

BOARD 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

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9:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Mary D. Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Dorene D'Adamo

Ms. Lydia Kennard

Mrs. Barbara Riordan

Mr. Daniel Sperling

Mr. John Telles

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

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. Kathleen Quetin, Ombudsman

Mr. Albert Ayala, Chief, Climate Change Mitigation and Emissions Branch

Mr. Tony Brasil, In-Use Control Measures SEction

Mr. Richard Corey, Assistant Chief, RD

Ms. Susan Gilbreath, Ph.D., Population Studies Section, Research Division

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APPEARANCES CONTINUED

STAFF

Ms. Annette Hebert, Chief, MSOD

Mr. Dean Hermano, Aftermarket Parts Section, Mobile Source Operations Division

Ms. Jackie Lourenco, Chief, New Vehicle/Engine Programs Branch, MSOD

Mr. Winston Potts, Climate Change Mitigation and Emission Research Section

Ms. Tina Suarez-Murias, Particulate Matter Analysis Section, Planning and Technical Support Division

Ms. Monica Vejar, Board Clerk

Mr. Erik White, Chief, Heavy-Duty Diesel In-Use Strategies Branch, Mobile Source Control Division

Mr. Alex Wang, Senior Staff Counsel

Ms. Elizabeth Yura, Mobile Source Control Division

ALSO PRESENT

Mr. Brant Ambrose, Dawns Equipment

Mr. Don Anair, Coalition for Clean Air

Mr. Tom Austin, Motorcycle Industry Council

Ms. Diane Bailey, NRDC

Mr. Andrew Bray, Sierra at Tahoe

Mr. Eric Carleson, Associated California Loggers

Ms. Michele Corash, Association of General Contractors of America/Morrison Forester

Mr. William Davis, Southern CA Contractors Association

Mr. Charles Frazier, California Black Chamber

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Henry Hogo, South Coast Air Quality Management District

Ms. Bonnie Holmes-Gen, American Lung Association

Mr. Jeff Hove, NAPA

Ms. Diana Hull, AutoZone

Mr. James Hunt, Syblon Reid

Mr. Michael Klein, IDQ

Mr. Joseph Kubsh, MECA

Mr. Michael Lewis, CIAQC

Mr. Edwin Lombard, California Black Chamber

Mr. Aaron Lowe, AAIA

Mr. Rodney Michaelson, Bay Cities Paving and Grading

Mr. Clayton Miller, CIAQC

Ms. Christine Nota, Regional Forester's representative, US Dept. of Agriculture

Mr. John Paliwoda, California Motorcycle Dealers Association

Mr. Nick Pfeifer, Granite Construction, Inc.

Ms. Mary Pitto, Regional Council of Rural Counties

Mr. Norman Plotkin, Plotkin & Associates

Mr. Tim Pohle, Air Transportation Association

Mr. Dave Porcher, Camarillo Engineering

Ms. Betsy Reifsnider, Catholic Charity Diocese in Stockton

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Gary Rohman, ECCO Equipment

Mr. Doug Stanley, Levins

Mr. Michael Steel, AGC

Mr. Tom Swenson, Cleaire

Mr. James Thomas, Nabors Well Service

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1 PROCEEDINGS

2 CHAIRPERSON NICHOLS: Clerk will call the roll
3 and then we will say the Pledge of Allegiance. Let's do
4 the roll call first, please.

5 BOARD CLERK VEJAR: Dr. Balmes?

6 BOARD MEMBER BALMES: Here.

7 BOARD CLERK VEJAR: Ms. Berg?

8 BOARD MEMBER BERG: Here.

9 BOARD CLERK VEJAR: Ms. D'Adamo?

10 Ms. Kennard?

11 Ms. Riordan?

12 BOARD MEMBER RIORDAN: Here.

13 BOARD CLERK VEJAR: Professor Sperling?

14 BOARD MEMBER SPERLING: Here.

15 BOARD CLERK VEJAR: Supervisor Roberts?

16 Mayor Loveridge?

17 Dr. Telles?

18 BOARD MEMBER TELLES: Here.

19 BOARD CLERK VEJAR: Supervisor Yeager?

20 BOARD MEMBER YEAGER: Here.

21 BOARD CLERK VEJAR: Chairman Nichols?

22 CHAIRPERSON NICHOLS: Here.

23 BOARD CLERK VEJAR: Madam Chair, we have a
24 quorum.

25 CHAIRPERSON NICHOLS: Thank you.

1 Now if you'll all please rise and face the flag.

2 (Thereupon the Pledge of Allegiance was

3 Recited in unison.)

4 CHAIRPERSON NICHOLS: I want to note for the
5 record we all did that correctly.

6 (Laughter)

7 CHAIRPERSON NICHOLS: Welcome, everybody to the
8 January 22nd public meeting of the Air Resources Board.

9 We have a couple of announcements to make this morning.

10 First of all, we had put a closed session on our
11 agenda and we are going to have it today. We routinely
12 notice it and we don't always have one. However, today we
13 do plan on having one to update the Board on some
14 litigation matters. And we'll report afterwards if there
15 are any decisions made. We'll do that during the lunch
16 break.

17 Anyone who wishes to testify, if you are
18 unfamiliar with our procedure, we hope you'll sign up with
19 the staff outside the auditorium. You don't have to
20 include your name, but we need a speaker card. So it has
21 to identify you somehow.

22 We will be imposing a three-minute time limit on
23 speakers today. We appreciate it if you just quickly
24 state your name when you go up to the podium and put your
25 testimony into your own words. Please do not read your

1 written testimony if you have written testimony, because
2 we already have it and we can read it faster than you can
3 speak it.

4 I also want to point out there are exits in the
5 back of the room. Those are emergency exists with lights
6 over the doors. And in the event of an emergency, we are
7 required to leave the building immediately to go down the
8 stairs at the back there and outside the building until
9 there is an all-clear signal.

10 And with that, I think we can move directly into
11 the program.

12 I do want to make sure that I've introduced, for
13 those of you who have not seen him, our newest Board
14 member, recently appointed by the Governor to fill the
15 vacancy for the member of the Bay Area Air Quality
16 Management District that was created by the departure of
17 Jerry Hill who is now over in the Legislature and doing
18 good work for clean air over there. His position is now
19 being ably filled by Supervisor Ken Yeager who is also a
20 Board member for the Bay Area Air Quality Management
21 District. Welcome.

22 (Applause)

23 CHAIRPERSON NICHOLS: And we're going to begin
24 this morning with a report by our Executive Officer on the
25 Board's program priorities for the year. It seems fitting

1 at the January meeting that we should at least hear
2 quickly from our Executive Officer about what's ahead of
3 us.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
7 Nichols. Good morning, members.

8 I'd like to kick off the new year with a preview
9 of upcoming key activities and Board items.

10 --o0o--

11 EXECUTIVE OFFICER GOLDSTENE: 2009 will be an
12 exciting and challenging year for the Board and staff.

13 I'll highlight the important work we'll be doing
14 this year to improve air quality, reduce diesel and
15 particulate emissions, and implement the Climate Change
16 Scoping Plan you adopted last year.

17 Our goal is to integrate these efforts throughout
18 the Board as we focus on our mission to protect public
19 health and the environment.

20 --o0o--

21 EXECUTIVE OFFICER GOLDSTENE: To date, you've
22 adopted 14 regulations to implement the 2007 State
23 Strategy, including a measure to clean up ship engine
24 fuel, a measure to clean up off-road equipment, and
25 measures to reduce emissions from the diesel trucks

1 operating in California. These regulations fulfill most
2 of the Board's commitment to attain the national PM2.5
3 standard by 2014.

4 But there are remaining regulations to be adopted
5 in 2009. This year, we will bring you measures to make
6 further progress towards attaining ozone standards. We
7 will continue our work to clean up emissions caused by the
8 evaporation of fuel from engines, gas station refueling
9 hoses, and pleasure craft.

10 Other SIP-related regulations we will bring you
11 this year include the next phase of our consumer products
12 regulations. And we'll also continue work on developing a
13 measure to clean up agricultural equipment by accelerating
14 turn over to cleaner engines.

15 This spring, we'll propose a SIP amendment
16 showing the emissions reductions achieved since adoption
17 of the State Strategy in September 2007. This amendment
18 will aid the U.S. EPA in approving California's submitted
19 SIP.

20 --o0o--

21 EXECUTIVE OFFICER GOLDSTENE: There are still a
22 few local plans that must be submitted for this. First,
23 the Board will consider approval of the ozone plan for the
24 Sacramento metropolitan area in March. And later this
25 year, we'll consider approval of a proposed SIP for

1 in 2009.

2 This year, staff plans to propose key
3 implementing regulations that will begin the next phase of
4 the Board's Climate Change Program. Today, you will hear
5 staff's recommended approach to control emissions from
6 small containers of automotive refrigerant, which is a
7 very high global warming potential gas.

8 Another near term item will be the greenhouse gas
9 administrative fee authored by AB 32 which staff plans to
10 present in May. This fee will provide a long-term stable
11 funding source for California's Greenhouse Gas Reduction
12 Program and pay back loans from the Beverage Container
13 Control Account and other funds that have covered our
14 costs so far. The first workshop on the fee rule will be
15 next Tuesday.

16 Other AB 32 activities for the year include
17 implementing the mandatory greenhouse gas reporting
18 program and developing the required verification program.

19 In April, you will consider the low carbon fuel
20 standard. This measure aims to reduce the carbon
21 intensity of California fuels by 10 percent by 2020.
22 Staff will hold a workshop on this on January 30th.

23 Other regulations that will reduce greenhouse gas
24 emissions include rules focused on maintaining tire
25 inflation in vehicles using energy audits, improved

1 capture of landfill methane, reducing high potency
2 greenhouse gases from certain commercial uses, and solar
3 reflective automobile paints.

4 Of course, we will work closely with our sister
5 agencies that will adopt regulations for sources under
6 their purview, such as the water use efficiency measure at
7 the Department of Water Resources.

8 This year, like last year, will be filled with an
9 extensive public stakeholder process as we develop each
10 rule. We expect to get the most public comment on the cap
11 and trade program.

12 Staff will be holding workshops throughout the
13 year, and we plan on presenting an informational item to
14 you regarding our implementation work this February. By
15 the end of the year, staff will present the updated
16 economic analysis and public health methodologies that you
17 requested during the Scoping Plan deliberations.

18 In December, we will share with you our ideas for
19 re-designing the zero-emission vehicle, or ZEV program, to
20 reduce greenhouse gas emissions. The goal of the new ZEV
21 program is to assure that the ultra-low carbon vehicles
22 can be commercialized in time to meet the Governor's 80
23 percent reduction goal by 2050. Although 2050 sounds like
24 a long way away, the actions the Board takes in the next
25 two years to assure ZEVs enter the marketplace before 2020

1 will determine if the 2050 goal can be achieved.

2 ARB will also continue coordinating activities of
3 other entities involved with implementing the Scoping
4 Plan. This includes work with the Climate Action Team,
5 the Western Climate Initiative, the Economic and
6 Technology Advancement Advisory Committee, and the
7 Environmental Justice Advisory Committee.

8 In this vain, tomorrow you will be considering
9 appointments to a new Advisory Committee established under
10 SB 375. This is the SB 375 Regional Targets Advisory
11 Committee, or RTAC. This is the first step in an
12 eight-month process that will result in the Committee's
13 advise to the Board on methodologies for setting
14 greenhouse gas passenger vehicle regional targets in 2010.

15 Also I have to mention the opportunity we have
16 this year to work with our national partners in Congress
17 and the new Administration. We are in a unique position
18 to shape national policy on climate change and ensure
19 California's ability to go further if we choose to.

20 Finally, just yesterday, Chairman Nichols sent a
21 letter to EPA administrator designate Lisa Jackson asking
22 her to reconsider the waiver denial from the prior
23 administration. The Governor also sent a similar letter
24 to President Obama yesterday.

25 This is a crucial that makes the single biggest

1 contribution towards the State meeting its emission
2 reduction goals and also will continue to have a further
3 national impact as other states move to adopt our
4 standards.

5 By calendar year 2020, California's more
6 stringent limits would reduce cumulative greenhouse gas
7 emissions by 43 percent more than the new federal fuel
8 economy standards.

9 --o0o--

10 EXECUTIVE OFFICER GOLDSTENE: While I have
11 described our major public efforts, much will be going on
12 behind the scenes that is just as critical to our success.
13 From enforcement to air monitoring, from emission
14 inventory to basic research, from our labs to our
15 administrative operations, we will be busy.

16 The obvious question is how the State budget will
17 impact this ambitious workload. As I'm sure you are
18 aware, the Governor has announced a two-day per month
19 furlough program on the first and third Fridays of the
20 month. Staff and I are assessing the impacts of that
21 decision on ARB, and we are developing contingency plans
22 to make sure we meet the goals I've outlined for this
23 year.

24 Additionally, ARB in the past two or three years,
25 ARB has taken on new challenges. And we've added a

1 considerable amount of staff to our divisions. Because of
2 these changes, we will be taking a step back this year to
3 make sure that we are properly organized to tackle the
4 numerous and complex tasks that lie ahead of us, as well
5 as ensure we can appropriately engage on issues with our
6 national and international colleagues.

7 To conclude, I think we can all agree we will
8 have a busy and exciting year. I'd like to thank you for
9 your commitment and thank staff for its commitment to
10 tackling the challenging issues we have this year.

11 This concludes my presentation. We're happy to
12 take any questions.

13 CHAIRPERSON NICHOLS: Thank you very much, Mr.
14 Goldstene.

15 You mapped out a very ambitious agenda like last
16 year, but we managed to get through that and accomplished
17 that successfully. I'm feeling confident about this year.

18 Questions or comments from the Board at this
19 time? Yes, ma'am.

20 BOARD MEMBER RIORDAN: Madam Chairman, very
21 challenging work ahead of us.

22 What I failed to hear though was what month are
23 you going to bring the Zero Emission Vehicle Program back?
24 When did you say? December?

25 CHAIRPERSON NICHOLS: The report I believe is due

1 in December. And then rule making will follow in 2010.

2 So I believe we gave this staff this year to actually
3 think as opposed to actually propose.

4 BOARD MEMBER RIORDAN: Thank you.

5 EXECUTIVE OFFICER GOLDSTENE: You're welcome.

6 CHAIRPERSON NICHOLS: Yes.

7 BOARD MEMBER D'ADAMO: This might not be the
8 right time for it, but the revolving SIP process and the
9 constant need to update plans, maybe just a short briefing
10 at one of our Board meetings to kind of lay the
11 groundwork, especially for new members that haven't been
12 through the process yet and to help us to gain a better
13 understanding of the new process and how it fits in with
14 what we've already done the last few years.

15 CHAIRPERSON NICHOLS: Ms. Terry, do you want to
16 comment?

17 DEPUTY EXECUTIVE OFFICER TERRY: Great idea, of
18 course. And since we are meeting with U.S. EPA staff, we
19 will be proposing some streamlining processes. So
20 hopefully we'll have something to report positively.

21 CHAIRPERSON NICHOLS: Well, that would be good.
22 I agree with the need -- you know, as somebody who's been
23 working with SIPs for actually I'm embarrassed to say as
24 long as there have been SIPs, I still need constant
25 refreshing on the regulations. It's just incredibly

1 complicated and confusing. So the idea of doing kind of a
2 workshop on this before we're actually hit with an action
3 that we have to take at the Board is a good idea. Thanks.

4 Anybody else, comments? Questions? If not, you
5 now have your agenda for the year in front of you.

6 The next item on the agenda is the regular
7 monthly update on health research. This month's summary
8 of current research findings deals with the issue of the
9 health impacts from exposure to wood smoke both in
10 children and adults. It's a hot topic literally in a lot
11 of parts of the state. So it's timely that we should hear
12 about the health research as well. Mr. Goldstene, you
13 want to kick this off?

14 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
15 Nichols.

16 Ambient fine particulate matter is a mixture of
17 particles emitted from a variety of primary sources and
18 also formed in the atmosphere via a number of chemical
19 processes.

20 The health impacts associated with exposure to
21 ambient PM are well established, but how the level of risk
22 may vary with regard to the source of PM is a question
23 that has only recently begun to be addressed.

24 In several areas of California, one major source
25 of fine PM is wood combustion, particularly in the

1 pollution. Wood smoke consists of several pollutants,
2 including carbon monoxide, nitrogen dioxide, particulate
3 matter or PM, and other irritating and toxic components.

4 Residential wood burning affects ambient and
5 indoor air quality locally, throughout neighborhoods, and
6 regionally. In addition to the smoke that can be released
7 inside the home, studies show that up to 70 percent of
8 smoke from chimneys can actually re-enter the home and
9 other neighborhood dwellings.

10 In the winter, we often have weather conditions
11 that cause stagnant air. As a result, wood smoke is
12 trapped close to the ground. To illustrate this point,
13 the photograph in this slide shows wood smoke lingering in
14 the San Joaquin Valley.

15 --o0o--

16 DR. GILBREATH: Although many studies have shown
17 that exposure to the components that are found in wood
18 smoke are associated with adverse health effects, a few
19 recent studies have tried to parse out effects
20 specifically related to wood smoke.

21 In a panel of asthmatic children in Seattle,
22 Allen and colleagues found lung function decreases with
23 exposure to the combustion generated components of PM2.5,
24 particularly wood smoke.

25 In this same Seattle panel, Jansen and colleagues

1 methodologies and found comparable results.

2 The second study examined indoor emissions from
3 different types of wood burning devices. We have recently
4 completed data collection in this study and the findings
5 will be released later this year.

6 --o0o--

7 DR. GILBREATH: Exposure to wood smoke is
8 associated with adverse health effects. Wood smoke can be
9 the dominant component of wintertime ambient air
10 pollution. Concern over air quality has prompted several
11 air districts and municipalities to initiate various
12 degrees of residential wood burning restrictions when air
13 quality is forecasted to be poor.

14 Implementation of these regulations has been
15 coupled with public education. And there are indications
16 that some of these campaigns have been successful in
17 improving air quality and health. This will help us meet
18 our air quality standards and protect the health of all
19 Californians.

20 This concludes my presentation. We will be happy
21 to answer any questions you may have.

22 CHAIRPERSON NICHOLS: Thank you, Dr. Gilbreath.

23 This is a complicated area because it plays into
24 the whole field of fine particle research which is going
25 on nationally and internationally right now.

1 And also I think not all wood smoke or all
2 background air quality is the same in every part of the
3 state or the country. But there is important research
4 going on elsewhere.

5 And I was just handed a copy of an article from
6 Dr. Telles. Maybe you would like to describe that.

7 BOARD MEMBER TELLES: I would just like to
8 mention the San Joaquin Valley, which in your slide so
9 graphically depicted the problem we have, we recently
10 re-did our wood burning rules for fireplaces and made it
11 even more restrictive. And now you can't start burning
12 even when the air is "in health range." We reduced the
13 particulate matter concentration to much lower level than
14 we had before, which will probably make a huge impact.

15 And what you mentioned about San Joaquin Valley
16 with their change two years ago had a huge impact on the
17 bad PM days we had in the winter.

18 I mentioned to some of the Board members last
19 time that despite our strict regulations, I was recently
20 in Santiago, Chili. And there, their regulations for wood
21 burning is no wood burning at all. And we're not the only
22 country that's addressing this. But they have no wood
23 burning at all in the entire city of Santiago, Chili.

24 Now this article here that I distributed to Board
25 members was the one that was mentioned in the Sacramento

1 Bee this morning linking -- for probably the first really
2 good article linking for the first time reduction of PM2.5
3 actually has resulted in improvement of mortality with
4 each ten micrograms length of life saved is like .7 years,
5 which is quite significant. It falls into the same range.
6 It's giving a population a cholesterol lowering drug.
7 It's a significant contribution to the health of our
8 people.

9 CHAIRPERSON NICHOLS: Thank you very much.

10 Other comments? Dr. Balmes.

11 BOARD MEMBER BALMES: Yes. I just wanted to echo
12 Dr. Telles's comments about how important this issue of
13 wood burning is. I was actually just two weekends ago in
14 Modesto for a soccer tournament for my son. And I was
15 happy to hear on the local radio there was a talk show
16 where there was somebody from the San Joaquin District
17 explaining the wood burning rules. And it was pretty
18 clear that most people still are unaware of the issue. I
19 think that's true throughout the state wherever there are
20 wood burning restrictions. Probably true in the Bay Area
21 Air Quality District as well.

22 I just want to say it's not just acute effects
23 that we have to worry about. Those are striking,
24 exacerbations of asthma, sudden death, which is the topic
25 of the article that Dr. Telles mentioned. But there are

1 chronic effects.

2 I'm involved with a study in Guatemala of biomass
3 smoke exposure where women in rural areas of Guatemala
4 actually burn wood for cooking inside their homes so
5 exposures are very high. And worldwide, that's a major
6 source of chronic obstructive lung disease among women
7 since in the developing world women tend not to smoke. So
8 this is a greater exposure.

9 But there are data from developed countries.
10 There was a study in Spain that came out a couple of years
11 ago that showed that women in Spain who either cooked
12 using wood or lived in homes where wood was used for
13 heating actually had increased risk for chronic
14 obstructive pulmonary disease.

15 So I just wanted to point out its chronic effects
16 as well acute effects. I'm the principle investigator of
17 the UCF study that was mentioned on the slides. We've
18 been slow to get going, because it hasn't been easy to
19 convince the University and the hospital that I should
20 have a wood burning stove in my laboratory. And we've had
21 to work hard to come up with engineering to pull that off.
22 We've been working with combustion engineer at UC Davis,
23 and we finally have a system that I think we're going to
24 be able to install soon and get on with the work that
25 we've been funded to do.

1 CHAIRPERSON NICHOLS: Thank you.

2 Supervisor Yeager.

3 BOARD MEMBER YEAGER: Yes. Well, my questions
4 tie into what Dr. Balmes was just mentioning. I assume
5 most of the studies are being done on the effects of wood
6 burning deals with outdoor air. And I was just wondering
7 if we have many studies as far as the effects on indoors.

8 Certainly, in the Bay Area on Spare the Air
9 nights where we don't allow wood burning, we have gotten
10 any number of people who are complaining because they feel
11 it's their Constitutional right to be able to do that.

12 But I didn't know if we knew much about the
13 effects of people who are actually inside the homes as a
14 way of argument not only is this good for other people's
15 health, it's also good for theirs.

16 BOARD MEMBER BALMES: I would just say in
17 response to that Spanish study I mentioned, the exposures
18 were from indoor smoke. But in terms of US data, I don't
19 know if we have much.

20 CHAIRPERSON NICHOLS: Do we have a comment from
21 staff?

22 DR. GILBREATH: There was one study that was a
23 chamber study. It wasn't actually inside the home. They
24 were being exposed to controlled wood smoke exposure
25 within a chamber.

1 There was a study recently in Sweden where they
2 looked only at exposures inside the homes. They actually
3 didn't look at any of the health effects associated with
4 the exposures. They compared different types of wood
5 burning devices, maybe 25 different homes in Sweden.

6 BOARD MEMBER YEAGER: It would be interesting. I
7 don't know if studies such like that are being conducted
8 elsewhere. But to see what the differences might be
9 between cooking and just regular residential use of a
10 fireplace and if there is much of an increase in the
11 particulate matter.

12 Is anyone looking at not allowing in new
13 construction wood burning fireplaces and having it just
14 gas?

15 DR. GILBREATH: Several of the air districts are
16 banning new uncertified devices in new construction. And
17 they're also limiting the density of these devices
18 allowable.

19 BOARD MEMBER TELLES: In the San Joaquin Valley,
20 you can't build a home with a fireplace, a new home. Even
21 if you have an old home and you have it remodeled and
22 there's a fireplace in it before, you lose your fireplace.

23 BOARD MEMBER YEAGER: James, is that something
24 that we as a Board can look at, or is that sort of outside
25 of our purview?

1 EXECUTIVE OFFICER GOLDSTENE: I think we can look
2 at it. It's certainly within our purview. But we
3 probably wouldn't be able to impose a statewide rule in
4 that area. That would be handled at the local level. But
5 we can work with the local districts and coordinate effort
6 and consider developing research proposals in this area to
7 see what the impacts could be. So make sure there is a
8 baseline so we know and could measure the effects.

9 CHAIRPERSON NICHOLS: I think the issue
10 Supervisor Yeager brings up about indoor versus outdoor
11 exposure is an important one to emphasize though, because
12 in terms of getting the information out to the public and
13 making people aware of the impact of what they're doing,
14 certainly regulations matter. And people will do some
15 things out of concern for the community. But if they are
16 aware that it's impacting their own health as well, that
17 may have a greater bearing on their decisions. Yes.

18 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF
19 SMITH: I would like to mention that we do have an
20 in-house study that was actually mentioned today with a
21 Professor at Cal Poly where we are looking at the indoor
22 air quality versus the outdoor air quality due to wood
23 combustion and fireplaces.

24 CHAIRPERSON NICHOLS: That's just looking at what
25 the exposures are?

1 HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF

2 SMITH: Now relating health would be difficult because you
3 can't tell the difference between outdoor and indoor. But
4 it's a start.

5 CHAIRPERSON NICHOLS: Okay. Well, thank you.

6 Was this an item that anyone had submitted a
7 public comment card? No. Okay.

8 Yes, one more comment.

9 BOARD MEMBER BALMES: Just to -- everybody is
10 excited about this New England Journal of Medicine paper
11 that came out showing that a reduction in particulate
12 matter leads to a reduction in early mortality. And Dr.
13 Telles correctly highlighted that as an important study.

14 But it's actually not the first -- not even the
15 first good study to show this. There was a study a few
16 years ago published in a slightly less prestigious
17 journal, the American Journal of Respiratory and Critical
18 Care Medicine from the six-city study that was done by
19 Harvard many years ago. And they also showed a reduction
20 in mortality associated with improvement in particulate
21 matter air quality.

22 So this is a bigger study that's nationwide, but
23 it builds on. So I actually think we have good evidence
24 that cleaning the air improves health.

25 CHAIRPERSON NICHOLS: Okay. Much more solid.

1 Thank you for that.

2 If there are no further Board member comments, we
3 will move on to the next item, which is a regulatory item.
4 It is the first time the Board is being asked to take
5 action under AB 32 on the refrigerants that are used in
6 motor vehicle air conditioners. And this is one of our
7 Early Action items.

8 The proposed regulation will reduce greenhouse
9 gas emissions associated with do-it-yourself recharging of
10 motor vehicle air conditioners using refrigerants that are
11 sold over the counter in small cans. This refrigerant has
12 a very high global warming potential, about 1300 times
13 that of carbon dioxide. And addressing it is important
14 for meeting our goals of AB 32 for the year 2020.

15 It was identified as a Discrete Early Action
16 measure back in October of 2007. And the Board directed
17 the staff to carefully consider comments by the
18 Environmental Justice Advisory Committee and others to see
19 if there were any methods that could be used as an
20 alternative to simply banning these cans because of
21 concerns that many people who own older cars that have air
22 conditioners in them that need recharging may not be in a
23 position to hire professionals to do this work for them.

24 So staff and industry worked together with other
25 stakeholders to come up with a proposal that I think

1 significantly improves the containers and will reduce
2 emissions of un-used refrigerants as well as also requires
3 manufacturers to recycle these refrigerants.

4 Another component of this plan is outreach by the
5 ARB and others to promote better recycling or better
6 recharging practices by do-it-yourself auto maintainers.

7 So I think this is an example of a case where ARB
8 has gone well beyond the traditional regulatory approach
9 to try to come up with a scheme that will get the same
10 results but do it in ways that are less burdensome.

11 With that, Mr. Goldstene, do you want to
12 introduce the item?

13 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
14 Nichols.

15 Over the next two years, the Board will consider
16 a number of Early Action Measures to address emissions of
17 refrigerants from mobile sources.

18 We're also working closely with a broad spectrum
19 of stakeholders, including the European Union, on
20 strategies for phasing out high global warming potential
21 refrigerants through the use of safe and efficient
22 alternatives that are currently being developed.

23 As a first step, we have put together a
24 regulation that reduces emissions associated with
25 do-it-yourself vehicle air conditioner recharging cans.

1 Mr. Winston Potts from the Research Division will
2 provide the Board with the details of the staff's
3 proposal. Mr. Potts.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 MR. POTTS: Thank you, Mr. Goldstene. Good
7 morning, Madam Chairman and member of the Board.

8 The regulation we are proposing today deals with
9 small containers of refrigerant used in do-it-yourself
10 recharging of motor vehicle air conditioners and was
11 identified by the Board as an AB 32 Discrete Early Action.

12 In the AB 32 Early Action staff report, we
13 initially proposed this measure as a statewide ban of
14 retail sales of refrigerant in small cans. But there was
15 a concern for high cost and impact, particularly on the
16 low-income population.

17 As a result, you directed us to conduct
18 additional analyses and explore other options. We
19 conducted studies and worked closely with industry and
20 many other stakeholders to arrive at the approach we are
21 presenting today. Our proposal gets at the emissions of
22 concern, but in a technically feasible and cost effective
23 way.

24 Let me begin the staff presentation with a brief
25 overview of the high global warming potential greenhouse

1 gas sector and the prominent role that automotive
2 refrigerants play.

3 --o0o--

4 MR. POTTS: There are many substances that
5 contribute to climate change. Some of these are known as
6 high global warming potential greenhouse gases because
7 their warming can be thousands of times that of carbon
8 dioxide, or CO2.

9 Under business as usual, high global warming
10 potential greenhouse gases will play an increasingly
11 significant roll in the future. We project that emissions
12 of these gases will more than triple by 2020 in
13 California. So we have identified a number of mitigation
14 measures for this sector that will achieve reductions on
15 the order of 20 million metric tons carbon dioxide
16 equivalent. We believe the remaining emissions can be
17 addressed by a combination of technological solutions and
18 concrete strategies to be developed as part of our AB 32
19 process.

20 --o0o--

21 MR. POTTS: The high global warming potential
22 greenhouse gas sector is very diverse. This slide
23 reflects the breadth of strategies that we have identified
24 in the Scoping Plan. The measures will realize reductions
25 from both mobile and stationary applications. There are

1 also plans for developing a high global warming potential
2 mitigation fee as discussed in the AB 32 Scoping Plan.

3 --o0o--

4 MR. POTTS: I will now focus on motor vehicle air
5 conditioning. The figure on the left shows a typical air
6 conditioning system. An air conditioning system naturally
7 leaks refrigerant to the point that it may need
8 recharging, but only after several years.

9 In other situations, the system can experience a
10 catastrophic leak if a hose pops off or a compressor is
11 compromised. Wear, tear, and lack of routine maintenance
12 for some systems can also lead to excessive leaking
13 resulting in loss of cooling power.

14 When recharging is needed, a person has two
15 options. One is the attempt to service the system
16 themselves or do-it-yourself by using a small container
17 typically holding 12 ounces of refrigerant to recharge the
18 system. The other is to have the vehicle serviced by a
19 professional.

20 The most common refrigerant currently used
21 worldwide in mobile applications is HFC-134a. It is a
22 potent greenhouse gas with a global warming potential 1300
23 times that of carbon dioxide.

24 The contents of the single 12-ounce can at 134a
25 are equivalent to the carbon dioxide emissions from a

1 passenger car driven 1,000 miles or from burning a barrel
2 of oil. HFC-134a is the focus of this regulation.

3 --o0o--

4 MR. POTTS: Globally, mobile AC emissions have
5 undergone drastic changes in recent decades. This slide
6 shows the emissions trend of HFC-134a.

7 Below the chart is a time line of significant
8 events in the history and future of mobile refrigerants.
9 Emissions of HFC-134a have grown steadily since 1990 and
10 are projected to continue growing significantly to 2020
11 and beyond as the world car population and air
12 conditioning use increase.

