

PESTICIDE INCIDENT REPORTING AND TRACKING REVIEW PANEL

9:00 – 11:00 a.m.
Department of Health
Town Center 1, Israel Road, Room 337
Tumwater, WA 98501

Attend via Teleconference
1.888.583.1346
Pass code *56-14474*

AUGUST 20, 2009 MEETING NOTES

(Approved by PIRT on September 17, 2009)

Panel Members in Attendance

Pam	Edwards	Labor and Industries
Gregg	Grunenfelder, Chair	Department of Health
Vince	Hebert	Washington State University
Matt	Keifer	University of Washington
Bill	Robertson, Alternate	Poison Control Center
Debby	Sargeant	Department of Ecology
Ann	Wick	Department of Agriculture
Liesl	Zappler	Public Member

Panel Members Absent

Fish and Wildlife – No Member
Natural Resources
Toxicologist – No Member

In Attendance

Mark	Calkins	Assistant Attorney General
Steve	Cant, Alternate	Labor and Industries
Maralyn	Chase	Legislator
Steve	Gilbert	Member of Public
Heather	Hanson	Washington Friends of Farms and Forest
Alice	Larson	Member of the Public
Cynthia	Lopez	Member of the Public
Pam	Madsen	Staff, House Environmental Health Committee
Nancy	Napolilli	Department of Health

Welcome

- The Chair called the meeting to order at 9:03am. All in attendance introduced themselves, including those on the phone. A quorum was met.
- The Chair reminded all in attendance that the meeting is being recorded. This audio recording will be kept through the meeting after the August 20, 2009 PIRT Meeting Minutes are approved.

Review and approval of agenda

- Debby Sargeant motioned to approve the agenda with no changes. Ann Wick seconded the motion. All in favor, none opposed.

Review and approval of July meeting minutes

- Debby motioned to approve the July 2009 Meeting Minutes. Liesl Zappler seconded the motion. All in favor, none opposed.

Roles & Responsibilities for Annual PIRT Report

Mark Calkins, Assistant Attorney General discussed the roles and responsibilities around PIRT and the PIRT Annual Report. RCW 70.104.070, RCW 70.104.080, and RCW 70.104.090 were discussed and referenced.

- The Department of Health (Health) is to provide coordination of the PIRT Panel and to Chair the PIRT Panel.
- The PIRT Panel is to review and approve the PIRT Annual Report that Health prepares.
 - The author is typically in charge of the content. In this instance, Health is preparing a report and taking cues from the PIRT Panel for what should be included in it according to the requirements laid out in the RCW.
 - PIRT has the authority to review and approve. If no accord is met there is a way for PIRT's approval comments to be part of the report. PIRT's comments about what is missing can be part of the report, but it will be framed as PIRT's review.

Matt asked Mark if the report reflect the deliberations of PIRT?

- The report should reflect the work that PIRT has done or gathered during the year that the events are being reported (calendar year that is being reported in the report). PIRT's meeting minutes, exhibits, and other public records are what should be used to create the report.

Matt also asked Mark if DOH has the obligation to report items that were discussed by PIRT or can Health leave some items out?

- DOH does have that discretion. The report is not intended to be a compilation of minutes of the whole year of items PIRT has discussed. PIRT's function includes doing other things than what would be part of content in the annual report. The report is not intended to be compilation of all topics discussed by PIRT because the audience is different.
- Regarding RCW 70.104.090 Section 5 – identifying inadequacies in state laws, etc. When this is a point of discussion of PIRT should Health report on this?

- If PIRT has spent time discussing items listed in Section 5 there should be a summary that Health prepares for the report based on the year that the report is covering.
- If PIRT feels that something has been left out of the report and PIRT and Health cannot agree, then PIRT's review and approval statement would include what PIRT feels is missing from the report. This would be by a majority approval.

Liesl commented that PIRT has to discuss issues that affect incident reporting and tracking. If DOH has final say how can PIRT as a panel reflect in the report things like proposed budget cuts that are significant to the panel?

- The statute says this is an annual report - there is a time issue. PIRT and Health will need to look at the timing of the report to see what should be included. If one of the key audiences is the Legislature getting the report done by end of December or January would better accomplish this goal if that is one of PIRT's goals.
- The annual report is not the only way for PIRT to express ideas. Whatever PIRT wants to reflect in the report needs to fit into the year that is being reported.
- If PIRT can't reach an accord with Health there are two options:
 - Make PIRT's comments independent of the report subject to complying with lobbying, etc (reference Mark Calkins 2006 memo to PIRT).
 - Include PIRT's majority comments as PIRT wants to see in the final approval of the annual report.
 - This wouldn't be a separate Executive Summary but it would include the content of what PIRT would have liked included in the Executive Summary.
 - PIRT's Review and Approval Comment would be an appendage to the report. It would be referenced in the table of contents because it is necessary to the document.

Matt commented on the issue of the timeframe for the report - subsequent information has frequently been part of the PIRT Annual Report that is not for the year that the report covers.

- Goal to comply with the legislative intent is to try and get more contemporary report with the data being reported. Covers the year of the data being reviewed. The legislature was contemplating a report that would cover the information reviewed by PIRT during the year that the report is about.
- All of the things PIRT does under their responsibilities are not necessarily things that go into the annual report.
- PIRT is not the only agency with a voice. The legislature has other ways to obtain information. The annual PIRT report is not the only tool.

