

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM, SECOND FLOOR
1001 I STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 28, 2010

9:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Doreene D'Adamo

Mr. Ronald O. Loveridge

Mr. Ron Roberts

Dr. Daniel Sperling

Dr. John Telles

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Ms. La Ronda Bowen, Ombudsman

Mr. Tom Cackette, Chief Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Mr. Michael Scheible, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

Ms. Lori Andreoni, Board Clerk

APPEARANCES CONTINUED

STAFF

Mr. Joseph Gormley, Air Resources Engineer, Rule Evaluation Section, Stationary Source Division

Mr. Paul Henderick, Air Pollution Specialist, Retrofit Assessment Section, Mobile Source Control Division

Ms. Lucille Van Ommering, Manager, Program Development Section, Office of Climate Change

Mr. Jim Ryden, Chief, Enforcement Division

Ms. Annalisa Schilla, Air Pollution Specialist, Climate Action and Research Planning Section, RD

Mr. Erik White, Senior Staff Counsel, Office of Legal Affairs

ALSO PRESENT

Dr. Rasto Brezny, MECA

Deputy Attorney General Will Brieger

Mr. Skip Brown, Delta Construction Company

Mr. Anthony Brunello, Deputy Secretary, California Natural Resources Agency

Mr. Julian Canete, CA Hispanic Chambers of Commerce

Ms. Brenda Colman, California Chamber

Mr. William Davis, SCCA

Mr. Michael Endicott, Sierra Club Ca

Mr. Arthur Fulton, Diamond Well Drilling

Mr. Randal Friedman, U.S. Navy

Mr. Bill Gaines, Transfer Flow, Inc.

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Graboski, American Rental Association
Mr. Josh Gruen, CMI
Ms. Bonnie Holmes-Gen, American Lung Association
Mr. Alex Jackson, NRDC
Mr. Andy Katz, Breathe California
Mr. Karl Lany, SCEC
Mr. Michael Lewis, CIAQD
Mr. Gary Liss, Local Government Commission
Mr. Edwin Lombard, Cal Black Chamber
Mr. Bill Magavern, Sierra Club Ca
Ms. Sabrina Means, California Transit Association
Mr. Mike Mortensson, California Groundwater Association
Mr. Brian Nowicki, Center for Biological Diversity
Mr. Alan Osofsky, West State Alliance
Mr. Joseph Partransky, Healthy Ports and Ships
Ms. Mary Pitto, Regional Council of Rural Counties
Ms. Betty Plowman, CA Dump Truck Owners Association
Ms. Catherine Reheis-Boyd, WSPA
Ms. Marisa Rimland, Public Health Institute
Ms. Erin Rogers, Union of Concerned Scientists
Ms. Patty Senecal, IWLA
Mr. Tom Swenson, Cleaire

APPEARANCES CONTINUED

ALSO PRESENT

Mr. James Thomas, Nabors Well Services Company

Mr. Doug Van Allen, BJ Services Company

Mr. Matt Vander Sluis, Planning and Conservation League

Mr. Derek Walker, EDF

Mr. Barry Wallerstein, South Coast AQMD

Mr. Mel Zeldin, CAPCOA

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PROCEEDINGS

1

2 CHAIRPERSON NICHOLS: Welcome to the January
3 28th, 2010, public meeting of the Air Resources Board.
4 The meeting will come to order. And we will begin, as we
5 normally do, by saying the Pledge of Allegiance to the
6 flag.

7 (Thereupon the Pledge of Allegiance was
8 Recited in unison.)

9 CHAIRPERSON NICHOLS: The Clerk will call the
10 roll, please.

11 BOARD CLERK ANDREONI: Dr. Balmes?

12 BOARD MEMBER BALMES: Here.

13 BOARD CLERK ANDREONI: Ms. Berg?

14 BOARD MEMBER BERG: Here.

15 BOARD CLERK ANDREONI: Ms. D'Adamo?

16 Ms. Kennard?

17 Mayor Loveridge?

18 Mrs. Riordan?

19 Supervisor Roberts?

20 BOARD MEMBER ROBERTS: Here.

21 BOARD CLERK ANDREONI: Professor Sperling?

22 BOARD MEMBER SPERLING: Here.

23 BOARD CLERK ANDREONI: Dr. Telles?

24 Supervisor Yeager?

25 BOARD MEMBER YEAGER: Here.

1 BOARD CLERK ANDREONI: And Chairman Nichols?

2 CHAIRPERSON NICHOLS: Here.

3 BOARD CLERK ANDREONI: Madam Chair, we have a
4 quorum.

5 CHAIRPERSON NICHOLS: Thank you.

6 We have several members who have called to tell
7 us they're struggling to get here through the fog. So we
8 expect our numbers to increase as the day goes on.

9 One of our Board members called last night and
10 said she was ill, so we want to send our best wishes to
11 Barbara Riordan and hope she has a speedy recovery and
12 that it's not anything worse than a cold.

13 I have a couple of announcements that I need to
14 make. One is the reminder that the emergency exits are at
15 the rear of the room and that's the way we are to exit in
16 the event of a fire alarm. We're supposed to go outside,
17 downstairs, and outside the building until we get the
18 all-clear signal.

19 Also if there's anybody here who's not familiar
20 with our procedures, if you want to testify on any item or
21 to speak during the open session, we need you to fill out
22 a card and give it to the clerk of the Board. And we will
23 impose our usual three-minute time limit on speakers. So
24 it makes more sense if you're planning to speak if you can
25 give us your written remarks so that we can read them, but

1 then just summarize them quickly to keep within the
2 three-minute limit.

3 And beyond that, I think we're going to begin
4 this morning with a report and an overview by the
5 Executive Officer on the program priorities for the
6 upcoming year. Kind of a good way to start the new year
7 off is to focus on the overall agenda for the year.

8 And before I turn it over to Mr. Goldstene, I
9 want to comment that in the front row here today of the
10 staff that's in front of us, we have for the first time
11 appearing as the successor to the not departed but retired
12 Mike Scheible and taking up all of the myriad of
13 responsibilities, Bob Fletcher. So welcome, Bob.

14 All right. So for the first agenda item, Mr.
15 Goldstene, will you please begin the review of what I
16 expect, to put it mildly, is going to be a busy year?

17 (Thereupon an overhead presentation was
18 presented as follows.)

19 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
20 Nichols.

21 At the start, I'll take a few minutes to review
22 last year's major accomplishments and move on to this
23 year's highest priorities. Of course, there is a lot
24 going on that we must do this year to meet a variety of
25 state and federal requirements.

1 While I won't take the time to go through
2 everything we're doing, it's important to recognize the
3 broad scope of the technical, legal, and policy work that
4 goes on to support our program.

5 --o0o--

6 EXECUTIVE OFFICER GOLDSTONE: In the climate
7 change arena in 2009, we can characterize last year as the
8 year in which we moved from planning to action. The Board
9 adopted the Low-Carbon Fuel Standard for transportation
10 fuels and seven other regulations to reduce greenhouse gas
11 emissions.

12 We also adopted the fee regulation authorized by
13 AB 32 to provide the necessary program resources.

14 The rules the Board has already adopted only one
15 year after approving the AB 32 Scoping Plan achieve almost
16 half the reductions needed to meet the 2020 emissions
17 target.

18 In 2009, the Board also took action to reduce
19 toxic air contaminants and ozone levels when it adopted
20 new emission limits for several categories of consumer
21 products. These amendments broke new ground by reducing
22 smog-forming gases from consumer products and
23 simultaneously establishing a cap on the use of high
24 global warming ingredients in these products.

25 --o0o--

1 EXECUTIVE OFFICER GOLDSTONE: Last year, the
2 Board supported the distribution of a variety of incentive
3 funds for the purchase and development of clean
4 technologies. The Board revised its guidelines for the
5 use and distribution of Proposition 1B goods movement
6 funds, as well as the Carl Moyer Program guidelines.

7 The Board also adopted funding guidelines for the
8 distribution of \$50 million provided by Assembly Bill 118.
9 Like the other incentive programs, the AB 118 Air Quality
10 Improvement Program is designed to reduce both criteria
11 and toxic pollutants from motor vehicles. These AQIP
12 funds can also be used to support related research
13 efforts, especially research related to the development of
14 alternative fuels.

15 --o0o--

16 EXECUTIVE OFFICER GOLDSTONE: ARB staff was also
17 busy implementing recently adopted regulations in 2009.
18 Californians started to see air quality benefits from the
19 Board's Goods Movement Emission Reduction Plan, as several
20 of the pioneering rules in that plan took effect.

21 The clean fuels and shore power requirements for
22 ships became effective in 2009, as did the first phase of
23 the retrofit or replacement requirements for the drayage
24 trucks that service the ports and intermodal rail yards.
25 These rules are now reducing toxic particulates in the

1 communities near the ports and helping us meet regional
2 air quality goals for ozone and fine particulates.

3 The first phase of emissions standards for
4 transport refrigeration units on trucks also took effect.
5 This rule will reduce diesel emissions throughout the
6 state.

7 The Board staff has continued to work to reduce
8 rail yard emissions. ARB staff released its report on
9 options for further reducing emissions from locomotives
10 and is now refining its recommendations according to the
11 Board's direction.

12 ARB staff also secured an \$8.9 million federal
13 grant that will be used to retrofit eleven switch
14 locomotives operating in California with new cleaner
15 engines.

16 --o0o--

17 EXECUTIVE OFFICER GOLDSTENE: We also made
18 progress in several other programs. The first phase of
19 the Board's composite wood products regulation took effect
20 in 2009, limiting the levels of formaldehyde that can be
21 emitted from new products sold in California. This
22 regulation is important for reducing toxic emissions both
23 indoors and outdoors. It has had a national and
24 international impact as well, since many manufacturers are
25 now producing only ARB-compliant materials.

1 The enhanced vapor recovery regulations for
2 gasoline service stations also took effect last year.
3 Working closely with local districts, we were able to
4 ensure that implementation of this rule, which was
5 originally adopted in 2000, went smoothly. And we are
6 seeing a very high compliance rate with that rule.

7 California's largest industrial greenhouse gas
8 emitters reported their emissions for the first time in
9 2009. And electricity retail providers and marketers
10 reported their electricity transaction information. We
11 have a 97 percent compliance rate with this new rule and
12 we're working closely with other states, the National
13 Climate Registry, and U.S. EPA on the development of a
14 national reporting program.

15 Throughout the year, ARB also worked closely with
16 local air districts and have reviewed and processed
17 hundreds of applications for Proposition 1B and Carl Moyer
18 program grants. These programs can help the owners of
19 older trucks and off-road equipment retrofit, upgrade, or
20 replace their polluting equipment.

21 --o0o--

22 EXECUTIVE OFFICER GOLDSTENE: Now moving on to
23 our plans for 2010.

24 This year the Board will consider a number of key
25 rulemakings to address both public health and climate

1 issues.

2 This slide provides an overview of the most
3 complex and significant rulemakings the Board will
4 consider this year, beginning with the proposed amendments
5 to the truck and bus rule to reflect the emissions impact
6 of the economic downturn.

7 Later this year, we will recommend major
8 rulemakings to ensure that passenger vehicles of the
9 future will be even cleaner than today, and support
10 long-term greenhouse gas reduction goals.

11 By July, we are to develop a renewable
12 electricity standard as outlined in Governor
13 Schwarzenegger's September 2009 Executive Order. And in
14 the fall, staff will propose a cap and trade rule.

15 --o0o--

16 EXECUTIVE OFFICER GOLDSTENE: Disbursing Prop. 1B
17 bond funds and other incentive dollars as quickly as
18 possible is essential to accelerating air quality progress
19 by cleaning up diesel emissions. These expenditures are
20 especially important to single owner/operators and many
21 small fleets which have been given more time to comply
22 with ARB's diesel regulations.

23 As part of this effort, Board Member Berg is
24 guiding the review of the Carl Moyer Program incentive
25 program that is designed to ensure that this 12-year-old

1 program will continue to provide mobile source emission
2 reductions into the future. The goal of this review is to
3 reflect newly adopted regulations and changes in the
4 economy, to bring more sources into the 12-year-old
5 program, and to increase the program's flexibility.

6 Another major item the Board will consider is the
7 adoption of regional greenhouse gas emission targets for
8 local transportation planning agencies, as required by SB
9 375. Staff is making good use of the SB 375 Advisory
10 Committee recommendations that were presented to the Board
11 last November.

12 Another priority is to continue working closely
13 with the Western Climate Initiative on regional cap and
14 trade greenhouse gas reduction programs in the Midwest and
15 in the northeast. In the absence of national action,
16 representatives of these three programs have been meeting
17 regularly to discuss options for linking these programs
18 together. In addition, we are collaborating with U.S. EPA
19 staff on a number of greenhouse gas reduction strategies,
20 including vehicles, fuels, and high global warming
21 potential pollutants.

22 We are also working with our partner state
23 agencies on the Governor's third Climate Change Summit,
24 which will take place this fall.

25 And this year, we will continue our efforts to

1 improve our Enforcement Program, which you'll hear more
2 about later today.

3 Lastly, we must address a number of federal Clean
4 Air Act issues related to air quality planning, including
5 what we hope will be federal approval of the 2007 and 2008
6 SIPS.

7 --o0o--

8 EXECUTIVE OFFICER GOLDSTONE: To follow up on
9 direction from the December Board meeting, staff is
10 preparing a new report on the health effects of
11 particulate matter pollution. The report will be released
12 for public comment and undergo an independent peer review.

13 On February 26, ARB will hold a public PM2.5
14 science symposium on the subject. Chairman Nichols and
15 other Board members will attend to hear the discussion.

16 Staff recently held three workshops to solicit
17 comment on possible amendments to the truck and bus rule
18 in the context of the Board's direction in December. A
19 public hearing on these amendments is scheduled for April.

20 Also, in April, staff will provide an
21 informational update on the effect of reduced economic
22 activity on emissions from construction and other off-road
23 equipment, and we'll have a more comprehensive review in
24 July.

25 As you can see, staff's updating the Board

1 frequently this year on the status of our diesel rules and
2 the impact of the economy on emissions. And we also will
3 provide updates on the financial incentive programs I
4 mentioned earlier as we go through the year.

5 --o0o--

6 EXECUTIVE OFFICER GOLDSTONE: 2010 will be a
7 significant year for California's passenger vehicle
8 programs. Staff is developing new requirements affecting
9 our low-emission vehicle, Pavley, and zero-emission
10 vehicle regulations.

11 One proposal would strengthen the Pavley
12 greenhouse gas fleet standards for 2012 through 2016, as
13 well as strengthening the low-emission standards. This
14 rule will integrate our efforts to reduce greenhouse
15 gases, ozone-forming pollutants, particulate matter, and
16 toxics.

17 Another rulemaking is a revamping of the Zero
18 Emission Vehicle Program primarily to meet greenhouse gas
19 reduction targets into the future.

20 And we hope that last year's Rose Garden
21 commitments between the Obama administration, automakers,
22 and ARB set the stage for continued cooperation with the
23 auto industry and the federal government. It is important
24 that we continue to coordinate with our federal
25 counterparts on standards for both vehicles and fuels so

1 we can maximize emission reductions in California and the
2 rest of the nation.

3 --o0o--

4 EXECUTIVE OFFICER GOLDSTONE: One important
5 element of our Scoping Plan is increasing the use of
6 renewable energy used to meet California's electricity
7 needs.

8 Last year, the Legislature passed a bill that
9 would have changed the renewable portfolio standard from
10 20 percent to 33 percent to meet the Scoping Plan goals.
11 The Governor vetoed that bill because of some of its other
12 provisions.

13 With the Executive Order that I referred to
14 earlier, the Governor directed ARB to adopt a regulation
15 requiring the state's electricity providers to meet a 33
16 percent renewable energy target by 2020. The rule is to
17 be adopted by July 31st of this year. We are working
18 closely with the Public Utilities Commission, Energy
19 Commission, and Cal ISO in developing this proposal.

20 We've held two workshops and received public
21 comments on concept paper as well as proposed approaches
22 for economic, technical, and environmental analysis. And
23 a third workshop will be held next week.

24 Given the accelerated rulemaking schedule, staff
25 will brief the Board on the status of this item at our

1 March meeting. In addition, we will keep the Board
2 apprised of any legislative action that may occur.

3 --o0o--

4 EXECUTIVE OFFICER GOLDSTONE: This year's climate
5 change priorities are the renewable electricity standard,
6 which I just mentioned, and the cap and trade regulations.
7 ARB staff is developing a cap and trade proposal that
8 would establish a declining cap to ensure emission
9 reductions, while providing compliance flexibility through
10 trading of allowances and offsets.

11 We released a preliminary draft regulation late
12 last year to help focus the public discussion. Earlier
13 this month, the Economic and Allocation Advisory Committee
14 released its draft recommendations for the distribution
15 and evaluation of greenhouse gas allowance created under
16 this program. The Committee will discuss its
17 recommendations at the March meeting.

18 Staff has held numerous workshops and met with
19 many experts and stakeholders throughout the development
20 of this proposal. This outreach and consultation will
21 continue as we prepare the proposed regulation for the
22 Board's consideration in October.

23 As the rule is being developed, staff is also
24 proposing revisions to our current mandatory reporting
25 regulation so that it will meet the needs of a Cap and

1 Trade Program. And to avoid duplication, this update will
2 also be used to align our requirements with the new
3 federal reporting requirements to meet our AB 32 program
4 needs.

5 --o0o--

6 EXECUTIVE OFFICER GOLDSTONE: AB 375 was landmark
7 legislation that aligns planning efforts for regional land
8 use, transportation, housing, and greenhouse gas
9 reductions. The Board's consideration of regional
10 greenhouse gas reduction targets has the potential to
11 achieve significant reductions through sustainable land
12 use and transportation planning.

13 Staff is working with metropolitan planning
14 agencies, or MPOs, to explore the greenhouse gas impacts
15 of different planning scenarios and to share the
16 information needed to set targets. This has been a very
17 good process so far. And moving forward, staff will be
18 holding workshops throughout the state over the next few
19 months.

20 Staff will propose draft targets by June for
21 public comment and the Board will consider final targets
22 in September.

23 A number of Board members have particular
24 interest and expertise in this subject, and we look
25 forward to your guidance as we proceed to develop draft

1 targets for your consideration.

2 --o0o--

3 EXECUTIVE OFFICER GOLDSTONE: We will be taking
4 on this year's agenda amid significant fiscal, economic,
5 and legal challenges. The state of the economy and the
6 pace of California's recovery will be a consideration
7 every step of the way. As staff, we will do our best to
8 provide you with the most complete and accurate
9 information possible.

10 From a staffing perspective, the state budget
11 will continue to limit the resources available to deliver
12 on these program priorities. We expect a three-day per
13 month furlough to continue through June as proposed in the
14 Governor's budget and to be replaced with a five percent
15 cut in personnel expenditures.

16 This year's priorities reflect what must be done
17 to meet our public health and AB 32 goals. Staff
18 recognizes that how we go about it is important. We will
19 strive to ensure transparency and the comprehensive public
20 processes that have been an ARB hallmark over the years.
21 The Chairman's Offices of Legislation, Communications, and
22 the Ombudsman are working harder than ever to expand our
23 outreach efforts and to address questions raised in the
24 press and elsewhere.

25 We greatly appreciate the leadership of each of

1 our Board members and look forward to a challenging and
2 productive year.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you, Mr. Goldstene.

5 Before we get into a general discussion, are
6 there any questions about any of the specific items that
7 were raised there as part of our 2010 agenda?

8 Obviously, those are the high level issues.

9 There will be numerous, I suspect, of the normal updates
10 and changes to existing rules and processes that are part
11 of what the Board does.

12 But in terms of the overview, I thought it was
13 really useful to have the staff's roadmap, if you will,
14 for what sometimes feels like it's going to be a long
15 journey through 2010.

16 You know, I might just add that we have had -- we
17 have enjoyed tremendous support from the Governor for the
18 ARB and our work, since I've been here at least. And I'd
19 like to say that, you know, from what I have seen in every
20 way possible, you know, in a very tough and challenging
21 budget time and also in a time when there's a great deal
22 of backlash and resistance against government in all
23 forms, some of which has been focused very specifically at
24 our Board and our programs, the Governor has really taken
25 it upon himself personally to be an advocate for the

1 importance of the work that we do.

2 And just as I think a lot of us were waiting
3 somewhat breathlessly last night to see if President Obama
4 would mention his support for doing something about
5 climate change, and we're very pleased to hear that high
6 up in his remarks was an affirmation of the need to focus
7 on energy and on climate, we're seeing the same thing here
8 in California.

9 Obviously, we all have to be smart about what we
10 do and how we do it. We all have to be careful not to do
11 things that either really don't make sense or that are in
12 any way unduly burdensome and to try to find ways to make
13 sure that we speak about what we're doing in ways that are
14 more comprehensible to people than I think often we end up
15 doing when we are caught up in our daily rounds of jargon
16 and our scientific expertise shows, but maybe not our
17 awareness, of the things that people actually care about.

18 So I'm actually thinking it's going to be a year
19 of an enormous amount of accomplishment, but I don't want
20 to minimize the effort it's going to take to get from here
21 to there.

22 And I'd just like to echo James's comments about
23 the Board. As the only person who gets paid to work here
24 full time, sometimes, you know, I know, too, the
25 Legislature think I'm the one they can point to whenever

1 there is anything that they would like to see changed or
2 done differently. But I'm very well aware of the fact
3 that in many parts of the state, in many communities and
4 constituencies, the face of the ARB is in fact the
5 individual Board members.

6 And I'm only aware, I'm sure, of a small portion
7 of what you all do, when I hear about it through Charlyn
8 because of speech requests or meetings that you're
9 outdoing or if you happen to call to check in with me or
10 give me good advice, which a few of you do from time to
11 time and which I really appreciate, even if I don't seem
12 grateful at the time.

13 (Laughter)

14 CHAIRPERSON NICHOLS: So with that, I would like
15 to say how pleased I am that we've had the activity that
16 we've had on the part of the Board members.

17 And if any of you feel inclined in the coming
18 year to take on more assignments, and particularly with
19 respect to fulfilling some of the invitations that we get
20 to go out and speak with groups around the state about
21 what we're doing, I am very happy and I know the staff
22 will be very happy to have you involved.

23 So with that, I'll open it up for any comments,
24 questions, remarks, speeches.

25 Okay. If you don't feel like weighing in right

1 now, that's okay, too, I guess.

2 Dr. Sperling, you looked like you were about to
3 say something. I'll call on you.

4 BOARD MEMBER SPERLING: I don't have anything of
5 great profoundness to say.

6 But I do support what you just said that this is
7 going to be an important year for us. And as I looked at
8 that list that James was providing us, it was pretty
9 overwhelming, the amount of actions that we're going to be
10 contemplating. And it is a difficult time.

11 I've just always been impressed with ARB with the
12 leadership of the staff and Chairman Nichols and the
13 Board.

14 And I think I would echo what Chairman Nichols
15 said is I think we are all sensitive to what's happening
16 with the state of the economy and the jobs and so on, but
17 at the same time, how important California has been in
18 leadership with a lot of issues in air pollution and
19 climate change now. So it's going to be an interesting
20 year.

21 CHAIRPERSON NICHOLS: That's for sure.

22 All right. If no one else feels moved to add, I
23 appreciate that. And we'll just move on to the next item.

24 Welcome, Dr. Telles.

25 So the next item is the proposed amendments to

1 the regulations applicable to portable equipment and
2 diesel engines used in off-road and on-road vehicles.

3 Mr. Goldstene.

4 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
5 Nichols.

6 The major purpose of today's proposed amendments
7 is to provide temporary relief for businesses that operate
8 smaller fleets of portable engines.

9 Under existing regulations, the oldest and
10 dirtiest portable engines must be replaced by January 1st,
11 2010. The proposed amendments provide a one-year
12 extension for a limited number of portable engines. While
13 providing some relief for about 90 percent of the
14 companies that operate older portable engines, the staff
15 proposal still retains about 70 percent of the first year
16 benefits.

17 In addition, staff is proposing to move water
18 well drilling rigs out of the portable engine ATCM and the
19 regulation for heavy-duty on-road vehicles and instead
20 make them subject to the in-use on-road vehicle
21 regulation, just as was previously done for cranes.

22 The replacement of the portable engine on these
23 rigs is extremely difficult and cost prohibitive. This
24 proposed move would allow owners of the drilling rigs more
25 flexibility for complying with requirements, while still

1 achieving the emission reductions for diesel PM and oxides
2 of nitrogen.

3 The proposed amendments provide a balanced
4 approach that allows businesses to continue to operate
5 while achieving the emission reductions needed to protect
6 public health.

7 I'd like now to ask Mr. Joseph Gormley of the
8 Stationary Source Division to present the staff's
9 proposal.

10 Joseph.

11 (Thereupon an overhead presentation was
12 presented as follows.)

13 AIR RESOURCES ENGINEER GORMLEY: Thank you, Mr.
14 Goldstene.

15 Good morning, Chairman Nichols and members of the
16 Board.

17 --o0o--

18 AIR RESOURCES ENGINEER GORMLEY: This slide
19 presents an overview of the topics I will cover in today's
20 presentation.

21 --o0o--

22 AIR RESOURCES ENGINEER GORMLEY: First, I have a
23 brief overview of today's proposed amendments.

24 --o0o--

25 AIR RESOURCES ENGINEER GORMLEY: Today, staff is

1 some additional background information.

2 --o0o--

3 AIR RESOURCES ENGINEER GORMLEY: Portable engines
4 are used to provide power to generators, pumps,
5 compressors, and a variety of other equipment used in
6 industrial and construction activities.

7 --o0o--

8 AIR RESOURCES ENGINEER GORMLEY: The portable
9 equipment registration program regulations established a
10 voluntary registration program for portable engines and
11 equipment units. If an owner chooses to register in PERP,
12 they may operate that portable equipment statewide without
13 obtaining a separate permit in each air district.

14 Although the Air Resources Board issues the
15 registration, the local air districts provide the primary
16 enforcement for the program.

17 The PERP regulation was adopted in March of 1997
18 and started accepting applications later that same year.

19 --o0o--

20 AIR RESOURCES ENGINEER GORMLEY: When the PERP
21 regulation was originally adopted in 1997, it contained a
22 requirement that all Tier 0 engines must be removed or
23 replaced by January 1, 2010, which effectively gave
24 registered businesses a maximum of 13 years to plan for
25 replacement.

1 At the time, this replacement requirement only
2 affected engines registered in PERP. The PERP regulation
3 also requires that registered Tier 0 spark ignition
4 engines be removed from service by January 1, 2010.

5 --o0o--

6 AIR RESOURCES ENGINEER GORMLEY: The air-borne
7 toxic control measure for portable diesel engines came
8 about as a result of the Diesel Risk Reduction Plan, which
9 the Board adopted in September of 2000. It is designed to
10 achieve particulate matter emission reductions from
11 portable diesel engines through three main mechanisms:

12 First, it mandates the replacement of older
13 higher-emitting engines by January 1, 2010.

14 Second, it sets eligibility requirements for
15 newly permitted or registered engines.

16 And third, it establishes fleet emission
17 standards which take effect later this decade.

18 These requirements are applicable to all portable
19 diesel engines, whether registered in PERP or permitted by
20 the local air districts. The Board adopted the ATCM in
21 February of 2004, and it became effective in March of
22 2005.

23 The portable ATCM differs from the other diesel
24 engine regulations in that it requires the replacement of
25 all older higher emitting engines by a specific date. The

1 other diesel relations require a phase-out of older
2 engines over several years.

3 --o0o--

4 AIR RESOURCES ENGINEER GORMLEY: The requirement
5 to replace Tier 0 engines is a key component of the
6 Board's strategy to reduce the emissions of toxic
7 particulate matter from portable diesel engines.

8 Currently, there are about 4400 Tier 0 engines
9 either registered with ARB or permitted by the local air
10 districts that are affected by this requirement. We want
11 people to replace their older Tier 0 engines with newer
12 certified engines, because the newer engines have
13 significantly lower emissions, as shown by the graphs on
14 the next two slides.

15 --o0o--

16 AIR RESOURCES ENGINEER GORMLEY: This graph
17 compares the particulate matter emission rates from
18 uncertified engines to emission standards that certified
19 engines must meet. You can see from this graph the Tier 0
20 engines have significantly higher emissions than certified
21 engines.

22 --o0o--

23 AIR RESOURCES ENGINEER GORMLEY: This graph
24 similarly compares the emissions of NOx from uncertified
25 engines to the emissions standard for certified engines.

1 As shown by these two graphs, the overall
2 emission levels from portable engines decrease with each
3 new tier. This is why we structured the regulation for
4 portable engines to require that industry to have the
5 newest tier available when seeking a new permit or
6 registration.

7 --o0o--

8 AIR RESOURCES ENGINEER GORMLEY: The regulations
9 for in-use heavy-duty off-road and on-road diesel-fueled
10 vehicles are the most recent regulations to be adopted as
11 a result of the Diesel Risk Reduction Plan.

12 The off-road regulation was adopted by the Board
13 in 2007 and was recently amended to include requirements
14 for two-engine cranes.

15 The on-road regulation was adopted by the Board
16 in December of 2008 and became effective earlier this
17 month.

18 Our proposed amendments today only affect these
19 two regulations as they apply to two-engine water well
20 drilling rigs.

21 --o0o--

22 AIR RESOURCES ENGINEER GORMLEY: With that
23 background, let's take a closer look at what we are
24 proposing.

25 --o0o--

1 AIR RESOURCES ENGINEER GORMLEY: Several of the
2 owners of smaller fleets indicated that they experienced
3 difficulty with the requirement to replace Tier 0 engines
4 by January 1, 2010. So staff is proposing to provide a
5 limited extension for these engines. The extension will
6 be available to smaller fleets which contain no more than
7 25 portable engines as of December 31st, 2009.

8 If an owner of portable engines qualifies for the
9 extension, they must then choose either one engine of any
10 size or up to five engines that do not exceed 500
11 cumulative brake horsepower. The engines selected for the
12 extension may then operate until the end of 2010.

13 The extension is not being proposed for fleet
14 owners with more than 25 portable engines. These larger
15 companies generally have access to more resources, and
16 they typically have smaller percentages of uncertified
17 engines in their fleet. Therefore, they are not as
18 severely affected by the Tier 0 replacement deadline.

19 In an effort to preserve as much of the original
20 emission reductions as possible, ARB staff proposes the
21 extension only for the companies that need it in most.

22 --o0o--

23 AIR RESOURCES ENGINEER GORMLEY: Under this
24 proposal, approximately 2,000 engines may potentially
25 receive the temporary operating extension. The proposed

1 extension maintains at least 70 percent of the original
2 emission reduction benefits from the Tier 0 engine
3 replacement requirement. The full emission reductions
4 will be achieved once the extension period ends at the end
5 of 2010.

6 It is important to note that the estimates do not
7 include any adjustments based on changes due to economic
8 conditions. The emission reduction estimate is based on
9 the number of currently permitted or registered portable
10 engines and the requirements of the existing regulations.

11 --o0o--

12 AIR RESOURCES ENGINEER GORMLEY: Some of the
13 additional amendments staff are proposing include allowing
14 engines certified to the on-road emission standards to
15 operate after January 2010 if they are used as portable.

16 The current portable engine ATCM requires these
17 engines to be placed out of service the same way that Tier
18 0 engines are. It makes sense to allow these engines to
19 continue operating because they are clean certified
20 engines.

21 As stated previously, the portable engine ATCM
22 does settle eligibility requirements for engines seeking a
23 new permit. Currently, the portable engine ATCM and PERP
24 regulation allow only diesel engines certified to the
25 off-road emission standards to obtain either a permit or

1 registration. Because engines certified to the on-road or
2 marine standards are sometimes used in portable
3 operations, staff is proposing to allow these engines to
4 be eligible for district permits or registration in PERP.

5 --o0o--

6 AIR RESOURCES ENGINEER GORMLEY: Staff is also
7 proposing some modifications to the recordkeeping and
8 reporting requirements contained in the PERP regulation.
9 Because certified engines are not subject to any hourly
10 operating restrictions, staff is proposing to remove the
11 requirement for tracking hours of operation and reporting
12 of annual hours of use for these engines.

13 To improve the enforceability of the requirement
14 that portable equipment not reside at a location for more
15 than 12 consecutive months, staff is proposing that the
16 specific location of all registered engines and equipment
17 units be recorded no less than once a month. Currently,
18 only the county or air district has to be recorded for
19 location.

20 Staff is also proposing to remove the requirement
21 in the PERP regulation that equipment dealers provide a
22 list to the Air Resources Board of all portable engines
23 sold in California. Because PERP is a voluntary program,
24 staff believes it is not appropriate to have a mandatory
25 notification requirement for equipment that is not yet

1 registered. And it has not proven to be a useful
2 mechanism to track equipment that may need a permit.

3 And, finally, we are making some minor wording
4 changes for clarity, which will improve the implementation
5 of the portable engine ATCM and statewide registration
6 program.

7 --o0o--

8 AIR RESOURCES ENGINEER GORMLEY: Finally, I would
9 like to discuss why we are proposing to amend the off-road
10 and on-road diesel vehicle registration.

11 Currently, water well drilling regs are covered
12 by two regulations: The portable engine ATCM for the deck
13 engine and the on-road vehicle regulations for the truck
14 engine.

15 The California Groundwater Association has
16 indicated that replacing the portable Tier 0 deck engine
17 on two-engine water well drilling rigs as required by the
18 portable engine ATCM is extremely difficult. Our analysis
19 showed that these rigs face many of the same cost and
20 safety issues with engine replacement as with two-engine
21 cranes. Therefore, staff is proposing to move these
22 two-engine water well drilling rigs into the off-road
23 regulation, just as was done with two-engine cranes in
24 previous amendments.

25 Under this proposal, both the drive engine and

1 the portable deck engine will be subject to the
2 requirements of the off-road regulation and must be
3 reported into the diesel off-road on-line reporting
4 system. The deck engines still technically meet the
5 definition of portable and may be subject to district
6 permitting requirements. Therefore, under this proposal,
7 the deck engine will remain eligible for registration in
8 PERP.

9 --o0o--

10 AIR RESOURCES ENGINEER GORMLEY: Before we move
11 on to discuss future actions, there is one issue that we
12 would like to bring to your attention. Currently, the
13 portable engine ATCM does not allow the permitting or
14 registration of Tier 1 or Tier 2 portable engines if they
15 have been found to be operating illegally.

16 To facilitate enforcement, the local air
17 districts have requested that we amend the ATCM to allow
18 the permitting of these engines.

19 As we have not yet reached an agreement on an
20 appropriate mechanism or proposed regulatory language, we
21 would like to continue to work with CAPCOA on this issue
22 to explore those options and may propose a regulatory
23 solution as part of a 15-day change, if necessary.

24 --o0o--

25 AIR RESOURCES ENGINEER GORMLEY: If the

1 amendments are approved today, we will conduct outreach
2 activities to inform people of the new changes, which
3 include dedicating resources to assist the public with
4 questions and applications, updating folks on our website,
5 and sending out informational fliers to members of
6 affected industry that may be subject to the new
7 requirements.

8 Once the amendments are effective, we will start
9 processing the applications for engines that are affected
10 by the new requirements.

11 --o0o--

12 AIR RESOURCES ENGINEER GORMLEY: Finally, we move
13 on to staff's recommendation.

14 --o0o--

15 AIR RESOURCES ENGINEER GORMLEY: Staff recommends
16 that you adopt the proposed amendments.

17 Thank you. That concludes my presentation.

18 CHAIRPERSON NICHOLS: Okay. Thank you very much.

19 We have a list of ten witnesses here, so I think
20 we'll just begin with those, unless anybody has any
21 comments or questions. Okay.

22 BOARD MEMBER TELLES: When I read this, it wasn't
23 clear to me what the emissions reduction inventory is for
24 the sector. How big of emissions is this that we're
25 talking about?

1 AIR RESOURCES ENGINEER GORMLEY: Well, the total
2 population of engines registered in PERP currently is
3 about 30,000 engines, a little less than that. And that's
4 just private sector. The military has about 5,000 more
5 than that.

6 The only engines that are affected by the Tier 0
7 engine replacement requirement is just over 5,000. Some
8 of those can be designated as emergency use. So when you
9 really look at it, it's only about 4400 engines that are
10 actually subject to be replaced by the end of last year.
11 That's the total scope of the proposed amendments.

12 BOARD MEMBER TELLES: That's the number being
13 replaced. What's the actual emissions? How many NOx and
14 PM?

15 AIR RESOURCES ENGINEER GORMLEY: Oh, we have
16 that.

17 STATIONARY SOURCE DIVISION CHIEF FLETCHER: The
18 total emissions in 2009 are estimated to be about 115 tons
19 a day of NOx statewide and about somewhere around ten tons
20 a day -- nine to ten tons a day of PM. So it's a pretty
21 significant amount.

22 To put it in perspective, in the San Joaquin
23 Valley, probably about -- I would guess -- probably 30 to
24 40 of those tons in the San Joaquin Valley. So this is a
25 big category. Tier 0 represents about 40 percent of those

1 emissions.

2 BOARD MEMBER TELLES: Okay. And what's the total
3 cost to the industry as far as doing this 30 percent
4 replacement?

5 AIR RESOURCES ENGINEER GORMLEY: Well, with the
6 2,000 engines that would normally have to be replaced that
7 we're giving relief to, the cost delay is about \$66
8 million.

9 BOARD MEMBER TELLES: All right. And you said
10 there wasn't an estimate of the reduction of emissions
11 based on -- surplus reduction of emissions based on the
12 decrease in economy. Do you have any estimate of that?

13 AIR RESOURCES ENGINEER GORMLEY: We have not
14 performed that analysis.

15 BOARD MEMBER TELLES: Have you performed any
16 analysis of how many jobs would be lost if you do this?

17 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well,
18 two comments on that.

19 The first, if you assume that the construction
20 industry might be a surrogate for these, because many of
21 the engines are used in construction-type industries, that
22 would be a 30 percent or so reduction.

23 So, for example, on the PM side, instead of 3,000
24 tons a year, it would be around 2100 tons a year.

25 So if you consider that the Tier 0 engines

1 themselves account for 40 percent of the emissions, then
2 there is sort of a situation where if all of those Tier 0
3 engines were to operate, then we would probably be about
4 where we were in 2009. That is, we would see no emission
5 reductions associated with this measure.

6 What makes it difficult to estimate is that we're
7 not sure how many of the Tier 0 engines have already been
8 replaced. When we estimated the cost to replace those
9 engines of 66 million, that assumes that all of those Tier
10 0s have not already been replaced.

11 And the way that the Portable Engine Registration
12 Program is set up, those engines are registered in the
13 program, but there is no requirement once they're replaced
14 to notify us they've been replaced. The registration
15 essentially expires on that date. So we expect that many
16 of these engines have already been replaced.

17 On the second question in terms of jobs, the
18 impact of our proposed change is actually to make many of
19 these engines in the smaller fleets 25 or less. You can
20 now operate five or more of those engines. So we would
21 expect -- we haven't estimated what the job impacts are,
22 but a thousand -- or roughly 1100 companies of the 1200
23 companies that still have Tier 0 engines are now eligible
24 for some relief. And of those, I think 900 companies get
25 full relief. So it should have a positive impact on jobs.

