there are always a few new things, they can probably be covered in an hour or two, and not have to take a whole day, and not have to spend the two or three hundred dollars that we have to spend for this recertification every year.

**Catherine Jones:** I agree completely with that. Those of us that are in the arena of asbestos that deal with this daily keep up on whatever regulatory changes come down, and lately, within the last three years, there haven't been a whole lot of changes.

There are some new changes now that we're gonna have to address with the federal regulations, but I think those of us that deal with this keep current enough on the information so that a refresher every other year would be much more appropriate than every year. Those of us who do, for six or plus years now, that have gone through annual refresher, you hear the exact same information every single year. And you don't leave feeling very refreshed, you feel like you need to go take a nap. Because you've sat there for eight hours and feel like you've wasted your time. And I think every other year would be much more appropriate.

**Don Benning:** I find that a lot of school districts are isolated, and unless they hire a consultant once in a while, or unless they are hiring contractors directly, that they don't hear a lot of the new regulations. And a lot of things come and go without anyone knowing about it. Now I don't know if the length of the class or the cost of it is an issue, but I do definitely think there should be something done on an ongoing basis, and I don't think yearly is out of line. Now some of hold like three accreditations or more, that gets a little bit much. Maybe we can consolidate some of that.

**Dan Napier:** We happen to be one of the training centers that offer all these training classes, and we're working closely with one of the universities now. But, we do go through back flips, and I do feel that some of the training is inappropriate and very difficult. And I would suggest that we may be able to do some correspondence type recertification.

With ASHARA, I'm afraid that EPA has taken the typical American tradition, and that's best, I think, explained by the, my brief, if you'll let me, old story about the two guys that own a truck and they buy \$1,000.00 worth of vegetables in Mexico, drive across the border, sell the vegetables for 900 bucks, and they say, "Gee, this isn't working. What should we do?" Well, if they're American businessmen, they go out and buy another truck. And I think the EPA is guilty of that with the training in that we've extended the training, we've made it four days or five days instead of three days. And, I don't know that this is actually making the training more effective.

I think what recently has made all the training more effective is arresting the person who was selling certifications. I think as a course provider, I have heard fewer students say, "Yeah, I just went over there and they gave me the certificate" of late. We had one, recently one of the supervisors from a removal company say, "Well, gee, we're gonna have to put these guys in your class again that goes eight hours instead of the half hour we're spending over at the other guy." I think those kinds of problems are more endemic and more of a problem than making the courses longer. And, I think if we actually looked at the course content, and provided a way to gain refreshment from completing some correspondence, as one person already suggested, a take-home test.

And certainly, I think we should bundle some of these refresher courses. Because we're having to offer refresher courses in project designer and competent person, and they cover virtually the same material. And so we have to take this poor person and run him through two days of covering the same thing. It's very difficult from both a faculty side and as a student. I think this needs to be changed. I think that the best thing we could do is require or allow some sort of a correspondence update.

**Tom Wise:** Tom Wise, Sierra Nevada Asbestos Consultants. Again, course provider and consultant and testing lab is our business. Until recently when I got booted upstairs I had personally under my supervision 11 accredited consultants. And, because we provide our own training, that helped us cut the cost. But, as I evaluate the cost of services as an asbestos consultant, we give a minimum of two weeks vacation, and then in Nevada, to do full consulting, you have to have four different accreditations. That's inspector, management planner, project designer and project monitor. To keep those

current, that's three days per year additional of training every year. Now that's valuable time, a good percentage of that. The duplication is the first half a day at least, for each one of the refresher courses is the same identical information. So now I've got another three days, now that lead training is being proliferated or being proposed on, it's the same guys are not gonna have additional accreditations in lead-based paint inspection and design and management.

Now I'm gonna add three or four more days. We have radon. We have indoor air quality. And what I'm seeing happen is when people are saying within my same firm that do tank remediation and do engineering, which is also very professional, very technical, and does change, due to federal regulations, they will not pay our people because, at a rate that maybe helps, or they're not willing to, because they go the cost of this person is higher than the cost of a person doing a similar type of work, because the asbestos regs and now the lead regs have so many training requirements that are not so intensive up front. But this year after year with the repeat things.