Gregg commented on Mary Selecky's memo regarding the edits to the Executive Summary – the Governor's budget wasn't released until after the last 2008 PIRT meeting of the year. PIRT cannot conduct business outside of open public meetings. There is an issue about whether this

really was part of the PIRT's 2008 discussions since the budget was not available until after the last 2008 meeting.

Matt Keifer mentioned that this is the first time that PIRT has been requested to do an annual report with time constraints.

Liesl referenced the 2007 PIRT Annual Report and feels that the draft 2008 PIRT Annual Report follows the same format. Regarding the reports not being timely – it does take a long time to get the reports done.

- It should be very clear what time period is being covered in the report and not misleading.
 - The concern that was just mentioned was that PIRT included in a draft Executive Summary something that could not have happened in that period of time stated to be covered.

What if the PIRT panel vote results in a tie?

- A motion will fail if there a tied vote. There must be a majority vote.

Bill Robertson joined the call at 10:04am.

- How do you define an independent agency?
 - The main implication of being an “agency” is the applicability of the Open Public Meetings Act
 - As an independent agency, PIRT needs to comply with the Open Public Meetings Act and Public Records Act
- An agency representative may be opposed to a majority vote of PIRT. This does not mean that PIRT's view is the agency's view. The two are completely separate.

Public Comments

Cynthia Lopez, Member of the Public. Comments addressed to Mark Calkins.

- Year Issue – mute point. It has been consistently impossible for PIRT to produce a current report due to compilation of data of various agencies. So it has traditionally been previous year data with current year PIRT Activities.
- The Executive Summary under dispute does reflect the deliberations of PIRT. Mark says that there should be something in the report that reflects the deliberations of PIRT and there is nothing in the RCW that says it has to be in an appendix.
- When reading the RCW it is pretty consistent that DOH is a coordinating authority and does not have more authority. The definition of “prepare” in the dictionary means to put in proper condition. DOH does not author all of the chapters. DOH has traditionally only authored the DOH chapter. For DOH to have final authority is not in the RCW and it gives too much authority to one agency. It is inappropriate and inconsistent with the RCW. All members are equal and DOH merely has the added responsibility of being the coordinator. DOH is flouting the RCW by putting off the report that has already been approved in early 2009.
- Is Mark Calkins legal counsel for PIRT or DOH? Does Mark have a conflict of interest?

- Mark responded that he is here as legal advisor to PIRT. There is not conflict of interest in him advising this client (PIRT) to understand the law.
- Has the interpretation of this law changed?
 - Mark responded that he has not provided interpretation of this portion of the RCW previously.

Steve Gilbert – Member of the Public

- What is the difference between author and preparer?
 - Legislature has established two separate activities – one for PIRT and one for Health. One entity is the reviewing and approving and the other is the author. If there cannot be an accord on a report prepared by Health, PIRT’s review and approval can be a document that shows PIRT’s thought process.
- Are agencies required to attend PIRT?
 - Legislature said these are the people on the PIRT Panel – the Legislature wants these agencies to be on it and can have someone delegated to attend. Each state agency has information that the Legislature wants gathered. It is a “should” rather than a “must”. The Legislature wanted the diverse perspectives to be at the table.
- What is the Governor’s obligation to appoint a toxicologist and what can PIRT do?
 - PIRT can write a letter requesting a toxicologist appointment.

Alice Larson – Member of the Public

- The PIRT Annual Report is basically PIRT’s report to the Legislature per what the Legislature established PIRT to do which is to take a look at pesticide-related issues and report annually back to the Legislature. It is not reasonable for the Legislature to expect an instantaneous report on pesticide investigations that are ongoing. Legislature does expect PIRT to be its advisory body in regards to pesticide-related issues for the year. For PIRT not to comment on the budgetary issues would be PIRT neglecting their responsibility of reporting to the Legislature.
- Regarding authorship belonging to the Department of Health – If PIRT and Health cannot agree PIRT has the right to do an addendum. This means PIRT’s approval is superfluous. Legislature is expecting the opposite. PIRT should have final approval of the report and if Health does not agree, Health is the one that needs to add an addendum.

Steve Gilbert requested to know if there has been any response to PIRT’s letter requesting a toxicologist appointment.

- No, the Chair has not received a response to this letter.

Potential Action on the 2008 PIRT Report

- Agreement has not been reached between DOH and the PIRT Panel on the Executive Summary for the 2008 PIRT Annual Report.
- Liesl suggested an addendum letter to include with the final 2008 PIRT Annual Report. The letter would state something like: “The PIRT Panel approves the 2008 PIRT Annual Report with these exceptions...” The Panel would like to review and consider such a

draft letter and would like to see it concisely express the Panel's concerns with the 2009-2011 budget proposals.

- Liesl motioned to work with the Executive Summary Subcommittee to draft an addendum letter for consideration by the Panel. Debby seconded the motion. All in favor, none opposed.
 - PIRT Annual Report, Executive Summary Subcommittee is made up of: WSU, UW, Public Member, and DNR.

Other PIRT Process Issues Needing Discussion

- Fish and Wildlife responded to PIRT's letter requesting their membership be filled. Anna Jackson will be the Fish and Wildlife representative on the PIRT Panel.
- The PIRT Web pages need updating. The Web pages will be reviewed and any missing documents will be posted. Please submit comments regarding the Web page to the Chair.
- The Poison Control Center is still looking for additional funding.

Draft September Agenda

- There were no changes recommended to the draft September agenda.

Adjourn

- Liesl motioned to adjourn the meeting. Bill Robertson seconded the motion. All in favor, none opposed. The meeting adjourned at 11:00am.