1 CHAIRPERSON NICHOLS: Did that respond to your
2 question?

3 BOARD MEMBER TELLES: Yes.

4 CHAIRPERSON NICHOLS: Okay. We'll start with our
5 first witness. And I'll give you the next three in order
6 so people can be prepared to come forward. And as I said
7 before, we will be using our three-minute rule.

8 So starting with Bill Gaines and then Mel Zeldin
9 and Barry Wallerstein.

10 MR. GAINES: Thank you very much.

11 My name is Bill Gaines. I am the Chairman and
12 Senior Engineer at Transfer Flow, Incorporated. I have a
13 degree in mechanical engineering from CalPoly and in fluid
14 dynamics. I have been an engineer at General Motors and
15 now own my own manufacturing company.

16 We've been in the business for 27 years
17 manufacturing fuel systems for the niche market. And we
18 own 160 CARB executive orders. We have basically been
19 involved in developing and providing orders for new
20 vehicle, for aftermarket, and for SORE. So we have a very
21 good relationship with CARB. And when we started reading
22 the portable regulations, we found a lot of areas of
23 concern to us, since we are very familiar with writing
24 these regulations and trying to meet them.

25 In our opinion, there was no thought of

1 integration when writing these regulations. In other
2 fields, you basically have a General Motors or Ford or
3 Chrysler that you issue an Executive Order to. They are
4 literally the integrator for the vehicle.

5 In this particular scenario, the diesel
6 particulate filter manufacture is typically the person or
7 company that is held to the standard of the Executive
8 Order. They do not typically have the familiarity with
9 designing a complete system. Instead, they are very good
10 at building a diesel particulate filter. The controllers
11 that go along with it, the pressure transducers, the
12 thermal couples, et cetera, all have to work as a family.
13 And we don't believe that that's really been looked at.

14 We do believe -- we are an integrator and have
15 been doing that again for several years. One of the
16 problems that we see -- I just heard the testimony that
17 there are 4400 Tier 0 engines that are in the registered
18 program. Well, in Butte County, 49 percent of the ag
19 portable engines are Tier 0. And so we question that
20 number. And these are registered engines, by the way.

21 We are finding that the cost of these engines --
22 these retrofits run from \$11,000 to \$43,000 to bring up a
23 Tier 0 engine to meet current emissions compliance.

24 Just retrofitting the Tier 0 by our estimates is
25 going to cost, in essence, \$290 million. We don't

1 think -- we question that as well. We believe that if you
2 use the current --

3 CHAIRPERSON NICHOLS: I'm sorry. Three minutes
4 is a very short time.

5 Have you met with staff and/or participated in
6 the proceedings up until now and conveyed your information
7 to them?

8 MR. GAINES: No. I have talked to John Lee and
9 talked to some of your Board members, but I have not
10 been -- I've not talked to staff. We got involved in this
11 late after the regulations were made.

12 CHAIRPERSON NICHOLS: Okay. Well, if you have
13 any written information to provide, I would really
14 appreciate it if you could further it now. And if not,
15 we'll see what we can do.

16 MR. GAINES: Thank you very much.

17 CHAIRPERSON NICHOLS: Mel Zeldin and Barry
18 Wallerstein.

19 MR. ZELDIN: Chairman Nichols, members of the
20 Board, I'm Mel Zeldin, Executive Director for the
21 California Air Pollution Control Officers Association.

22 Good morning.

23 CAPCOA appreciates this opportunity to express
24 our support for the proposed revisions to the portable
25 diesel engine ATCM and PERP regulations. We share ARB's

1 goals in reducing exposure to diesel particulate and
2 reducing the emissions of ozone-forming NOx pollution from
3 diesel-fueled engines.

4 We recognize, too, that the current economic
5 conditions would present difficult implementation issues.
6 We support the flexibility provided by the proposed
7 revisions and appreciate that the flexibility is
8 accomplished without giving up significant emission
9 reductions.

10 However, there are two yet unresolved issues with
11 which most but not all of CAPCOA members have concerns.
12 First, currently, it is illegal to operate Tier 1 and Tier
13 2 engines in many districts. If those engines have not
14 been issued a permit or PERP registration, this rule
15 revision does not provide a legal mechanism for operators
16 of previously unpermitted or un-PERPed engines to continue
17 operations after being discovered by district enforcement
18 personnel.

19 Secondly, the portable engine ATCM does not
20 contain a prohibition of sale provision which we are
21 concerned that illegal Tier 1 and Tier 2 engines will be
22 sold to unsuspecting buyers in California by unscrupulous
23 vendors.

24 We would request that you direct staff to work
25 with CAPCOA to incorporate these changes in the 15-day

1 comment period, and we're glad to see staff's willingness
2 to do so.

3 In summary, CAPCOA supports the revisions before
4 you today, and we thank ARB staff for working with us
5 during this process. Thank you.

6 CHAIRPERSON NICHOLS: Thank you for your
7 testimony.

8 Could I just ask you one question? I'm sorry
9 maybe I don't understand the issue. But why wouldn't
10 somebody who was cited and found to have an unpermitted
11 engine just get a permit?

12 MR. ZELDIN: As I understand it that they can't
13 get a permit. They're in violation of the ATCM so --

14 CHAIRPERSON NICHOLS: They would never get it.

15 MR. ZELDIN: By state law, if they're in
16 violation, they can't get a permit.

17 CHAIRPERSON NICHOLS: Right. Okay. I get it.

18 BOARD MEMBER BERG: Chairman Nichols, I do have a
19 follow-up question.

20 It's my understanding they had an opportunity and
21 we gave an extension to register those Tier 0 engines. So
22 now if anybody was found, they would not be able to use
23 them now.

24 MR. ZELDIN: As it stands now, there's no relief
25 other than just --

1 BOARD MEMBER BERG: Do not use. But that was the
2 intent of the regulation was my understanding.

3 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Let
4 me clarify this a little bit. There's a couple things in
5 play.

6 One is the extension we're proposing applies to
7 engines that are already in the program.

8 I think what Mel is talking about has to do with
9 engines that are not registered and are not permitted. So
10 they're currently operating illegally.

11 BOARD MEMBER BERG: I understand that, but we've
12 had this conversation a couple of times to my memory. And
13 so it sounds to me now that we're considering or we're
14 being asked to consider to allow unregistered --

15 CHAIRPERSON NICHOLS: Illegal.

16 BOARD MEMBER BERG: -- illegal engines to come
17 into the program for a third time. We've already done it
18 originally and we gave an extension.

19 STATIONARY SOURCE DIVISION CHIEF FLETCHER: And
20 that's what we're trying to avoid. As Mr. Gormley said in
21 the presentation, we want to continue the discussion with
22 CAPCOA on this.

23 Our view is we do not want to provide a fourth
24 amnesty period for engines that have not registered or
25 have not been permitted in the program.

1 And the issue really has to do with how do you
2 affect an enforcement action against engines that are
3 found to be operating illegally?

4 And there is a difference of opinion right now in
5 terms of how an abatement order would work. And some of
6 the districts believe an abatement order, the way that
7 they have traditionally done abatement orders, the first
8 thing they do in an abatement order is bring the engine
9 under permit so it can operate. So it's really a very
10 limited --

11 CHAIRPERSON NICHOLS: Regulatory issues.

12 STATIONARY SOURCE DIVISION CHIEF FLETCHER: --
13 defined issue here that says they can't issue an abatement
14 order and these engines can't operate while they are under
15 an enforcement action unless they're under a permit. And
16 that's why we couldn't come to an agreement on what sort
17 of regulatory language we could introduce that would not
18 be an amnesty period, but would simply address the sort of
19 technical issue of how you issue an abatement order and
20 bring an engine in under permit so that you can then get
21 them to the newer cleaner engine.

22 BOARD MEMBER BERG: Can I just ask one clarifying
23 question?

24 From a layman's perspective on what you just
25 said, are we trying to understand how to bring something

1 under permit so we can tell them that they cannot use it?

2 STATIONARY SOURCE DIVISION CHIEF FLETCHER: We're
3 bringing them under permit so we give them a short period
4 of time to operate and replace the engine, because the
5 issue really is if they have to replace the engine, that
6 it costs money. If we take their ability to earn income
7 away by shutting down that operation, they have no ability
8 to generate resources to replace the engine to the newer
9 cleaner engine.

10 BOARD MEMBER BERG: Thank you.

11 CHAIRPERSON NICHOLS: I understand the issue.
12 This has been going on -- this type of problem has been
13 going on for many, many years. Okay. Thank you.

14 Barry Wallerstein.

15 MR. WALLERSTEIN: Good morning, Chairman Nichols,
16 members of the Board.

17 I'm Barry Wallerstein, the Executive Officer of
18 the South Coast AQMD. I'm before you this morning in
19 support of the staff's modest proposal to grant an
20 additional year to allow folks during this recessionary
21 time to accumulate some additional funds to be able to get
22 the new engines.

23 I did want to point out that just last week the
24 federal government proposed potentially a new range of
25 ambient air quality standard for ozone. In South Coast,

1 under our current ozone plan, we have to reduce oxides of
2 nitrogen by about 75 percent. Potentially, under the new
3 federal standard, that could become 90 percent. That
4 means that our agencies have to be working together to
5 look for every possible area of emission reductions as we
6 have in the past.

7 Regarding Board Member Berg's last question, it
8 really is an issue of how do you grant in this case for
9 this rulemaking temporary relief. The engines not only
10 have to be able to comply with your ATCM if it receives a
11 district permit, it has to meet best available control
12 technology. So Tier 1 or Tier 2 cannot meet BACT. So
13 really the only mechanism to provide this sort of relief
14 is the item that is before you today, and that's why we're
15 supporting it, given the extraordinary economic times that
16 we find ourselves in, and the fact that it is just a brief
17 one-year period and we will then be fully back on track.

18 Thank you for your time.

19 CHAIRPERSON NICHOLS: Thank you for that.

20 Michael Graboski, Mary Pitto, and Doug Van Allen.

21 MR. GRABOSKI: Good morning. I'm Dr. Michael
22 Graboski of the American Rental Association.

23 ARA has submitted detailed written comments, and
24 we hope that you'll review the totality of what we had to
25 say.

1 But we're here this morning to just take a
2 neutral position on the regulation. In particular, we
3 don't really see any or very much at all economic relief
4 for our membership in what has been proposed.

5 We do have a concern about Section 2458 on the
6 reporting requirements. Rental companies have no control
7 over where their rental equipment is located once it
8 leaves the yard. But in the new version of the
9 regulation, we basically are going to be required on a
10 monthly basis to provide an exact location of where our
11 equipment is, like UTM coordinates.

12 Previously, we were told and we understood that
13 what we had to do is ask our customers where they were
14 going to have the equipment, and we were going to note
15 that down. And in a best effort, we would provide that as
16 part of reporting.

17 But we now believe that, because as hearsay
18 knowledge and the way this is written in the regulation,
19 that we might leave ourselves open to a serious compliance
20 risk if we can't exactly know where the equipment is.

21 It's our understanding that the industry has
22 contacted both ARB and CAPCOA regarding this section of
23 the rule. And we would request the Board set aside action
24 on this until those discussions are completed. And we
25 would all feel that we would be more safe with regard to

1 compliance as far as the rule is concerned.

2 Thank you.

3 CHAIRPERSON NICHOLS: Thank you.

4 Mary Pitto.

5 Ms. PITTO: Good morning, and thank you for this
6 opportunity to address you.

7 I'm Mary Pitto with the Regional Council of Rural
8 Counties. I'm here to make one request, an additional
9 amendment for your consideration.

10 In the fleet rule for public agencies and
11 utilities and with the off-road equipment rule and the new
12 truck and bus regulation, you have exempted dedicated snow
13 removal equipment. We're requesting that for the snow
14 blower machines that have a dual engine, one to propel the
15 vehicle and one to power the snow blowing equipment, that
16 these also be exempt from this regulation, the portable
17 auxiliary ATCM.

18 The snow blowing equipment is used for public
19 service, a safety service to the general public. They're
20 used only seasonally and part time. So we would
21 appreciate that consideration.

22 CHAIRPERSON NICHOLS: Thank you.

23 Doug Van Allen, followed by James Thomas and Karl
24 Lany.

25 MR. Van ALLEN: Good morning. My name is Doug

1 Van Allen with BJ Services Company.

2 BJ supports all the changes that will help
3 relieve extra expenses on California businesses during
4 these hard times.

5 In 1997, BJ had 123 Tier 0 engines registered in
6 the PERP Program. As of December of '09, we've replaced
7 84 of the Tier 0 engines. That was 42,800 horsepower at
8 an actual cost of over \$25 million to BJ.

9 On December 31st, '09, BJ still had 39 Tier 0
10 engines, totaling 22.5 thousand horsepower. Replacement
11 costs for those 39 engines would be \$3.9 million according
12 to CARB's estimation of \$175 per horsepower. So they're
13 right now out of business.

14 January '09, we had lay to off 30 percent of our
15 California employees due to the downturn in business.
16 This was our first layoff since 1986 for California
17 employees.

18 Since '08, we have reduced our on-highway truck
19 fleet by 15 percent.

20 Since '08, we've reduced our diesel engine
21 powered pumps by 31 percent operating in California, and
22 our sales of our pressure pumping services has decreased
23 around 30 percent as well.

24 Several of the air districts want to make changes
25 allowing Tier 0 engines to be permitted for future use.

1 If this recommended change is made, it must be allowed for
2 all businesses, not just small businesses, in order to
3 prevent creating a larger competitive disadvantage than
4 we've already had.

5 And if this recommended change is made, BJ has
6 22.5 thousand horsepower engine Tier 0s we'd like to
7 continue to operate in California.

8 Thank you.

9 CHAIRPERSON NICHOLS: Okay. Thank you.

10 James Thomas.

11 MR. THOMAS: I'm James Thomas with Nabors Well
12 Services.

13 Our company supports some of the proposals of the
14 amendments today.

15 We are greatly happy or greatly jubilated with
16 the reducing of the annual reports and the daily
17 recordkeeping. For the past, less than 20 percent of the
18 fleets filed the annual reports with CARB. And with that
19 data going in, no one has ever requested to look at that
20 data. So we're glad to see the red tape leave.

21 On-highway engines being allowed back into PERP,
22 we support that. But last summer, we received a
23 notification stating that our engines would have to be
24 replaced by the end of the year. In the cost analysis, it
25 talks about federal fleets and that they will be able to

1 save \$510,000. Our company spent that money to replace
2 our five engines that were not going to be allowed.

3 Now, here today, we're talking about Tier 0
4 engines and allowing them to operate. In this repowering
5 process, we removed two Tier 0 -- two Tier 2 on-road
6 engines, which were very clean.

7 So our suggestion is in the future when you
8 decide to make some changes that you start sooner so all
9 companies can benefit from this proposal.

10 We support the relief for small fleets, but we
11 believe that if you're going to give it to small fleets
12 that you ought to give it to large fleets as well.

13 The last we'd like to talk about is the
14 competitive disadvantage that PERP regulations has created
15 on complying companies through modification, amnesty, lack
16 of inspection, for allowing companies to opt out of the
17 program and operate.

18 The comments of two of the air districts
19 acknowledged that these people do exist. And for
20 regulations to be fair for companies that are spending
21 large amounts of money, like my company that spent \$14.8
22 million, we must make sure that we create a level playing
23 field for all affected people.

24 And we hope and pray that you will make sure that
25 the companies that do not get -- the engines that don't

1 get to be extended are inspected and make sure they
2 comply.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you for your
5 testimony.

6 Karl Lany, followed by William Davis and Mike
7 Mortensson.

8 MR. LANY: Good morning. I'm Karl Lany with SCEC
9 Air Quality Specialists. I'm here on behalf of the
10 Caterpillar rental operations in California and
11 neighboring states who have approximately 1700 engines in
12 the PERP program. We've been very committed to this
13 program, have replaced our fleets, have very, very modern
14 fleets.

15 My comments reflect a lot of the comments you've
16 already heard today, specifically as it relates to
17 recordkeeping and reporting. I want to make sure it's
18 understood that while recordkeeping and reporting may have
19 been streamlined for owner/operator fleets through these
20 amendments, the proposed amendments will make
21 recordkeeping and reporting more onerous for rental
22 fleets. And we think it reflects a disconnect in
23 thinking, maybe something that's less than full awareness
24 of the intricacies of the rental transaction.
25 Specifically, in 2458(b), the inclusion of a monthly

1 log-in entry as to the specific location of the engine is
2 very, very problematic, primarily because it's something
3 that's enforced upon the owner of the engine and not the
4 operator of the engine.

5 As previously stated by the ARA representative,
6 we don't have that kind of control. We don't have the
7 ability to validate that kind of data. You may think if
8 CARB is going to have this type of restriction or
9 requirement, we need to recognize who is responsible for
10 which compliance actions, owners versus operators. And we
11 would ask that that provision be withheld until we can
12 have more communication with CARB and CAPCOA.

13 Also, CARB is proposing that certified engines be
14 removed from annual reporting requirements for
15 owner-operated fleets. But rental fleets and actual
16 essential public service fleets do not enjoy that same
17 luxury, and we would like to see that more evenly applied.

18 Finally, we do thank CARB for several of the
19 other provisions that are in the amendments very much so,
20 one of which is their willingness to provide registration
21 electronically. It's very important that we get engines
22 into the field and dispatched as soon as possible. That's
23 very welcome.

24 I would like to see additional language that
25 clarifies that for a limited amount of time we can operate

1 without the placards and labels, because those are going
2 to follow through the mail.

3 CHAIRPERSON NICHOLS: Thank you. Good comments.
4 William Davis, and then Mike Mortensson and
5 Arthur Fulton.

6 MR. DAVIS: Is there a button? We're in
7 business.

8 Good morning, Madam Chairman, members of the
9 Board. I'm William E. Davis, Executive Vice President of
10 the Southern California Contractors Association and Board
11 member with the Construction Air Quality Coalition.

12 But this morning, I'm here to discuss the idea of
13 William of Ockham, a 14th century --

14 CHAIRPERSON NICHOLS: Bill, we'll let you
15 restart. This is a reset.

16 MR. DAVIS: Thank you.

17 William Davis with the Southern California
18 Contractors Association and CIAQC.

19 This morning I'm here to discuss the ideas of
20 another William however, William of Ockham, a 14th century
21 Franciscan friar and logician. The founder of Williams
22 Order of Saint Francis of the CC is the patron and saint
23 of the environment and environmentalist. I've actually
24 thought of bringing you all medallions for Saint Francis
25 just in case you might need them.

1 William of Ockham was a leading thinker in the
2 scholastic movement, which was a very important period in
3 intellectual life, and made it his life goal to strive for
4 simplification, a very Franciscan precept, especially when
5 church bureaucracies debated in those days over topics
6 such as how many angels can dance on the head of a pin.

7 When William of Ockham was man of many parts, he
8 is in our day associated with the principle known as
9 Ockham's razor, a philosophy he used to cut through
10 complexity and to get at the heart of the matter before
11 him.

12 In the 1330s, William expressed the idea -- and
13 I'm not going to butcher the Latin, but in the prepared
14 remarks you have it -- and you, Dr. Balmes, can read it
15 and several others. Entities must not be multiplied
16 beyond necessity. The way we say that today is that the
17 simplest explanation or strategy tends to be the best one.

18 In the case before you, we believe the staff
19 proposal unnecessarily complicates the issue of what to do
20 about Tier 0 portable engines. This staff approach
21 harkens back to the idea of angels dancing on the heads of
22 pins.

23 The simplest thing to do would be to extend the
24 operation of all registered Tier 0 equipment for a
25 one-year period. This simple thing would have virtually

1 no effect on emissions.

2 And, Dr. Telles, as your staff estimates, there's
3 no more than 4300 of these machines in the state. The
4 construction industry, which owns most of them, has
5 declined so dramatically over the last five years it's
6 essentially operating at about 50 percent of where it was
7 when this regulation was last discussed. So only half of
8 these machines would be operating at best.

9 Your cost estimates -- and I'm going to take just
10 a second to talk about this. At \$66 million, our industry
11 will actually receive far greater cost savings just from
12 the elimination of the recordkeeping requirements that are
13 proposed. We do support that.

14 We had one company up here a moment ago that had
15 a cost of almost \$30 million all on their own. We think
16 the cost estimates on these again are underestimated by a
17 factor of four or five.

18 Finally, when CAPCOA and CARB get together to
19 discuss their request, our industry would like a place at
20 that table. Since we're the regulated body for most of
21 this, we think we have something to contribute to the
22 discussion.

23 Thank you all very much.

24 CHAIRPERSON NICHOLS: Thank you.

25 I really am a sucker for anybody that quotes

1 Latin, especially medieval Latin. I started college as a
2 classics major. Appreciate your comments.

3 MR. DAVIS: Point of personal question.

4 Dr. Balmes is one of the nation's recognized
5 experts on the health effects of ozone. And since the EPA
6 has come out with these new recommendations, I was
7 wondering if it would be possible to contact you about
8 getting some information on that so our industry can
9 formulate a position.

10 BOARD MEMBER BALMES: You can contact me.

11 MR. DAVIS: Thank you.

12 BOARD MEMBER BALMES: The Board secretary,
13 Ms. Fraizer, always seems to be able to contact Board
14 members.

15 Mike Mortensson.

16 MR. MORTENSSON: Good morning, Chairman Nichols
17 and members of the Board. I'm Mike Mortensson, the
18 Executive Director of the California Groundwater
19 Association, commonly known as CGA.

20 CGA represents water well drilling contractors,
21 pump installing contractors and firms throughout the
22 state. The groundwater industry is not large in numbers,
23 but its functions are critical to the state's well-being.
24 And our industry is subject to multiple CARB rules.

25 We ask that the Board approve the proposed

1 amendments that will place two-engine water well drilling
2 rigs similar to the cranes in the off-road rule and to
3 allow additional compliance time for Tier 0 engines. Your
4 approval will prevent the loss of what we estimate to be a
5 third of the state's water well drilling rigs and give our
6 many small business owners in the industry time to comply
7 with the regulations in these hard economic times.

8 We have worked with CARB staff in the last year
9 on these matters, and we look forward to working with them
10 in the future to help our members improve air quality
11 while ensuring the continued reliability of the
12 groundwater industry to meet the water needs of all
13 Californians.

14 Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 BOARD MEMBER BERG: Chairman Nichols, could I
17 just ask a question of the staff?

18 I do have on my list the time frame for bringing
19 these regs into compliance on the off-road rule, given the
20 fact that the off-road rule is in effect right now for
21 large companies and what type of additional time are we
22 looking at?

23 AIR RESOURCES ENGINEER GORMLEY: Well, Ms. Berg,
24 you know, there's three scenarios with the compliance
25 dates we're expecting for these water well drillings rigs.

1 The majority of these we're expecting to be small and
2 medium fleets when they enter into DOORS. So their
3 compliance dates are the 2013 and 2015 respectively for
4 medium and small.

5 Then you have a scenario of large fleets. If one
6 of these existing small to medium fleets becomes large,
7 then the off-road regulations provide them an additional
8 two years from the next compliance date to come into
9 compliance if they increase in size. So those fleets that
10 increase to large will get until March of 2013 as well.

11 We have the scenario of an existing large fleet
12 that it was already large in the off-road and they add
13 some water well drilling rigs. What will happen is their
14 compliance date will still be March 1st of 2010, but the
15 water well drilling rigs won't be part of that compliance
16 until the next year, which is March 1, 2011.

17 BOARD MEMBER BERG: And that's for registering
18 for the DOORS?

19 AIR RESOURCES ENGINEER GORMLEY: Yes, for the
20 off-road compliance.

21 BOARD MEMBER BERG: Isn't there some requirements
22 on 8 percent NOx and 20 percent PM, if my memory serves me
23 correctly?

24 AIR RESOURCES ENGINEER GORMLEY: No. The
25 compliance dates I was speaking of was for those

1 compliance emissions rates, the 8 percent NOx. We
2 actually extended the reporting date for all water well
3 drilling rigs until August 1st of this year. So then, you
4 know, the next year's compliance date would be in effect
5 for the existing large fleets, which is March 1st of 2011.

6 BOARD MEMBER BERG: So they would, in fact, have
7 a one-year delay and then there isn't a catch up? There
8 isn't a double down, so to speak?

9 AIR RESOURCES ENGINEER GORMLEY: Right.

10 BOARD MEMBER BERG: Is that correct?

11 AIR RESOURCES ENGINEER GORMLEY: For existing
12 large fleets, if they're adding in water well drilling
13 rigs, they get until next year to comply with those.

14 BOARD MEMBER BERG: Thank you.

15 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Let me
16 add one other thing. For the larger fleets when they get
17 put in with the off-road rule, there's a longer phase-in
18 for a replacement of engines. So they're able to average
19 things out. So if these are really tough to comply with,
20 you can do other ones first, which buys you more time.
21 There's a lot more flexibility but having it in that
22 bigger pool for the larger fleets.

23 CHAIRPERSON NICHOLS: All right. Thank you.

24 Is Arthur Fulton here?

25 MR. FULTON: I'm Arthur Fulton. I'm a well

1 drilling contractor. I'm the owner of Diamond Well
2 Drilling Company.

3 In the beginning of 2008, I employed 30 people.
4 Right now, I employ 15.

5 Half of my fleet, four rigs, has been taken out
6 of service as a result of the portable equipment ATCM and
7 the compliance date of January 1, 2010.

8 I'm speaking in support of these amendments.
9 They'll help me a great deal. And I'd like to explain
10 why. I'd like to buy new drill rigs. I'd like to buy two
11 new higher tiered engine drill rigs to replace the drill
12 rigs that I have that are decommissioned that have Tier 0
13 engines. The rigs cost a little bit south of a million
14 dollars a piece. And I can't do that now. I'm hoping
15 that when business picks up that I can put these rigs back
16 into service and make some money and buy the new drill
17 rigs. If I can't do that, I'll go out of business and the
18 15 jobs that I lost will be compounded with the 15 jobs
19 that I still provide. And, therefore, I would encourage
20 you to pass these amendments.

21 I do have one question though. And it was said
22 today by Mr. Gormley, and I am a little bit confused about
23 where the jurisdiction is. It's my understanding the
24 off-road rule is administered by the state in general.
25 But you did mention that the old portable equipment

1 engines would still be administered and enforced by the
2 local districts.

3 And I'll take my answer in the seat.

4 CHAIRPERSON NICHOLS: Thank you. Do you want to
5 add a comment at this point about how the system actually
6 works?

7 AIR RESOURCES ENGINEER GORMLEY: Sure. I'll
8 expand on that a little bit.

9 We are proposing to move both engines and water
10 well drilling into the off-road regulation, which means
11 their emission control requirements for those two engines
12 are going to come from off-road reg. They're not going to
13 come from the on-highway truck rule or the portable ATCM
14 any longer.

15 However, the deck engine still meets the
16 definition of portable. So, therefore, the districts then
17 can still require permit for it. And so to satisfy that
18 permit requirement, they still have the option to come
19 into PERP if they want to or permit with the district.
20 But the emission control requirements will be set by the
21 off-road regulation.

22 CHAIRPERSON NICHOLS: Thanks.

23 MR. FULTON: Are you saying we'll have the choice
24 of whether to be in the state or with the local?

25 AIR RESOURCES ENGINEER GORMLEY: For the permit,

1 yes.

2 BOARD MEMBER BERG: And that means you do have to
3 register with a PERP in order to be with the state.

4 MR. FULTON: Yes, ma'am.

5 On those two rigs, I'm currently registered with
6 my district, because frankly I missed the deadline. I
7 woke up in 2006 on those two rigs, and I was able to
8 permit with the district, but not with the state. I'd
9 like to be able to permit with the state. Under the new
10 rule, would I be able to do that?

11 BOARD MEMBER BERG: Staff?

12 AIR RESOURCES ENGINEER GORMLEY: Yes. Once these
13 amendments become effective, he can apply to register the
14 deck engine with the PERP. And both engines will be
15 registered into DOORS.

16 BOARD MEMBER BERG: Thank you very much.

17 CHAIRPERSON NICHOLS: That was interesting and
18 useful clarification.

19 Michael Lewis.

20 MR. LEWIS: Good morning, Madam Chairman and
21 members of the Board.

22 I'm Mike Lewis, Senior Vice President of the
23 Construction Industry Air Quality Coalition. And we are
24 the organization that sponsored the legislation that
25 created the PERP program. You can either thank us or

1 curse us.

2 But we foresaw the problem that was pending at
3 the time with local districts with a myriad of rules and
4 requirements and fees and reporting for equipment that was
5 moving around the state in a fashion where a piece of
6 equipment could be in three different districts in three
7 different weeks.

8 The program has been very successful in
9 minimizing fees and providing an understandable and
10 uniform set of rules for portable equipment in California.

11 I would like to ask that you consider option two
12 in your staff report which would grant relief to all
13 companies with portable engines, not just small companies.
14 Every company in California, every construction company
15 certainly, is suffering equally in this economy. And most
16 of the equipment in this program is employed in
17 construction-related activities.

18 And most of you know by now that unemployment and
19 therefore emission reductions in construction industry is
20 pushing about 40 percent and growing still.

21 Emissions from this equipment is down
22 considerably. And I think granting relief across the
23 board is the appropriate way to deal with the issue that
24 you're trying to accommodate by granting some relief for
25 these Tier 0 engines.

1 I'd also like to ask that you take a second look
2 at the monthly reporting requirements for the rental
3 companies. The purpose of that report is to get at
4 equipment that stays in one place for 12 months or longer.
5 Having a company that has hundreds of pieces of equipment
6 out on rental, and they have to try to track it,
7 especially some of this equipment is second and third hand
8 rental, is almost impossible. If what you want is the
9 equipment that's going to stay in one place for 12 months
10 or longer, you can eliminate about 85 percent of the
11 reporting by just focusing on contracts that are 12 months
12 long or contracts that get extended to 12 months or longer
13 and then you know where that equipment is.

14 Finally, I'd like to ask, since you're going to
15 be extending this deadline and you have recently provided
16 some relief on the off-road rule and you're going to be
17 providing some on the on-road rule, and I wouldn't be
18 surprised if we're back here in 12 months doing this
19 again, that you look at the cumulative effect of these
20 rules on the industry.

21 As we've said before, companies are struggling to
22 comply with just one rule, let alone three. Most
23 construction companies have all three kinds of equipment:
24 Off-road, on-road, and portable. The deadlines for
25 compliance match almost identically for all of them. And

1 it makes it very difficult for a contractor to decide what
2 am I going to do when he has to deal with all three pieces
3 of equipment, rather than some emissions bubble which
4 might be a more effective way for them to do it by
5 aggregating their emissions and achieving some percentage
6 reduction across the board, but let them decide how
7 they're going to do it with what changes and modifications
8 to their fleet.

9 Thank you.

10 CHAIRPERSON NICHOLS: Thank you, Mr. Lewis.

11 That's an intriguing idea. I said you were the
12 last witness, but that was not true. I received two
13 additional cards. This is the end, however. We're not
14 going to take any more witnesses on this. So I've got
15 Fitts Weiss and Scott Watson; one in support, one oppose.

16 You're Mr. Watson?

17 MR. WATSON: Yes, I'm Mr. Watson.

18 I'm here today as simply an individual. I have
19 been on opposing sides of different regulations, primarily
20 with the ATCM regulation with formaldehyde and composite
21 wood products. And I'm here to ask the Board to help us,
22 the public, police this process. Because currently in the
23 Scientific Review Panel, it's my understanding that there
24 are six members of the Scientific Review Panel that are
25 not properly seated. And I think that it would be

1 important for us to follow those rules. There are nine
2 members. There are exhaustive rules on how these people
3 are appointed.

4 And the problem that I have is that there are
5 supposed to be three nominees for each of the nine
6 positions. And these are your own rules. I can go
7 through the code if you wanted me to, but I think it's
8 going to be a long and boring --

9 CHAIRPERSON NICHOLS: Actually, Mr. Watson your
10 comments are appropriate, but not on this item. They are
11 not relevant to the item that we're considering here.

12 But for your information, we have requested
13 nominees from the University of California. I'm familiar
14 with the regulatory system here. And I just received a
15 letter from the President of the University of California
16 quite recently. And I think the process is, in fact,
17 underway that you're hoping for. But we can communicate
18 with you later on that.

19 MR. WATSON: Okay. And that's terrific.

20 I suppose I should just summarize by saying that
21 as a Board we have to live with the regulations that you
22 folks pass. We ask you to pass those with the rules that
23 are already provided. Otherwise, you're holding us to a
24 higher standard than we can hold you.

25 CHAIRPERSON NICHOLS: I appreciate your comment.

1 Thank you.

2 Mr. Weiss, I hope your comment is on the rule
3 we're considering here.

4 MR. WEISS: On the proposed amendment, yes. It's
5 in support with one -- basically in support of also
6 including for the one-time compliance agreements that were
7 signed with local air districts and I think the gentleman
8 was referring to in terms of the fourth amnesty. We're
9 not exactly sure, but when the decision was made -- I
10 represent Berkeley Concrete Pumping. And basically
11 similar to the water well rigs that are very extensive
12 large pieces of equipment, when the one-time compliance
13 agreements were made, no one really could foresee the
14 economic crisis that was going to be occurring.

15 And that was one of the options that was given by
16 the ARB and the air quality local districts. And then to
17 now exempt those one-time compliance agreements from
18 getting into the proposed extension we feel is an unfair
19 singling out of what at the time was considered an equal
20 option to joining the PERP program or getting permitted by
21 these local air districts.

22 CHAIRPERSON NICHOLS: I think understand the
23 point, but I'm not sure. Why do you feel you're being
24 singled out?

25 MR. WEISS: We're not sure the -- we've been told

1 by our local air district that the one-time compliance
2 agreements will not be included in the extension.

3 CHAIRPERSON NICHOLS: Oh, I see.

4 MR. WEISS: And we're not sure exactly why that
5 is. Because it's not exactly a permit with the local air
6 districts.

7 CHAIRPERSON NICHOLS: I'm going to ask Mr.
8 Fletcher to respond.

9 STATIONARY SOURCE DIVISION CHIEF FLETCHER: If I
10 understand, the issue that anybody that came into the
11 program as a result of the amnesty he's saying would not
12 be eligible for this extension, that is not our
13 interpretation. If they are registered in the program
14 right now through whatever means, they have to decide
15 what --

16 CHAIRPERSON NICHOLS: You're not going to single
17 them out because they came in through this other door,
18 if you are registered.

19 STATIONARY SOURCE DIVISION CHIEF FLETCHER:
20 Right. If you were registered.

21 MR. WEISS: They're called the compliance
22 agreements signed with local air districts.

23 STATIONARY SOURCE DIVISION CHIEF FLETCHER: If
24 they're under an enforcement action, then it may be a
25 different situation and we'd have to evaluate it. We'd be

1 happy to talk to him after.

2 CHAIRPERSON NICHOLS: Why don't we have this
3 conversation off line if you don't mine.

4 But as a general rule, if you're registered,
5 you're registered. No matter how. Okay. Thanks.

6 That does conclude the list of witnesses on this
7 item. I'd like to take it back to staff if you have any
8 further comments at this point.

9 EXECUTIVE OFFICER GOLDSTONE: We're prepared to
10 do that.

11 CHAIRPERSON NICHOLS: Okay.

12 STATIONARY SOURCE DIVISION CHIEF FLETCHER: I
13 just have a few comments that I'll walk through, some
14 common themes that came up.

15 From the rental industry, the issue of the
16 monthly provision. There are two requirements that apply
17 to rental fleets. One of them is for equipment units and
18 the other one is for engines. And they do have different
19 requirements. And we've modified both of those provisions
20 to essentially relax requirements in both cases.

21 I think the one issue that came up regarding the
22 fact that they have to do this annual report for engines,
23 even though we exempted other engines, the comment was
24 made that both rental engines and the public utility
25 engines are still subject to the annual report.

1 There is a case to be made that perhaps that is
2 not necessary, and we did look at that in the context.
3 The reason we didn't make the changes is that rental units
4 are more complicated than typically other business. We
5 did relax the requirement. The original requirement
6 required rental companies to identify the location of
7 every rental. We've struck that requirement and added the
8 once-a-month again to reflect the fact that in some cases
9 the rental industry is renting engines to people that keep
10 them in the same place for long periods of time. So we
11 thought once a month was not an undue burden to just check
12 in periodically that says where is the engine and where is
13 it located.

14 There was an issue about who is responsible for
15 doing that, because the owners don't really know. And we
16 believe in both for rental units and rental engines that
17 the operators can be brought into being responsible for
18 that as a condition of the contract itself. So they can
19 simply require the operators to report that information to
20 them, particularly for longer term rentals.

21 So the second issue or one of the issues that
22 came up was on snow blowers. This is a new issue to us,
23 but it certainly is consistent with what we have been
24 doing with other two-engine type units.

25 The one caveat that we would want to make is to

1 ensure that it is cost prohibitive to make these changes.
2 We've done it for street sweepers. We've done it for
3 cranes. We're proposing to do it for water well drilling
4 rigs. There's no reason why we wouldn't extend the same
5 benefit. And we can do that as a 15-day change to this
6 regulation if we find that, in fact, there is a
7 cost-prohibitive element to the replacement of the
8 portable engine on snow machines.

9 CHAIRPERSON NICHOLS: Board members? Yes, Dr.
10 Balmes, you had a question?

11 BOARD MEMBER BALMES: This is a question about
12 the reporting data. I took it from the one witness that
13 those data weren't actually even asked for from his
14 company. I mean, I don't think we should be collecting
15 data unless we're making use of it. So could you
16 enlighten me about that?

17 STATIONARY SOURCE DIVISION CHIEF FLETCHER: I
18 agree. That's why we did drop the annual requirements for
19 many of the certified engines.

20 We have focused in the last two or three years on
21 bringing engines into the program. And so the districts
22 have been spending a lot of resources and trying to find
23 engines and get them into the program. If you recall,
24 several years ago, we adopted amendments to the regs that
25 set up an amnesty period with a back schedule of fees

1 associated with it to level that playing field. And over
2 the last three years, we've brought in an average of 800
3 engines a year.

4 So I think we're now turning the attention to
5 sort of the compliance with the people that have
6 registered in the program. But I think a lot of the
7 districts' efforts to date have been focused on that.

8 But we are dropping some of that recordkeeping
9 requirements. We have relaxed a lot of the requirements,
10 and in recognition of that, we are not using it. But the
11 reports we were not using. Even though we thought it
12 might be a useful piece of information, we were getting
13 very few of them and not using them.

14 So I think the question here is whether or not we
15 drop that annual report requirement for rental companies
16 and for the public utilities. That's really the decision
17 that needs to be made here. But in general all of the
18 reporting has been relaxed.

19 CHAIRPERSON NICHOLS: Ms. Berg.

20 BOARD MEMBER BERG: I'm not hearing from staff
21 though how they're going to use that information. Is the
22 information important to you? And if so, how for the
23 rental and the utilities on the annual report?

24 STATIONARY SOURCE DIVISION CHIEF FLETCHER: It's
25 the check-in to ensure that the districts have some

1 information about where these engines are operating within
2 their districts. That then provides them with a database
3 that they can go out and can check locations. They know
4 where to go. A lot of times we don't know where these
5 engines are being used, so it's really difficult to track
6 in and see. But if we get sort of common patterns on
7 where things are operating, they're in a better position
8 to go out and enforce on site than they would otherwise
9 be.