So, I'm trying to be succinct but I'm not. The refresher classes that we train, if we could have a four hour component that this is the base information for an inspector, management planner, designer and supervisor, that they need to hear every year, we would not do that four hours three times over. We've done it once. And then you could have a component in the afternoon that addressed they guy who's only a worker. Who, oh by the way, gets discharged after the first four hours cause they covered everything a worker needs to know.

The supervisor stays his extra two hours and covers anything to do with the liability, the aspects of managing his building in place, the inspector has another two hour component or something that deals with anything that's new in inspection, and the designer by the way may have to stay another extra hour to cover anything on top of that. Now, that's gonna take money out of my training revenue but it's gonna put it right back in, in these employees because 11 times three days, and again, with our staffs in other states, it's the same thing. It's actually making us stand up and not look very good to our parent corporation, who has engineers who don't have to do this, who has environmental technicians that don't do it because they're dealing with tanks. There's just a difference

**Brian Cook:** Are you suggesting more of a modular approach to training?

**Tom Wise:** Exactly.

**Brian Cook:** 'Cause someone who takes the basic stuff once does not have to take it for all four disciplines?

**Tom Wise:** That's right. And clearly with my staff, I go, "Okay, you guys have gotta sign up for your three days." And guess what? The first part of this morning, so we don't even let 'em do it back to back because we know they're diddling or out at the pool, they'd like to be. Because it's all repetitive. So I make 'em actually do their supervisor one time and their inspector another time. 'Cause the base course material is kind of the same. So the modular is ideal for those. And on the other hand, if you've got a rural school district and you are an asbestos program manager and you don't come back annually, you may not have any idea of what's going on. You may have inability to deal with issues because you feel even uncomfortable and insecure. So I do enjoy those people that I see once a year who we can refresh and say, gee, this is what's changed or not changed. And the comments have been correct. For the last three years, nothing's changed, until this year. Now we're spending a full eight hours plus talking about the new OSHA regs and all the different things that are happening. So again, there's some redundancy in once a year, but I think it needs to stay once a year with the modular component, or a correspondence if you've had so much training you don't need to sit there.

**Brian Cook:** You talked about lead also. Have you given any thoughts to how you might incorporate lead training with asbestos training to also cut down the amount of time the workers are out? Have you thought about that? 'Cause that is a big area, we are in the middle of working on a (inaudible) we're making for training of lead abatement workers. And we are interested in ways we can avoid duplication within lead and also between lead and asbestos. If it's possible, or perhaps inspectors for asbestos and lead, put something together for both of those groups. Or something. But, if anybody has any ideas along those lines, let us know that too.



**Tom Wise:** You're speaking the kind of language that makes sense to me now as a training provider, once again, and paying a lot of salaries for people that have to be trained. The component, in my opinion, to comply with the OSHA lead regulation right now, an asbestos abatement supervisor can quickly learn the distinctions between lead abatement and asbestos abatement. So to put him through another 40 hour course may or may not be warranted. But certainly I feel like I can address the difference in how he controls his job site, how he protects his employees in less than the time of somebody off the street who has never been an asbestos supervisor. Particularly not for the last five years, who's intimately aware of some of the controlled technologies that are similar. That makes very good sense to think about it.

I didn't think about it a lot, 'cause all I've done is gone from the mental standpoint that the environment for me is gonna get worse, because I'm gonna have similar guys who now need to go for more days, and they're gonna wanna pay 'em less because we have more invested to get 'em out there on the street. And it's been the head ache, the idea of talking component training that can be stacked even between similar things. Where you don't underdo it, but you just do what makes sense. And if somebody's fresh off the street, a 40 hour supervisor class is probably minimum. So again, I think you're, I agree entirely with also one other related thing. In that OSHA and EPA, which you are doing now, are talking about these things so when the regs come out, we don't have one that says every two years and one that says every one year. And I get clients coming in and they read one and they think that's the gospel. And I say, "That's one gospel, and here's the other gospel, and if we stack 'em all together, then you have to do all of these." So I'm in support of the other things you're doing.

