

ARB09250971.txt

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT OFFICE
AUDITORIUM
21865 COPLEY DRIVE
DIAMOND BAR, CALIFORNIA

FRIDAY, SEPTEMBER 25, 2009

8:30 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

□

APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Lydia Kennard

Mr. Ronald O. Loveridge

Ms. Barbara Riordan

Dr. Daniel Sperling

Dr. 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. LaRonda Bowen, Ombudsman

Ms. Jeannie Blakeslee, Office of Climate Change

Mr. Jon Costantino, Climate Change Planning Section, OCC

Mr. Harold Holmes, Engineering Evaluation Section,
Stationary Source Division

Ms. Monica Vejar, Board Clerk

□

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Joe Aguilar, City of Commerce

Ms. Anna Arriola, East Yard Communities for Environmental Justice

Ms. Barbara Baird, SCAQMD

Mr. Michael Barr, Association of American Railroads

Mr. Brian Bateman, Bay Area AQMD

Ms. Nidia Bautista, Coalition for Clean Air

Ms. Susie Berlin, McCarthy & Berlin, LLP

Ms. Sylvia Betancourt, CCAEJ

Ms. Maria Birrueta, CCAEJ

Ms. Colleen Callahan, American Lung Association

Mr. Frank Caponi, LA County Sanitation District

Mr. Chris Carney, Union of Concerned Scientists

Ms. Sofia Carrillo, Coalition for a Safe Environment

Ms. Maria Chavez, LBACA

Ms. Madeline Clarke, East Yard Communities for Environmental Justice

Mr. Eric Coker, Center for Environmental Health/Ditching Dirty Diesel Collaborative

Ms. Christine Cordero, Center for Environmental Health/Ditching Dirty Diesel Collaborative

Ms. Martha Cota, LBACA

Ms. Allis Druffel

Ms. Daniela Esparza, Pacoima Beautiful

□

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Robert Eula, East Yard Communities for Environmental Justice

Ms. Teresa Flores, CCAEJ

Mr. Rudi Flores, CCAEJ

Ms. Jalene Forbis, CA Short Line Railroad Association

Mr. Juan Garibay, Coalition for a Safe Environment

Ms. Josie Gaytan, CCAEJ

Ms. Margaret Gordon, West Oakland Environmental Land Project/Ditching Dirty Diesel Collaborative

Mr. Peter Greenwald, SCAQMD

Mr. Bill Haller, Sierra Club California

Mr. John Hansen

Ms. Maria Hernandez, CCAEJ

Ms. Amber Hill, Excel High School

Ms. Chi Ho, OEHS & LAUSD

Mr. Kenneth Hofacker, Progress Rail

Ms. Andrea Hricko, USC

ARB09250971.txt

Ms. Erin Huffer, LBACA

Ms. Wendy James

Mr. Robert Kard, San Diego APCD

Mr. Gideon Kracov, East Yard Communities

Mr. Allan Lind, CCEEB

Mr. Angelo Logan, East Yard Communities

□

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Rachel Lopez, CCAEJ

Mr. Joe Lyou, SCAQMD

Mr. Kirk Marckwald, Association of American Railroads

Mr. Jesse Marquez, Coalition for a Safe Environment

Ms. Adrian Martinez, NRDC

Mr. Nathen Mata, East Yard Communities for Environmental Justice

Ms. DePrima Mayo, West Oakland Environmental Land Project/Ditching Dirty Diesel Collaborative

Mr. Jay McKeeman, COIMA

Ms. Jackie McMillan

Mr. Pat Morris, Mayor, San Bernardino

Ms. Terranisha Nathaniel, Excel High School

Ms. Susana Negrete, CCAEJ

Ms. Patty Newman, CCAEJ

Mr. George Osborn, ACTI

Mr. Norman Pedersen, Southern CA Pacific Power Authority

Ms. Swati Prakash, Pacific Institute/Ditching Dirty Diesel Collaborative

Mr. Todd Priest, CA Business Properties Association

Mr. Alex Pugh, LA Chamber of Commerce

Ms. Isela Ramirez, East Yard Communities

Ms. Catherine Reheis-Boyd, WSPA

□

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Jennifer Renteria, East Yard Communities for Environmental Justice

Ms. Elena Rodriguez, LBACA

Mr. John Rozsa, Stonebridge Associates, Inc.

Mr. Seyed Sadredin, San Joaquin Valley Air Pollution Control District

Ms. Kristina Santana

Mr. Martin Schlageter, Coalition for Clean Air

Mr. Scott Sommer, California Chamber of Commerce

Ms. Delphine Smith, Contra Costa Asthma Coalition/Ditching Dirty Diesel Collaborative

Mr. Mark Stehly, BNSF Railroad

Mr. Jim Steward, Sierra Club California

Ms. Pamela Topia, Excel High School
Ms. Lupe Valdez, Union Pacific Railroad
Mr. Jose Valesco, CCAEJ
Ms. Sarah Weldon, R.J. Corman Railpower
Ms. Joy Williams, Environmental Health Coalition
Ms. Lexus Wilson, Excel High School
Ms. Jill Whynot, SCAQMD
Ms. Rosa Zambrano, EYCEY

□

INDEX

PAGE

Item 09-6-5	
Chairperson Nichols	11
Executive Officer Goldstene	12
Staff Presentation	13
Mr. Caponi	24
Ms. Reheis-Boyd	28
Ms. Druffel	30
Mr. Sommer	32
Mr. Rozsa	35
Ms. Berlin	36
Mr. Sadredin	39
Mr. Hansen	41
Mr. Priest	44
Mr. Haller	45
Mr. McKeeman	47
Mr. Kard	51
Ms. Whynot	52

Mr. Stewart	53
Ms. James	54
Mr. Bateman	56
Ms. Callahan	58
Mr. Carney	60
Ms. Zambrano	61
Ms. McMillan	62
Mr. Pedersen	64
Mr. Schlageter	66
Mr. Marquez	67
Q&A	69
Motion	86
Vote	87
Item 09-8-5	
Chairperson Nichols	87
Executive Officer Goldstene	89
Staff Presentation	92
Mr. Lyou	112
Mr. Greenwald	115
Mayor Morris	118
Ms. Hrick	122
Ms. Ho	124
Mr. Haller	125
Mr. Stewart	126
Ms. Santana	128
Mr. Osborn	129
Ms. Chavez	130
Ms. Forbis	131

□

INDEX CONTINUED

	PAGE
Ms. Smith	133
Mr. Garibay	135
Ms. Prakash	137
Mr. Pugh	140
Ms. Carrillo	141
Ms. Renteria	143
Mr. Marquez	146
Ms. Esparza	148
Ms. Ramirez	149
Mr. Kracov	152
Mr. Logan	155
Ms. Newman	158
Ms. Birruetta	162

Ms. Hernandez	163
Ms. Betancourt	164
Ms. Negrete	166
Ms. Lopez	167
Ms. Gaytan	169
Mr. Velasco	170
Ms. Flores	171
Mr. Flores	173
Ms. Cota	174
Ms. Huffer	175
Mr. Lind	176
Mr. Coker	178
Ms. Mayo	180
Ms. Martin	181
Ms. Gordon	182
Ms. Cordero	184
Ms. Rodriguez	186
Mr. Martinez	187
Ms. Arriola	190
Mr. Mata	191
Ms. Clarke	193
Mr. Eula	194
Mr. Aguilar	195
Ms. Nathaniel	196
Ms. Wilson	198
Ms. Hill	198
Ms. Topia	199
Ms. Williams	202
Mr. Schlageter	203
Mr. Carney	205
Ms. Weldon	208
Mr. Hofacker	209
Ms. Bautista	210

□

INDEX CONTINUED

	PAGE
Mr. Pok	212
Ms. Valdez	213
Mr. Stehly	216
Mr. Barr	220
Mr. Marckwald	222
Ms. Baird	225

Board Discussion

227

Adjournment

251

Reporter's Certificate

252

□

10

1

PROCEEDINGS

2

CHAIRPERSON NICHOLS: Good morning, ladies and

3

gentlemen. We're ready to begin this morning's program.

4 The September 25th public meeting will come to order.

5 And before we begin the meeting, I think I'll do
6 the safety announcement, which is that there are emergency
7 exits marked around the edges of this auditorium and that
8 we recommend that people take the southeast exit, because
9 it goes right to the parking lot. If I knew where
10 southeast was, that would be better. But I'm assuming
11 it's over here. Anyway, there is an emergency assembly
12 area in the parking lot and you are not allowed to come
13 back into the building until you get an all-clear signal.