10 CHAIRPERSON NICHOLS: Having watched this evolve
11 a little bit, it seems to me the problem here is this is a
12 rule that really was not being enforced at all for a long
13 time. And we're gradually starting to clean it up and
14 make it enforceable. But I guess the staff is trying to
15 figure out what the best tool is to get the information.

16 BOARD MEMBER BERG: If we're getting back to the
17 monthly reporting, if owners have a responsibility to
18 report the equipment they own on a monthly basis, why
19 would we not include they also would report whatever
20 rental equipment they have? They're already submitting
21 the report.

22 STATIONARY SOURCE DIVISION CHIEF FLETCHER: It's
23 just the way that the rule is structured that there are
24 requirements for owners or operators of engines and then
25 there's separate sections for owner or operator of rental

1 equipment. So because rental equipment operations are
2 different than other types of operations is the equipment
3 is going out; sometimes it's going out to third party
4 rentals. Then we felt there was a necessity to have a
5 little different reporting requirement than what's in
6 place for normally registered engines.

7 BOARD MEMBER BERG: Is it true that what we're
8 trying to get at is long-term placement?

9 STATIONARY SOURCE DIVISION CHIEF FLETCHER: In
10 general, yes, that's true for rental equipment.

11 BOARD MEMBER BERG: Why aren't we having them
12 report their long-term equipment?

13 STATIONARY SOURCE DIVISION CHIEF FLETCHER: What
14 we were concerned about is -- and we can do that. We can
15 drop that requirement and restructure it in that way.
16 What we were concerned about is that as sort of a
17 condition of good business, we thought a check-in
18 periodically would be useful to ensure that they had an
19 indication of where that equipment was operating and to
20 provide service to their customers that if they were
21 approaching the 12-month limit, they would lose their
22 ability to be in the portable equipment program and would
23 need to seek a permit from the district.

24 BOARD MEMBER BERG: We probably wouldn't need to
25 do the short-term. Like anything under six months, we

1 would know that that would not apply. So we could
2 absolutely exempt some sort of time frame to lessen their
3 reporting burden.

4 STATIONARY SOURCE DIVISION CHIEF FLETCHER: We
5 could work with the districts to restructure something
6 along that line. I'd want to make sure that we got
7 district input on this, because they're the ones that are
8 doing the primary enforcement.

9 BOARD MEMBER BERG: I do think we do need to put
10 in a 15-day change, however, that we need to come up with
11 some mechanism that lowers the burden of the reporting for
12 things that do not meet the goal.

13 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Okay.
14 We'd be happy to do that.

15 CHAIRPERSON NICHOLS: We can certainly add that
16 to the list of things to put in the discussion when we get
17 to the actual voting on the regulation.

18 I wanted to actually ask a slightly different
19 question, which responds to Mike Lewis' comment. And this
20 may not be the time to deal with that. But it is true
21 that for the construction industry they are dealing with
22 different pieces of equipment that are being regulated
23 under different rules, all of which we're in the process
24 of considering. And I find myself being quite attracted
25 to the idea at least that -- and I realize this probably

1 only works for larger companies that a company which is
2 using a bunch of these different kinds of equipment could
3 take on the responsibility for managing the emissions
4 reduction across the whole company.

5 So it is a bubble concept, and we've used it
6 effectively in the past for stationary sources who never
7 tried to do it for mobile sources and obviously it's hard
8 to do. But in the case of the construction industry, they
9 might actually afford a unique opportunity to do something
10 like this.

11 I'd like to at least raise the question and see
12 if at least before we get to the next one of these
13 deadlines if the staff could take a look at the potential
14 for doing something like this. I really think it bears
15 further investigation.

16 STATIONARY SOURCE DIVISION CHIEF FLETCHER: For
17 example, the portable engine rule does go into the fleet
18 average mode in the 2013 time frame --

19 CHAIRPERSON NICHOLS: But only for the portable
20 engines.

21 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Only
22 for the portable engines.

23 CHAIRPERSON NICHOLS: So we don't allow people to
24 trade across different types of equipment. I don't know
25 how advantageous it would be for many people in the

1 construction industry. But if they wanted to try it to go
2 under a cap, it would seem like it could. And there's all
3 the usual questions about reporting and enforcement and
4 all of that. It would be worth looking at.

5 EXECUTIVE OFFICER GOLDSTENE: We'll look at it.

6 CHAIRPERSON NICHOLS: Thank you.

7 Other comments? Questions?

8 Supervisor Roberts.

9 BOARD MEMBER ROBERTS: I wanted to hear the
10 response to the other part, the exempting all of the
11 companies but the same rule --

12 CHAIRPERSON NICHOLS: The size issue.

13 BOARD MEMBER ROBERTS: They were saying who's
14 most able to pay. Most able to pay, means you still did
15 pretty bad.

16 And, you know, I don't think there's a
17 fundamental understanding of what's going on in the
18 construction industry. We're still putting heavy
19 requirements on and assuming that most able to pay means
20 they're in good shape. They're not. So I thought that
21 was a good recommendation. And I'd like to hear what
22 the implications are.

23 CHAIRPERSON NICHOLS: Emissions and other
24 implications, I guess.

25 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well,

1 let me start with the issue of why we selected 25 or fewer
2 to begin with. And that was done basically because as we
3 were looking at the proposed amendments, we went through a
4 number of factors as to why we even decided this was
5 appropriate. And as we were going through it and when we
6 made the decision that some relief is appropriate, we then
7 looked at the companies that are in the program and what
8 they have in the way of engines. And we looked at what
9 percentage the Tier 0 were in each of those fleets.

10 And what we found was for engines -- for
11 companies that had 25 or fewer engines, 65 percent of
12 their engines were Tier 0. And as you went into larger
13 fleets, for example, if you went into let's say a medium
14 size fleet, it went down to 45 percent. And when you got
15 to larger fleets, it was 25 percent.

16 So we were then able to look at those 1200
17 companies that had at least one Tier 0 engine and break
18 that down in terms of what those companies typically were
19 doing and how they would be affected. And when we found
20 that 800 of those 1200 companies would be getting one year
21 relief completely, that all of their engines -- say, if
22 they were a tree trimming company, for example, they might
23 have five engines, all of those engines total would be
24 less than 500. So 800 out of the 1200 companies we felt
25 were completely -- we would get one year relief.

1 When we looked at the larger companies, you were
2 looking at companies that had in some cases hundreds and
3 hundreds of engines. So these were companies like
4 Halliburton and other people in the oil industry that
5 hasn't really seen necessarily that decline. So we felt
6 that the resources were there to be able to replace those
7 engines. And we believe, in fact, that many of those
8 companies probably have already.

9 So of the 4400 engines that were in the database
10 in 2009, we're providing relief for about 2,000 of those
11 engines. And then the other 100 companies are owning the
12 remainder of the 2400.

13 So we didn't want to -- and if you look at the
14 sort of the emissions impacts associated with that, you
15 know, those 4400 engines represent about -- what did I say
16 earlier -- about 40 percent of the total emissions from
17 portable engines. And so by our actions, we're retaining
18 most of those emission benefits without really affecting
19 the overall emission reduction.

20 BOARD MEMBER ROBERTS: It sounds very simple, but
21 you kind of jump from one extreme to sort of the biggest
22 exempt one. I guess I'm wondering when I get up -- I
23 don't know how many companies are falling just beyond the
24 reach here.

25 And these sort of attempts at regulations through

1 financial management in a sense kind of bother me, because
2 we're making all sorts of assumptions and drawing the
3 lines. And I feel like we ought to have one rule, period.
4 And I would be in favor of extending it just in those
5 categories in the same way you did at one engine.

6 You're saying we're going to capture most of them
7 in what we're doing. But there are going to be some that
8 are going to fall just outside this boundary, not the
9 example that you used.

10 I think most of the ones that are very big, not
11 only is it not going to make a difference, it's probably
12 not going to matter whether there is a rule or not.
13 They're going to start to phase those out. I'm more
14 concerned about the guys that aren't quite in that
15 position. And I'm not sure that drawing the line at 25 or
16 fewer is appropriate.

17 BOARD MEMBER BERG: The other question I would
18 have, on the emissions estimate, is that based on
19 pre-recession or post-recession numbers?

20 STATIONARY SOURCE DIVISION CHIEF FLETCHER: All
21 of the emission estimates are pre-recession numbers.

22 BOARD MEMBER BERG: So we could take the
23 reduction of business off of this. We wouldn't have 40
24 percent today because of the downturn in business?

25 STATIONARY SOURCE DIVISION CHIEF FLETCHER:

1 That's correct.

2 BOARD MEMBER BERG: Thank you.

3 STATIONARY SOURCE DIVISION CHIEF FLETCHER: For
4 some of the industries. For some of the industries, they
5 haven't seen that sort of downturn.

6 BOARD MEMBER BERG: But we heard two compelling
7 testimony today from large fleets who have spent a great
8 deal of money to bring a large percentage of their fleet
9 in compliance, and yet have also gone through layoffs and
10 reductions in business. And they do have a portion of
11 their equipment remaining. And they would be certainly
12 appreciative also of some consideration.

13 CHAIRPERSON NICHOLS: I think everyone would
14 appreciate the additional opportunity. I think the level
15 playing field argument is one that sort of works well for
16 me anyway.

17 Okay. Other Board comment or questions?

18 Dr. Telles.

19 BOARD MEMBER TELLES: I'm a little troubled by
20 the cost estimates where CARB estimates 66 million and
21 some of the speakers here say it's 200 million.

22 In front of me, I have a written comment, Comment
23 17, where it's estimated to be 290 million. Just kind of
24 using simple arithmetic. And so it seems like this may be
25 much more costly and more onerous to these industries than

1 what CARB is estimating.

2 CHAIRPERSON NICHOLS: Could I interrupt there?
3 Because that was the first commenter, Mr. Gaines, who
4 really made some very strong statements, kind of off there
5 from the perspective of the filter manufacturer. Without
6 interrupting your basic issue about cost, he raised a
7 whole bunch of challenges to this whole rule approach.

8 BOARD MEMBER TELLES: This is his letter.

9 CHAIRPERSON NICHOLS: We've got the letter. I'm
10 just asking the question if the staff wanted to give a
11 broader response when they responded to your point.
12 That's all.

13 BOARD MEMBER TELLES: Well, is his arithmetic
14 wrong? Simple question if you read his letter. And if
15 you wanted to look at this letter, it's page 3 halfway
16 down. That's one concern.

17 The other concern is in this letter they
18 addressed the fact that in certain counties, like Butte
19 County, 43 percent of the engines are Tier 0. And they're
20 wondering why you can't retrofit some of these Tier 0
21 engines at a much cheaper price, which would save this
22 industry about \$200 million according to their estimates.
23 I wonder why that's not considered here if this letter is
24 accurate.

25 EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOU:

1 Couple responses on that.

2 On the first thing with respect to the cost, we
3 would estimate the cost to be at 175 per brake horsepower
4 hour, if you go through basically that's looking at what
5 information we received in the registration program and
6 all that. So we think ours is a good number.

7 The other thing I think you need to take into
8 consideration when looking at cost, the PERP regulation
9 for those registered in it, we told them 13 years ago that
10 you need to do this. These engines are at least 15 years
11 old, these Tier 0 or older. So while they may cost some
12 to replace, you would also assume, as you are a car, that
13 they are depreciating over time.

14 BOARD MEMBER TELLES: Let me just comment that's
15 the number they used to calculate this is \$175.

16 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Dr.
17 Telles, I can answer the question.

18 The problem is simply with his math. And he did
19 not have the same access to the information, nor did he
20 ask us what information that we had, nor did he apparently
21 read the staff report. Because the estimate that we have
22 for the number of portable engines statewide is 4400.

23 But what he has done is taken the percentage of
24 Tier 0 engines in Butte County and applied that percentage
25 through the entire PERP database to get 18,000. So he's

1 overestimated the number of engines by over a factor of
2 four. And that represents really the difference in where
3 those numbers come from.

4 BOARD MEMBER TELLES: How about the concern about
5 the retrofitting the Tier 0 engines?

6 STATIONARY SOURCE DIVISION CHIEF FLETCHER: That
7 is the issue that Dan was speaking to. And Dan is correct
8 in that the retrofit of the Tier 0s is these are very old
9 engines. They have very high loading. The vendors have
10 really not looked at trying to address those issues
11 explicitly because of the age of the engines.

12 As you move to the certified engines and you do
13 as Mr. Gaines was talking about, which is looking at an
14 integrated system where you can reduce the PM and the NOx
15 simultaneously and incorporate a diesel filter as part of
16 that overall system, then you can systematically reduce
17 those emissions.

18 So to us, it seemed not a good idea to apply a
19 \$15,000 piece of equipment to an equipment that may have a
20 value of two to \$5,000 at this point. So you can do it,
21 but it does not simply make a lot of mistakes.

22 And Dan may have some other things to add.

23 EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOUÉ: The
24 other thing Mr. Gaines is talking about is portable
25 irrigation pumps, and that is actually covered under the

1 stationary ag engine rule. Since the application is
2 similar, we tried to lump together both stationary ag
3 pumps and portable ag pumps, and they are under the same
4 program.

5 We have not seen very many verifications at all
6 for the Tier 0 engines for a couple reasons. One, they're
7 very old. They're very high emitters. And the other
8 thing is that we tend to see an awful lot of oil slip with
9 respect to those. And that really has caused a
10 significant challenge to those things. So there are
11 opportunities to qualify those and to use those on
12 stationary engines, but we have seen very few applications
13 of that in the thing.

14 But the issues -- as far as bringing the ag
15 engines in, how we establish the stationary portable
16 engine program on that, there was a lot of work with the
17 Nisei Farmers League and those things on what would be the
18 best way to handle those. And that regulation is set up
19 particularly along the line of looking at long-term
20 replacement, particularly for the very old engines, as
21 compared to the retrofit, because we just simply did not
22 have many takers in that technology looking at those Tier
23 0 engines.

24 CHAIRPERSON NICHOLS: That would seem to make
25 sense. Yeah. Thanks.

1 I'm going to close the record at this point since
2 we have the staff comments and the testimony and the
3 written comments in the record. We can close this record
4 and begin the discussion about what we want to do with the
5 proposed rule.

6 The understanding here then is that we would not
7 be receiving any more written or oral comments on this
8 item unless and until we deal with the 15-day comment
9 period; is that correct? Yes. Okay.

10 This is now -- before we move into actual
11 discussion on the rule, we need to make sure that we've
12 disclosed any ex parte communications that we may have
13 received on this.

14 I'll start off by saying I didn't receive any.
15 Did anyone receive any?

16 Supervisor Yeager.

17 BOARD MEMBER YEAGER: I met with Bill Gaines of
18 Transfer Flow and Glen Toney and Virginia Walker from the
19 Jamison Group talking about this item, this regulation, as
20 well as the next one as well.

21 CHAIRPERSON NICHOLS: Okay. Great. Thanks.
22 Anybody else? No. All right. That's that then.

23 We can move on to proposal on the regulation.
24 Should we -- I think the best process is to make a motion
25 and then add any amendments that people want to add to it.

1 Ms. Berg, did you want to move the resolution?

2 BOARD MEMBER BERG: I'll so move the resolution.

3 CHAIRPERSON NICHOLS: Do we have a second?

4 BOARD MEMBER BALMES: I'll second.

5 CHAIRPERSON NICHOLS: Okay. Now, let's think
6 about any possible changes we'd like to see.

7 BOARD MEMBER BERG: Could staff just remind me
8 what 15-day changes you're requesting?

9 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes.
10 We're proposing to add snow blowers, presuming they pass
11 the test for technical feasibility and cost. We're also
12 proposing to work with CAPCOA and the stakeholders to
13 address the issue of how to issue a permit in the context
14 of an enforcement action.

15 CHAIRPERSON NICHOLS: I'm glad you mentioned that
16 you would work with the stakeholders as well. That's a
17 good idea.

18 STATIONARY SOURCE DIVISION CHIEF FLETCHER: And
19 then those are the two that we had proposed.

20 And then the open questions had to do with
21 recordkeeping issues for the rental companies and then the
22 issue associated with larger fleets.

23 BOARD MEMBER BERG: Just so I understand that the
24 non-compliant Tier 0 engine issue would only come into
25 play if there was an enforcement action?

1 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes.

2 BOARD MEMBER BERG: Thank you.

3 CHAIRPERSON NICHOLS: Okay. Did you want to make
4 any proposed changes then?

5 BOARD MEMBER BERG: I would like to add the
6 proposed change for staff to work with the stakeholders
7 regarding the rental equipment and looking at the fact
8 that what we want is to capture data for long-term
9 contracts and at what point that gathering that data makes
10 sense and doesn't overburden the industry.

11 CHAIRPERSON NICHOLS: I think I can say that I
12 see general head nodding in the direction of trying to
13 further simplify this particular reporting requirement.

14 BOARD MEMBER BERG: I don't want to be
15 prescriptive, because that isn't my goal.

16 CHAIRPERSON NICHOLS: Good. So I think that
17 amendment should go in.

18 The last issue is really the one that was raised
19 by Supervisor Roberts. And that is the question of do we
20 want to try to extend this change to the entire industry
21 as opposed to singling out for the benefit of the smaller
22 companies.

23 And this is one of those great philosophical
24 dilemmas. I don't think there is a right answer from a
25 technical perspective or even an economic theory

1 perspective, although it would help to know more about
2 sort of how this industry works in detail probably,
3 whether the small companies really compete with the bigger
4 companies, and thereby would be getting an advantage that
5 would allow them to take business away versus just the
6 questions of generic fairness that always is a legitimate
7 issue.

8 But I think the staff has stated a good case for
9 focusing here on smaller businesses as opposed to the fact
10 that all businesses obviously are affected by the state of
11 the economy.

12 I don't know if there's any additional thoughts
13 or comments on this. I'm sorry.

14 BOARD MEMBER ROBERTS: I clearly support just
15 extending this across the board. I think the numbers --
16 while we're capturing most of the numbers, it's not going
17 to add a lot of numbers. But I think there are going to
18 be some businesses that are going to be impacted by this,
19 and I think the relief would make a big difference in
20 their operations. For that reason, I would like to extend
21 the same rule for all.

22 CHAIRPERSON NICHOLS: Yes, sorry. I was pointing
23 down to the far end there to the mayor.

24 BOARD MEMBER LOVERIDGE: Let me agree with the
25 position but ask what is the argument against the premise

1 and recommendation? What is staff arguing against?

2 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well,
3 part of the rationale was to look at those that had the
4 resources or that were the least likely to be able to
5 comply. And so when we did the breakdown between the
6 small, medium, and large, we felt that we were capturing
7 most of those companies that were in the worst position to
8 be able to comply with the regulation.

9 BOARD MEMBER LOVERIDGE: This didn't include the
10 pain that everybody is now -- okay.

11 STATIONARY SOURCE DIVISION CHIEF FLETCHER:
12 Right. And we thought the other thing is that in part
13 because of the downturn in the economy that the larger
14 companies had enough engines they would not have to run
15 Tier 0 engines. If they didn't have a choice, they
16 wouldn't run them. They would run more efficient ones
17 anyway.

18 And we were looking at sort of the competitive
19 advantage/disadvantage issue for those companies that had
20 taken actions. We think that they're positioned to comply
21 with the regulation now and all this would simply do would
22 allow them to bring back in engines that shouldn't be
23 running right now anyway.

24 EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOU: The
25 other point is the potential health impact and the

1 emissions associated with Tier 0 engines that have NOx
2 emissions that are three to four times the cleaner engines
3 and PM emissions more than five times.

4 CHAIRPERSON NICHOLS: So we're trying to strike a
5 balance here between continuing progress on cleaning up
6 the air and allowing for a recognition of the fact that
7 there is particular hardships being experienced by this
8 sector of the industry as a whole that are at least
9 distinct from the whole industry. All right. I think we
10 better -- sorry.

11 BOARD MEMBER TELLES: In that last comment, you
12 mentioned that a company might run their Tier 0s instead
13 of their Tier 1s. Is this any economic reason why they
14 would do that?

15 If you look at the modern size businesses, you're
16 talking about 45, 50 percent of those companies have Tier
17 0 engines. Why would they differentially run Tier 0s
18 instead of 1, 2, and 3s?

19 STATIONARY SOURCE DIVISION CHIEF FLETCHER: They
20 would only do it if it was a matter of convenience. A lot
21 of the larger companies have engines scattered at over the
22 state, whether they're supporting cell towers or whatever.

23 BOARD MEMBER TELLES: It's my understanding that
24 the newer engines are not only less emissions but more
25 fuel efficient. It seems like they would want to use

1 their Tier 1, 2, and 3, I mean, newer motors rather than
2 the older motors. And the argument is not too strong.
3 And I would kind of support the idea of the whole industry
4 wide.

5 STATIONARY SOURCE DIVISION CHIEF FLETCHER: You
6 would think so, but I think it's a location convenience
7 issue. If they have a Tier 0 that's available and they
8 don't have to move a Tier 1 as far to get to a location,
9 then the economic benefit of running a Tier 1 over Tier 0
10 is lost.

11 CHAIRPERSON NICHOLS: It's an anecdotal
12 observation. I don't think there's any scientific data
13 one way or the other on this point. All right.

14 Well, I think we have a motion and a second for
15 an amendment to extend the rule to the industry as a
16 whole. And I think the best thing to do is to just call
17 for a vote on the amendment before we take up the main
18 motion, unless there's any reason not to do it.

19 CHIEF COUNSEL PETER: Just if we do either a roll
20 call or hand vote so both the clerk and the court reporter
21 knows exactly what the vote was.

22 CHAIRPERSON NICHOLS: I was going to ask for
23 actually a roll call vote on this item.

24 And -- I thought it was you. You didn't
25 formally, but I was assuming that you were seconding the

1 motion. Taking it for granted. Okay.

2 We're not on the main motion or the rule. We're
3 just on the amendment that would extend the rule from
4 small businesses to all businesses that are covered by
5 this rule.

6 Okay. Clerk will please call the roll.

7 A yes vote means you want to extend the rule --
8 open up the benefits of the extension to all firms that
9 are covered, as opposed to as the staff has made the case
10 for why it should be limited to small businesses.

11 BOARD CLERK ANDREONI: Dr. Balmes?

12 BOARD MEMBER BALMES: Yes.

13 BOARD CLERK ANDREONI: Ms. Berg?

14 BOARD MEMBER BERG: Yes

15 BOARD CLERK ANDREONI: Ms. D'Adamo?

16 BOARD MEMBER D'ADAMO: No.

17 BOARD CLERK ANDREONI: Ms. Kennard?

18 Mayor Loveridge?

19 BOARD MEMBER LOVERIDGE: Aye.

20 BOARD CLERK ANDREONI: Supervisor Roberts?

21 BOARD MEMBER ROBERTS: Yes.

22 BOARD CLERK ANDREONI: Professor Sperling?

23 BOARD MEMBER SPERLING: Yes.

24 BOARD CLERK ANDREONI: Dr. Telles?

25 BOARD MEMBER TELLES: Yes.

1 BOARD CLERK ANDREONI: Supervisor Yeager?

2 BOARD MEMBER YEAGER: Yes.

3 BOARD CLERK ANDREONI: Chairman Nichols?

4 CHAIRPERSON NICHOLS: No.

5 BOARD CLERK ANDREONI: Yes vote wins. Motion
6 passes seven to two without Kennard.

7 CHAIRPERSON NICHOLS: I think we can probably
8 adopt the Resolution on a voice vote then. So all in
9 favor please say aye.

10 (Aye)

11 CHAIRPERSON NICHOLS: Any opposed?

12 All right. Thank you.

13 (Thereupon a recess was taken.)

14 CHAIRPERSON NICHOLS: The other Board members who
15 are not sitting with me are in the back room where we have
16 a sound system available to them, in case anybody is
17 wondering.

18 Coming up next on the agenda are staff's proposed
19 amendments to the diesel emission control strategy
20 verification procedure. Since diesel particulate matter
21 was first identified as a toxic air contaminant back in
22 1998 and with subsequent approval of the Diesel Risk
23 Reduction Plan in 2000, this Board has had as one of its
24 primary goals the reduction of emissions of diesel
25 particulate matter from the existing fleet.

1 Meeting these emissions reduction goals had not
2 only required the Board to put in place emission standards
3 for new diesel engines, but also numerous regulations
4 specifically targeting emission reductions from existing
5 diesel engines because these engines are so long lived and
6 work so hard out there in our state.

7 To effectively support ARB's in-use diesel engine
8 regulations, in 2002, the Board approved a procedure for
9 verifying that diesel retrofits are effective and durable.
10 The verification procedure lays out the requirements that
11 retrofit manufacturers must follow if they wish to
12 participate in the California market.

13 Since it was originally approved, the
14 verification procedure has been subsequently amended by
15 the Board several times to improve its effectiveness and
16 strengthen the health benefits it provides. The procedure
17 was last amended in January 2008. Since that time, the
18 staff has identified a number of elements that could be
19 improved or clarified in order to improve our ability to
20 evaluate these retrofits while providing improved
21 performance for the end users.

22 To address this issue, staff is going to be
23 proposing several amendments. And Mr. Goldstene will
24 begin the staff presentation.

25 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman

1 Nichols.

2 The verification procedure is used by staff to
3 verify that diesel retrofits achieve real and durable
4 reductions in emissions of particulate matter and oxides
5 of nitrogen.

6 The verification procedure supports numerous
7 in-use diesel emission control regulations by ensuring the
8 performance of emission control technologies to be
9 installed on in-use diesel engines. To date, staff has
10 verified over 150 diesel retrofits, including subsequent
11 extensions to existing verifications that can reduce
12 emissions of diesel PM and, in some cases, provide NOx
13 reductions as well.

14 Over the last two years, staff has worked with
15 industry to identify a number of improvements to the
16 procedure that will assist both manufacturers and end
17 users. These proposed amendments are intended to further
18 the objectives of the verification program while
19 strengthening protections for system purchasers.

20 The proposed amendments will improve the process
21 of matching retrofits with appropriate vehicles,
22 strengthen ARB's ability to quickly and effectively
23 address high warrantee claim rates, and provide additional
24 information to fleets on the maintenance of the retrofits.

25 The proposed amendments will require

1 manufacturers to demonstrate compliance with state
2 industrial safety requirements, provide better information
3 to staff regarding durability performance, and clarify
4 that a retrofit may only be sold if all the conditions of
5 the governing Executive Order and the procedures are met.

6 I'll now ask Paul Henderick of the Mobile Source
7 Control Division to provide the staff presentation. Paul.

8 (Thereupon an overhead presentation was
9 presented as follows.)

10 AIR POLLUTION SPECIALIST HENDERICK: Good
11 morning, Chairman Nichols and member of the Board.

12 Today, staff will propose a number of amendments
13 to the diesel retrofit verification procedure. These
14 amendments will improve the performance of diesel
15 retrofits in the field, provide better information to
16 staff during the verification process, and better support
17 the in-use diesel fleet rules.

18 --o0o--

19 AIR POLLUTION SPECIALIST HENDERICK: First, I
20 will provide some background on the verification
21 procedure.

22 Next, I will discuss the proposed amendments,
23 followed by staff's assessment of economic and
24 environmental impacts.

25 My presentation will conclude with a

1 recommendation to the Board.

2 --o0o--

3 AIR POLLUTION SPECIALIST HENDERICK: I will now
4 provide background information on the procedure as well a
5 status update on retrofits that are currently verified.

6 --o0o--

7 AIR POLLUTION SPECIALIST HENDERICK: The
8 verification procedure was approved by the Board in May of
9 2002 to support the Diesel Risk Reduction Plan and its
10 associated fleet rules. It is critical to ensure that the
11 diesel retrofits used by fleets to comply with these rules
12 achieve real reductions in emissions of diesel PM and NOx.
13 The verification procedure fills this need. It is used by
14 staff to verify the performance of retrofits for a broad
15 range of diesel engines, including heavy-duty on-road
16 trucks, off-road vehicles and equipment, stationary
17 engines, and marine vessels. In addition to performance,
18 verification also ensures that retrofits are durable and
19 gives end users substantial warrantee protection.

20 ARB verification is not the only verification
21 program that evaluates diesel retrofits. Existing
22 programs run by U.S. EPA and VERT in Switzerland perform
23 similar functions, and ARB staff communicate regularly
24 with staff in these other programs. While neither of
25 these programs meets all of the needs of ARB's fleet

1 rules, they nevertheless have provided useful input and
2 experience over the years.

3 I will now give a brief overview of the
4 verification process to give you a better sense for how
5 our program works.

6 --o0o--

7 AIR POLLUTION SPECIALIST HENDERICK: If a
8 retrofit manufacturer wishes to sell its product as a
9 compliance option in California, it must first obtain
10 verification from ARB. In order to do so, an applicant
11 must submit a complete application, including an
12 appropriate test plan. ARB staff then reviews this
13 information and approves the test plan. The applicant is
14 responsible for conducting all appropriate testing and
15 submitting the test data. ARB reviews all information and
16 issues an Executive Order if everything is complete and
17 supports the verification.

18 --o0o--

19 AIR POLLUTION SPECIALIST HENDERICK: Many diesel
20 retrofits have gone through this process, and over 50 are
21 currently verified for a variety of applications. On-road
22 and off-road diesel engines each have over 20 systems
23 verified. Ten systems are verified for stationary
24 engines. And there is even one retrofit verified for
25 marine vessels. Two-thirds of these retrofits are diesel

1 particulate filters that achieve a PM reduction of over 85
2 percent.

3 --o0o--

4 AIR POLLUTION SPECIALIST HENDERICK: I will now
5 discuss staff's proposed amendments.

6 Since the start of the program, staff has
7 continued to gain valuable experience and stakeholder
8 feedback that point out ways in which the program can be
9 improved. Today's amendments reflect this input.

10 --o0o--

11 AIR POLLUTION SPECIALIST HENDERICK: To
12 summarize, staff's proposed amendments will improve the
13 matching of retrofits to vehicles, improve end-user
14 protections, improve design and data requirement, and
15 increase program flexibility.

16 --o0o--

17 AIR POLLUTION SPECIALIST HENDERICK: To provide
18 background on the first of our proposed amendments, I will
19 discuss the importance of properly matching a retrofit to
20 a vehicle, which is a key factor in the retrofit's
21 success.

22 Each retrofit has certain conditions as listed in
23 the Executive Order, which must be met for it to function
24 properly. A poor match may occur if these conditions are
25 not met, resulting in a retrofit malfunction. A

1 retrofit. In particular, the installer must determine if
2 the engine is consuming excessive amounts of oil, which
3 can adversely impact retrofit performance. Finally,
4 engine assessment records must be maintained by the
5 installer.

6 This proposed amendment underscores the
7 importance of pre-installation assessment and will serve
8 to reduce problems in the field by establishing minimum
9 requirements.

10 --o0o--

11 AIR POLLUTION SPECIALIST HENDERICK: Staff is
12 also proposing several amendments that will strengthen
13 end-user protections and provide better assurance for
14 successful retrofits.

15 First, staff proposes that retrofit manufacturers
16 be required to provide end users with sufficient
17 maintenance information to enable them to properly
18 maintain the retrofits themselves. This will give end
19 users more choices when it comes to deciding how to
20 fulfill their maintenance needs.

21 Staff is also proposing that when retrofit
22 manufacturers perform durability testing on their devices,
23 they demonstrate that they can fulfill all OSHA industrial
24 safety requirements for off-road vehicles.

25 Lastly, staff is proposing several clarifications

1 requirements will help to ensure that diagnostic data are
2 available to help in troubleshooting retrofit performance
3 and in the warranty resolution process. Most retrofit
4 manufacturers already voluntarily incorporate this
5 functionality into their systems.

6 Staff also proposes to require that date, time,
7 and engine speed data be collected during demonstrations
8 and submitted as part of verification. Staff will use
9 this information to form a more complete picture of how a
10 retrofit performs when used in the field. This proposed
11 change is a small additional burden to applicants but
12 provides valuable information to ARB in its evaluation of
13 their products.

14 The final amendments I will discuss serve to
15 increase the flexibility of how retrofits are used in the
16 field.

17 --oOo--

18 AIR POLLUTION SPECIALIST HENDERICK: Currently,
19 the procedure only allows component swapping within the
20 same common ownership fleet. Said another way, a fleet
21 may not share spare retrofit components with another
22 fleet. Staff proposes to remove this restriction by
23 allowing component swapping of identical retrofit
24 components across different fleets under certain
25 circumstances. This will give end-users more maintenance

1 options by allowing for the creation of a larger pool of
2 spare components, likely through a dealer network.

3 Second, the procedure currently provides no
4 guidance on how to repower a vehicle which has already
5 been retrofit. Staff proposes allowing such repowers,
6 provided the same basic conditions that applied to the
7 original retrofit are satisfied. This proposal thereby
8 defines a path for allowing the existing retrofit to stay
9 on the vehicle.

10 Staff notes that because of a manufacturer's
11 warrantee and in-use compliance obligations, both of these
12 practices would require approval from ARB and the
13 manufacturer.

14 Finally, staff is proposing to extend a
15 compliance deadline in the procedure. The procedure
16 currently requires that all retrofits be designed such
17 that they can only be installed in one direction as of
18 January 1, 2010. Retrofits that do not meet this
19 requirement currently cannot be installed.

20 Due to lower sales than expected arising from
21 market instabilities, there is an existing inventory of
22 retrofits that do not comply with this requirement and so
23 cannot be sold or installed. Staff therefore proposes a
24 sell-through period to December 31st, 2010, for this
25 existing inventory.

1 Note that this date is a six-month extension from
2 the original date of July 1, 2010, that was noticed in the
3 staff report.

4 All remaining amendments in staff's proposal are
5 minor clarifications that are described in the staff
6 report.

7 --o0o--

8 AIR POLLUTION SPECIALIST HENDERICK: In
9 developing the proposed amendments, staff held a public
10 workshop last June in El Monte to solicit input from all
11 interested stakeholders. The workshop was well attended
12 by representatives from the emissions control
13 manufacturing industry, among others.

14 In addition to the workshop, staff also met with
15 the association for this industry, MECA, and its
16 individual member companies. Staff considered comments
17 brought forth by MECA and individual companies alike and
18 incorporated appropriate comments into the proposed
19 amendments.

20 --o0o--

21 AIR POLLUTION SPECIALIST HENDERICK: Since the
22 initial release of the staff report, staff has identified
23 a number of minor 15-day changes.

24 First, where the performance of a retrofit system
25 will not be impacted, staff proposes to allow a retrofit

1 manufacturer to request that a system component not have
2 to comply with the unidirectional design requirement.
3 This option does not extend to diesel particulate filters.

4 As previously noted, staff is also proposing to
5 extend the deadline to sell non-unidirectional retrofits
6 by six months to December 31st of this year.

7 Another 15-day change proposed by staff is to
8 clarify that only routine maintenance information must be
9 provided to end users. This clarification is based on
10 comments from retrofit manufacturers and MECA.

11 Finally, staff does not want to potentially
12 expose end users to enforcement action if they fail to
13 keep records for oil consumption. Staff has modified the
14 proposed amendments to advise end-users to follow good
15 engine maintenance practices, which includes keeping oil
16 consumption records. The new language also reminds end
17 users that failure to keep the engine well maintained may
18 be grounds for denial of a warranty claim.

19 A copy of these proposed 15-day changes has been
20 provided to the Board and is also available on the table
21 outside the hearing room.

22 --o0o--

23 AIR POLLUTION SPECIALIST HENDERICK: I will now
24 discuss the impacts of our proposal and then provide
25 staff's recommendation.

--o0o--

1

2 AIR POLLUTION SPECIALIST HENDERICK: Staff does
3 not anticipate any significant impacts from the proposed
4 amendments. There is, however, some potential for
5 end-user cost savings and the creation of new services and
6 businesses. These potential benefits may result from
7 having fewer restrictions on the swapping of retrofit
8 components, better assessment of vehicles prior to
9 retrofit, an alternative to data logging each and every
10 engine, and end-user access to comprehensive maintenance
11 procedures.

12

--o0o--

13 AIR POLLUTION SPECIALIST HENDERICK: In
14 conclusion, staff believes that the proposed amendments to
15 the procedure will improve the verification program and
16 enable it to better support the fleet rules.

17 Therefore, staff recommends that this proposal be
18 adopted along with the 15-day changes just described.

19 This concludes my presentation. Thank you.

20 CHAIRPERSON NICHOLS: Thank you very much.

21 Are there any questions before we go to public
22 comment? If not, let's proceed to the public. We have
23 three witnesses to sign up. If you want to speak and
24 didn't sign up, please see the clerk and fill out a card.

25 We have in order number one Bill Gaines once

1 again and then Dr. Rasto Brezny from MECA and Tom Swenson
2 from Cleaire.

3 MR. GAINES: Thank you, Madam Chairman.

4 Regarding the verification procedure, it was
5 first written in 2000. Since that time, technology has
6 increased substantially on DPFs, certainly on on-road.
7 One of the issues that we see is in the current regulation
8 is the use of method five testing. That's a test that has
9 been a 15-year-old test, been used to measure particulate
10 matter in industrial power stacks, and we believe that's
11 not necessary anymore.

12 The cost of method five tests to perform that
13 specific test is over \$5,000. We've got two quotes from
14 two labs, certified California labs, to determine that.
15 The cost -- and we got the quote from one particular
16 testing lab to obtain verification procedure was \$250,00.
17 We understand that number can go up as high as \$1 million

18 If you notice in your own staff testimony, there
19 are only ten stationary retrofit kits currently available.
20 And there's good reason for that. There are a variety of
21 stationary equipment in the marketplace today. And to
22 spend a quarter of a million dollars up to a million
23 dollars for verifying a system makes the cost of that
24 system significantly more expensive.

25 Getting real world costs to replace a stationary

1 engine and DPF is \$43,000. City of Chico has quotes on
2 that, and you're welcome to take a look at that. That's a
3 lot more than 175 per horsepower.

4 Regarding stationary engines, they are a low-use
5 engine. They are used 300 to 400 hours a year. Diesel
6 engines can last several thousand hours before they can be
7 modified. And they are very simple to be modified by the
8 way. If they are oil, you can change out the sleeves, et
9 cetera.

10 In Butte County, which is where I've got my data,
11 there are 13 different engines, 45 different horsepowers
12 on just stationary equipment. If you do the math, that's
13 a significant amount of different kinds of equipment that
14 are out there.

15 We do believe you can develop these systems using
16 current technology, for an example like a CMM machine.
17 And we believe if you except the on-road testing data for
18 DPFs, I think that should be acceptable, and in lieu of
19 following the verification for getting your OE.

20 I applaud the fact they're looking at more data
21 and that they have a diagnostic trouble code. That's
22 exactly what we suggest. Thank you.

23 CHAIRPERSON NICHOLS: All right. Thank you very
24 much.

25 Dr. Brezny.

1 DR. BREZNY: Thank you, Chairman Nichols and
2 members of the Board. Thank you for the opportunity to
3 speak today in support of this proposal.