**Brian Cook:** For training, one of the real practical sort of, I'm gonna use the word problem, that may not be the right word, but one of the hard things that we have is keeping, if we were to go to a modular approach, keeping track of all of that. It's easy if someone goes through a whole course, you know that you have certificate, whatever, and you know that. But if you start to allow people to opt out of the first four hours for these three courses, how you keep track easily that they did take that first module at some point in time, and that then carries them through for the next three courses. Those are the kinds of things that we want to make sure that we can keep track of.

**Tom Wise:** You and us as employers of course have to have that if somebody shows up, and are your people properly accredited. So it is a record keeping thing versus the cost of the hours away from work, billable work, in that it's the kind of problem that I think industry should, we should come up with recommendations if you're willing to listen. My immediate response would be, just mine is, that they don't get the add-on classes until they can walk in with the proof that they've got the base four hours. Then they get the inspector, then they can get the management planner, then they can get the designer. If they don't have the base four hours, you don't give 'em the other components, and it may need to be stacked in some kind of manner like that. Where you've got a certificate, yes, I've covered the first four, now this week I can fit the extra time to get the inspector, maybe next week I get the management planner. As long as I'm not doing a management planning job in the school district, even there's some flexibility in that for the people. It is a record keeping thing. That costs more. The time and money spent will far outweigh, you know, I think some kind of logical thought process.

**Hugh Johnson, Carpenter:** My name is Hugh Johnson, I work with carpenter's training apprentices and journeymen throughout 46 Northern California counties, and I'd like to comment on the refresher to the extent that I agree to maybe to make it a shorter time length. A four or six hour or possibly a correspondence I think might be a good idea. But I think we do need them, because most of us in this room, we may not need it because we get the correspondence through mail. Okay, but we have members, several thousand members of carpenters in Northern California, and they get refreshed every year. They may or may not have worked at the trade throughout the year. Their only correspondence usually through us, or through your organization, or the workers don't get the correspondence that we get as training providers or LEA's. And so they need to be refreshed each year. They need to be, to have that review, to have the importance brought back into mind, to be prepared to work on the jobs when and if they do. The same with some of the supervisors and contractors. And I find, we've held several refreshers for CAL-OSHA personnel. And they also, they want to know what's new. You know, the people in the field of consultants and the different inspection personnel, they're not kept abreast except at the local refresher, unless there's a special point that someone has

taken to them. So I'd like to comment that I think that they're very important from the worker and the contractor level. And we might reduce the length of time, and we might make it into a correspondence type course, but they do need to be reviewed each year, on not necessarily the new, but the old. Because they may have not been involved in it, and they've forgotten some of it. Thank you.

**Jim Campbell:** Jim Campbell, Mt. Diablo Unified School District. Just sitting here listening to all this, excuse me, an idea passes through my head that may help this process. As a certified safety professional, I'm required to have a certain number of continuing education hours each year in order to maintain certification. If I don't do that I lose my certification, and there are penalties, and then retesting and so on required with that. If perhaps you look at this as an initial certification and testing, the 40 hours, I don't think anybody is in dispute of any of the initial courses here. They're valuable and they need to be done. Now it's up to us, as certified personnel, to maintain our certifications by attending work shops, on regulations, for example. On whatever's new. And I think the spirit that you intend, or the reason that you ask us to be recertified is one, to keep us abreast of any new regulations, of course, and as the young lady from Kern County pointed out, that's not a huge difficulty. They're thrown at us, we don't have any choice in that matter. But secondly, to interface with our colleagues, to develop new ideas collectively, such as what we're doing here today and at numerous other workshops. Perhaps this idea of developing a program of CEU's, continuing education units, each year. And you would have to arrive at that number and what sort of courses or workshops were acceptable. But perhaps that might help to solve the problem.