13 This trend in refrigerant emissions is occurring
14 in spite of the Kyoto Protocol, AB 32 strategies, and
15 other mobile refrigerant measures in Europe and elsewhere.
16 With AB 32, California is now taking an action on
17 refrigerants in relation to climate protection.

18 --o0o--

19 MR. POTTS: There are two ways in which motor
20 vehicle air conditioning systems contribute to global
21 warming.

22 First, there is the leakage which we have
23 discussed.

24 Second, there are indirect emissions which are
25 part of tailpipe emissions due to the increased load

1 placed on the engine from air conditioning system
2 operation and the added weight of the air conditioning
3 system itself.

4 --o0o--

5 MR. POTTS: In order to mitigate both types of
6 emissions, staff is developing a comprehensive suit of
7 strategies to address air conditioning use in all mobile
8 applications.

9 For new vehicles, the Board has already approved
10 two measures which are noted in red.

11 Additional mobile air conditioning measures for
12 new vehicles are in development, including an air
13 conditioning element anticipated in the Pavley II
14 regulation.

15 Emissions from in-use vehicles and end-of-life
16 vehicles will also be addressed.

17 --o0o--

18 MR. POTTS: You will consider these items in the
19 next few years as part of the high global warming
20 potential greenhouse gas sector measures in the Scoping
21 Plan.

22 --o0o--

23 MR. POTTS: Let me now describe the proposed
24 regulation to reduce emissions from do-it-yourself use of
25 small containers of automotive refrigerant.

1 --o0o--

2 MR. POTTS: As I pointed out, we initially
3 proposed this measure as a statewide restriction of retail
4 sales of refrigerant in small cans. Due to concerns with
5 a can ban, and at your direction, we worked closely with
6 industry and many other stakeholders and conducted
7 additional studies to come up with this proposal.

8 The estimated cost of reduction for the can ban
9 is \$159 per metric ton carbon dioxide equivalent. As you
10 will hear, our proposal achieves cost-effective emission
11 reductions while still allowing the consumer to purchase
12 the refrigerant in small cans.

13 --o0o--

14 MR. POTTS: Staff determined about two million
15 small cans of automotive refrigerant were sold in
16 California during 2006. The refrigerant in these cans is
17 equivalent to 0.85 million metric tons carbon dioxide
18 equivalent each year. And the price of a typical small
19 can is about \$10. Staff estimates that 95 percent of
20 sales go to consumers for do-it-yourself servicing of
21 their vehicle air conditioners, while approximately five
22 percent are sold to professional technicians.

23 --o0o--

24 MR. POTTS: Do-it-yourself emissions attributed
25 to small can use are 0.81 million metric tons carbon

1 dioxide equivalent per year.

2 Refrigerant in the small can is emitted to the
3 atmosphere in two time frames, either immediately or
4 delayed.

5 Approximately 11 percent of the can content is
6 lost during the servicing process. After servicing, on
7 the average, 22 percent of the refrigerant remains in the
8 can. This is called the can heel. Either it isn't needed
9 or the do-it-yourselfer doesn't successfully empty the can
10 into the air conditioning system. Cans presently offered
11 for sale are mostly screw and puncture cans, meaning there
12 is no valve on the can to retain the unused refrigerant in
13 the container. Thus, when the recharging process is over,
14 any refrigerant remaining in the can is vented to the
15 atmosphere as immediate emissions.

16 The remainder of the can content, 67 percent, is
17 transferred to the vehicle air conditioner. If no repairs
18 were made to the air conditioner, this amount will
19 eventually leak to the atmosphere as delayed emissions.
20 The leak rate versus depending on the condition of the
21 system. Studies indicate that a system with no major
22 leaks will need recharging after approximately six years.
23 Our proposal addresses the immediate emissions associated
24 with the use of the small cans.

25 --o0o--

1 MR. POTTS: Our proposal allows the sale of small
2 cans to the consumer while reducing emissions relative to
3 current practices.

4 The proposed regulation has three components:
5 Improvements to the can to include a self-sealing valve
6 and improved labeling; a comprehensive consumer education
7 and outreach program; and a new producer-administered
8 deposit, return, and recycling program.

9 Manufacturers will submit an application to ARB
10 for approval that includes information on each of these
11 components in order to gain certification to sell small
12 containers of automotive refrigerant in California.
13 Generally, this regulation affects containers with less
14 than two pounds of automotive refrigerant.

15 --o0o--

16 MR. POTTS: The first components for
17 certification requires manufacturers and packagers to
18 install a self sealing valve on all small containers to
19 prevent the refrigerant can heel from venting to the
20 atmosphere. The regulation also requires them to include
21 California-specific labeling to inform the consumer of the
22 new deposit, return, and recycling program as well as
23 provide improved instructions for use.

24 --o0o--

25 MR. POTTS: The second component for

1 certification requires manufacturers and packagers to
2 develop an educational program that will be available
3 through brochures at retail outlets, through a website,
4 and other means.

5 Elements of the education program must include
6 specific instructions and information as indicated in this
7 slide.

8 Funds that are retained due to unreturned
9 deposits will be strictly monitored by ARB staff so they
10 are used as intended in the regulation to enhance consumer
11 information. For example, by conducting promotional
12 events to offer training on Air conditioning servicing.

13 --o0o--

14 MR. POTTS: The new self-sealing valve allows for
15 the can heel to be recovered and recycled. The proposed
16 regulation initiates a deposit and return program to
17 assure that recycling occurs. This idea was inspired by
18 other programs, such as the led acid battery deposit
19 program, existing in several states. The retailer
20 interacts with the consumer to collect the deposit when
21 the can is sold.

22 The deposit initially set at \$10 per can, doubles
23 the current price of a can. We determine this amount
24 based on a pilot project run by industry in southern
25 California where a five dollar deposit yielded only a 75

1 MR. POTTS: The greenhouse gas emissions
2 reduction achieved by the proposed regulation is estimated
3 to be 0.26 million metric tons of carbon dioxide
4 equivalent annually. Again, the reductions are associated
5 with eliminating the immediate emissions due to the
6 servicing loss and the can heel. The reduction has a cost
7 effectiveness of \$11 per metric ton of CO2 equivalent.
8 This cost is about a factor of 15 lower than the cost of
9 the originally proposed can ban. The cost of improvements
10 to the can via the new valve, better labels, and other
11 requirements will add approximately one dollar to the
12 current price of a can. The consumer will have an
13 additional expenditure of \$10 for the deposit on the can,
14 but the deposit is fully refundable.

15 Should other states choose to adopt the
16 regulation, as some have expressed, components of the
17 regulation or the regulation in whole are exportable to
18 them as well as the nation. Our proposal can be
19 harmonized with a mitigation fee in the future.

20 --o0o--

21 MR. POTTS: The public process was valuable
22 during the development of this regulation. Staff held two
23 public workshops and three work group meetings during the
24 course of regulation development.

25 We also benefited from our broad network of

1 national and international stakeholders as we try to stay
2 abreast of global developments in the areas of mobile AC
3 technology and new refrigerant alternatives.

4 Throughout the process, we received public
5 comment on our proposed regulatory language that we
6 believe have been addressed.

7 However, we have been asked to provide
8 clarification of some definitions and the reporting
9 requirements that manufacturers and retailers will be
10 subject to and believe some minor adjustments to the time
11 frames may be warranted.

12 We have also received comments from the
13 Integrated Waste Management Board that the proposal is
14 consistent with the principles of extended producer
15 responsibility.

16 --o0o--

17 MR. POTTS: Staff concludes that the proposed
18 regulation will reduce greenhouse gas emissions associated
19 with air conditioner use in vehicles.

20 The proposed regulation is both technologically
21 and commercially feasible. It is cost effective. It
22 meets all legal requirements under AB 32.

23 Staff therefore recommends that the Board approve
24 the proposed regulation. We believe that the ultimate
25 solution for reduced emissions lies with efficient low

1 global warming potential alternatives.

2 However, we recognize the need for bridge
3 strategies until such alternatives are available. The
4 proposed regulation represents a tangible approach for
5 early reductions.

6 This concludes my presentation. Thank you for
7 your attention. We can try to answer your questions next.

8 CHAIRPERSON NICHOLS: Thank you.

9 Do you have any comments, Mr. Goldstene?

10 EXECUTIVE OFFICER GOLDSTENE: No. Thank you.

11 CHAIRPERSON NICHOLS: I think at this point we'll
12 hear from the Ombudsman who is charged with the
13 responsibility of making sure that we are following public
14 participation processes correctly.

15 So, Kathleen, do you want to comment on that?

16 OMBUDSMAN QUETIN: I'd be glad to.

17 Chairman Nichols and members of the Board, I
18 believe that the staff described the public outreach well.
19 And the only thing I could add that they didn't say and
20 that was that the staff report was released for public
21 comment on December 5th, 2008, noticed via the ARB website
22 e-mail, and to the over 495 people on the regulations list
23 serve.

24 Other than that, I think it's a wrap.

25 CHAIRPERSON NICHOLS: Thank you very much.

1 Before we go to the public testimony, are there
2 any comments the Board members want to make? Ms. Berg?

3 BOARD MEMBER BERG: Good morning.

4 First of all, I'd like to congratulate staff and
5 industry in working together. I think this has been
6 almost a two-year project. And it seems that we've come
7 up with some good solutions.

8 I do have a question since greenhouse gas is our
9 goal here. If we investigated and took in consideration
10 if there was additional energy or processing that the can
11 would take to manufacture? And did we take into
12 consideration those greenhouse gases that might be in
13 addition to the more complicated can?

14 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

15 CHIEF AYALA: This is Alberto Ayala with the Research
16 Division.

17 We did take into consideration. We didn't have a
18 hard calculation. But we looked at the associated
19 emissions with -- you mentioned as well as the additional
20 emissions associated with transporting back the cans in
21 reverse it can be recycle. And we convinced ourselves it
22 was not a primary emission contribution.

23 BOARD MEMBER BERG: Convincing ourselves, but did
24 we net out -- do we believe that the savings that we are
25 going to achieve as a result of adopting this program that

1 that is the net savings in greenhouse gases?

2 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

3 CHIEF AYALA: There is definitely a net savings. And we
4 have some calculations we can share with the Board and
5 publicly that shows that the fraction of a percent erosion
6 in terms of those additional greenhouse gases.

7 BOARD MEMBER BERG: Okay. There's great.

8 My real concern with the program is the
9 recycling. And do we have experience with other product
10 recycling programs that we're drawing on?

11 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

12 CHIEF AYALA: Yes. As the staff commented, we took a look
13 at existing programs. We worked very closely with
14 industry, because ultimately we recognize that they know
15 their industry best. And collectively we arrived at what
16 we presented today. So the answer is yes.

17 BOARD MEMBER BERG: I think my concern is the \$10
18 on an \$11 product seems excessive to me. With two million
19 cans and at 95 percent, we're leaving a million dollars on
20 the table. I'm concerned about that.

21 The other problem or issue that I have is the
22 pilot program was very short. My understanding, 90 days.
23 A 90-day program to get a 75 percent return is actually
24 remarkable. And if given the education on a five dollar,
25 I think that that amount would go up significantly. I'm

1 not quite comfortable with a doubling of the deposit.

2 The other concern I have is the reporting time
3 frame that you have. It's best for industry to be on a
4 calendar year. You have the reporting coming back in
5 December. I'm really confused on the reporting. And in
6 order to really give the consumer time to return the
7 product, it seems to me that the reporting should be on a
8 calendar year with the report in the following quarter.
9 That gives the consumer 30 to 60 days to get that return
10 on that can. And therefore you have a calendar year of
11 dollars that need to then go back to the manufacturer.
12 And so I would really suggest we take a look at the
13 reporting time frame.

14 And then finally, I would really recommend that
15 we either extend a pilot program. I think you skipped a
16 step of distribution in your chart. My understanding of
17 that industry is it goes manufacturing to distribution to
18 retail to the consumer. You know, that is a lot of
19 changing money or paperwork. Even transactional cost I
20 don't think has been taken under consideration.

21 So before we really impose a recycling program, a
22 hard line recycling program -- which I think is a fabulous
23 idea. I'm all for that. I do think we need an extended
24 program that we should change the language to say up to
25 \$10 to initiate a \$10 write out, I'm very concerned about.

1 And then really allow industry to figure out this
2 transactional paperwork between this four step
3 distribution and back down.

4 And then my other question on the eleven dollars,
5 did we include recycling costs in that eleven dollars?

6 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

7 CHIEF AYALA: Yes. The one dollar additional cost
8 includes some of the costs associated with the recycling
9 program.

10 BOARD MEMBER BERG: So one dollar per can is
11 going to include the cost of the can and the cost of
12 recycling?

13 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

14 CHIEF AYALA: The cost of the new valve technology plus
15 the program cost is approximately -- adds up to that
16 dollar.

17 BOARD MEMBER BERG: Okay. And we agree that the
18 setting a deposit does not run into any anti-trust issues?

19 SENIOR STAFF COUNSEL WANG: No. We don't believe
20 so.

21 BOARD MEMBER BERG: And there's no DTSC, there's
22 no hazardous waste involved, so the recycling doesn't
23 require any following of any hazardous waste laws?

24 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

25 CHIEF AYALA: That's correct. The substance is not toxic.

1 BOARD MEMBER BERG: Great. So other than the
2 nuances of the recycling issue, which I'd kind of like
3 some suggestions from staff at the end of the testimony,
4 so how we can resolve that.

5 Congratulatory, I think you did a great job.

6 CHAIRPERSON NICHOLS: I do want to suggest that
7 we defer responding to those points until after the
8 testimony. And then you can do it comprehensively, unless
9 there's something like you feel you need to get out right
10 now.

11 If not, we have six witnesses who signed up to
12 testify. We are going to impose our three-minute time
13 rule on commenters. Is the timer working? Last time it
14 wasn't. It is. Okay. So there's going to be a light
15 you'll see.

16 So our first three witnesses if you would come
17 forward please and be prepared are Norman Plotkin, Michael
18 Klein, and Diana Hull.

19 MR. PLOTKIN: Good morning, Madam Chairman,
20 honorable Board members, Mr. Goldstene.

21 We stand before you today in the unusual place
22 for us in support of this staff measure. It's not an
23 unwelcome place, I might add. It's the result of
24 two years of hard work on the part of industry and staff.
25 We appreciate beginning in June 2007 when the Discreet

1 Early Action item came up before you in Los Angeles where
2 we appealed for you dispensation to explore an alternative
3 to the ban of the product.

4 And again I want to just commend staff we're
5 often at loggerheads from the aftermarket industry with
6 staff, and this has been a very pleasant experience. It
7 began as the ban, as I indicated, and as you've heard from
8 staff. I won't go into a lot of detail, because the staff
9 presentation was incredibly detailed. There are a couple
10 of nuances that we have taken exception with in terms of
11 the lay of the land in our written comments, but I don't
12 belabor the point here because the major point is here
13 that we're in support of this proposal.

14 Like any close relationship, over the last few
15 years with staff, it's had its ups and downs and its back
16 and forths. But we've worked through in a collaborative
17 fashion to arrive at a compromise that we believe that
18 will reduce emissions and keep this product, which has
19 health and safety implications for those in hot parts of
20 California, available to the folks who most need it.

21 You'll hear in a moment that this proposal has
22 industry wide support from the packagers, the
23 distributors, the retailers, and the trade associations
24 that represent these organizations. But it's not going to
25 be without cost or complication. As you've heard from

1 Member Berg that there are going to be some challenges in
2 implementing this program. The recycling program, we have
3 given you our best estimate it will add about a dollar to
4 the product between the can top and taking the cans back.
5 But in the end, we're committed.

6 There remain two issues that have been kind of
7 highlighted in short here that will be elaborated on
8 further by the retailers in terms of the take back of the
9 can, the customer service element of that take back, and
10 the handling of the unclaimed deposits. And you'll hear
11 further on that in a moment.

12 This experience should serve as the first out of
13 the gate AB 32 measure as an example for how industry and
14 the regulators can collaborate to work through major
15 differences, major points of contention, and arrive at a
16 workable solution that benefits all.

17 Moreover, it's a solution that can as you've
18 heard be exported in other states and to the national
19 level. We're here to stand up and tell the story to you
20 and all who will listen because it's been beneficial.

21 With that, I'll close with just ask for your aye
22 vote, and you'll hear more from our industry. Thank you
23 very much.

24 CHAIRPERSON NICHOLS: Thank you very much, Mr.
25 Plotkin.

1 Michael Klein followed by Diana Hull and Jeff
2 Hove.

3 MR. KLEIN: Good morning, Madam Chairman,
4 honorable Board members, I appear on behalf of the
5 Automotive Refrigerant Packagers Producers Institute as
6 well as the CEO of a major packager of the dreaded small
7 cans.

8 First of all, I want to echo Mr. Plotkin's
9 comments.

10 Second, as a manufacturer, from our perspective,
11 there is a tremendous amount of work to be done for RP
12 members, for our retail customers, and for staff. We are
13 committed to doing that work though. We have a long
14 history of leading the charge and making migrations and
15 making historical. Changes and we find ourselves pleased
16 to be on the cusp of doing another one.

17 One of the changes that we led as an industry was
18 the migration from freon R12 to R134 years ago without
19 allowing a ban and still allowing customers to be able to
20 use the product. And as Mr. Potts said, we do view this
21 legislation as bridge legislation. We are equipped and
22 are prepared to migrate to the new low GWP gas also.

23 Another change that we led was the recycling
24 program. While it has its warts, we worked closely with
25 staff and with AutoZone, one of our major customers who'll

1 you'll hear from next, to pilot and approve and test the
2 theory a recycling program could work for all California.

3 We heard a lot of mention of staff. And I also
4 want to take the opportunity. I was a late entrant to the
5 program. But I want to commend staff, not only for their
6 willingness to work hard, but also for their willingness
7 to compromise and to listen to alternative proposals.

8 As Mr. Goldstene mentioned earlier, we did start
9 with a ban. And we've come a long way from that ban to
10 this new hybrid solution. And we are very, very thrilled.
11 We think it's the right answer for Californians and
12 obviously for us.

13 The membership of RP, whether producers,
14 packagers, suppliers, retail customers, all pledge our
15 support to this program. We pledge our support but also
16 pledge to respond back and to monitor and report back to
17 Mr. Goldstene and staff those parts of the program that
18 don't work perfectly.

19 We do have a long history of cooperation
20 together, and we know that the staff will listen and
21 listen to compromise solutions and that the Executive
22 Officer is given a lot of autonomy in fine tuning the
23 program. We think that's good for us and for all
24 Californians.

25 Madam Chairman, on behalf of the Automotive

1 Refrigerant Producers Institute, I thank you for the
2 opportunity to appear before you to address this Board and
3 thank staff again for all of their hard work.

4 Finally, I respectfully request of the Chair and
5 the Board unanimous approval of the measure before you.
6 Thank you.

7 CHAIRPERSON NICHOLS: Thank you.

8 Ms. Hull followed by Mr. Hove, Mr. Stanley.

9 MS. HULL: Good morning, Madam Chairwoman and
10 Board. I'm Diana Hull, Vice President, Assistant General
11 Counsel with AutoZone.

12 On behalf of AutoZone, I thank the California Air
13 Resources Board for the opportunity it has afforded us to
14 participate in this important initiative. AutoZone is the
15 nation's leading retailer of automotive replacement parts,
16 maintenance items, and accessories with over 4200 in the
17 US, Puerto Rico, and Mexico.

18 We currently operate 440 stores in the state of
19 California. From these 440 stores, we sold over 200,000
20 cans of R134a refrigerant last year.

21 In addition to being the nation's leading
22 retailer in this industry, we are also a significant
23 contributor to recycling efforts. By example, our stores
24 collect and recycle over eleven million gallons of used
25 oil and nine million used lead acid batteries each year.

1 In 2008, we implemented a chain-wide collection
2 and recycling program for scrap metal, cardboard, and
3 shrink wrap. Our stores and distribution centers are well
4 equipped to handle multiple returned collection recycling
5 programs.

6 I wish to thank the CARB staff for working with
7 AutoZone on various issues that have come up as we have
8 addressed these draft regulations. The dialogue has been
9 open and productive. As a result, AutoZone expresses its
10 overall support for this program.

11 That said, there are two issues that need to be
12 worked through before AutoZone can implement the program.
13 Specifically, AutoZone's operating systems, which are
14 designed to promote consistent customer service, do not
15 support a damaged can inspection process, much less offer
16 any assurance that a store employee could distinguish
17 between an intentionally damaged can versus an
18 unintentionally damaged can.

19 We also ask for clarification on the requirement
20 that uncollected customer deposits accrue to the benefit
21 of the manufacturer. We believe the intent is that
22 uncollected customer deposits accrue to the benefit of the
23 consumer.

24 We are hopeful we can work through these last two
25 issues and achieve our dual objectives of improving the

1 state's air quality while allowing retailers such as
2 AutoZone to continue to provide an important product to
3 the do-it-yourself consumer.

4 On behalf of AutoOzone, I thank you for the
5 opportunity to share our views.

6 CHAIRPERSON NICHOLS: Thank you for your
7 comments. We may have questions later.

8 Mr. Hove, Mr. Stanley, Mr. Lowe.

9 MR. HOVE: Good morning. And thank you also for
10 this opportunity to speak on this issue. I have to say
11 being fairly new to it, I'm very impressed with the
12 collaboration between staff and the Board. It is a
13 somewhat refreshing experience to be involved in something
14 like this.

15 I represent the Napa Auto Parts distribution
16 center here in Sacramento. Our Napa Auto Parts
17 distribution in Sacramento services approximately 120 Napa
18 Auto Parts retail and wholesale outlets throughout
19 northern California.

20 We also at Napa have distribution centers in
21 Fresno, Los Angeles, and San Diego who service hundreds
22 more throughout the state of California.

23 So needless to say, this is a significant
24 initiative. This is a significant program for our company
25 and I know consumers as well.

1 We at Napa continuously and continue to
2 understand the importance of pro-environmental policies
3 and reduction of emissions in improving air quality. We
4 are certainly looking forward to educating our customers
5 on the proper use and handling of automotive refrigerant.
6 We view this as an opportunity to provide program as an
7 added service, not only to the customer, but to the
8 communities we live in. Most of those communities are
9 very small towns that generally are significantly impacted
10 by this.

11 We feel that this proposed program will keep the
12 do-it-yourself servicing of AC systems available and
13 affordable for low and fixed income individuals who would
14 have been hurt by an overall product ban.

15 At Napa, we understand that participation in this
16 program is going to be costly. We understand there's
17 going to be challenges. But we are willing to meet those
18 challenges. We are willing to work with Board and staff
19 to overcome any problems that may present themselves
20 during implementation.

21 As with AutoZone, we also have significant
22 recycling procedures in place similar to theirs as well.
23 We're not as large a retailer, but we have significant
24 retail presence. So we are work looking forward to
25 working with everyone as well as implementing this in our

1 distribution systems as well our retail outlet stores.

2 I thank you all for this opportunity. Thank you
3 again.

4 CHAIRPERSON NICHOLS: Thank you.

5 Doug Stanley and then Aaron Lowe.

6 MR. STANLEY: Good morning. And thank you for
7 the opportunity to appear here today in front of
8 everybody.

9 I have a distribution company here in Sacramento
10 that distributes products primarily a lot of the same
11 items that we've been discussing here throughout the state
12 of California.

13 We have been in the automotive aftermarket for
14 many, many years. And we certainly realize the importance
15 of all the issues that have been brought before us over
16 the past eight to ten years. We've certainly seen these
17 things happen in different formats. And we've tried to
18 adjust and be proactive in the way a lot of these things
19 are handled: Gas cans, spray paints, things that have
20 happened over the years.

21 However, it is crucial for us as an industry to
22 still be capable of providing the necessary products for
23 the individual consumer. And I think this concept is a
24 way to continue to offer those products. It's not -- it's
25 a system that has been -- I think is very, very

1 formidable. It can be worked through. It has its
2 challenges. I know as always there are additional costs
3 that aren't always accounted for. And I think some of
4 those have been addressed here today. But we will
5 continue to find ways to make that work and find new ways
6 to address it.

7 With that said, you know, we intend to certainly
8 comply and with all the wishes and to continue to educate
9 the customers. And educating the customers is tough for
10 us. We have many levels to get that information out. We
11 have to get it to the retailers, and there is many
12 different retailers. And fortunately a lot of the larger
13 retailers can address 400 stores at a time. We have this
14 issue of addressing 400 independent retail stores at a
15 time, and then they have 200 each installers. We will do
16 the best we can to continue to get the word out so we can
17 make this a very successful program going forward.

18 So we can affect what we can. Look forward to
19 seeing how this plays out. And I think it will be a very
20 satisfactory outcome. Thank you very much.

21 CHAIRPERSON NICHOLS: Thank you.

22 And last Mr. Lowe.

23 MR. LOWE: Good morning, Madam Chair, members of
24 the Board. My name is Aaron Lowe, and I'm with the
25 Automotive Aftermarket Industry Association. We are a

1 national trade group with 3,000 members nationwide. We
2 represent manufacturers, distributors, and retailers of
3 auto parts, including the small can that's in question
4 that's being discussed today.

5 I want to echo the appreciation for the help --
6 the work the Board has done -- the Board staff has done in
7 putting this regulation together. It's been a long
8 arduous process. But give and take and the amount of
9 willingness to listen to each other has really proven to
10 be successful. And I think it offers a model for both
11 here in California, but also nationally.

12 I think the rule that's before you today is a
13 win-win for the consumer, the do-it-yourselfer who needs
14 to work on their own car or who desires to work on their
15 own vehicle air conditioner, for the small businesses that
16 sell and package refrigerant and for the environment in
17 the reductions in greenhouse gases that will result from
18 this. So I think the willingness for everyone to work
19 together has resulted in a great project.

20 And I also see this is something that we'll be
21 working on with the US Congress as they debate greenhouse
22 gas regulations. And we've also been working with the
23 U.S. EPA on keeping them up to date on what's going on in
24 California on this project. And hopefully it will look
25 for a national program that has some of the similar

1 elements.

2 Our concern is, of course, if there were to be
3 adopted state by state with a different patchwork that
4 would prove to be really burdensome for our members. So
5 we're hoping this would become more of a national program
6 than going state by state.

7 Also want to urge the Board to seriously look at
8 some of the concerns raised by the retailers regarding the
9 recordkeeping requirements. We don't want to see our
10 retailers put in the position of having -- or their staff
11 being in the position of having to decide whether a can is
12 worthy or return of the deposit or not. I think it's an
13 uncomfortable position between the customer and the
14 retailer and one that's must better suited for the
15 manufacturer to take into account.

16 I think the real beneficiary of the deposits is
17 the consumer education program and not the manufacturer.
18 And we'd like to see that clarified in the regulation as
19 well.

20 And that's really all my comments. I think
21 you've heard from everybody. We're really pleased with
22 this, and I would like to urge respectfully that this gets
23 a favorable vote from the Board. Thank you.

24 CHAIRPERSON NICHOLS: Thank you very much. That
25 completes my list of people who signed up to testify on

1 this item, unless I see hands waving in the audience,
2 which I don't. Okay. Great.

3 I think we can go back to the Board now and the
4 staff and our questions and comments.

5 So in addition to the questions that were just
6 raised by Board Member Berg, I do hope and also hear some
7 response on the two major points I heard. Really this all
8 revolves around how the recycling program is going to work
9 and both how it works at the outset and then also what
10 provisions there might be for fixing it as we go along as
11 we learn.

12 And the two other comments that were raised I
13 believe by Ms. Hull about the difficulties that the
14 retailers would have with a requirement they be
15 responsible for inspecting damaged cans and also the
16 question about what to do with the deposits that are not
17 collected that are left in the hands of the retailers and
18 what we're going to do with the money.

19 We should always have problems with what to do
20 with excess money. But I think this is one of those
21 situations where the program has a potential to really
22 create some backlash if we don't handle this well.

23 So do you want to respond to those points?

24 EXECUTIVE OFFICER GOLDSTENE: Dr. Ayala is
25 prepared to respond.

1 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

2 CHIEF AYALA: Let me take the easy question first from Ms.
3 Berg.

4 We agree with your comments about the
5 inconsistencies -- the minor inconsistencies that we find
6 in the reporting requirements. And in fact, I'd like to
7 point out that your comments almost identically mimic what
8 we heard from industry. So we are prepared to make it
9 more in sync with some of the things that you mentioned,
10 such as reporting calendar year, changing when the report
11 has to come back to us. We definitely agree with that and
12 are prepared to make those changes.

13 Let me try to tackle the hard one now. We agree
14 and that's why we acknowledge in the staff presentation a
15 \$10 deposit doubles the current price of a can. There's
16 two reasons for that. We feel strongly that we need a
17 significant incentive for that can to come back. Every
18 can that doesn't come back for whatever reason, we lose
19 the ability to reduce emissions.

20 Second, I too would like to acknowledge industry
21 when they agreed with us to run the pilot program. One of
22 the -- that pilot program was significant for many
23 reasons. One of the reasons was that industry actually
24 undertook a follow-up. They actually recorded people that
25 didn't bring back the can. And in a follow-up question,

1 one of the questions that was asked was, "Was five dollars
2 sufficient for you to return the can?" And some of the
3 answers were no.

4 So part of the thinking as we worked on this
5 issue with industry was that we needed an incentive
6 significant enough for that can to come back. Because if
7 it doesn't come back, we cannot account emission
8 reductions. So those are the reasons behind the doubling
9 of the price for the can.

10 BOARD MEMBER BERG: I'm wondering at the timing
11 of the pilot program what the price of gas was.

12 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

13 CHIEF AYALA: That was in the summer of '08.

14 BOARD MEMBER BERG: It would be interesting to
15 know is the five dollar price -- was it not worth it
16 because the price of gas was so high coming back and
17 making another trip or was it just the five dollar price.

18 CHAIRPERSON NICHOLS: I think people valuing
19 their time also is an issue.

20 I want to ask, if you don't mind me piggybacking
21 on this, in other recycling programs -- I'm more familiar
22 with the Bottle Bill Program from my past life at the
23 Resources Agency, you have a whole submarket that's been
24 created by people who go out and collect the cans and
25 bottles for the deposits who were not the original

1 purchasers. And retailers will redeem them regardless of
2 who the original purchaser was. It's an expensive program
3 to administer. But it's statewide, and they are required
4 to do it. I don't quite understand what's going to happen
5 here, but I'm assuming that given the value of the deposit
6 if anyone could come in with a refrigerant can that was
7 used and get the money, you would have lots of people out
8 there looking through trash and collecting these things.

9 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

10 CHIEF AYALA: Part of the requirement is calling for show
11 of receipt purchase and for the can to come back to the
12 place where it was purchased.

13 CHAIRPERSON NICHOLS: And that's clear so that
14 retailers don't get stuck with having to --

15 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

16 CHIEF AYALA: The primary focus is the actual end-user of
17 the can.

18 DEPUTY EXECUTIVE OFFICER SCHEIBLE: Part of this
19 is an education program. When the consumer comes in,
20 they'll know the use of this and the escape involves
21 releasing global warming gas. There is a deposit program.
22 They're encouraged to recycle it. Here's how you do it.

23 And the goal of the program is 95 percent. We
24 set the goal high. That's why we tended to say we think
25 \$10 is likely needed to get to that percentage. We don't

1 know for sure. We think it's going to take a very high
2 return rate by the consumers to do that. And basically at
3 the consumer level, it's either they're motivated by
4 environmental consciousness or just the economics of it.
5 And five dollars may not motivate 95 percent of the
6 consumers to make that trip back to the place where they
7 bought the can.