4 I'm Rasto Brezny, the Deputy Director for the
5 Manufacturers of Emission Controls Association.

6 MECA is a nonprofit association made up of the
7 leading manufacturers of emission control technologies for
8 motor vehicles, including the majority of the verified PM
9 and PM plus NOx technologies that are available today for
10 in-use, on-road, and off-road vehicles and engines.

11 I want to start off by thanking ARB's
12 verification staff for their hard work and diligence in
13 putting together this proposal. I think it has a lot of
14 very good improvements.

15 We've submitted our detailed written comments,
16 and today I just want to highlight a few of our
17 recommendations.

18 Again, I want to thank staff for including in the
19 15-day changes the routine maintenance requirements for
20 cleaning these filters. We feel that there's certainly a
21 role for third party and end users to do the maintenance
22 and clean these filters. However, there are situations,
23 for example, where the engine or the device is not
24 maintained properly, in which case a cleaning will require
25 a more in-depth diagnosis by a trained technician in order

1 to avoid damaging these devices.

2 Along these lines, request that language be added
3 in the 15-day changes that outlines the responsibility of
4 the cleaning service provider in the event that damage is
5 incurred due to improper handling.

6 We also would support a filter cleaner registry
7 similar to what's available today for registered
8 installers on the ARB website for on-road and off-road
9 retrofit devices.

10 In the pre-installation compatibility section of
11 the proposal, installers are required to review specific
12 documents such as oil consumption records and parts
13 replacement records. And our members' experience has been
14 in most cases that the oil consumption records in
15 particular are not available, and that leaves the
16 installer with no choice but to reject the candidate
17 vehicle for retrofit.

18 We suggest these requirements be made flexible
19 enough to leave the specific assessment strategy to the
20 experience of the installer. So that if the oil records
21 are available, they can use that, but they have other
22 database and information that they have developed over the
23 years to assess the proper operation of the engine.

24 We also requested some flexibility in in-use
25 pre-installation assessment to allow experience across

1 fleets to be shared when doing the pre-installation
2 assessment, because primarily in off-road fleets very
3 rarely are there five of the same vehicle and model within
4 a specific fleet. And this reduces the cost for the
5 pre-installation assessment primarily for these fleets.

6 CHAIRPERSON NICHOLS: Thank you. Those sound
7 like renewable suggestions that the staff would entertain
8 during the 15-day process then. Thank you.

9 Okay. Mr. Swenson, and then we have one more
10 witness also. Randal Friedman has signed up.

11 MR. SWENSON: Thank you. Tom Swenson, Cleaire
12 Advanced Emission Controls.

13 We provided written comments. I wanted to just
14 cover two.

15 Rasto did a wonderful summary on the maintenance,
16 providing the maintenance practices. We have no issue
17 with providing those maintenance practices. But
18 consistent with the MECA comments, we would expect if
19 somebody breaks it that they would be responsible for the
20 cost and it wouldn't fall then back on our warranty.

21 The other is around the preinstallation. We're
22 being required under this proposal to check oil
23 consumption. In addition to that though is to be required
24 to review the specific maintenance records on each engine
25 to see if they were consistent with the manufacturer

1 requirements. That will be very burdensome, and we'll
2 have to go to the fleets and get individual records for
3 individual engines. And, frankly, it feels like we're
4 becoming sort of the maintenance police if you will about
5 whether or not they have maintained their engine properly.
6 And we believe that they should deliver us an engine that
7 is in good maintenance.

8 We have provided some basic checks that you can
9 do and, in fact, we are doing now to know whether or not
10 there are gross issues with the engines, such as visual
11 smokes and oil residue in the pipe, those sorts of things.
12 And we would encourage staff to review those and
13 potentially adopt them.

14 Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 Mr. Friedman.

17 MR. FRIEDMAN: Madam Chairman, Board members,
18 Randal Friedman on behalf of the U.S. Navy.

19 As I'm sure you're aware from past appearances
20 here at the department, the Navy is one of the larger
21 users of biodiesel in the state. And, in fact, our new
22 Secretary of the Navy has issued a solid challenge to
23 significantly increase the use of biofuels. Along those
24 lines, the Department of Defense is one of the leading
25 funders of next generation research of biofuels from

1 cellululosic feedstocks to deal with non-food.

2 Where does this fit into this? We continue to
3 have a longstanding concern that we will be able to use
4 current biodiesel and future biofuels in our vehicles that
5 have retrofits. We've had longstanding concerns about
6 regulatory issues, warranty issues. I know this has been
7 dealt with before, but I guess I'm seeking some continued
8 assurance that this is still on your staff's radar and
9 that as you consider amendments to your verification
10 process that, in fact, those of us including cities,
11 universities, and others that are using biodiesel in their
12 fleets can continue to do future retrofits and not worry
13 about consistency and warrantee issues and the like.

14 Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 Mr. Goldstene is nodding his head vigorously that
17 it's on his radar screen and it will continue to be on his
18 radar screen; correct?

19 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

20 WHITE: Madam Chair, yes.

21 I would add we already have an existing program
22 in place to allow biodiesel to be used with a number of
23 different retrofits that are verified today. And we will
24 continue to do so in the future.

25 CHAIRPERSON NICHOLS: All right. That's helpful

1 to know.

2 That concludes the public testimony. And so I
3 believe we can close the record on this item. It would be
4 reopened again when the 15-day notice is issued. And at
5 that point, people can comment on what's in the 15-day
6 notice. But this will close the record as far as this
7 proceeding is concerned.

8 And I guess I should ask for ex partes at this
9 point. Are there any ex partes on this item?

10 I believe Supervisor Yeager previously disclosed
11 his meetings.

12 No others. Okay.

13 Than let's proceed to the discussion. So this
14 issue about who bears the burden of making sure the engine
15 is in decent shape before a retrofit is put on it is
16 obviously an important question. And I wonder maybe,
17 Eric, if you can respond to that.

18 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
19 WHITE: Yes.

20 You know, certainly the goal here is to make sure
21 that it's a good candidate, the engine is a good candidate
22 to be retrofit. And one of the things we found as we've
23 started to see more and more retrofits be introduced into
24 the fleet is oil consumption can cause issues down the
25 line if it's excessive. So we're looking for a way in

1 which to try to identify that up front.

2 And I think the commenters, both today as well as
3 the comment letters, have provided some good suggestions
4 of alternatives we can go back and look at. So we are
5 committed to go back and during the 15-day process look at
6 some of those and look to incorporate some of those as
7 well into the regulation.

8 CHAIRPERSON NICHOLS: And in terms of the test
9 procedure itself, again Mr. Gaines is looking for
10 something simpler, cheaper, faster, I guess,
11 understandably so.

12 I guess my view on that would be that the staff
13 has certainly tried hard to fix the procedures so that
14 they're in not a bottleneck towards getting this program
15 done. But I think we as a Board have a long history of
16 being very, very careful about creating a market for
17 devices that will later on cause problems as well as
18 potentially not do the job they were certified to do. So
19 I think the balance really should be in favor of making it
20 as rigorous as possible for the benefit of the consumer.

21 With that, I guess I'll ask for the motion on the
22 resolution then.

23 BOARD MEMBER D'ADAMO: So moved.

24 CHAIRPERSON NICHOLS: Is there a second?

25 BOARD MEMBER BERG: Second.

1 CHAIRPERSON NICHOLS: Any further discussion on
2 the part of the Board?

3 If not, will all in favor please say aye.

4 (Ayes)

5 CHAIRPERSON NICHOLS: Any opposed?

6 Very good. Thank you very much.

7 Our next item is a fairly lengthy one I believe
8 and it's about noon time. So I'm going to declare it
9 lunch break time, and we'll resume at 1:00. Thanks,
10 everybody.

11 (Thereupon a lunch recess was taken
12 at 11:48 a.m.)

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1 AFTERNOON SESSION

2 1:09 p.m.

3 CHAIRPERSON NICHOLS: All right, ladies and
4 gentlemen, we are ready to resume our meeting.

5 This is the seventh in a series of semi-annual
6 updates to the Board. And I think in the past the Board
7 has heard much of the evidence that climate change poses
8 risk to public health as well the economy and the
9 environment. California's ability to cope with climate
10 impacts depends in part on the pace and magnitude of the
11 global climate changes, as well on the success of global
12 mitigation efforts.

13 However, because we are already facing risks
14 associated with climate variability and because further
15 impacts are, we are now told, unavoidable, adaptation is
16 also needed to compliment mitigation.

17 For this presentation, we invited Tony Brunello
18 to share an overview of the 2009 California Climate
19 Adaptation Strategy with us.

20 Mr. Brunello serves as the Deputy Secretary for
21 Climate Change and Energy for the California Natural
22 Resources Agency, formerly known as the Resources Agency.
23 And the Natural Resources Agency has taken the lead in
24 developing the 2009 California Climate Adaptation Strategy
25 discussion report working with the Climate Action Team, of

1 which ARB is also a member. The Climate Action Team is
2 the administration-wide program that was created by the
3 Governor and which is chaired by our Cal/EPA Secretary
4 Linda Adams.

5 Mr. Goldstene, would you please introduce this
6 item?

7 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
8 Nichols.

9 Today's Climate Change Adaptation presentation
10 discusses statewide efforts to respond to the actual and
11 expected impacts of climate change. The development of
12 California's first comprehensive climate change adaptation
13 strategy was directed by Governor Schwarzenegger in an
14 Executive Order and spearheaded by the State's Natural
15 Resources Agency.

16 Tony Brunello, as Mary just mentioned, leads all
17 climate change and energy activity at the California
18 Natural Resources Agency. Prior to his current position,
19 he worked extensively on climate and energy-related issues
20 developing greenhouse gas mitigation projects and
21 conducting analysis around the world for public and
22 private sector clients.

23 I'm very happy to introduce Mr. Brunello. Tony.

24 (Thereupon an overhead presentation was
25 presented as follows.)

1 DEPUTY SECRETARY BRUNELLO: Great. Thanks,
2 James.

3 Chairman Nichols and honorable Board members, I
4 really appreciate the opportunity today to speak to you a
5 little bit about the topic of climate adaptation. I'm not
6 sure how much you have been familiar with it. I know that
7 many of the reports you have frequently talk about the
8 issue of climate impacts. And I've been on panels, et
9 cetera, with a number of you. So again I really
10 appreciate to talk a little bit more about this. I hope
11 to keep my presentation as tight and precise as possible
12 to answer any questions you guys might have.

13 A key thing about why I was excited to come today
14 is to highlight the fact of how important you all and your
15 staff are to the topic of climate adaptation. Whether you
16 know it or not, most of the actions you're pushing and
17 promoting are linked directly with climate adaptation.
18 Reducing water use, promoting renewable energy, all of
19 these things are climate adaptation strategies.

20 In a nutshell, what I'm going to talk about today
21 is a little bit on some of the climate impacts. I think
22 you guys have been flooded enough with that I'm sure with
23 plenty of presentations. But just to give a context of
24 where we got to where we are to talk a little bit about
25 the process for developing strategies to adapt to those

1 impacts and then what we're doing next and where I think
2 is the best place for ARB engaged.

3 Next slide.

4 --o0o--

5 DEPUTY SECRETARY BRUNELLO: One of the things
6 that really helped drive the adaptation strategy from the
7 beginning was the fact we are already seeing climate
8 impacts. This is a graph you've probably seen frequently,
9 but it's showing in San Francisco we've already seen seven
10 inches of sea level rise there. We've seen an increase in
11 temperatures in certain parts of the state, changes in
12 precipitation, et cetera. But really the driver is to
13 show in the past we've already seen climate impacts.
14 What's more troubling is looking out to some of the
15 projections that we're seeing in the future where sea
16 level rise, just using one example, could be up to almost
17 55 inches by the end of the century. As you can see,
18 that's probably about almost ten times what we've already
19 seen. It's a similar issue -- next slide.

20 --o0o--

21 DEPUTY SECRETARY BRUNELLO: This is now looking
22 out to projections for the future. This was put together
23 by -- funded by the California PEER Program, also in
24 cooperation with some of your researchers here at ARB.
25 But the PEER Program has been funding analyses over the

1 last ten years on climate change research. And what
2 they've been able to do is to fund a number of
3 universities across the state who have taken a lot of the
4 global climate impact models and downscaled it to
5 California. Probably just five years ago, if we had
6 looked at a map of California and how projections were
7 these climate models, essentially California would have
8 looked like four big boxes. And they try to predict how
9 the climate would shift in those boxes.

10 Today, I can say some of the models have we
11 actually downscaled to about a seven-by-seven square
12 kilometer radius, and I think we have some of the best
13 information anywhere in the world of climate impacts to a
14 specific geographic location.

15 So what this is showing here is that you can see
16 historical temperatures. And in the middle graph, they've
17 given us a range. But it basically says the projected
18 increase is around two to five degrees in the next 40
19 years. And then about four to nine degree change in
20 temperature on the average over the next century.

21 So temperature is what most of the science and
22 the scientists can agree on that it will increase. There
23 will be a range. But most of the adaptation measures that
24 we've developed have been based on these scenarios that
25 we've driven. And the temperature is the one that we

1 focus the most on.

2 The next slide.

3 --o0o--

4 DEPUTY SECRETARY BRUNELLO: This is also just to
5 show one that has been very close to the administration's
6 minds and all of our minds as a lot of these projections
7 as we've projected on to actual impact shows that over the
8 next 50 years we could have about 40 percent less snow
9 pack and over the next century about almost 20 percent
10 remaining, losing 80 percent of our snow pack. Obviously,
11 as we look at a major restructuring of our water supply
12 system, the Governor has been very involved in that as the
13 Legislature and many of you I'm sure as well your
14 counties.

15 But this is something that was very much a driver
16 in looking at how we need to restructure our water supply
17 system. So as we look at these impacts, there's been a
18 lot of work on adaptation measures over the last decade.
19 But really what happened in looking at the water supply
20 system was that we realized there were three or four
21 different scenarios that were moving and looking at the
22 topic of sea level rise. And really that's a global
23 number. So we realized that we had to try to coordinate
24 among state agencies to ensure they were using similar
25 numbers, because some were using much higher numbers than

1 others. So we wanted to try to make sure if we were going
2 to have a policy on adapting, that we're using the same
3 numbers. And so we did an Executive Order with the
4 Governor in 2008 that directed the Resources Agency in
5 cooperation with multiple government agencies to look at
6 the science that we had right now.

7 Next, which I think is most important, is to
8 identify a portfolio of options on how to reduce the risk
9 from these climate change impacts.

10 And then finally, which is why this report has
11 caught much more attention, which I think most of the
12 states across the U.S. need to do much more of is to
13 actually move this to action so there are actual things
14 that we can guide State agencies to do.

15 And so what we worked on over the last year and a
16 half is we had seven different working groups -- and I
17 forgot all of them as I try to state them -- but basically
18 was forestry, agriculture, water, public health --
19 transportation, energy, and biodiversity, and habitat.
20 And I'm probably missing one.

21 Each of these were led by different State
22 agencies. The Air Resources Board was fundamental in
23 helping Department of Public Health in developing their
24 air quality recommendations. So what we did is we asked
25 each of the different working groups in working with the

1 Climate Action Team and Cal/EPA to go through that effort
2 that we highlighted the science and figure out what were
3 the options available and then to identify what specific
4 strategies they would do. So what we came up with was a
5 report that we released -- next slide.

6 --o0o--

7 DEPUTY SECRETARY BRUNELLO: Governor
8 Schwarzenegger was able to release the report, and we
9 released the final report after we had significant public
10 comment. We had over 80 different inputs to the final
11 report, the draft that we had out. We also had multiple
12 public meetings within the working groups and for the
13 overall report that we released.

14 But December 2nd, we did release our final report
15 in San Francisco. We also had the 23 members of the newly
16 announced Climate Adaptation Advisory Board, which Board
17 Member Dan Sperling sits on. We had Eric Schmidt, who's
18 the person in the orange tie, from Google. I'll get to
19 the point why it was very important to have both of those
20 figures there for this announcement.

21 I'm not sure if anything was provided to you, but
22 it's like the Scoping Plan. It's a difficult read. And
23 we have multiple strategies within that. And overall I
24 think there were probably about 60 or 70 that came out of
25 all the different working groups.

1 And then what we did though is we highlighted 12
2 in our executive summary, which I briefly want to go
3 through. I think you can read the report, but it will
4 give you a flavor for the types of recommendations we
5 pulled out and I wanted to relate specifically to the Air
6 Resources Board.

7 --oOo--

8 DEPUTY SECRETARY BRUNELLO: So the first, which I
9 think is fundamental, is to get more people to be talking
10 about this just beyond state government. We did focus on
11 state government. What was established was a Climate
12 Adaptation Advisory Board from representatives from NGOs,
13 private business, government, and a very wide group that
14 even includes former Governor Pete Wilson and a number of
15 other luminaries. What we're asking that group is to
16 really build upon our strategies and come up with a report
17 this summer that will step outside the box and see what
18 else needs to be done.

19 Another fundamental issue, which is really
20 important in all the work that all of you do, is land use.
21 That was the biggest thing coming out of this is we need
22 to think differently about how we plan and how we develop.
23 So one of the issues that came up within CEQA that a lot
24 of the recommendations and comment letters that we had
25 really wanted us to re-write our CEQA laws to move around

1 climate adaptation. We thought it was still a little
2 early to have anything too in-depth, but what we did
3 identify was within CEQA you're already required to look
4 at impacts from the natural environment project. It's
5 typically thought of in terms of earthquakes. But our
6 lawyers also determined it's also directly relevant for
7 floods from sea level rise and other impacts. That's
8 something that came out new.

9 On the six recommendations here, another key one
10 is really important for a lot of the public health work
11 that you do, that one of the things that we're going to be
12 developing is working with our California Emergency
13 Management Agency to try and look much more in depth at
14 the local hazard mitigation plans, a lot of the plans the
15 counties are already required to develop, so we can help
16 them identify where some of the climate impacts are in
17 their communities and try to help develop different tools
18 to do that.

19 In particular, there's been a lot of concern
20 about the most vulnerable communities. Hunters Point is
21 the one always brought up, again sea level rise is the one
22 most people have latched onto. But that area is one of
23 the first that could go under, and there's been
24 predictions of numerous people that could lose their homes
25 in low-income communities.

1 Next slide.

2 --o0o--

3 DEPUTY SECRETARY BRUNELLO: On this slide, I
4 wanted to highlight again we're looking at the Department
5 of Public Health and the Air Resources Board for as
6 temperatures increase -- as Board Member Balmes, I know
7 we've sat on working groups and can speak to this much
8 better than I -- but that as temperatures increase in
9 communities that we really see the diseases and things
10 that will already be there will be that much worse. So we
11 really need to work with those communities that we're
12 already identifying as areas that will be in areas where
13 the temperatures will go up much faster than other areas.

14 And the last one I just wanted to hit on was the
15 aspect on research. I think the work that the Air
16 Resources Board has done on looking at climate impacts and
17 looking at the research, specifically focusing on public
18 health, is something that we really wanted to try to
19 incorporate and link with as much as possible. I'm
20 sitting next to Bart Croes there, and they've done an
21 excellent job of coordinating with the Energy Commission
22 and across State government to really make the research
23 not only improve some of these adaptation strategies, but
24 also in working to get it out to the public so they can
25 actually change some of the planning they're doing right

1 now.

2 Another key aspect is less about doing more
3 research, more about getting information out to people on
4 what these impacts are and letting them make their own
5 decisions on looking at the science and incorporating that
6 in their own planning processes. So that was a reason
7 why -- next slide.

8 --o0o--

9 DEPUTY SECRETARY BRUNELLO: This is a horrible
10 graph, but this is on our website, the
11 climatechange.ca.gov website. This linked with having
12 Eric Schmidt at our announcement with Governor
13 Schwarzenegger. What this was to release a beta
14 version of what we call Cal Adapt. And this is a tool
15 that we really hope that we can partner with ARB to
16 utilize much more that uses the Google Earth platform.
17 And what we've done is we've actually put the climate
18 science that we have established -- and again this is a
19 beta version that we'll be building and finalizing by the
20 end of the year.

21 But what's important, as I mentioned before, the
22 aspect when you try to look at the climate impact and
23 climate science information, previously you would see four
24 boxes and you would try to understand how that might
25 impact your region.

1 What we've done is once we had the climate
2 projections for the studies that I had mentioned, what we
3 then did is worked with Google to then put it into their
4 Google Earth platform so you can see each of the boxes.
5 Right now, you can go and click on and find out more what
6 the impacts are for what we projected to your region.

7 So somebody living in Tulare County, for example,
8 they're developing their general plan and need to know
9 more about information. They hear about this crazy topic
10 of climate change adaptation and they know they have to
11 look at some of the different measures for how to adapt
12 general plans. So what they can do is go specifically
13 onto this and realize quickly I don't have to worry about
14 sea level rise, but they may want to worry about
15 precipitation and others, and they may have their own
16 science they want to use.

17 But what the goal is with Google is to allow
18 anyone to go and link and find out specifically the
19 information and the science for their region. If you
20 click on these boxes, it goes down to another level that
21 reaches a seven-by-seven square kilometer radius.

22 This is really an area that we need much more
23 work on is the outreach side; making sure that people and
24 individuals get their own information to make their own
25 decisions. Because I know there is a lot of discussion

1 with what science to use. And instead of having us cram
2 it down people's throats is to give them the opportunity
3 to use this and see what they can do.

4 Next slide.

5 --o0o--

6 DEPUTY SECRETARY BRUNELLO: So just to end, I
7 just wanted to bring back some of the areas that I really
8 hope that you in your powerful positions at the ARB can
9 help us with.

10 And one that we're working on very closely with
11 all of our climate action teams is to figure out what are
12 the links with mitigation. And, for example, the
13 renewable energy standard that you're developing is an
14 excellent example, where right now we in Resources Agency
15 and many folks across the state are figuring out where to
16 site large renewable energy projects in many in your
17 districts. And one area that we've known is an issue is
18 mitigation, natural habitat mitigation.

19 Climate change and some of the temperature
20 increases into these regions will significantly impact the
21 range of different species. And that could impact and
22 result in some of the large projects that are trying to be
23 sited right now. So it's something that we really have to
24 incorporate at this point in time.

25 Also in the 375, same thing. You can develop the

1 best community plan looking at how to reduce greenhouse
2 gas emissions. But if it's an area that we know might be
3 flooded in the next 20, 30, 40 years, it's something that
4 should be considered in those plans.

5 Second, I've already mentioned a little bit, but
6 there's so many resources here at the Air Resources Board
7 and so many invaluable tools that I really hope that there
8 is a way that we can try to link better since you're
9 focusing on adaptation with a lot of the mitigation
10 measures that you've been doing.

11 And third, the same thing, in looking at outreach
12 programs that you've been developing of how we can more
13 closely connect with all the great work that you've been
14 doing. I know we've been focused on the Google tool and
15 figuring out how we might use that more, but I do hope we
16 can find more ways to cooperate on that.

17 Thank you very much for the time and I look
18 forward to any questions.

19 CHAIRPERSON NICHOLS: Thank you for coming over
20 and for being such a good partner through the development
21 of this program. It's been a process that's taken place
22 over a period of almost a year. And the product that was
23 finally put forth is really a good one.

24 I've said to the point of being boring at CAT
25 team meetings that I believe that mitigation and

1 adaptation can't be neatly divided from each other and
2 that we need to focus on things that are actually part of
3 both. I mean, obviously there are some areas where we're
4 just looking to the future and planning for what the world
5 is going to be like under the range of likely scenarios
6 and then figuring out how to adapt to it.

7 But even there, the things we might do as
8 adaptation, if we are actually working on them now, also
9 become part of our mitigation strategies. And it's how we
10 talk about this and also how we actually do it, how we
11 incorporate it is obviously a tricky part.

12 I don't know if there's something new, different,
13 or better that we could be doing institutionally on this
14 front. But I tend to think that one thing that might help
15 us as at least a next step in terms of outreach would be
16 to develop some scenarios or some specific examples of
17 case studies of where climate thinking would potentially
18 have an impact in how we went about doing something in
19 California and a project to identify those things and then
20 to kind of look at what the range of options would be.

21 I'm sure there are people thinking about these
22 issues, you know, in other places, including the
23 universities. It's not something that's unique to state
24 government. But as government officials, we do have so
25 many opportunities on a day-to-day basis to affect how

1 things are going to be in the future that it seems like we
2 should be able to come up with some better tools than we
3 have right now.

4 And I think that finding a way to get beyond this
5 mitigation versus adaptation dichotomy would help in that
6 regard, because then it's just, you know, dealing with
7 climate. It's just the fact that climate is out there and
8 it's a problem and an issue that we're dealing with. And
9 it's got to be one more of those strands we factor into
10 our work. That's been the major thing that keeps coming
11 back to me as I look at the presentation as I've had an
12 opportunity to experience before.

13 I'm sure other members of the Board will have
14 thoughts, starting with you, Dr. Sperling.

15 BOARD MEMBER SPERLING: One thought -- I'm part
16 of that Adaptation Task Force. One of the ideas that's
17 been discussed to illustrate what you're talking about is
18 the use of the SB 375 entities, because they are dealing
19 with land use issues in the different metropolitan areas,
20 and it would be a very logical extension to also be
21 talking about incorporating adaptation issues, whether
22 it's where you put the airports or deal with the airports
23 and roads and so on. So we don't want to -- SB 375 is
24 enough of a challenge already. So I'm not proposing
25 anything specific here. I don't know what the Task Force

1 will say. But it's just an illustration of what you're
2 saying, Mary, that this is a way and a process to bring it
3 together.

4 CHAIRPERSON NICHOLS: Good idea.

5 Any other thoughts at the moment?

6 If not, this actually segues very nicely into our
7 next presentation. But before we get there, I think it
8 would be good to hear from the one person who did sign up
9 for comment on this report. I'm looking for Matt. There
10 you go. Matt Vander Sluis from the Planning and
11 Conservation League.

12 MR. VANDER SLUIS: Thanks so much for this
13 opportunity.

14 I just wanted to thank Tony for doing such a
15 great job on this report and for the Air Resources Board
16 for being engaged in this issue. It's a critical one that
17 affects a lot of the work that you all do, that we all do.
18 Some of the ways specifically that comes to mind as we
19 think about health impact assessment tool, as the Air
20 Resources Board works on developing that, adaptation will
21 be a critical component.

22 Again, as it was mentioned earlier, SB 375, are
23 we going to make sure that this round of regional
24 transportation plans do include climate impact
25 information? And I'm worried that we won't in this

1 particular round. So this is an area where the Board and
2 the staff can be particularly engaged to make sure we do
3 get some great case studies around the state as we make
4 those transportation and land use decisions.

5 And then thinking about the issue that you
6 wrestle with in terms of air quality from wildfires, so in
7 2003, San Bernardino County, San Diego County, \$2 billion
8 from the wildfires from those particular years. As we
9 look at wildfires increasing dramatically, it's an air
10 quality issue that the State has to grapple with. I
11 encourage you to work on the integration of the two
12 issues.

13 And then particularly to make sure there is an
14 investment in dealing with adaptation issues. I think the
15 key area where we have that opportunity is to make sure
16 that as we put a price on greenhouse gas emissions,
17 allocate some portion of those revenues to wrestling with
18 these tough adaptation issues, particularly as they affect
19 natural resources and public health.

20 Thank you so much.

21 CHAIRPERSON NICHOLS: Thank you for that comment.

22 EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
23 I'd take a moment to thank Tony, not just for his work on
24 this but also for the work he's been doing on forestry
25 issues, land use, and the renewable portfolio standards.

1 He's ever present and sometimes we think he should just
2 get an office over here.

3 CHAIRPERSON NICHOLS: Some of us have thought for
4 a while we should just annex him, but we haven't figured
5 out how to do that. Part of the territorial expansion of
6 ARB.

7 We have one other public commenter that we just
8 got the card, and that's Alex Jackson.

9 MR. JACKSON: Good afternoon. Thank you for
10 accommodating my late request. I just had a few brief
11 points.

12 Chairman Nichols, I just wanted to echo the point
13 that you were making that really mitigation strategies
14 almost are their own adaptation approach. And I think the
15 more we can be investing now in greenhouse gas emissions
16 reductions, obviously the less we're going to have to deal
17 with adaptation.

18 Along those lines, I'd just have to recommend the
19 Board later in the day when you talk about the cap and
20 trade design and the use of allowance value and I think
21 there's certainly some places that allowance value can be
22 used to get at some of those investments, some of that
23 preparedness that we can use to really lessen the later
24 more costly adaptation approaches we're going to have to
25 deal with.

1 That's it. Thank you.

2 CHAIRPERSON NICHOLS: Thank you very much.

3 Are there any other members of the audience who
4 wanted to speak on this?

5 All right. We will move along.

6 Thank you very much for coming over and doing
7 this with us.

8 We will now hear from the Climate Champions
9 Program and get an update on the Board's activities in
10 that arena. And coming to the floor are some of the
11 Climate Champions, who I recognize from previous events,
12 as well as one of their handlers or groupies -- or I'm not
13 quite sure what to call them -- the people who are working
14 with the Climate Champions Program from ARB.

15 Mr. Goldstene, do you have an introduction to
16 this item?

17 EXECUTIVE OFFICER GOLDSTENE: I do. Thank you,
18 Chairman Nichols.

19 The Climate Champions Program is part of ARB's
20 growing portfolio of voluntary programs to reduce
21 greenhouse gas emissions, which of course are a critical
22 element of reaching our 2020 goals.

23 The staff presentation will put the Champions
24 Program into the context of ARB's larger voluntary
25 efforts, provide an update on the accomplishments and

1 status of the program, and lay out the staff's vision for
2 the future of the program, including plans for building a
3 national program based on the California model.

4 Annalisa Schilla from our Research Division will
5 make the staff presentation.

6 (Thereupon an overhead presentation was
7 presented as follows.)

8 AIR POLLUTION SPECIALIST SCHILLA: Thank you, Mr.
9 Goldstene.

10 Voluntary programs that engage Californians in
11 greenhouse gas reduction through personal action are
12 critical to reaching and exceeding the 2020 target defined
13 in AB 32.

14 The California Climate Champions Program is one
15 key component in this voluntary actions portfolio. This
16 program engages young people as leaders and educators who
17 demonstrate practical solutions for greenhouse gas
18 reduction and who help lay the foundation for the very
19 significant greenhouse gas reductions necessary for
20 climate stabilization.

21 I will bring the Board up to speed on the
22 program's accomplishments to date and staff's vision for
23 future direction of the program. Staff hope that the
24 Board will increasingly recognize and utilize the Climate
25 Champions as a resource as we seek to raise Californian's

1 awareness of climate change and to engage citizens in
2 climate change solutions.

3 --o0o--

4 AIR POLLUTION SPECIALIST SCHILLA: The AB 32
5 Scoping Plan points out that setting California on track
6 to a low-carbon future beyond 2020 will be a
7 multi-generational challenge and California will not reach
8 its greenhouse gas reduction goals without engaging our
9 citizenry in this critical effort.

10 The Scoping Plan recognizes that meeting our
11 greenhouse gas reduction goals requires a creative mix of
12 measures including: Regulations, market mechanisms, and
13 voluntary actions.

14 Within the broad realm of voluntary actions, ARB
15 staff are developing programs and resources to promote
16 greenhouse gas reduction in local governments, small
17 businesses, households, schools, and also programs
18 specifically targeting young people at school and beyond.

19 --o0o--

20 AIR POLLUTION SPECIALIST SCHILLA: Just how much
21 greenhouse gas reduction can we expect to get from
22 voluntary programs? Much more research is needed, but
23 conservative estimates suggest that energy efficiency
24 alone could reduce projected energy demand in 2020 by 20
25 percent and reduce greenhouse gas emissions by more than

1 And young people's energy and climate change behaviors and
2 attitudes can be strongly influenced by teachers and
3 school programs, reinforcing the need for programs like
4 the California Climate Champions to demonstrate practical
5 climate change solutions in schools.

6 --o0o--

7 AIR POLLUTION SPECIALIST SCHILLA: California has
8 a number of efforts underway to engage young people in our
9 vision for a low-carbon future. And the Climate Champions
10 program is just one effort that seeks to cultivate young
11 leaders. This compliments other programs, such as
12 Cal/EPA's Education and the Environment Initiative, which
13 will provide K through 12 environmental curricula,
14 including some climate change units. The
15 coolcalifornia.org schools toolkit provides resources to
16 help school administrators, teachers, and students to save
17 electricity and reduce their school's carbon footprint.
18 And, of course, the State is actively engaged in efforts
19 to promote green jobs education and training.

20 --o0o--

21 AIR POLLUTION SPECIALIST SCHILLA: Before I go
22 into more detail about the California Climate Champions
23 Program, I would like to provide a little bit of history
24 of the program and explain our partnership with the
25 British Council.

1 projects and activities are all part of our program goal
2 to promote voluntary action to stabilize the climate by
3 inspiring students, engaging classrooms and schools, and
4 helping young people make the connections among personal
5 action, curriculum, and the school itself.

6 This program goal strives towards our larger
7 mission of fostering voluntary behavior change to reduce
8 greenhouse gas emissions in California and aims to build
9 the capacity of young people to tackle complex
10 interdisciplinary problems and to incorporate an acute
11 environmental awareness into whatever career path they
12 follow.

13 We have seen our 25 California Champions make
14 great strides in their projects. And moving forward, we
15 plan to expand the program to work more closely with other
16 ongoing state efforts, such as the Education and the
17 Environment Initiative, also known as EEI, and to engage
18 more students and teachers by creating a competition that
19 provides an incentive for teachers to link champions
20 climate curriculum with classroom-based projects.

21 We will continue selecting individual champions
22 to serve as Climate Change ambassadors and to engage with
23 the international network of champions through the British
24 Council.

1 AIR POLLUTION SPECIALIST SCHILLA: To fulfill our
2 program goal of linking personal action to curriculum in
3 the school, we have laid out these program objectives. We
4 aim to develop the leaders of the climate generation by
5 training champions from project management, climate change
6 policy, and media interaction to provide an opportunity
7 for youth to be heard on climate issues.

8 We also strive to instill in youth the need for
9 climate change initiatives by educating them on the
10 science, policy, and solutions to climate change by
11 promoting climate change education in schools through
12 project-based learning that will compliment EEI's ongoing
13 efforts.

14 And, finally, we intend this program to support
15 local, national, and international climate change
16 initiatives and policies as we continue to provide
17 opportunities for youth leaders to attend high level
18 events where they can provide a youth perspective in
19 keeping with our tradition of sending students to
20 Governor's Global Climate Summits, COP15, as well as air
21 districts, state agencies, and other events.

22 --o0o--

23 AIR POLLUTION SPECIALIST SCHILLA: In order to
24 enable the Champions to be as successful as possible and
25 to fulfill our program objectives, program activities are

1 designed to support and train these young people.

2 Champion projects are a central and required component of
3 the program. And I will briefly share some of their work
4 with you in a moment.

5 Champions are selected as high school students,
6 but some begin college during their year-and-a-half in the
7 program, so many start projects when they start college or
8 bring their high school projects with them.

9 Champions receive training at an orientation day
10 and at climate camp where they learn about climate change
11 policy, visit climate science laboratories, and receive
12 training on communication, media interaction, and project
13 management.

14 The champions give climate change presentations
15 and media interviews over the course of their
16 year-and-a-half in office, and several report that
17 introducing themselves as California Climate Champions
18 lends legitimacy to their climate change work.

19 Champions have spoken at the Governor's Global
20 Climate Summits and at air district and other State agency
21 events and have been featured in a number of newspapers,
22 such as the Contra Costa Times and the San Diego Union
23 Tribune, as well as blogs such as KQVE's Climate Watch and
24 TreeHugger. Champions also have their own blog at
25 climatechamps.org and have a Twitter account and Facebook

1 page.

2 In collaboration with the British Council,
3 Champions have exciting international opportunities, such
4 as the COP15 where two California Champions were among 200
5 British Council youth delegates, and participate in a
6 variety of other high-profile policy and youth events as
7 well as other international climate camps and workshops.
8 Champions are also encouraged to form international
9 project collaborations with champions in other countries.

10 --o0o--

11 AIR POLLUTION SPECIALIST SCHILLA: Champion
12 projects span a wide range of topics from scientific
13 research into new energy technologies and fuels, designing
14 hip clothing or writing plays to raise climate change
15 awareness, regular columns or segment in local news media,
16 promoting water conservation in arid parts of California,
17 connecting school environmental clubs so we can have a
18 bigger impact, and a whole host of projects designed to
19 raise awareness of climate change in schools, including
20 after-school programs, green events, demonstration
21 projects, campaigns, and classroom education.

22 Two of our Champions, Soraya Okuda and Adam
23 Raudonis, are here today to share their projects and
24 program experience with you. I will yield the floor to
25 them now and wrap up my presentation after their

1 presentations have concluded. Soraya?

2 --o0o--

3 MS. OKUDA: Thank you, Annalisa. And thank you
4 Board members.

5 Hello. My name is Soraya Okuda, and I'm from
6 San Francisco.

7 At first, I geared my project toward composting
8 in a local mall with the hope that people's consuming and
9 waste habits would change over time. As my vision for the
10 project had started implementation, my project as a
11 Climate Champion took a different course. And it has
12 evolved into an education and gardening project with kids.

13 --o0o--

14 MS. OKUDA: After volunteering and tutoring
15 children on my own time, I have realized that I can have a
16 much greater impact on people's behavior by focusing my
17 efforts on teaching children about conservation concepts.
18 Much like the Climate Champions Program puts emphasis on
19 teaching youth and actively encouraging us, I hope my
20 project will instill the same concept of nurturing young
21 kids as well as inspire them to conserve and take an
22 active role.

23 Over the next few months, I hope to collaborate
24 with a local school by creating lesson plans and educating
25 children in various basic environmental and gardening

1 aspects.

2 Last Saturday, I volunteered at San Francisco's
3 Garden for the Environment to get a better understanding
4 of basic gardening as well as ideas for lesson plan.

5 --o0o--

6 MS. OKUDA: With the help of the Climate
7 Champions Program, I have begun to think more about
8 conservation practices even when traveling. I recently
9 went on vacation with my family to Buenos Aires,
10 Argentina. And although I was sightseeing, I couldn't
11 help but think about the various practices I observed.

12 For example, the process of taking out trash was
13 vastly different from those I've seen in San Francisco.
14 As seen in this slide above, rather than having a trash
15 collecting company dump bins into their truck, the trash
16 bags of residents were placed out on the streets every
17 night. And every night I saw people pushing carts,
18 rummaging, and sorting through the trash to find
19 recyclables to exchange for money. While the disparity in
20 wealth was sad for me to see, I learned later on that the
21 city of Buenos Aires had been hiring the knowledgeable
22 cart pushers as part of the recycling and waste management
23 initiative.

24 With this in mind, I felt hopeful seeing
25 governments working with the local people in adapting

1 eco-conscious practices and providing proper compensation
2 for their efforts.

3 While I had a main understanding of climate
4 change prior to joining this program, there wasn't much
5 that I felt I could do. But after being given the
6 opportunities to visit the U.C. San Diego labs, met with
7 numerous experts in various fields, as well as the work
8 they do every day, and get to know people my age who are
9 working on climate change projects worldwide, the process
10 for slowing climate change has become much more tangible
11 to me.