14 So having given that mandatory warning, we will
15 begin our meeting with the Pledge of Allegiance.
16 Everybody please stand.

17 (Thereupon the Pledge of Allegiance was
18 recited in unison.)

19 CHAIRPERSON NICHOLS: Thank you.

20 The Clerk will please call the roll.

21 BOARD CLERK VEJAR: Dr. Balmes?

22 Ms. Berg?

23 BOARD MEMBER BERG: Here.

24 BOARD CLERK VEJAR: Ms. D'Adamo?

25 Ms. Kennard?

□

1 BOARD MEMBER KENNARD: Here.

2 BOARD CLERK VEJAR: Mayor Loveridge?
3 Ms. Riordan?
4 BOARD MEMBER RIORDAN: Here
5 BOARD CLERK VEJAR: Supervisor Roberts?
6 Professor Sperling?
7 BOARD MEMBER SPERLING: Here.
8 BOARD CLERK VEJAR: Dr. Telles?
9 BOARD MEMBER TELLES: Here.
10 BOARD CLERK VEJAR: Supervisor Yeager?
11 BOARD MEMBER YEAGER: Here.
12 BOARD CLERK VEJAR: Chairman Nichols?
13 CHAIRPERSON NICHOLS: Here.
14 BOARD CLERK VEJAR: Madam Chair, we have a
15 quorum.
16 CHAIRPERSON NICHOLS: Thank you.
17 The first item on our agenda this morning is a
18 continuation of the proposed AB 32 cost of implementation
19 fee regulation and a proposed amendment to the mandatory
20 reporting regulation.
21 This item was first heard in June. Since then,
22 staff has met with various stakeholders, held another
23 workshop, and developed the revised proposal that will be
24 presented today. Establishing a fee to cover the costs of
25 implementing AB 32 is an important task. And so I think

□

1 it was worth it that we took the extra time to listen more
2 and think more about the structure of the rule.

3 And I will now ask Mr. Goldstene to introduce
4 this item.

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

7 As you know, the implementation of AB 32 requires
8 a stable and continuing source of funding, which ARB is
9 pursuing with this regulation.

10 At the June Board hearing, the Board asked staff
11 to take another look at issues associated with the
12 electricity sector. Since the June Board hearing, staff
13 held an additional workshop and continued to meet with
14 stakeholders from various sectors affected by the proposed
15 regulation.

16 We've crafted a proposal that responds to the
17 Board's concerns and still recovers fees from 85 percent
18 of the State's greenhouse gas emissions while minimizing
19 the administrative burden on both the State and the fee
20 payers.

21 I'd like now to introduce Jeannie Blakeslee who
22 will make the staff presentation which describes the
23 proposal. Jeannie.

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

□

13

1 MS. BLAKESLEE: Thank you, Mr. Goldstene.

2 Good morning, Chairman Nichols and members of the
3 Board.

4 Today's proposal consists of two related
5 regulatory items: Adoption of the fee regulation to
6 support California's AB 32 program, and an amendment to
7 the existing mandatory reporting regulation.

8 As you know, this item was continued from the
9 June Board hearing to address the Board's concerns about
10 how the regulation handled imported electricity.

11 After meeting with the stakeholders and
12 considering input from the public workshop, we have made
13 modifications to address the Board's concern while
14 retaining the basic approach of the regulation. My
15 presentation today will focus primarily on the changes
16 made since June.

17 --o0o--

18 MS. BLAKESLEE: Adopted in 2006, AB 32 put
19 California in the forefront of the efforts to address
20 climate change, setting the first comprehensive
21 economy-wide emission reduction goals. Climate change is
22 a major new program area for ARB and the State, but the
23 program was launched without a stable funding source. AB
24 32 recognized the need for such funding and provides
25 authority to ARB to establish this fee. The idea of this

24 MS. BLAKESLEE: Now we'll discuss staff's
25 proposal.

□

15

1 --o0o--

2 MS. BLAKESLEE: As a review, the proposal
3 consists of two related but distinct regulatory proposals.
4 The primary proposal is the fee regulation itself. But
5 associated with it is a very specific amendment to the
6 mandatory reporting regulation previously adopted by the
7 Board in December 2007.

8 I'm going to focus on the proposed fee
9 regulation. The proposed modifications to the mandatory
10 reporting regulation have not changed since June.

11 I should also note that ARB will need to revisit
12 both of these regulations as the State's climate change
13 program matures, and especially as a cap and trade program
14 is implemented.

15 --o0o--

16 MS. BLAKESLEE: ARB is taking the same basic
17 approach in developing the fee regulation that we
18 presented in June to the Board.

19 This proposal remains based on the premise that
20 the fee should be applied to the greatest extent possible

21 upstream in the California economy. Our approach is
22 broad-based and economy-wide, capturing 85 percent of the
23 statewide greenhouse gas emissions.

24 Applying the fee upstream allows us to limit the
25 number of fee payers to only about 350 affected entities.

□

16

1 The regulation relies on existing data and approved State
2 budgets. This allows ARB to administer the program with
3 minimal additional resources.

4 --o0o--

5 MS. BLAKESLEE: This slide shows the main
6 categories subject to the fee. The only change since June
7 is how electricity is handled, which I will discuss in the
8 next section.

9 --o0o--

10 --o0o--

11 MS. BLAKESLEE: Since the June Board hearing,
12 staff have worked closely with stakeholders to modify the
13 proposed fee regulation in response to the Board's concern
14 about the electricity sector. We have also proposed --
15 excuse me. We have also proposed two administrative
16 changes due to the delay in adoption. The proposed
17 changes since June fall into three areas: We propose a
18 shift to the first deliverer approach for the electricity

19 sector. We propose to bill in fall instead of spring, and
20 we propose to begin fee collection in fiscal year 2010-11
21 instead of 2009-10.

22 --o0o--

23 MS. BLAKESLEE: In June, the Board was concerned
24 that the proposed regulation did not treat in-state and
25 out-of-state electricity the same. In order to treat all

□

17

1 electricity deliverers equally, we have shifted our
2 approach to a first deliverer concept.

3 Our proposed first deliverer approach would
4 require that in-state deliveries from
5 electricity-generating facilities would be charged a fee
6 per megawatt hour, the same as electricity importers. In
7 both cases, the fee is charged where the electricity first
8 reaches the California grid. The fee would be charged on
9 all delivered electricity, except for electricity for
10 co-generation plants, which produce both electricity and
11 heat.

12 For co-generation facilities, fees would be based
13 on the quantities and types of fuels they use. Fees would
14 be charged on the fuels or fuel emissions from coal,
15 natural gas, coke, and refinery gas where the fuels are

14 shift the annual collection period from spring to fall.
15 This shift would provide revenue from the fee earlier in
16 the State agency fiscal year. As soon as the budget is
17 passed each summer, ARB would send invoices with payment
18 due in the fall.

19 --o0o--

20 MS. BLAKESLEE: We are also proposing to shift
21 initial collection of the fee to fiscal year 2010-11.

22 Due to the delay of adoption of the regulation,
23 collection of the fees in fiscal year 2009-10 is not
24 possible. Therefore, ARB will use the \$35 million
25 beverage container recycling fund loan currently budgeted

□

19

1 to pay for ARB and Cal/EPA's AB 32 programs in this fiscal
2 year.

3 Under the budget language, the beverage container
4 recycling fund must be paid back no later than June 30th,
5 2014. This change would affect the estimated revenue
6 required.

7 The estimate in the initial statement of reasons
8 did not include the use of the 2009-10 beverage container
9 recycling fund loan. ARB will still need to collect
10 additional funds during the first four years of the fee

11 regulation to pay back this loan and the additional
12 accrued interest.

13 --o0o--

14 MS. BLAKESLEE: Over the last few months, in
15 addition to addressing the electricity issue, stakeholders
16 also presented staff with a number of additional requests
17 for modifications to the proposed regulation. These
18 requests fall into three general areas: The point of
19 regulation for transportation fuel; using a
20 forward-projecting fuel rate or prospective billing for
21 transportation fuel; and net electrical imports.

22 At the June Board meeting, representatives from
23 the Western States Petroleum Association recommended
24 moving the point of regulation from the refinery to the
25 terminal distribution rack, commonly known as the rack.