8 BOARD MEMBER BERG: Chairman Nichols, I don't
9 want to get into the right price. Is it five? Is it
10 7.50? But I would like to know as you suggested that
11 there is a mechanism within the rule for the Executive
12 Officer to be able to hear industry and refine this
13 recycling program as needed, because I think it is
14 something that evolves. And I'd like to know that staff's
15 hands aren't so tied that we are signing on to something
16 that is going to take another regulatory action in order
17 to evolve the program properly.

18 And it appears to me that industry and staff are
19 working so as well together they're quite capable of
20 coming up with the proper end result. I guess what I need
21 to know is do you have the flexibility within the rule to
22 get where you desire to go.

23 CHAIRPERSON NICHOLS: Mr. Scheible.

24 DEPUTY EXECUTIVE OFFICER SCHEIBLE: I think we do
25 and we recognize we're learning by doing. And by

1 proceeding that way, we're able to do this earlier. And
2 this will take refinement. We haven't done this type of
3 program. And the industry hasn't done it exactly. So
4 we've anticipated the need to be flexible.

5 CHAIRPERSON NICHOLS: What about the issue of the
6 collected funds that aren't claimed and whether they could
7 be used for the purposes of supporting the education
8 program or benefit consumers? What ways the flexibility
9 on that?

10 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

11 CHIEF AYALA: That's basically the requirement that we're
12 placing on the unreturned deposits. And in fact, we've
13 got multiple checks and balances where we need Executive
14 Officer approval for how those funds are going to be put
15 to use.

16 The focus is to increase the return rate to the
17 targeted amount. So there are constrains that we're
18 placing all the way up to requiring the manufacturers to
19 keep the moneys in a separate account. So we believe
20 there are sufficient checks and balances to make sure that
21 we don't just create a windfall situation here with those
22 deposits.

23 BOARD MEMBER BERG: I think if we can just figure
24 out what to do with the damaged cans system, what are your
25 recommendations for that, then my list would be satisfied.

1 ASSISTANT CHIEF COREY: This is Richard Corey.

2 I want to clarify that provision and make sure
3 there is clear understanding what it was getting at.

4 What it says is when a damaged can, a breached
5 can, a can with a hole in it is returned to the retailer,
6 the retailer would not return the deposit in those
7 instances.

8 The reason for the provision was about a small
9 percentage of cans are intentionally breached. It's a
10 practice that generally a subset of professionals use. It
11 defeats the purpose of the self sealing valve. The can is
12 evacuated. We are concerned that if a deposit continues
13 to be paid for cans with those practices, in a sense we're
14 rewarding the behavior that really is juxtaposed to the
15 objective here in a few instances it would take for the
16 deposit not to be paid for that behavior to be
17 discontinued.

18 Ms. Hull expressed an interest, and we are
19 sensitive to the points she made about the
20 retailer/customer relationship. We're also mindful of the
21 point she made any breached cans will be fully documented
22 on the part of the manufacturers. So we would get a
23 reporting. But we did have the rationale for this not
24 returning the deposit. And I kind of just laid it out.

25 CHAIRPERSON NICHOLS: Okay. Ms. Riordan.

1 BOARD MEMBER RIORDAN: Madam Chairman, when staff
2 briefed me, I said at the time it couldn't have happened
3 at a better time that we have this item before us with
4 this resolution, because I think there's an awareness of
5 greenhouse gases nationwide, but particularly also here in
6 California.

7 So I think people are going to understand given
8 that now we have the opportunity for education as well as
9 a part of this program.

10 I would just like to say, Ms. Berg, that I had a
11 little bit different take on the amount of money. I'm one
12 of those that would probably need the \$10 to motivate me.
13 So I saw it as a positive, because they're getting back
14 the full \$10. It's not like they aren't going to get back
15 their deposit or some part of deposit. So I saw it as a
16 good push to get to the 95 percent recycle.

17 But I just want to commend everybody on working
18 through this issue. And if we have the opportunity for
19 adjustments later that we may need, great. And what we
20 have on the Board right now I think is a good program and
21 I'm ready to support it.

22 CHAIRPERSON NICHOLS: I'm going to take that as a
23 motion.

24 BOARD MEMBER RIORDAN: I do have some ex partes.

25 CHAIRPERSON NICHOLS: If we can get a motion and

1 a second.

2 BOARD MEMBER BERG: I will second it.

3 CHAIRPERSON NICHOLS: Thank you.

4 Further comments?

5 BOARD MEMBER TELLES: I just have a question.

6 What is the significance of this nationwide in
7 the sense of what's the market -- what percentage of the
8 market is California for this product?

9 CLIMATE CHANGE MITIGATION AND EMISSIONS BRANCH

10 CHIEF AYALA: Certainly, the manufacturers and the
11 retailers are here. But California, the population, the
12 markets represents about ten percent of what nationally
13 gets sold.

14 CHAIRPERSON NICHOLS: Okay. Before we move to a
15 vote, we do have a standard policy about ex parte
16 communications.

17 BOARD MEMBER SPERLING: Madam Chairman, could I
18 say something?

19 CHAIRPERSON NICHOLS: Sorry. Okay.

20 BOARD MEMBER SPERLING: Just a little quick
21 thought. I do want to comment that I think this is a
22 model example of the agency being responsive and flexible.
23 It started out with an action that turned out to be
24 ill-advised or proposed. And you know, it turned around
25 and came up with something that seems to be very effective

1 and very cost effective.

2 But I do have one thought. And it doesn't effect
3 the motion. But in the larger sense here, in the second
4 slide it said that there's going to be 47 million tons of
5 high GWP gases leaked by 2020. And what we're talking
6 about here is .25. It's a tiny part of it.

7 So while this seems like an outstanding rule by
8 itself, you know, there is this thing of the trees and the
9 forests. And I wonder -- I'm not expecting an answer
10 right now unless you have one. But are there other
11 actions, policies, incentives we're looking at to get at
12 that larger number? And because even that larger number I
13 suspect is very crudely estimated that it could even be
14 much more than that.

15 And you know, I know when the industry group
16 talked to me it was there's all the leakage from the air
17 conditioners themselves that we are not even address ing
18 at all. And there are sealants that can be used for
19 instance can be sold along with these cans that can be
20 used to help seal some of these air conditioners and
21 prevent leakage. And you know, there might be a lot of
22 other actions that I can't even imagine. So is there some
23 thought being given to the bigger challenge?

24 DEPUTY EXECUTIVE OFFICER SCHEIBLE: Most
25 definitely. Over the next two years, we're going to bring

1 you a series of measures. And many of them will involve
2 the same thing we had to do now, which is to say what's
3 the solution that gets the greatest emission reductions
4 versus what's the one that gets them in a cost effective
5 manner.

6 So we are going to be bringing a series of
7 proposals that address both the stationary use and the
8 emissions of refrigerants, of how these substances are
9 used in insulation and motor vehicle side. And the target
10 there under the Scoping Plan is to reduce the projected
11 emissions by about 50 percent by 2020. So there would be
12 much bigger measures.

13 And in addition to that, we're trying to design a
14 measure that would bring you a comprehensive fee proposal
15 that would say what is the value of these emissions if
16 they were in a cap and trade program. And how would we
17 set up an economic incentive to get at the things that
18 aren't related.

19 And then in the longer term, we need to get to
20 the point where we don't put substances that have a
21 thousand or 10,000 global warming potential into commerce
22 in a way where they're very hard to capture afterwards.
23 But that's dealing with preventing the problem getting
24 bigger in the future.

25 Right now, we're dealing with what actually is an

1 artifact of solving another environmental problem in many
2 ways. And when we at the international level banned ozone
3 depleting substances, we looked for things that didn't
4 hurt people's health when they were used, didn't burn when
5 they escaped, and didn't reduce stratospheric ozone. And
6 unfortunately many of these substances have high global
7 warming potential. So now we have to find new ways of
8 doing thing that don't pose that threat.

9 CHAIRPERSON NICHOLS: One of the speakers
10 commented on the need for gases that don't have this
11 particular problem. And that ultimately where we need to
12 go. But the structure of AB 32, which I think is actually
13 even wiser than I realized when I first looked at it,
14 really pushes us to do things that we can do now cost
15 effectively and then continue working on these bigger
16 changes that we also have to make.

17 And I think as Ms. Riordan pointed out earlier,
18 what's commendable about this particular rulemaking is
19 that in a reasonably short period of time and with
20 certainly a lot less contention than many of our rule
21 makings involved, we were able to get to something which
22 gets us a significant reduction that everyone can feel
23 proud of at a reasonable cost. And I think that's really
24 a benchmark we will be looking to in the future.

25 BOARD MEMBER SPERLING: I would like to support

1 that. But I would like to support the latter part of what
2 Mr. Schieble said. And that is we don't want to tie
3 ourselves up with hundreds of rules and regulations. And
4 we ought to be giving a lot of very serious thought to
5 broader incentive-based or fee-based mechanisms that will
6 make it much simpler and perhaps more flexible in the end.

7 CHAIRPERSON NICHOLS: Got to do both. It
8 requires us to actually think at the same time that we're
9 acting. Always a challenge.

10 All right. It's time as I was -- unless I've
11 overruled anybody who had anything more to say -- to go
12 through quickly any disclosure contacts that Board members
13 have had with respect to this particular agenda item since
14 the agenda was published.

15 So do any Board members have any communications
16 that they need to disclose before we vote?

17 Mr. Sperling.

18 BOARD MEMBER SPERLING: I met yesterday I guess
19 it was with the Automotive Refrigeration Products
20 Institute. Most of those that testified, Norman Plotkin,
21 Michael Klein, Mitch Bolinsky, Doug Wheeler, Aaron Lowe
22 about exactly this. And their testimony was very similar
23 to what we discussed.

24 CHAIRPERSON NICHOLS: Thank you.

25 BOARD MEMBER RIORDAN: I would mirror that

1 declaration and say mine was via the phone. And certainly
2 the testimony of those mentioned mirrored what was said
3 today.

4 CHAIRPERSON NICHOLS: Thank you.

5 Any others? Yes.

6 BOARD MEMBER BERG: I had a phone call on January
7 15th with the Automotive Refrigerants Product Institute
8 with ten members led by Norm Plotkins. And their comments
9 to me was overwhelmingly in support of this measure today.

10 CHAIRPERSON NICHOLS: Okay. Thank you. I would
11 have had a meeting with the group, but I was forced to
12 cancel as a result of conflict with a meeting I had to go
13 to. But I appreciate very much your appearance here today
14 and all the hard work that went into this.

15 Without further ado, I'm going to call this to a
16 vote and ask all those in favor of adopting the regulation
17 to say aye.

18 (Ayes)

19 CHAIRPERSON NICHOLS: Any opposed?

20 Very good. Thank you.

21 I'm going to turn the gavel over briefly to Ms.
22 Riordan to start the item, and I'm going to excuse myself
23 but I will be back.

24 BOARD MEMBER RIORDAN: Let me open this item,
25 which is Agenda Item 9-1-6. This is an update from the

1 staff of particulate matter on the performance standard --

2 EXECUTIVE OFFICER GOLDSTENE: Ms. Riordan, 9-1-3,
3 the Motorcycle Aftermarket Part item.

4 BOARD MEMBER RIORDAN: Sorry. I was hoping it
5 was the next.

6 The next item today is Consideration of Proposed
7 California Evaluation Procedures for the Aftermarket
8 Critical Emission Control Parts on Highway Motorcycles.

9 Mr. Goldstene, would you please introduce this
10 item?

11 EXECUTIVE OFFICER GOLDSTENE: Thank you, Ms.
12 Riordan, members.

13 It's well known that many motorcycle owners
14 customize how their bikes look and make other changes to a
15 bike's performance characteristics. It's estimated as
16 many as 85 percent of motorcycles sold today are modified
17 during early ownership.

18 New emission regulations from motorcycles have
19 spurred the development of advanced technology components
20 such as catalytic converters and oxygen sensors in order
21 to meet tougher standards. Under existing regulations,
22 sale of the aftermarket versions of these critical
23 emission control parts is prohibited.

24 This proposal presented today by the staff
25 provides the manufacturers of aftermarket parts with the

1 procedures to show their product do not impact the
2 motorcycle's emissions and makes them legal for sale in
3 California.

4 I'll now ask Dr. Dean Hermano of the Mobile
5 Source Operations Division to provide a summary of the
6 regulatory proposal. Dean.

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

9 MR. HERMANO: Thank you, Mr. Goldstene and good
10 morning members of the Board.

11 Today, I will present to you staff's proposed
12 evaluation procedures for aftermarket critical emission
13 control parts used on highway motorcycles.

14 --o0o--

15 MR. HERMANO: During my presentation, I will
16 discuss why we drafted this proposal and how we got to
17 this point. I will then show you data collected during
18 emission testing that we conducted to support the
19 proposal. I will follow with details about the technical
20 provisions in the proposal including specific enforcement
21 programs. And to conclude, I will discuss the
22 environmental and economic impact associated with the
23 proposal.

24

25 --o0o--

1 year. And starting with the 2008 model year, the standard
2 was almost cut in half to 0.8 grams per kilometer for
3 hydrocarbon plus oxides of nitrogen plus HC or NOx.

4 --oOo--

5 MR. HERMANO: Removal of stock motorcycle exhaust
6 systems increases emissions because the aftermarket
7 exhaust systems that replace them either do not include
8 catalysts or the catalyst used has not been demonstrated
9 to be equally effective as a stock catalyst.

10 Currently, the only legal aftermarket catalytic
11 exhausts that can be purchased are from motorcycle
12 manufacturers such as Harley-Davidson, who include them as
13 part of their new vehicle emissions certification. The
14 vast majority of aftermarket exhaust systems sold are not
15 effective in reducing emissions.

16 The proposed evaluation procedures were drafted
17 to address this unique problem. Right now, there are no
18 existing procedures that allow the ARB to approve
19 aftermarket critical emission control parts for highway
20 motorcycles, particularly catalyst-equipped exhaust
21 systems.

22 While one does exist for aftermarket catalysts
23 for cars, it is not comparable since it focuses on
24 replacements for very old cars.

25 Motorcycles are unique because exhaust and other

1 part replacements typically occur while the motorcycle is
2 quite new and still covered under the original warrantee.
3 For these reason, several aftermarket exhaust companies
4 approached ARB in early 2008 requesting the development of
5 comprehensive evaluation procedures they could follow to
6 legally sell aftermarket exhaust systems that replacement
7 catalyts.

8 --o0o--

9 MR. HERMANO: During the development of this
10 proposal, ARB had little empirical data on the impact that
11 both tampering and potentially compliant aftermarket
12 critical emission controls parts would have on the
13 emission of highway motorcycles.

14 ARB conducted in-house testing of catalytic
15 muffler exhausts to develop data needed to support this
16 proposal. The motorcycle tested was a 2008
17 Harley-Davidson cruiser that is representative of the
18 bikes that commonly undergo this type of modification.
19 The bike was emissions certified with two oxidation
20 catalytic converters and dual oxygen sensors.

21 For the purposes of the proposal, we tested three
22 exhaust configurations that would show the impacts of both
23 legal and illegal modifications: Stock with prototype
24 aftermarket exhausts with catalyts and an exhaust system
25 with no catalyts. The latter two systems have not been

1 approved by ARB for street use. This photo was taken
2 during the actually test program. We also conducted tests
3 on several motorcycles owned by California residents. The
4 emission test results from this project are shown in the
5 next two slides.

6 --o0o--

7 MR. HERMANO: The results of ARB's testing on the
8 2008 motorcycle confirmed that current aftermarket exhaust
9 systems increase emissions. While both the stock and
10 prototype aftermarket catalytic mufflers complied with the
11 HC plus NOx standard for this bike, the use of the
12 non-catalyst system increased emissions by more than
13 double.

14 --o0o--

15 MR. HERMANO: The owner-modified motorcycles
16 tested were also originally emission certified with
17 catalytic converters and subsequently had their exhaust
18 systems replaced with illegal ones at some point during
19 ownership. All three were relatively new and still within
20 their warrantee period.

21 As this bar graph shows, the use of aftermarket
22 exhaust systems resulted in all three motorcycles
23 exceeding their applicable HC plus NOx standard by a fair
24 margin.

25 Overall, the test program confirmed that illegal

1 exhaust system modifications were increasing emissions.
2 By the same token, it also was shown that aftermarket part
3 manufacturers are capable of producing modified exhaust
4 systems that can keep motorcycles emissions compliant.

5 --o0o--

6 MR. HERMANO: The proposal before you today
7 creates a process allowing aftermarket part manufacturers
8 to demonstrate the efficiency of their catalyst equipped
9 exhaust systems, allowing them to be sold legally in the
10 state.

11 Since it is apparent that motorcycle
12 modifications are primarily occurring while they are still
13 covered under their original emission warranties, staff's
14 proposal is intended to ensure that owners that replace
15 stock critical emission control parts do so with
16 aftermarket emission control parts that are just as
17 effective and just as durable.

18 As defined by ARB in the proposal, aftermarket
19 critical emission control parts for motorcycle are add-on
20 and modified parts designed almost exclusively for
21 emission control and whose failure can result in
22 significantly higher emissions from motorcycles.

23 While catalytic converters are the primary
24 examples of aftermarket critical emission control parts
25 used on motorcycle, other common one include but are not

1 limited to oxygen sensors and hydrocarbon absorbers.

2 The proposed evaluation procedures contain
3 several provisions that are very similar to those followed
4 by motorcycle manufacturers to obtain new vehicle
5 certification from ARB. Meaning, that the aftermarket
6 part manufacturers would be subject to full emission
7 testing requirements that include a durability
8 demonstration, warranty and labeling, quality audit
9 reporting and testing, and recall provisions. The next
10 few slides will quickly describe each.

11 --o0o--

12 MR. HERMANO: This flow chart gives a better idea
13 of the emission testing that is required to obtain
14 approval of a motorcycle aftermarket critical emission
15 control part.

16 Briefly, the part manufacturer would choose a
17 worst-case configuration for testing and accumulate
18 several thousand miles on the motorcycle with the
19 aftermarket critical emission control part installed. A
20 number of emission tests would be conducted during that
21 time and used to determine an emission deterioration rate.
22 The results would be compared to the same emission
23 standards that the original motorcycle OEM met in order to
24 determine final compliance.

25 ARB may also request a confirmatory test be done

1 within 30 days of the original data of submittal if
2 compliance is marginal or other testing issues arise.

3 --o0o--

4 MR. HERMANO: Moving on to warrantee, ARB is
5 proposing that aftermarket part manufacturers provide
6 purchasers with a detects warrantee for their aftermarket
7 critical emission control parts. Like motorcycle OEMs,
8 aftermarket part manufacturers must provide this warrantee
9 to ensure their parts are free from defects in design,
10 materials, and workmanship that would cause them not to
11 pass applicable emission standards. Doing so provides a
12 healthy assurance that the aftermarket parts will remain
13 durable, despite not being covered by the original
14 emission warrantee anymore.

15 The warrantee periods would be tiered depending
16 on the age of the motorcycle that the aftermarket critical
17 emission control part is installed on. For bikes up to
18 four years old, the warrantee period would be five years
19 with a full useful life, whichever occurs first. Past
20 four years, the warrantee is reduced to three years or
21 half the useful life mileage.

22 The reduced warrantee lessens the compliance
23 burden for part manufacturers that have parts installed on
24 motorcycles that are near the end of the original OEM
25 warrantee period.

1 --o0o--

2 MR. HERMANO: In addition to the defects
3 warrantee, part manufacturers would also provide a
4 warrantee registration card with each aftermarket critical
5 emission control part sold. It would contain the purchase
6 and owner information needed in the event of a warrantee
7 claim or on ordered part recall. Given that the return of
8 such cards is historically low for motorcycle owners,
9 staff is proposing a minimum return rate of 50 percent and
10 part manufacturers would be given flexibility to provide
11 whatever consumer incentives it chooses to meet that goal.

12 ARB would be also be willing to review other
13 information collection methods suggested by part
14 manufacturers if they are equivalent to the 50 percent
15 rate.

16 Staff is also proposing that an installation
17 warrantee be provided by any party that installs any
18 exempted critical emission control part. Like the defects
19 warrantee, an installation warrantee adds an extra measure
20 of confidence that the part is installed according to the
21 part manufacturer's instructions. The coverage period is
22 shorter at two years or 12,000 kilometers, whichever occurs
23 first. This is considered ample time to resolve typical
24 issues related to incorrect installation.

25 --o0o--

1 MR. HERMANO: Dealers, retailers, and installers
2 would also have to document and keep records of sales of
3 exempted aftermarket critical emission control parts.
4 Information about the purchaser, aftermarket critical
5 emission control part, and motorcycle would need to be
6 documented and the records maintained for a period of five
7 years.

8 One specific piece of information that would be
9 collected would be the motorcycle vehicle identification
10 number, or VIN. This has caused concern for the affected
11 industry which believes that this information is very
12 difficult to collect, because many bike owners are simply
13 unwilling to provide information about themselves and/or
14 do not have their motorcycles with them to provide the
15 VIN.

16 Staff has had many discussions with the
17 Motorcycle Industry Council and the California Motorcycle
18 Dealers Association about this concern and fully
19 understand their viewpoint, but a similar requirement
20 exists for aftermarket car catalyts. So it is not
21 unreasonable for such documentation to be made available
22 for legally exempted aftermarket critical emission control
23 parts.

24 This is especially true since aftermarket
25 critical emission control parts can potentially be subject

1 to recalls for which the VINs would be the most accurate
2 way to locate owners that have defective parts, even more
3 so than just an address or phone number which do not
4 account for changes to motorcycle ownership.

5 --o0o--

6 MR. HERMANO: An exemption label would also be
7 required as is the current practice for other aftermarket
8 parts. It would contain identifying information such as
9 the part manufacturer's name, part or kit name, part
10 number, and executive order number.

11 For enforcement of the regulation, ARB would
12 require quality audit reporting and testing requirements
13 to help maintain the integrity and uniformity of the parts
14 being sold.

15 To address industry concerns related to the
16 expenses associated with audit testing, ARB is proposing
17 to cover the testing costs for any aftermarket critical
18 emission control parts selected for testing provided they
19 pass the applicable emissions standard. If any tested
20 emission standard is failed, then the aftermarket part
21 manufacturers would be required to reimburse ARB's
22 actually testing costs.

23 There are also defects reported and recall
24 provisions in the proposal. Generally, defects reported
25 for an exempt aftermarket critical emission control part

1 would be similar to what is already done by vehicle
2 manufacturers, but done on a semiannual basis and only
3 when warrantee claims reach levels deemed to be excessive.
4 If the reports verify that valid warrantee claims are
5 excessive, the aftermarket part manufacturer may be
6 required to implement an ordered recall.

7 --o0o--

8 MR. HERMANO: The proposed enforcement programs
9 are in line with ARB's existing enforcement activities on
10 aftermarket parts, which include the review of exemption
11 applications and approval of add-on and modified parts,
12 confirmatory testing and audit testing of exempted parts,
13 review of parts advertising to ensure accurate marketing,
14 and response to complaints lodged by the public and the
15 aftermarket industry about potential violations with
16 applicable anti-tampering law.

17 As with most of ARB's aftermarket regulations,
18 these enforcement activities are imposed on the affected
19 industries rather than the ultimate purchaser.

20 --o0o--

21 MR. HERMANO: In regards to environmental
22 impacts, the proposal on its own does not provide emission
23 reductions. Instead, it maintains the benefits that were
24 anticipated when the motorcycle emission standards were
25 ramped down to 0.8 grams per kilometer plus HC for NOx.

1 The proposal also provides a needed deterrent to consumer
2 tampering and provides the procedural mechanism for the
3 sale of legal aftermarket critical emission control parts.

4 --o0o--

5 MR. HERMANO: From an economic standpoint, the
6 proposal gives aftermarket part manufacturers the
7 opportunity to make their own business choices to enter
8 this sales market for aftermarket parts that is currently
9 open only to motorcycle OEMs. Costs related to emission
10 testing and product research and development would be
11 normal expenses that any part manufacturer would expend
12 even without this regulation in order to compete and make
13 a profit in California.

14 Staff estimates that the proposal will impact
15 affected parties by \$358,000 over a five year default
16 regulatory period. Specifically, aftermarket part
17 manufacturers would only incur costs of about \$100 related
18 to the preparation of each exemption application submitted
19 to ARB, while the more than one thousand California
20 dealers and retailers that sell the exempted parts would
21 be subject to the recordkeeping requirements that are
22 estimated to cost each about \$60 per year.

23 The incremental costs related to the development
24 of these aftermarket critical emission control parts will
25 likely be fully passed to the consumer at an amount of

1 about 100 to \$150 above the cost of a standard exhaust
2 system averaging 500 to \$600.

3 --o0o--

4 MR. HERMANO: To conclude, I just want to
5 reiterate a few points discussed in the presentation.
6 First, today's regulatory proposal responds to the
7 aftermarket industry's request to permit the legal
8 exemption of aftermarket critical emission control parts
9 for motorcycles from California's anti-tampering laws and
10 allows part manufacturers to legally sell them in the
11 state.

12 Second, the regulation will reduce illegal
13 tampering by ensuring that only exempted parts can be sold
14 by retailers.

15 The regulation helps maintain the emission
16 reductions expected from the amended emission standards
17 for highway motorcycles. It is not overly burdensome in
18 terms of cost or regulatory requirements given the major
19 impact these aftermarket parts have on motorcycle
20 emissions and the high likelihood that the parts may be
21 sold soon after the purchase of a new motorcycle.

22 Therefore, staff recommends that the Board adopt
23 the regulation as proposed. Thank you for your time.

24 CHAIRPERSON NICHOLS: Thank you very much.

25 We're going to move on to the Ombudsman's report

1 to describe the public participation.

2 OMBUDSMAN QUETIN: Thank you, Madam Chairman and
3 members of the Board.

4 This proposed regulation has been developed with
5 input from the parts manufacturers, highway motorcycle
6 manufacturers, industry association representatives,
7 dealer associations, catalyst manufacturers, repair
8 technicians, testing laboratory owners, and interested
9 motorcycle owners.

10 Staff began their efforts to develop this rule in
11 February 2008. They held two public workshops in El Monte
12 in April and August of 2008 with approximately 50
13 attendees each. They also held nine meetings between
14 April 9th and August 14th with manufacturers and the
15 Motorcycle Industry Council.

16 The staff report was released for public comment
17 on October 24th, 2008, noticed via the ARB website and
18 over 2,494 people on several list serves.

19 Also 30 copies of the public hearing notice and
20 the staff report were provided to the Environmental
21 Science Center in the Cal/EPA building. And copies of the
22 notice were sent to motorcycle parts dealers and major
23 parts distributors doing business in California. Thank
24 you.

25 BOARD MEMBER RIORDAN: Board members, are there

1 any questions that you have of staff at this point?

2 BOARD MEMBER BERG: I'm going to wait until after
3 the testimony. Thank you.

4 BOARD MEMBER RIORDAN: Everybody would like to
5 wait.

6 We do have four who have signed up to speak. If
7 you will come forward, please: Dr. Kubsh, Mr. Paliwoda,
8 Mr. Austin, and Bonnie Holmes-Gen.

9 Three minute rule applies. Welcome.

10 DR. KUBSH: Thank you, Mrs. Riordan and members
11 of the Board. My name is Joe Kubsh. I'm the Executive
12 Director of the Manufacturers of Emissions Controls
13 Association. I'm here to add my industry support for this
14 staff proposal there's in front of you. My members
15 manufacture the catalysts that are used in original
16 equipment motorcycle applications here in California. And
17 they're ready to work with the aftermarket suppliers for
18 incorporating these same kinds of durable catalyst
19 technology into their parts they wish to sell to
20 motorcycle users in the state here.

21 We have no issues with the proposal. We're very
22 familiar with the aftermarket process here in California.
23 My members have been involved with the sale of aftermarket
24 converters for automobiles for many, many years here. And
25 we just would like to ask you to approve this proposal

1 that's before you and thank the staff for its efforts.

2 BOARD MEMBER RIORDAN: Thank you very much.

3 Mr. Paliwoda, followed by Mr. Austin.

4 MR. PALIWODA: Good morning, Madam Chair and
5 Board members. Thank you for this opportunity to respond
6 to this proposed regulation.

7 I'm the Executive Director of the California
8 Motorcycle Dealers Association, a 38-year-old nonprofit
9 trade association for California motorcycle and motor
10 sport dealers.

11 You probably see that you have two cards as far
12 as my position on this bill. I showed up here this
13 morning to support the bill as we thought some of the
14 details had been worked out. But unfortunately in our
15 negotiations with staff, we still have one outstanding
16 issue that I'd like to talk to you about today.

17 Please understand, this is a worthwhile
18 regulation. This gives the opportunity for an industry
19 and a demographics that does a lot of customization of the
20 products that they buy, the vehicles they buy. This is
21 motorcycles. And this opens up a whole new area for legal
22 exhaust systems to be installed on motorcycles through the
23 purchase of aftermarket equipment -- or systems and
24 equipment that meet CARB certification. And it's a very
25 good thing. Because if the staff estimates are right that

1 87 percent of the motorcycles delivered today have
2 catalytic systems, then this is a good thing. And the
3 aftermarket will step up and make systems that will
4 improve performance and gas mileage, but that will comply
5 with the standard.

6 The problem we have here is the recordkeeping for
7 retailers for motorcycle dealers and other retailers. And
8 we had proposed some language based on the Motorcycle
9 Industry Council language that would allow retailers to
10 collect the name, address, the model number of the
11 motorcycle, and other information that would help in a
12 recall should the faint possibility of a recall of this
13 particular type of equipment occur short of asking for VIN
14 numbers.

15 Why wouldn't we ask for VIN numbers? In many
16 cases or maybe even a majority of the cases, a motorcycle
17 owner will come to a retailer with his pickup truck or his
18 car and then purchase the equipment. He'll then take this
19 home or take it to an installer or put it on himself or
20 herself.

21 The problem is the VIN number isn't always
22 available. It's at home on the motorcycle. Motorcycles
23 aren't normally sent to pick up the parts that are going
24 to be installed.

25 So the problem is it's not like an automobile

1 which normally they're driven into a muffler shop and the
2 catalytic converter is put on it. That's the disconnect
3 there.

4 And respectfully we would ask you to approve the
5 language that you have copies of there short of the VIN
6 number and otherwise we have no problem with this
7 regulation and would support it. Otherwise, we do not.

8 BOARD MEMBER RIORDAN: Thank you very much.

9 Mr. Austin.

10 MR. AUSTIN: Good morning. I'm Tom Austin,
11 senior partner at Sierra Research.

12 This morning, I'm testifying on behalf of the
13 Motorcycle Industry Council, a trade association I've been
14 consulting with over ten years.

15 MIC member companies include all of the major
16 original equipment motorcycle manufacturers except for
17 Harley-Davidson and many manufacturers of aftermarket
18 parts and accessories. MIC's position on this issue is
19 supported by both the original equipment manufacturers and
20 the aftermarket manufacturers.

21 MIC does not represent dealers, but we know
22 enough about operation of dealers to have a concern with
23 one specific section of the proposal, the one Mr. Paliwoda
24 adjust referenced, Section C(2)(d)(2) which requires
25 installers and retailers to collect VIN numbers for the

1 motorcycle on which this part would be installed.

2 And that's what we have a problem with for three
3 reasons.

4 First, we think it's reasonably certain that most
5 of the dealers are never going to realize that this is a
6 requirement they're subject to. Because this would be
7 unique. When they're selling emission legal components,
8 they don't have to record VIN numbers for anything else.
9 They're not set up to do that. Counter staff have to be
10 educated. We think for this tiny niche of the
11 aftermarket, it's unlikely to actually happen.