12 The Climate Champions Program has not only
13 provided the resources for youth like myself to start our
14 projects, but has inspired us to create them, which as
15 students otherwise might have seemed too daunting to
16 pursue.

17 I feel incredibly fortunate and thankful to be a
18 part of this Climate Champion Program, not only for the
19 great support it has provided me, but to be among a group
20 of bright students who are striving to make a difference
21 and are a model for others.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 MR. RAUDONIS: Thank you, Board members.

25 Hi. My name is Adam Raudonis. I'm a senior at

1 West Lake High School, and I was selected in 2008 as a
2 California Climate Champion. What I thought would just be
3 another opportunity for environmental community service
4 ended up defining my high school experience. It has given
5 me the tools to reach my full potential as a student and
6 achieve what were only dreams just a few years back.

7 My Climate Champions project, Students for Solar
8 Schools, started with the simple ambition to put solar
9 panels on my high school, yet it has now grown into an
10 international effort that unites students under a common,
11 specific, and achievable goal.

12 For my high school, I have raised \$5,900 in cash
13 and obtained an estimated 45,00 in labor and material
14 donations. If the local inspector permits the site, then
15 we will install a 6.3 kilowatt DC photovoltaic solar array
16 this semester, which will be the world's largest
17 student-led and funded solar installation on a school.

18 Yet, one project will not impact climate change,
19 but a movement might. What makes Students for Solar
20 Schools unique is its online network of currently over 15
21 schools that are now sharing knowledge, resources, and
22 making the task of installing solar on schools a whole
23 light easier.

24 Through the website I created,
25 studentsforsolarschools.org, I'm able to share success

1 stories, such as fellow California Climate Champion Jason
2 Bade who, behind the scenes, since ninth grade lobbied his
3 district to eventually invest \$33 million in a solar and
4 roof upgrade, or Pam Chang, the Oak Park Students for
5 Solar Schools leader, who is now close to installing a 2.8
6 kilowatt array on her local elementary school's
7 greenhouse. And the whole time, the California Climate
8 Champions Program has been there to support the project by
9 regularly checking in, connecting me with key people, and
10 most importantly, allowing me to expand my audience.

11 I have had the opportunity to address the
12 Governor's Global Climate Summit both years, attend the
13 Copenhagen Climate Conference, and speak with some of the
14 writers of AB 32. Being so close to the individuals who
15 are actually making the key decisions when it comes to
16 climate change makes me recognize that I can assume that
17 role one day, too, which makes me conclude that what's
18 most important is not the watts of solar installed today,
19 but the leaders of tomorrow that are made.

20 The impact of the Climate Champions Program is
21 exponential in that it grooms bold leaders who are
22 networked, impassioned, and capable to meet the greatest
23 environmental challenges any generation has ever faced. I
24 do not know of a more solid investment than the very
25 mechanism that inspires and enables future leaders to

1 tackle climate change. All I can hope is that every
2 student gets the same opportunity I'm grateful that the
3 California Climate Champions Program has given me.

4 CHAIRPERSON NICHOLS: Thank you very much.

5 (Applause)

6 AIR POLLUTION SPECIALIST SCHILLA: Moving forward
7 with the program, staff will continue to foster Champion
8 projects that focus on energy, transportation, waste, and
9 education and will strive to encourage youth, teachers,
10 and school administrators to replicate Champion's projects
11 in other schools and promote new projects that support
12 Scoping Plan measures and network projects internationally
13 with other British council Climate Champions projects.

14 In order to continue to multiply the impact of
15 this program, we are working with the British Council to
16 engage key partners in California, including other state
17 agencies, air districts, and various NGOs to create the
18 most effective curriculum and project-based program to
19 launch in schools this coming fall, which will compliment
20 the EEI initiative curriculum with projects and additional
21 incentives for classrooms to engage in climate change
22 learning.

23 We aim to increase the program's impact and
24 participation significantly in the coming years. We are
25 also working to create a program model that could be

1 easily replicated at the national level or in other
2 states.

3 --o0o--

4 AIR POLLUTION SPECIALIST SCHILLA: The California
5 Climate Champions Programs brings a new dimension to
6 California's consistent leadership on the issue of climate
7 change and innovation to reduce greenhouse gas emissions.
8 The current and future Champions are working to fulfill
9 ARB's goal of engaging all Californians in our collective
10 effort to reduce greenhouse gas emissions and protect our
11 climate.

12 We agree with Mary Nichols, who has pointed out
13 that, "We can't regulate our way out of climate change,"
14 underscoring the critical importance of a multifaceted
15 approach to greenhouse gas reduction. In this complex
16 effort, the reach of young people is critical to the
17 fulfillment of ARB's mission. And it's critical that we
18 be successful in fostering this emerging generation of
19 climate conscious citizens. The more successful the
20 Champions are, the better the prospects for all of our
21 future.

22 We look forward to continuing and growing this
23 program as part of the state's larger efforts to engage
24 the emerging climate generation. We hope the Board will
25 increasingly recognize and draw on the Climate Champions

1 as a resource and engaging Californians in climate change
2 solutions and look forward to many future opportunities
3 for young people to contribute to the climate change
4 dialogue. Thank you.

5 CHAIRPERSON NICHOLS: Thank you very much for
6 that presentation.

7 You did mention some of the other voluntary
8 programs that are underway at the moment, but I think it's
9 worth noting that this is in many ways a great program to
10 talk about, because the Climate Champions themselves are
11 very engaging. And generally speaking, people are
12 enthusiastic about young people leading the way on big
13 problems. And we're very grateful to them for having been
14 willing to engage with us in this program as well. It
15 certainly is mutually beneficial. But you might just talk
16 about some of the other voluntary programs. I think you
17 slid over that perhaps a little quickly.

18 AIR POLLUTION SPECIALIST SCHILLA: In terms of
19 the other Champion projects?

20 CHAIRPERSON NICHOLS: Well, no. Really about the
21 other programs that your group is working with.

22 AIR POLLUTION SPECIALIST SCHILLA: So we have our
23 coolcalifornia.org web portal hosts toolkits for local
24 governments, small businesses, households, schools, and
25 young people. Includes tools and resources for all of

1 those different groups to reduce their greenhouse gas
2 emissions voluntarily. So those are definitely several
3 that we're involved in.

4 CHAIRPERSON NICHOLS: Okay. Go ahead.

5 RESEARCH DIVISION MANAGER MORA: So did you want
6 to know about the case studies that we're trying -- the
7 same with the Champions Programs is we're trying to show
8 schools, local governments, and small businesses that
9 greenhouse gas reductions are achievable on a voluntary
10 basis. So we have a whole effort on coolcalifornia.org
11 that show how to lead by the example and the others are
12 doing their part for the climate.

13 CHAIRPERSON NICHOLS: I think it's just helpful
14 to see that this is just one of a variety of different
15 approaches we're taking. And obviously it's very small,
16 because you can only work with a relatively small number
17 of students at one time. But it's a good showcase for
18 some of the other work as well. Thank you.

19 Questions? Comments?

20 Yes, Mayor Loveridge.

21 BOARD MEMBER LOVERIDGE: It really follows from
22 your question of scale. What Soraya and Adam presented
23 were really powerful and the multiplication of that I
24 think is important. But how many Climate Champions do we
25 have?

1 AIR POLLUTION SPECIALIST SCHILLA: We currently
2 have 25 Champions. We treat them as Champions for life.
3 So as we continue to select more, many of them remain
4 engaged with the program beyond their minimum commitment.

5 BOARD MEMBER LOVERIDGE: Each year --

6 AIR POLLUTION SPECIALIST SCHILLA: We selected 15
7 in 2008 and 10 in 2009. And we have not selected any for
8 2010.

9 BOARD MEMBER LOVERIDGE: These are high school
10 students?

11 AIR POLLUTION SPECIALIST SCHILLA: Correct. We
12 selected 15 to 19-year-old students.

13 BOARD MEMBER LOVERIDGE: If I wanted to be a
14 Climate Champion, assuming I was in high school, how would
15 I do it?

16 AIR POLLUTION SPECIALIST SCHILLA: Our
17 application basically is a simple proposal of what you
18 would work on as a Climate Champion to reduce emissions
19 and raise awareness of climate change and also requires
20 some demonstration of basic understanding of climate
21 change and the importance of tackling this problem. We
22 select the best applicants that we get electronically and
23 we interview them in person.

24 CHAIRPERSON NICHOLS: And the British Council as
25 a partner has done I think most of the legwork in terms of

1 outreach to get people to apply. And they, I know, have
2 put up some funding for travel for the students and so on.

3 AIR POLLUTION SPECIALIST SCHILLA: All the
4 international travel is through the partnership with the
5 British Council.

6 BOARD MEMBER LOVERIDGE: Seems the number and
7 attention should be increased.

8 But could I ask Soraya and Adam, how did you
9 happen to hear about the program and apply?

10 MS. OKUDA: I heard about the program through my
11 high school environmental science teacher. She made a
12 brief announcement in class, and I thought it seemed like
13 an exciting opportunity, so I went for it.

14 MR. RAUDONIS: I heard about it from a friend
15 through a friend, who heard it from a teacher.

16 BOARD MEMBER LOVERIDGE: You know the science
17 project which really, I mean, sort of mobilize many
18 people. And it seems to me it would be helpful. This was
19 not simply a small number of Champions, but somehow we can
20 figure out how we can multiply the number.

21 AIR POLLUTION SPECIALIST SCHILLA: That's one of
22 our program goals moving forward is to really develop a
23 component of the program that incentivizes classrooms to
24 take on projects as a group so that more students can be
25 involved and the teachers are participating as well just

1 to really help spread the word and engage more students.
2 And our hope is to continue selecting individual Champions
3 who can participate in this international network and
4 other opportunities but to really have this program touch
5 and influence a lot more climate change learning through
6 schools.

7 CHAIRPERSON NICHOLS: Any other comments?

8 If not, I think you got a round of applause,
9 we'll give you another one.

10 (Applause)

11 CHAIRPERSON NICHOLS: Great work. Thank you.

12 Okay.

13 We are going to hear now from some of the ARB
14 staff who have been valiantly wrestling with the issues
15 related to creating a greenhouse Cap and Trade Program
16 Board members undoubtedly have been hearing a lot about
17 this issue from your friends and neighbors in the press.
18 And I think we all know that the very term has become kind
19 of loaded in some ways. And hopefully Kevin Kennedy,
20 who's the head of our Office of Climate Change, will be
21 able to give us some context and update us on the work
22 that's been going on at the staff level. This is kind of
23 a preview of coming attractions in terms of what the Board
24 is going to be dealing with this year.

25 Do you want to introduce this?

1 EXECUTIVE OFFICER GOLDSTONE: Thank you, Chairman
2 Nichols.

3 The purpose of this item is to brief the Board on
4 the progress in developing a Cap and Trade Program
5 consistent with your direction at the time you adopted the
6 AB 32 Scoping Plan in December 2008. We want to keep the
7 Board fully briefed as we continue to move this program
8 towards reality.

9 Under AB 32, the Global Warming Solutions Act of
10 2006, California must reduce greenhouse gas emissions to
11 1990 levels by 2020. The Scoping Plan calls for a
12 California Cap and Trade Program that links with other
13 regional partner jurisdictions in the Western Climate
14 Initiative to create a regional market system. A Cap and
15 Trade Program is one of the key measures that California
16 will employ to reduce the state's overall greenhouse gas
17 emissions. As adopted in the Scoping Plan, the Cap and
18 Trade Program would establish a cap covering about 85
19 percent of the state's greenhouse gas emissions. The
20 program provides incentives for industry to seek the most
21 cost-effective emissions reductions. The cap and trade
22 regulation will set up the framework and requirements for
23 participation in the program.

24 Today's overview is the first in a series of
25 briefings we'll provide the Board over the course of this

1 year on different aspects of the program. At your
2 February meeting, staff will present a brief overview of
3 how offsets would work in a Cap and Trade Program.
4 Offsets are emission reductions that entities in a Cap and
5 Trade Program would be able to use to help meet the
6 regulatory compliance obligations. At the March Board
7 meeting, staff will present its report on the economic
8 analysis update for the Scoping Plan, and the March
9 meeting will also include a presentation by members of the
10 Economic and Allocation Advisory Committee who will report
11 their recommendations for allocating allowances and
12 distributing allowance value from a Cap and Trade Program.
13 They will also comment on the revised Scoping Plan
14 economic analysis. We hope these presentations are
15 helpful for your consideration as we move towards October
16 and the regulations comes before you.

17 Ms. Lucille Van Ommering, the Manager of the
18 Program Development Section and our Office of Climate
19 Change, will now present today's item. Lucille.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
23 Thank you, Mr. Goldstene. Good morning, Chairman Nichols
24 and Board members.

25 Six months ago, staff briefed you on the Scoping

1 Plan's greenhouse gas cap and trade measure. Since then,
2 we have made significant progress on developing a
3 broad-based program that addresses the state's
4 contribution to climate change.

5 This is the first in a series of updates to you
6 on the cap and trade proposal that will culminate in a
7 proposed regulation we'll ask you to consider in October.

8 Today, I'll be updating you on staff's
9 preliminary draft regulatory proposal, which includes
10 staff's current thinking on the design elements of the
11 regulation. I will also describe how program development
12 is being supported through the advice and review of a Blue
13 Ribbon Committee of outside experts, the Economic and
14 Allocation Advisory Committee.

15 --o0o--

16 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
17 The Scoping Plan you adopted in December 2008 called for
18 the creation of a broad-based Cap and Trade Program that
19 provides a fixed limit on GHG emissions in California.
20 Its design is geared to drive innovation and use market
21 forces to find least cost solutions to reducing greenhouse
22 gas emissions.

23 The Scoping Plan also calls for the California
24 Program to link with those of our partners in the Western
25 Climate Initiative. The Western Climate Initiative, or

1 WCI, is comprised of seven western states and four
2 Canadian provinces.

3 California has been actively engaged for the past
4 two years with our WCI partners in establishing a regional
5 program. The goal of a regional Cap and Trade Program is
6 to collectively reduce greenhouse gas emissions. Similar
7 to the California target, the regional program would cover
8 sources that encompass about 90 percent of the region's
9 emissions, and when fully implemented, would nearly double
10 the reductions of a California-only program.

11 Our collaboration with the WCI has contributed to
12 development of our thinking on the California cap and
13 trade proposal. In turn, ARB's development of a draft
14 rule is progress for all of WCI as the program moves
15 forward. We expect a subset of WCI partners to start in
16 2010 as we ourselves are proposing. Others will join as
17 they are ready.

18 The diverse views of the WCI partners are
19 resulting in a program with broad appeal that we expect
20 others will join. In fact, WCI is also in discussions
21 with representatives of the Midwest Governor's Initiative
22 and the Regional Greenhouse Gas Initiative in the
23 northeast about possible linkage to create an even broader
24 market.

25 California's Cap and Trade Program will be

1 designed to complement health-based air quality programs
2 and environmental justice policies. As with all of ARB's
3 regulations, staff will consider the effects of the
4 program on the California economy and public health.

5 To assist ARB in developing a Cap and Trade
6 Program, Cal/EPA Secretary Adams and Chairman Nichols
7 created a 16-member panel of economic, financial, and
8 policy experts to evaluate various cap and trade
9 allocation strategies and to review staff's economic
10 analysis update on the AB 32 Scoping Plan. The Economic
11 and Allocation Advisory Committee, or EAAC, started work
12 in May of last year by carefully considering various
13 options for freely distributing or auctioning allowances,
14 and if auctioned, for distributing auction revenues.
15 Their allocation recommendations were released earlier
16 this month. You will hear more about those
17 recommendations at your March meeting.

18 Broadly speaking, the Committee recognized the
19 need to use the allocation system to address possible
20 effects on the competitiveness of California's industries.
21 It also recognized the need to help address the potential
22 for increased pollution and to protect low-income
23 communities from adverse economic effects.

24 The Committee also recommended that the bulk of
25 allowances be auctioned with revenues being returned

1 directly to Californians and invested in ways that help
2 meet the overall objectives of AB 32. EAAC has been
3 working closely with staff on the economic analysis update
4 of the Scoping Plan and plans on holding a workshop on
5 ARB's economic analysis in February.

6 In March, EAAC will release an appendix to
7 staff's economic report to the Board for further public
8 discussion.

9 --o0o--

10 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

11 This table, which is a simplified version of one in the
12 Scoping Plan, shows that the Cap and Trade Program works
13 in conjunction with many complementary policies that also
14 achieve reductions from the cap sectors.

15 The Scoping Plan calls for measures to reduce
16 emissions from sectors in the Cap and Trade Program by
17 more than 245 million metric tons, 110 of those would come
18 from complementary measures, and the remaining 35 would
19 come from additional reductions from the Cap and Trade
20 Program itself.

21 --o0o--

22 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

23 The public has been an integral part of rule development
24 since day one, and we will continue to consult with all
25 affected stakeholders throughout the process.

1 In 2009 alone, staff held 21 public meetings and
2 received hundreds of comments on program concepts and
3 proposed design elements. ARB carefully considered both
4 written and verbal comments as we developed our initial
5 proposal, in which we sought to strike the right balance
6 between environmental effectiveness and the need to avoid
7 economic disruption as the program is implemented.
8 Staff worked with WCI partner jurisdictions to coordinate
9 our work with regional efforts.

10 Needless to say, the California Legislature has
11 also shown a keen interest in ARB's climate change
12 programs. Over the past year, Chairman Nichols and our
13 Executive Officers have participated in seven legislative
14 hearings on AB 32 and the cap and trade proposal.

15 In November 2009, staff released a preliminary
16 draft regulation holding a workshop on the draft in
17 December. This early look at the Cap and Trade Program
18 reflects many of the comments received by stakeholders
19 over the past year. It also reflects an emerging
20 consensus by WCI partners over what key elements of the
21 program should look like.

22 Since our December workshop and as of today,
23 staff has received 127 comment letters. Additional
24 comments continue to come in. We are also continuing to
25 meet with several stakeholder groups on their comments.

1 The EAAC has also had an active schedule over the
2 last year holding nine open business meetings in which the
3 public comment was invited and considered.

4 The EAAC's report on allocation strategies was
5 released earlier this month. As I mentioned, they will
6 present their recommendations to you in March.

7 Also, EAAC Committee members are reviewing
8 staff's economic analysis update for the Scoping Plan and
9 will hold a workshop on their review next month prior to
10 staff's presentation to the Board in March.

11 --o0o--

12 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
13 Staff will encourage continued opportunities for public
14 involvement through the remainder of the rule development
15 process.

16 Throughout the course of this year, we will
17 continue to solicit public input on a variety of proposed
18 rule elements and technical analyses. This will include
19 discussions on how the cap would be set, how to minimize
20 the potential of emissions increases from unregulated
21 imports that compete with California covered sources, the
22 proposed allocation strategies under the cap, and likely
23 compliance strategies available to covered sources.

24 We also plan to hold public meetings on the
25 public health analysis and the economic analysis update to

1 discuss how these evaluations will be used in program
2 design.

3 Finally, we expect to hold workshops on revisions
4 to ARB's mandatory reporting requirements. These will be
5 needed to harmonize the existing requirements with the cap
6 and trade regulations.

7 --o0o--

8 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

9 From now until October, staff will also be bringing
10 progress updates to the Board.

11 In February, we will provide an overview of the
12 creation issuance of and use of offsets in a cap and trade
13 program.

14 In March, the Board will hear from EAAC on their
15 recommendations for allocation distribution and the use of
16 auction revenues.

17 Also in March, staff will present an updated
18 economic analysis of the Scoping Plan.

19 In June, staff will brief the Board on setting
20 the emissions cap and proposed allowance allocation
21 strategies.

22 Finally, before you consider the rulemaking
23 package in October, we'll brief you again in September on
24 our rulemaking progress and stakeholder comments received
25 to date.

1 With each general update, staff will also keep
2 you apprised on ongoing work to establish a regional Cap
3 and Trade Program through the Western Climate Initiative.

4 --o0o--

5 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

6 Staff released our preliminary draft regulation, or PDR,
7 in November 2009. This was nearly a full year before
8 we'll ask you to consider a proposed rule in October of
9 this year.

10 We did this to maximize the opportunity for
11 public comment and to advance the public dialog on the
12 proposed structure and content of a key Scoping Plan
13 measure.

14 The PDR includes preliminary regulatory language,
15 narrative text, and placeholders. Proposed regulatory
16 language details the administrative process and regulatory
17 structure of the program. Narrative text describes
18 concepts for discussion for regulatory provisions that
19 staff are still considering.

20 Placeholders are also inserted where language is
21 still under development or awaits staff consideration of
22 other work in progress, such as EAAC recommendations and
23 the public health analysis.

24 --o0o--

25 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

1 The next several slides provide a general overview of the
2 Cap and Trade Program structure as reflected in the
3 preliminary draft regulation.

4 Cap and trade is a regulatory mechanism that
5 establishes a cap or upper limit on an amount of
6 greenhouse gas emissions allowed to be released into the
7 environment. The cap, which is also called an allowance
8 cap or allowance budget, is the total number of California
9 greenhouse gas allowances that ARB would issue over a
10 given period of time. The cap would be divided into
11 annual budgets, which specify the number of allowances ARB
12 would allocate each year from 2012 through 2020 and
13 beyond.

14 A covered source is an entity that would be
15 regulated under the Cap and Trade Program, such as a
16 cement plant or a distributor of natural gas. It is
17 important to note that the cap applies to the total number
18 of allowed greenhouse gas emissions that can be emitted in
19 the aggregate by covered sources in any one compliance
20 period. It is not a cap on individual emitting sources.
21 Instead, covered entities would be required to hold
22 sufficient allowances and offsets to cover their emissions
23 for each compliance period.

24 Annual allowance budgets will be contained in the
25 final proposed rule that is released for public review in

1 late September 2010 and will reflect the latest 2009
2 emissions reporting data. Our intent is to establish the
3 cap in 2012 at our best estimate of what emissions would
4 be that year, so that relatively few reductions would be
5 needed in the early years of the program. We believe that
6 this type of phase-in is an important element of avoiding
7 unacceptable near term economic costs.

8 --o0o--

9 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

10 The staff is proposing to include the following sectors in
11 the Cap and Trade Program:

12 Large sources that are industrial sources that
13 emit 25,000 metric tons of CO2 equivalent per year or
14 greater;

15 Electricity delivered to the California grid
16 including imported electricity;

17 Natural gas and propane distributors and
18 providers and transportation fuels providers.

19 The November 2009 draft regulation leaves open
20 whether to bring all sectors into the program in 2012 or
21 stagger these sectors in over two compliance periods with
22 transportation and other fuel providers phased in in 2015.

23 CO2E or equivalent emissions include the six
24 greenhouse gases identified in the Kyoto Protocol as well
25 as nine nitrogen trifluoride which is identified in

1 Senate Bill 104, which was sponsored by Senator Oropeza.
2 Nitrogen trifluoride is a greenhouse gas used in the
3 semiconductor industry with a global warming potential
4 many thousands of times that of CO2.

5 --o0o--

6 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

7 Allowances are finite tradable permits that ARB would
8 establish at the beginning of the program. Each year, ARB
9 would issue an aggregate number of allowances for a
10 one-time right to emit these gasses. At defined periods,
11 such as every year or every three years, ARB would require
12 covered entities to turn in allowances equal to their
13 greenhouse gas emissions. And sometimes you'll hear me
14 talk about turn in. Other times, I'll use the term
15 surrender. They're both the same.

16 Covered entities would also be permitted to use a
17 limited number of high quality offset credits for a small
18 part of this obligation, and we'll describe the concept of
19 offsets shortly.

20 Under a regional Cap and Trade Program, such as
21 the WCI, allowances issued by regional partners would also
22 be tradable among all sources covered under the regional
23 link, including covered entities in California.

24 While the WCI is the most likely opportunity for
25 linking to other jurisdictions, California is also engaged

1 in preliminary discussions with northeastern states who
2 have an active regional cap and trade program in place
3 today, that's the Regional Greenhouse Gas Initiative, or
4 RGGI, or states in the midwest who are seriously
5 contemplating such a move through a Midwestern Regional
6 Greenhouse Gas Reduction Accord.

7 --o0o--

8 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

9 This graph illustrates what the allowance cap would look
10 like if we were to phase covered sectors into the program.
11 This is illustrative only. However, as you can see, the
12 cap does not set an emissions limit over any specific
13 sources. Rather, it sets an overall cap on the number of
14 allowances or permits to emit.

15 ARB would decrease the total number of allowances
16 each year and, thus, lower the emissions cap. Covered
17 entities could either reduce their emissions or compete
18 for increasingly scarce allowances.

19 --o0o--

20 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

21 How would allowances be distributed in the California
22 program? ARB could either freely distribute allowances to
23 covered entities or auction them.

24 The Scoping Plan calls for a minimum of 10
25 percent of the total allowances to be auctioned in the

1 An offset is a credit that represents a
2 reduction, avoidance, or sequestration of carbon dioxide
3 or other GHG emissions that result from an activity not
4 covered by the cap and that can be measured, quantified,
5 and verified. This credit can then be sold and used by a
6 covered entity to meet a portion of its compliance
7 obligation under the Cap and Trade Program. Ensuring the
8 environmental integrity of offset credits is a major issue
9 associated with including them in cap and trade.

10 To ensure to the public and covered entities that
11 offset credits provide high environmental quality, the
12 broader Cap and Trade Program would establish offset rules
13 and quantification methodologies or protocols that
14 projects must meet in order to qualify for a credit.
15 These regulatory criteria and protocols must ensure that
16 emissions reductions, avoidance, and greenhouse gas
17 sequestration from such projects are real, additional,
18 quantifiable, permanent, verifiable, and enforceable.

19 A few examples of activities that could
20 potentially generate offsets include planting trees on
21 land not previously forested or capturing and making use
22 of methane from livestock operations.

23 This Board has approved protocols for voluntary
24 offsets from such project types. While Board approved,
25 these voluntary protocols may need to go through an

1 additional review before they meet criteria under the
2 regulatory Cap and Trade Program.

3 Once the criteria are met, these credits could be
4 used by covered entities to fulfill a portion of their
5 compliance obligation in addition to the use of offsets.

6 --o0o--

7 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

8 What role would offsets play in a Cap and Trade Program?

9 Offsets can help to reduce the compliance costs
10 of cap and trade by offering an additional supply of
11 compliance instruments that may cost less than allowances.

12 In addition to increasing the cost effectiveness
13 of the program, a California offsets program can benefit
14 Cap and Trade Program goals by stimulating emission
15 reduction opportunities and technology innovation in
16 sectors outside of the capped sectors. It can encourage
17 early emission reduction activities, while providing a
18 transition period for industry to develop and deploy
19 low-carbon technology.

20 It can promote technology and knowledge transfer
21 between developed and developing countries, such as
22 helping to preserve rain forests in danger of
23 deforestation. And it can provide environmental, social,
24 and economic benefits, such as reduced air or water
25 pollution, through improved land management practices and

1 wildlife habitat. Staff will brief the Board on offsets
2 in more detail in February.

3 --o0o--

4 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

5 Not only can a covered entity hold and surrender both
6 allowances and offsets for its own compliance, it can also
7 trade these two instruments to other entities in the
8 system.

9 Likewise, once linked to other programs, such as
10 in the WCI, allowances and offsets issued in the other
11 jurisdictions would also be interchangeable.

12 --o0o--

13 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

14 Under staff's current thinking, various entities could
15 participate in the purchase and trading of allowances
16 subject to limits on the amount any individual entity
17 could hold. Clearly, we expect the vast majority of
18 traders will be covered entities.

19 Offset providers could also supply credits
20 resulting from projects that ARB has approved for use in
21 the California program. We are also proposing to allow
22 even private individuals or groups not covered under the
23 cap to purchase allowances that could either be traded or
24 retired, provided they register with the cap and trade
25 tracking system.

1 In order to provide safeguards against market
2 manipulation, staff is developing rule provisions that
3 will limit the number of allowances that any individual or
4 firm can hold, as well as trade data publication rules to
5 maximize transparency of these trades to the public.

6 --o0o--

7 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

8 For trades to occur, staff is proposing that all traders
9 first register in the cap and trade tracking system.
10 Persons trading on exchanges, such as the New York
11 Mercantile Exchange, would also be required to register in
12 ARB's system before they could hold allowances for
13 trading. The regulations would also include rules to
14 ensure transparency in the markets and help prevent market
15 manipulation.

16 --o0o--

17 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

18 So how would the integrity of the cap be maintained?
19 Covered entities will be required to report and verify
20 their emissions annually under ARB's mandatory reporting
21 requirements.

22 ARB is also proposing to establish a registration
23 and tracking system that would closely monitor trading
24 activities and establish a chain of custody for allowances
25 and offset credits that could be used in the program.

1 Under the registration and tracking system, ARB
2 would open accounts for each market participants or other
3 eligible registrants. Those accounts would include a
4 holding account that would hold allowances and offsets
5 until they are ready to be traded or used and a compliance
6 account in which allowances and offsets would be
7 surrendered for compliance or voluntarily retired without
8 trading it to a covered entity for use.

9 A covered entity's surrendered allowances and
10 offsets would then be compared to its reported emissions
11 to verify compliance. A quantitative limit on the use of
12 offset credits would also maintain the integrity of the
13 cap. As discussed in the next slide, the draft regulation
14 includes a limit on offsets set at four percent of a
15 facility's emissions. This was proposed to ensure that a
16 majority of reduction in the program come from covered
17 sources.

18 --o0o--

19 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

20 Why limit the use of offsets?

21 Since staff's first public meeting on a cap and
22 trade proposal, the most contentious issue for
23 stakeholders was whether or not to limit the use of
24 offsets. Those who favor no limits argue that offsets
25 would reduce the cost of compliance to California

1 industries with savings passed along to California
2 consumers. These commenters also argue that since climate
3 change is a global problem, offsets would also result in
4 more effective emission reductions, especially in the
5 developing world where widespread reductions could be
6 achieved at a much lower cost than in California.

7 Others argue against the use of any offsets.
8 These stakeholders believe that offsets would allow
9 covered entities to emit at their facilities. And,
10 therefore, residents in already impacted communities would
11 see fewer co-pollutant benefits. Also these stakeholders
12 fear that most offset projects would occur outside
13 California and deprive the state from potential
14 co-benefits. Additionally, these stakeholders argue that
15 complimentary measures do not go far enough in achieving
16 greenhouse gas reductions and that more can be and should
17 be done.

18 Staff considered both positions in the context of
19 the Scoping Plan and concluded that a quantitative limit
20 on the use of offsets would help to provide the balance
21 needed between the need to achieve meaningful emission
22 reductions from covered entities with the need to provide
23 entities within capped sectors the opportunity for low
24 cost reduction that offsets can provide.

1 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
2 ARB is proposing to apply a limit on offsets that is 49
3 percent of the emissions reductions expected from capped
4 sectors from 2012 to 2020. Since each individual facility
5 does not have a specific reduction goal under cap and
6 trade, this quantitative use refers to the total
7 reductions resulting for all uncovered sources between
8 2012 and 2020.

9 In the preliminary draft regulation, staff
10 translated the limit from 49 percent of the aggregate
11 emission reductions into something that could be applied
12 to each covered entity in the program, an individual
13 limited of four percent of a facility's emission.

14 We have heard that there is some confusion on
15 this point, so let me be clear about this: We did not
16 reduce the limit on offsets from 49 percent to 4 percent.
17 Rather, we translated the policy goal of no more than 49
18 percent of reductions coming from the offsets in the
19 aggregate to a proposal that no more than 4 percent of a
20 covered entity's emission could be covered through the use
21 of offsets. We can provide more information on how we
22 calculated the limit on emissions if the Board is
23 interested at the conclusion of this presentation.

24 In the draft regulation, we have proposed to
25 apply this limit on offsets equally across compliance

1 periods. Because fewer reductions are required in the
2 early years of the program, applying the limit uniformly
3 over time allows room for limited emissions growth in the
4 initial years of the program, providing additional
5 flexibility for companies concerned about how to comply as
6 the program starts in 2012.

7 --o0o--

8 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

9 So what do all these parts mean for someone who would be
10 covered under the cap?

11 Once in the Cap and Trade Program, a covered
12 entity would need to do the following:

13 Register with ARB to create accounts that could
14 hold and surrender allowances and offsets;

15 Report its emissions each year and have its
16 emission verified by a third party;

17 Acquire and surrender sufficient allowances and
18 offsets equal to the amount of emissions over the span of
19 the compliance period;

20 Comply with recordkeeping, trading rules,
21 verification, and other requirements in the regulation.

22 Even before the system is ready the launch, we
23 will need to have enforcement mechanisms in place to
24 ensure the program's integrity and to prevent market
25 manipulation.

1 organizations favored bringing all sectors into the
2 program in 2012, while transportation and natural gas
3 providers advocated delaying their participation in the
4 program until 2015.

5 Some commenters questioned the rationale for
6 incorporating transportation fuels into the cap, arguing
7 that adding the price for allowances on top of
8 complementary policies would not result in additional
9 reductions and would unnecessarily increase costs to
10 trucking, goods movement, and agriculture.

11 Public health and environmental advocates
12 emphasized the importance of addressing the potential
13 co-pollutant impacts within the program design, while all
14 stakeholders wanted to actively participate in a process
15 of establishing the cap and ensuring that staff's
16 methodology for setting the cap is transparent.

17 Environmental organizations want the cap set at
18 2012 emissions, while some covered entities felt that
19 setting a strict cap at 2012 emissions might reflect
20 recessionary levels and not allow room for a return to
21 economic growth. So you can see, it really spans the
22 whole spectrum and see some interesting collaborations
23 depending upon what the issue happened to be.

24 In April, we'll be releasing a second draft that
25 considers these comments and fills in most of the gaps

1 that exist in the current draft.

2 With regard to allowance distribution strategies,
3 staff will be considering the EAAC recommendations and
4 stakeholder input along with any direction or
5 considerations you wish staff to take into account.

6 --o0o--

7 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

8 Also underway are technical analyses that will inform our
9 regulatory development up until we're ready to release the
10 final draft rulemaking package for the 45-day public
11 comment period in late summer. These analyses will
12 include an economic and fiscal analysis of the Cap and
13 Trade Program, a public health analysis, along with an
14 evaluation for the potential for localized emission
15 impacts and an environmental analysis.

16 We will continue to work with other State and
17 federal agencies on developing a robust enforcement
18 program as I described above.

19 Staff is also performing an analysis of the
20 compliance path options for different industries to lower
21 their greenhouse gas emissions and to work with them on
22 different compliance options.

23 --o0o--

24 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

25 As the world's eighth largest economy, California is at

1 the forefront of real and submitted climate action and
2 working with other states in the U.S. and abroad to create
3 partnerships to fight global warming.

4 2010 will be a busy year culminating in your
5 consideration of probably the single most important
6 measure of this decade. We'll be coming back to you
7 frequently so you can observe and direct us at several
8 critical points in the process.

9 As mentioned earlier, EAAC will be holding a
10 workshop next month on their evaluation of the staff's
11 economic analysis to the Scoping Plan that will also be
12 released next month. EAAC will also present their
13 recommendations to you in March on cap and trade
14 allocation strategies.

15 In spring of this year, staff will release a
16 second draft cap and trade regulation for public comment.

17 In September, we expect to release the final
18 proposed draft and take the proposal to you in October for
19 consideration and adoption.

20 Thank you. That concludes my presentation.

21 CHAIRPERSON NICHOLS: Thank you very much for a
22 concise overview of a very complicated topic. Take a
23 breath or a drink of water.

24 As you might have expected, this topic has
25 attracted a good number of commenters. And I see they

1 span the gamut of views on this topic, which is actually
2 helpful I think in terms of the preliminary process of
3 getting all of us up to speed on what's going on.

4 I just want to make a couple comments, because
5 this is the first occasion I've had to meet with the Board
6 since returning from Copenhagen. And I think it's
7 important to set the context a little bit for what we're
8 doing here.

9 First of all, if you can remember back to 2008
10 when we adopted the Scoping Plan, there was a considerable
11 amount of controversy about whether we should include any
12 Cap and Trade Program in it at all. And if so, how big it
13 ought to be with generally speaking environmental
14 interests in favor of no cap and trade or very limited cap
15 and trade and businesses wanting it to cover much more of
16 the emissions reductions that were needed.

17 At this point, I think it's fair to say things
18 have shifted a little bit. If anything, there's more
19 comfort level on the part of the environmental community
20 with the concept that if you're going to find a way to
21 send a message through prices that carbon is something we
22 need to be budgeting very carefully that a cap and trade
23 system could work with caveats about offsets and so forth.
24 And businesses expressing a lot more concerns about
25 whether this program could work, whether it's too

1 complicated, too difficult, et cetera. So there's some
2 evolution clearly going on.

3 I think I can't overemphasize the amount of
4 interest that there is around the world in what California
5 is doing as well as the interest on the part of some
6 countries and certainly other states in participating with
7 us, not just with the Western Climate Initiative, but the
8 European Union, which has its own Cap and Trade Program
9 and after 2012 will be interested in linking up with other
10 entities that are involved in similar kinds of programs as
11 well as the eastern states.

12 So it's with the recognition that an
13 international treaty done through the U.N. is probably not
14 going to be the way forward, at least for the next few
15 years, towards tackling this problem, at the same time,
16 there's much greater recognition I thought from around the
17 world that this is a problem we have to tackle. But
18 people are struggling to find what the best and most
19 effective method is going to be.

20 We have been asked many times whether California
21 would launch a program that was only for the state of
22 California and do this all by ourselves. And I think I
23 have been careful in saying that we believe that the bulk
24 of the emissions reductions that California will take
25 responsibility for our share are going to come from

1 the specific measures that were in the plan, things like
2 the Pavley emissions limits on vehicles or the low-carbon
3 fuel standard. But that the Cap and Trade Program was
4 something that we would want to see done at a minimum with
5 other partners before we actually began handing out
6 allowances and enforcing limits and so forth. We'll hear
7 more I'm sure from staff as we go along about progress in
8 that endeavor.

9 But I think it just is worth remembering that the
10 reason why we started down this path in the first place
11 was that there is a very widespread belief that you can't
12 get to the myriad of different sources and the ways in
13 which carbon is so imbedded in everything we do in our
14 economy, unless you could find some method for allowing
15 those who get to make decisions about whether to invest in
16 new technologies or invent new technologies to see there
17 would be a market out there. And that the way to make
18 that happen, to incentivize that kind of a market, would
19 be through a cap and trade system.

20 The major alternative that people put forward is
21 a tax system. And I think we all know that there's a lot
22 of issues about doing any kind of a carbon tax as well.
23 Maybe it begins to look more attractive to people when
24 they see the complexities of cap and trade. But on the
25 other hand, I think both politically and from a shear

1 efficiency perspective, we know taxes have problems, too.

2 So anyway, there is a lot of work going on here
3 in California, not only on the part of our staff and
4 volunteers like the wonderful people from the EAAC
5 Committee who helped us with their report, but also all
6 the stakeholders who are investing so much time and effort
7 in this program.

8 And I think that even when we hear sometimes how
9 contentious a lot of the details of the program design
10 are, it's just worth remembering that it's hard because
11 we're tackling something that's really hard. And we are
12 doing it for the first time literally anywhere. But the
13 thinking that we do is clearly having an influence on
14 thinking elsewhere in the world as well, because as we saw
15 with the Waxman Markey legislation, many of the details in
16 that bill that has now passed the House of Representatives
17 were based on what we doing here in California. And we
18 get calls all the time from people in other jurisdictions
19 and people in Congress and the administration to try to
20 make sure that we're all in sync.