**Ken Schipper:** Well, being the representative of one of the training firms, talking about that issue, I can't tell you how difficult it is sometimes to try and come up with material for some of the courses when in fact, nothing has changed for a significant amount of time. We go back about three years, we had a lull when there were no new major regulations, you could take a handful of items and go over them in a half hour, and then you're saying, "Okay, what else am I gonna say?" This last year's been great, with the changes, with ASHARA comin' out a little over a year ago. And the OSHA regulations, it's like, "How am I gonna fit this all into an eight hour day?"

What I do feel concern about, and I've seen Ed there, and I've seen Bob there, where we typically schedule a contractor/supervisor, an inspector, and a project designer refresher three days in a row, and I've had people show up. Scheduled for one, two, three days, and 90% of what they're gonna hear is exactly the same thing. And I feel like saying, "Well, Bob, why don't you come up here and do the next session, since you heard it twice already." You know. So, I think something needs to be addressed in regards to that, that possibly combining components of those courses to some matter.

Brian, was Brian, yeah, the question you brought up in regards to combining lead and asbestos in some way, having put together all of the asbestos courses for our firm and just recently all of the DHS accredited lead courses for Cal, the only component that I've seen that readily fits together is probably the respiratory protection training. Beyond that, while there are a lot of similarities in work practices, if you were to start throwing out terms like needle guns and scrabblers and baking soda blasters and carbon dioxide blasters and everything else, pretty soon people are saying, "I don't have a clue of what a scrabbler is and how it works and how I might utilize that on a job." So while we may build the similar containments or similar protective, or use similar engineering controls in some areas, when you take a look at what's required for lead and what's required for asbestos, you may have a four hour overlap, but not much more than that.

What I would like to see, and what the DHS here in California has done is to establish that health and safety component, which is history of lead, health and safety, medical surveillance, respiratory protection. And has essentially said, you take that once, for all of the courses, and when you've taken that, you never need to repeat it. You can skip that full day of the course, even though they don't call it a day, but you can skip that component of it.

**Brian Cook:** How about OSHA and EPA training? Another way to be more efficient there?

**Ken Schipper:** Maybe in regards to clarification a little bit. The one thing that OSHA requires is annual training. They don't say how many hours of annual training, but they do require it. One issue is 16 hour trained workers. In the past, EPA's said, 16 hour training for maintenance custodial workers. No requirements for annual refresher training. OSHA is saying, we will

accept EPA's 16 hour training for our Class III workers. Or for Class III work. But they require annual refresher training. Is that a one day course, is that a one hour course? So some collaboration between OSHA and EPA, you know, deciding exactly what the training requirements are would be helpful.

**Dan Napier:** Dan Napier again. I don't want to be heretical, but I think that EPA and OSHA may need to look at what's the proper role of EPA in defining worker training versus OSHA's mandate to provide a safe workplace or ensure that employees, employers, employees, have a contract to provide a safe working environment.

The other issue is that when you talk about lead, one of the serious concerns that I have as a professional, in Hong Kong I heard at a World Health meeting, I heard a very astute and well-educated professor make a very sound argument that we haven't looked at all the data on lead, and we may be looking at the symptom and deciding that, that is a cause. So we may be faced with really looking at lead, and lead may be far more controversial than anyone in this room has thought it could be.

As far as combining the two training programs, I would tend to agree that about the only issue is respiratory protection, and possibly PPE, in general. Or personal protective equipment. If we did go to some sort of a modular course, I think that would be very wise.

My experience, however, with the EPA training courses is that we made some serious mistakes when we first started out. I think the most serious was that we actually wrote our own worker training course. And we wrote our own supervisory training course. And since it wasn't the Atlas approved course, EPA looked at it and said, "Gee, it's not thick enough, I don't think we're gonna approve it. Then they decided, well they better read it so they could tell us fairly what was wrong with it. And the person reported back to me that they felt almost excited. They felt it read like a dime novel and with three or four changes in one or two sentences, the course work was all approved. As I say, it was a mistake when I did it because everybody else was just grabbin' the Atlas course and saying, "Here, this is what we're gonna teach." So, one size doesn't necessarily fit all. And the modular courses may be real difficult to manage, and if somebody has a modular course, how's it going to interface with someone else's modular course.