12 Second, we don't think it's really necessary
13 because the combination of warrantee card returns, the
14 information like name and address the dealer will collect
15 we think is going to be sufficient in the unlikely event
16 that any of these products have to be recalled. I say
17 unlikely because these products are going to go through
18 the same durability testing that OEM systems go through.
19 I don't think there's ever been a recall of an OEM
20 catalyst system for a motorcycle and we doubt there's
21 going to be a recall of any of these systems given the
22 testing they're going to be subject to.

23 And third, we think that those dealers who do
24 understand this is a requirement are going to end up
25 having to turn away customers for the same reason that Mr.

1 Paliwoda mentioned. When you're buying parts for your
2 motorcycle, you're usually not taking the motorcycle to
3 the shop. If you see this system hanging on the wall and
4 you think that will look good on your bike, you take your
5 pickup truck with you. You want to buy it. And the
6 dealer says, "I'm sorry. I can't sell it to you if you
7 don't have your VIN." That's going to run the risk that
8 system doesn't get sold.

9 This is where I have a disagreement with the
10 staff presentation when they said this isn't about
11 reducing emissions. This is about reducing emissions.
12 Every day in California catalyts are coming off of
13 catalyst bikes. And right now they're being replaced with
14 non-catalyst systems, which is increasing emissions.

15 One of the reasons that's happening is there
16 aren't any catalyst equipped systems that are approved for
17 sale. If they are approved for sale, they're going to end
18 up replacing non-catalyst systems and there is going to be
19 a net air quality benefit. So that's the one sticking
20 point we see.

21 Otherwise, we think it's a fine regulation. The
22 manufacturers that MIC represents are satisfied with it.
23 We just see this very practical problem at the dealership
24 level. We think the dealers are going to end up finding
25 out they could get fined. And that is going to discourage

1 sales and not be a good thing for air quality.

2 BOARD MEMBER RIORDAN: Thank you.

3 Bonnie Holmes-Gen.

4 MS. HOMES-GEN: Bonnie Holmes-Gen with the
5 Emergency Lung Association of California. And I'm here to
6 state that the American Lung Association of California
7 supports the evaluation procedures for aftermarket parts
8 for motorcycles that you're considering today.

9 And the American Lung Association is of course
10 very concerned that the State needs to do everything
11 possible to reduce emissions from in-use vehicles,
12 including motorcycles, to meet our State Implementation
13 Plan requirements for ozone and to reduce the serious
14 health impacts, including respiratory and cardiac
15 illnesses and death from air pollution.

16 We believe this regulation has been carefully
17 crafted and is clearly needed in light of a large
18 aftermarket parts market. We certainly need to make sure
19 that we're not losing ground in our smog-fighting efforts
20 due to replacement parts and ARB essentially has been
21 adopted and implemented aftermarket parts regulations for
22 some time. So there is a great deal of experience with
23 this. And we believe the Board will be able to
24 successfully implement this.

25 So we urge your approval.

1 BOARD MEMBER RIORDAN: Thank you very much.

2 Staff, I know the Board members are going to ask
3 questions. But in your wrap up, maybe you would like to
4 discuss the VIN number requirement and your response to
5 their issue.

6 EXECUTIVE OFFICER GOLDSTENE: I'm going to ask
7 Annette Herbert to respond to that issue.

8 MSOD CHIEF HERBERT: On the VIN issue, the VIN is
9 a critical part of information because any time we do a
10 recall like, say, on a car or even on the aftermarket OBD
11 catalyst for instance in the aftermarket arena, how we
12 track where the part is, where the owner is, where the car
13 is, or vehicle that it is on is through DMV through the
14 VIN. As we all know, the car could change ownerships.
15 People can move, et cetera. And the only way that they're
16 truly tracked is through the use of the VIN.

17 So to have an effective recall program if we did
18 need to go and recall parts that were not working right,
19 the most effective way would be through the DMV VIN
20 registration process to locate the owners to send them the
21 appropriate letters for responses.

22 So that's why we've decided to keep it in,
23 although we have listened to the industry's concern and we
24 understand that it is a different spin than driving a
25 vehicle in. But we feel it's critical to have an

1 effective recall program if we do need to have one to have
2 the VIN as part of that information.

3 BOARD MEMBER RIORDAN: Thank you.

4 Mr. Goldstene, is there anything else in your
5 wrap up? And then we'll have our questions from the
6 Board.

7 EXECUTIVE OFFICER GOLDSTENE: We think this is an
8 important step forward on making sure that motorcycles are
9 as clean as they can be as we continue our work in air
10 quality.

11 BOARD MEMBER RIORDAN: Let me just from a
12 technical point of view, if you of either a BlackBerry on
13 or your cell phone, I'd appreciate it if perhaps you could
14 turn it off. Because it does bother the sound system in
15 some way, and you'll hear this funny little sound.

16 If anybody has ever monitored this with your
17 computers at some of other location, you'll know
18 essentially it just takes out all the sound totally if
19 that little sound is on. So thanks for turning it off.
20 I'm grateful.

21 Ms. Berg, I think you had some questions you were
22 reserving.

23 BOARD MEMBER BERG: I think I would just like to
24 know how many recalls we have had. I can't quite assess
25 this VIN issue. I certainly understand it from the

1 supplier side, and their uniqueness is accurate. So I do
2 understand that. But I guess I'm trying to assess -- and
3 I understand staff's position that if we need it, so I'm
4 trying to assess, you know, when it meets the need of
5 really enforcing this action and what is the fine if they
6 don't.

7 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Let me
8 answer the first part.

9 There have not been recalls, because catalyts
10 hasn't been used on motorcycles until recently. So they
11 haven't reached the age in which a recall might occur.
12 This is for the ones installed by the Harley and Yamahas,
13 et cetera.

14 So they were -- I think the staff report points
15 out there was 2004 there were 50, 60 percent of the bikes
16 had it and by 2008 it's like 80 percent. There were some
17 from the early periods, but generally it had not been used
18 until the last few years. And therefore there's been no
19 recalls.

20 That's not to say there won't be recalls. I
21 think Mr. Austin implied that there wouldn't be. But if
22 you look at the environment of a Harley-Davidson with the
23 thumping exhausts and high throughput, in our mind there
24 is a real risk that some of these aftermarket systems will
25 not perform as good as the OEM ones or the original

1 equipment manufacture ones. And that's why we think we
2 need to have some way of dealing with the recall should
3 these devices fail.

4 And you know, I know they've raised it as an
5 important issue. But I think it has to be taken into the
6 context of the overall program. The parts that are being
7 sold today by the aftermarket are not legal. They
8 shouldn't be being sold. And we haven't been taking an
9 aggressive enforcement action. So in dealing with the
10 Dealers Association and other people, we thought we would
11 find a creative way to allow the dealer -- to encourage
12 them to provide catalytic-equipped exhaust replacements.
13 And in that place, it would be much easier to weed out the
14 bad actors, rather than having to take on 85 percent of
15 the actions and prove they're illegal. I don't think the
16 staff is going to be looking forward to going to Holister
17 for the Harley rallies and trying to cite motorcycle
18 operators for having illegal systems.

19 We want to do it systematically, and we don't
20 have any other alternative way of tracking the vehicles,
21 so if a recall is needed, that we would be able to get
22 back to the owner. That effectively means the recalls
23 will be ineffective and the broken parts won't be replaced
24 if we identify a systematic problem with one of these
25 aftermarket converters. What seems like a small item is

1 really at the core of making this program have the same
2 level of emission guarantee that we expect other
3 aftermarket parts used on cars and heavy-duty trucks and
4 things like that.

5 BOARD MEMBER BERG: What's been our experience of
6 recalls in other programs?

7 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Well,
8 in other programs we have, it works very well. First of
9 all, there are recalls going on all the time on cars
10 primarily and to some degree on trucks.

11 Since it's tied to the registration of the
12 vehicle, we actually -- if you don't perform the recall,
13 then you can't re-register your vehicle. So we have a 95
14 percent compliance rate.

15 But the way we identify the people who own those
16 cars is through the VIN number. And so that's the way
17 that works. We have not had recalls I'm aware of so far
18 on aftermarket catalytic converters for cars. But again
19 you that just tightened up that program a while ago. And
20 we would expect that might occur. But I think the
21 expectation is there is a greater risk of motorcycles
22 because of the severe environment they operate in.

23 And there was a question about the penalty. Can
24 someone answer what the penalty is?

25 SENIOR STAFF COUNSEL WANG: I think the penalties

1 are prescribed in the evaluation procedures. But
2 essentially we could rescind the Executive Order. We
3 could seek civil penalties as prescribed in the Health and
4 Safety Code. I think it's \$500 per violation. We could
5 as Mr. Cackette said, revoke registration.

6 BOARD MEMBER D'ADAMO: I support the proposal,
7 but I have some questions of a general nature regarding
8 motorcycles, so if staff would indulge for a few minutes.

9 I know Mr. Cackette is familiar with this has
10 been an ongoing concern I have had. Are we doing enough
11 with regards to the emission systems for the new
12 motorcycles? And in light of the rising gas prices, I
13 think it's an opportunity to take a look at sales and see
14 if we're seeing more motorcycles on the road and where
15 that fits in in the emissions pie chart. I don't know if
16 you're prepared to address these issues today or maybe
17 bring it back.

18 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: I can
19 at least in a qualitative way. As we've done with many of
20 the smaller sources of emissions for motor vehicles, the
21 requirements tend to be graduated depending how big of an
22 impact they have. Cars and diesel trucks, we are getting
23 99 percent, 97 percent reduction from uncontrolled levels.
24 Here with motorcycles, it's probably more like 70 percent
25 or something on that order.

1 We saw the emissions standard of .8 grams per
2 kilometer, which is 1.3 grams per mile and a new car is
3 allowed to emit -- cleanest ones .03 grams per mile. You
4 can see it many, many orders of magnitude higher. Yet
5 they are using the similar emission control technology.
6 It's just that we have not forced them to refine it to
7 these extremely low levels. And there is more difficulty
8 to some degree in controlling this type of motorcycle.
9 Some of them are air cooled. Some of the engines are
10 smaller, which makes it harder to control emissions,
11 things like that.

12 And overall, I think their emission inventory is
13 less than ten tons per day I think might be the number.
14 Somebody correct me if I'm wrong. Whereas cars are still
15 in the hundreds of tons and same with heavy-duty trucks.
16 So I guess it's sort of apportional reaction to the degree
17 of damage.

18 Here, our concern on this specific regulation of
19 course is that we expected to get the benefits of these
20 catalysts. But, you know, they're being removed and
21 thrown into the back of the lot so you can have a
22 different looking chromed version put on the bike. And
23 that's where we're losing what we thought we were going to
24 get. And so this gets us back to where we hope to be when
25 we last tightened up the requirements in 1998.

1 BOARD MEMBER D'ADAMO: Since I've been on the
2 Board, we haven't had a regulation as I recall for new
3 motorcycles. With all the improvements in technology,
4 maybe we can bring that level down even further and it
5 wouldn't be as expensive as it would have been ten years
6 ago. Just anything that staff can do to take a look at
7 that and bring it back if it is cost effective.

8 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: We can
9 certainly take another look at it.

10 BOARD MEMBER YEAGER: I too am in support of the
11 proposal in front of us. I appreciated staff's response
12 to the necessity of tracking by the VIN number makes sense
13 as far as recalls and that's the only one can do that. I
14 don't know in our conversations with industry if they had
15 other suggestions of ways to track the motorcycle. I
16 can't think of any. But I'm wondering if they had a
17 suggestion and what that might have been.

18 NEW VEHICLE/ENGINE PROGRAMS BRANCH CHIEF
19 LOURENCO: I think what you heard today from both Mr.
20 Paliwoda as well as Mr. Austin is they were including
21 information about the user name and address and also the
22 vehicle make. So it was basically everything we have in
23 common except for the VIN. There was no alternative. It
24 was just minus the VIN.

25 BOARD MEMBER YEAGER: If the vehicle was sold,

1 it's not of any great use.

2 And I think changing habits are always very hard.
3 My hope is the first time a motorcycle owner comes to a
4 shop and realizes he needs the number, he'll somehow write
5 that number down and either have it in the car or the
6 wallet or the purse, whatever, and be able to show it.
7 But certainly the first time I assume won't probably have
8 that number. But a lot of these regulations/procedures
9 are just changing habits. And hopefully it isn't as much
10 of a burden as people think.

11 CHAIRPERSON NICHOLS: I was listening to the
12 testimony from back there. I didn't hear the question
13 answered about whether motorcycle registrations include
14 the VIN number on the registration and whether people are
15 required to carry those as they are with cars.

16 EXECUTIVE OFFICER GOLDSTONE: They do. And they
17 are.

18 CHAIRPERSON NICHOLS: So this shouldn't be all
19 that difficult.

20 EXECUTIVE OFFICER GOLDSTONE: Including proof of
21 insurance.

22 CHAIRPERSON NICHOLS: Okay. Thank you.

23 BOARD MEMBER BERG: But Chairman Nichols, I think
24 the industry point -- and I'm in agreement with the VIN.
25 I think that unfortunately it's going to be necessary.

1 But I think the industry's point was that many times
2 motorcycle owners come in with their automobiles, not
3 their motorcycles.

4 CHAIRPERSON NICHOLS: Good point.

5 BOARD MEMBER BERG: And my other -- what are we
6 going to do to notify the retailer or the distributor of
7 this? Because I think education, as pointed out by one of
8 the speakers, is going to be critical. And I think that
9 does fall on us to make sure to get the word out.

10 NEW VEHICLE/ENGINE PROGRAMS BRANCH CHIEF

11 LOURENCO: I totally agree with you. And I think that is
12 the burden that falls on us.

13 And one of the things we can promise to do is
14 that we will send mailings and work certainly through the
15 MIC and Dealers Association to get the word out.

16 CHAIRPERSON NICHOLS: Other comments?

17 BOARD MEMBER TELLES: Just point of
18 clarification. Did I, Tom, hear you correctly say a new
19 car per kilometer emits less than a new motorcycle of NOx?

20 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Yes.

21 For HC and NOx it would be orders of magnitude less.

22 CHAIRPERSON NICHOLS: All right. I'm going to
23 call for any ex parte communication before we move the
24 Resolution. Do we have any? None.

25 Hearing no ex parte communications, I'm going to

1 call for a motion then.

2 BOARD MEMBER D'ADAMO: Madam Chair, I move
3 adoption of Resolution 09-2.

4 BOARD MEMBER YEAGER: Second.

5 CHAIRPERSON NICHOLS: All in favor please signify
6 by saying aye.

7 (Ayes)

8 CHAIRPERSON NICHOLS: Any opposed?

9 Good. Thank you. I think we should take a ten
10 minute break and then come back for the next item.

11 (Thereupon a recess was taken.)

12 CHAIRPERSON NICHOLS: The plan for the next hour
13 or two is that we will hear the staff presentation on our
14 next item, and then we'll break for lunch. And then after
15 lunch, we'll come back and hear public testimony. So for
16 those of you who are planning your afternoon, I hope that
17 will help.

18 The next item on the agenda is an update from the
19 staff on the impacts of the particulate matter performance
20 standards of the in-use on-road vehicle regulations in
21 oxides of nitrogen attainment areas.

22 And I do want to note that this is a follow-on
23 from the Board meeting where we adopted a rule. This is
24 not a continuation of the public hearing. It's not a
25 rulemaking item. It's an informational item.

1 If the Board were to decide it wanted to take
2 further action, it would have to notice that and bring it
3 back for a rulemaking proceeding. So I hope people in the
4 audience will understand we are here to listen and to take
5 in information, but we're not in a position to take any
6 action today.

7 When we approved the in-use on-road vehicle
8 regulation last month, some Board members were concerned
9 about the timing of the retrofit and turnover requirements
10 for trucks, and in particular, logging trucks that operate
11 exclusively in attainment areas and wanted additional
12 information about the ability to better harmonize these
13 two requirements.

14 Therefore, the Board directed the staff to
15 provide some additional information regarding the retrofit
16 requirements for vehicles operating in the NOx attainment
17 areas. Staff has gone back and obtained some additional
18 information about these areas and the potential impacts on
19 air quality from trucks that operate within them. And
20 they'll be sharing their findings with us today.

21 However, before the staff begins their
22 presentation, I want to remind all of us that under the
23 Diesel Risk reduction Plan that this Board has previously
24 adopted, we need to continue to achieve diesel particulate
25 matter reductions from on-road diesel vehicles operating

1 in all parts of the state as expeditiously as possible if
2 we're going to reduce localized exposure of residents of
3 these areas, regardless of whether they are major
4 metropolitan areas or not. And only then are we going to
5 be able to meet the risk reduction goals that were
6 established eight years ago.

7 I at the time that this item came up and we
8 agreed to put it over for a further report, I expressed
9 some concerns about the issue of how we handle regulations
10 that may have different economic impacts in different
11 parts of the state. And our desire to sometimes fine tune
12 things in ways that give recognition to different needs
13 and different parts of the state.

14 But I am more convinced than I was before I
15 looked at this issue in any detail that we need to be
16 cognizant of the fact that residents of rural areas of the
17 state, even if they are fewer in number and more
18 scattered, also are entitled to the health benefits that
19 come from our emissions reductions program for the diesel
20 trucks.

21 So I'm laying that out there as a marker even
22 before we hear this information, because I think it's
23 often tempting to go down the path of trying to make
24 special accommodations that seem reasonable in an isolated
25 area but may not necessarily fit within the bigger

1 picture.

2 So with that, Mr. Goldstene, will you please
3 introduce this item?

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

6 As you indicated, today staff will present
7 additional impacts of the PM performance standards of the
8 truck and bus regulations in NOx attainment areas.

9 Staff's analysis will include a clear description
10 of what the regulation as approved by the Board last month
11 would require for vehicles that operate exclusively in
12 these areas. Staff will also provide additional
13 information on the characteristics of the counties that
14 comprise the NOx attainment areas as well as the potential
15 localized health impacts of diesel PM exposure in these
16 areas.

17 I'll ask Erik White, our Heavy-Duty Diesel In-Use
18 Strategy Branch Chief to provide the staff presentation.
19 Mr. White.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
23 WHITE: Thank you, Mr. Goldstene. Good morning, Chairman
24 Nichols and members of the Board.

25 --o0o--

1 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
2 WHITE: Last month, as part of its approval of the Truck
3 and Bus Regulation, the Board had some questions regarding
4 the schedule for installing particulate matter retrofits
5 for vehicles that operate exclusively within certain
6 designated federal air quality attainment areas of the
7 state.

8 The Board subsequently directed staff to report
9 back in January 2009 to provide an update and additional
10 information in these areas and trucks that operate in
11 them.

12 --o0o--

13 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
14 WHITE: Today, staff are reporting what additional
15 information we've learned.

16 The Board concerns raised including questions
17 about the need for diesel PM emissions reductions in these
18 regions on the same schedule as the rest of the state and
19 whether it would be more appropriate to better align the
20 retrofit requirements for trucks operating in these
21 regions with their associated turnover requirements so as
22 to reduce the need the take multiple compliance actions on
23 the same vehicle.

24 There were also questions regarding how
25 significant the localized risk in these areas is,

1 considering these areas generally have lower populations
2 of both people and trucks and the cities in these regions
3 are typically smaller than those found in the more urban
4 areas of California.

5 --o0o--

6 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

7 WHITE: As an overview of what the Board approved, the
8 regulation contains special provisions for vehicles that
9 operate exclusively within certain designated attainment
10 area counties. These areas, shown here in orange, are
11 known as NOx attainment area counties. These areas attain
12 all federal air quality standards and do not contribute
13 pollution to down wind areas that violate the standards.

14 Any vehicle that operates exclusively in these
15 areas would not be required to be replaced until 2021.
16 However, they would remain subject to the PM requirements
17 which are phased in from 2011 to 2014.

18 This means that for vehicles that don't leave
19 these areas, they would be required to have retrofit
20 filters installed during the first few years of the
21 program, but then could continue to operate for an
22 additional seven to ten years before they would have to be
23 replaced.

24 In contrast, outside of these areas, fleets
25 typically have only four years to operate their vehicles

1 with retrofit filters before the vehicle would need to be
2 replaced.

3 Of course, any vehicle with a 2007 model year or
4 newer engine already having a diesel PM filter would meet
5 the PM requirement.

6 Also for vehicles that operate exclusively in
7 these areas, there are no mileage limitations. However,
8 annual reporting to ARB is required, as is the need to
9 install a GPS tracking device or comparable system to
10 ensure the vehicle does not leave the NOx attainment area
11 counties.

12 --o0o--

13 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
14 WHITE: The current PM schedule in the NOx attainment area
15 counties provides several benefits, including minimizing
16 the potential for toxic diesel PM hot spots, while
17 uniformly implementing the goals of the Diesel Risk
18 Reduction Plan.

19 It is also consistent with the existing ARB
20 policy regarding diesel PM emission reduction strategies
21 which typically do not distinguish between different
22 regions of the state when it comes to reducing diesel PM
23 emissions.

24 Numerous regulations, including the transit bus
25 regulation, the solid waste collection vehicle regulation,

1 the stationary engine air toxic control measure, the
2 off-road regulation, and others all provide for the
3 installation of PM filters on the same schedule regardless
4 of location.

5 --o0o--

6 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

7 WHITE: Overall, there are about two million residents
8 living in the NOx attainment area counties. And in many
9 ways, these residents are not all that different from
10 those in the more populated areas of the state.

11 Using data from the California Department of
12 Finance and the 2000 US Census, we determined that about
13 two-thirds of the residents in these areas live in urban
14 or incorporated areas. And that just under ten percent of
15 this population lives within 500 feet of roadways.

16 Both of these statistics are similar to other
17 areas of the state, such as the San Joaquin and Sacramento
18 Valleys. Also there are about 23,000 trucks registered in
19 these areas. And the ratio of residents to trucks is the
20 same in the NOx attainment area counties as it is in the
21 rest of the state.

22 Of these 23,000 trucks, we believe that at least
23 60 percent are local trucks, often medium heavy-duty
24 delivery trucks that remain within 25 miles of their home
25 base.

1 We also evaluated Department of Motor Vehicle
2 data to better understand the characteristics of the
3 fleets registered in these areas and found that the
4 average age of these trucks is about four years older than
5 the statewide average and that there are more small fleets
6 having three or fewer vehicles compared to the rest of the
7 state.

8 --o0o--

9 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
10 WHITE: To evaluate potential localized impacts from
11 trucks operating exclusively in these areas, staff
12 performed a risk analysis in the Eureka/Arcata. Staff
13 used information provided by the forest product industry
14 to evaluate the impacts of logging and other mill related
15 trucks on residents. These trucks are ideal for such an
16 analysis, because we know with the high level of certainty
17 that most stay within these areas.

18 Staff selected the Eureka/Arcata area because it
19 was representative of a small urban area where we had good
20 information on the local meteorology and where we could
21 make reasonable estimates of truck trips for that
22 industry, which we were able to validate with input from
23 several companies in the industry.

24 This was also ideal in that it allowed staff to
25 estimate the cumulative impacts of multiple facilities

1 the wood processing facilities in these areas are shown
2 along the respected roadways.

3 Staff found within the study area the number of
4 truck trips to support the wood processing industry
5 exceeds 200 along certain roadway segments and more than
6 500 in others. This represents as much as 10 to 20
7 percent of all truck trips on area roadways on a given
8 day.

9 Using these truck volumes, staff model the
10 relative risk from trucks operating in this area. Because
11 of the significant number of truck trips in Arcata,
12 staff's exposure risk assessment focused on the boxed area
13 shown on the map. Staff's findings are shown on the next
14 two slides.

15 --o0o--

16 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
17 WHITE: The red lines on this map show where the
18 incremental risk exceeds ten in a million, even with the
19 PM filter requirements already approved by the Board in
20 place.

21 As you can see, even with the maximum PM
22 reductions possible, near the roadways in this region, the
23 exposure risk will still exceed ten in a million. And a
24 risk of 50 in a million remains near the intersection of
25 highway 101 and 299 near the top of the map.

1 As can be seen, a majority of the local
2 population in this area is exposed to elevate risks.
3 These findings would be similar in other areas of the
4 state as well, given similar distances from roadways and
5 truck trip volumes.

6 --o0o--

7 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
8 WHITE: This map shows the associated risk from diesel PM
9 if the filter requirements for wood processing trucks were
10 delayed.

11 On balance, a delay would nearly double the
12 exposure risk to residents in this area. As can be seen,
13 the boundary where the exposure risk exceeds ten in a
14 million is larger and the area of highest risk would
15 exceed 100 in a million.

16 --o0o--

17 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
18 WHITE: In conclusion, available data shows that localized
19 diesel PM hot spots do occur in NOx attainment area
20 counties and that significant exposure risks occur along
21 roadways where most people live and breathe.

22 Although these areas are not as densely populated
23 as other areas of the state, they share many
24 characteristics common to the more populous areas,
25 including significant percentages of urban residents and

1 high ratios of trucks per person.

2 Although staff does not have specific data on
3 other industries in these areas and cannot perform similar
4 analyses until better data are developed, it is clear that
5 local trucks are likely to contribute significantly to
6 elevated background exposure risk.

7 This concludes my presentation.

8 CHAIRPERSON NICHOLS: Thank you.

9 I believe we do have witnesses who have signed up
10 to speak on this item. Is that correct?

11 BOARD MEMBER SPERLING: I just have one technical
12 question, because we just had that earlier discussion this
13 morning about PM concentrations. And there it said a ten
14 microgram per cubic meter reduced life by seven months.

15 Have you done a dispersion analysis to say like
16 50 yards from the road what effect it had on the
17 concentrations?

18 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
19 WHITE: That data was developed as part of this. I'm
20 going to see if we can get another staff member up who did
21 the work.

22 DEPUTY EXECUTIVE OFFICER SCHEIBLE: I can give
23 you a rough estimate.

24 One microgram of exposure for diesel exhaust
25 equals 300 in a million lifetime risk. So when you have

1 100 in a million risk, you have a third of a microgram of
2 PM exposure. And you can go through the math. And
3 because there is going to be a -- the health effects in
4 terms of mortality for diesel PM is about an order of
5 magnitude greater than cancer risk. So in reality when
6 you see the cancer risk at one hundred in a million, you
7 have to worry much more about the PM mortality risk than
8 you do the cancer.

9 BOARD MEMBER TELLES: In your evaluation here
10 looking at the map along 101, are those -- wasn't clear to
11 me. Are those estimates or do you actually have PM
12 monitors along the freeway?

13 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
14 WHITE: Those are our model estimates. We did go back and
15 look to see where the ambient air quality monitors were in
16 this area. And actually they're south of this area down
17 in Eureka I believe.

18 But this type of work looked at the emission
19 rates for the vehicles that operate in this area and
20 dispersion of those pollutants from those emissions.

21 BOARD MEMBER TELLES: But the dispersion, it
22 looks like you're two miles away from the ocean with the
23 ocean breeze there. It seems like it would be moving that
24 particle mass back and forth and taking out to the ocean
25 and may not even be exposed to the people in this area.

1 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

2 WHITE: The data that's used, one of the key inputs in
3 this is that you have to have -- we try to get as
4 representative meteorological data as we can for this
5 area.

6 So for this particulate region we used
7 meteorological data from I believe Eureka. It took into
8 account changing wind patterns throughout the year, wind
9 velocities, how high temperatures relative to how high up
10 emissions go as part of their dispersion. So all of that
11 information is folded into the analysis. So it truly is
12 localized and representative of the area being looked at.

13 BOARD MEMBER TELLES: Just one other quick
14 question. Not so much in this region, but in the San
15 Joaquin Valley where you have 80,000 trucks going down 99
16 and 5 on a daily basis, would you have just kind of an
17 estimate? Is it ten per million? Twenty per million if
18 you're within close to the freeway as far as risk for
19 cancer? I'm just trying to put this into perspective when
20 you compare to other impacted areas of the state.

21 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

22 WHITE: I think the findings are certainly representative
23 of what we've seen in other areas when we've looked at it,
24 whether it's down in Southern California. Looks we've
25 taken in West Oakland, for instance, that have seen kind

1 of the cumulative impact of trucks on multiple roadways in
2 a region and the cancer impacts associated with that.

3 BOARD MEMBER TELLES: Do you have a number? Is
4 it 10? 20? 30? 200?

5 DEPUTY EXECUTIVE OFFICER SCHEIBLE: I'm going to
6 go off my memory, which isn't always completely right.
7 But along like the very heavily traveled freeways like the
8 710 or around city of Commerce, the risk around the
9 freeway gets to be a thousand in a million. And those are
10 pretty congested and very heavily traveled truck routes.

11 So I think when you looked at a freeway that
12 carried a volume of trucks many times this in an area like
13 the San Joaquin Valley, you would see hundreds in a
14 million of risks for those that are living within the
15 first quarter mile or half mile of a freeway.

16 But this would be typical of even in the other
17 areas of the state for the roadways that don't have quite
18 that concentrations of trucks.

19 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
20 WHITE: I'm going to add to what Mike said, because I got
21 a little bit of information.

22 Typically, what we've seen on heavily traveled
23 roadways is the extent of risk of ten in a million can go
24 miles away from the roadway. So it can have a significant
25 impact, a significant distance down wind of the freeway.

1 CHAIRPERSON NICHOLS: So living in Arcata is
2 still less risky than living along the freeway route in
3 the valley, no question about that. But I do think the
4 data shows it's not an idyllic area of pure air even now.

5 Comment.

6 BOARD MEMBER BERG: I just have a procedural
7 question right now. And that is, is this data also
8 include or what would the data show on off season? What
9 are the truck trips off season? Because my understanding
10 is that on season this would be a fair representation,
11 which is four to five months out of the year, four to
12 six months off of the year. What would the data show off
13 season?

14 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
15 WHITE: This takes into account some of the temporal
16 nature of these trucks. In other words, this is a very
17 long term look when you're looking at cancer. We look at
18 very extended periods of time of exposure to the PM. So
19 it includes the winter, the summer, the fall. And the
20 work we did kind of averaged out over an annual basis that
21 cyclical nature of these specific vehicles where you have
22 the logging trucks themselves bring the raw logs in
23 happening during the summer months. And then you have
24 other trucks that service the facilities that are local
25 that take sawdust, bark, other products to be processed

1 someplace else. Those trucks actually operate on a more
2 annual basis. Stuff builds up and then it gets let out in
3 the winter to these various facilities. So both of those
4 types of activity are reflective in here, but on an
5 annualized basis.

6 CHAIRPERSON NICHOLS: I think Ms. Riordan had a
7 question.

8 BOARD MEMBER RIORDAN: Just a very quick question
9 on the map.

10 Help me remember, this area that you have defined
11 on your map which is slide 10, what air district is that?

12 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

13 WHITE: I believe it's the North Coast Air District.

14 BOARD MEMBER RIORDAN: And Mendocino County is
15 south of this?

16 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

17 WHITE: Correct.

18 BOARD MEMBER RIORDAN: But do they abut each
19 other?

20 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:

21 I think they do.

22 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

23 WHITE: If we flip to slide four, it has a map of the
24 state and it kind of shows the various counties. We're
25 talking about --

1 BOARD MEMBER RIORDAN: I can't read that,
2 unfortunately.

3 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
4 WHITE: There is Humboldt County where the Arcata/Eureka
5 area is, although it's probably up closer to halfway up --

6 BOARD MEMBER RIORDAN: And Mendocino is --

7 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
8 WHITE: Mendocino is directly below it.

9 BOARD MEMBER RIORDAN: Okay. And then later I'm
10 going to refer to a document from Mendocino County, but I
11 won't do that now.