21 So it's a big responsibility this Board is going
22 to be facing, and I think it's great we have an
23 opportunity now to at least get somewhat of a taste of
24 where the thinking is today.

25 If there are questions of the staff before we

1 hear from the witnesses, feel free.

2 Yes, first Ms. D'Adamo and then Dr. Telles.

3 BOARD MEMBER D'ADAMO: I'm going to jump in here,
4 because I wish I could stay, but I have to leave right at
5 3:00. So I have to make a couple comments and I do have
6 questions.

7 First of all, just a general comment on the need
8 for us to rely on outside experts and have very thorough
9 and robust review before we launch. And I'm pleased to
10 see the report with the EAAC coming back. I've always
11 been kind of confused about auction distribution for free
12 and just where we ought to land. And it's very useful to
13 be able to rely on a Committee of that stature. So I'm
14 pleased with that.

15 And also looking forward to the economic analysis
16 that I guess is due out in April. I'd like to see the
17 Committee maybe do a little bit more and in the field of
18 offsets. That's an area that I think a number of us
19 commented on that we were a little uncomfortable with the
20 49 percent offset. I don't remember at what hearing it
21 was, but several months back. And I was of the impression
22 that staff was going to do a more thorough analysis of
23 that, and now I see coming back it's still 49 percent. So
24 I would feel much more comfortable if we could have a more
25 thorough review of that offset.

1 I think it ought to be lower. I don't really
2 know how much lower, and I'm not an expert. So it would
3 be useful to have information from others.

4 I do note that I received some letters on this,
5 and one of the environmental organizations did point
6 out -- I was aware that there was a piece of legislation
7 that the Governor vetoed providing a limit of offsets to
8 ten percent that in the Governor's veto announcement
9 indicated the EAAC Committee was going to be reviewing
10 this. And so it sounds like there might be interest
11 across the street for further review well.

12 The other thing that I wanted to just raise is
13 the issue of protocols in relation to the offsets. When
14 we have the forestry protocol before us, I was concerned
15 about the allowances for some clearcutting and at that
16 time it was made very clear that this was just -- these
17 were just standards for voluntary measures and that we
18 were free to adopt a higher standard, sort of a gold
19 standard so to speak, with regard to offsets. And from
20 what I can tell, it looks like we're not doing that.

21 So I don't know if there's going to be further
22 analysis on this or not if staff's already committed, but
23 we'd like to ask that question. And if you're not
24 planning on doing further analysis and looking at a gold
25 standard for the various sectors that we have these

1 protocols for, I would highly encourage it. Those are my
2 comments.

3 CHAIRPERSON NICHOLS: Thank you. I think offsets
4 is such an important issue that staff is planning a whole
5 special briefing just on that topic. But maybe you'd like
6 to respond now on an update on what you're working on.

7 EXECUTIVE OFFICER GOLDSTONE: First thing we'd
8 like to give you an update on is what the EAAC is looking
9 at in terms of the offset issue. Maybe Kevin or Steve.

10 PROGRAM EVALUATION BRANCH CHIEF KENNEDY: One of
11 the key issues to understand about the use of offsets is
12 what is the economic effect, because the argument in favor
13 of using offsets is that it provides a lower cost and
14 reduces the cost of the program overall. So that actually
15 is one of the things that we're specifically looking at in
16 the context of the economic analysis. Staff will be
17 putting out a draft of the analysis next month. The
18 Advisory Committee is actually helping us think through
19 that analysis overall. So they are helping us take a look
20 at that aspect of the program.

21 And as Mr. Goldstone indicated, we are intending
22 to come back with a much more thorough discussion of the
23 offset program piece of the Cap and Trade Program next
24 month. We are having very serious discussions about the
25 relationship of the voluntary protocols that have already

1 been adopted by this Board and whether those are good
2 enough and how do we structure the compliance offset
3 program so that we are sure that we are only allowing in
4 gold standards. So we'll have more opportunity to talk
5 about that next month.

6 CHAIRPERSON NICHOLS: Any other preliminary
7 comments? I think -- I'm sorry. Dr. Telles had his hand
8 up first and then Supervisor Yeager.

9 BOARD MEMBER TELLES: I was listening to Chairman
10 Nichols' comments about how important it is to have
11 partners. And the Western Climate Initiative is our
12 partners in this. And you mentioned that a certain subset
13 is prepared to go on board in 2012. And who are they and
14 how far along are they? And do they have a whole robust
15 cap and trade plan like this?

16 PROGRAM EVALUATION BRANCH CHIEF KENNEDY: We
17 actually had a meeting of the Western Climate Initiative
18 partners last week and where the partnership as a whole is
19 we're in the process of working on what we're calling
20 essential elements, which are similar to a model rule for
21 the overall Cap and Trade Program that the partners
22 collectively are working on to implement -- or to publish
23 by June. So there could be common understanding of what
24 the broader program would look like.

25 The different partners are at different stages in

1 terms of legal authority and sort of where they are in
2 terms of being able to get the pieces together in order to
3 start the program in 2012. I would say that the partners
4 that are furthest ahead and most likely to be able to
5 start right in 2012 would be California British Columbia,
6 Ontario, Quebec. But the other partners are participating
7 very much and are looking to start it as soon as possible.

8 BOARD MEMBER TELLES: I just have one follow-up
9 question. I understand that California's emissions per
10 capita, there's probably some of the lowest in the
11 country. It's somewhere around -- I don't remember the
12 numbers exactly, but somewhere around 12 to 10 tons per
13 capita versus the rest of the United States is somewhere
14 around 22 tons per capita. And in the Western Climate
15 Initiative, is that kind of disparity between California
16 and the other states?

17 Because the problem I'm having in dealing with
18 the cap and trade thing is if there's that much disparity,
19 it seems like the low-hanging fruit has been picked in
20 California. And all the offsets and allowances is going
21 to be purchased cheaper outside of California. That means
22 money from California leaving California going someplace
23 else versus the other way around.

24 Do we have anything allowance wise or offset wise
25 that would be something that one of our Western Climate

1 Initiative partners would be willing to buy because of the
2 expense?

3 PROGRAM EVALUATION BRANCH CHIEF KENNEDY: I don't
4 actually have any of those numbers offhand. I would have
5 to go and take a look.

6 But I would agree in general terms California is
7 much more energy efficient and generally our greenhouse
8 gas emissions per capita do tend to be lower than a lot of
9 other jurisdictions.

10 A lot of the idea of the Cap and Trade Program is
11 to allow sources to be able to seek out the lowest cost
12 emission reductions so you are able to get the
13 environmental benefit, which is a global environmental
14 benefit, at the least cost.

15 We are in the process -- one of the analyses
16 we're looking at is taking a look at what real
17 opportunities are in California for emission reductions
18 with this the particular programs.

19 As Chairman Nichols mentioned earlier, a lot of
20 the actual reductions we would expect to see from the
21 covered sources are things that would be driven by things
22 like the Pavley auto standards, energy efficiency programs
23 and standards, the LCFS, and other complementary measures.
24 So we think there is a lot of opportunity for reductions
25 happening in California. We think getting this program,

1 even if it's linked to WCI, will provide incentives for
2 people to invest in California in a way that will help
3 reduce their emissions either through developing new
4 technologies or becoming more efficient. So it is an
5 issue, but we do think this is still sending a signal in
6 the right direction.

7 CHAIRPERSON NICHOLS: And I think big picture
8 assessing whether this project is good for California or
9 not is kind of at the core of the overall economic
10 assessment that we're asking the Committee to do. If we
11 can't demonstrate to our satisfaction and that of the
12 Legislature and the public this is something that's
13 beneficial to us, I don't think we would be able to go
14 forward with the program.

15 So you know, at this point, we hear a lot of
16 allegations or assertions or fears or hopes, but either
17 way, it's still unknown, you know. What might actually
18 happen has to still be fleshed out. And I think when we
19 hear the report from the EAAC Committee on the modeling
20 that they're doing and how they're doing it, that will at
21 least help to put some boundaries around some of these
22 concerns about whether what California is doing might be
23 doing really makes sense.

24 EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
25 maybe another way of looking at the context I think Dr.

1 Telles is getting at is that with regard to WCI, that
2 California is about 50 percent of the emissions within
3 WCI. So we're half.

4 CHAIRPERSON NICHOLS: Okay. Let's turn to
5 those -- oh, sorry.

6 BOARD MEMBER YEAGER: Speaking of the unknown, is
7 there a scenario where there would be action taken by the
8 federal government that would supercede or trump anything
9 we are either trying to do or at some point once we put
10 something into effect they take some sort of other action?

11 EXECUTIVE OFFICER GOLDSTONE: Yes. That's
12 certainly possible.

13 Congress was getting ready to act at the end of
14 last year again and, you know, yesterday the President was
15 encouraging action again.

16 The ideal scenario is to have the market as big
17 and as robust as possible. So a national program would be
18 better than even a regional program, which is one of the
19 reasons why we're talking about linking the two other big
20 markets linked together as possible in the future.

21 But that being said, one of the important things
22 that we've been advocating for is to make sure that we
23 still maintain the rights as a state to go further if we
24 needed to. And this is an important issue that we're
25 saying close attention to.

1 BOARD MEMBER YEAGER: As I remember, some of the
2 earlier discussion about the carbon tax and whether that
3 we as a nation went forward with rather than cap and trade
4 and trying to track all of that what's happening in
5 Washington and our actions now and keeping it all in
6 perspective.

7 EXECUTIVE OFFICER GOLDSTONE: That might be
8 something we should also consider presenting to the Board
9 in the near future is having Brian Turner come out and
10 give the Board an update on the activities in Washington,
11 particularly if things start up again as they had begun.
12 If things start getting active again, we can give an
13 update on what's going on.

14 BOARD MEMBER YEAGER: I appreciated what Lucille
15 mentioned where the groups were taking different
16 positions. And I don't know whether she's going to write
17 up some of that, but that would maybe help to have a
18 matrix just to see what issues all the various interests
19 have.

20 EXECUTIVE OFFICER GOLDSTONE: We are working on
21 developing a matrix or a high level summary of the
22 comments. We got lots of comments. And we will
23 distribute that to the Board.

24 BOARD MEMBER LOVERIDGE: Are we going to follow
25 up with suggestion of having the D.C. person?

1 CHAIRPERSON NICHOLS: Yes. Duly noted. I think
2 it's a really good idea. We'll figure out if we can get
3 him out here for the next meeting. The February meeting
4 would be a perfectly appropriately.

5 BOARD MEMBER TELLES: And in regards to the
6 federal plan, if it ever gets launched, has there been any
7 questioning of the federal government if California
8 launches this three, four, five years before the federal
9 government does? Will there be some credit for surplus
10 emissions before they start their program?

11 EXECUTIVE OFFICER GOLDSTENE: This is an issue
12 that's discussed quite a bit and we refer to it -- the
13 easiest way we refer it to is how we transition a program
14 that's already operating at the state level into a
15 national program. So there is discussion about that and
16 there is a great awareness about having to pay attention
17 to that. So if a national program does come in effect
18 after state or regional programs started, that transition
19 is critical.

20 CHAIRPERSON NICHOLS: I guess in fairness, you
21 know, California is the first state to be as far along as
22 we are in looking at an economy-wide cap. But the
23 northeastern states, 13 of them, are partners in a Cap and
24 Trade Program that deals with the electric utilities
25 sector, the RGGI program, which has been operational for

1 several years now. And they are also very anxious about
2 making sure they don't get penalized if and when a federal
3 program comes into effect.

4 This isn't just an issue for us. It is an issue
5 of these states that have been more progressive on some of
6 these energy issues versus those that have not and how you
7 achieve some level of fairness or equity, a topic we'll be
8 talking about today and will be talking about much more.

9 Dr. Sperling, do you have your hand up?

10 BOARD MEMBER SPERLING: Yes.

11 One thought I had and one concern I have is over
12 the next year there's going to be a lot of attention given
13 to cap and trade. It's the lightning rod of a lot of the
14 concerns about environmental regulation generally and
15 climate policy more generally.

16 And as I thought about it, you know, all these
17 presentations we get and the way we -- many of us think
18 about it, including myself, is kind of a top-down approach
19 in the sense of what's the theory. What's the overall.
20 And then we take that to the overall structure and even
21 take that to what are the overall economic impacts.

22 But, in fact, what's likely to be happening over
23 the next year is a lot of businesses, a lot of regions are
24 going to look at it in terms of what's the impact on us.

25 And a lot of the presentation talks about details

1 to be worked out. And I'm a little concerned that if we
2 keep being too vague, it allows a lot of different groups
3 or organizations to craft the most catastrophic scenario.

4 And just an example of that would be there's a
5 lot of concern with LADWP has a lot of coal-based
6 electricity. So you do a simple analysis, the rates are
7 going to go up in Los Angeles by 30 or 50 percent as they
8 have been saying.

9 And so my suggestion and as this moves forward is
10 generally thinking about this a little bit and what will
11 really be the impact on different business groups, on
12 different regions. And I'm not often an advocate of
13 getting into all the details. Being a professor, I like
14 the big picture. But I think in this case, you know, we
15 ought to be thinking along those lines much more than we
16 might otherwise do.

17 CHAIRPERSON NICHOLS: Interesting. We have a
18 brochure I'm sure we'll hear about later. I was looking
19 at it called "Climate for Success" from the Union of
20 Concerned Scientists, which is certainly one of our most
21 dedicated and active groups working on these issues. And,
22 you know, they have broken it down by the additional cost
23 of a bill for a meal on a particular restaurant under a
24 climate regime. We may not be able to get to that point,
25 but that's a really helpful kind of analysis.

1 BOARD MEMBER SPERLING: Well, that's one way.

2 But another is a lot of the details, for instance, on how
3 you treat the equity between different regions. You know,
4 there is the continuing discussion about this massive
5 wealth transfer from south to north. And that discussion
6 can go on, because there's no detail to counter that.

7 And so there are a few of these major issues that
8 I think that are out there already. And I think we can
9 try to -- you know, part of the question is I don't know
10 how far the staff proposal is actually go into detail.
11 But to the extent that it is and we can answer some of
12 those key issues that we know are already in the public
13 arena I think is all for the better in the coming months.

14 EXECUTIVE OFFICER GOLDSTONE: There is quite a
15 bit of detail in the draft that we released late last
16 fall. And we'll be narrowing that down based on the
17 public input we've just received for a spring release of a
18 more tightened up package where we're really narrowing in
19 on what the final rule will look like. And also the
20 economic analysis that we've been doing and that's being
21 reviewed by the EAAC, I think we'll get at least some if
22 not all what they're asking for.

23 I don't know if Steve or Kevin want to add to
24 that.

25 CHAIRPERSON NICHOLS: Dr. Balmes.

1 BOARD MEMBER BALMES: Well, I was just going to
2 sort of chime in after Professor Sperling.

3 Dr. Telles and I were talking at lunch, we were
4 asking each other how many of our patients will be able to
5 say what AB 32 was. And we didn't think very many. And
6 how many of our patients could talk about climate change
7 in the sense does California have a climate change plan.

8 And I think I'm even going beyond what Professor
9 Sperling was suggesting. I really think we have to have a
10 communications plan to try to get the average person in
11 California to understand what we are all about -- and I
12 know the staff has been trying -- on top of having to
13 craft the whole thing in the first place.

14 But I think especially in the current economic
15 climate and the fact that this is going to be a difficult
16 political year just because of the complexity of
17 everything that's going on that we need to be as clear as
18 possible about what we're about.

19 BOARD MEMBER LOVERIDGE: Two very quick things.

20 One is the importance of the general educational
21 focus is that you do all these -- people take poles and
22 they say does California support or doesn't. And those
23 pole interpretations become important. And the question
24 is how do we influence what people think in terms of
25 generally.

1 But let me go back to Dan Sperling's comment. It
2 seems to me if -- we need to hear from the people who are
3 here to speak. But if there is a number of sectors, a
4 number of sections, a number of groups which are angry and
5 upset and don't like it and take the message in
6 opposition, it may not make a difference what happens when
7 it comes to our end. There is a possibility of
8 discrediting this process by people marshaling their
9 opposition. So I think the point he makes is really an
10 important point strategically as we proceed.

11 CHAIRPERSON NICHOLS: All right. Now we are at
12 the maximum point of everybody being worried. So we have
13 nowhere to go but forward from there I think.

14 Thank you very much.

15 We will start hearing from the assembled
16 individuals. And we'll start with Gary Liss from Local
17 Government Commission, followed by Brenda Coleman and
18 Julian Canete. These are three-minute thoughts,
19 three-minute rule.

20 MR. LISS: Madam Chair, members of the Board, my
21 name is Gary Liss. I'm mayor of the town of Loomas, and
22 I'm here representing the Local Government Commission.

23 I'd like to say we're here to help you, want to
24 be your local partners. There is a reason for the slogan,
25 "Think globally, act locally," because things get done at

1 the local level. That's where the rubber hits the road.

2 And we've demonstrated that investing in improved
3 local planning will not only result in reduced greenhouse
4 gas emissions, it will also save money. The Sacramento
5 Region Smart Growth Plan is projected to save \$9 billion
6 through the year 2050 with the result of reduced
7 infrastructure and consumer-driving costs.

8 As a result, we're here to ask you to support the
9 EAAC recommendation to include land use planning and
10 implementation of SB 375 and the investment options. We
11 ask that you set aside of the portion of the revenue to be
12 allocated for specific plans and zoning code updates to
13 help local governments meet the state targets through
14 smart growth, to create communities that are more compact,
15 walkable, and transit friendly.

16 Research has shown that smart growth and land use
17 plans can reduce vehicle miles traveled and the associated
18 greenhouse gas emissions from 20 to 50 percent.

19 We're pleased the Scoping Plan and SB 375
20 Regional Targets Advisory Committee saw that local
21 governments should be an essential partner in achieving
22 reductions in greenhouse gases. But local governments are
23 under the gun. The State keeps taking more and more of
24 our revenue. In order for us to take on a new
25 responsibility like this, we need your help to have this

1 be part of your program.

2 Local governments zoning ordinances make it
3 difficult to get approval to build sustainable smart
4 growth development at a time when improved land use
5 planning is required to implement AB 32 and SB 375. Local
6 government are reducing their planning due to budget
7 constraints. Without funding, they will not be able to
8 undertake the necessary updates of their codes to make
9 them consistent with the State's climate air quality and
10 energy conservation goals.

11 So the Local Government Commission encourages the
12 Board to adopt the EAAC Committee's recommendation to
13 invest cap and trade funds in the preparation of specific
14 plans and zoning code updates for small and large
15 communities. Dedicating a meaningful portion of allowance
16 value to smart growth planning would be a cost effective
17 investment that will reduce economy-wide greenhouse gas
18 mitigation costs. This will improve our communities, keep
19 money in the local economy, and reach the state's emission
20 reduction goals.

21 This is based on testimony that was submitted
22 earlier on January 26th, signed by 37 people, mostly
23 elected officials.

24 Thank you for the opportunity to present here
25 today.

1 CHAIRPERSON NICHOLS: Thank you. I did receive
2 that. Thanks very much.

3 Brenda Coleman and then Julian.

4 MS. COLEMAN: Good afternoon, Madam Chair,
5 members of the Board. Thank you for the opportunity to
6 comment today.

7 My name is Brenda Coleman. I'm the Policy
8 Advocate on climate change and energy for the California
9 Chamber of Commerce, the California Chamber of Commerce
10 participants as co-chair on the AB 32 Implementation Group
11 on whose behalf I'm speaking today.

12 You have our written comments that we submitted
13 on the proposed draft regulation for the Cap and Trade
14 Program, which notes our concern about the absence of a
15 sound economic analysis, the multi-billion dollar auction
16 tax that could cripple large industry here and cause more
17 leakage of jobs and economic activity and insufficient
18 evaluation of the economic impact of offsets as proposed.

19 We are also concerned that you are moving forward
20 on this rulemaking without having adequate information on
21 the low-carbon fuel standard program.

22 The staff report on the LCFS has been removed
23 from your agenda yet again. This means your cap and trade
24 discussion is occurring without the critical context of
25 how elements of the LCFS will affect not only emission

1 reductions but fuel costs and suppliers.

2 We are particularly worried that regulation of
3 transportation fuels under the cap, if adopted in addition
4 to the ambitious LCFS requirements, will result in
5 billions of dollars and duplicate costs that will place
6 California companies at an even greater competitive
7 disadvantage with out-of-state providers.

8 Considering the fact that California-only
9 policies for LCFS and cap and trade while costing billions
10 of dollars will have absolutely no impact on global
11 warming, this process becomes even more questionable.

12 The AB 32 Implementation Group urges you to take
13 a more deliberative approach to cap and trade and the LCFS
14 not only in relationship to each other within California,
15 but in the context of federal and global approaches to
16 climate change policy. Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 BOARD MEMBER LOVERIDGE: Could I just ask --

19 CHAIRPERSON NICHOLS: Question. Sorry. Hold it.

20 BOARD MEMBER LOVERIDGE: Just quick comment on
21 the group you're representing, you're part of it. But
22 tell us about the group you're representing.

23 MS. COLEMAN: The AB 32 Implementation Group is a
24 group that has been working with the California Air
25 Resources Board in the implementation of AB 32. Our

1 primary mission of the IG is to seek cost effective
2 technologically feasible mechanisms of advancing AB 32,
3 keeping in mind its primary goals of reducing greenhouse
4 gas emissions.

5 BOARD MEMBER LOVERIDGE: Can you give an example
6 of some of the groups? Who's a part of this group?

7 MS. COLEMAN: The California Chamber, as I said,
8 which I'm a Policy Advocate on behalf of the Chamber. We
9 are co-chairs of the organization.

10 Are you asking other -- to list other groups that
11 are --

12 BOARD MEMBER LOVERIDGE: What's the letter --
13 besides the Chamber --

14 MS. COLEMAN: We have as well as our other
15 co-chairs is the California Manufacturers Technology
16 Association. So CMTS.

17 CHAIRPERSON NICHOLS: It's an association of
18 associations as I understand it.

19 MS. COLEMAN: Yes. There's several business
20 organizations that the IG is comprised of.

21 Thank you very much.

22 BOARD MEMBER SPERLING: Is WSPA a member of that?

23 MS. COLEMAN: Yes, they are.

24 CHAIRPERSON NICHOLS: Good afternoon.

25 MR. CANETE: Good afternoon, Madam Chair, Board

1 members.

2 Thank you for the opportunity for allowing us to
3 address the Cap and Trade Program.

4 My name is Julian Canete, and I'm director of
5 operations at the California Hispanic Chambers of
6 Commerce. The State Hispanic Chamber is the largest
7 hispanic business organization in the nation representing
8 over 720 hispanic-owned businesses through our network of
9 over 65 hispanic chambers and business associations.

10 We're here today to urge you to pay close
11 attention to the warnings of your Economic and Allocation
12 Advisory Council with respect to allocating emissions,
13 allowances under the California's Cap and Trade Program.
14 They are predicting significant job losses and higher
15 energy costs that will have a devastating and regressive
16 impact on low-income households throughout California.
17 With unemployment among hispanics higher than any other
18 group in the state, this is obviously of great concern to
19 us as well.

20 We are also concerned that the low-carbon fuel
21 standard has once again been taken off the agenda.
22 Gasoline diesel fuels will be among the most heavily
23 regulated impacted sector under Cap and Trade and the LCFS
24 with higher prices at the pump a result of that.

25 We sincerely hope that you will not make any

1 binding decisions on the Cap and Trade Program without
2 first answering the critical, technical, and economic
3 questions about the LCFS. Otherwise, you will run the
4 risk of doubling the financial burden of higher fuel costs
5 at a time when even moderate increases will inflict
6 serious harm on those least able to afford.

7 The State Hispanic Chamber of Commerce continues
8 to support the goals of AB 32. But piecemeal rulemaking
9 without thorough and objective cost benefit analysis is no
10 way to get there. Thank you.

11 CHAIRPERSON NICHOLS: Okay. I'm not sure which
12 warnings of our Economic Advisory Committee you're
13 referring to. Staff, are you --

14 EXECUTIVE OFFICER GOLDSTENE: I'm not sure.

15 CHAIRPERSON NICHOLS: -- aware of citation for
16 that?

17 EXECUTIVE OFFICER GOLDSTENE: Maybe he can be
18 more specific.

19 CHAIRPERSON NICHOLS: He's left the podium. I
20 don't want to -- you know, people can come here and say
21 anything they want to, I guess. But it's always helpful
22 if they have something specific to back it up.

23 Erin Rogers, Union of Concerned Scientists; and
24 Bill Magavern, Sierra Club; Bonnie Holmes-Gen from the
25 American Lung Association.

1 And if you're not on the list and you wanted to
2 speak, I hope you'll give your information to the clerk
3 because we've got a long list here.

4 MS. ROGERS: Hi. Thank you. I'm Erin Rogers
5 from the Union of Concerned Scientists. I brought some
6 show and tell today.

7 I wanted to start off just mentioning the study
8 that Chairman Nichols mentioned. I wanted to make sure
9 you were all aware of it. There's been a lot of
10 controversy that's been stirred up in part by the AB 23
11 Implementation Group about how AB 32 may effect small
12 businesses. And we commissioned a report by a group of
13 independent economists. The report was peer reviewed and
14 it was done by the Braddle group that looks specifically
15 at how AB 32 may affect small businesses. And the results
16 were that even in sort of worst-case most expensive
17 scenario, the impacts would be marginal.

18 And as Chairman Nichols mentioned, we looked at a
19 case study, a restaurant in Los Angeles, and looked at if
20 they wanted to keep their profit margins the same
21 throughout 2020, what would they have to do to their
22 prices because of AB 32 to stay with the same profit
23 margins. And they would only have to raise the price of a
24 meal three cents in 2020, a \$20 meal. We think that's
25 pretty manageable and pretty worth it for the dramatic

1 impacts we're going to get from AB 32.

2 I wanted to segue into the second topic I wanted
3 to address which is many businesses are calling for more
4 offsets in our program, because they think that the
5 offsets will help contain the costs of the program. We
6 think -- we disagree, first of all, that the costs will be
7 too hard to handle. We also think that the very large
8 amount of offsets that have been proposed in the PDR put
9 the integrity of the program in jeopardy. So, you know,
10 the use of offsets is controversial for many reasons,
11 including the loss of co-benefit effects that we get here
12 in California; cleaner air, more jobs.

13 And I wanted to -- I think you have a letter up
14 there that was passed out that was signed by 70
15 organizations and businesses, including 20 of the
16 legislators -- state legislators who work on the bill that
17 passed last session calling for the offset limit to be
18 strengthened. And I hope you can take a look at that
19 later.

20 One of the reasons that we are all concerned is
21 that we think that because so many offsets will be allowed
22 into the program, the Cap and Trade Program itself will
23 not actually achieve any emission reductions beyond those
24 that we're going to get from Pavley and the RES and energy
25 efficiency measures.

1 I brought this chart, because a lot of people are
2 confused about how we're thinking about this. But the
3 yellow bars here are the amount of offsets allowed into
4 the system. And these come straight from the PDR, CARB's
5 own numbers and the spreadsheet that was sent along with
6 the PDR. The green bars are how much reductions we expect
7 to get from cap and trade itself. And as you can see,
8 there are more offsets in the program than cap and trade
9 reductions all the way until the very end of the program.

10 CHAIRPERSON NICHOLS: If you can leave your
11 chart, I'm sure we would all welcome taking a look at it.
12 I think we understand the point though. Thank you.

13 Bill Magavern.

14 MR. MAGAVERN: Good afternoon. I'm Bill
15 Magavern, the Director of Sierra Club California.

16 And I want to say first that I thought the staff
17 presentation was both accurate and clear on a difficult
18 topic.

19 And secondly that I completely agree with the
20 comments of the Board members on the importance of being
21 able to really communicate the essence of this program to
22 the public, you know, which will take even more skill than
23 delivering the presentation today, which was to a more
24 informed audience.

25 But the global warming deniers and big polluters

1 and ideologues are spreading a lot of disinformation about
2 this program. So it's going to be important to really
3 convey the actual facts of what goes on here.

4 From the beginning of the implementation of the
5 Global Warming Solutions Act -- I sometimes use its name
6 instead of its number -- our position has been that we
7 could support a well-designed cap and auction system. And
8 it's very important that the design be sound in order to
9 avoid some of the mistakes that have been made with other
10 emissions trading programs. And we think that really the
11 best way to avoid those mistakes and have a well-designed
12 program is to take the recommendation of the EAAC and
13 auction off the allowances from the start, make the
14 polluters pay for their emissions. It's a fair and
15 transparent way to set up the system. The auction would
16 determine the value. And if the polluters have to pay,
17 then they will be really looking at ways they can decrease
18 their emissions and will also create revenues which, of
19 course, can go back to consumers and/or be used for
20 investments in a number of important clean energy
21 programs. So auctioning is I think what's most important.

22 We also need to make sure that we don't over
23 allocate the allowances, a mistake that was made in some
24 jurisdictions. So setting a tight cap from the start and
25 have that cap declining.

1 And then making sure that we don't have major
2 loopholes in the system. And so we do think there should
3 be stricter limitations on offsets. We agree with the
4 comments of UCS. And Michael Endicott later will be
5 making more specific comments for Sierra Club on the topic
6 of offsets.

7 And enforcement is crucial. I know you've been
8 talking with the attorney general's office, and I think
9 they have a lot of important lessons learned from the
10 electricity crisis and ways to avoid the gaming and
11 manipulation of the market. We think penalties need to be
12 strong and sufficient and include disgorgement of any
13 illgotten gains that are made through violations of the
14 system as well as surrendering of allowances in the next
15 compliance period to make sure that there are no excess
16 emissions.

17 Thank you.

18 CHAIRPERSON NICHOLS: Thank you.

19 Bonnie Holmes-Gen, followed by Sabrina Means and
20 Marisa Rimland.

21 MS. HOLMES-GEN: Thank you, Chairman Nichols and
22 Board members. I'm Bonnie Holmes-Gen with the America
23 Lung Association of California.

24 And we did earlier this month submit a letter
25 from 25 total public health organizations, state and

1 local. And I wanted to emphasize a few key points that
2 are in this letter that we've been communicating to staff
3 about the Cap and Trade Program.

4 The first key point is that the Cap and Trade
5 Program will have direct impacts, of course, on public
6 health. And the Board is entering into a process that's
7 very important to evaluate those public health impacts,
8 including the potential for impacts to disadvantaged
9 communities, communities that are already overburdened
10 with multiple pollution sources.

11 And this process is called a health impact
12 assessment, and it's been referred to in your staff
13 slides. But I want to emphasize the importance of this to
14 better understand how to design this program in a way
15 that's going to lessen inequities and promote options that
16 are the best from a public health perspective.

17 And as we're talking about this tension between
18 how much detail to put out in the street versus how much
19 we need to continue to analyze and develop the program,
20 this is a case where I think we do need to make sure that
21 we complete the public health analysis before we get all
22 the details of this program worked out.

23 The health impact assessment will be specifically
24 looking at the auctioning -- the benefits, how public
25 health benefits the auctioning of allowances, the impact

1 of offsets both inside and outside of the state, placing
2 quantitative limits on offsets, and what the impacts would
3 be of different limits, in trading restrictions of the
4 potential impact of trading restrictions for allowances
5 and for offsets, and of course, investment options for
6 allowance value. So these are all very key parameters of
7 the program. And I'm just concerned that we don't get
8 locked in on the design until we get some of this input.

9 And we would hope that -- we're very concerned
10 that the information from this analysis needs to be
11 integrated into the development of the regulation.

12 And we believe it's especially important for the
13 Board to have an update specifically on this HIA process
14 and to hear not only from your staff, but from your
15 partner in this process, the Department of Public Health.
16 And we think that should happen before the next draft
17 comes out in the spring that you've been talking about.

18 While we're watching this HIA and participating
19 and doing our best to help make this successful, we're
20 also urging the Board in the mean time to move toward
21 100 percent auction at the start of the program, to move
22 toward quantitative limits on offsets and to recommend
23 specific investment of allowance value in both mitigation
24 and adaptation, including specific investments in public
25 health preparedness and the public health infrastructure

1 that's vitally important to address our needs in
2 California. This would include assisting with the
3 emergency preparedness, identifying, prioritizing
4 vulnerable communities, disease surveillance systems, and
5 a number of other public health needs.

6 CHAIRPERSON NICHOLS: Thank you.

7 Sabrina Means and then Marisa Rimland and Andy
8 Katz.

9 MS. MEANS: Good afternoon, Madam Chair and Board
10 members.

11 I'm Sabrina Means here on behalf of the
12 California Transit Association, which represents over 80
13 transit agencies in the state as well as approximately 19
14 transit suppliers. Thank you for the opportunity to
15 provide comments on this item.

16 Our transit members have been following the cap
17 and trade regulation development process. And thus far,
18 we're supportive of a cap and trade system that allows for
19 some revenues from the system to be reinvested into
20 furthering the goals of AB 32, specifically by reducing
21 greenhouse gases from the transportation sector.

22 Transit is one of the avenues by which reducing
23 greenhouse gases in the state can be achieved. Therefore,
24 we ask the Board to recommend that transit investment be
25 built into the final cap and trade regulation having to do

1 with allowance allocations.

2 The Economic and Allocation Advisory Committee,
3 which has adopted its recommendations on allocating
4 allowances for the cap and trade system specifically,
5 includes public transportation as a consideration for
6 investment of allowances or allowance revenues.

7 Transit currently faces significant market
8 barriers. An example is that fares that transit agencies
9 charge, which are kept at a certain level to maintain
10 affordability to riders, are drastically insufficient in
11 comparison to what the overall cost is to transport people
12 from here to there.

13 Most importantly, due to recent state budgets,
14 the most recent being a proposal which completely
15 eliminates transit funding from the state, transit
16 operators have been forced to make devastating service
17 cuts and raise fares beyond affordability for riders, both
18 those that depend on transit and choice riders. The State
19 has diverted billions of dollars that should have gone to
20 transit agencies in the last several years.

21 Transit systems are in absolute need of
22 investment by the State. And since transit is a key way
23 to reduce transportation emissions, as it takes people out
24 of their cars, investing in transit from the cap and trade
25 system is realistically the logical way to go.

1 The Regional Targets Advisory Committee which
2 recommended factors and methodologies for setting regional
3 greenhouse gas targets as part of SB 375 also recommended
4 in their report that the State must find a way to increase
5 funding for transit in the state. Therefore, they
6 acknowledge that transit is a key way for regions to
7 reduce their greenhouse gas emissions.

8 Including transit as a recipient of allocation
9 investments as part of the regulation will help achieve
10 the goals of AB 32 and the goals of the cap and trade
11 system. We also ask that fuels be included as part of the
12 cap and trade system. This will potentially provide
13 revenue for transit as transit has historically funded
14 through taxes on fuels. Thus, new any costs at the pump
15 as a result of cap and trade could go toward furthering
16 greenhouse gas reduction goals through transit investment.

17 Thank you. And we look forward to working with
18 you and staff as this process continues.

19 CHAIRPERSON NICHOLS: Thank you very much.

20 Marisa Rimland and then Andy Katz.

21 MS. RIMLAND: Good afternoon Madam Chair, members
22 of the Board.

23 My name is Marisa Rimland representing the Public
24 Health Institute. Thank you for the opportunity to
25 comment today.

1 The first topic I'd like to address is offsets.

2 We believe that the current proposed offset limit of 49
3 percent of reductions is too large. We urge CARB to
4 re-examine this and lower it to a more appropriate level.

5 PHI believes a lower allowance of offsets is
6 necessary to maximize health co-benefits resulting from
7 improved air quality and to verify that greenhouse gas
8 emissions are being reduced per AB 32 requirements.

9 Offsets, with their well known additionality,
10 verification, and monitoring issues, will not sufficiently
11 accomplish this. Greenhouse gas emissions reductions are
12 especially important in the first stage of the program
13 when the cap is only slightly below business as usual
14 emissions and every ton of carbon reduced is crucial.

15 PHI also urges CARB to create geographic
16 restrictions on a percentage of offsets and to incentivize
17 the location of offset projects within disadvantaged and
18 disproportionately impacted communities. This can be done
19 by weighing offsets based on their geographic location
20 using a policy design tool such as a multiplier or by
21 discounting offsets located outside of California.
22 Incorporating such protective measures into the regulatory
23 design will benefit these communities by simultaneously
24 improving their health and creating jobs.

25 The next topic I'd like to address is allocation.

1 PHI believes that 100 percent of emissions allowances
2 should be auctioned off. One of the primary benefits of
3 creating a market for carbon is the expectation that a
4 well-designed mechanism will set a price for greenhouse
5 gas emissions that accurately reflects the marginal cost
6 of abatement. This price signal determines the decisions
7 made by producers and consumers about the types of energy
8 and services they provide or use.

9 If emissions allowance are given away rather than
10 auctioned off, the pricing will be diluted and investment
11 in lower-emitting technologies or renewable energy
12 diminished, resulting in fewer co-benefits from improved
13 air quality as well as decreased opportunity to reduce
14 greenhouse gas emissions.

15 Auctioning all allowances will maximize the
16 revenue available to California to use in its work both
17 mitigating and preparing for climate change, as well as
18 helping to offset higher energy prices for low-income
19 families who are negatively impacted by price increases.

20 We ask that a significant percentage of allowance
21 value be invested in public health adaptation as well. It
22 is especially important that such investments be targeted
23 towards increasing preparedness and resilience in our most
24 vulnerable communities. In order to accomplish this, we
25 also request that a community benefits fund be created to

1 target effort within those communities once they've been
2 identified by CARB.

3 Thank you very much.

4 CHAIRPERSON NICHOLS: Thank you.

5 Andy Katz and then Alex Jackson.

6 MR. KATZ: Hi. Good afternoon, Chair Nichols and
7 Board members.

8 I'm Andy Katz representing Breathe California.

9 And I want to support and agree with the comments of my
10 environmental and health colleagues from the American Lung
11 Association, Sierra Club, and Union of Concerned
12 Scientists and Public Health Institute.

13 We have also signed onto the Public Health
14 Organization's letter and want to encourage the Board to
15 take care when approving and considering this cap and
16 trade regulation. It is important for the Board to move
17 forward on implementing AB 32. The cap and trade
18 regulation is included in the Scoping Plan and is
19 responsible for a large amount of the greenhouse gas
20 reductions, although not by any means the majority.

21 But it is important that in pursuing this that
22 the Board take care and maximize the public health
23 benefits. There is tremendous opportunity to either move
24 forward in a way that does not maximize these health
25 co-benefits or in a way that doesn't. So it's important

1 that many of these options be studied.

2 Right now, the California Department of Public
3 Health and the Air Resources Board have convened a public
4 health working group that I've been participating in. And
5 it does seem like many of these options are to be studied
6 in a health impact assessment. I think it's important
7 that this study be thorough and that this study accurately
8 convey to the Board the choices that you'll have about
9 what are the effects of reducing offsets from 49 percent
10 to a more appropriate level and a level that may provide
11 health benefits to communities that would otherwise see
12 those benefits outsourced outside the state of California.