And in fact do we want to have a one size fits all needs. I think that is an overview.

Some of the schools and some of the things that I've heard is that when you come out as an agency and mandate this is the way management must do something, that, that may be the wrong approach. And maybe we might wanna look at results rather than a cookbook approach. Because for what one school district does, another may find completely unsuccessful. And it seems to me, or again, looking at ASHARA, one agency or one building area does may be completely unsuccessful for someone else. And we may need to look at a results orientation rather than a cookbook. Thank you.

**Ed Kennedy:** Ed Kennedy, Executive Environmental Management. I've been listening to some of the comments and thought some of the approaches may be very beneficial. Particularly the modular approach. Perhaps there's a way in which the modular approach would say, package all of the asbestos regulations as one package. And then, the refresher courses, for example, of inspector, management planner, designer, etc., would be the time reduced for those courses, maybe to four hours instead of eight hours. And, as long as the regulation module had been accomplished, then the others would be much less time consuming.

I have found that a wide range of credibility in the training courses which I have attended. I think it's interesting that the instructor in a training course does not even have to be a certified inspector, management planner or designer in order to train inspector, certified people. And, as such, I've seen major deficiencies in training. I had one instructor that insisted that amocite is never in pipe insulation. And, I could not convince him otherwise. So, those are the types of things that I'm seeing out there. I'm seeing very little consistency in even the time constraints that are supposed to be in these courses. I've been let out as early as 12:30 from refresher training courses that started at eight o'clock. And this is pretty consistent with a lot of people that are out there going to those courses, from what I'm hearing from them. I've heard that the instructor assigns a certain amount of work and comes back an hour later to see how your doing. Those types of things are, from my experience, again, I'm not pointing a finger that everybody's that way, but there's those types of activities going on.

And these are the people, the consultants, the workers, that we put in charge of the industry out there, and many building owners, specifically schools, don't know the difference. They put their trust in a consultant and they find out later on down the road that what they have in their sites is much less complete than it should have been. So I see a real need for review and audit of the training courses that are out there. By someone. And a standardization, back to the basics, type thing. I have been very surprised, and I haven't attended a lot of initial training courses, but the level of understanding regarding an AHERA inspection is very deficient from my experience of what's out in the field and what I've attended in class. I was not taught how to do an AHERA inspection, I was taught about an AHERA inspection. And somehow, I would like to see that improve, so that the people that are being turned out now through these courses think for themselves and don't just pick up a consultant's existing format for doing an AHERA inspection, and follow that blindly.

There's many holes in the work that's out there. I have the opportunity to review management plans and inspection reports from consultants all over the state. And, in that process, I've developed a 35 point check list, which includes very basic requirements, such as, is the name of the person who did the assessment provided? Is the date the assessment was done provided? They're very basic AHERA requirements. And they also include some more complicated ones, such as are the homogenous areas adequately defined? Are the exact sample locations available in the report? And I'm finding that out of 35 points, from consultants that have been in business for a long time, I'm finding 11 or 12 of those points in an AHERA management plan that's being provided today. So I see there's a real need for this whole training area to be upgraded, in order that we can raise the level and the quality of the product that's out there, so everyone's doing the same level of work. So that consultants who are doing it right are not being undercut by someone that's coming in and can do it at half the cost 'cause they're doing half the quality of work. I see that as a real problem.

**Paula Basson:** Okay. Thank your for, oh sure.

**Brian Cook:** You know, when we change regulations, we get very data hungry. And if we are to consider perhaps making some changes in the frequency and time periods of surveillance and the re-inspections, data that

supports those changes will be really helpful. If there are any of you out there that would be willing to share data with us that shows why surveillance does not have to be done every six months. But if you have information that nothing changes over 18 months or a year or something and could show us that, that would really be helpful, because someone's gonna ask us, "Why are you doing this." And we have to say, "Well, because here we have some data that shows us we don't need to do it every six months. And the same thing with inspections. So if you have anything, we would be very happy to get some information from you on that.