12 CHAIRPERSON NICHOLS: Okay. Ms. D'Adamo.

13 BOARD MEMBER D'ADAMO: Just to clarify what we
14 adopted. Looking at that slide, slide four, so these
15 provisions that you've identified apply if the vehicle is
16 operated exclusively in attainment areas. And then we
17 also have the agricultural provision.

18 Are the wood processing facilities saying that
19 they need more because they don't fall under the ag
20 provisions and don't operate exclusively?

21 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

22 WHITE: Yes.

23 CHAIRPERSON NICHOLS: Yes. Ms. Berg.

24 BOARD MEMBER BERG: My understanding is they do
25 operate exclusively. They're not asking to operate

1 outside the attainment areas. I just want to double
2 check.

3 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

4 WHITE: The difference between this particular provision
5 in the rule is these provisions still require the
6 installation of particulate matter retrofits early in the
7 program. And that's -- thank you, Ms. Berg, for
8 correcting that.

9 On the agricultural provisions, the vehicles that
10 operate under the approved mileage limitations do not have
11 to be retrofit until 2017 or 2023, depending on their
12 mileage. So agricultural vehicles have a somewhat added
13 benefit of not having to put a particulate filter on until
14 that vehicle is required to be turned over.

15 And the concern with some of the logging vehicles
16 is just that they have too many miles to fit under the
17 agricultural provisions, although they are an agricultural
18 vehicle. So they would meet this criteria, but this
19 criteria would require that the retrofit be installed
20 early in the program.

21 CHAIRPERSON NICHOLS: Okay. Yes, Dr. Telles.

22 BOARD MEMBER TELLES: This is really an
23 interesting report you did.

24 As far as ambient air quality along the freeway
25 with 500 trucks going by, what is the estimated

1 concentration of PM in micrograms? Is it -- I mean, is it
2 hitting any ambient air quality standard?

3 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:

4 The two monitors in the Eureka area reach on the order of
5 30 to 35 microgram level, which is just below the
6 standard. They're not necessarily next to the roadway
7 though.

8 BOARD MEMBER BALMES: I think it's important to
9 point out that monitors are sited away from roadways on
10 purpose.

11 BOARD MEMBER TELLES: I know that. But I was
12 wondering what concentration you would have if you were in
13 this 10 to 20 cancer risk region. Do you have any
14 estimate there? It's a question I always ask our local
15 Board, and they shake their head too and we don't measure
16 it because it's not a federal necessity.

17 But if you live within half a mile of the
18 freeway, I mean, which a lot of people do, it seems like
19 an important question.

20 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
21 WHITE: One of the struggles we have with looking at
22 ambient data, especially when it comes to risk, we haven't
23 found a good way. There's not been a good method
24 established to take out of that total PM that they collect
25 from all sources, whether fireplaces or automobiles or

1 whatever it is, that is contributed from diesel exhaust
2 emissions.

3 And so the method that we use to try to evaluate
4 health impacts and risk impacts is through modeling of
5 emissions of the diesel PM and trying to see how those
6 would disburse through the local community.

7 CHAIRPERSON NICHOLS: Other Board member
8 questions or comments?

9 If not, we might actually get the testimony
10 begun. What do you think?

11 I'll ask Mr. Cackette what your schedule is like
12 here. You're going to have to leave. All right. Why
13 don't we just take our lunch break now then and resume at
14 hopefully 1:15. Thank you.

15 (Thereupon a lunch recess was taken.)

16 CHAIRPERSON NICHOLS: We are ready to assemble.
17 We do still have our quorum, although some Board members
18 are listening in the back room and some are on their way
19 in.

20 And at this point, we're going to be calling the
21 witnesses that had signed up to testify. I'm not sure if
22 they're back. But I hope they are.

23 Do we have Eric Carleson here? Yes. Great. To
24 be followed by Bonnie Holmes-Gen, Diane Bailey, and Nidia
25 Bautista.

1 MR. CARLESON: Hello. I'm Eric Carleson,
2 Executive Director of Associated California Loggers.

3 Briefly and informationally on this item, first,
4 seeing the data up there on the screen earlier, one
5 comment I can make having seen that is not many saw mills
6 left in California anymore, are there?

7 But given that, we had three issues we wanted to
8 bring to your attention regarding this agenda item.

9 One, our association does look forward to working
10 continually and perhaps intimately with your staff on the
11 implementation of this rule. For data for today, two of
12 our members companies sent you letters with spreadsheets
13 dedicated to making the rule work with regard to their
14 fleets and in rural attainment counties in general. We'll
15 follow up on that with the staff.

16 Two, with the letters, we have provided an e-mail
17 that was sent to us from Christopher Brown, Air Pollution
18 Control Officer, with the Mendocino County Air District.
19 I would like to read two parts of the letter.

20 "As far as the major city of Willitts goes,
21 we have a PM monitor at the fire house on
22 Commercial. It is close enough to be impacted by
23 highway 101, although probably more with dust
24 than diesel PM. We did change that monitor to a
25 PM monitor which will show vehicle emissions more

1 than the old PM10 or TSP monitor did. We will
2 gladly share any data ARB would like to see.
3 Vehicles are a very small source of PM locally.

4 "We have done an initial toxics look at
5 highway 101 following the guidelines CAPCOA is
6 developing, and the traffic volume is too low to
7 have a health impact under that criteria. I
8 believe we have the highest trip count of 8,000
9 vehicles per day on highway 101, which is very
10 low. Many surface streets and urban areas are
11 higher than that. We do not need reductions from
12 vehicles to reach our attainment plan goals."

13 Christopher Brown, Air Pollution Control Officer.

14 Finally, we would like to urge you to please get
15 your staff out there educating people in the rural
16 counties on this rule. Last year, I believe Mr. Tony
17 Brasil came to the Sierra Cascade Logging Conference in
18 Redding. He should return this year, or someone should,
19 if they can. It's in February next month, same with the
20 Redwood Conference in Eureka in March. If they're already
21 attending, I apologize. I'm not the organizer of either
22 event, but I can get you in touch with people who are.

23 CHAIRPERSON NICHOLS: Thank you, Mr. Carleson.
24 And we appreciate your continued involved in this. As you
25 can tell, we're struggling to try to do something that's

1 fair and makes sense here. So appreciated your help.

2 Bonnie Holmes-Gen.

3 MS. HOLMES-GEN: Madam Chair and members, Bonnie
4 Holmes-Gen, Senior Policy Director with the American Lung
5 Association of California. Thanks for the chance for some
6 brief testimony.

7 And I just first wanted to applaud the Board for
8 adopting this tremendous rule last month. It was a
9 tremendous success to finally get this rule in place and
10 to cut the number one source of toxic diesel soot in
11 California, and we were thrilled. Thank you for doing
12 that.

13 We believe that adopting the rule the staff did a
14 great job of crafting the regulation. And you included a
15 lot of flexibility. And we are opposed to any changes now
16 to try to provide further flexibility in order to extend
17 or delay particulate matter compliance in attainment
18 areas.

19 Just wanted to comment as shown by the staff
20 report today, diesel trucks and buses do create toxic hot
21 spots even in these non-attainment areas. And we do
22 believe, as Chairman noted in the beginning, that
23 residents of rural areas are entitled to the health
24 benefits and reduce cancer risk from the rule. And it's
25 clear that the diesel trucks in rural areas would create

1 unacceptable cancer risks.

2 So we ask you to keep moving forward with the
3 regulation and to continue to meet our diesel toxic hot
4 spot to reduce diesel toxic hot spots and meet the diesel
5 risk reduction goals that are also an important part of
6 this regulation. Thank you.

7 CHAIRPERSON NICHOLS: Thank you very much.

8 Diane Bailey.

9 MS. BAILEY: Good afternoon, Madam Chairwoman,
10 members of the Board and staff. My name is Diane Bailey
11 with the Natural Resources Defense Council.

12 And I want to echo the kudos my colleague Bonnie
13 gave you for the truck regulation. The truck regulation
14 was really tremendous in terms of the health protections
15 it offers throughout the state. Thank you very much for
16 that. And we strongly support this regulation in its
17 entirety. And I hope that none of the health protective
18 standards even in rural areas will be relaxed.

19 And I really appreciate the effort that staff has
20 made to come back and look at the potential impacts of
21 delaying some of the PM standards in rural areas. It
22 looks like the health impacts were quite large even up in
23 Eureka and northern California.

24 So I hope that you'll strongly consider the data
25 that was presented today if any changes are underway at

1 later hearings. Thank you so much.

2 CHAIRPERSON NICHOLS: Thank you. I did not see
3 Nidia, but I do see Don Anair.

4 MR. ANAIR: Nidia had to step out. She asked me
5 to say a few words on her behalf and my behalf as well.

6 Basically want to thank you for re-visiting this
7 and the staff for doing an analysis on the impacts in
8 rural areas. And basically, you know, we support
9 consistent measures across the state in terms of health
10 protections for populations both in rural and urban areas.
11 And I think the intention of the Diesel Risk Reduction
12 Plan in the initial -- of course the plan itself is to
13 reduce toxicity exposure. And I think that's what the
14 current proposal does and we support maintaining that.

15 And that's all I wanted to say.

16 CHAIRPERSON NICHOLS: Thank you for coming. I
17 always worry when we don't have hundreds of people lined
18 up to speak.

19 That concludes the public testimony as far as I
20 know. I don't see anybody else who's here to testify.

21 And as I indicated at the outset, this is not an
22 action item. Sorry.

23 MS. REIFSNIDER: Chairman, I did put in a card.

24 CHAIRPERSON NICHOLS: This is Betsy Reifsnider.

25 MS. REIFSNIDER: Thank you very much. My name is

1 Betsy Reifsnider. I'm here on behalf of Catholic Charity
2 Diocese of Stockton.

3 We support implementation of the rule, and we ask
4 you not to weaken it. It's especially important to the
5 public health in our rural communities.

6 And lastly, we'd just like to congratulate the
7 Board and the staff for the landmark diesel truck rules
8 that you passed in December. So thank you very much.

9 CHAIRPERSON NICHOLS: Thank you.

10 Is there anyone else who didn't get heard? Okay.

11 This is back to the Board for further discussion.
12 It was here because we all had questions. You may have
13 further questions now than you did before. But would
14 anyone like to make any suggestions?

15 BOARD MEMBER RIORDAN: You know, and I understand
16 clearly, Madam Chairman, your support of -- I clearly
17 understand your earlier comments before this item was
18 heard. And I generally agree with you. And yet I'm one
19 of those who will always try to see if I can help an
20 industry that I think is impacted a bit unfairly from a
21 different standpoint from the fact that these people have
22 a very short operating schedule if the weather is not
23 good. Obviously, if we don't have rain or snow, they have
24 a longer operating schedule. And because of the economy
25 as we see it today.

1 I do note the letter from the Mendocino Air
2 Quality Management District. And while I realize there is
3 maybe a bit of a difference of discussion there, I'm still
4 somewhat I guess concerned that we are maybe being unfair
5 to this logging industry. I'm more interested in the
6 logging industry. I'm not stretching it beyond the
7 logging industry. And I'm not sure I have an answer for
8 this. And I just think that maybe further discussion may
9 be necessary. But I certainly abide by the majority if
10 they choose to leave the regulation as it is.

11 CHAIRPERSON NICHOLS: If I may, before I call on
12 Ms. Berg, I would like to maybe come a little closer to
13 where you are, because I may have not been as clear as I
14 should have been at the beginning.

15 My concern when this issue came up at the last
16 Board meeting was in the about whether the logging
17 industry should be treated essentially as a similar kind
18 of hardship case as the agricultural industry because
19 actually they are an agricultural industry. I agree with
20 that.

21 My concern is that when we carved out our special
22 treatment for the agricultural industry, we did it based
23 on some specific criteria. It wasn't just, you know, you
24 haul tomatoes. It was mileage. So --

25 BOARD MEMBER RIORDAN: It was the short haul.

1 CHAIRPERSON NICHOLS: It was a short haul
2 situation which arguably then minimized exposure in a way
3 that fits within our purview as an Air Resources Board.
4 And we didn't have that same situation with respect to the
5 logging industry. And as we were going through that
6 discussion, there were some comments about rural areas of
7 the state being treated differently than urban areas. And
8 that was what got to me, because I'm -- well, for two
9 reasons.

10 First of all, because I do think that people who
11 live in rural areas are often subjected to worse health
12 risks in terms of the environmental risks than people in
13 urban areas. But also because I think as a State Air
14 Resources Board that has the duty and the privilege of
15 setting motor vehicles standard because we're a state that
16 it's really not -- it's not a good precedent to carve out
17 regions of the state for different treatment just based on
18 geography and where they happen to be. So I was concerned
19 about kind of having the discussion about the rationale for
20 what we were doing.

21 I think, you know, I agree with you there is an
22 economic hardship issue here we need to deal with. And
23 I'm open to trying to gather some further information to
24 figure out how we might address it. But I don't at this
25 point have a good suggestion.

1 Ms. D'Adamo, did -- you want to speak next?

2 BOARD MEMBER BERG: No, please.

3 BOARD MEMBER D'ADAMO: Well, I would just say on
4 the issue of incentives -- and we've grappled with this on
5 the agricultural side, because those are low use vehicles
6 and typically they don't qualify for Carl Moyer.

7 I think in this region in the state there is an
8 additional challenge because they're in attainment areas.
9 So maybe we could put a group together to look at the
10 incentive piece and ways that we could bring them into
11 compliance so it's not such a hardship.

12 BOARD MEMBER RIORDAN: And that probably would be
13 very helpful to them, because I do think that the
14 hardship and also the -- as I recall, there's the use of
15 the truck which it has to pull a tremendous amount of
16 wait. And we're talking at the location where they pick
17 up the logs, not on the roadway. But they have some very
18 special needs for a lot of power. And as I recall, it was
19 then translated into perhaps some concerns about how to
20 fit the retrofits and all of the things on there at the
21 time. Now I'm only going on the basis of what was told to
22 me by some of the logging people.

23 CHAIRPERSON NICHOLS: Okay. Dr. Balmes.

24 BOARD MEMBER BALMES: Well, as one of the Board
25 members who asked for this kind of special analysis, I

1 first of all want to compliment staff for as usual a job
2 well done in a relatively short time.

3 And, you know, I've wrestled with this since the
4 last Board meeting, because I'm the first to agree with
5 you, Chairman Nichols, that we have to protect individuals
6 in rural areas as well as in urban areas. And I'm
7 convinced that we should in fact not have a separate
8 approach for the attainment areas.

9 That said, I really do think it's an issue of
10 fairness. And we have to do something I think
11 economically to incentivize change in trucks in the
12 logging industry.

13 So I agree that we shouldn't have a separate
14 approach so that we protect the health of the population
15 in these areas. But on the other hand, I think we have to
16 do something to make it feasible for the logging industry.
17 Because the testimony we heard last time made it sound
18 like -- and I believed it -- that there would be
19 substantial hardship and that they wouldn't be able to
20 qualify for Carl Moyer funds so that we need to come up
21 with a program to help them get new vehicles.

22 CHAIRPERSON NICHOLS: Well, they would not be
23 eligible for Carl Moyer funds.

24 BOARD MEMBER BALMES: Exactly. So they don't
25 have much -- so for public health reasons, we should go

1 forward. But we need to come up with something else to
2 support the industry I think.

3 CHAIRPERSON NICHOLS: I agree.

4 BOARD MEMBER BERG: Thank you, Chairman Nichols.

5 One point of clarification. My understanding
6 from the industry is that these vehicles do travel 50,000
7 miles or less. So we're not talking about the vehicles
8 that are putting on 100 or 150,000 miles. So I think that
9 will be helpful in part.

10 And also within the regulation, we do have an
11 economic update. And so maybe a viable option would be to
12 have staff come back to us at the economic update time.
13 And can you remind me, Erik, when that is going to be, the
14 economic update?

15 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

16 WHITE: This December.

17 BOARD MEMBER BERG: So maybe by December we would
18 have enough opportunity to truly take a look at this
19 specific issue with the logging industry, the uniqueness
20 of their vehicles within the regulation really looking at
21 how we can harmonize.

22 I'm hearing from the industry that they're
23 willing to turn over sooner. What they're trying to
24 prevent is the double hit on cost on low mileage vehicles.
25 There might be some opportunity where retrofits make sense

1 for them. But if they can have a mechanism to be able to
2 accomplish the rule, they're not asking to be left out or
3 they understand the importance. But how can we make this
4 economically attainable and get the health benefits.

5 CHAIRPERSON NICHOLS: We were talking when we
6 broke about the fact that the federal government has just
7 made available really substantial amount of money for
8 agricultural air quality purposes. Ms. D'Adamo is
9 familiar with how that worked. I believe it goes mostly
10 for irrigation pumps on farms. But for the first time,
11 there was money made available for mobile sources like
12 tractors as well.

13 Clearly, this is a problem that can be solved
14 with money. And to the extent that we can identify any
15 potential new sources of funding that could assist, I
16 think that ought to be factored into the discussion as
17 well.

18 Is the Board --

19 BOARD MEMBER TELLES: I had a question. Just a
20 point of clarification again. Is there any funding
21 available -- incentive funding available for the logging
22 industry? Are they 1(b), Carl Moyer, anything out there?

23 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
24 WHITE: Probably not the 1(b) since they're operating in
25 areas that are not part of the goods movement corridors in

1 that program.

2 But the Moyer money, yes.

3 I think we have to be cognizant of the amount of
4 money in some of these smaller districts that's available.

5 BOARD MEMBER BERG: The other thing on Carl
6 Moyer, in fairness, they would not meet the cost
7 efficiency with 50,000 miles. So the really answer is no.
8 There isn't funding available for them.

9 CHAIRPERSON NICHOLS: And I think we need to make
10 a special effort to see if we can either re-shape some
11 other program or find some new program to fit this into.
12 Because I agree with you it is a fairness issue.

13 If I may then, since there was no action
14 scheduled on this, but just to sort of sum it up. We
15 would like to ask the staff in conjunction with the
16 economic review that they will be working on anyway to put
17 a special focus on the issue of the logging trucks and
18 this industry and to come back with recommendations that
19 would deal specifically with their situation. And that's
20 it. Okay.

21 BOARD MEMBER BERG: And to close, Chairman
22 Nichols, may I echo my thanks to staff. They have done a
23 fabulous job in keeping us updated. They really worked
24 overtime in pulling together this critical information.
25 And I really do appreciate it. Thank you.

1 CHAIRPERSON NICHOLS: I agree.

2 Our next item involves consideration of some
3 proposed amendments to previously adopted regulation
4 showing we do in fact change our mind from time to time if
5 we need to when the facts justify it.

6 This has to do with the off-road diesel
7 regulation. We also wanted to hear a status report on its
8 implementation. So give the staff a minute to change
9 seats here.

10 The regulation for off-road diesel was adopted on
11 July 26th, 2007, at my very first Board meeting on my
12 return to the Board. And it's an important rule because
13 it will significantly reduce public exposure to diesel
14 particulate matter and ozone that are caused by nearly
15 180,000 off-road diesel vehicles in California. And it's
16 also essential to meeting our SIP commitments.

17 When the Board approved this regulation, many
18 stakeholders raised questions about whether the technology
19 needed to comply would be available in time. The Board
20 directed staff to report on the availability and cost of
21 retrofit devices that are needed to comply with this
22 regulation before the first compliance date, which is in
23 2010.

24 The Board also asked staff to include an update
25 on the joint ARB/South Coast Air Quality Management

1 District retrofit showcase. Staff are going to discuss
2 some proposed amendments to allow more fleets to take
3 advantage of the early credit provisions of the rule. And
4 they're also going to discuss how the fleets affected by
5 this regulation are able to utilize the flexibility that
6 was built into the regulation in anticipation that there
7 might be difficult times, although nobody I think knew how
8 bad they were going to be.

9 We want to hear how the current economic
10 downturn -- I think we can call it a recession -- may be
11 affecting emissions from off-road vehicles to get a better
12 sense of whether the down economy is also making a change
13 in the air quality problem here.

14 And I'll ask Mr. Goldstene to introduce the item.

15 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
16 Nichols.

17 Since July 2008, staff has made significant
18 progress in educating and assisting fleets in preparing to
19 comply with the off-road regulation. This effort is
20 essential to ensuring fleets affected by the regulation
21 know about its requirement and understand how to comply.

22 This effort has included dozens of private
23 meetings with effected parties as well as 16 free half-day
24 training sessions in 15 cities throughout the state.
25 These sessions attended by over 1500 people describe the

1 regulations requirements and how fleet owners can get
2 compliance assistance. With the regulations first
3 reporting requirements just a few months away, staff has
4 also developed and posted an electronic reporting system
5 that fleets may use to report required information about
6 their fleet to ARB and has already helped hundreds of
7 fleets with thousands of vehicles report their data ahead
8 of the deadline.

9 Staff is also actively involved with a number of
10 demonstration programs aimed at bringing more retrofit
11 choices to fleets. These programs are providing valuable
12 experience to staff, fleet owners, and retrofit
13 manufacturers on the challenges of retrofitting off-road
14 vehicles and are facilitating a substantial increase in
15 the number of off-road devices. Staff will elaborate on
16 the outreach efforts, reporting system, and the
17 demonstration projects in its presentation.

18 Over the past 18 months, staff has worked closely
19 with industry and other stakeholders in implementing the
20 regulation. Through this effort, staff has identified
21 several areas in the regulation where minor changes are
22 needed to provide additional flexibility and clarity. As
23 such, staff is proposing several changes to the
24 regulations.

25 The most important proposal is an amendment to

1 extend the deadline for double credit for fleets that have
2 installed an early retrofit by ten months from March 1st,
3 2009, to January 1st, 2010.

4 Staff recommends this extension because exhaust
5 retrofits have become verified slower than anticipated,
6 leaving many fleets unable to take advantage of the early
7 credit provisions. The ability of fleets to take
8 advantage of the double retrofit credit provision was
9 important during the Board's consideration and approval of
10 the regulation as it provides a mechanism for fleets to
11 use to reduce their costs during the initial years of the
12 regulation.

13 I'll now ask Elizabeth Yura from our Mobile
14 Source Control Division to give the staff presentation.

15 CHAIRPERSON NICHOLS: Thank you.

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

18 MS. YURA: Thank you, Mr. Goldstene. Good
19 afternoon, Chairman Nichols and members of the Board. My
20 presentation today serves several purposes. First, I will
21 update you on how the implementation of the off-road
22 regulation has proceeded in the year-and-a-half since its
23 adoption. I will also summarize the extensive public
24 outreach and reporting work the staff has undertaken.

25 Second, when you approved the regulation, you

1 directed staff to provide the Board a technology update by
2 January 2009. And this report serves as that update.

3 Finally, I will describe some minor proposed
4 changes to the regulation.

5 Because of the technology update concerns the
6 development of exhaust retrofits, throughout the
7 presentation, I have included a number of photos of
8 off-road vehicles with successful exhaust retrofit
9 installations in place. These retrofits are shown circled
10 in red as on this slide.

11 --o0o--

12 MS. YURA: Here is an outline of today's
13 presentation.

14 First, I will provide a little background on the
15 regulation.

16 Second, I will summarize the implementation work
17 that staff has done.

18 Then I will update you on the development of the
19 retrofit technology that is available to comply with the
20 regulation.

21 Next, I will discuss our efforts to evaluate how
22 the emissions of sources affected by the regulation may be
23 impacted by the current economic downturn.

24 Finally, I will summarize staff's proposed
25 changes to the regulation, including staff's

1 recommendation.

2 --o0o--

3 MS. YURA: Now I'll provide some background on
4 the regulation and key dates.

5 --o0o--

6 MS. YURA: The Board approved the regulation on
7 July 26, 2007. At that time, a number of stakeholders
8 raised concerns about the retrofit technology, the
9 regulation relied upon. And as a result of that concern,
10 the Board directed staff to report back by January 2009
11 with an update on the status of verified retrofits
12 available.

13 The Board also directed staff to report back on
14 the cost of those devices as well as to provide
15 information on the off-road diesel retrofit showcase.

16 Today's update is the first of four updates that
17 the Board directed staff to provide. Staff will also
18 report back in late 2010, 2013, and 2017.

19 In order to fully enforce the regulation, ARB
20 needs approval from U.S. EPA. ARB requested enforcement
21 authorization on August of 2008, and a hearing on
22 California's request was held in October. A decision is
23 still pending. As I'll discuss more fully in the next
24 slide, there are elements of the regulation that can be
25 enforced today even without U.S. EPA approval.

1 --o0o--

2 MS. YURA: The regulation took effect last June
3 15th. At that time, the idling limits and requirements of
4 disclosure to buyers became effective. Enforcement of
5 these provisions has already begun.

6 A little over a month from now, on March 1st,
7 2009, fleets will no longer be permitted to add the
8 oldest, dirtiest vehicles, called tier zeros, to their
9 fleets.

10 Currently, the ability of fleets to accrue early
11 double retrofitted credit will end on March 1st. Although
12 as I'll discuss later, we are proposing to extend this
13 deadline.

14 The reporting deadlines for fleets fall between
15 April 1st and August 1st of this year, with large fleets
16 required to report first on April 1st, medium fleets on
17 June 1st, and small fleets by August 1st.

18 After vehicles report, they will receive
19 equipment identification numbers for each vehicle with
20 which they will be required to label their vehicles within
21 30 days of receipt by ARB. The requirements to reduce
22 emission began on March 1st, 2010, for large fleets, March
23 1st, 2013 for medium fleets, and March 1, 2015, for small
24 fleets.

25 On these dates, fleets will need to either meet

1 fleet averages or show compliance with the best available
2 control technology requirements of the regulation.

3 --o0o--

4 MS. YURA: These flow charts illustrate how
5 compliance will work each year for fleets. Each year,
6 large and medium fleets will need to first either meet the
7 NOx fleet emission target or turn over the required
8 percentage of their horsepower. Then they will need to
9 either meet the PM fleet average target or apply exhaust
10 retrofits to 20 percent of their horsepower.

11 Again, these requirements begin in 2010 for large
12 fleets and 2013 for medium fleets.

13 The process is the same for small fleets, except
14 they do not need to comply with the NOx provisions. Each
15 year, beginning in 2015, small fleets will need to either
16 meet the PM fleet average target or apply exhaust
17 retrofits to 20 percent of their horsepower.

18 --o0o--

19 MS. YURA: The regulation is an integral part of
20 the State Implementation Plan for the South Coast and San
21 Joaquin Valley air basins. The most recent air quality
22 modeling shows these two areas need very large reductions
23 in NOx, on the order of 50 percent, to meet the PM2.5
24 standard. The attainment deadline for PM2.5 is coming up
25 in 2015 with reductions needed to be demonstrated by 2014.

1 NOx reductions are also needed to achieve the
2 8-hour ozone standard. The South Coast air basin is
3 classified as extreme non-attainment for the 8-hour ozone
4 standard. And ARB has requested that the San Joaquin
5 Valley be reclassified as extreme as well.

6 California's SIP shows that reductions of NOx of
7 80 to 90 percent will be needed to achieve the 8-hour
8 ozone standard in these two regions by 2023.

9 Additionally, in September 2007, ARB committed to
10 achieve additional reductions in the San Joaquin Valley by
11 2017 to help them attain the federal ozone standard as
12 quickly as possible.

13 --o0o--

14 MS. YURA: Because the regulation is an integral
15 part of California's plan to reduce emissions, a
16 successful implementation of the regulation is key to
17 ensuring those necessary reductions are realized.

18 The next slides present a summary of what staff
19 has done to inform and assist affected stakeholders about
20 the regulation and will also give status updates on the
21 activities of our Off-Road Advisory Group and fleet
22 reporting.

23 --o0o--

24 MS. YURA: Since the regulation was adopted,
25 staff has been involved in a multitude of outreach events.

1 The largest of these being a series of 16 off-road
2 training seminars held in 15 different locations
3 throughout the state, as shown on this map on this slide.
4 More than 12,000 flyers were distributed to publicize the
5 seminars and advertisements in local newspapers were also
6 used. Over 1500 stakeholders attended these seminars, and
7 staff is currently scheduling six more in the coming
8 months.

9 --o0o--

10 MS. YURA: In addition to the training seminars,
11 staff has attended over 50 meetings, conferences, and
12 events to give presentations regarding the regulation or
13 to provide fact sheets or other information to interested
14 stakeholders.

15 Staff has done multiple mailings and e-mails to
16 individual potentially affected by the regulation and
17 notified them about upcoming training sessions and
18 outreach opportunities. ARB's off-road list serve
19 contains over 3,800 individual e-mails.

20 Staff is also currently working with the
21 Contractors State Licensing Board to get information about
22 the off-road regulation inserted into the agency's license
23 renewal documents. We expect to be able to reach
24 approximately 15,000 contractors each month with these
25 renewal letters.

1 Staff is also producing a series of training
2 videos to simply and clearly illustrate how to choose,
3 install, and maintain retrofits. The goal for these
4 videos is to help fleets gain the necessary understanding
5 to more readily implement rules such as the off-road
6 regulation that require installation of retrofits.

7 Staff has also provided a script to 31 radio
8 stations throughout the state so they will be able to
9 provide free public service announcements about the
10 regulation and how to learn more about it.

11 --o0o--

12 MS. YURA: In addition to fact sheets giving an
13 overview of the regulation, staff has been preparing many
14 guidance documents and answers to frequently asked
15 questions to clarify details of the regulation.

16 Also as parts of the regulations come into
17 effect, staff will release enforcement advisories that
18 discuss the provisions of the regulation being
19 implemented, when those provisions will be enforced, and
20 what potential fines for non-compliance will be. The
21 enforcement advisories for the idling limitations and the
22 sales disclosure are already available.

23 In addition to the documents currently available,
24 staff is also working on guidance documents for several
25 other questions that have arisen during the beginning

1 stages of implementing the regulation, including the
2 feasibility of verified retrofits in certain applications
3 such as when they need to be frequently regenerated or
4 when there is no power available where the vehicle is
5 being used. In addition, staff is also currently working
6 on guidance documents to provide a more in-depth
7 discussion on the applicability of the regulation to
8 unique vehicles.

9 --o0o--

10 MS. YURA: At the suggestion of several industry
11 stakeholders, staff formed an advisory group in March 2008
12 to assist us with outreach and implementation. The group,
13 called the Off-Road Implementation Advisory Group, or
14 ORIAG, is an informal Committee made up of approximately
15 50 members representing a range of stakeholders. Thus
16 far, ORIAG has three general meetings all of which were
17 webcast.

18 ORIAG has also formed subcommittees on topics
19 such as safety, retrofits, fleets, outreach, the reporting
20 system, as well as a guidance document review group.

21 ORIAG members have provided excellent suggestions
22 and feedback regarding, for example, the content of the
23 training seminars, safe installation of retrofit devices,
24 guidance documents, and the reporting system developed for
25 the regulation.

1 MS. YURA: The regulation only requires retrofits
2 if they are verified by ARB for the specific engine
3 application. Verification ensures that devices are
4 durable and achieve the advertised emissions reductions.

5 To be verified, manufacturers must warrant the
6 device itself and warrant against any engine damage caused
7 by the device.

8 PM emission reductions are verified to one of
9 three levels. Level 2 is for devices that achieve PM
10 reductions of 50 percent or more, such as flow through
11 filters. Level 3 devices are typically diesel particulate
12 filters, or DPF, that capture diesel soot before it can be
13 released into the atmosphere and then subsequently burn it
14 off, also called regeneration.

15 --o0o--

16 MS. YURA: There are two types of DPFs, active
17 and passive. Passive DPFs use a catalyst in the filter to
18 lower the PM ignition temperature, thus requiring no
19 outside source of energy for regeneration. The
20 regeneration of passive DPFs is usually transparent to the
21 vehicle operator.