13 That's a serious health concern that while the
14 greenhouse gas emissions around the world may go down,
15 communities won't actually see the toxic air contaminants
16 that they're exposed to on a daily basis in the
17 neighborhoods. They won't actually see those reductions
18 in their neighborhoods. So it's important that the health
19 impact assessment be real and be informative to the Board.

20 I'm very concerned that in the short time line
21 that we have within a month that that study will even be
22 done in as thorough enough a state to inform your
23 discussion, your workshop at the February Board meeting on
24 offsets.

25 So I do hope that the Board will ask your staff:

1 Will this report be ready for the Board's consideration?
2 And if not, perhaps you should have either a second
3 offsets workshop or postpone that offsets workshop.
4 Either way, please do not make a final decision on offsets
5 before you have the full and accurate information on
6 health impacts. That's a critical piece.

7 Similar concerns exist for the way allowances are
8 given out. That makes a big difference in whether these
9 reductions are real, how these reductions happen
10 throughout the state, and what the associated health
11 impacts or benefits might be. So we also agree with the
12 EAAC in terms of full auction, 100 percent auction, as
13 well as strong consideration for geographic restrictions
14 and trading.

15 For more reference, please look at those written
16 comments and please insist on a strong health impact
17 assessment before you make these decisions.

18 CHAIRPERSON NICHOLS: Thank you.

19 Alex Jackson and then Brian Nowicki and Josh
20 Gruen

21 MR. JACKSON: Good afternoon, members of the
22 Board. I'm representing the Natural Resources Defense
23 Council.

24 First, Chairman Nichols, I'd like to appreciate
25 your injection of a little bit of context and perspective

1 into this program and also for the Climate Champions who
2 have since departed to remind us about why we're all
3 dealing with this.

4 That said, I'm going to be wading into the weeds
5 on four issues.

6 The first is on the cap level. I'd like to echo
7 some of the points made earlier about the need for a
8 strong declining cap. I think there's two reasons for
9 that.

10 The first is really to send a strong market
11 signal early that it's going to be cost effective to be
12 making the investments we're going to need to get at these
13 greenhouse gas reductions. You know, setting a tight cap
14 in the initial period will really facilitate that price
15 discovery and make the price of the allowances meaningful
16 enough where people will be looking at ways to reduce and
17 not simply purchase allowances.

18 And the second is that getting to the end point
19 is not a whole ball game for cap and trade. The earlier
20 we can make reductions, the less warming we're going to
21 see and the less we're going to have to spend on
22 adaptation and all the impacts associated with that.

23 Second point I'd like to talk about briefly is
24 allowance value, which has come up several times before.
25 But, again, I'd like to add my voice to the chorus to pay

1 attention to the EAAC's report. They really put a lot of
2 efforts and careful analysis into their recommendations.
3 And we particularly support their views on 100 percent
4 auction and their general views on distribution of
5 allowance value.

6 The only point I think I'd like to raise where we
7 might differ is their breakdown on how to allocate between
8 giving back to consumers in some way and investment, which
9 is right now roughly 75 and 25 percent. And they do
10 appreciate in the report that maybe a little bit more
11 might need to go towards investment in the initial years.
12 And we think that is true. And perhaps a little bit more
13 than 25 percent is appropriate in the initial years of the
14 program where the market will not really be able to get at
15 some of these cost effective investments because of some
16 the barriers that the transit agencies, the local
17 government representatives have been talking about. So
18 there is a real need in these initial years to be making
19 those investments with the public wealth that generates
20 from cap and trade.

21 And, finally, I'd like to touch on enforcement
22 briefly. I can't really stress enough how important
23 enforcement will be to maintaining the integrity of the
24 cap. And I think at this point any attention that staff
25 and the Board can devote to really crafting the regulatory

1 scheme now will really pay dividends later in terms of all
2 the enforcement that's going to be needed.

3 So finding some simple approaches like a
4 multiplier we've been discussing and we submitted in our
5 comments that really send a clear signal willful
6 non-compliance will never be in the capped entity's
7 economic interest, and it is risky to wait until the end
8 of a compliance period to make those reductions.

9 Thank you for your time.

10 CHAIRPERSON NICHOLS: Thank you.

11 Brian Nowicki.

12 MR. NOWICKI: Thank you, Madam Chair and members
13 of the Board.

14 I'm Brian Nowicki with the Center for Biological
15 Diversity, a nonprofit environmental organization here out
16 of Sacramento.

17 I support previous comments and letters submitted
18 by -- previous comments by Sierra Club and Union of
19 concerned Scientists and have signed onto those letters.
20 I'm not going to recap those here, because what I would
21 say would not be as concise or articulate as what's
22 already been said and put forward in those letters.

23 So I'd like to take my time here to focus on just
24 the offsets portion with the two main points.

25 One is that aside from the need for the strong

1 reducing cap on offsets, there is also the need for
2 recognition that not all offsets are created equal. And
3 that's with regard to both within sectors as well between
4 sectors.

5 And in particular, I've been working on forest
6 offsets and using in a situation where there are very
7 loose restrictions/limitations on the number of offsets
8 flowing as we see in the current draft as well as no
9 restrictions on the geographic origin of those offsets, we
10 are in a position where we could see much lesser offsets
11 brought into the program than we could generate here in
12 California under California's laws. And it would be an
13 improvement in our own state forests.

14 In particular, talking about the forest offsets,
15 I would like to point out that you last saw me come before
16 you on this issue in the September meeting of the Board
17 where I brought comments, brought opposition to the
18 adoption of the forest project protocols that were the
19 methodology by which carbon credits would be assigned in
20 the forest sector.

21 At that time, I raised a number of questions
22 about clear cutting projects being included under the
23 forest sector as offsets -- as carbon credits and
24 eventually as offsets. At that time, there was discussion
25 among the Board and questions to the staff of ARB of

1 whether they would have another chance -- whether the
2 Board would have another chance to address the concerns
3 around clear cutting and other concerns about forestry
4 before those methodologies were adopted into the
5 compliance mechanism of the cap and trade regulation.
6 They were assured by Executive Officer Terry they would
7 have another chance. And, yet, in the preliminary draft
8 rag, we saw language that said they intended to roll the
9 voluntary action methodologies directly into the
10 compliance mechanisms.

11 I would like the Board to pay particular
12 attention to that methodology, especially given the
13 discussion and the attention you've already given.

14 CHAIRPERSON NICHOLS: Thank you.

15 Josh Gruen and Patty Senecal and Alan Osofsky.

16 MR. GRUEN: Good afternoon, Madam Board and
17 Commission and staff. Thanks for the opportunity in
18 letting me speak.

19 I'm Josh Gruen, the Director of Operations for
20 CMI. We have a family of companies, 800 owner/operators
21 and contractors that work with our trucking groups in the
22 state of California.

23 We're opposed to the transportation related goods
24 movement and placed under a declining cap. Goods movement
25 sector cannot survive a complication of increased utility

1 rates, spikes, and higher California diesel prices, as
2 well as new trailer efficiency requirements. Placing
3 transportation under the cap and adopting a low-carbon
4 fuel standard and requiring utilities to use renewable
5 energy cost increases all of our costs.

6 We ask that you not consider placing
7 transportation under this cap and that you return to the
8 public process of the low-carbon fuel standard into a
9 process that includes the end users.

10 I have spoken now at three public workshops.
11 This is my fourth. Not only have our questions not been
12 answered, but the study due in 2007 to show if CARB diesel
13 is any cleaner than national fuel has yet -- the study is
14 more than two years old and it's overdue. And as yet the
15 fuel has been -- yet a new fuel now is being adopted
16 without testing, without proving the recipe. As we've
17 said in previous, the fuels in the past weren't tested on
18 diesel. We'll have a colleague, Allen, with Rogers
19 Trucking, our group, we'd love to test some of these
20 projects for you and see how they effect the diesels.

21 As you guys know, the trucking and the compliance
22 of the new trucks have completely changed. We now have a
23 whole group of liquid natural gas trucks. We've purchased
24 300 of them and are utilizing them. We have new diesels
25 we don't know how this will affect. We have also 1100

1 transportation professionals signed -- are sent to you
2 that are opposed to this regulation.

3 Appreciate your time today. Thank you.

4 CHAIRPERSON NICHOLS: You've kind of thrown a
5 whole bunch of stuff here, and it's mixed up in my mind.

6 I get it you don't want to be under the cap and
7 trade rule. I got it you've got a beef with CARB diesel
8 and you want it tested.

9 MR. GRUEN: Yes, ma'am.

10 CHAIRPERSON NICHOLS: So what's the deal on that?

11 MR. GRUEN: Meaning that --

12 CHAIRPERSON NICHOLS: No, I'm not asking you. I
13 was speaking to staff.

14 MR. GRUEN: Sorry.

15 CHAIRPERSON NICHOLS: That's okay.

16 STATIONARY SOURCE DIVISION CHIEF FLETCHER: A
17 number of years ago, there was a Calderon bill that
18 authorized the testing of California diesel fuel versus
19 federal diesel fuel, but there was no appropriation of
20 money until fairly recently. So once we got the
21 authorization, we did start. We have done a considerable
22 amount of work already. There's been several public
23 workshops on that issue.

24 CHAIRPERSON NICHOLS: Have you been attending
25 these public workshops on the issue? So you're aware

1 testing is going on in response to your desire to see that
2 happen?

3 MR. GRUEN: We've been aware testing has gone on
4 for a long time. We haven't seen the completed studies
5 and haven't seen the ability to do it in a timely manner
6 before we start taking on additional processes.

7 CHAIRPERSON NICHOLS: I understand your attempt
8 to make the linkage here. I'm just trying to find out
9 what the facts are.

10 MR. GRUEN: Trying to help.

11 CHAIRPERSON NICHOLS: So what are we expecting in
12 terms of getting this study done?

13 STATIONARY SOURCE DIVISION CHIEF FLETCHER: I'd
14 have to check and see what the final timing is on it.

15 I think we're pretty close to wrapping up the
16 testing. We have put out preliminary results so far that
17 do indicate that the California fuel is cleaner than
18 federal fuel. But we do need to wrap the study up. I'll
19 let you know.

20 CHAIRPERSON NICHOLS: Sounds like we've got an
21 eager audience out there awaiting it. So thank you.

22 Patty.

23 MS. SENEAL: Thank you. Represent the
24 International Warehouse Logistics Association, which are
25 three PLs distribution centers, Harbor Truckers for

1 Sustainable Future from L.A. Long Beach, and I'm also part
2 of the Western States Goods Movement Alliance.

3 We are opposed to having transportation with
4 trade-sensitive transportation put under a declining cap.
5 Putting transportation under a cap and mandating a
6 low-carbon fuel along with that is a double count for that
7 in the emission reductions and the goods movement sector.

8 In addition, the complications in the piling on a
9 lot of rules where the utilities and the refineries are
10 going to have additional cost upstream will trickle down
11 to its end users. End users meaning transportation,
12 trucking, warehousing distribution, et cetera. And we are
13 in a very trade-sensitive environment now and we're very
14 concerned about the piling on of the effect of all of this
15 cost to us.

16 Low-carbon fuel is a big cost factor for us. And
17 there is a white paper by the American Trucking
18 Association, a study about biofuels. And be happy to give
19 staff a copy of that, that is looking at biofuels being an
20 additional dollar per gallon with extended federal excise
21 tax; and without it, two dollars a gallon. Be happy to
22 share that with staff.

23 We would like to recommend expanding offsets to
24 25 percent from the four percent so that investment is
25 made in distributed energy within California and then, of

1 course, our nation to help lower cost.

2 I think Professor Sperling brought up a great
3 point, what really will impacts be. And again that is the
4 question that as end users having to work through these
5 regulations, what will the cost of our fuels be? Will it
6 be on-road tested? What is the reliability of the supply
7 and vehicle performance? Are we actually going to get
8 more emissions/less emission reductions and the per
9 gallon -- we know with diesel particulate filters our fuel
10 economy actually went down. So again reliability of our
11 engines, et cetera. And so these are really the questions
12 we're asking as end users about the impacts.

13 And again we're opposed to having transportation
14 for trade-sensitive transportation put under declining
15 cap.

16 Also for the record, we did submit comments
17 submitted on the 11th.

18 CHAIRPERSON NICHOLS: Alan Osofsky and Derek
19 Walker and Michael Endicott.

20 MR. OSOFSKY: Thank you very much for letting me
21 speak.

22 My name is Alan Osofsky, safety and compliance
23 manager for Rogers Trucking in San Leandro, California.
24 We have 150 employees, teamster drivers. We've dumped a
25 lot of money in the local economy; employee taxes, we buy

1 tires, so on, so forth. But our future is questionable.

2 The previous two speakers stole my thunder, but
3 I'll reiterate it anyway. We are opposed to placing
4 transportation and goods movement under the CARB cap and
5 trade rule. Again, we believe it's double counting and
6 double cost and causes leakage out of the state of
7 distribution centers, which we service.

8 I'd like to comment on the low-carbon fuel
9 standard. I'd hate to see that we'd be coming under both
10 regulations. We have personal experience with the
11 reformulation of a fuel back in 1994. Twelve of our
12 trucks went down when the diesel fuel pumps went bad. The
13 State was generous in helping us replace those, and we
14 appreciate that. Based on the Bill AB 3290 reimbursed
15 diesel owners. I have a copy of that here. But it didn't
16 compensate us for the down time.

17 But my point here is on the low-carbon fuel
18 standard, we'd like formal testing to be done. I've
19 offered our fleet as a test fleet at three different
20 meetings that I've attended between 2008 and 2009 and that
21 still stands.

22 Again, I'll summarize. We request that you not
23 place transportation under the cap and also allow offsets
24 of up to 25 percent, and hopefully that will include more
25 people and businesses in the program and bring the cost

1 down for everybody.

2 Thank you very much.

3 CHAIRPERSON NICHOLS: Thank you.

4 Derek Walker from EDF.

5 By the way, my machine was buzzing up here,
6 because there was a news alert from Washington that the
7 United States through Todd Stern, our climate negotiator,
8 has made a commitment at the U.N. that the U.S. is going
9 to reduce its greenhouse gas emissions about 17 percent
10 below 2005 levels in the next decade. So by 2020, a 17
11 percent reduction below 2005.

12 So just a point I think. I guess the President
13 is following up on his commitments and as of what he said
14 last night, but also just a reminder that there is a
15 context here that we're all working in. Thank you.

16 MR. WALKER: And this is Derek Walker, Director
17 of Climate Program and EDF, and certainly a reminder
18 California's leadership has stimulated a lot of aggressive
19 action and collaboration among countries and other states.

20 Cap and trade is the most effective tool that we
21 have for climate policy to generate quick reductions at
22 the lowest cost. And so EDF strongly supports CARB's
23 inclusion of the Cap and Trade Program as a core element
24 within AB 32 implementation.

25 We certainly appreciate the comments not only

1 earlier but just now by Chair Nichols about the context
2 here. The risk of California going off track right now,
3 especially when in D.C. things are not looking so
4 positively, California is -- the light is shining on us
5 and our actions carry tremendous weight. So this Board's
6 support for CARB staff and the process is very vital. And
7 we thank you for that.

8 I want to mention a couple of specific things
9 about why the Cap and Trade Program and the other policies
10 that ARB is working on are so vital.

11 You know, climate policies like the Cap and Trade
12 Program and the renewable energy standard are really the
13 backbone of innovation, promoting innovation, and also
14 helping with our economic recovery. And I know that you,
15 the Board, has seen a lot of materials that outline those
16 positive economic impacts. So I don't need to really go
17 over much of that right now.

18 In terms of the specific good ideas in the PDR,
19 expanding the program to include transportation fuels and
20 natural gas in the first part of the program is an
21 extremely positive development. We do urge the Board to
22 keep that in there. This makes the market larger. This
23 lowers the cost strain on other regulated entities. But
24 it also drives down an important part of the emissions
25 portfolio of California.

1 We also -- EDF strongly supports the inclusion of
2 offsets in the program. We do not have concerns about the
3 levels that CARB is proposing. We believe that there are
4 many examples of offsets promoting innovation in things
5 like sustainable agricultural and forestry projects,
6 waste, and other sectors.

7 And just to kind of address some of the comments
8 that we've heard earlier, this is a conversation about cap
9 and trade, but cap and trade is but one of the package of
10 policies that ARB is demonstrating leadership on. So
11 there are going to be lots and lots of benefits from ARB's
12 AB 32 implementation on a range of issues from criteria
13 pollution to energy sector innovation and investment. And
14 I would just urge everyone to keep that in mind and not
15 focus so much on cap and trade as if it's the only thing
16 ARB is doing.

17 Thanks a lot.

18 CHAIRPERSON NICHOLS: Thank you, Mr. Walker.

19 Michael Endicott and then Edwin Lombard. And
20 those are the last names on my list. So if you were
21 planning to speak and your name hasn't been called, please
22 make sure you turn in a card. Thank you.

23 MR. ENDICOTT: Good afternoon. My name is
24 Michael Endicott, Resource Sustainability Advocate for
25 Sierra California.

1 I'm going to go to one level below what Mr.
2 Magavern talked about, which was the overall design of
3 this program and look at the offsets component.

4 Only the laws of nature are immutable. Gravity
5 will do what gravity does all the time. If we don't put a
6 cap on our greenhouse gas emissions, we will get to the
7 tipping point. And the laws of man, which we're trying to
8 construct here, are often more a statement of intent.
9 Just because you put up a speed limit sign, it can effect
10 behavior, can get people to slow down, but doesn't mean
11 they'll actually drive 65 or 55 or 20.

12 So it's important that you pay attention to the
13 big details, but also the small components of your
14 program, include the offset program.

15 And to steal Mr. Nowak's phrase, not all
16 offsets are created equal. Within even offset programs,
17 there are some that will get you actual certain
18 reductions, and those should be prioritized and launched
19 first.

20 Secondly, you could have the kinds of offsets
21 that might actually give money to disproportionately
22 impacted communities to purchase energy-efficient
23 refrigerators or air conditioners. Would also help reduce
24 emissions, because you wouldn't need to have that
25 increased power demand.

1 On the lowest of the totem pole, you get to
2 carbon sequestration. That one has the most presumptions,
3 the most modeling, the most assumptions built into it. So
4 in that, not all of them are created equal either. Some
5 of them will have some co-benefits. So that if we don't
6 get as much carbon reduction as we had planned, at least
7 we're getting something good. Some have bigger risks by
8 the practices, by encouraging those kinds of business
9 practices, say, that operate on the edges of regulatory
10 scheme that also push the boundaries of nature's carrying
11 capacity.

12 Within that, one particular one concerns us very
13 much. Mr. Nowicki referred to that. We do not think you
14 can clear-cut your way out of climate change and we ask the
15 Board not to try to do that at least in the first two
16 cycles of your role out of this program. We need to take
17 time to revisit that protocol.

18 So going back up and to finish this to give you a
19 little extra time as you close up, remember, please, that
20 all offsets are not created equal. And we really
21 shouldn't try to clear-cut our way out of climate change.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Edwin Lombard.

25 MR. LOMBARD: Thank you, Madam Chair and Board

1 members and staff.

2 I'm here today representing the California Black
3 Chamber of Commerce. Over the last year-and-a-half, I've
4 made public comments in front of the Board here a number
5 of times about the fact that we're alarmed by the
6 projected billions of dollars in costs of the
7 implementation of AB 32.

8 We're here today because we're even more alarmed
9 since the release of EAAC's recommendations relating to
10 the cap and trade proposal. The proposal projects higher
11 prices in electricity, natural gas, gasoline, and
12 recommends billions of taxes and compensation for job loss
13 and higher energy costs related to AB 32 seemingly before
14 factoring in the cost of the LCFS, which was not discussed
15 today. Cap and trade and LCFS are programs with cost
16 implications that will overwhelm all Californians, but
17 will disproportionately affect minority small businesses.

18 One cannot be considered without examining the
19 other and its impacts. We have seen cap and trade is
20 frightening, but even more frightening when you haven't
21 seen the cost of LCFS.

22 The rest of the nation and the world are taking a
23 more fiscally responsible approach to climate change and
24 carbon reduction. California could drastically reduce its
25 carbon and greenhouse gas emissions and still not put a

1 dent into world global warming.

2 Unemployment among African Americas in California
3 is over 15 percent higher than any other state group.

4 Before driving figures higher, we strongly
5 encourage that you get all the facts of the cost of
6 implementing cap and trade and the low-carbon fuel
7 standards and make sure that we're aware of the cost that
8 we're going to be facing in order to make this
9 accomplished.

10 CHAIRPERSON NICHOLS: Excuse me. I just want
11 to -- you made a reference to some other country that you
12 think is doing a more fiscally responsible job.

13 MR. LOMBARD: I said the rest of the United
14 States and the world are taking a more fiscal approach in
15 implementing reduction of greenhouse gases. I mean, you
16 just told us that the President is going to take a 17
17 percent reduction based on 2005.

18 CHAIRPERSON NICHOLS: From 2005.

19 MR. LOMBARD: Right. To me, that's a more fiscal
20 approach than what we're trying to get done.

21 CHAIRPERSON NICHOLS: I see. I didn't understand
22 what you meant. Thank you.

23 All right. Are there other witnesses on this
24 item?

25 I think one thing we've learned, if nothing else,

1 is the price of leadership is a lot of concern, if not
2 dissension on the part of people that need to come along
3 and be a part of this program.

4 Clearly, a number of groups are here today primed
5 to talk about low-carbon fuel standard, and we're unhappy
6 that we didn't get to talk about the low-carbon fuel
7 standard today. But that was not on the agenda. And it
8 will be on the agenda at some point in the future. But in
9 the mean time, we're expecting an update on that from the
10 staff. So maybe we can hear from you about what you're
11 planning to do with that.

12 STATIONARY SOURCE DIVISION CHIEF FLETCHER: We
13 intend to give you and the rest of the Board members a
14 memo on the status of where we are in the low-carbon fuel
15 standard. We expect to have that in the next two to three
16 weeks. That memo will be made public and will summarize
17 the status of all the direction that the Board has given
18 us where we're at.

19 We then intend to come back in the June/July time
20 frame with an update as well as any recommendations that
21 we have for regulatory changes to the LCFS. And, of
22 course, we'll be back at the end of the year for another
23 update.

24 CHAIRPERSON NICHOLS: Okay. So the Board when we
25 adopted the rule obviously set in motion a lot of

1 activity. But as of yet, decisions on many points really
2 are awaiting further work. And so we've got to take a
3 look at this report and see where we are.

4 STATIONARY SOURCE DIVISION CHIEF FLETCHER:

5 Correct.

6 CHAIRPERSON NICHOLS: Yes, please.

7 BOARD MEMBER TELLES: I wonder if you can maybe
8 research and give us some information on what other
9 jurisdictions have done with their allocations in the
10 public health sector and how successful they've been, if
11 Europe has done anything, if the east coast plan has done
12 anything. Because I think that's important, but it's
13 rather nebulous. And if there is any practical things
14 that have been done out there and some of the areas that
15 have already started cap and trade.

16 CHAIRPERSON NICHOLS: I think that's in the
17 public health analysis, isn't it? Or no? Are they
18 reviewing that as part of the analysis?

19 PROGRAM EVALUATION BRANCH CHIEF KENNEDY: I'm not
20 certain whether that was actually part of the plan for the
21 analysis already. But I do think that it is a good idea
22 to take a look at that if we weren't already -- if that's
23 not already in progress, I think we can do that.

24 CHAIRPERSON NICHOLS: If you could get a report
25 back to Dr. Telles. And I think all the Board members

1 would be interested to know what evidence there is out
2 there of any examples of this kind of an approach.

3 Mayor Loveridge.

4 BOARD MEMBER LOVERIDGE: Just three comments sort
5 of from 40,000 feet.

6 At the local level, one of our mantras is KISS,
7 keep it simple, stupid. This is the other end of the
8 continuum in terms of complexity and being comprehensive.

9 I think as we approach this the problem is that
10 it's seen as zero sum. People see themselves as losing
11 rather than winning in this effort. And I think for
12 effective presentation, we have to translate what we're
13 doing to the benefits for the economy, the benefits for
14 quality of life, for why this will enhance California's
15 economy, will enhance what happens to individuals.

16 Third comment, this is now as mayor of the city
17 of Riverside, a city which sees 30 percent increase
18 according to our public utility director, really
19 representing five million people in southern California
20 from SCPPA is 30 percent increase in its utility rates is
21 not something that five million people will except.

22 CHAIRPERSON NICHOLS: Well, I think from the
23 40,000 foot level, you can say global climate change is
24 real. And most people understand that, as science has
25 been telling us for quite a long time now.

1 On the other hand, it's not as present in their
2 minds as other things they're more worried about. And
3 most of the changes, if not all of the changes, that we
4 see coming as a result of having an effective
5 implementation of AB 32 or any other Global Solutions
6 Act -- I think is better to call it by its name, I agree
7 with that -- are things that most people recognize are
8 going to happen and need to happen anyway. The transition
9 to cleaner fuels, the transition to a more
10 energy-efficient lifestyle, the transition to cleaner
11 electricity, these are things that we know we need to do
12 for lots of reasons. People have been talking about it
13 for years, for the economy, for energy independence, for
14 national security, and for the environment, of course.

15 So global warming is just kind of one more reason
16 to do a lot of things that many people I think their
17 consensus is need to do anyway. I don't think there's
18 anybody who's advocating that we burn more gasoline or we
19 drive more miles or that we use energy less efficiently.

20 The issue is the transition and how fast it's
21 going to be and how we're going to pay for it, how we
22 generate the money to pay for it.

23 I think the irony of the cap and trade discussion
24 is that the people who invented this concept were looking
25 for a way to generate money to help with the transition.

1 The idea was instead of regulating people and saying use
2 less, burn less, whatever, the idea was that by putting a
3 cap on the bad stuff, which is the carbon, and then
4 selling the allowances by auction or whatever, that you
5 would generate resources that would then allow you to do
6 investments in good stuff that everybody wants.

7 But when people we actually start to look at the
8 fact that they might be the one who has to buy the
9 allowances or potentially at least initially deal with the
10 cost, then the fear factor takes over. And the natural --
11 in a democracy, we all want to be winners and don't want
12 to be the ones to have to pay the cost.

13 So this is going to be a tough balance. It
14 really is.

15 I think the one thing we don't have the luxury of
16 doing is nothing. We could change the program. We could
17 fix it in various ways. We can do something different, if
18 we don't want to do cap and trade. Although every time
19 I've met with a group of business people and asked them,
20 you know, to work through what the options are and is
21 there something else they would rather see happen than cap
22 and trade, there's not a program that people really like a
23 whole lot better. But they do want to be -- they want to
24 make sure that somehow it doesn't cause too much
25 disruption right away. And I think we have to take that

1 into account. There's no question about it. We have to
2 be mindful of that.

3 Yes, sir.

4 BOARD MEMBER ROBERTS: If I dare make a comment,
5 but just sitting here listening, when we started out, it
6 was we were going to look at those businesses or agencies
7 that were emitting these greenhouse gases. And the whole
8 idea was instead of them reducing was to be able and find
9 the lowest cost ways to remove or to supplement, to trade,
10 in effect.

11 We've come a long way from there, and we're
12 creating a very complex model now. And I think people are
13 having trouble understanding it. And I think the
14 implications I think we're getting into -- we're already
15 starting to see the line up of people. We heard that
16 cities need the money to do their planning and that other
17 groups need it because they're going to be unfairly
18 impacted.

19 This thing is going in a direction that at least
20 wasn't clear when we started and sounded much simpler.

21 And I remember the discussion maybe having a
22 carbon tax instead. So it's all starting to sound very
23 simple in comparison to the issues that are being raised.

24 And I have some pretty strong concerns, because
25 this is not how high most people's radar scopes. It's

1 well behind the concerns over the economy and jobs. And I
2 think, you know, we live this every day, but there is a
3 world of people out there that are faced with issues that
4 are very different.

5 CHAIRPERSON NICHOLS: Oh, absolutely.

6 BOARD MEMBER ROBERTS: And, you know, I will sit
7 and listen, but I have some concerns from the 40,000 foot
8 level where this is going and the costs and the
9 complexities and perhaps the backlash.

10 CHAIRPERSON NICHOLS: Well, I think there really
11 needs to be a better way of describing what some of the
12 differences are and the assumptions that people are
13 making.

14 On the other hand, you see something that says a
15 three cents increase in the cost of a \$20 meal in 2020.
16 And that doesn't take into account any of the possible
17 things that that business might do that would actually
18 benefit them, like putting in LED lights on their exit
19 signs or, you know, buying a more efficient refrigerator
20 or something, with help from their local utility.

21 And then, on the other hand, you hear about
22 impossibility of people operating their businesses.
23 There's something fundamental in the way these programs
24 would work that people are disagreeing about, and we need
25 to have a better way of at least articulating why one view

1 is the one that ought to prevail over the other before we
2 make a decision. And that is something that I think we
3 have not really seen. That's not what the economists do.
4 This is a much more down-to-earth kind of discussion that
5 we really need to be able to have.

6 So I share your concerns about the level of
7 discord that's out there right now.

8 Okay. I think we have no action to take. This
9 was intended to be educational. It has been educational.
10 Very much appreciate all the people who have come and
11 taken the time to help educate us.

12 STATIONARY SOURCE DIVISION CHIEF FLETCHER: This
13 is me.

14 CHAIRPERSON NICHOLS: Yes, you.

15 STATIONARY SOURCE DIVISION CHIEF FLETCHER: I
16 just want to close a loop here. The AB 679 report on the
17 federal testing versus the California testing on the
18 fuels, we expect to get the final report in May. We still
19 have some testing to do, but that's in May. There is a
20 work group meeting actually on February 4th. So I just
21 wanted to mention that increase the gentleman would like
22 to --

23 CHAIRPERSON NICHOLS: I think the gentleman who
24 was asking about that left right after he testified, but
25 maybe you can get the information to him. Thank you.

1 We'll take a five-minute stretch break and resume
2 our final action, which is a report and update on the
3 Board's enforcement program.

4 (Thereupon a recess was taken.)

5 CHAIRPERSON NICHOLS: We're getting ready to take
6 up our last item of the day on ARB's enforcement program.

7 I'm going to give Mayor Loveridge credit for
8 something that he said to me after the meeting broke up.
9 It's just a good reminder for all of us. And I would like
10 to have staff imprint this on your palm or your forehead
11 or something which is that what Obama said last night
12 what -- the President said last night about the country
13 that figures out this energy game is the country that's
14 going to be a winner is exactly what we're talking about
15 in California. It's why the Legislature passed the Global
16 Warming Solutions Act in the first place. It's the
17 success we've already had so far with our energy programs
18 and our environmental programs that have made the state
19 able to grow and retain its natural resources and
20 environmental quality at the same time.

21 And we're doing what we should be doing to build
22 on that success, and we believe that it's to our advantage
23 economically to be doing it. The Legislature would have
24 never have passed AB 32 in the first place if we weren't
25 convinced by being ahead of the game we were going to be

1 attracting investment here. It's already proven to be
2 true. But we cannot ever even talk about this topic
3 without mentioning those facts and the benefits that we
4 see in AB 32.

5 We're living in a time of bad budgets. We know
6 that the job picture is bad. We know the economy is bad.
7 We are the bright spot in all of that. We are the
8 solution, not the problem. Just need to remember that.

9 So thank you, Mayor Loveridge, for reminding me
10 when we were taking our break.

11 The next item is an update on ARB's Enforcement
12 Program. As I mentioned at the July Board meeting when we
13 were in San Diego, the Air Resources Board's then
14 relatively new Chief Counsel had already started working
15 with our Enforcement Division on a review of our
16 Enforcement Program, because it was one of the things I
17 had asked her to do when she came on board.

18 With a multitude of new regulations that have
19 been passed on a whole range of various subject areas, the
20 Air Resources Board needs to be sure that those we
21 regulate know about the requirements, that the
22 requirements are enforced fairly, and that the enforcement
23 process is transparent.

24 And, indeed, in terms of public understanding and
25 support for programs, one of the things that I've learned

1 over the years of working in this area is that enforcement
2 is key to how the public perceives the program. They need
3 to know that it's happening. They also need to know that
4 it's being done fairly.

5 In open comment periods at recent Board meetings,
6 a new industry coalition emerged and is voicing concerns
7 about the Board's Enforcement Program. So that was a good
8 opportunity for direction to staff to formally begin a
9 process to review these concerns and to invite the public
10 in as well.

11 The Air Resources Board reached out through an
12 open forum to solicit ideas about how to improve our
13 Enforcement Program. And I stepped into a small portion
14 of the meeting that took place here in Sacramento, and I
15 was very pleased at the diversity of organizations that
16 had taken the time. And we really do appreciate all of
17 those who gave us their views as part of this process.

18 So I'm now going to turn to Mr. Goldstene to
19 present the results of the process so far.

20 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
21 Nichols.

22 As you noted, we've undertaken extensive outreach
23 efforts, and we're going to present our preliminary
24 efforts today.

25 There are a number of ideas that we've received,

1 including the recommendation to develop penalty guidance
2 and other measures to increase the transparency of our
3 Enforcement Program.

4 Interested parties are encouraged to provide
5 their comments today in response to what we present to you
6 today. We look at this as an iterative process and would
7 like to continue to capitalize on the valuable dialogue
8 that this process has inspired so far. Staff will
9 continue to evaluate new comments as they come in, and we
10 plan on holding another public workshop and report back to
11 the Board in the next few months.

12 I do want to make one specific observation. All
13 though most commenters address the issue of how to enhance
14 and improve our Enforcement Program, few commenters have
15 been rather persistent in using this process as a platform
16 to resolve their own current pending violations. Our
17 view, of course, is that this approach is
18 counterproductive, and we hope that that effort will stop
19 because we really want to focus on the general policies.
20 This is not the forum to handle individual violations that
21 are under investigation.

22 Jim Ryden, Chief of ARB's Enforcement Division,
23 will brief the Board on the status of our efforts to date.
24 We were guided in our review by the attorney general's
25 office staff, and today Deputy Attorney General Will

1 Brieger is here and he'll make some brief comments after
2 Mr. Ryden concludes.

3 Jim will start by responding to the comments from
4 the -- he'll give an overview of where we are and respond
5 to other comments that have been made in Board open
6 sessions over the last few Board meetings. And then we'll
7 be available to answer any questions you have.

8 CHAIRPERSON NICHOLS: Okay. Thank you. So this
9 is a policy review. We're not talking about getting into
10 the specifics of individual enforcement cases.

11 EXECUTIVE OFFICER GOLDSTENE: That's right.

12 CHAIRPERSON NICHOLS: Okay. Good. Because I
13 really don't think this is the place to be doing that.
14 Okay. Thank you.

15 Let's begin.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 ENFORCEMENT DIVISION CHIEF RYDEN: Thank you.

19 And good afternoon, Chairman Nichols, Board members.

20 I'm Jim Ryden, Chief of ARB's Enforcement
21 Division.

22 --o0o--

23 ENFORCEMENT DIVISION CHIEF RYDEN: We've worked
24 closely with the attorney general's office to review the
25 way we conduct enforcement at the ARB to ensure that it

1 for violations is established in statutes and regulations
2 we enforce. It is the typical standard in environmental
3 laws across the country, because environmental violations
4 involve ongoing business activity and are not usually
5 committed intentionally or even negligently.

6 Under strict liability, a violator's intent helps
7 determine the amount of penalty. The coalition commenters
8 urged ARB to adopt a system in which violators could avoid
9 strict liability. This would put the ARB out of step with
10 most environmental laws and leave many violations
11 unpunished.

12 --o0o--

13 ENFORCEMENT DIVISION CHIEF RYDEN: The next
14 comment you heard from the new coalition urged ARB to
15 require mandatory administrative hearings, instead of
16 following the current ARB practice of working with
17 violators to reach mutually agreeable settlement based on
18 the facts and the law of each case. Allowing violators to
19 invoke mandatory administrative hearings instead of
20 working with us to settle cases would increase both
21 settlement costs and the time it takes to reach
22 settlements. Both would result in fewer violations being
23 addressed.

24 In addition to being long and costly, after an
25 administrative hearing, both ARB and the violator have the

1 ignore other violations or impose nominal penalties.

2 We do concentrate on emissions violations, but we
3 also prosecute other violations as well. Some coalition
4 commenters argue that the violations of ARB's engine
5 emission certification requirements are simply paperwork
6 violations. We disagree. ARB considers selling vehicles
7 that are not certified to ARB emission standards to be
8 emissions violations. The emissions that come out of
9 uncertified vehicles are illegal. They should not occur
10 at all.

11 The only way to protect our certification
12 programs, the emission standards they implement, and the
13 many law-abiding companies that spend their time and
14 resources to comply with ARB's certification requirements
15 is to impose substantial penalties for certification
16 violations. Since the Health and Safety Code provides
17 these substantial penalties for violations, the ARB is
18 merely reflecting the Legislature's decision.

19 These commenters also urged us to augment
20 enforcement against illegal uncertified products being
21 imported into the United States. We agree and have been
22 seeking to do this for several years, but we have made
23 less progress than we would like in discussions with
24 federal customs officials and others. We are working with
25 the coalition commenters to help obtain the necessary

1 authority to inspect products at the port.

2 --o0o--

3 ENFORCEMENT DIVISION CHIEF RYDEN: You were also
4 told that the ARB should stop enforcing alleged
5 underground regulations, one of the coalition commenters
6 claimed had not been adopted through the Administrative
7 Procedures Act.

8 ARB does not enforce underground regulations. We
9 have our hands full enforcing the regulations this Board
10 adopts. The Office of Administrative Law recently
11 declined to rule on the underground regulation petitions
12 that these commenters, the California Motorcycle Dealers
13 Association and the Sand Car Association, brought to your
14 attention at open sessions of recent Board hearing.

15 CHAIRPERSON NICHOLS: Could I just -- I want to
16 clarify this, because I think this term "underground
17 regulations" sounds like something nefarious, and it
18 probably is. Basically, the idea is an agency would
19 attempt to enforce something that had never actually been
20 adopted as a regulation, is that --

21 ENFORCEMENT DIVISION CHIEF RYDEN: Or should have
22 been adopted.

23 CHAIRPERSON NICHOLS: It should have been adopted
24 through a formal process, but they didn't do it, but
25 they're still trying to go after people for violating it.

1 And to do that would be illegal and it would be a defense
2 if we were to try to bring a case --

3 ENFORCEMENT DIVISION CHIEF RYDEN: It would be an
4 absolute defense.

5 CHAIRPERSON NICHOLS: Then the defendant in that
6 case could say I'm not responsible, because they did not
7 adopt this regulation, and they would win.

8 ENFORCEMENT DIVISION CHIEF RYDEN: That's
9 correct.

10 CHAIRPERSON NICHOLS: Okay. Thank you.

11 --o0o--

12 ENFORCEMENT DIVISION CHIEF RYDEN: Finally, you
13 were told the compliance assistance and training
14 activities currently housed in the Enforcement Division
15 should be transferred away; people are allegedly reluctant
16 to interact with ARB enforcement staff.

17 Over the years, we have trained thousands of
18 people from industry, academia, government agencies, other
19 organizations, and members of the public and have never
20 heard this concern expressed. In fact, our training is
21 the model for other states and nations and other
22 countries. Enrollment is, in fact, growing.