**Don Lanier:** Don Lanier, Region 9. If we're approaching the closure here of this, I want to hold on for just a minute because there's some people who came in late that haven't talked yet. And I wanted to make sure that they knew that the forum is still open for that kind of thing, so anyone who hasn't spoken who desires to, please don't miss the opportunity.

**Paula Basson:** Okay, well before we close, I thank you all for your patience in following our format. Are there any other general comments that you wanna make about AHERA. Dr. Goldman opened this up pretty wide, so if anybody's got comments, this would be a good time.

**Brian Cook:** Let me throw something else out for you to think about. You know, what would happen if there was no AHERA? Are there any other sort of paradigms out there, you know, a lot of you who have been involved in this for eight years now or so, what, perhaps, if there was an opportunity or a way to even start all over, are there ways that the program can still be run, and as Lynn said this morning, we aren't going to turn the clock back and decide not to deal with asbestos in schools. But, if the program really could be revamped, not just amendments to current regulations or changes in policy, but if we really had an opportunity to kind of start all over, are there any view on how things might be done differently from the beginning?

I know that's kind of a big question to ask you now, but think about that. And, over the next few weeks, if you have any, you know, kind of brain storms on new paradigms for dealing with asbestos in schools, we really wanna hear them. Because, you know, who knows what's gonna happen. I'm just trying to open this up to a more broader look than just amendments



to the current regs, but you know, in a really broad sense. Are there big things that would effect, you know, a lot of things? The big picture look. Now, or later, or use these things here.

**Tom Wise:** I kind of make the topic, Brian, that you just mentioned, a big topic. In particular, our refreshers. Point being that a lot of our refreshers are conducted, two people have a lot of responsibility and a lot of authority and I don't see but once a year. And how AHERA and NESHAPS and OSHA 1926, of all, from respiratory protection through the new 1101 and 1001, how they inter-relate, is something that I spend a lot of time on, so that they can sort those out. In the earlier training days I used to say that the AHERA's the most important regulation in existence.

And, I'm trying to not make this long, but I'm giving you a little background. Because it, that's where the emphasis was, it was protecting the children. That's where the mandatory time dates were in place, and, you know, as of current training classes, other than what is a minority of the population, that is the school district people, the managers, and the parents, we spend very little time on AHERA because AHERA has nothing to do with life for most of the people in the industry, any more. The industry, the asbestos industry is driven by NESHAPS. NESHAPS says that you shall renovate or you shall survey for asbestos before you renovate or demolish any facility. Facility owners, day in and day out, have to deal with that, irregardless of the age date of the building. In other words, they have no exemption to not survey if was build in 1995. They still have to have some basis for not dealing with asbestos. So that drives the industry. The new OSHA standard now that requires a assumption, or presumption, of asbestos containing materials, which in effect then drives training requirements for any building built in 1980 or earlier, all of us now, also drives a major part of the industry. Where AHERA does not. AHERA's got important provisions that carry on in the training and the implementation of things. But if it was to go away today, most of the industry would exist would exist with these regulations that we've already got. That are very important. Tell you what you gotta do, how you gotta do it, maybe not with extreme detail.

So all I'm trying to say in summary is, you could drop this away, or if you, I don't have this very well thought out, if you combined the provisions, that's where this cross-referencing, because the one thing I wanted to come back and speak about is clearance. We've spent a bit of time here talking about

clearance and had some good suggestion from, there's a problem when you say 161 square feet of floor tile needs five to 13 samples taken at the cost of \$1500.00 when that costs more than the removal and the consulting itself. But, AHERA's got the only clearance requirement. It's the only in law clearance requirement. So the school's law is the law. Other than some states have their own clearance requirement. So this coordination, so one thing I would say is AHERA, if they change their clearance requirement, that's kind of the standard of the land but nobody has to abide by it except in the schools.