22 Unlike passive DPFs, active DPFs use an external
23 source of heat to oxidize the accumulated PM. The most
24 common methods of generating additional heat for oxidation
25 involve passing a current through the filter medium or

1 MS. YURA: To put the impact of the current
2 verifications into perspective, there are now passive
3 Level 3 filters available for approximately 60 percent of
4 the horsepower in the statewide fleet, depending on the
5 duty cycle of the vehicle. In contrast, until very
6 recently, only eleven percent of the off-road horsepower
7 had passive systems available.

8 --o0o--

9 MS. YURA: While the recent increase in the
10 number of passive DPFs is encouraging, staff continues to
11 work to increase retrofit availability even further in the
12 coming months. These efforts are spearheaded by two
13 off-road demonstration programs: The showcase and a U.S.
14 EPA Supplemental Environmental Project, or SEP.

15 Combined, these two programs provide nearly \$6
16 million to demonstrate the durability and effectiveness of
17 exhaust retrofit systems in challenging off-road
18 applications, supporting their verification and providing
19 early emissions reductions.

20 There are approximately 14 emissions control
21 manufacturers and over 25 systems pursuing verification
22 through these programs. And over 230 vehicles
23 representing a wide variety of engines and application are
24 participating. Currently, approximately 35 retrofits have
25 been completed.

1 MS. YURA: During the development of the
2 regulation, staff recognized that in some cases it may not
3 be possible to install an exhaust retrofit safely.
4 Recognizing these potential safety hazards, the regulation
5 includes provisions to exempt a vehicle from the retrofit
6 requirements if one cannot be installed safely.

7 Under the regulation, a fleet owner may request
8 that the Executive Officer review and determine whether a
9 retrofit should not be considered the highest level
10 retrofit available because of a potential conflict with
11 other safety or health requirements.

12 As part of these provisions, there is also an
13 appeals process for any party whose request has been
14 denied. Staff is working with Cal/OSHA and our advisory
15 group to develop the protocols for the evaluation of
16 safety claims submitted through these safety provisions
17 and to include Cal/OSHA staff in the evaluation of any
18 safety appeals.

19 Last August, the Associated General Contractors
20 and the Local 3 Operating Engineers petitioned Cal/OSHA to
21 change their safety regulations such that vehicle
22 manufacturer approval would be required, among other
23 things, prior to installing an exhaust retrofit.

24 The Cal/OSHA Board has considered the petition,
25 and ARB staff is working with their staff to propose

1 changes to their safety regulations and that are workable
2 and objective in establishing retrofit safety criteria.

3 --o0o--

4 MS. YURA: Staff recognizes that current economic
5 conditions have been difficult to many who need to take
6 actions to comply with the regulation and that many
7 stakeholders believe that the economic downturn has
8 reduced emissions sufficiently to meet our air quality
9 goals without the regulation.

10 To answer the question, staff has been evaluating
11 many industry indicators to better understand how the
12 current state of the economy is affecting emissions from
13 off-road vehicles.

14 --o0o--

15 MS. YURA: Staff has been investigating the
16 effect of the current economic downturn on emissions from
17 vehicles affected by the regulation. Staff has gathered
18 data on a variety of factors that could affect the
19 emissions from off-road vehicles, including activity and
20 turnover.

21 If activity, that is, hours of operation, is down
22 due to the poor economy, then emissions may be lower than
23 previously estimated. If the economy has caused fleets to
24 hold onto their older vehicles longer than normal or to
25 return newer high-cost vehicles back to the dealer, this

1 could lead to an increase in emissions.

2 In addition to these two factors, staff has also
3 looked at the total value of employment in the
4 construction sector and has examined economic indicate for
5 other fleet types subject to the regulation, such as
6 rental and airport ground support equipment.

7 --o0o--

8 MS. YURA: This slide shows data from the Federal
9 Department of Energy on California diesel fuel use by the
10 construction industry through 2007. Although we do not
11 have data for 2008, several industry indicators suggest
12 that fuel use in 2008 will be lower than 2007. Staff
13 believes that fuel use is an important indicator in
14 evaluating overall industry activity.

15 As the graph shows construction is a cyclical
16 industry. Some years, business is good and fuel use is
17 high, while in other years business is slow and fuel use
18 is down. We are now in one of those slow periods and
19 believe other industry affected by the regulation are
20 currently in a downturn as well.

21 Overall, this lowered actively has likely
22 decreased emissions from staff's previous estimates.
23 However, because changes in turnover practices during an
24 economic downturn can result in increased emissions
25 thereby somewhat offsetting the reductions due to reduced

1 activity, it is necessary to have a thorough understanding
2 of the make up of fleets and vehicle turnover in order to
3 perform a more accurate estimate.

4 While we do not have adequate data to quantify
5 the effect of current changes in turnover practices, we
6 expect to be able to evaluate these trends better after
7 fleets complete their initial reporting later this spring
8 and summer. Staff intends to continue to monitor the
9 situation and to report back to the Board on its findings
10 later this year.

11 --o0o--

12 MS. YURA: In anticipation of economic downturns,
13 the regulation contains many provisions that give fleets
14 credit for action taken due to economic downturns. These
15 provisions take into effect the cyclical nature of
16 industries affected by the regulation. For example,
17 fleets can receive turnover credit for repowers and
18 vehicle turnover above 24 percent in addition to double
19 credit for their early installation of exhaust retrofits.

20 After March 1st, 2009, fleets will continue to
21 have many opportunities to take advantage of reduced
22 activity. First, the regulation provides credits to
23 fleets that downsize after March 1st, 2009, by reducing
24 their oldest, dirtiest vehicles. Such vehicles would
25 receive credits that could be applied in the future

1 towards both NOx and PM requirements in the regulation.

2 Thus, a fleet that is downsizing due to poor
3 economic conditions may actually not be required during
4 this period to take any further action to retrofit or
5 replace vehicles. Additionally, the regulation's low use
6 vehicle provisions benefit fleets that are reducing
7 operation of or are temporarily parking vehicles. Low-use
8 vehicles, or those vehicles that operate less than 100
9 hours per year, are exempt from the regulation's
10 performance requirements and are not counted as part of
11 the fleet's total horsepower.

12 For example, the requirements for a fleet with
13 half of its vehicles parked would be half of what they
14 would be otherwise if all of the vehicles were operating.
15 Overall, these provisions are structured such that a fleet
16 taking advantage of them may have no early compliance
17 costs due to the regulation.

18 --o0o--

19 MS. YURA: Now I will discuss the staff's
20 proposed modifications to the regulation and the reasons
21 for these proposed changes.

22 --o0o--

23 MS. YURA: The early credit provision of the
24 regulation currently provides double credit for retrofits
25 installed by March 1st, 2009. Currently, when a highest

1 about 20 percent of fleets could have used early PM credit
2 to meet the full 2010 requirements of the regulation.

3 However, by extending the deadline to receive
4 early double credit by ten months as proposed by staff,
5 over 80 percent of the fleets could realize this same
6 benefit as shown by the bar on the right. Thus, if early
7 credit for retrofits is extended, over four times as many
8 fleets will be able to take full advantage of the double
9 credit and reduce their compliance costs.

10 --o0o--

11 MS. YURA: Since the regulation was adopted and
12 based on feedback and comments from affected fleets and
13 other stakeholders, staff has also identified a number of
14 other provisions of the regulation that require
15 clarification or simplification.

16 First, staff is proposing to clarify the duration
17 of the Tier 1 vehicle turn over exemption by adding
18 clarifying language that Tier 1 vehicles are exempt from
19 turnover only until the March 1st, 2012, compliance date.

20 Staff is proposing to add clarifying language to
21 the recordkeeping requirements for the disclosure of the
22 regulation's applicability so that sellers of vehicles and
23 not just dealers must also notify buyers of the
24 regulation.

25 In addition, staff is proposing to require the

1 reporting of retrofit device serial numbers and family
2 names to improve enforceability and consistency of the
3 regulation.

4 And lastly, staff is proposing to simplify a
5 minor provision in the changing of fleet size
6 requirements.

7 --o0o--

8 MS. YURA: In conclusion, staff recommends that
9 the Board approve the proposed amendments to the
10 regulation. This concludes my presentation.

11 CHAIRPERSON NICHOLS: Thank you.

12 Before we hear from the witnesses, we'll hear
13 from the Ombudsman.

14 OMBUDSMAN QUETIN: Chairman Nichols and members
15 of the Board, as you heard, this proposed regulation has
16 been input from the Off-Road Implementation Advisory
17 Group.

18 Staff began their efforts to develop these
19 amendments after the September 26th, 2008, Advisory Group
20 meeting.

21 In addition to the training seminars and outreach
22 already mentioned, staff held a public workshop on
23 December 19th, 2008, in Sacramento. Forty-five people
24 attended the workshop and represented public and private
25 fleets, off-road equipment manufacturers and dealers,

1 exhaust retrofit manufacturers and dealers, environmental
2 consulting groups, environmental nonprofit groups, air
3 quality management district staff, and industry group
4 representatives.

5 The staff report was released for public comment
6 on December 4th, 2008, noticed via the ARB website and
7 eight list serves. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 We'll now turn to the witness list. I have an 20
10 people that have signed up to testify.

11 And we'll begin with Dr. Joe Kubsh from MECA,
12 followed by Henry Hogo and Michael Lewis.

13 MR. KUBSH: Good afternoon, Madam Chair, members
14 of the Board. Joe Kubsh with the Manufacturers Emissions
15 Control Association.

16 I would like to make three points in my comments
17 here this afternoon.

18 One, our industry does support the extension of
19 the double emission credit.

20 Secondly, I'd like to talk about off-road
21 retrofits in general. Retrofits for off-road applications
22 are building an impressive track record. Our industry
23 estimates more than 50,000 active and passive filters have
24 been installed worldwide on off-road construction
25 equipment. And these retrofit filters have been designed

1 and installed using the best engineering considerations
2 with respect to performance, durability, and safety. And
3 our members are bringing this experience for off-road
4 vehicles here to California.

5 It is important to note the installation of
6 retrofit filters on off-road equipment has a significant
7 positive impact on the occupational health of equipment
8 operators and other workers on job sites where exposure to
9 PM can be significantly higher than ambient standards.
10 Retrofit technologies are both an emission control and a
11 health safety technology.

12 As you heard from staff, the number of off-road
13 verifications has expended in the past year, and our
14 members are working very hard to bring more options with
15 respect to off-road retrofits using your verification
16 process.

17 My third point this afternoon is to indicate that
18 retrofit technologies are creating jobs here in
19 California. Green jobs here in California. We recently
20 did a survey of our membership, and here in California
21 just with MECA members, more than a thousand green jobs
22 have been created in the past five years. And that
23 doesn't even include the jobs that have been created
24 associated with the distribution, servicing, and
25 installation of retrofit technologies on both on and

1 off-road equipment.

2 That's just the tip of the iceberg. As these
3 companies gear up to serve the demand that's been created
4 by all of the rules that you have adopted that are part of
5 the Diesel Risk Reduction Plan, there will be more jobs
6 created here in California to service the retrofit
7 technology industry.

8 And our industry -- I would just like to conclude
9 by saying our industry pledges to continue to support to
10 help achieve the goals of your off-road rule. And we look
11 forward to working with staff on their efforts to come up
12 with reasonable and workable safety guidelines for the
13 installation of retrofits on off-road equipment. Thank
14 you.

15 CHAIRPERSON NICHOLS: Thank you very much.

16 Henry Hogo.

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

19 MR. HOGO: Good afternoon, Madam Chair, members
20 of the Board. I'm Henry Hogo, Assistant Deputy Executive
21 Officer, Mobile Source Division at the South Coast AQMD.

22 We have submitted written comments relative to
23 the proposed amendments and also a little bit of highlight
24 on our SOON program. We would like to take a few minutes
25 to highlight what our agency's efforts have been in moving

1 forward with this part of the regulation, which we believe
2 is very critical to the overall program.

3 Next slide.

4 --o0o--

5 MR. HOGO: Just to show our commitment to the
6 regulation, our Board released early a solicitation for
7 projects under the SOON provisions back in November of
8 2007. We felt that we had to get this program started
9 right away to get people involved, fleets involved in
10 understanding the off-road regulation and the SOON
11 provisions.

12 And our Board opted into the program in May 2008,
13 and we worked very closely with your staff in developing
14 guidelines for the SOON program. And we had gone through
15 two rounds of SOON solicitations actually, and our last
16 one closed November of 2008.

17 Next slide.

18 --o0o--

19 MR. HOGO: Just to give you an idea of the number
20 of fleets that participated in the solicitation in the
21 SOON program, 22 fleets, 154 engines, and over 16 and a
22 half million dollars have been awarded to date to actually
23 repower these 154 engines.

24 Next slide.

25 --o0o--

1 MR. HOGO: Next month, we're going to our Board
2 with a recommendation to do additional 56 engine involving
3 ten fleets. It turns out that half of these fleets
4 actually have been awarded in the first round and are
5 coming in for a second round of funding. So we're looking
6 at another almost six million dollars worth of funding to
7 meet the SOON portion of the program.

8 --o0o--

9 MR. HOGO: We are still in solicitation of
10 projects, and that will close May of this year. And we're
11 going to continue to work effortlessly to increase our
12 outreach to fleets, because we can work with individual
13 fleets in looking at not only how they comply with the
14 SOON provision, but how they comply with the overall
15 regulation. Because they go hand in hand. If we don't
16 have the base regulation in place, we wouldn't know how
17 much surplus emissions we would need to achieve. So we do
18 need to work very closely.

19 We have been working very closely with your
20 staff. We want to continue to have a close working
21 relationship.

22 But in order for the SOON program to be really
23 successful, it is critical for CARB to move ahead with
24 implementation of the basic requirements of the
25 regulation. So we would urge that we continue moving

1 forward with the program, and we strongly believe you'll
2 have a successful SOON portion also.

3 CHAIRPERSON NICHOLS: Thank you very much.

4 BOARD MEMBER RIORDAN: Could I ask Henry one
5 question?

6 CHAIRPERSON NICHOLS: Sure.

7 BOARD MEMBER RIORDAN: Henry, of these fleets,
8 how many are private and how many are public?

9 MR. HOGO: On the first round, there were 22 that
10 were -- total, 21 were private. One public fleet. The
11 only reason we didn't get more public fleets is because of
12 their budgeting at this time, that they felt they couldn't
13 participate.

14 BOARD MEMBER RIORDAN: What about your second
15 round?

16 MR. HOGO: We have ten. Nine of them are private
17 and one public.

18 BOARD MEMBER BERG: May I ask a clarifying
19 question? On this money that you spent the \$16 million,
20 how much did industry or the individuals participating,
21 how much did they put in?

22 MR. HOGO: Fifteen percent.

23 BOARD MEMBER BERG: Of the 16 million or on top
24 of the 16 million?

25 MR. HOGO: On top, because the Moyer requirements

1 or 85 percent would be the 16 million. So it's a 15
2 percent portion that comes from the fleets themselves.

3 BOARD MEMBER BERG: Thank you very much.

4 CHAIRPERSON NICHOLS: All right. Mr. Lewis.

5 MR. LEWIS: Thank you. Mike Lewis with the
6 Construction Industry Air Quality Coalition.

7 CIAQC doesn't have any objection to these
8 amendments. I guess we question the result that will
9 actually come about as a result of them.

10 I think the fact that you need to do this is sort
11 of symptomatic of the bigger problem that we've got with
12 VDEX. There aren't sufficient options. The installations
13 are problematic, particularly with regard to safety. And
14 I would encourage you not to show those photos to OSHA,
15 because many of those installations aren't going to pass
16 the safety test.

17 And the devices simply don't work on the engines
18 for which they're verified. The staff estimated
19 originally they would need to install 35,000 of these
20 devices over the next 13 months. That's a billion
21 dollars. The construction industry doesn't have that kind
22 of money to spend in that period of time.

23 In the showcase, you were talking about doing
24 approximately 250 engines over -- that program was
25 supposed to be in place and fully done by over a year ago.

1 You had the money. You had the machines. And you had the
2 devices. The fact that you've only been able to get nine
3 of them installed ought to be a big red flag. You haven't
4 been able to data log most of those machines, and that's
5 the first step and the easiest step in making what is a
6 very complex device selection and machine pairing process.

7 You're going to hear from contractors today how
8 difficult it is or impossible to match a device that will
9 work with their equipment. And they have the added burden
10 of not having money or the choice of options that you had
11 in the showcase.

12 And that's why we're going to be recommending
13 that you take a good hard look at this program and
14 reassess that burdens that you've placed on the
15 construction industry. We don't concur with the staff's
16 assumption that somehow they are going to get greater
17 emissions as a consequence of any further changes in the
18 rule. This rule does not allow you to bring that older
19 equipment back into your fleet once you've disposed of it,
20 and it doesn't allow you to bring in Tier 1 engines after
21 a date certain as well. So those emissions aren't going
22 to come back.

23 We've prepared a graph which I think all of you
24 have that kind of illustrates what's happening when you
25 look at multiple trends in the industry. We've been

1 tracking hours, fuel use, revenues, employment, and
2 equipment sales, new and used. And I think you have to
3 look at all of those in terms of trying to make an
4 assessment of what's happening with the industry.

5 Essentially, everything in the construction
6 industry peaked in July of '06, which we tried to tell
7 your staff back when this rule was being adopted. And
8 it's been going down and has shrunk considerably sense.

9 Most importantly, if you want to know what's
10 happening with emissions, you have to look at operating
11 engineers hours, because those are the guys that drive the
12 equipment. Their hours are currently down 40 percent and
13 expected to continue to drop for the next 18 months.

14 So if I can summarize, we think you need to make
15 a very thorough and independent evaluation of economic
16 impacts of the rule and the industry's ability to comply,
17 particularly with regard to the safety issues. You need
18 to direct your staff to return in July with an update on
19 the large fleet inventory and the status of the retrofits
20 for those fleets. Those are the guys that have to comply
21 by next March, a year from March. You're going to have
22 all that data by April 1st. And you need to take a
23 serious look at the retrofit schedule and the percentages
24 you're asking to be retrofit, because they're going to be
25 missed by a pretty wide margin.

1 CHAIRPERSON NICHOLS: I think I need to --

2 MR. LEWIS: Those are already gone.

3 CHAIRPERSON NICHOLS: Thank you.

4 Clayton Miller, Bill Davis, James Hunt.

5 MR. MILLER: Good afternoon. Clayton Miller with
6 CIAQC.

7 I just wanted to address couple of the challenges
8 that we find industry is finding and experiencing with the
9 VDEX. These are that the VDEX are more costly than
10 originally promised. The reliability of the devices. A
11 device be verified is no indication that the device is
12 applicable to a piece of equipment and safety issues need
13 to be resolved.

14 The cost of the retrofit is proving to be more
15 expensive than anticipated. We heard today 30 percent
16 more. We haven't heard or seen anything that would lead
17 us to believe that those prices are not going to come in
18 line with or decrease, but actually like most things
19 increase over time.

20 We don't see the evidence for that, and we also
21 note in the staff report that some of the manufacturers
22 are limiting the resources that they are providing for
23 off-road VDEX or verification and focusing instead of
24 on-road systems. So that doesn't look too promising from
25 this perspective.

1 Another challenge for the construction industry
2 is the ample evidence that the devices don't always
3 perform with the duty cycles of the engines, and thus make
4 the equipment not suitable for the construction industry.
5 And that has to do with the duty cycle and how often these
6 active devices need to regenerate. We've heard instances
7 where after just a couple hours the construction equipment
8 needs to be shut down while device or devices two in some
9 instances or more independently need to regenerate. And
10 that's a problem.

11 The safety issue is something that certainly
12 needs to be resolved. Nobody wants to move forward with
13 installing devices on their equipment. If there's any
14 sort of potential to harm or injure or in worst case kill
15 somebody because of problems with heat or problems with
16 visibility, and we just think that the process to resolve
17 whether or not these devices are safe on a particular
18 application needs to be addressed.

19 And it needs to happen quickly, because in March
20 of next year, like Mike indicated, 35,000 devices are
21 supposed to be in place, or at least that's the estimate
22 for the regulation.

23 So I guess, in conclusion, I would want to say
24 that CIAQC believes that the verification process for the
25 devices needs the ability to provide for the industry

1 ability to determine their applicability on equipment.

2 And thank you. I'm wrapping up.

3 Also on the safety. We think the safety issue
4 certainly needs to be addressed. Thank you for your time.
5 And we appreciate the opportunity.

6 CHAIRPERSON NICHOLS: Okay. William Davis.

7 MR. DAVIS: Madam Chairman, members of the Board,
8 Supervisor Yeager, welcome to this happy crew. My name is
9 Bill Davis. I'm the Executive Vice President of the
10 Southern California Contractors Association.

11 I'm a member of the Board for the Construction
12 Industry Air Quality Coalition. And I'm a very happy
13 member of the Off-Road Implementation Group, which we
14 think had a lot of impetus in bringing these amendments to
15 you.

16 As Elizabeth said, they are minor amendments over
17 the large scope of the regulation. But they're important,
18 and we appreciate both staff's cooperation and our
19 industry's efforts to get these to you.

20 In 1516, Sir Thomas Moore took a quill and put it
21 on some parchment and wrote a book called "Utopia." In
22 the book, Moore described a fictional island where
23 everything was as near perfection as humanly possible.
24 The residents were all employed and there were no lawyers.

25 Moore's work was generally described as a satire

1 poking fun at the evils including lawyers that was
2 afflicting England at that time. But he also gave our
3 generation, our time, the word utopia, a concept of
4 utopianism. It's a basic human yearning to strive for
5 perfection.

6 And later when he was Chancellor to King Henry
7 the VIIIth, Moore lost his head for daring to tell the
8 sovereign the truth. Moore was later canonized as a Saint
9 in the Roman Catholic Church. And today he's the Saint of
10 public servants, among other groups. So I didn't know if
11 you guys knew you had one. But now you do.

12 Moore's life and satire made it quite plain that
13 nothing created by man can be perfect. And so it is that
14 today we come before you to make the case for additional
15 amendments to the off-road diesel regulation, which is
16 also far from perfect.

17 During this process -- and I was certainly an
18 active participant in it, there were issues about the
19 economic analysis that stated that the construction
20 industry could easily afford to replace all of its
21 equipment over the next ten years.

22 In the materials that are at your ready what's
23 got the big blue SCA logo, there is a chart. Illustrates
24 these economic projections and the terrible reality that
25 our industry faces today.

1 Madam Chairman, you described our current
2 economic situation as recession. For the construction
3 industry, it's a depression. We have unemployment well in
4 excess of 25 percent in most of our union trades, and it's
5 going to get far, far worse.

6 Thank you. There is much more in the handout.
7 And one final point. ORIAG represents a very wonderful
8 partnership between the industry and the ARB staff. We'd
9 like to invite you, the Board members, to come and visit
10 with us too for some of these meetings. Thank you.

11 CHAIRPERSON NICHOLS: Thank you.

12 James Hunt, Dave Porcher, Michele Corash.

13 MR. HUNT: My name is Jim Hunt. I'm President of
14 Syblon Reid. We're a general engineering contractors out
15 of Folsom. We own and maintain about a 7500 horsepower
16 fleet of diesel equipment.

17 In the overall scheme, we're probably small
18 players. But I consider our company very successful in
19 main stream, and I suspect that our situation is very
20 similar to many contractors in the area and in California.

21 Until 2008, a lot of our work was residential
22 related, especially relating to our heavy equipment. In
23 2008, the bottom dropped out and our heavy equipment
24 basically sat idle for the year. It looks like this year
25 is going to be more the same.

1 In 2009, we're looking at our primary source of
2 work in the treatment plant market which requires very
3 little heavy diesel equipment. So we anticipate our
4 equipment usage and revenue to be down about 50 percent on
5 what it was in 2007. And really that number is deceiving,
6 because most of the equipment revenue we're developing
7 this year is going to come from our light-duty vehicles,
8 our basic -- our heavy equipment is going to be parked for
9 the year.

10 Overall, our company's revenue is going to be
11 down about 40 percent over what it was in 2007. And out
12 of that, our profits on that work are only going to be
13 about 60 percent of what they were in 2007.

14 And finally, as if things aren't bad enough
15 already, you get into banking, access to cash, the banks
16 are employing tighter and stricter covenants on our
17 ability to borrow money. And that is the source that we
18 go to for equipment revenue.

19 So as a company, we're behind you. We don't have
20 a problem meeting your requirements and your goals. We
21 have a problem paying for them, especially in the next
22 year or two.

23 So a lot of things are not going our way right
24 now. Things will get better. But your consideration and
25 action on AGC's recommendations before you will go a long

1 way towards ensuring our survival the next couple of
2 years. Thank you.

3 CHAIRPERSON NICHOLS: Thank you.

4 I'm being lenient about the time deadlines.
5 Maybe because I have a cold and I'm just not up to being
6 tough today. So if anybody else on the Board wants to
7 step in and be an enforcer, be my guest.

8 Michele Corash -- Dave Porcher first.

9 MR. PORCHER: Good afternoon. My name is Dave
10 Porcher. I work for Camarillo Engineering, and I'm a
11 member of the Off-Road Implementation Advisory Group.

12 I ask the Board to vote in favor of the proposed
13 amendments made by the ARB staff.

14 I'd like to go over a few of the reasons I feel
15 extending the double credit for purchasing and installing
16 retrofit devices is important.

17 As of September 19th, 2008, there were 14 Level 3
18 verified devices on the ARB website. Nine of these
19 devices were for on-road, five for off-road. Two of the
20 devices are passive, and the three remaining devices are
21 active. Two of the active devices require an outside
22 electrical source for regeneration, which in most cases is
23 impractical.

24 The remaining active system has an on-board
25 diesel burner. This manufacturer had the broadest

1 selection for verified devices at least before the Board
2 voted to implement the regulation in 2007. This
3 manufacturer quoted retrofits for our high horsepower Tier
4 0 fleet without opacity testing or data logging anything.
5 After the Board voted to implement the regulation, this
6 manufacturer declined to re quote Tier 0 for a fleet.
7 They were then required to do opacity testing for Tier 1
8 engines, and then we had to start data logging all of our
9 equipment. This all boils down to less equipment that
10 could be retrofit.

11 On the two manufacturers of passive devices, they
12 could both do the same three machines in our fleet.
13 Progress has been slower than expected of having verified
14 Level 3 devices available. I feel because of these
15 problems and the long process verifying new devices that
16 it would help industry if the Board would vote to extend
17 the double credit for retrofits.

18 On December 29th, 2008, KNX radio in Los Angeles
19 reported we are in the worst decline in the construction
20 industry since the great depression. In southern
21 California, there are thousands of new homes waiting to be
22 bought. There are thousands of finished lots waiting to
23 have homes built on them.

24 We have had a number of developers go bankrupt in
25 our company in the last year, leaving us owing a lot of

1 debt. We are taking jobs just to break even and just to
2 stay working. We are just one contractor out of thousands
3 in this predicament.

4 I want to thank the ARB staff for working with
5 ORIAG and recognizing these problems. I look forward to
6 working with staff on the other issues that we clearly
7 need to take care of before the implementation date.

8 CHAIRPERSON NICHOLS: Thank you.

9 Ms. Corash, followed by Mary Pitto and James
10 Thomas.

11 MS. CORASH: Yes, thank you, Chairwoman Nichols
12 and members of the Board. I'm Michele Corash, and I'm
13 here representing the Associated General Contractors of
14 America.

15 Our members build roads and bridges and
16 infrastructure projects. You have heard from some of
17 them. And we support reduced off-road diesel emissions
18 that are necessary to meet the SIP and other critical
19 deadlines. The question is how.

20 So that it doesn't get lost, I want to start with
21 what we are asking of the Board. We filed a petition on
22 December 15th to modify the rule to reflect the dramatic
23 change in the economic, technological, and for that
24 matter, emissions conditions as contrasted to those that
25 were anticipated when you adopted the rule in 2007.

1 The double credit modification is appreciated and
2 is helpful, but it is far short of what is needed today.

3 What we are seeking is simply your endorsement of
4 our quest to the staff to engage in a process of looking
5 at the rule and what modifications are necessary and are
6 appropriate to reflect today's realities. And in order to
7 keep our feet to the fire. And because of the eminence of
8 the short term deadlines, that you give us a short term
9 deadline for getting back to you. And in fact that you
10 have us report to you every month on our progress.

11 Those discussions should also include taking a
12 look at what revisions might be appropriate to allow us to
13 access federal and State funding from which we are
14 currently barred, because we are talking about required
15 emissions reductions. And that seems to be
16 counterproductive.

17 Now why is this? The fact is that while the
18 staff has described to you enforcement policies, the
19 economic and technological realities that you're hearing
20 about are forcing large parts of this industry to be out
21 of compliance by the time the near-term deadlines come or
22 to be out of business.

23 This is not a cyclical down turn. The Washington
24 Post last week described the California construction
25 industry as decimated. The Governor described to the

1 Legislature thousands of people thrown out of work in this
2 industry. And the Wall Street Journal tells us yesterday
3 that the situation will not improve through 2010.

4 Now, that makes meeting these near-term deadlines
5 impossible for many. It also may make it unnecessary to
6 achieve the Board's objectives.

7 The silver lining to this cloud is that when work
8 stops, emissions stop, too. And we believe that that
9 gives us some breathing room to look at modifications and
10 in particular to look at whether the near term deadlines
11 can be modified as we think they can without jeopardizing
12 your long-term objectives.

13 Thank you very much.

14 CHAIRPERSON NICHOLS: Thank you.

15 MS. PITTO: Good afternoon. And thank you,
16 Chairman Nichols, members of the Board. I'm Mary Pitto
17 with the Regional Council of Rural Counties. And I would
18 like to express our support for staff's amendments.

19 We are most of staff's willingness and efforts to
20 address issues that arise not only during the development
21 of the regulation, but during its implementation as they
22 have also done with the Public Fleet Rule.

23 We also appreciate and support concerns that have
24 been expressed by industry here today. We recognize that
25 the proposed amendments do not address our comment, but I

1 simply would like to state that we would still like to see
2 the NOx exemption for the captive attainment area fleets
3 extended to those rural counties who are non-attainment
4 strictly due to transport.

5 Again, thank you. And we continue to offer your
6 staff our assistance in the outreach and implementation in
7 our rural counties. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 James Thomas, Tom Swenson, and Tim Pohle.

10 MR. THOMAS: James Thomas first.

11 CHAIRPERSON NICHOLS: Sorry.

12 MR. THOMAS: James Thomas with Neighbors Well
13 Services.

14 Just like to say that Neighbors supports the
15 extension of the double credit. We do not support the
16 changes to the Tier 1 delay. Whenever you repower a Tier
17 0 to a Tier 1, you realize a 58 percent reduction in PM
18 and a 55 percent reduction in NOx.

19 Those Tiers 1s have been generating those
20 reductions for anywhere between eight and 12 years.
21 During the time of the development of the regulation, this
22 was a small incentive for the Tier 1 fleets and we believe
23 it should remain the same.

24 On the technology front, I'd like to share an
25 in-field experience. My company just installed a 2008

1 on-road engine that has a passive diesel particulate
2 filter. It has been installed for 60 days. And in that
3 60 days, it's regenerated every day. And we've had two
4 manual regenerations which requires a computer to go out
5 and tie into the brain of the engine and do a manual
6 regeneration for this event. And during these events, our
7 customer is not willing to pay for the down time.

8 The last one I'd like to bring up is the current
9 state of the economy. Our industry is changing
10 drastically weekly. Our industry has reduced -- our
11 customers has reduced their activity and the capital that
12 they are investing in their facilities. This has resulted
13 in a decline in our revenues, a decline in the utilization
14 of our equipment, a decline in emissions. And our goal is
15 just to survive this period of time.

