

**Environmental Working Group ♦ Breast Cancer Fund ♦ Clean Water  
Action Environment California ♦ Natural Resources Defense Council ♦  
Science and Environmental Health Network**

October 14, 2010

Dr. Joan Denton, Director  
Office of Environmental Health Hazard Assessment  
1001 I Street,  
Sacramento, CA 95814

Dear Dr. Denton,

Thank you for meeting with the NGO community on April 8, 2010 to discuss our concerns about the July 15, 2009 meeting of the Prop 65 Developmental and Reproductive Toxicant Identification Committee (DART-IC), as outlined in our July 22, 2009 letter. We were pleased to see that the question of fair public participation will be discussed at the October 21, 2010 DART-IC meeting. For the benefit of the Committee, we thought it would be helpful to reiterate and further detail our concerns here since the July, 2009 letter did not cover all of the topics that we discussed in the April, 2010 meeting.

Specifically, we would like the Committee to address the following issues:

**1. Clear, fair, and consistent allocation of time for public comments.**

It has been a consistent frustration among the environmental community for more than a decade that there often appears to be a double standard when it comes to time allocation for public comment at key hearings, including DART-IC meetings. We described one example of this problematic situation, which occurred at the July 15, 2009 DART-IC meeting, in our July 22, 2009 letter:

In an effort to develop a coherent and thorough case for listing, prior to the meeting, the NGO scientists and independent scientists repeatedly requested additional time for their presentations. We were repeatedly told that time would be strictly limited to 5-10 minutes per presenter. Immediately prior to the start of the meeting, Dr. Solomon asked Dr. Denton and the Chair this question one more time in regard to Dr. vom Saal's presentation, and was given the same answer. As a result, we needed to have two speakers cede their full time to Dr. vom Saal, and to seriously shorten our presentation. In contrast, the industry panel contained only five speakers and was given a full 70 minutes to present (nearly 15 minutes per speaker). Using this process not only did they have more time per speaker, they were able to present an organized

case against listing. When they went over their allotted time, the Chair immediately offered their panel an additional 15 minutes without any protest. Since our lead scientists had already spoken, there was no chance for them to rebut industry's arguments. This structure results in no opportunity for a comprehensive presentation and rebuttal in favor of listing, and could explain in part why DARTIC lists so few chemicals using the "clearly shown" listing route.

It is important to note that the July 2009 meeting was just one example of a consistent problem whereby industry representatives are routinely given more time to address, and thus potentially influence the committee, than those representing the public's interests. These pervasive discrepancies in time allocation are unacceptable and must be rectified. One important element of the solution is to create clear and specific guidelines around public comment periods. Please see our proposed guidelines below.

## **2. Disclosure of financial interests during public comment.**

It has also been a consistent frustration within the NGO community that industry representatives often do not disclose their financial interests. For example, as we noted in our July 22, 2009 letter:

After the [July 15, 2009 DARTIC] meeting, one of us [Gretchen Lee Salter of BCF] spoke with two panel members (Dr. Jones and Dr. Hobel). Both of them stated their belief that industry had not been present at the meeting. They further stated that the American Chemistry Council is a non-profit group, with the implication apparently being that they are not an industry group nor that they are linked to industries whose products fall under the jurisdiction of the committee. They also apparently believed that Dr. Tyl and Dr. Murray were independent scientists who had come to the meeting on their own time. Dr. Tyl contributed to this misunderstanding by stating that her institute receives 80% of its funding from government, without mentioning that the studies she was presenting on bisphenol A had been funded entirely by the American Plastics Council. Dr. Murray failed to make any disclosures at all. None of the industry panelists were asked for their disclosures, as they should have been.

In your September 1, 2010 response to this letter, you noted that OEHHA's "general practice at the meetings has been to ask speakers to identify the organizations, if any, that they are representing at the meeting." You also noted that OEHHA is constrained from requiring individuals presenting public comments to disclose whether they have any financial conflicts of interest.

Given that very few of the industry representatives at the July 15, 2009 DART-IC meeting disclosed their financial ties, and that this led to confusion within the Committee,

it seems reasonable to conclude that OEHHA's current practices regarding financial disclosures are insufficient. While OEHHA may not be able to *require* disclosure of financial interest, it can make a point to *request* such disclosure. For example, if a presenter does not note what party or parties he or she is representing, OEHHA could respectfully ask the speaker to note it for the record. In addition, speakers should be asked to disclose any financial interests that could bias their presentation, including who has sponsored any research being presented, travel support, consulting contracts and other industry support for the chemical being discussed. Though a speaker may choose to decline, specifically asking speakers to disclose their affiliation and financial ties would be an improvement over the current process and make public their lack of transparency.

**3. In light of the above concerns, we propose the following new guidelines for public comment periods:**

**1. Limit each organization or company represented to 5 to 7 minutes maximum.**

This will ensure that all speakers are given equal opportunity to presents their comments.

**2. Provide no exceptions for time limits due to distance travelled.** Currently, this informal policy of providing extra time to individuals who have travelled long distances to make public comments unfairly biases parties with more resources than others. A "no exceptions" rule will also solve the problem of this informal policy being applied non-uniformly among different parties, which could be viewed as favoritism. It is very unusual for a government body to grant more time for public comment to those who travel longer distances -- there is simply no obvious connection between how far a person has traveled to get to a meeting and the importance of his or her comments to California or, even if they are more important, why more time is needed to state them.

**3. Disallow "ceding" of time.** The practice of "ceding time" to other individuals present has been routinely used by some parties to put together very long presentations; this violates the intent of public comment time limits.

**4. Institute uniform enforcement of time limits.** The current policy of not enforcing time limits uniformly gives preferential bias to those parties that choose not to respect the time limits, over those parties that choose to "play by the rules." It also puts the committee in a position by which they could be accused of favoritism, whether intentional or not.

**5. Specifically request each presenter to state whom they represent and to disclose any financial interests.** This will encourage transparency and reveal vested interests amongst parties presenting public comments.

Thank you for taking the time to address our concerns and consider our proposal.

Sincerely,

Renee Sharp  
California Director  
Environmental Working Group

Gretchen Lee Salter  
Policy Manager  
Breast Cancer Fund

Andria Ventura  
Program Manager  
Clean Water Action

Pam Palitz  
Environmental Health Advocate and Staff Attorney  
Environment California

Sarah Janssen  
Staff Scientist  
Natural Resources Defense Council

Joe Guth  
Legal Director  
Science and Environmental Health Network