I have a little concern in that the EPA passed the NESHAPS and has amended it later and says there's no clearance requirement after you do abatement. You have to do proper abatement, but you don't have to clear it. OSHA does not say you have to clear it, but you have to protect everybody during the job. So there's a little bit of unclarity on clearance requirements. If we do amend OSHA, AHERA, if we're takin' the big picture now, we've got schools to one standard, and we've got everybody else that doesn't have the AHERA in certain areas with the different standard yet the other standards, NESHAPS and 1101, because obviously there's an employer/employee relationship in any school district also to cover the schools. The schools are covered by everything. They're the only ones that are covered by everything. Kindergarten through twelfth. So, I guess that emphasis of how do we make sure that we're not just isolating the schools and saying you should do everything to a higher standard 'cause there's kids. 'Cause there's kids in day cares, there's kids in universities, there's kids in public commercial facilities, there's kids in day cares. They're all covered by OSHA and NESHAPS. So again, I think the emphasis of paying attention to the broad perspective is really good. Wish we had more time. And I better shut up.

**Jim Campbell:** Rather than belabor that and say it again, I'll just say I support that. Two very brief comments. I'm sorry, Jim Campbell, Mt. Diablo School District again. Two very brief comments. If you are going to revisit AHERA, if you're gonna start from scratch, provide a mechanism to fund it for us, because we don't have the mechanisms, public schools. If you require us to do something, and that seems to be the direction that the congress and the executive branch is headed, and I applaud that, don't give us a mandate or a regulation and then force us to do it without providing the money. And the second thing is, if you do AHERA over again, put a table of contents in the darn thing.

**Catherine Jones:** Catherine Jones with SISK. I think to say that AHERA isn't leading the industry today is fairly incorrect. Because AHERA established state-of-the-art. And there are not a whole lot of consultants that are doing work outside of schools that did work in schools that ignored the AHERA requirements. And did less than AHERA inspections, that did less than AHERA contractor supervision. Those things became state-of-the-art once AHERA went into effect. And, in fact, those did drive the industry. And although that's not, AHERA isn't on the tips of everybody's tongues when they're doing Bank of America buildings or federal buildings or other buildings, residential buildings, the practices that they're following generally, in the consultant that did the inspection, although I agreed with the earlier comments, some of the quality leaves much to be desired. But, most of that work is being done according to AHERA, whether it was done in a school or not. So, the AHERA regulations did have impact and they did value. And that established what quality work was supposed to be.

I did want to back up on the response action for the time line. I think the time line can be eliminated in the development of the management plan. Some response actions, a response action can simply be, "We are going to monitor this material. There's nothing wrong with it." Our response is just maintain it, monitor it, and to say I'm gonna that by a certain date doesn't really make a whole lot of sense. That's an ongoing activity, and so I think that, that can be eliminated.

With the record keeping requirements, I think that, that was a valid point that was brought up about the school districts. Each individual site should have their own management plan. The management plan that reflects what's at that school site. The additional information that's continually being added to the management plan, the six month inspections, all of the abatement records, I think it's much more feasible to expect a district to keep that at their central location, like their district office. That way, you have one site that has all of the AHERA information, and it's more feasible to expect a school district to have one individual that can sit down, that can go over all the abatement information and can explain anything about that management plan to the people that come in. Larger school districts with 20 or 30 different school sites, you're asking the principal, the vice-principal, the school secretary, to become an expert on AHERA so that she can explain all of their abatement information and air monitoring and pull out all the six

month surveillance records, and that will not happen. And that is not happening now. And I don't think it's fair to require a school district to have that kind of an expertise. For a large district, it's an extreme, extreme burden.