16 Our capital budget has dried up to -- our capital
17 budget has been reduced by 75 percent. We cannot pass any
18 cost on to our customers. We're heading the other way.
19 The compliance cost dollars are going away. And we ask
20 that you take some time and just re-evaluate the current
21 economy. It's changing drastically.

22 Thank you for your time.

23 CHAIRPERSON NICHOLS: Thank you, sir.

24 Now it's Tom Swenson.

25 MR. SWENSON: Good afternoon. Tom Swenson,

1 Cleaire Advanced Emission Controls.

2 We're here today to support the recommended staff
3 changes and to give you a little update on Cleaire and
4 what we have relative to retrofit technologies.

5 We are a retrofit provider. And since the
6 adoption of the off-road rule, we have invested heavily
7 and aggressively to develop retrofit technologies that can
8 be deployed in a large and wide variety of applications.
9 And we are here today to affirm that retrofit technology
10 is available. It works. And it is safe.

11 At Cleaire, we have two verified products
12 currently. Our Skyline product, which is an active Level
13 3 PM system that uses the electric plug-in to regenerate.
14 Our Lone Star technology, which is a passive Level 3
15 system with 40 percent NOx reduction. We also have two
16 systems in the verification process now, an active Level 3
17 PM system that uses thermal regeneration; passive Level 3
18 PM system that we believe is good up to at least 600
19 horsepower.

20 Also wanted to touch base on Cleaire as a
21 California company. We're based in San Leandro. Our
22 manufacturing is in San Diego. We also source as much as
23 possible our components from California companies.

24 We have been looking at the job impact related to
25 our business. And the numbers that we've come up with are

1 for every seven Cleaire retrofits that are installed
2 results in one annual California full-time job. We're
3 continuing to dig deeper into that number. And we believe
4 that it may be as few as three retrofits will result in a
5 full time job.

6 In addition to that, we are also exporting our
7 technology outside of California to other parts of the US.

8 Be happy to answer any questions.

9 CHAIRPERSON NICHOLS: Thank you.

10 Tim Pohle, Nick Pfeifer, and Gary Rohman.

11 MR. POHLE: I'm Tim Pohle with Air Transport
12 Association representing major airlines in the country.

13 Came 3,000 miles, and it seems that my
14 two-year-old son sent something with me.

15 About 90 percent of passenger and cargo traffic
16 is represented by the folks who are members of our Air
17 Transport Association.

18 It's good to be here again. It's always good to
19 have an opportunity to comment.

20 I came here to ask the Board, given the
21 extraordinary economic circumstances that we find
22 ourselves in, to step back and consider the effort or the
23 effect of the economic downturn and how emissions
24 reductions targeted by the rule can be achieved without
25 afflicting unnecessary economic harm.

1 Let me be clear. The Air Transport Association
2 has always supported the emission reduction targets of
3 this rule. We understand how important it is to work with
4 you to protect public health and the environment. I think
5 the staff will agree that we've done that throughout this
6 process and we continue to want to do that. I'm not here
7 to ask you for a handout or a free pass. I'm asking you
8 to take a breath and assess what in fact is needed in
9 these circumstances to achieve the emission reduction
10 targets that we all support.

11 We've submitted comments that you all should have
12 which include data on the effect of the economic downturn.
13 When you all pass this rule, you expected, as we did, that
14 the air transport industry would grow. The fact is that
15 we've contracted. There are far fewer passengers being
16 transported, far less cargo, far fewer planes being
17 operated. Even as we're speaking today, airlines are
18 reporting their financial results and projecting that
19 they're going to reduce capacity even further.

20 This means that emissions are down. And they're
21 far below what was anticipated. Coupled with staff's
22 conclusion over a year ago that the rule imposes
23 requirements at the limits what industry could bear,
24 there's simply no reason to barge ahead with a rule
25 without taking time to consider what is needed and

1 economically feasible to achieve the reductions we all
2 support.

3 Pausing now won't hurt the environment. I think
4 pausing will certainly cause unnecessary economic harm to
5 our industry that's already hurting.

6 It seems to me that staff today -- and I don't
7 want to put words in their mouth -- but it seems they're
8 saying they need more information to assess the effect of
9 the economic downturn. We agree with that. We don't
10 think that the remedy is to simply monitor the situation.
11 Because the fact is the first requirements are coming up
12 quickly, and we need to work now to get ourselves in a
13 position to comply. So if something needs to be done, its
14 needs to be done now.

15 So basically, the Air Transport Association
16 supports the emission targets. We want to work with staff
17 to figure out how to get there from here. Thank you very
18 much.

19 CHAIRPERSON NICHOLS: Thank you.

20 Nick Pfeifer, Gary Rohman, Brant Ambrose.

21 MR. PFEIFER: I'm Nick Pfeifer. I'm the Special
22 Operations Manager for Granite Construction's Corporate
23 Equipment Department and also a member of the Off-Road
24 Implementation Advisory Group.

25 Just to give you a general scope of where Granite

1 stands, we have a fleet of approximately 1100 off-road
2 pieces of equipment that fall under this rule. So we are
3 very heavily impacted with the requirements of the rule.

4 Like to start by stating that Granite fully
5 supports the amendments to postpone the double credit
6 deadline for early installation of VDEX.

7 And I'd also like to make a comment that I would
8 request that the Board consider postponement of the
9 regulatory deadlines concurrently with the postponement of
10 the early credit deadline. I don't make this comment
11 lightly. I realize it's a huge shift in the regulation.
12 But I think given the current economic downturn, the
13 current decrease in operating hours, fuel consumption, the
14 emissions coming out of the stacks of equipment across the
15 state has simply gone down since the regulation was
16 adopted.

17 I'd also like to express my concern about the
18 availability of technology even given an extension of the
19 double credit deadline to meet the requirements of the
20 regulation. When you look at Granite's fleet and you
21 start whittling away at the pieces of equipment that don't
22 have a verified device for that engine, you whittle away
23 the older equipment, you whittle away the new equipment,
24 you whittle away the large equipment, you whittle away the
25 low load equipment, and you whittle the equipment that

1 doesn't need the specific requirements of each
2 verification, you end up with some number under 20 percent
3 of our total fleet horsepower that can be retrofitted.

4 There needs to be significant additional devices
5 verified. There needs to be, you know, a wide variety of
6 both active and passive devices for a wide range of engine
7 horsepower to meet the requirements of the regulation.
8 And given where we stand now, that's just not available.
9 Thank you.

10 CHAIRPERSON NICHOLS: Thank you.

11 Gary Rohman.

12 MR. ROHMAN: Chairman Nichols and Board, my name
13 is Gary Rohman. I'm Vice President of ECCO Equipment
14 Corporation. We started business in 1962. We are a heavy
15 construction equipment rental company.

16 During 2006, 2007, we repowered 29 pieces of
17 equipment. The last ten we were required to put on DPFs
18 which we did. We tried to get out of them. We asked CARB
19 to waive it from us. And we asked the district to not
20 have us install those, which we weren't successful in
21 getting. So we went ahead and did it.

22 And once we had the first one repowered, I could
23 see some real strong concerns. I requested CARB to come
24 over and take a look at those, which they did. We never
25 got a response from them. So we had to rent them because

1 we had needs for that equipment.

2 Once we got them out on the job site, I had calls
3 for safety concerns, operational concerns. One customer
4 told us they are unsafe. As soon as that happened, I had
5 to park all the machines. I wrote a letter to the
6 Executive Officer of CARB on June 11th asking a waiver so
7 we could get out of those.

8 On June 11th, we had a meeting -- on August 1st,
9 we had a meeting with CARB and OSHA. We had another one
10 on August 1st -- on September 30th. We finally received a
11 letter from CARB saying we don't find them fundamentally
12 unsafe. But if you do, you take them off, which we did
13 because we had to go to work.

14 ECCO has seen 34 straight months rental decline.
15 We also have 197,000 horsepower. We have 692 units. Last
16 year, in 2008, we utilized that equipment 17.1 percent of
17 its time.

18 Last year, we lost \$5 1/2 million based on our
19 first quarter financials. We are on target to lose
20 another \$7.2 million this year.

21 Used equipment market, there is no demand. The
22 resell values have plummeted. Banks have shut down
23 lending. The compliance costs that are stated in the
24 Statement of Reason are completely off whack. We are
25 going to do another round of lay-offs Monday morning.

1 It is economically impossible for ECCO to
2 consider the compliance mandates at this time. And ECCO
3 is respectfully requesting your help with this regulation
4 so that we even have any possibility of making it.
5 Appreciate it. Thank you.

6 CHAIRPERSON NICHOLS: Thank you.
7 Brant Ambrose, Rodney Michaelson, Bonnie
8 Holmes-Gen.

9 MR. AMBROSE: Good afternoon, Madam Chairman,
10 Board members. My name is Brant Ambrose. I'm General
11 manager of Downs Equipment Rental.

12 Starting with the verified DPFs to date, they've
13 added DPF conditionally verified units in the last 18
14 months for a very limited number of rubber off-road
15 equipment. Staff is reporting the costs are 30 percent
16 higher than they were estimated to be.

17 I want to remind everyone this is a 21-year rule.
18 Yet, as stated in July 2007, 50 percent of the cost of
19 this rule will be incurred by those large fleets within
20 the first three years of this rule. It's doubtful to me
21 these future low cost DPFs are going to be much good to
22 fleets when most of the costs come up front.

23 You folks have been touting this showcase. It's
24 been two years in the making with \$4.9 million and a fleet
25 of 202 machines and you've done nine retrofits so far.

1 We have a fleet that will require us to do 53
2 DPFs in the first year without double credit. And we
3 don't have a budget of \$4.9 million, nor do we have a
4 staff of thousands to get this done with.

5 This should speak volumes about this 20 percent
6 annual requirement under BACT. This rule for our company
7 without that double credit will require us to spend \$1.1
8 million on DPF in the first year, and that does not
9 include the NOx part of the rule.

10 Staff also stated in their rule back in July 2007
11 somewhere between 1400 and 3400 jobs annually will be lost
12 under this rule. That could be as many as 71,400 jobs
13 over the 21-year-period. I suggest that that is the wrong
14 time to knowingly put people out of work. I believe staff
15 would find there is a closer relationship between poverty
16 and public health than PM emissions and public health.

17 As for the SOON program, apparently staff is
18 unaware, but San Joaquin has opted out of the SOON program
19 because they determined the cost was too excessive.

20 The good news is that the environmental impact of
21 this economic downturn has been a positive one. Lower
22 overall emissions. Staff has acknowledged a slight
23 reduction statewide diesel fuel usage. I urge them to
24 take a closer look. Fuel consumption for our fleet has
25 dropped from 1.2 million gallons annually in 2006 to under

1 600,000 gallons annually last year. Our hours of
2 utilization have dropped by more than 50 percent. Those
3 are real emissions reductions. But we get no credit for
4 them. If we were to receive credit for them, that would
5 be two-and-a-half years of PM credit and almost five years
6 under the NOx portion of the rule.

7 To conclude, in light of the current economic
8 downturn, soon to be known as the depression, I think that
9 the Board should consider what AGC has suggested and delay
10 the implementation of the rule.

11 Thank you for your time.

12 CHAIRPERSON NICHOLS: Thank you, Mr. Ambrose.

13 Rodney Michaelson.

14 MR. MICHAELSON: Good afternoon, ladies and
15 gentlemen. I'm Rod Michaelson, the equipment manufacturer
16 of Bay Cities Paving and Grading. We're a large
17 contractor. We have 100 pieces of construction equipment.
18 So that makes us 15,000 horsepower. But we are a small
19 company. And I've been a member of the ORIAG Committee
20 representing large contractors and trying to work with the
21 implementation of these rules.

22 I do have a support of this extension. And we
23 along with some of the other members were instrumental on
24 making sure that we showed our need for that.

25 I sat down with a member of the off-road group,

1 and we looked at my fleet of 100 pieces to see how many
2 pieces I can do that were passive filters. We came up
3 with three. So we need some more time for the vendors to
4 make these pieces work for our equipment.

5 As far as looking at fuel for how much we're
6 working, we now have had ten percent of our fleet is now
7 Tier 3 machines. My lube guys go out and tell me those
8 things are using 20 percent more fuel than our older
9 machines doing the same thing. And I checked with the
10 manufacturers and they're going, yes, they do use more
11 fuel. So now ten percent of my machinery is Tier 3
12 engines. As I go more, I will use 20 to 30 percent more
13 fuel. Something is strange about that. But that's how it
14 is. That's how they're getting the reductions.

15 As far as financially, hopefully I will be able
16 to stand with you next year giving you an update. I'm not
17 sure.

18 We've bid a Caltrans job. The engineering
19 estimates used to be where you would start was a \$60
20 million job. We got the job, 43 million. But tenth
21 bidder was 49 million. And that's not unusual right now.
22 We are just out there trying to stay alive right now.

23 It is a recession. Our emissions are a lot
24 lower. We're not using our equipment. And we need your
25 support to make sure we survive.

1 1989, the earthquakes, we were there taking apart
2 the bridge where the people were trapped. If we have a
3 disaster, we need the contractors -- the heavy civil
4 engineering contractors to be around to help us out.

5 Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Bonnie Holmes-Gen, Diane Bailey, Don Anair.

8 MS. HOLMES-GEN: Good afternoon, Chairman Nichols
9 and Board members.

10 Bonnie Holmes-Gen with the American Lung
11 Association of California.

12 And the American Lung Association strongly
13 supports the off-road equipment rule. As with the on-road
14 rule, we're very pleased that the rule will provide
15 critical health benefits to communities throughout the
16 state. We're here to support the staff proposal and here
17 to urge you to ensure that this regulation moves forward
18 without delay.

19 We do believe that this regulation and the
20 on-road truck rule not only protect public health but do
21 assist with the State's efforts to build a stronger
22 economy. And I think that you're hearing mostly one side
23 of the story here today. I understand there are
24 significant concerns that people are facing.

25 But you need to also consider the many ways these

1 regulations assist in building the economy, reducing the
2 economic burdens from death and illness from particulate
3 pollution, by creating green jobs through the retrofit
4 industry. You've heard some of that. And by ensuring
5 that the State can comply with our federal requirements.
6 And I think you can hear a lot of testimony on each of
7 those areas to go into more detail.

8 But the bottom line is clean air and sound
9 economy do go hand in hand. It's a false choice to say we
10 have to pick one over the other. And I'm concerned you
11 may be hearing that message today.

12 We're very pleased to see the positive report
13 from the staff and the continued progress on the
14 development of new retrofit technologies. And we believe
15 this will continue to be progress in this area that ensure
16 the success of this regulation.

17 And while we appreciate that the Board must be
18 sensitive to economic conditions, we believe the Board has
19 done this by providing flexibility and compliance options
20 in the regulation and by working with the Legislature and
21 the air districts to provide incentive funding through the
22 Carl Moyer program and the SOON program.

23 In regards to -- and by the way, we're always
24 willing to work with you to continue to increase those
25 incentive funds and do what we can in that regard.

1 In regard to safety concerns, as you know, the
2 Board has aren't authority to address any safety concerns
3 in the current regulation. And again authorities in the
4 current regulation. There are no regulatory changes
5 needed.

6 And we urge you to resist any attempts by
7 Cal/OSHA or others to weaken regulatory requirements under
8 the guise of protecting safety. So I don't see any
9 lights.

10 I guess the bottom line is that the Board must
11 hold the line and continue to move forward with the
12 regulation. We support the proposed amendments to further
13 clarify ad ease compliance. But even with these
14 amendments, we urge you to monitor the emission impacts.
15 So we can be assured that with these changes we're not
16 giving up any expected emission benefits.

17 Any pause in the regulations as you've been
18 requested to do today will harm public health and the
19 environment and will undermine our efforts to meet federal
20 requirements. So we urge you to stay the course.

21 CHAIRPERSON NICHOLS: Thank you very much.

22 Diane Bailey, Don Anair, Andrew Bray, and Michael
23 Steel.

24 MS. BAILEY: Good afternoon again. My name is
25 Diane Bailey. I'm with the Natural Resources Defense

1 Council.

2 And I just want to note that we've heard a lot of
3 doom and gloom in this room today. And I didn't come
4 prepared to speak to all of the hardship that we've heard
5 on the part of these companies, and it is very sad. And I
6 think none of my colleagues take it lightly.

7 But I also want to note that I wish I would bring
8 the four thousand people here whose lives will be saved by
9 this regulation to testify before you to the tremendous
10 health savings that this regulation provides.

11 And as you might imagine, I am here in strong
12 support of the regulation. We think that it's really a
13 critical piece of the SIP in meeting our air quality
14 attainment goals. It's a critical piece for cleaning our
15 air and protecting health in California, and we hope not
16 to see any backsliding.

17 We do support the staff proposed amendments that
18 you're considering today. And we hope as my colleague
19 Bonnie Holmes-Gen has noted that you'll keep a close eye
20 on those amendments and make sure we don't lose any
21 emission reductions of the rule.

22 We're actually very heartened by all of the
23 improvements that we've seen with the diesel retrofit
24 technology. As you heard earlier from Joe Kubsh, there
25 are about 50,000 diesel retrofits that have been made on

1 off-road equipment worldwide. I think that's significant.
2 And I think we've also seen very significant progress in
3 southern California with our SOON early cleanup program
4 about 150 pieces of equipment cleaned up so far and 50
5 more and ready to go.

6 I just want to note very quickly that we're very
7 concerned that this regulation might be relaxed or somehow
8 changed through the budget process. And we hope you will
9 stand strong for the emission reductions and health
10 protections of this rule. Thank you so much.

11 CHAIRPERSON NICHOLS: Thank you. Don Anair and
12 then Andrew Bray and Michael Steel is the last.

13 MR. ANAIR: Good afternoon, Chairman Nichols,
14 members of the Board and staff.

15 UCS continues to believe reducing emissions from
16 construction equipment is critical to meeting air quality
17 goals and improving public health in California. But we
18 also believe it's important on the job site as well to
19 protect workers as well as neighbors who live nearby
20 projects. And I think in terms of questions about
21 delaying and whatnot, I think we need to consider both,
22 the air quality impacts as well as the near source
23 exposure impacts that will occur on job sites regardless.

24 If there is less job sites, there will be less
25 job sites, but there will still be equipment working on

1 them.

2 Today, I want to offer our full support of the
3 proposed changes by staff. I think the changes to extend
4 the double credit are appropriate. They certainly will
5 encourage the installation of retrofits throughout 2009
6 which otherwise might not occur.

7 I think it's been raised by both Ms. Bailey and
8 Ms. Holmes-Gen the question of the emissions impacts of
9 the extended double credit. And I think there's a
10 potential for significant benefits. Early reductions of
11 PM certainly provide health benefits. It's unclear how
12 big they will be. There's also impacts for delaying
13 through the double credit installation of retrofits,
14 pushing those off a year.

15 So I think it would be helpful in the next report
16 back to the Board -- I forget when the date is. I think
17 if that can include a number of retrofits that are
18 occurring under the early compliance provision an estimate
19 of the emissions and health impacts, that would be useful
20 for future Board actions to encourage early action as well
21 as identifying if there's any emission reductions that we
22 need to make up for.

23 Finally, I just want to say ARB's outreach on
24 this rule has been extraordinary. The number of workshops
25 across the state and facilitation of the Off-Road Advisory

1 Group has been critical and is probably why we are here
2 today. And I'm encouraged to see that's going to continue
3 throughout 2009. I think it's an important point to
4 making the implementation a success. So thank you very
5 much.

6 CHAIRPERSON NICHOLS: Thank you.
7 Andrew Bray.

8 MR. BRAY: Madam Chair, Board and staff, thank
9 you for the opportunity to speak this afternoon. My name
10 is Andrew Bray with Sierra at Tahoe Ski Resort, California
11 Ski Industry, and also a member of ORIAG.

12 And I would like to thank the staff for the
13 pleasure of working with them and appreciate all the work
14 they put into this presentation today.

15 Would also like to express our support for the
16 extension of the double credit. There are many, many
17 challenges coming into compliance with these new
18 regulations and any opportunity to improve the technology,
19 get more bang for the buck with all these challenging
20 times, and improve our opportunity to achieve the
21 deadlines in a more timely manner I think is a thing to
22 be -- a goal to be strived for.

23 I would like to thank the staff for doing that.
24 And also just to recognize all of the manufacturers that
25 are putting the work into this and that are coming up with

1 new and exciting technologies that combine some different
2 things. And I think there are some good opportunities for
3 us to move forward through these difficult times and
4 achieve some compliance.

5 Thank you. I hope you strongly consider this
6 recommendation today. Thank you.

7 CHAIRPERSON NICHOLS: Thank you.

8 Michael Steel, last.

9 MR. STEEL: Good afternoon. I'm Michael Steel
10 also here for the AGC. And I'll be very brief.

11 I just want to stress that we don't believe that
12 this is a choice between health and jobs. We think that
13 you can accomplish both goals by taking another hard look
14 at the current environment and the emission reductions
15 that are being achieved.

16 We have different figures from what staff
17 presented to you in terms of fuel usage and the
18 reliability of VDEX and so forth. You've heard that back
19 and forth. I think though that you really cannot deny
20 that we are in a very severe economic crisis with a very
21 severe downturn in construction activity.

22 I don't think you can deny that VDEX haven't
23 performed as predicted. How badly they're off that
24 prediction is a matter of debate. But parking equipment
25 can't be an effective strategy for dealing with this rule

1 or dealing with the economic downturn. So these radical
2 changes in conditions warrant a second look.

3 And that's what AGC is asking. It's asking that
4 given these changed circumstances that the staff work with
5 the industry and other stakeholders to take a hard look at
6 what the data yields in March of April, what the actual
7 facts are, and that we make decisions about whether this
8 rule needs to be modified or can be modified based on
9 facts.

10 The construction industry needs your help. It
11 needs the staff to work with us to evaluate this data and
12 look at these near term deadlines and determine whether
13 there is some flexibility there because of the economic
14 downturn.

15 We agree that a guide post in these discussions
16 needs to be that we have to achieve SIP compliance by
17 2015. No one is suggesting a backsliding or a roll back
18 of the health goals. What we're saying is that given this
19 current environment, you actually have some room to
20 breath, some flexibility here. And we ought to take that
21 opportunity and take a hard look at whether there are ways
22 the rule can be modified without impairing public health
23 given the economic downturn to give some breathing room to
24 these companies so they can survive.

25 Thank you for your attention this afternoon.

1 CHAIRPERSON NICHOLS: Thank you very much.

2 That concludes the public testimony.

3 Mr. Goldstene, do you have any additional all
4 comments?

5 EXECUTIVE OFFICER GOLDSTENE: As you heard, the
6 implementation of the regulations is progressing well with
7 a tremendous amount of outreach by the staff occurring
8 with more to come over the next year.

9 It's also encouraging that so many fleets have
10 already voluntarily reported the data early and that the
11 retrofit demonstration programs are yielding positive
12 results. Of course, we need to expand them. And that
13 we're working to make sure there are additional verified
14 product is available for installation.

15 With that, we're open to questions.

16 CHAIRPERSON NICHOLS: Thank you. I'm going to
17 officially close the record at this point because we have
18 all the testimony written and oral that's been entered
19 into the record and there's not any extension for comment
20 on this rule. We'll close the hearing on Agenda Item
21 9-1-4. Any other comments that come in on this item will
22 not be considered with respect to the action that's before
23 us.

24 I think there may be Board members who will want
25 to comment on some of the points that we heard that are

1 larger than what was specifically in front of us today. I
2 think we've all been listening carefully and were subdued
3 not only because of the cold and the weather, but because
4 of the situation.

5 So I would like to I think move forward to
6 putting the resolution on the table and then we can have
7 some more discussion at that point.

8 So before we do that, I guess we need to have any
9 ex parte communications entered at this point.

10 BOARD MEMBER RIORDAN: Madam Chair, I do have
11 two. One, had a call with John Dunlap, Mike Lewis, and
12 Clayton Miller, the Construction Industry Air Quality
13 Coalition. Testimony mirrored very much what was said
14 today.

15 A call from Camille Kustin from the Environmental
16 Defense. Her testimony would be similar to that that we
17 heard from some of the last speakers from the
18 environmental community.

19 CHAIRPERSON NICHOLS: Thank you.

20 Any others?

21 BOARD MEMBER YEAGER: Yes. I had a very brief
22 telephone conversation with Andy Katz from Breathe
23 America. For some reason, my notes say Breathe America.
24 But maybe it's Breathe California.

25 CHAIRPERSON NICHOLS: Maybe they've expanded.

1 BOARD MEMBER YEAGER: It was very general in
2 nature.

3 CHAIRPERSON NICHOLS: Thank you.
4 Ms. D'Adamo.

5 BOARD MEMBER D'ADAMO: January 16th, telephone
6 call with Camille Kustin with Environmental Defense. And
7 those comments mirrored the issues raised today.

8 CHAIRPERSON NICHOLS: Thank you.
9 Ms. Berg.

10 BOARD MEMBER BERG: I had an e-mail from John
11 Dunlap regarding the airport ground equipment. And that
12 e-mail was dated yesterday.

13 I also had an e-mail dated yesterday from Bonnie
14 Holmes-Gen from the American Lung Association.

15 And both of these e-mails were consistent with
16 the testimony heard today.

17 CHAIRPERSON NICHOLS: Okay. Any others?
18 Yes, Dr. Sperling.

19 BOARD MEMBER SPERLING: I believe I received that
20 same e-mail from John Dunlap.

21 CHAIRPERSON NICHOLS: I must have dropped off his
22 list. I didn't get any e-mail from you, John. Maybe it's
23 that program that we put in place.

24 BOARD MEMBER RIORDAN: The screening program.

25 CHAIRPERSON NICHOLS: Exactly. Okay. I think

1 that will do it.

2 BOARD MEMBER RIORDAN: Do you need a motion?

3 I'll move that we support and approve the staff
4 recommendations for modifications.

5 CHAIRPERSON NICHOLS: Alright. Second?

6 BOARD MEMBER YEAGER: Second.

7 BOARD MEMBER D'ADAMO: Second.

8 CHAIRPERSON NICHOLS: We have a motion and a
9 second.

10 Now before we proceed to a vote on the
11 resolution, we may want to make comments that go outside
12 the scope of what's in the resolution, because I didn't
13 really hear any opposition whatsoever to what's in the
14 resolution, but I did hear a lot of suggestions.

15 Ms. Kennard.

16 BOARD MEMBER KENNARD: Thank you, Madam Chairman.

17 This is a real difficult one for me, because I
18 come from the construction industry. And I'm particularly
19 sensitive to the impacts this particular economy has had.
20 This is the worst any of us have seen in our lifetime in
21 the construction industry. So it's really hard to balance
22 the economic impact of this regulation on this industry.

23 But I guess public policy is never perfect. And
24 you have to make decisions, and you have to weigh where
25 the real priorities are. And I'm going to support this

1 modification but reluctantly, because I'm very, very
2 sympathetic to the industry's call for some moderation.

3 I think the staff has done a good job in trying
4 to be sensitive. And if there's any other place that you
5 might find a way to do that, I encourage you to do so as
6 we walk through this very, very difficult economic time.

7 BOARD MEMBER RIORDAN: Madam Chair, this is
8 certainly the motion was to support the staff
9 recommendation.

10 What I'd like to encourage is that as we receive
11 the data and I think that's in April 1st is the initial
12 reporting required and then probably follows along a
13 little bit more.

14 I think at that point in time we're going to know
15 a great deal more or the staff will know a great deal
16 more. And they need to come back to us. And I think
17 there was a commitment at least in my conversation with
18 staff that perhaps fall would be a time to see exactly
19 where we are with the equipment, the economy, and the
20 effect of the economy on the use of that equipment and
21 just what really is happening. But we can't do it without
22 the inventory to know where that inventory is.

23 There is a theory that some of the equipment that
24 may be being sold and moved totally out of California is
25 old equipment. There is a theory that says it may be new

1 equipment. I think we need to know.

2 We also we need to know what changes have taken
3 place and where that equipment is being parked and how
4 much of that equipment is parked. And so my encouraging
5 words are we need to hold to that September -- not
6 September but fall report and that that be very high on
7 the priority list for our staff and bring it back to this
8 Board.

9 CHAIRPERSON NICHOLS: I'm going to take myself in
10 order here and ask for a comment from our attorney about
11 the petition that was referenced during the course of the
12 hearing and who that's addressed to and the specific
13 request and what you're doing with that.

14 CHIEF COUNSEL PETER: The petition as was
15 mentioned by Michele Corash was filed in December of 2008.
16 There is a 30-day response period which was up last week.
17 They had asked for a meeting which was after the period
18 was up and gave us an extension to respond to it. So at
19 that point, our response is due in mid February in terms
20 of that response. It's asking for a petition.

21 CHAIRPERSON NICHOLS: And the petition is
22 directed to the Executive Officer?

23 CHIEF COUNSEL PETER: It is normally answered by
24 the Executive Officer is our practice.

25 CHAIRPERSON NICHOLS: One of the things we

1 delegate to the Executive Officer.

2 CHIEF COUNSEL PETER: Right. And the options
3 under the Code would be to grant, deny, or grant and with
4 other relief. Those are the statutory options.

5 CHAIRPERSON NICHOLS: And the specific request is
6 for what?

7 CHIEF COUNSEL PETER: I don't have it right in
8 front of me. But it basically has an overall based on the
9 economic downturn is asking for a postponement and other
10 changes. The staff can address more precisely.

11 In the conversations that we had within the last
12 few days, there was a suggestion of entering into a
13 process of the industry suggesting specific proposals they
14 might offer. We invited those at the time. None were
15 presented then. So we're in this --

16 CHAIRPERSON NICHOLS: I realize we've heard from
17 both associations. And the Associated General Contractors
18 are not exactly the same organization as CIAQC and that --

19 CHIEF COUNSEL PETER: The petition was from the
20 Associated General Contractors only.

21 CHAIRPERSON NICHOLS: So we're dealing with a
22 number of different groups here.

23 And I'm also mindful of the fact that we -- this
24 has been a very long and contentious process. I certainly
25 don't think that the construction industry in any way

1 caused the economic downturn. I don't actually see how
2 they could have.

3 But it's sort of bizarre that, you know, long
4 before there was any hint of the kind of economic downturn
5 there is, that we were fighting against this rule when I
6 came in. And we ended up adopting the rule. It was after
7 history of some extremely difficult and unpleasant
8 hearings I know that the Board had. And some of the same
9 arguments that were made then are being brought back again
10 today, some of which I think are specious. Others of
11 which I think may have merit.

12 Either way, you can't deny that the situation has
13 changed since we adopted the rule. And it seems to me
14 that it would make sense for the staff to meet with the
15 petitioners and to discuss what kinds of information needs
16 there might be that would cause you to think about whether
17 there could be any appropriate modifications here that
18 don't sacrifice the goal of getting us to -- we don't have
19 a choice. We have to meet our SIP requirements. We have
20 deadlines to meet that are beyond our purview to change.

21 On the other hand, to the extent there are
22 flexibilities that you might want to consider, this is an
23 appropriate -- that would be an appropriate forum in which
24 to consider them I think. We have that extension of time,
25 and I would assume they would be willing to give you more

1 time if that was necessary.

2 EXECUTIVE OFFICER GOLDSTENE: We have agreed to
3 work with them. And we will proceed to set up a meeting
4 to have a formal discussion.

5 CHAIRPERSON NICHOLS: But I think along the lines
6 of what others have said, we want to keep an eye on this.
7 And we don't want to wait until next year or whatever in
8 order to take another look at what's going on. And
9 there's a lot of information that they've indicated they
10 have, some of which we don't necessarily agree with. But,
11 you know, it's time to have those discussions I think.