□

20

1 WSPA noted in their comments that the Board of
2 Equalization already collects excise taxes at the rack and
3 claimed it would be more efficient to assess this fee at
4 the rack as well.

5 We disagree. After meeting with WSPA, fuel
6 providers, and other stakeholders, and evaluating this
7 proposal, staff does not believe the collection at the
8 rack would be more efficient. Refineries are already

9 subject to the regulation for their facility emissions.
10 Applying the fee at the rack for transportation fuel that
11 refineries produce could simply bring more fee payers into
12 the system and require ARB to create an additional bill
13 system at the rack. In addition, many of the new fee
14 payers this approach would bring into the system are small
15 businesses, raising equity and competitive issues.

16 WSPA has also recommended using a forward-looking
17 fee rate on transportation fuels. The current proposal
18 relies on two sets of data: The approved State budget and
19 data reported to ARB from every affected entity. For ARB
20 to bill prospectively in a way that ensures sufficient fee
21 collection, we would have to annually predict future sales
22 of gasoline and diesel fuel.

23 To minimize the chances of under collection, ARB
24 would need to establish a margin of safety, potentially
25 resulting in higher fees. In addition, for equity

□

21

1 reasons, ARB would have to apply this prospective method
2 to the other sectors subject to the regulation. Doing so
3 would require information -- I'm sorry. Doing so would
4 require the projection of all of the data necessary to
5 calculate the common carbon costs, including such diverse

4 MS. BLAKESLEE: This slide shows the sources of
5 revenue used during the first years of the program,
6 including the loan amount for fiscal year 2009-10.

7 For 2009-10, ARB and Cal/EPA will use the 35
8 million loan from the beverage container recycling fund.

9 --o0o--

10 MS. BLAKESLEE: The revised total revenue
11 requirement is the fee to be collected and is based on
12 annual program costs. Debt repayment and any annual
13 adjustment for fiscal year 2010-11, the preliminary total
14 revenue requirement of \$63.1 million is based on the
15 estimated program cost of \$36.2 million. This covers ARB,
16 Cal/EPA, and a number of other State agencies and the
17 repayment of a portion of the loans, plus interest, which
18 in 2010-11 is \$26.9 million. Actual program costs for
19 fiscal year 2010-11 will depend on the approved State
20 budget.

21 --o0o--

22 MS. BLAKESLEE: We have updated this slide from
23 June to show the revised sector-specific fee estimates
24 based on the additional loan and accrued interest.

25 --o0o--

□

1 MS. BLAKESLEE: At the consumer level, the impact
2 of the fee is still estimated to be very small, as seen on
3 this slide. The common carbon cost is calculated to be 15
4 and a half cents per metric ton of carbon dioxide.

5 --o0o--

6 MS. BLAKESLEE: Again, here is an updated slide
7 that we first shared in June. This slide shows the cost
8 increase per year to a family restaurant, a 100-year
9 person office, and full service grocery store, as well as
10 the effects on the average household's natural gas and
11 electricity and vehicle use.

12 CHAIRPERSON NICHOLS: Just to be clear, but those
13 numbers are estimates based on their additional cost for
14 energy and other items? It's not a bill that's going to
15 be sent to the households?

16 MS. BLAKESLEE: Correct.

17 CHAIRPERSON NICHOLS: Just let's be clear.

18 Thanks.

19 --o0o--

20 MS. BLAKESLEE: Thank you for asking that.

21 Here is one more administrative slide to show the
22 milestones needed in order to send invoices to fee payers
23 in the fall of 2010. Please note that this regulation
24 will go through a 15-day notice process subsequent to
25 Board action. And ARB anticipates adding documentation to

1 the rulemaking record through the 15-day notice procedure
2 in order to address the concerns of commenters claiming
3 that not enough documentation has been provided.

4 --o0o--

5 MS. BLAKESLEE: This concludes my presentation.
6 Staff understands the myriad of issues
7 surrounding this regulation. However, to continue the
8 support of AB 32 implementation, staff recommends that the
9 Board approves the staff proposal with the suggested
10 regulatory changes. Staff would be pleased to answer any
11 questions you may have. Thank you.

12 CHAIRPERSON NICHOLS: All right. We do have a
13 number of witnesses that have signed up. I'll read the
14 list. And we're going to invoke our three-minute rule.
15 I've forgotten how the timer system here works, but I'm
16 assuming somebody else activates it. Great.

17 So our first witnesses are Frank Caponi, followed
18 by Catherine Reheis-Boyd and Allis Druffel. If you would
19 come forward and sit up here, it will save us all time.
20 Thanks.

21 MR. CAPONI: Good morning, Madam Chair.
22 Frank Caponi with L.A. County Sanitation
23 Districts.

24 The industry had brought a concern to staff
25 regarding renewable sources or biogas facilities which

□

25

1 produce renewable energy. Staff, I think, assured us that
2 these facilities -- these biogenic sources would not be
3 included in the fee structure. We appreciate the
4 clarification on that.

5 However, two things have slipped through the
6 crack. Number one, it's not recognized here that in
7 delivering our renewable energy -- our biogas to energy
8 facilities, specifically landfill gas energy, many times
9 we need natural gas for stabilization of the BTU values of
10 that gas. It enables to burn landfill gas. Without that
11 natural gas in many cases we'd have to shut down and just
12 flare our gas.

13 The way I read this rule right now is that that
14 could potentially be subject to a fee. So we not only
15 have to pay for the natural gas to deliver our renewable
16 sources, but we have to pay a fee on top of that.

17 The second issue, which I think has slipped
18 through the crack, we also operate MSW incineration
19 facilities. There's three in the state of California.
20 While those facilities largely produce biogenic emissions,
21 there's a portion of solid waste plastics, textiles, for
22 example -- while there is an effort to take those out of
23 the waste stream, they're still there. And they produce
24 anthropogenic emissions, and they would be considered I
25 believe under this a fossil fuel. And that would cause us

□

26

1 to once again have to pay a fee on that, which would be an
2 extreme burden in terms of reporting and all that. And
3 once again, this is a renewable stream of MSW and really
4 should not be caught up in this rule.

5 I recommend that language simply be put in there
6 that facilities that primarily burn biogas be excluded and
7 facilities that burn MSW be excluded from the fee rule.

8 And just with my 50 seconds left, I'm always
9 complimentary of the staff here. They always do a
10 wonderful job and they continue to do that. In the fervor
11 of getting AB 32 implemented -- and this unfortunately is
12 an example of that, I think staff has really -- the
13 dialogue of staff has broken down with the central public
14 services of waste treatment plants, waste disposable
15 plants, and deliveries of wastewater treatment. As we
16 move into cap and trade and very significant issues there
17 that we're trying to resolve with staff, dialogue has
18 completely broken down.

19 Once again, I respect staff. I hate to have to
20 come here and say that. But this is another example where
21 staff does not understand our business or how we operate.
22 And as we get into AB 32, which is a brand-new world of

23 greenhouse gases, it's very important that we have a
24 dialogue and continue an ongoing dialogue with staff.
25 Thank you.

□

27

1 CHAIRPERSON NICHOLS: Thank you.

2 Does the staff want to comment at this point on
3 the specific items that were mentioned, or are you going
4 to later? Or how do you want to handle this?

5 MR. COSTANTINO: Biogas is not one of the
6 specified fuels that we would assess the fee on. So we
7 think the regulation covers it already as written.

8 The natural gas portion of the fuel, if you are a
9 mandatory reporter, that natural gas would get covered.
10 And we think it's appropriate to cover the natural gas
11 portion of the fuel.

12 As far as the municipal solid waste, that is also
13 not one of the covered fuels. And if something did slip
14 through the cracks, we would be happy to work with them to
15 address that issue.

16 CHAIRPERSON NICHOLS: As I read the rule, it
17 specifies what the fuels are that are covered. So there
18 would be no reason to assume that some other fuel that
19 isn't mentioned specifically is covered. Would that be
20 correct?

21 MR. COSTANTINO: Yes.
22 CHAIRPERSON NICHOLS: It may be there needs to be
23 some further conversation obviously. The sanitation
24 district feels they have not had sufficient dialogue with
25 our staff, so we should encourage that to occur.

□

28

1 I want to specifically underscore how the process
2 in this auditorium works. When I call your name, there
3 are two podiums here. And I'd like people to be lined up,
4 one at each podium, so you're ready to go. That will save
5 us all a lot of time.