Also, in the management plan section, although it's fairly irrelevant for us that we have to submit our plans to the state designee because there isn't one. I think that whole section can be omitted. Most of the language under management plan, where it issues submission of that management plan, all that language can be eliminated. The whole key for the management plan is that it's at the school site. It doesn't need to be sent to a state office to somebody that's not gonna review it, not gonna look at, and doesn't really care about it and doesn't have anywhere to put it anyway. So I think the development of the management plan is the key and maintaining that at the school site. But to eliminate the requirement to send that anywhere. That's kind of old news now anyway. Thanks.

**Dan Napier:** Dan Napier again. I guess if you were to rethink AHERA, and I don't typically represent a school district, but were I to, I would be asking the questions of looking at what's happened with ASHARA and asking, "Well, if it's good enough for the Bank of America, I think it's good enough for the south P.U. school district." I'm astonished that the ASHARA came into existence and removed all these so-called failed or ineffective programs, and left them in place for school districts. And I think that ASHARA as it's written probably provides as much protection and it would end all of the, as I said, the management plan. I think ASHARA's direction was a results oriented program vis-a-vis a plan that says all right, this school district shall have inspections every six months and that sort of language. So if we looked at revisiting AHERA, we may want to look at those issues and how is.

The other comment is that how's EPA enforcing AHERA/ASHARA? I was talking to one of the enforcement agencies in Ventura agent. And, his position was that his instructions were from their district attorney not to make any attempt to enforce ASHARA because it wasn't clear enough. And that the only thing that they would enforce were violations under the code that occurred at a school. Again, were I to represent a school, I would feel that this was unfair and I was being singled out as a particular citizen vis-a-vis the rest of everybody else. I guess my concern there is to rework

AHERA, perhaps we should take the ASHARA and apply it across the board. Thank you.

**Paula Basson:** Again, let me remind you that there are, there is an opportunity to submit written comments if you want. As Dr. Goldman said, they would be most useful if you could do that within the next two weeks. But I think this re-invention of our regulations is gonna go on for a long time, so they'd probably be helpful any time we could get comments. Let's see, we also had another handout in the back. Don, what's the additional handout that's available?

**Unknown Speaker:** Did not speak into microphone; inaudible.

**Paula Basson:** Okay. Well, I'd like to thank you for your formal comments and for participating in this forum. And we do have some of our EPA folks, I don't know how often you get to see those. Maybe I can put them on the spot a little bit by asking to be here for questions or comments if you wanna talk about anything that's outside of the regs. Do you have any closing that you'd like to say, Brian?

**Brian Cook:** Earlier this week there was about an hour and a half session at the EIA meeting in Tampa. And a lot of similar comments actually came out of that group. On management plans, a strong feeling that we need to kind of rethink about how we even deal with management plans. There was a lot in this meeting on NAVLAB, the lab program, and that hasn't come up here at all. Not very much at that meeting on the issue of timing of inspections, though frankly I don't know if the group just didn't get into that at the time. What we will be doing is having a transcript of that meeting made also, and this one, and a two or three page summary available through that office up there, if folks wanted to hear what happened. Still more time, if anyone else has anything to add to this conversation.

**Jim Sharp:** I'm Jim Sharp from Hazard Management Services again. And I have more of a question than a comment. And that is that we're concluding many more of the second tri-annuals in our school districts. And

we have found, in a lot of locations, the school district has done replacement activities, such as putting 12 inch floor tiles over nine, or carpeting over nine inch tiles, or new walls over walls that had drywall that contained asbestos. My question is, how are we dealing, I mean in the real world, with these new materials? The districts have suggested that they're not interested in having us sample them, because of the cost involved, and they also are not interested in getting from the manufacturers certifications that the materials did not contain asbestos. And they don't want us to assume that it is asbestos. When we tell 'em that we have to, unless it's sampled, we make people pretty unhappy at the school districts. So my question is, how are other people handling these situations? I know what the regulations say, but I'm talking about what happens in the real world?

**Paula Basson:** So I'm assuming you're asking the other participants and not EPA to answer this one?

*The remaining comments were made off-mike and were inaudible. The tape recorder was subsequently turned off.*