23 For example, in 2008, we trained about 4,000
24 people. In 2009, we trained almost 9,000 people.

25 Also, clients appreciate getting information from

1 the enforcement perspective. The ARB has other compliance
2 assistance programs that it's conducted by, for example,
3 the Ombudsman, other ARB staff through toll-free hotlines,
4 websites, problem resolution, program implementation, and
5 financial incentives.

6 --o0o--

7 ENFORCEMENT DIVISION CHIEF RYDEN: ARB brought an
8 action against individuals selling sand cars. Sand cars
9 are essentially off-road dune buggies with extremely large
10 engines that were not certified to ARB emission standards.

11 After the sand car settlement was entered, an
12 individual complained to the Board. In response, we
13 opened an investigation into the allegations you heard.
14 This investigation is ongoing. But to date, the
15 allegations have not been substantiated.

16 Contrary to what you heard, we do give people
17 detailed explanations of how their penalties are
18 calculated. We issue citations, notices of violations,
19 and penalty evaluations based on the penalty amounts and
20 factors established in law, such as harm the violation
21 caused, how long it lasted, what the violator did to
22 correct, and the financial burden the penalty would place
23 on the violator.

24 --o0o--

25 ENFORCEMENT DIVISION CHIEF RYDEN: In summary,

1 right now I'd like to summarize the other comments we
2 received and ways we are addressing them.

3 We always seek to improve the Enforcement Program
4 and these proposals came out of outreach efforts recently
5 taken in your direction. These outreach efforts have been
6 quite productive, thanks to the high level public
7 participation.

8 We'd like to think that the public's outstanding
9 response was due to ARB's outreach abilities, but there is
10 something bigger in play here. ARB's Enforcement Program
11 is receiving a great deal of interest lately because of
12 the ambitious regulations this Board has adopted. These
13 regulations will now impact industries and individuals who
14 have never before been subject to ARB compliance
15 obligations.

16 Based on these comments we received, now is an
17 excellent time to increase our transparency of what we do,
18 provide additional compliance assistance, especially to
19 the new regulated companies and individuals, and to
20 augment our efforts in environmental justice communities.
21 We look forward to continuing this dialogue.

22 Before I present the specific actions we are
23 taking, I would like to briefly summarize our outreach
24 activities.

25

--o0o--

1 course and, if anything, seek to strengthen our programs
2 and laws we enforce.

3 Some comments included many of the comments you
4 have heard in the open comment period at recent Board
5 hearings, and sought changes that we believe would have
6 the effect of weakening both our program and these laws.

7 These comments were not widely supported,
8 however, and they relate to issues some of the speakers
9 have raised in ongoing enforcement litigation with us.
10 I've already summarized these comments for you and our
11 thoughts on them, so I'll not repeat them here.

12 --o0o--

13 ENFORCEMENT DIVISION CHIEF RYDEN: The main area
14 of consensus among the commenters is to increase the
15 transparency of ARB's Enforcement Program. Again, these
16 concerns are understandable, because the new ARB
17 regulations will affect people who previously were not
18 subject to regulation by ARB and are unfamiliar with the
19 ways we do business. We think many of these comments have
20 merits and are implementing them in several ways.
21 Increasing transparency should speed the resolution of our
22 cases and provide savings to us and the regulated
23 community.

24 Now I would like to discuss the specific actions.

25 --o0o--

1 guidance's.

2 4. An explanation of where ARB penalty moneys
3 are deposited and how they are processed.

4 We think it is important to emphasize to the
5 public that the penalties paid in ARB enforcement cases
6 are deposited in the Air Pollution Control Fund and are
7 spent only after appropriation by the Legislature.

8 5. A list of potential supplemental
9 environmental projects, including instructions for
10 requesting that a project be added to the list.

11 --o0o--

12 ENFORCEMENT DIVISION CHIEF RYDEN: In conclusion,
13 we believe there is much value in this dialogue and we
14 plan to continue in the future. We found it beneficial.
15 We would like to afford people the opportunity to provide
16 written comments on what they heard today.

17 After we review these comments, we plan to report
18 back to you and will hold an additional workshop.

19 I would like to emphasize the ARB's Enforcement
20 Program has three main goals: To foster compliance, deter
21 violations, and create a level playing field for people
22 who have to comply with our regulations.

23 We do our job well, but believe there is always
24 room for improvement. These actions we are taking will
25 promote all of these goals.

1 I would like to thank the Board for the
2 opportunity to provide you with an update. I'm available
3 to answer any questions you may have.

4 CHAIRPERSON NICHOLS: Thank you very much. We
5 don't get to see you often at Board meetings.

6 ENFORCEMENT DIVISION CHIEF RYDEN: We're the only
7 division that doesn't do regulations.

8 CHAIRPERSON NICHOLS: That's right. Thank you.
9 That was actually very helpful. I think probably most
10 Board members never hear about enforcement. Or if they
11 do, it's only in the aftermath.

12 You do. Okay. And what do you hear about
13 enforcement people?

14 BOARD MEMBER BERG: I actually participate
15 sometimes on the other side of the table running a
16 manufacturing company.

17 CHAIRPERSON NICHOLS: So you've been subjected to
18 enforcement. And how was the experience?

19 BOARD MEMBER BERG: Actually, with ARB it was
20 very good. I could give you some DTSC stories, however.

21 CHAIRPERSON NICHOLS: Well, this is a very
22 sensitive area. I don't mean to put you on the spot too
23 much, but I knew you could take it.

24 It really is the place where most people probably
25 experience regulation, and that is those who are regulated

1 by us who need to both see us out there and also see that
2 they know that somebody is cheating one of their
3 competitors that they are going to hear from us and that
4 the laws are going to be enforced. So this is a highly
5 important area.

6 BOARD MEMBER TELLES: Just a question of
7 information.

8 In the enforcement penalties, I think I asked
9 this once before, but do you have a list of the penalties,
10 the size of the penalty for the degree of the violation?

11 I've looked on like a truck website and things
12 like that. If a guy drives without a particulate filter,
13 I don't see any penalties listed.

14 ENFORCEMENT DIVISION CHIEF RYDEN: The penalties
15 actually are specifically found in the Health and Safety
16 Code. That's part of our proposal to put on a
17 user-friendly list of the particular areas of violations
18 and the penalties that follow.

19 On the mobile source side, they're very specific
20 to certain violations. For example, 43151 prohibits the
21 sale of uncertified vehicles. 43016 is the fallback
22 position that covers things like small off-road engines
23 and gas cans.

24 And one of the proposals we had, since not
25 everybody is a lawyer -- and we resolve most of our

1 enforcement actions without lawyers at the staff level
2 with individuals. And like I said, what the initial
3 proposal to do is simplify so that you can find it and
4 everybody else who's interested in finding it can find it.

5 BOARD MEMBER TELLES: On the website I saw there
6 was a recent like \$350,000 penalty for something some
7 entity did. The entity that did that, were they aware
8 there was going to be a \$350,000 penalty for what they
9 did?

10 ENFORCEMENT DIVISION CHIEF RYDEN: I believe that
11 was one of the ones for the periodic smoke inspection
12 program. That's a program that's been on the books for
13 well over ten years. We've done extensive outreach in the
14 area and we conduct regular inspections. They're
15 notified -- actually in the DMV truck drivers handbook it
16 explains certain aspects of the requirements of the
17 periodic smoke inspection program.

18 That program is essentially like smog check for
19 trucks. It requires fleets of more than two to regularly
20 inspect their vehicles that are over four years old.

21 So what we would have done is conducted a regular
22 inspection probably of the fleet facility as we do
23 regularly. And during the audit process, we discovered
24 that, in fact, they didn't have the appropriate records.

25 So what we would have done with that is we

1 acquire the facts. We determine how many vehicles are
2 subject to the periodic smoke inspection program, bring in
3 the alleged violator. We discuss the violation. We show
4 them that, in fact, this is one of the fallback provisions
5 in 4301 -- Health and Safety Code 43016 which provides for
6 a \$500 penalty for each vehicle for each year they didn't
7 do the penalty.

8 So they're fully aware of the basis of the
9 penalty structure. That's probably a lot longer
10 explanation --

11 EXECUTIVE OFFICER GOLDSTENE: But our goal is to
12 make it easier to find that.

13 ENFORCEMENT DIVISION CHIEF RYDEN: That's our
14 first goal is to make it user friendly. Right now, I
15 think, oh, it's in the Health and Safety Code. But I've
16 been a lawyer for a quarter of a century. To me, it's
17 like reading a novel unfortunately.

18 CHAIRPERSON NICHOLS: You need a life.

19 (Laughter)

20 ENFORCEMENT DIVISION CHIEF RYDEN: Actually, I do
21 have a life beyond that. I don't spend time reading the
22 Health and Safety Code all day.

23 CHAIRPERSON NICHOLS: Just checking.

24 We've been laughing about this a bit, but
25 obviously it is an important topic. And I do particularly

1 want to call on John Dunlap representing CEERT.

2 EXECUTIVE OFFICER GOLDSTONE: Chairman Nichols,
3 Will Brieger from the AG's office was going to say a few
4 words.

5 CHAIRPERSON NICHOLS: Before you speak, Mr.
6 Dunlap, if we could hear from our colleagues and frequent
7 lawyer in these matters from the Attorney General's
8 Office.

9 DEPUTY ATTORNEY GENERAL BRIEGER: Good afternoon,
10 Chairman Nichols and Board members. This will be brief.
11 I know it's approaching 5:00.

12 My name is Will Brieger. I'm a Deputy Attorney
13 General specializing in environmental law enforcement.
14 And my years in law enforcement have included time as a
15 district attorney. I briefly filled in at Cal/EPA as the
16 head of the Enforcement Programs, but most of my career
17 has been in the attorney general's office working on a
18 variety of cases, hazardous waste, water quality, and of
19 course air quality.

20 But I'm not here to discuss specific cases. We
21 were recently asked to assist in a more general review of
22 enforcement practices. And appropriately so, as you may
23 know, the attorney general has a duty in the constitution
24 to ensure the uniform enforcement of law throughout the
25 state.

1 And as we proceed through that process, it's
2 clear that the Board's programs have a balance of
3 compliance assistance and a considerable deterrence
4 through enforcement.

5 There is a well-known enforcement maxim that
6 holds that 20 percent of the population will always comply
7 with any regulation. And then there's five percent that
8 will try to evade it. But the majority, that 75 percent
9 that remains, they'll comply also as long as they know
10 that that five percent is going to get caught and
11 punished.

12 Your Enforcement Programs know that. The Board's
13 fortunate to have an unusually experienced long tenured
14 group of savvy enforcement folks. And my office has
15 enjoyed a good collaboration with your staff reflecting,
16 I'm sure, a shared commitment to the air quality and in
17 recent years to climate change issues. And that
18 collaboration has gotten stronger since you hired away one
19 of our better lawyers as your Chief Counsel.

20 But I'm not saying that things can't be improved.
21 Every organization can streamline. Everyone can work a
22 bit smarter. The need is to improve on the ability to
23 educate that majority of people that want to comply with
24 the law and to catch that minority that don't. And that's
25 all in four days a week, most weeks. That can be done.

1 ARB's strength has always been its use of
2 science, experience, and public input to improve the air.
3 And likewise your enforcement programs draw on those
4 resources. The Enforcement Programs look at science, if
5 you will, in the form of research about what works in
6 enforcement. They draw on their experience and actually
7 experience from other agencies, and of course, public
8 input. The suggestions from the October workshop have
9 obviously resonated and are being listened to.

10 California sets high goals for itself. And it's
11 heartwarming to see how many businesses and people share
12 in those goals. We all benefit from the effort and the
13 ingenuity and frankly the real dollars that Californians
14 spend to keep our skies and our lungs clear.

15 Nobody wants those efforts to fail, and nobody
16 wants those investments to be undercut by laggards or
17 cheaters. So the attorney general's office is happy and
18 looks forward to a continued collaboration that's aimed at
19 fair and effective law enforcement.

20 CHAIRPERSON NICHOLS: Thank you. Thank you very
21 much. So are we your favorite client?

22 DEPUTY ATTORNEY GENERAL BRIEGER: Absolutely.

23 CHAIRPERSON NICHOLS: Thank you. I just had to
24 ask anyway.

25 I appreciate that. And appreciate your coming

1 over. Obviously, we depend on you not only for your
2 ability to take cases when we need to take them to court,
3 but also for the feedback.

4 And I had an opportunity to take a look at some
5 of the information that you provided in terms of an
6 overview, and it was really very helpful. I appreciate
7 all the work that the attorney general's office has put
8 into this.

9 Mr. Dunlap.

10 MR. DUNLAP: Good afternoon, Madam Chair and
11 members. It's a pleasure to be with you.

12 I'm not representing the laggards or the
13 scofflaws today, I want you to know.

14 The CEERT Coalition is a 20-trade associations
15 strong coalition from a diverse group of business sectors.
16 Some of them as Mr. Ryden pointed out in his remarks are
17 in tune savvy with being regulated. Others are new, and
18 some are facing pending compliance dates and the like.

19 And there is some concern, and that's why you
20 heard from various members of this coalition -- I think
21 four times in the last seven months of Board meetings.
22 This continues to be a priority for them. They're
23 interested in some reform. They want to see transparency,
24 predictability. We appreciate the overview that was
25 provided by Jim and Mr. Brieger. We support the need for

1 clarity and for consistency and to ensure there's level
2 playing fields.

3 One of the things I intended to say -- I had some
4 prepared remarks. I think I'll stray from them in the
5 short time I have and speak to perhaps a broader issue
6 that might bring home why we think this is so important.

7 The Air Resources Board has enjoyed unprecedented
8 public support and great cooperation over the past four
9 decades it's existed by setting tough, fair-minded, but
10 predictable regulatory goals. And you've noticed
11 particularly these days -- and we heard Madam Chair in
12 some of the commentary you offered in response to
13 industry -- because of the problems in the economy, people
14 are very sensitive to not only additional cost potential,
15 but unknowns through regulation.

16 And in the compliance area, it's important for
17 you to just pause a moment and reflect on it that it is
18 important to be perceived as not just fair minded and
19 consistent, but to provide resources for people to be able
20 to comply. And if they feel as if they're being rough
21 handled or the penalties are too high or they're not clear
22 to them, it is I think a real barrier to enjoying the
23 support that the Board has long had.

24 And so we take this seriously. We're delighted
25 in some of the changes and improvements that have been

1 promised by the staff. We appreciate that. We want you
2 to know that the more closely the Board pays attention to
3 these issues and asks staff to come back and tell them how
4 it's going, we think it will be strengthened. Your Board
5 is hands on and engaged and we only benefit from that.

6 A few things I must object to just briefly.
7 There was some characterization in how the staff looked at
8 some of the comments. And I just want you to know we're
9 not trying to reflect people getting away with things they
10 shouldn't. But at the same time, there needs to be some
11 detailed shared relative to the contents --

12 CHAIRPERSON NICHOLS: I'm going to give you more
13 time, because you're representing a group.

14 MR. DUNLAP: And there's a half a dozen
15 gentleman --

16 CHAIRPERSON NICHOLS: Rather than have them stand
17 up, go ahead.

18 MR. DUNLAP: I won't belabor that point, but I
19 want to focus on it for a moment, that if you can be as
20 transparent as possible, if you can provide a framework
21 that people know what they're facing and that you can
22 allow the framework to be accessed not just on websites,
23 but there can be some detail about units, number of units
24 that violated rules, what the penalties were per unit, the
25 SEPS, and the SEP being a way to contribute some fine

1 money for some mutually agreed upon programs, that I think
2 people will go into that process not so much fearing it
3 and being troubled. Nobody wants to go to court. So when
4 your staff says 99 percent of them settle, absolutely,
5 because people are motivated not to have legal
6 entanglements. I don't think that's necessarily the
7 greatest success statistic. It's people are worried about
8 going into the legal process.

9 So the bottom line is your Board expects quick
10 compliance, cost-effective compliance, fair treatment so
11 people can come out of the experience like Ms. Berg has
12 and her settlement case that she mentioned a moment ago
13 feeling that she was treated fairly.

14 So I would encourage the Board to keep after your
15 staff a bit. They're tough. Ms. Peter came from the AG's
16 office. They have a role to play there. We think this is
17 perhaps a little bit different role and a different
18 approach most times.

19 And so please understand our interest and
20 involvement to try to strengthen the program. We're not
21 trying to guide it, not trying to give people that
22 shouldn't be held to the high level of compliance an out.

23 So thanks for listening. We're going to continue
24 to work with your staff.

25 CHAIRPERSON NICHOLS: Thank you.

1 MR. DUNLAP: And we appreciate your attention.

2 CHAIRPERSON NICHOLS: Thank you.

3 I think the comment that Mr. Brieger made about
4 the need for always to be looking for ways to improve and
5 particularly at any given moment to see what the need is
6 and Mr. Reddens' recognition that we are in the process of
7 regulating people that had previously not had the pleasure
8 of dealing with us before and it isn't always something
9 people look forward to. So, you know, it's like visiting
10 the dentist I suppose.

11 MR. DUNLAP: But the idea of having the website
12 material and the like will be very helpful. And I think
13 you would want people to be able to represent themselves
14 whenever possible to come in and work with the staff and a
15 lot of them are inexperienced in that area.

16 CHAIRPERSON NICHOLS: Well, actually, that's one
17 of the reasons -- as I know you're very familiar with our
18 small business Ombudsman because she worked with you at
19 the South Coast District. And the district had a
20 reputation also that was somewhat scary. And I think part
21 of the work that you did and that she did there was to try
22 to help small businesses understand what they needed to do
23 and figure out how to make the process less scary. And
24 that was very important work.

25 MR. DUNLAP: And I think the idea that somebody

1 suggested that maybe a program be shifted from one
2 operation to another is more about optics than a failure
3 in people. Nobody is suggesting the program is failing,
4 but there has been some examples from clients I've had and
5 industry groups where they're reluctant to share
6 information perhaps or to participate when they know it's
7 being headed by folks from compliance. No matter how
8 public relations schooled they may be, they're concerned
9 about that.

10 CHAIRPERSON NICHOLS: I think there is a
11 difference between training, which I think the enforcement
12 does superlative job of from everything I've seen, and
13 this issue of sort of general compliance assistance or
14 counseling. And those are areas which are maybe sometimes
15 a little bit of a gray area. But I agree with you that a
16 different tone is sometimes called for.

17 MR. DUNLAP: And Mr. Goldstene made a quick call
18 to me and said there are a lot of things that are going to
19 be explained over the next few months and we appreciate
20 that. And we'll be pleased to continue to be as positive
21 as we can in the process.

22 CHAIRPERSON NICHOLS: Great. Thank you very
23 much. And you set something useful in the motion. It was
24 already -- I'd like to claim credit for having started the
25 process, but you definitely accelerated it and pushed it

1 up a notch. So thank you.

2 Do we have anything further on this topic?

3 EXECUTIVE OFFICER GOLDSTONE: No.

4 CHAIRPERSON NICHOLS: We do have four people who
5 have discovered the benefits in coming in the open comment
6 period to say whatever they feel like saying, and that's
7 what it's for. So we will close off the Enforcement
8 Program item and take the public comment period now.

9 We have four people: Skip Brown, Katherine
10 Reheis-Boyd, Joseph Partranski, and Betty Plowman. So
11 we'll start with Mr. Brown.

12 MR. BROWN: Good afternoon. Thank you for this
13 opportunity.

14 My name is Skip Brown with Delta Construction
15 Company.

16 In December, CARB had quite a broad side against
17 its credibility due to the Tran scandal. And I'd like to
18 talk about the fact that you possibly have some other
19 credibility issues. I'd like to bring them up at this
20 time.

21 The peer reviewers still stood behind the report,
22 but unfortunately six out of the nine peer reviewers have
23 compromised positions with CARB. Some of them were the
24 authors themselves. You know, what's up with that? We're
25 having the authors themselves doing the peer review group.

1 I don't think that's acceptable.

2 John Froins, Chair of the SCP, has been an
3 indirect recipient of funds that came from the State of
4 California and the federal EPA. And as Chair of the SRP,
5 who basically was a promoter of this back when it was
6 decided in 1998, 1999 to being a recipient of funds after
7 the fact, I think that -- certainly there's the appearance
8 of impropriety.

9 Gary Friedman was appointed as the epidemiologist
10 in 1988 and again in 1991, but has not -- there's been no
11 appointment since then. Since what we're doing is talking
12 about epidemiological studies, I would think that the
13 epidemiologist would be the key person to have on board.
14 And quite obvious I guess he's been retained in
15 perpetuity.

16 The studies used by CARB for doing this are
17 nationwide. There are no California-specific studies.
18 But California shows no premature death on six independent
19 studies, all discounted by CARB. What's up with that?

20 California is a fourth healthiest state in the
21 nation on age-adjusted death. So I don't understand
22 what's going on there.

23 No other state or county has declared or county
24 has declared diesel particulate matter to be attacked, but
25 California has that.

1 Asthma rates are up 75 percent. You're correct
2 about that. Between 1980 and 1996 in the children are up
3 almost 100 percent. But the air quality PM is down -- 2.5
4 is down 58 percent. In Riverside/L.A., one-hour ozone
5 exceeded 150 days in the 70s, down 25 days currently.

6 Here's a chart of the asthma going up and the air
7 quality improving by all the particulate matter and
8 everything going down. So we're blaming all this on
9 particulate matter.

10 CARB issued factoids after the December meeting I
11 guess to help support the premise that the studies are
12 good. Here's a list of their factoids. One of them says
13 each year in California diesel PM contributes up to 24,000
14 premature deaths. That's up from 3500 on the Tran report.
15 So now we're up to 24,000 premature deaths and thousands
16 of hospital emissions for asthma attacks and other
17 respiratory symptoms.

18 CHAIRMAN NICHOLS: Your time is up. I'm sorry if
19 you have a written presentation, you can submit it.

20 MR. BROWN: I didn't have time to do the written
21 presentation. I have very serious business problems
22 trying to survive in today's economy.

23 CHAIRPERSON NICHOLS: I understand, but you
24 obviously had time to do a lot of analysis. I would
25 invite you to come to our symposium on diesel, which is

1 being scheduled for a full day in February --

2 RESEARCH DIVISION CHIEF CROES: February 26th.

3 CHAIRPERSON NICHOLS: And many of the people
4 whose work you agree with and as well as those whose work
5 you do not agree with and who you are here attacking will
6 be there. So please feel invited to come on February
7 26th.

8 MR. BROWN: Thank you very much. Will the
9 symposium offer a person more than three minutes?

10 CHAIRPERSON NICHOLS: Yes. For the speakers.
11 But the speakers are all going to be scientists. But
12 they're going to be scientists who agree with you as well
13 as scientists who don't agree with you. It's not just a
14 group of one-sided people or those who are on the take or
15 anything else.

16 MR. BROWN: That's excellent. I would like you
17 to look up the definition of factoids. I think you'll
18 find it entertaining. And my Latin offering for the day
19 is illegitimus non carborundum.

20 CHAIRPERSON NICHOLS: I agree with you on that
21 one.

22 Catherine.

23 MS. REHEIS-BOYD: Good afternoon, Chairman
24 Nichols, members of the Board.

25 I'm Catherine Reheis-Boyd, President of Western

1 States Petroleum Association.

2 I appreciate being able to talk with you today
3 under public comment on an extremely important regulation,
4 the low-carbon fuel standard. I had hoped to do that
5 under the agenda item. We all know that was pulled.

6 It's going here under public comment. The staff
7 is writing an update. I'm glad to hear that, because it's
8 important. And it's equally important that the Board
9 begin engaging with the stakeholders like us to hear the
10 concerns that we continue to have.

11 They are legitimate concerns. They are around
12 compliance, which you are very -- obviously we just got
13 done with a whole discussion on enforcement. But we have
14 concerns that we want to begin that conversation now
15 rather than later. We hope that maybe the next Board
16 meeting we can agendize this and use the staff report as a
17 basis for that beginning conversation like we just did in
18 cap and trade.

19 We're working every day with your staff on the
20 gaps that still remain, and again they are significant.
21 The questions remaining are significant. We just had a
22 workshop that demonstrated the challenges that are real
23 and they're present and they're today. They're not in
24 May. They're not in June. They're not next year.
25 They're now.

1 And we believe that obviously there's a lot of
2 implementation details that you'll be interested in. We
3 are happy to continue engaging the staff, but some of
4 those are short term. You have an advisory counsel that's
5 being set up to deal with our long-term concerns and we'll
6 be engaged in that process. Those are around technology
7 and vehicles and delivery systems that aren't invented yet
8 and not widely available. But you have a process for
9 that.

10 On the short-term issues, especially on the
11 reporting side, they're significant. This is a reporting
12 year. It is a compliance reporting year. We appreciate
13 the release of the CARB's advisory, Mr. Goldstene,
14 Ms. Ellen did a great job in at least getting us some
15 comfort in an advisory, give an extended period of May of
16 July. However, talking to the Board in June and July is
17 not adequate time. We need to engage now. We would like
18 to continue that conversation. We believe we can provide
19 you some ideas to allow some other enforcement protections
20 during this year of continued dialogue on a lot of these
21 implementation issues that are still on the table. So we
22 are looking forward to that.

23 We are looking forward to the Low Carbon Advisory
24 Committee getting kicked off this year. And we are
25 thankful that the Board sees that as an opportunity to

1 deal with fuel adequacy in vehicles and technology that
2 has to go around this regulation for the long term.

3 And then finally, as the hope of the Board
4 obviously is that this technology and availability of
5 non-petroleum liquid-based transportation fuels will come
6 over time, we don't feel it's our company's
7 responsibilities to be held accountable for the vehicles
8 and the combustion fuels technologies that are outside our
9 business control. And that being to make low-carbon
10 intensive fuel. So we'd like to talk about these issues.

11 Our goal is to ensure we can provide adequate,
12 reliable, affordable fuels while we work with you on your
13 goals to a transition to a different low-carbon economy.

14 CHAIRPERSON NICHOLS: Thank you for the comment.

15 In terms of follow up, I realize that what you
16 want is attention from the Board. I mean, that's why
17 you're here. Board time is scarce, as you know. The
18 members of this Board are hard-working people who have
19 other lives. And they come from distances away, and they
20 tend to want to focus on things that they can take action
21 on. It's really hard to get people to sit and just
22 listen, you know, to a presentation unless there's
23 something that they can actually be engaged in.

24 And so I think once the report is here, we should
25 talk about what's the most effective way to get you an

1 open airing that you are seeking perhaps without having to
2 have an entire Board meeting devoted to that topic.
3 Perhaps there is a way that we can accomplish your goals.
4 We've had individual Board members in the past who have
5 been willing to spend extra time to work on an issue or
6 even subcommittees on the Board. I've been given some
7 thought how to work on those issue. I'm not making a
8 proposal right now but just suggesting we will get back to
9 you on this.

10 MS. REHEIS-BOYD: I really appreciate that
11 consideration. I thank you very much.

12 CHAIRPERSON NICHOLS: Thank you.

13 Joseph Partransky from Healthy Ports and Ships.
14 You've been with us all day, sir.

15 MR. PARTRANSKY: Yes, I'm Joe Partransky, and I'm
16 from the bay area. And I wrote a thesis back in '64 on
17 the politics technology of on-board ship automation. And
18 I'm concerned with health ports and healthy ships
19 currently.

20 Turns out that my understanding is that the
21 International Maritime Organization in March will be
22 dealing with a treaty which will have some impact on what
23 appears to be one of the major causes of Riverside's smog.
24 And that is ship diesel fuel being burned throughout the
25 whole world. Currently, the expectation by the year 2020

1 it will double. If it's not controlled by 2045, it will
2 double again.

3 Apparently, the diesel fuel burned in the ocean,
4 which is a concern that I think you should have as well as
5 I tried to find out if you had a subcommittee dealing with
6 it or what have you -- all I found so far is Lisa Williams
7 is one of your staff person who deals with harbors
8 community monitoring project, but there is no apparent
9 subcommittee or group that maybe you can direct me to that
10 is involved with the issues of the ships, not only within
11 the 20 miles, but within the 300 miles, within the whole
12 situation, because you are being effected by it. We are
13 being effected by it, not just in the ports.

14 The other question I have -- if you can provide
15 some help on that, I would appreciate that.

16 The other one is that in your area of outreach to
17 educational communities, may I suggest that every single
18 one of the district air quality management groups, can
19 they list on a very prominent place your website, that you
20 exist. It's not in the one that we have. And also list
21 the agendas when they're available, so everybody in the
22 state knows that your agenda is available. And they
23 should list besides the agendas that you actually have a
24 www.calspan.org repeat of this meeting so the people can
25 have access to that.

1 Every single one of the regional groups should
2 act cooperatively, collaboratively, and get information
3 out to the public, rather than us trying to find it, what
4 have you.

5 From the standpoint of a best practices in the
6 whole area of the California Air Quality Management Act
7 thresholds for significance, which will be done in our
8 area, the so-called measurements from the standpoint of
9 beyond greenhouse gases, we need to have involvement.

10 Thank you.

11 CHAIRPERSON NICHOLS: Your time is up, sir. But
12 thank you for coming and thank you for your comments.

13 Our final open comment period witness, Betty
14 Plowman. We have our letter, so you don't need to read
15 the letter. If you would just summarize it, that'd be
16 great.

17 MS. PLOWMAN: Yes. Thank you, Chairman Nichols.

18 And I did like your comments several moments ago
19 that the Board wants to take action. And I hope with this
20 letter that I presented they will take action, because
21 that's what we're asking for.

22 I have presented to each of you copies of letters
23 which were sent to you U.C. president Mark Yudof and U.C.
24 Professor Michael Jerrett requesting the California
25 specific relationship between PM2.5 and premature deaths.

1 These letters were sent both by regular and electronic
2 mail on January 6th, 2010, as well as numerous telephone
3 calls. And I sadly report today that there has been no
4 response.

5 There is serious disagreement among the
6 scientific community regarding the relationship between PM
7 2.5 and premature deaths. Evidence from six independent
8 sources indicate there's no relationship. Three of these
9 sources originate from the 2000, 2009 health effects
10 institute reports that Dr. Jerrett co-authored.
11 Clarification of the California-specific evidence from
12 these sources would resolve this issue. And Dr. Jerrett
13 is the California scientist in the best position to
14 clarify these results.

15 A detailed request was made to Dr. Jerrett on
16 July 11, 2008, and this request was repeated and expanded
17 upon in December 10th, 2008, public comment card. Dr.
18 Jerrett has failed to respond to these requests, in spite
19 of the fact that the underlining data used in his research
20 for Health Effects Institute is subject minimally to the
21 disclosure requirements of the federal data access.

22 Because of the lack of response from Dr. Jerrett,
23 the Hein Tran issue, as well as the catastrophic
24 consequences this rule is having on California businesses,
25 we urge you to assist us in our endeavor to bring

1 transparency to the science used that enacted this rule.

2 CHAIRPERSON NICHOLS: Thank you.

3 MS. PLOWMAN: Can I give the attorney general's
4 staff a copy also?

5 CHAIRPERSON NICHOLS: If he's willing to receive
6 it. I'm sure he would be happy to. Thank you.

7 Is there anybody prepared to comment at all on
8 the status of this matter?

9 RESEARCH DIVISION CHIEF CROES: Good afternoon.

10 Actually, Michael Jerrett from USC has published
11 an analysis of Los Angeles which shows a very strong
12 relationship between PM2.5 exposure and premature death.
13 That work was published in 2005. It's in the open peer
14 reviewed literature. And I'll make sure that's provided
15 to the person giving the testimony.

16 He does have a project with us to do an analysis
17 for all of California, not just Los Angeles. That's
18 ongoing. He's using data from the American Cancer
19 Society. They're the ones that hold that data, and it's
20 to protect the individuals that participate in the study.
21 It's really not available, something Michael Jerrett
22 cannot give to anyone on the outside. And if people
23 require that data, they should contact the American Cancer
24 Society directly.

25 CHAIRPERSON NICHOLS: My recollection, going way

1 back to the time when we first set the fine particle
2 standard at EPA in 2007, was there was demands on the part
3 of other groups -- outside groups who wanted American
4 Cancer Society data, that ACS refused to release because
5 of privacy type issues. And at the end of the day, there
6 was some process that was worked out through the Health
7 Effects Institute where they actually did find a way to
8 get some additional people to do some -- try to rerun the
9 studies that had been done. Is that what we're talking
10 about here?

11 BOARD MEMBER BALMES: If I might interject a bit.
12 The Health Effects Institute actually funded re-analysis
13 of some of the initial studies with regard to PM2.5 and
14 mortality that were done by Harvard investigators. Dr.
15 Jerrett was one of the group that was part of the
16 re-analysis.

17 So first of all, I wanted to say Michael Jerrett
18 is a colleague of mine at U.C. Berkeley. If that makes me
19 have conflict of interest in these statements, so be it.

20 But I can state that he's a scientist of great
21 integrity and believes in transparency of data. That's an
22 integral part of the scientist process. But I don't think
23 he believes in giving data without the permission of the
24 American Cancer Society, which I can tell you guards their
25 data very carefully.

1 On the basis of a publication that Dr. Jerrett
2 had earlier -- actually, in 2009, I wanted to follow up
3 with him and do a secondary analysis and we're still
4 waiting to get approval from the American Cancer Society
5 to do that.

6 And so I do think the data will eventually be
7 available. But it's the American Cancer Society that has
8 to be approached. And the Health Effects Institute may be
9 able to help convince the American Cancer Society to
10 release the data, but the American Cancer Society is very
11 difficult with regard to other investigators getting
12 access to their data. I'm a case in point in that regard.

13 CHAIRPERSON NICHOLS: Okay.

14 BOARD MEMBER TELLES: It's curious to me why the
15 American Cancer Society wouldn't release that. But in
16 your redoing the methodology report, are you not asking
17 for that information? I mean, that seems like it's almost
18 crucial to do what you need to do.

19 RESEARCH DIVISION CHIEF CROES: For our
20 re-assessment of the relationship between PM 2.5 and
21 health effects, we're relying on already published peer
22 reviewed literature, which in some of those studies do
23 rely on the American Cancer Society data. That data has
24 been re-analyzed by an independent group, the University
25 of Ottawa, I believe. So those studies have been

1 reproduced.

2 The raw data that I think the testifier was
3 asking for includes information on individuals, where they
4 live, how old they are, diet, race, and so forth. And
5 that's just not data that the American Cancer Society can
6 share under the guidelines of acquiring the data in the
7 first place.

8 UNIDENTIFIED SPEAKER: You can wash the pertinent
9 information out.

10 BOARD MEMBER BALMES: The data could be
11 de-identified and then re-analyzed, I agree.

12 CHAIRPERSON NICHOLS: And that's what happened.

13 BOARD MEMBER BALMES: I'm in favor of having the
14 data be made available. I'm just saying that we don't
15 have the power to automatically make it available.

16 I do think at the February 26th symposium that
17 Dr. Jerrett will be there. And Dr. Enstrom who's been
18 very concerned about getting those data will also be
19 present, and perhaps we can get to some kind of way to
20 move forward at that meeting.

21 RESEARCH DIVISION CHIEF CROES: Also the Health
22 Effects Institute will be there, which funded the
23 re-analysis, as well as Dan Cruski, who's the Canadian
24 investigator that did the re-analysis, will be there.

25 BOARD MEMBER TELLES: That data that you are

1 getting, is it going to be California-specific or is it
2 just including the whole country and using the whole
3 country's data to kind of make a California --

4 RESEARCH DIVISION CHIEF CROES: What we're
5 relying on primarily is the U.S. EPA integrated science
6 assessment which did look at the whole country. There
7 have been some California-specific studies which show a
8 whole range of results, and those will be discussed at the
9 symposium on the 26th.

10 BOARD MEMBER TELLES: I'm not trying to be the
11 devil's advocate, but I think it would be important to
12 know if there is a difference because of the different
13 type of particulate matter that's in California versus in
14 New York or Chicago or whatever. I mean, to me it's kind
15 of a scientific question that should be asked.

16 If the data is out there to get some information
17 in this regard, I think it would be very helpful for not
18 just us but the whole scientific community. Because one
19 of the questions I've always asked since I've been
20 involved in it is, is there a difference between the
21 particles between the different regions of the country.
22 In reviewing the cardiovascular literature, there's quite
23 a bit of difference when they talk about the composition
24 of these particles in Boston versus Los Angeles. A lot of
25 the cardiovascular literature comes out of Boston, which

1 is high in metals and whatever they do out there versus
2 what you see in the PM composition in Los Angeles.

3 To me, it's always been kind of a scientific
4 inquiry just kind of an interesting thing. Is there a
5 biological difference in what's actually happening.

6 RESEARCH DIVISION CHIEF CROES: That's a good
7 question. Certainly the transportation sources that
8 dominate the PM 2.5 are the same, but there are stationary
9 source differences. Coal combustion in the east versus
10 natural gas here.

11 CHAIRPERSON NICHOLS: Air quality, moisture
12 content of air, I mean, yes. Of course. This is a
13 flashback to 1996 at least as far as I'm concerned.

14 BOARD MEMBER BALMES: And correct me if I'm
15 wrong, Bart, but the current CARB support for Dr.
16 Jerrett's is to specifically look at the California
17 component of the American Cancer Society data.

18 RESEARCH DIVISION CHIEF CROES: That's correct.

19 BOARD MEMBER BALMES: So I think the Dr. Jerrett
20 will be at the February 26th symposium and it's fair game
21 for people to ask him what that analysis shows, so far
22 though. I know it's not completed at this point.

23 CHAIRPERSON NICHOLS: And I didn't mean my
24 comment to suggest that we shouldn't be pursuing it. I
25 think we should be pursuing it. Absolutely. Okay.

1 If that is the conclusion -- oh, sorry. Mayor
2 Loveridge.

3 BOARD MEMBER LOVERIDGE: I mean, obviously public
4 policy in this area has to be based on best science. But
5 I think the issue here is not so much science but the
6 choices we make in the public policy to implement. And so
7 even if we had the best science agreeing, I don't think
8 people whose names are on the list would be there if it
9 wasn't for the kind of impact public policy has on their
10 own business. It's not a scientific controversy as much
11 as a translation of science into public policy.

12 CHAIRPERSON NICHOLS: Well, yeah. Your comment
13 is relevant in this sense that the people who are
14 attacking the mortality studies may think that if there
15 were no mortality studies or no numbers about mortality
16 that would put an end to the obligation to regulate.

17 And, unfortunately, as we've discussed a few
18 times, but probably need to remind people, the regulations
19 that we have on diesels are based on air quality standards
20 that are federal air quality standards that we're required
21 to meet. So even if there was zero mortality, if there is
22 an air quality standard based on any public health issue,
23 we still have to come up with regulations to meet it.

24 So your quest is a perfectly acceptable one, and
25 it's not only within your rights, it's something you feel

1 strongly about and you should. But it isn't going to --
2 it's a sort of a diversion in a way from the issue that
3 you presumably as a business person are the most focused
4 on. That's a fair point. Thank you.

5 Hearing nothing more, we will stand adjourned
6 then. Thank you, everybody. See you next month.

7 (Thereupon the California Air Resources Board
8 adjourned at 5:21 p.m.)

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CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of February, 2010.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277