6 So Catherine Reheis-Boyd and Allis Druffel are
7 next. Thanks.

8 MS. REHEIS-BOYD: Good morning, Chairman Nichols
9 and members of the Board.

10 Cathy Reheis-Boyd, Western States Petroleum
11 Association.

12 And WSPA does not oppose a properly constructed
13 legally sustainable fee on all greenhouse gas sources to
14 pay for the direct administrative costs of this program.
15 I want to make that clear up front. Unfortunately, we
16 have not done that today.

17 We've submitted four sets of comments on this

18 issue, on many issues. Others will speak to that.

19 I want to focus my comments on the collection
20 mechanism for the transportation fuels side of the
21 equation. I've invested a lot of my personal time with
22 Mr. Goldstene and staff on this, and there is a
23 fundamental difference on assessing fees on stationary
24 sources and transportation fuels. You obviously catch us
25 as a stationary source in the proposal that staff talked

□

29

1 about. But on transportation fuels, CARB wants to impose
2 fees on an outbound refinery gate and all imports. This
3 approach will have considerable problems, which our tax
4 experts have articulated on numerous occasions to the
5 staff.

6 There will be potential federal court challenges
7 on issues because you're assessing fees on fuels going to
8 other states, Nevada, Arizona -- Nevada gets 100 percent
9 of its fuels from California; Arizona gets a large
10 majority; of course, some from Texas. It won't
11 substantially address a lot of the import requirements on
12 fuels. Forty percent of all the fees for this program are
13 going to be levied on transportation fuels. We have got
14 to get this right. We encourage much more conversation
15 with the staff on this issue.

16 Measuring the quantity of fuel removed from the
17 terminal rack with California delivery destinations is the
18 fairest, least complicated method. You collect it on a
19 prospective basis, on a rate per gallon. You know how
20 much fuel. You know where it's going. You set it. You
21 collect it. You remit it.

22 We have submitted a very easy proposal to the
23 staff and steps identified on how to do this. In the
24 context of efficient government, what you have is an
25 existing system in place with the Board of Equalization

□

30

1 who collects fees for transportation fuels for a long
2 time, diesel and gasoline, excise fees. Cal/EPA collects
3 fees on underground storage tanks in this same manner.
4 Childhood lead fees, oil spill fees, they're all collected
5 in using this system. It is a long established body of
6 law to administer the fee. It is the way to do it. It
7 would avoid duplication for you, for us. It is the
8 highest level of transparency. And it ensures a price
9 signal to the regulated community and the consumer.

10 We are very frustrated and disappointed with the
11 outcome. We urge this Board the adopt an at-the-rack
12 point of measurement on the fees for transportation fuels.

13 I cannot believe that we are fighting about how
14 to most efficiently provide you 40 percent of the finances
15 that you claim to need to administer this program.

16 And I urge you to revisit this recommendation, to
17 keep the dialogue open with us on this, much like you did
18 on the last item. We'd love the staff to continue to try
19 to get an understanding how this system works.

20 CHAIRPERSON NICHOLS: Thank you.

21 Allis Druffel, and next will be Scott Sommer.

22 MS. DRUFFEL: Good morning. My name is Allis
23 Druffel. And I'm the Southern California Outreach
24 Director of California Interfaith Power and Light.

25 And I'd like to take a big view picture today of

□

31

1 this issue. We work with 500 congregations in California
2 representing some 200,000 people of all faiths. And we
3 work on energy reduction, energy efficiency, and
4 sustainable energy measures.

5 We're one state affiliate with National
6 Interfaith and Light Movement, now working in 30 states on
7 climate change and energy issues.

8 To the faith community, the need to reduce energy
9 use is not merely a financial or environmental question;
10 it is a morale mandate dictated to us by our beliefs.

11 In regards to the proposed administrative fee,
12 which we support, I wanted to briefly bring up the issue
13 of equality and fairness.

14 In terms of energy reduction, many sectors of
15 California's society have taken action.

16 One, the legislators of California have passed
17 strong energy efficiency standards, which over the last 30
18 years have resulted in the stable use of energy, despite
19 our rise in population.

20 Two, many businesses, small and large, have taken
21 practical steps to become more energy efficient.

22 Three, the faith community has taken and
23 continues to take strong action and energy reduction
24 measures through education of their Congregants and
25 facility retrofitting.

□

32

1 And, fourth, the good people of California are
2 recognizing the need for energy reduction and are taking
3 practical steps toward that end.

4 It is now past time to make the biggest polluters
5 who are the largest causes of pollution in global warming
6 pay the small fee that ARB is proposing. To those who say
7 that this fee would be unfair to large polluters, let us

8 recognize the cost that has already been paid in health
9 and health care, lives and livelihoods of California
10 citizens, many of whom are in economically disadvantaged
11 areas, have been paying for decades because of pollution
12 and in the name of large profits.

13 California Interfaith Power and Light is
14 advocating for an eventual price on carbon, one that would
15 reflect the true price as business as usual in terms of
16 cost to the environment and human health. This fee, which
17 ARB has the authorization to instate, would be a small
18 step in the right direction, a step toward carbon
19 reduction and toward a needed rapid shift to clean energy.
20 It would save money in the long run and is very fair.

21 Thank you.

22 CHAIRPERSON NICHOLS: Thank you.

23 Scott Sommer, followed by John Rozsa.

24 MR. SOMMER: Good morning, Chairperson Nichols
25 and members of the Board.

□

1 Our firm represents the eleven associations
2 involved in the Public Record Act litigation. I'm here to
3 request the Board to provide additional supporting
4 information on the direct costs involved in the proposed
5 fee. We ask that the public comment period remain open

6 until this has occurred and the Board takes a vote.

7 There are, as is addressed in the written record
8 and other speakers will comment on, very substantial data
9 gaps that remain in the record on substantiation of direct
10 costs. In that litigation, on September 18th, the judge
11 ruled, and I quote, "Respondent Board is already under a
12 legal obligation to make public through the rulemaking
13 proceeding itself all of the facts that support its
14 action."

15 The court did not order further review, but did
16 state again "viewing this matter in its proper context in
17 regulation to a pending rulemaking proceeding in which
18 respondent Board is already under the legal obligation to
19 reveal the factual support proposed action" -- go on and
20 continue.

21 The court even commented, "in this case, given
22 the legal standards applicable to fees, any failure by the
23 Board to provide facts in the rulemaking record to support
24 its action presumably would make the regulation vulnerable
25 to a legal challenge."

□

34

1 I want to add that CARB's attorney made the
2 following statements on the record, "Any questions the

3 associations have, they can ask the staff of ARB during
4 this pending rulemaking proceeding as a matter of law
5 under the government code."

6 The staff have to respond. If they don't, they
7 do so at their own peril. Without the substantive
8 responses to public comment, the regulation's going to be
9 back in court. And went on to say ARB staff has to
10 respond substantively and help our clients understand
11 what's going on.

12 I would like to mention part of the APA,
13 Government Code 11347.A and B talks about the obligation
14 on CARB in this process that it shall maintain a file
15 available to the public, which shall include all data and
16 other factual information, empirical studies, reports, if
17 any, on which the agency is relying.

18 So, accordingly, for policy reasons as well as
19 the legal obligations that are referenced, we are
20 requesting that the Board make publicly available all of
21 the factual materials and documentation that validate the
22 cost of this fee. Thank you very much.

23 CHAIRPERSON NICHOLS: Thank you.

24 I'm going to ask our legal counsel to respond
25 after all the testimony. A number of legal issues I think

□

1 have been raised and will be raised. So we'll try to at
2 least ask the staff to respond before the Board takes any
3 action here today.

4 MR. SOMMER: If you have any other questions, I'm
5 happy to come back up.

6 CHAIRPERSON NICHOLS: Thank you.

7 Mr. Rozsa.

8 MR. ROZSA: My name is John Rozsa. I'm President
9 of Stonebridge Associates, Incorporated.

10 My firm was recently retained by the California
11 Business Properties Association, et. al., to examine
12 documents from ARB's production of records in response to
13 the Association's Public Record Act requests.

14 I was asked to identify whether the records that
15 ARB produced were a complete and appropriate set of
16 records for identifying past AB 32 expenditures and to
17 identify a quantitative assessment of the extent the
18 report supports the figures reported by the staff in the
19 staff report.