12 Yes, Ms. D'Adamo.

13 BOARD MEMBER D'ADAMO: I agree with everything
14 you've said and Ms. Riordan. We need more information.

15 CHAIRPERSON NICHOLS: Yes.

16 BOARD MEMBER YEAGER: Keeping in line with
17 keeping an eye and keeping track of issues, I think it's
18 great that we have set up the Off-Road Implementation
19 Advisory Group, and I commend everybody for thinking of
20 that and having a channel. It's one thing to hear people
21 come and talk to us and it's very important. But when it
22 comes to rolling up the sleeves and doing most of the
23 work, it's going to be in groups like that.

24 And I didn't know if there were other issues that
25 were on the table that you're discussing. And obviously

1 there were the ones you brought forward here. But just
2 didn't know if there were other things that were still
3 being worked on that might address some of the issues that
4 some of our speakers spoke to.

5 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
6 WHITE: I think that the biggest one that we're really
7 trying to sort through is the one that we heard the most
8 about, is what is the true impact on emissions so we can
9 start to look at what the provisions of the rule are doing
10 today, whether they're adequate to deal with the downturn
11 that we're currently in and what would be appropriate to
12 maybe look at if they're not. And so that's the rule.

13 Key one for us is getting that information this
14 late spring/early summer to start looking at it as was
15 suggested and to be able to understand more fully what the
16 emission impact is so we can look at our SIP commitments
17 and the other commitments that we've made that are so
18 critical in attaining.

19 BOARD MEMBER YEAGER: And then obviously you'll
20 be mindful of other incentives that might be suggested.
21 It's always a very good way to go. And we certainly see a
22 lot of support for the double credit. So there might be
23 other incentives out there.

24 So do we try to track any of the new technology
25 that may be introduced soon? You talked about the passive

1 retrofits that are now on the market. Do we know if
2 there's others that are in the pipeline and do we to
3 coordinate a little bit with what might be coming on to
4 the market with some of our regulation deadlines so that
5 if a company does have to go out and buy some new
6 equipment that it isn't like a month later there's another
7 product that might be cheaper.

8 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

9 WHITE: On the Advisory Group, we have a Retrofit
10 Subcommittee where we talk through where the technology
11 is, bring the vendors who are very active in that group,
12 the manufacturers, so they can let industry know where
13 things are. And the showcase is a good example, although
14 it's been slow in coming. What we've seen are devices
15 that are not yet verified now. For instance, there's an
16 active system. We've heard about some of the problems
17 with that with limitations that fleets are experiencing
18 with the need to shut their vehicle down so that that
19 filter could be regenerated. There is a system in there
20 that regenerates while the vehicle is being used.

21 So it serves the same function. It operates
22 similarly in that it will work on older, colder, and
23 dirtier vehicles. But you don't have to shut the vehicle
24 down to regenerate. So it offers many of the same
25 features that are attractive to fleets on the passive

1 filters. It happens behind the scenes and they don't see
2 it. So we're optimistic that technologies like that will
3 come out and give more options and help address some of
4 the operational limitations that fleets are concerned
5 about.

6 BOARD MEMBER YEAGER: I would certainly hope we
7 would be mindful of new products that come on to the
8 market. And it turns out that there is a great advantage
9 for a slight modification somewhere with a deadline just
10 because of a particular product we will consider that.

11 CHAIRPERSON NICHOLS: Dr. Balmes.

12 BOARD MEMBER BALMES: I'm going change the
13 subject a bit. So I'm an occupational medicine physician
14 as well as a pulmonary physician. I was troubled by the
15 comment of one of the speakers about sort of
16 incompatibility of our regulations in terms of devices and
17 OSHA safety concerns. And the speaker said there was a
18 meeting between CARB staff and OSHA or among CARB staff
19 OSHA folks and then some of the construction industry
20 folks. And it sounds like there wasn't resolution from
21 the speaker's point of view. Could I hear more about
22 where we are with that?

23 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: The
24 industry -- actually, I don't know the right word is
25 petitioned -- but asked the OSHA board to revise their

1 regulations that would govern this kind of equipment and
2 whether it's safely operated or not.

3 The language that was suggested would have
4 basically killed the regulation outright. It would have
5 put the burden on the engine manufacturers to decide if
6 something was safe. And they're not the right people and
7 they have no incentive to want to do that.

8 So when we saw that, we went and met with the
9 staff of the Cal/OSHA Board and explained to them what we
10 saw as the issue. And the issue we saw was that our
11 regulations say if it was not safe, you don't have to do
12 it. That's absolutely clear. But what is the criteria
13 that we need to use to make that judgment? Of course we
14 wanted them to be involved in that.

15 So the petition was heard in front of the
16 Cal/OSHA Board, and the Board basically said to the staff
17 go work with the ARB and stakeholders and see if you can
18 come up with that. And I think we all are working on with
19 the objective of coming up with a reg change they could
20 make that would govern these individual decisions.

21 I think some of the early comments perhaps a
22 little cavalierly that filters don't work and none of them
23 are safe and things like that are really not based in fact
24 at all. But most of the pictures you saw where you could
25 see the filter on the screen, many of those just replaced

1 the muffler that was in the same spot. So even though
2 it's there and it blocks the view, that's the way the
3 piece of equipment comes from the manufacturer to start
4 off with. Others were under the roof or so low you
5 couldn't argue that they in any way got in the way of
6 visibility or things like that.

7 That's what needs to be sorted out, and we think
8 the process will do that in the next coming months.

9 BOARD MEMBER BALMES: Thanks, Tom.

10 CHAIRPERSON NICHOLS: Ms. Berg.

11 BOARD MEMBER BERG: Thank you, Chairman Nichols.

12 I think I'd like to start with South Coast air
13 quality figures on their testimony. When we look at the
14 cost of the retrofits per horsepower by what SOON has
15 paid, as of January 2009, they paid \$56,432 per NOx. And
16 that's if we take their figures and divide it by the NOx
17 emissions. And then for 2000 being considered for
18 February, we're up \$83,560 per NOx. And I think that, if
19 my memory is correct, that's way over what staff projected
20 as the cost per NOx emissions.

21 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Let me
22 comment first that if you're dividing the dollars by the
23 tons in this graph, those are tons per year. Of course,
24 the benefit for the money spent will occur year after year
25 after year. So you have to look at the lifetime of the

1 entire use of the engine to determine that kind of a
2 calculation, not just on a per year basis.

3 But as to how that would compare to what we had
4 put in our staff report, I think maybe Erik or someone
5 could comment on that.

6 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
7 WHITE: In terms of these numbers, I think it's important
8 to point out two things. First, these aren't retrofit
9 costs. These are repower costs. And these are repower
10 projects that were performed using the SOON funding in the
11 South Coast. And that, you know, these were voluntary
12 projects that were done. So they weren't necessarily the
13 most cost effective projects that could be been funded.
14 The project applicants were interested in having performed
15 for that made sense for them through that program.

16 This is the first time I've seen the numbers, so
17 it would be difficult to comment how they match up with
18 what we estimated. But they are definitely not retrofit
19 costs though.

20 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: And
21 also if I could add to that that when we're looking at PM,
22 for example, there is a different number than when we're
23 looking at NOx. I think the kind of number that you're
24 referring to is we commonly use something like if it's
25 20-something-thousand-dollars a ton, that's getting

1 towards the upper limit, just for point of reference. And
2 that's how we apply the calculation we're doing.

3 BOARD MEMBER BERG: I was surprised by the total
4 amount spent. And looking at all the equipment that we
5 have to repower and retrofit, it seemed like a very high
6 number to me.

7 I think it really appears to me that we don't
8 need to back slide. And this isn't an issue about pulling
9 back or not meeting the regulation. For me, this is an
10 issue of giving industry credit for what is going on in
11 the field today.

12 In 2007, we had a projection of where we thought
13 we would be emissions wise. These figures that were shown
14 to us, these statistics are coming from the United States
15 Bureau of Economic Analysis, and the US Bureau of Labor
16 Statistics and California Board of Equalization.

17 I don't think anybody can disagree that we are in
18 a significant downturn in business. As one that has
19 personally taken a pay cut, because my business is down
20 and laid off people and working reduced hours as many are
21 even facing this economy and the staff, there must be a
22 way to figure out how we give credit for the reduced
23 equipment use for 2009 reportable in March of 2010 and
24 then take a look at the end of the year. Hopefully, we
25 will be in a different position at the end of the year.

1 So I don't want to project out what we need to do for 2010
2 for reportable and 2011. But I think it's critical that
3 the industry be allowed credit for what expectations were
4 when we passed the rule versus the reality of where we are
5 today.

6 And so that would be -- I'm a huge advocate of
7 that. I don't feel it's backsliding. I feel that it is
8 allowing credit for actually what is being asked of.

9 And so, Chairman Nichols, I would really like
10 some language in what we're passing today that would
11 reflect that we're going to get together and really try to
12 figure this out.

13 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: If I
14 could perhaps just add one thing. There are a number of
15 provisions in the rule that sort of automatically at least
16 partially address this now. And what we aren't able to do
17 is figure out who is in what position to use which of
18 those provisions.

19 So, for example, there are credits for parking
20 vehicles and not using them. You could comply based on
21 the average hours rather than the other parameters like
22 BACT, for example, which would perhaps be applicable to
23 someone who is following this steep decline of operating
24 engineer hours, for example.

25 But I think when we get the data in March, we

1 could add that to the list of things to look at and report
2 back to you as how have the existing provisions worked.
3 Have they only just helped on the margin? Have they been
4 a significant or will they be a significant factor in
5 helping with compliance? Or are other ones needed?

6 CHAIRPERSON NICHOLS: I think the concept that
7 Board Member Berg presents is an interesting way of
8 looking at the problem. But it does require some more
9 information to decide how it would actually work.

10 The other thing is I'm very mindful of the fact
11 having lived through the whole NOx reclaim program in the
12 South Coast which was developed at a time when the economy
13 was down and everybody was trying to figure out how to
14 apportion the credits in a way that would allow them to
15 get back to where they were, what you ended up was a
16 situation of significant over crediting, because people
17 had a real incentive to exaggerate how much they had been
18 doing beforehand. I know that's not where you want to go.
19 But I'm just putting some sideboards on the conversation.

20 I think it's pointing in the same direction that
21 we've all in various ways said we want to go, which is to
22 quickly get back together again with some better
23 information and try to see if there's something we can do.
24 However, today, we do have a modest measure in front of us
25 which will be of help to some people. And so I think we

1 should bring that now forward and vote on it. And then we
2 can go from there.

3 BOARD MEMBER TELLES: Just one comment.

4 CHAIRPERSON NICHOLS: Okay.

5 BOARD MEMBER TELLES: I presume one of the things
6 you're asking for is what is actually happening to the
7 emissions, which Erik mentioned.

8 CHAIRPERSON NICHOLS: Yes.

9 BOARD MEMBER TELLES: We don't know. It seems
10 like that's almost live data when you get on a website
11 that we should be able to be trending that.

12 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: There's
13 two factors. One is much of the data we've seen in terms
14 of fuel use, operating hours, things like that, clearly
15 verifies what everybody knows, which is there is a pretty
16 significant downturn in economic activity in this area.

17 But the other factor we don't know yet is have
18 people stopped buying new equipment, slowed their turnover
19 to new, cleaner equipment also as a result of the economy.
20 That's a factor that goes the other direction. And to
21 figure out the net is what we need the March reporting
22 information for.

23 BOARD MEMBER TELLES: What I would like to see is
24 actually just not the emissions that are estimates, but
25 the emissions that we're actually measuring: The NOx

1 levels, the PM2.5 levels, and is that actually trending
2 down.

3 CHAIRPERSON NICHOLS: The ambient air. We have
4 air quality data.

5 BOARD MEMBER TELLES: Yeah, there's air quality
6 data out there if you look on the website. But to be able
7 to trend that with what's happening now --

8 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: You
9 mean overall? Not for the specific rule?

10 BOARD MEMBER TELLES: Overall for the past
11 six months. We talk about this all the time. But I think
12 we have a way to measure that. And is it actually going
13 down at a faster rate than you would anticipate with the
14 rules that you have passed or that we passed now over the
15 last few years. That's one comment.

16 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: We can
17 try to do that. Although I think many of you have seen
18 that before. It's really hard to ferret out the weather
19 difference and things one year to the next and say this
20 difference. But we'll try it. It's a great idea.

21 BOARD MEMBER TELLES: And one comment I wanted to
22 make on the graph that Mr. Lewis showed, and I wanted to
23 make a public health comment on that. If you look at the
24 graph, the first thing that is down trending is
25 construction employment. And I mentioned this in the last

1 meeting. I think a major threat to public health is
2 unemployment. With that, you have increased stress and
3 loss of insurance. And with los of insurance, morbidity
4 mortality increases. And I think we need to keep that in
5 mind.

6 If we're positioning ourselves to put any
7 industries out of business and increase that, that's not a
8 public health measure to contribute to unemployment.

9 And I think that what I would also like to look
10 at is the amount of industries that is threatened. Is
11 this the straw on the camel's back that is going to make
12 some of these industries go under and that employment
13 issue will be going down at a faster rate by this
14 provision.

15 CHAIRPERSON NICHOLS: Any other comments?

16 If not, I'm going to call for the vote on the
17 resolution that's before us. All in favor, please signify
18 by saying aye.

19 (Aye)

20 CHAIRPERSON NICHOLS: All opposed?

21 Okay. Thank you very much.

22 And I think we should probably give ourselves a
23 short break before we take up the next item. So we'll be
24 back at 4:00.

25 (Thereupon a recess was taken.)

1 CHAIRPERSON NICHOLS: All right, ladies and
2 gentlemen. I believe we have one more item.

3 The next item that's before us is the California
4 Regional Haze Plan. And this is a change of pace from
5 what we've been working on for a while here. Shows how
6 the State is going to improve visibility in California's
7 wilderness areas and parks. We have a number of them that
8 are of great value to not only Californians, but to people
9 all over the world. And the Federal Clean Air Act
10 protects the visibility over those places. And so one of
11 our obligations is to develop a plan for maintaining
12 visibility.

13 And now we're going to hear the staff's proposal,
14 Mr. Goldstene.

15 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
16 Nichols.

17 As you'll hear today, California has 29
18 wilderness areas and National Parks which requires
19 specific visibility protection. This plan lays the
20 framework for what could be achieved in the next ten years
21 on a long-term path towards reaching natural visibility
22 conditions. It's been developed in conjunction with our
23 partners in the neighboring western states.

24 I'm pleased to report that we expect to improve
25 visibility at all California areas by the first milestone

1 year of 2018. This projected visibility improvement is
2 due to the actions that the Board and local air districts
3 have taken to meet health-based air quality standards.

4 I'll now ask Tina Suarez-Murias from the Planning
5 and Technical Support Division to present this item.

6 Tina.

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

9 MS. SUAREZ-MURIAS: Thank you, Mr. Goldstene.
10 Good afternoon, Chairman Nichols and members of the Board.

11 Today, I will present staff's proposed plan to
12 improve visibility at significant parks and wilderness
13 areas in California by 2018.

14 This is the first step in a long-term national
15 initiative to improve visibility in these special natural
16 areas. Unlike State Implementation Plans, which require
17 specific targets and attainment dates, this plan provides
18 for a series of interim goals to ensure continued
19 progress.

20 --o0o--

21 MS. SUAREZ-MURIAS: I will review the
22 requirements for this plan, summarize current visibility
23 conditions and its causes, and discuss the existing air
24 pollution controls in California that will improve
25 visibility by 2018. I will also explain the context for

1 future planning beyond 2018 and conclude with the staff
2 recommendation.

3 --o0o--

4 MS. SUAREZ-MURIAS: Very low concentrations of
5 particulate air pollutants that affect public health also
6 impair visibility. When we reduce man-made particulate
7 matter in the air, we also improve visibility.

8 The long-term national goal is to achieve
9 visibility reflecting natural conditions in the most
10 treasured natural areas by 2064. The plan before you
11 today sets California's visibility goals for 2018, the
12 first milestone.

13 The Regional Haze Rule specifies what elements
14 must be in the plan and describes the process each State
15 must follow to establish specific goals for improving
16 visibility, both within the state and in neighboring
17 states.

18 Reducing haze is a regional issue. This plan
19 sets forth California's visibility goals and represents
20 our element of a broader western regional effort.
21 California has therefore worked closely with our partners
22 in the other western states to develop this plan through
23 the Western Regional Air Partnership.

24 --o0o--

25 MS. SUAREZ-MURIAS: As I noted in the previous

1 slide, particulate matter pollution is the main
2 contributor to poor visibility. The sources that we are
3 addressing in PM non-attainment areas are the same ones
4 that we also impact visibility: Nitrates, sulfates, and
5 directly emitted particulates. Thus, the control programs
6 that are providing emissions reductions for these
7 non-attainment areas will also provide visibility
8 benefits. As such, our ongoing health-based control
9 program will continue to address needed incremental
10 visibility improvements as we proceed towards the
11 long-term goal of natural conditions.

12 --o0o--

13 MS. SUAREZ-MURIAS: This slide shows the impact
14 of extreme visibility impairment. Both photos were taking
15 from the same spot on different days in the same year.
16 While these photographs were taken a number of years ago,
17 they are still representative of the types of very good
18 and very bad visibility days that we still see today.

19 Most days fall in between these two extremes.
20 The day on the right represents the very low particulate
21 matter concentrations that can occur after a rain storm,
22 resulting in pristine vistas.

23 In contrast, the day on the left illustrates how
24 the view of Half Dome can be significantly obscured when
25 smoke from wildfires is overlaid with transport of PM from

1 upwind urban areas.

2 The rule requires California to improve
3 visibility on worst days and to assure that current
4 visibility on the best days can be maintained.

5 --o0o--

6 MS. SUAREZ-MURIAS: Yosemite is one of the 156
7 parks and wilderness areas throughout the United States
8 selected by the Federal Land Management Agencies and
9 designated by Congress as deserving special visibility
10 protection. These are known as the Class 1 areas.

11 California has 29 Class 1 areas, more than any
12 other state. They are distributed throughout the state
13 and are managed by either the US Forest Service or the
14 National Park Service. Staff worked closely with
15 representatives of these agencies while developing the
16 plan components.

17 --o0o--

18 MS. SUAREZ-MURIAS: These pictures of five Class
19 1 areas in California highlight the diversity of
20 locations. They include coastal sites such as Point Reyes
21 National Seashore and Redwoods National Park; locations in
22 the far northern high plateau such as Lava Beds National
23 Monument, and Lassen Volcanic National Park; areas in the
24 Sierra Nevada such as the John Muir Wilderness and the
25 Sequoia and Yosemite National Parks; and in southern

1 California, places such as the Joshua Tree National Park
2 in southern desert.

3 --o0o--

4 MS. SUAREZ-MURIAS: The Regional Haze Rule
5 establishes the key elements required for a statewide
6 Regional Haze Plan.

7 Current visibility for best and worst days at
8 each Class 1 area must be established for monitoring data
9 during the baseline years 2000 through 2004. Natural
10 visibility conditions to be achieved by 2064 are
11 determined by the U.S. EPA.

12 The plan must contain a control strategy to
13 reduce haze pollutants in the first ten-year planning
14 period ending in 2018. States must evaluate large, older
15 stationary sources with high emissions and affirm that
16 they are being controlled with best available retrofit
17 technology. The plan explains how California's reasonable
18 progress goals for 2018 for each of the Class 1 areas are
19 appropriate.

20 Finally, the plan must be developed in
21 consultation with the appropriate federal agencies and
22 other states in the region.

23 --o0o--

24 MS. SUAREZ-MURIAS: Although California's Class 1
25 areas are diverse in landscape and subject to different

1 MS. SUAREZ-MURIAS: As noted on the previous
2 slide, California's already adopted measures that are the
3 basis of the 2018 reasonable progress goals. And thus,
4 there are no new control requirements for regional haze
5 purposes.

6 California has a long history of air pollution
7 control to address federal and State air quality
8 standards, which will also provide visibility benefits.
9 This slide simply highlights many of California's key
10 programs, such as the Mobile Source Control Program, Goods
11 Movement, incentive funding, and local air district
12 measures. As a result of these efforts, NOx emissions, a
13 key PM and haze precursor, will decline by 40 percent by
14 2018.

15 --o0o--

16 MS. SUAREZ-MURIAS: One special requirement of
17 the Regional Haze Rule is the application of best
18 available retrofit technology, or BART, to older
19 stationary sources. ARB staff worked closely with the air
20 districts to evaluate current controls on these sources.

21 After review and assessment of modeled visibility
22 impacts, only one facility required a determination of
23 whether additional controls were necessary for the purpose
24 of the Regional Haze Rule. This facility is the Valero
25 Refinery in Benicia, which has visibility impacts at Point

1 Reyes National Seashore.

2 The Bay Area District conducted the BART
3 determination and concluded that the appropriate BART
4 limits should be based on a combination of the district's
5 existing federally enforceable rules and permit
6 conditions, as well as a U.S. EPA consent decree.

7 Since the release of the draft plan, the district
8 has clarified several aspects of the BART determination.
9 These include how the district rules and the consent
10 decree are referenced, as well as a correction for the NOx
11 limits.

12 While further control of NOx from boilers at the
13 facility may occur in the future under California's more
14 stringent state requirements, the Bay Area clarified that
15 the existing level of NOx control meets the national BART
16 requirements. ARB staff proposes that the Board also
17 approve these clarifications.

18 --o0o--

19 MS. SUAREZ-MURIAS: The Regional Haze Rule
20 requires a long-range planning process with plan revisions
21 and interim mid-course reviews. The plan before you today
22 anticipates a mid-course review by 2013 to evaluate our
23 progress towards the 2018 goals, including reviewing the
24 control strategy and the goals. We expect that we will
25 coordinate this mid-course review with the new SIPS that

1 CHAIRPERSON NICHOLS: Thank you. If there are no
2 immediate questions, I think we can proceed to public
3 testimony. We have two people who signed up to speak,
4 Chris Nota from Regional Foresters' Office and Kendra
5 Daijogo from the California Council for Environmental and
6 Economic Balance.

7 MS. NOTA: Thank you. Thank you, Chairman
8 Nichols. And thank you, Board members for the opportunity
9 to comment on this plan.

10 I'm Chris Nota, and I'm with the Forest Service.
11 I'm the Regional Forester's representative in Sacramento.
12 And this plan is very important to us. Twenty of the 29
13 Class 1 wilderness areas of part of the national forest
14 system. Our precious treasurers.

15 And on behalf of regional forester Randy Moore,
16 I'd like to thank you for the opportunity we've had to
17 work closely with your staff on this plan starting with
18 the initial evaluation, the development, and now the
19 subsequent review of the plan.

20 Cooperative efforts such as these ensure that
21 together we will continue to make progress on the Clean
22 Air Act's goal of natural visibility conditions in our
23 Class 1 wilderness areas.

24 We particularly want to compliment your talented
25 and dedicated staff. They have been great to work with.

1 And I think they've done a wonderful job of technical
2 analysis and collaboration with other agencies.

3 We feel confident that the final plan presents
4 strategies that will protect these very special Class 1
5 wilderness areas. And we've also submitted a few minor
6 written comments.

7 So thank you again for the ability to collaborate
8 with you on this. And we think you've developed a very
9 effective plan. Thank you.

10 CHAIRPERSON NICHOLS: Thank you. Nice to see
11 you.

12 MR. WRIGHT: I know I'm not Kendra. And I won't
13 even try to pass it off.

14 Chairman Nichols, I'm Mark Wright with CCEEB as
15 Kendra is with CCEEB. She got called out on a conference
16 call.

17 We're very appreciative. Lots of our CCEEB
18 members were able to work with your staff on the
19 development of this proposal, and we're in wholehearted
20 support.

21 CHAIRPERSON NICHOLS: Thank you. Nice to see
22 both of you again. You're old colleagues from my
23 Resources Agency days. Good to have a chance to work with
24 you.

25 Any comments, questions from the Board about this

1 item?

2 BOARD MEMBER BERG: I would just like to thank
3 staff after reading the comments from the United States
4 Department of Interior, congratulations. It really
5 looks -- and the presentation was great. I know this has
6 been a lot of work. And I just don't want to not
7 acknowledge that at the end of this day. And so really
8 appreciate your work.

9 CHAIRPERSON NICHOLS: If you could have generated
10 some more contention, you might have made it more
11 exciting.

12 But I agree with that comment that the fact that
13 we're not jumping up and down should not be taken as a
14 sign this is not an important milestone. It is an
15 important milestone. Something that it always tends to
16 get pushed to the back because it's not public health.
17 And most of the things that you do to achieve this
18 standard are things you would be doing for reaching public
19 health standards anyway.

20 But it has a whole separate life and constituency
21 of its own, as well as the legal requirement. In fact, I
22 think probably many of you know that our founder, our
23 original Chairman, Dr. Haggren-Schmidt, was a great
24 advocate of visibility. Because he said that that was the
25 thing that people actually thought about when they thought

1 about smog. And it was actually a lot more important to
2 most people than the health effects which they didn't
3 really understand. But when they saw it, they knew there
4 was something bad going on. So that's been an interesting
5 relationship from the very beginning of our program.

6 But this is a real milestone. And I, too, want
7 to congratulate everybody who worked on it.

8 I think we just need a motion.

9 BOARD MEMBER KENNARD: I will move it.

10 BOARD MEMBER BALMES: Second.

11 CHAIRPERSON NICHOLS: All in favor, signify by
12 saying aye.

13 (Ayes)

14 CHAIRPERSON NICHOLS: Any opposed? Great. Thank
15 you.

16 We have a couple of people who have signed up for
17 the open comment period. It's mandatory that we take
18 public comment on items that were not on the agenda. And
19 we have three people who have indicated they want to speak
20 to us. So now that we finished with our formal agenda, I
21 will call them forward. They are Charles Frazier, Roy
22 Perez, and Edwin Lombard.

23 Welcome.

24 MR. FRAZIER: Good afternoon, Madam Chair,
25 members of the Board and staff. Charles Frazier, Black

1 Chamber of Commerce.

2 And my comments are next week the public process
3 for the adoption of a low carbon fuel standard will begin.
4 And you soon will be asked to approve a policy.

5 We're concerned this rulemaking is moving very
6 quickly and there will not be sufficient time in which to
7 conduct the type of detailed economic analysis that the
8 public was assured would be provided for individual
9 rulemaking under the AB 32 Scoping Plan.

10 All through the AB 32 Scoping Plan debate, the
11 Black Chamber asked for detailed cost information. We
12 were told that many AB 32 costs couldn't be determined
13 until actual rule making began, but that the cost of the
14 each proposal would be carefully evaluated.

15 The economy and State budget crisis are even
16 worse now than they were in the months before the Scoping
17 Plan was approved. I'm here to ask for your assurance
18 that you will honor your pledge and fully examine the
19 costs before adopting a low carbon fuel standard and not
20 approve a policy that will impose financial or practical
21 hardships on small and minority-owned businesses, on our
22 families, and communities.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 Mr. Perez.

1 MR. LOMBARD: Mr. Perez isn't here right now,
2 Madam Chair. I'm Edwin Lombard. And I'd simply like to
3 dovetail on the comments that Mr. Frazier just made.

4 You know, during the Scoping Plan, we came to see
5 you guys on a number of occasions. And quite a few
6 members of the caucus being small business owners or
7 members of the Board came also. And we left understanding
8 that we would get some type of a financial plan and give
9 us some idea what the cost analysis for small businesses
10 was going to be as this thing progressed.

11 And to date, we haven't gotten anything. And we
12 would really appreciate it if some effort was made along
13 those lines.

14 And we welcome the opportunity to be able to make
15 comment, you know, on these findings. And also, you know,
16 that way we can be prepared, be better prepared, and
17 prepare members of the Chamber for what's coming ahead of
18 us. You know, we're facing some pretty dire financial
19 times right now. And with this Scoping Plan now being
20 implemented and the changes that are going to come about
21 with the increases in the energy costs we're going to be
22 faced, we're deeply concerned.

23 And we just want to make sure that we know what
24 we're going to be faced with and to give us an opportunity
25 to make changes that we need to make, adjustments that we

1 may need to make, and possibly even be involved in some of
2 this new green technology that's in front of us. But if
3 we're not given the opportunity to be aware of what's
4 coming down the pipeline, we get left behind the eight
5 ball, the train leaves the station, and we're left
6 standing there. And like it's been done in the past to
7 us. So we would appreciate that very much.

8 CHAIRPERSON NICHOLS: I assume you are on the
9 mail list, the list serve and getting updates.

10 MR. LOMBARD: Got the update about the workshop
11 next week. And we will participate and are very eager to
12 stay involved. We started early on, and we're going to
13 stay here.

14 CHAIRPERSON NICHOLS: Good.

15 MR. LOMBARD: We would really appreciate any
16 information that you can help us with as far as cost. We
17 understand someone has to belly up and kind of take the
18 brunt of some of this. But we don't want to see the small
19 business owners get buried under the bus in this process.

20 CHAIRPERSON NICHOLS: Mr. Goldstene, do you want
21 to comment on what's being done?

22 EXECUTIVE OFFICER GOLDSTENE: It's good to see
23 Mr. Frazier and Mr. Lombard.

24 I just want to remind them and the Board that we
25 were directed in the Scoping Plan resolution to do just

1 what they're asking for. And we're also required under
2 State rules to analyze small business economic impacts
3 very carefully. And I know that both Mr. Frazier and Mr.
4 Lombard are very active working with us and the staff in
5 the process of the Scoping Plan. And I know that they'll
6 be active in our individual rulemakings going forward over
7 the next two years.

8 CHAIRPERSON NICHOLS: When are they going to get
9 the economic analysis?

10 EXECUTIVE OFFICER GOLDSTENE: The economic
11 analysis will be conducted on every measure, measure by
12 measure. They'll be part of that.

13 CHAIRPERSON NICHOLS: But they specifically
14 mentioned the low carbon fuel standard.

15 DEPUTY EXECUTIVE OFFICER SCHEIBLE: And the low
16 carbon fuel standard we had a workshop in December where
17 we introduced the methodologies and our game plan for
18 doing the economic analysis and the environmental
19 analysis. We've been busy working on that. We're going
20 to provide a progress report at next week's workshop. And
21 as you know, the hearing is now scheduled for April. So
22 there is additional time.

23 There's going to be a lot of economic forces at
24 work with something as big as the low carbon fuel
25 standard. Fortunately, I think it's not going to have a

1 big effect on small businesses or consumers in terms of
2 big capital investment. It's going to impact fuel prices
3 which are spread around quite a bit. And so far, all the
4 analysis we've done is we think the lower carbon
5 alternative fuels are going to be somewhat cheaper to
6 produce and procure over the long term than the petroleum
7 they replace. That's going to be one part of our
8 analysis. And one part is going to show what if we're
9 wrong and we want to know what are the possible other
10 consequences.

11 CHAIRPERSON NICHOLS: Well, I think the
12 message -- I know you know this -- is that as soon as
13 people can see something laid out for them that will give
14 them an opportunity then to respond. So hopefully the
15 workshop will be the beginning of having something they
16 can actually look at.

17 DEPUTY EXECUTIVE OFFICER SCHEIBLE: And I think
18 that today when we brought the first measure which was the
19 can rule for auto refrigerants, you saw how sensitive the
20 staff was to cost impacts and how we started out with one
21 idea. And as we learned about it, we found a way that got
22 most of the emissions reductions we wanted at far less
23 cost.

24 CHAIRPERSON NICHOLS: And the industry was very
25 active. A good lesson. Thank you very much.

1 Any other comments? If not, I believe that we
2 are adjourned.

3 (Thereupon the California Air Resources Board
4 adjourned at 4:34 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 3rd day of February, 2009.

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