20 Our key findings are as follows.

21 ARB expenditure data for fiscal years 2007-08 and
22 2008-09 in tables 3A and 4A of the staff report is not
23 well supported by documents produced by ARB.

24 The documents produced by ARB supported only 17
25 and 11 percent of expenditures respectively for the two

□

1 fiscal years. Our analysis of the ARB's estimation excise
2 suggests that ARB may have double counted overhead costs
3 by removing administrative services PY contribution
4 without removing their salaries from total personnel
5 expenditures.

6 There are also significant expenditures for
7 operating costs, equipment, and administrative overhead,
8 totaling \$17 1/2 million for which no supporting data are
9 provided.

10 The ARB uses the CalSTAR system for all its
11 accounting and reporting. The only way the data in tables
12 3A and 4A and supporting spreadsheets can be determined to
13 be accurate is through the examination of complete
14 accounting records from ARB's CalSTARS accounting system.

15 I've made a copy of our report available for your
16 review.

17 CHAIRPERSON NICHOLS: Thank you, Mr. Rozsa.

18 Susie Berlin and Seyed Sadredin are next.

19 MS. BERLIN: Good morning, Madam Chair, Board.

20 Thank you very much for this opportunity to address you on
21 the fee issue.

22 My name is Susie Berlin. I represent the
23 Northern California Power Agency. And CPA is a joint
24 powers agency that is comprised of publicly-owned electric
25 utilities and one natural gas utility.

□

37

1 I want to start off with -- and I'm repeating
2 what others have said. I'm very appreciative of staff's
3 involvement with stakeholders and responsiveness to both
4 e-mails and telephone calls and having face-to-face
5 meetings. We appreciate this Board's responsiveness to
6 the concerns raised by NCPA and others back in June when
7 this issue was first brought up regarding the electricity
8 sector impacts.

9 We support many of the changes that have been
10 made, particularly the acknowledgement that fees should
11 not be assessed on power wheeled through California. But
12 we believe that the regs should be revised to exclude
13 imposition of the fee on the electricity imports.

14 Staff correctly notes that AB 32 does talk about
15 all statewide greenhouse gas emissions, and NCPA and its
16 members acknowledge both the compliance and reporting
17 obligations associated with that obligation. But that
18 obligation is distinguished from imposition of the fee and
19 they should not be read together.

20 NCPA supports the netting provisions for several
21 reasons. First, seasonal exchange agreements and
22 multi-power purchase agreements with entities from out of
23 state are very useful and they maximize the efficient use
24 of the entire regional electricity system. They can

25 control costs. They reduce emissions associated with

□

38

1 excess generation at various times of the year. They
2 maximize overall efficiencies and ensure reliability.

3 Second, the fact that the amount at issue is only
4 five percent is irrelevant, nor does it address the impact
5 of the fee on an individual compliance entity or recognize
6 the fact that there is no cap on the fee amount.

7 Accordingly, the actual obligation can be and likely will
8 increase from year to year and will be higher than the
9 current obligation.

10 Finally, the estimated impact on individuals is
11 irrelevant, because it does not address the impact of the
12 fee on the entity that needs to pay the fee. So we urge
13 the Board to reconsider of the netting of electricity
14 imports.

15 We believe the administrative burden can be
16 easily addressed and urge you to review the comments filed
17 by the Southern California Public Power Authority earlier
18 this week that address ways in which that can be handled
19 through the reporting regulation.

20 And also if there is going to be at look at the
21 fee, we would ask that something specific be placed in
22 there regarding enforcement to allow for a review of the

23 fee obligation before penalties are assessed if there is a
24 discrepancy.

25 Thank you very much for your time.

□

39

1 CHAIRPERSON NICHOLS: Thank you.

2 Mr. Sadredin followed by John Hansen.

3 MR. SADREDIN: Madam Chair, members of the Board,
4 good morning. Thank you for the opportunity to present
5 testimony on this matter.

6 I'd like to say it's a pleasure to be before you.
7 Unfortunately, I can't, because I come here with great
8 reservation to oppose your staff recommendation as it
9 relates to the mandatory reporting provision of this rule.

10 We often work together as partners and get things
11 done right. But in this case, I think that staff
12 recommendation really misses the mark. It will cost
13 businesses a great deal of unnecessary expense and having
14 to deal with a duplicate redundant system, it essentially
15 will codify inefficiency and bad government in my view.
16 As you know, for decades the local air districts have been
17 collecting emissions data both for criteria pollutant and
18 toxic pollutants from businesses, and that information has
19 been relied upon and acted upon by your agency, by EPA,

20 and all of us and all the difficult work that we have to
21 do.

22 Unfortunately, this recommendation now will
23 require businesses to do two different systems: Report
24 emissions to the local districts in a different format and
25 to the ARB really for no good reason. My colleagues from

□

40

1 CAPCOA had provided additional information on that.

2 But I'd like to point to two other -- bring up
3 two other thoughts that you may want to consider in your
4 deliberations today. One is EPA will soon require their
5 own mandatory reporting beginning next year. And will we
6 have three different systems now that the businesses will
7 have to use and report the same information to the three
8 agencies? Will ARB be able to fight against that if you
9 adopt the staff recommendation which says there is only
10 one way to do the reporting and do it redundantly.

11 The other thing I ask you to consider is to stay
12 true to the resolution that you adopted when you
13 implemented or the adopted the AB 32 Scoping Plan. In
14 that resolution, you said you will -- when appropriate,
15 you will rely on the existing infrastructure that is in
16 place at the local air district and will put that in place
17 and will use that to minimize the cost.

18 All we're asking here is that in Section 95204
19 and Section 95104 where it says "ARB's tool is the only
20 system to use," add a sentence at the end that will say
21 "or an equivalent system adopted by local air districts
22 and approved by your executive director," if it's
23 appropriate. Thanks.

24 CHAIRPERSON NICHOLS: Thanks.

25 Before we go further, because it may save us a

□

41

1 little bit of time and some apprehension, I'd like to say
2 that I agree with you. We have just been through an
3 exercise with EPA which staff has mentioned, but which we
4 can talk about a little bit more at the end, to try to
5 make sure that California's reporting system can move
6 seamlessly into the federal system. We need to do the
7 same thing between the locals and the states. I
8 understand that we need to move forward with the mandatory
9 reporting rule. And at this point, we don't yet have
10 software that works the way we would like it. We would
11 all like it to work so there's a single port of entry for
12 anybody who has to report. They don't have to do multiple
13 filings. That should be everybody's goal. But we
14 definitely need to make sure that we are open to that

15 occurring and helping to the extent that we can to make
16 that possible.

17 So I just want to say that I will be making that
18 recommendation when we get to that point. I appreciate
19 your bringing it to us. Thank you.

20 Mr. Hansen followed by Todd Priest.

21 MR. HANSEN: Thank you, Chairperson Nichols.
22 Appreciate the opportunity to address you today.

23 Like Scott Sommer, I'm a member of the firm of
24 Pillsbury, Winthrop, Shaw, Pitman, who has been
25 representing the eleven associations involved in the

□

42

1 Public Records Act litigation. And we are commenting on
2 their behalf both today and in greater detail through
3 written materials that we submitted to your staff on
4 September 23.

5 As stated in John Rosa's report, and Mr. Rozsa
6 addressed you a moment ago, which he submitted on behalf
7 of the association CARB has refused to release to the
8 associations or otherwise make available any -- and I
9 underscore the word "any" -- materials that validate past
10 cost of AB 32 cost implementation to be covered through
11 the proposed fee.

12 Indeed, in response to the Public Records Act

13 request from the associations, CARB staff withheld on the
14 asserted basis a privilege over 84 percent of their file
15 on the proposed regulation. By CARB's own admission, the
16 withheld records contain facts, financial information,
17 numbers, and estimates relating to the amount of the
18 proposed AB 32 fee and to the nexus with the regulatory
19 programs of AB 32.

20 For fiscal year 2007-2008, CARB claims staff
21 person years, or PYs, of 125.44 direct staff cost
22 approximately \$10.6 million and staff overhead of
23 approximately \$3.7 million.

24 For fiscal year 2008-2009, the staff PYs are
25 182.23. Direct staff cost are approximately 16.1 million,

□

43

1 and staff overhead is approximately 5.6 million.

2 We estimate that approximately 27.8 million is
3 claimed by CARB for staff hours and staff overhead for
4 fiscal year 2007-08 and 2008-09 of the approximately \$54.6
5 being retroactively claimed for those years.

6 The fact is that CARB staff has admitted through
7 the declaration of Daniel J. Whitney that CARB staff did
8 not keep records. Mr. Whitney stated, and I quote, "ARB
9 did not keep hourly records of AB 32 implementation

10 administration work for fiscal years 2007-2008 or
11 2008-2009. The time spent on such work by CARB employees
12 was estimated."

13 The bottom line is that CARB staff has taken the
14 position that the public is not entitled to see the
15 supporting documentation for the calculation of past year
16 costs and that the public is only entitled to see CARB
17 staff's final totals determined through its secretive
18 process. This position is contrary to the Legislative
19 intent of AB 32, the statutory requirements of AB 32 --

20 CHAIRPERSON NICHOLS: Mr. Hansen, your time it
21 up.

22 MR. HANSEN: -- and requirements of the
23 Administrative Procedures Act. Thank you very much.

24 CHAIRPERSON NICHOLS: Mr. Priest followed by Bill
25 Haller.

□

44

1 MR. PRIEST: Thank you, Chair Nichols.
2 I'm Todd Priest representing the California
3 Business Properties Association, a member of the AB 32
4 implementation working group. And our members aren't
5 direct fee payers, but they will indirectly pay the costs
6 through higher energy cost, as will most consumers here in
7 California. And our concern too has been the fairness and

8 the equity involving this rulemaking process. As previous
9 speakers have mentioned, there's not an opposition to the
10 need for an administrative fee. It's how it's done and
11 make sure it's done fairly.

12 There's been a concern that a great deal of money
13 has been spent by CARB in moving forward with AB 32, and
14 we recognize that. AB 32 is changing the landscape of how
15 we do business here in California. But understanding
16 that, there will be a financial obligation paid by most
17 businesses for implementation. And with that obligation
18 comes the ability for those costs to then be borne upon
19 our rate payers, which would be businesses and residences.

20 So we would request that as you move forward that
21 you require that there be an audit system included into
22 this rulemaking and that you set up an advisory committee
23 of those who are actually paying the rates, are paying
24 those fees to make sure that they can be substantiated,
25 since it is an administrative fee, that there's a nexus

□

45

1 study that's done, and to make sure there's direct
2 accountability for all those fees that are addressed.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 Mr. Haller, followed by Jay McKeeman.

6 MR. HALLER: Madam Chair, honored Board members,
7 my name is Bill Haller. I'm a volunteer with Sierra Club.
8 I serve as the Chair of Sierra Club of California Air
9 Quality Committee. I'm a volunteer. I'm not a \$450 an
10 hour lawyer getting paid to be up here.

11 I'm here in support of AB 32 the administrative
12 fee as proposed. This action is fiscally responsible, as
13 funds are needed for implementation of AB 32.

14 It would be fiscally irresponsible to move the
15 process forward without identifying how California
16 agencies will cover AB 32 implementation costs.

17 California taxpayers have already borne the
18 burden of this economy and future repayment of bonds with
19 interest. It's time for the polluter to pay for their
20 pollution. They created it. They profited from it. And
21 they should pay for it.

22 There is a clear split in California's business
23 community. There are many highly vocal and organized
24 individuals, many here today, that represent old dirty
25 business interests in California, who every step of the

□

46

1 way have been hard at work trying to delay or detail AB
2 32. It's the same old, same old. These companies sue

3 over every environmental regulation and then run ads
4 during the nightly news claiming how green they are.

5 Let's make no mistake. AB 32 enjoys strong
6 support from innovative business leaders across the state.
7 Six months ago, hundreds of business leaders, including
8 top executives from Google, Ebay, Gap, Warner Brothers,
9 many other highly respected companies, they signed a full
10 page ad in the Sacramento Bee expressing their strong
11 support of AB 32 and also claiming, rightfully so, siting
12 the economic opportunities it would spark.

13 Finally, AB 32 is an investment in stabilizing
14 California's future. I'm a native California. Born and
15 bred here. Lived my whole life here. It will put
16 California's environment and economy on a more secure
17 path, insulating us from the price shocks that they want
18 to continue to give us and supply disruptions for our
19 energy.

20 Regardless of how they're caused, these trends of
21 our growing oil demand in a business as usual mode will
22 continue to make these price shocks more frequent, deeply
23 felt, and longer lasting. The costs of driving a mile in
24 the U.S. has nearly doubled between 2002 and 2007.

25 And, finally, I have two little kids at home.

□

1 I'm more than willing to pay my fair share, as deemed by
2 this Board, of \$0.77 a year to see AB 32 implemented.

3 Thank you so much.

4 CHAIRPERSON NICHOLS: Thank you.

5 I should have said this earlier. I appreciate
6 people showing enthusiasm on either side, but it's
7 actually not helpful in terms of keeping the proceeding
8 moving along. So maybe you could just raise your hand and
9 wave like they do at the Coastal Commission if you want to
10 show enthusiasm.

11 Mr. McKeeman, followed by Robert Kard.

12 MR. MC KEEMAN: I'm Jay McKeeman, California
13 Independent Oil Marketers Association. And I take great
14 offense at being called a dirty industry. Our members
15 spend millions of dollars every year out of their own
16 pocketbooks paying for environmental improvement. If the
17 Board and the State doesn't recognize that, shame on you.

18 We oppose this regulation for several reasons.
19 First of all, we believe it is an inappropriate delegation
20 of taxing authority by the Legislature. The way this
21 regulation has unfolded shows that it is a guessing game,
22 that somehow ARB is going to guess on what's going to
23 happen and how much it's going to cost, and they
24 apparently have no obligation to tell us how they got
25 those guesses. So we believe that that's inappropriate

1 delegation of taxing authority to you.

2 Secondly, we adamantly oppose any retroactive
3 assessment at the rack. I have contacted our members that
4 will be included in such a proposal, that every one of
5 them has said that they will not be able to pay the
6 invoice -- they'll be able to pay. They will not be able
7 to pass along the money or the price of the invoices to
8 their customers. That is just the way the pricing
9 mechanism works in this industry. We're in competition.
10 One company decides not to pass it on, nobody gets to pass
11 it on. That's the way it works. This is not just a
12 simple assessment of cost and pass it on to the customer.
13 That's not the way it works. And it's obvious your staff
14 doesn't understand that.

15 Finally, we would oppose any retroactive
16 establishment, refinery gate, or at the rack. It's just
17 not the way to do business. When a price -- when a fee
18 gets laid into a gallon at the rack, that's apparent to
19 everybody. It gets laid into the gallon. It goes along
20 with the gallon. People pay that price laid in going
21 forward.

22 Retroactive fees don't work that way. It's a
23 mystery on whether those fees get paid for not. So this
24 regulation has just got a major amount of problems with
25 us, and we don't think that it is appropriate regulation.

□

49

1 CHAIRPERSON NICHOLS: Thank you.

2 Mr. McKeeman, if you could stay there for just a
3 second. I just want to clarify something with staff.

4 We've heard a lot about at the rack, at the
5 refinery. Do you want to clarify a little bit what you're
6 proposing here in terms of where the fee will be assessed?

7 MR. COSTANTINO: Yes. The original proposal in
8 June, which we have not changed, is to assess the fee at
9 the refinery. That means the amount of fuel produced at
10 the refinery or imported into the state would be where the
11 point of regulation would be.

12 In our August workshop, we discussed the idea of
13 moving to the rack due to the stakeholder concerns the
14 refinery wasn't the right place. And upon looking at it,
15 as the staff presentation laid out, we determined at the
16 refinery is still what we think is the best place. So we
17 are not proposing to move it to the rack.

18 CHAIRPERSON NICHOLS: And secondly on this issue
19 of retrospective versus prospective, I know there is a lot
20 of conversation here about the lack of hourly records by
21 state workers for what time they put in in previous years
22 on AB 32. And I just want to say one thing about that,
23 which is that, powerful as the Air Resources Board is --
24 and I won't deny that we have a lot of authority in

25 various areas -- we're subject to the Department of

□

50

1 Finance in terms of how we actually do our budgeting and
2 how our numbers are created and publicized and all of that
3 as we go along.

4 But as I understand what you're proposing to do,
5 it's to document past years. That is, no one is getting a
6 bill today or when this rule passes. You will still have
7 to go through a process of actually establishing what the
8 numbers are based on the best information that is there.
9 Obviously, people can disagree with that. But there will
10 be information produced, made available. And then people
11 will get bills if they're subject to this regulation. Is
12 that correct?

13 MR. COSTANTINO: That's correct in that the way
14 the fee regulation is set up, only public numbers will be
15 used for establishing the fee rate. Reported numbers and
16 the budget approved by the State Legislature and signed by
17 the Governor are the only numbers that we would be using
18 to assess the fee. So the fact that there's claims of
19 guessing of our cost is not accurate, because we can only
20 recover the cost approved and authorized by the
21 Legislature for us to spend.

22 CHAIRPERSON NICHOLS: Okay. I'm sorry to make
23 you keep standing up here, but I just wanted to clarify
24 that while you were still here. If you have 13 more
25 seconds, if you want to say anything in addition.

□

51

1 MR. MC KEEMAN: I've said my peace.

2 CHAIRPERSON NICHOLS: Thank you, sir.

3 Mr. Kard, followed by Jill Whynot.

4 MR. KARD: Good morning, Chairman Nichols and
5 Board members.

6 My name is Robert Kard. I'm the Air Pollution
7 Control Officer for the County of San Diego.

8 Chairman Nichols, you pretty much addressed the
9 issue that Seyed spoke to. We were up here concerned with
10 the greenhouse gas reporting tool being the only option.
11 And I appreciate the fact that you said you're going to
12 expand those into federal as well as perhaps our needs. I
13 think the data quality will be better with the APC
14 districts involved.

15 Thank you for your efforts as well as your staff.
16 It's a huge effort, and I look forward to continuing a
17 good relationship with you folks and your staff. Thank
18 you.

19 CHAIRPERSON NICHOLS: Thank you. Now we just

20 have to come up with a system that actually works with all
21 the different districts and their reporting systems.

22 MR. KARD: The IRS did it with Turbo Tax and
23 others. I think we can do it.

24 CHAIRPERSON NICHOLS: Thanks.

25 Jill Whynot, followed by Jim Stewart.

□

52

1 MS. WHYNOT: Good morning, Chairman Nichols and
2 members of the Board. Thank you very much for the
3 opportunity to provide some comments this morning.

4 South Coast staff supports the recommendations
5 from CAPCOA. They recently submitted a letter which Mr.
6 Kard and Mr. Seyed had discussed. And basically wanted to
7 show you the specific language that we think should be
8 added to the rule.

9 This specific language is a little bit different
10 from what South Coast staff proposed previously. But this
11 would enable tools developed by local air control
12 districts or local APCD's to provide an optional reporting
13 tool that, should the Air Resources Board staff approve
14 it, would be a good opportunity to stream line and
15 consolidate reporting.

16 The South Coast is willing to provide funding to

17 pay the CARB consultant that developed your tool to help
18 in the evaluation and to make sure that our tool would
19 meet all of your needs.

20 So we strongly support the CAPCOA recommended
21 language. And we really appreciate the opportunity to
22 continue working on this. We believe it would be very
23 good for business and also for our agencies.

24 Thank you.

25 CHAIRPERSON NICHOLS: Well, thank you. And thank

□

53

1 you for the offer to participate financially as well.

2 That's always welcome.

3 Okay. Mr. Stewart followed by Wendy James.

4 MR. STEWART: I'm Jim Stewart, the co-chair of
5 the Sierra Club's Energy Climate Global Warming Committee
6 for the state of California.

7 I'm also a volunteer speaking on behalf of the
8 200,000 volunteer members of the Sierra Club in
9 California. And I want to say that this is a great day.
10 This is the day when we finally get the financial
11 structure in place to move AB 32 forward. We are totally
12 thrilled with the amazingly brilliant staff that Mary
13 Nichols and the whole -- Mr. Goldstene and everybody has
14 put together, that this is a great staff. And obviously

15 we need to pay them. And so this is great that we're now
16 moving forward to get that pay structure in place.

17 And we know that this is obviously essential in
18 terms of getting this whole effort of the AB 32 on its
19 way. And this fee is pretty small, right? What was that,
20 1.4-tenths of a cent? In other words, less than
21 two-tenths of a cent of a gallon. How in the heck could
22 you ever know that that fee was added to your three or \$4
23 a gallon gas price?

24 This is truly a nominal fee to get us on the
25 track to do what we need to get done. And I think that it

□

54

1 is pretty embarrassing by all these emitters, polluters,
2 whatever trying to delay this thing with some ridiculous
3 Public Records Act that this is legal, mumbo-jumbo.

4 And what we need to do is move forward. And you
5 are all well aware that the cost of delaying of global
6 warming is getting worse and worse. As I said yesterday,
7 we're this deep trouble on this thing, because the methane
8 klath rates in Siberia are starting to leave. They're
9 starting to be emitted as the global warming. We're
10 getting very, very close to global warming runaway tipping
11 point.

12 So your action today is totally critical. And we
13 are going to look forward to supporting you in all the
14 rest of this wonderful implementation of AB 32. Thank
15 you.

16 CHAIRPERSON NICHOLS: Thank you.

17 Wendy James, followed by Brian Bateman.

18 MS. JAMES: Good morning, Chairman Nichols and
19 members of the Board.

20 My name is Wendy James. I'm here on behalf of
21 several public interest groups, environmental public
22 health, and other public interests. They submitted a
23 letter you should have received. The groups are the
24 Natural Resources Defense Council, American Lung
25 Association of California, Center for Resource Solutions,

□

55

1 Planning and Conservation League, Environment California,
2 Union of Concerned Scientists, California League of
3 Conservation Voters, California Tax Reform Association,
4 Coalition for Clean Air, California Interfaith Power and
5 Light, Sierra Club, Environmental Defense Fund, Climate
6 Protection Campaign, and a late addition that wasn't on
7 the letter you received, Breathe California.

8 I want to provide just some highlights of the
9 written copy you received. And those are the following:

10 That this regulation, the fee you're adopting today,
11 avoids adding to the already over-burdened state budget by
12 collecting fees from the largest sources of global warming
13 emissions in California.

14 Current law requires ARB to impose a fee on
15 sources of greenhouse gas emissions to carry out the
16 Scoping Plan you have adopted. AB 32 specifically
17 authorized the implementation of a fee to generate funds
18 for carrying out the AB 32 programs. And this regulation
19 will prevent ARB from continuing to borrow from existing
20 funding sources that the State has and repay these
21 borrowed funds to support the program over the last two
22 fiscal years, clearly not the intent.

23 This proposal equitably covers 85 percent of all
24 greenhouse gas emission sources in California. It would
25 not be applied to small businesses.

□

56

1 As was stated earlier, it's a very minimal fee,
2 even if passed along to consumers. And while it's not in
3 the letter, I will say it's a fraction of the cost
4 associated, I'm sure, with the legions of lawyers being
5 employed by those who are trying to delay it.

6 The cost of this program is minor compared to the

7 cost of global warming to California. California's vast
8 real estate, agriculture, and tourism industries face
9 significant threats from global warming with trillions of
10 dollars of assets and revenues at risk.

11 California's benefits far outweigh the annual
12 estimated 30 million of administrative cost of
13 implementation. We strongly support the proposed AB 32
14 administrative fee. We've had enough delay. We've had an
15 extensive public process. And we thank you for your
16 continued leadership.

17 CHAIRPERSON NICHOLS: Thank you. I was so
18 excited by your testimony I flipped over my coffee. I
19 apologize. I was listening. Thank you.

20 Then we'll hear from Brian Bateman, followed by
21 Colleen Callahan.

22 MR. BATEMAN: Good morning, Madam Chair and
23 members of the Board.

24 My name is Brian Bateman. I'm the Director of
25 Engineering at the Bay Area air Quality Management

□

57

1 District.

2 And like the other CAPCOA members that you've
3 heard from this morning, my comments are directed at the
4 proposed amendment to the mandatory reporting regulation.

5 We've had for many years a system in place for facilities
6 in the bay area to establish and update emission
7 inventories for criteria and toxic air pollutants. A few
8 years ago, that system was expanded to cover greenhouse
9 gases.

10 We've also been working on a major upgrade to our
11 inventory system, which we expect will be completed at the
12 end of next year. The upgraded system will be in the form
13 of intuitive online tool where facilities can enter their
14 data, check it for errors, and then submit it to us
15 electronically.

16 We've had discussions with ARB staff about the
17 possibility of extending our system so that it can be used
18 for Bay Area facilities to submit their greenhouse gas
19 inventory data directly to CARB rather than having to
20 duplicate their effort by using a separate tool.

21 The staff has been open to that idea and has
22 indicated a willingness to continue the discussions with
23 us toward that end. And so we're looking forward and
24 toward the time when we can have a more efficient
25 integrated approach that can provide all of the required

□

1 data directly from the facilities to both of our agencies

2 in the required format.

3 Realistically, in the Bay Area, we're probably
4 still a couple years away from that point. But we do
5 support the language that was proposed by South Coast
6 staff a moment ago.

7 I'd like to conclude by thanking the ARB staff
8 for their time and cooperation in this matter. They
9 obviously have a great deal going on, and they have shown
10 a sincere interest in what we're doing. And we look
11 forward to continuing to work with them on this.

12 CHAIRPERSON NICHOLS: Thank you.

13 BOARD MEMBER RIORDAN: Madam Chair, may I make a
14 request? I had difficulty reading on the monitor the
15 language. I wondered if staff during the speakers could
16 make a copy. At least my eyes didn't pick it up well. I
17 don't know about the rest.

18 CHAIRPERSON NICHOLS: It was pretty small. Do
19 you have a copy of the language that was submitted by
20 Ms. Whynot? Just pass it down then, if you wouldn't mind.
21 Thank you. Everybody can take a look at it. Okay.

22 Then we'll hear from Ms. Callahan, followed by
23 Chris Carney.

24 MS. CALLAHAN: Good morning, honorable Chairwoman
25 and Board members.

□

1 My name is Colleen Callahan. On behalf of the
2 American Lung Association in California, I'm pleased to
3 reiterate our strong support for adoption of the AB 32
4 administrative fee. As we've stated in letters,
5 workshops, and other Board meetings, we feel that this fee
6 is necessary to maintain the important work of CARB and
7 other State agencies to implement AB 32.

8 Like others, we applaud CARB for moving forward
9 in a responsible manner to protect our air quality, public
10 health, and environment from the worst effects of global
11 warming by maintaining California's role as a global
12 leader in climate policy.

13 Among the many reasons to proceed with adaptation
14 are:

15 One, we have seen the effects of California's
16 budget crisis on our many State programs. And AB 32
17 implementation is too important to delay.

18 Secondly, this regulation would provide a stable
19 and continuous source of funding in an equitable manner
20 ensuring that a broad range of major greenhouse gas
21 emission sources are responsible to pay for their
22 pollution.

23 And, third, as others have stated -- and I'll
24 just quickly reiterate, the overall cost of this program
25 is minor compared to the cost of global warming to

□

60

1 California, especially in terms of air quality and public
2 health that are already in crisis and will be further
3 threatened by rising temperatures, increased energy
4 demand, emissions, and other factors.

5 Climate change impacts could cost the public
6 health sector 3.8 billion to 24 billion in additional
7 annual costs. And this is on top of the \$170 billion
8 attributed to ozone and PM pollution every year.

9 So just conclude by again thanking you for the
10 opportunity to reiterate our strong support for adoption
11 without delay of the administrative fee. Thank you.

12 CHAIRPERSON NICHOLS: Thank you.

13 Chris Carney, followed by Rosa Zambrano.

14 MR. CARNEY: Good morning, Madam Chair and
15 members of the Board. Thank you for the opportunity to
16 speak.

17 My name is Chris Carney with the Union of
18 Concerned Scientists. And I'll be very brief.

19 I want to echo the support you've heard from
20 others. We believe this fee is both fair and equitable.
21 It's reasonable. And it's fiscally responsible. So we
22 encourage you and support you in adopting this without
23 delay. Thank you so much.

24 CHAIRPERSON NICHOLS: Thank you.

25 Ms. Zambrano and then Jackie McMillan.

□

61

1 MS. ZAMBRANO: Good morning, Chairman Nichols.
2 My name is Rosa Zambrano. I'm here to represent
3 the city of Commerce residents that were not able to be
4 here today. I'm here to say no to pollution. I know the
5 residents living in our city of Commerce have 140 percent
6 increase risk of cancer. And to show you care, I know
7 it's awareness week this week. And yesterday in the L.A.
8 Times there was a great article in the front page. It
9 describes our city as cancer alley. It is. You'll hear
10 residents later on in Spanish, and these residents that
11 care. Some of them have lost their husband to lung
12 cancer. Some of them they didn't even smoke.
13 I know I don't live in that alley, but I live in
14 that city and I care. So therefore we're asking you to
15 make our community a better place in the enforcement that
16 you have to make. You have the power to have
17 environmental justice in our city and the cities around
18 us.
19 And I believe it's been a difficult time to
20 gather signatures, because everybody that works, they
21 don't have time to actually come here. But I have
22 collected some signatures, and I would like to give them
23 to you. They are in opposition of so much pollution in

24 our city.

25 And thank you very much.

□

62

1 CHAIRPERSON NICHOLS: Thank you, ma'am. You can
2 leave them with the Board Clerk over here on the end.
3 Thank you for taking the time to come.

4 Jackie McMillan followed by Norman Pedersen.

5 MS. MC MILLAN: First of all, again, thank you
6 for the opportunity to come and address the Board. And I
7 really appreciate it.

8 I'm Jackie McMillan, Vice Chair of VICA, which is
9 the Valley Industry and Commerce Association of the San
10 Fernando Valley. And I am also co-chair of its Energy,
11 Environment and Water Committee.

12 VICA is a business advocacy association that for
13 nearly 60 years has advocates on behalf of the businesses
14 for the San Fernando Valley, which has reached 21,000
15 businesses and that provide over 387,000 jobs.

16 I'm here to respectfully ask that you oppose
17 approving the \$57 million in additional fees as we believe
18 this action will have a detrimental impact to our business
19 community and the consumers that we serve.

20 Ensuring a vibrant business community is of
21 paramount importance to us and our organization. And we

22 believe we support the principles behind AB 32, yet we are
23 deeply concerned about the associated costs with complying
24 with the government regulations.

25 For example, our local public utility districts

□

63

1 of Los Angeles, Pasadena, Glendale, and Burbank have
2 estimated that AB 32 implementation will increase the cost
3 of electricity anywhere from 30 to 60 percent. These
4 increases will inevitably be passed on to our businesses
5 and consumers in the form of higher energy rates, higher
6 costs of products and services, or worse, layoffs.

7 Given the strain placed on our current economic
8 climate, we believe it is extremely unwise to ask business
9 to pay more fees to comply with government imposed
10 regulation.

11 We appreciate greatly the opportunity to be able
12 to come to you today and voice my concern on behalf of the
13 VICA membership, but we ask you to give great
14 consideration to the economic backlash this would have to
15 our communities.

16 Again, we thank you for this opportunity to voice
17 our opposition.

18 BOARD MEMBER LOVERIDGE: Mary, could I --

19 CHAIRPERSON NICHOLS: Excuse me. Yes.
20 BOARD MEMBER LOVERIDGE: Help me out again. The
21 increase in utility fees, where did that number come from?
22 MS. MC MILLAN: They were provided to us by the
23 utilities. The cities of Pasadena, Burbank, and Glendale.
24 BOARD MEMBER LOVERIDGE: It came from the city's
25 utility company, that is where that number --

□

64

1 MS. MC MILLAN: Correct.
2 BOARD MEMBER LOVERIDGE: It was 30 to 40 percent?
3 MS. MC MILLAN: No. The number I have is 30 to
4 60 percent. And I cannot break out for you which one
5 would have the greatest impact. I apologize for that.
6 CHAIRPERSON NICHOLS: But that's not due to this
7 fee necessarily. It's due to many other factors.
8 BOARD MEMBER LOVERIDGE: I was trying to get the
9 connection with this fee.
10 MS. MC MILLAN: Well, just all the impacts of AB
11 32. This would be one more thing that would be layered
12 on to it.
13 CHAIRPERSON NICHOLS: Okay. Thank you.
14 Mr. Pedersen, followed by Martin Schlageter, and
15 Jesse Marquez.
16 MR. PEDERSEN: Thank you very much, Chairman

17 Nichols.

18 And, actually, I'm Norman Pedersen from the
19 Southern California Public Power Authority. And if I have
20 time, I could explain that 30 to 60 percent. But I don't
21 want to take time right now.

22 The time since July has been well spent by your
23 staff. They have proposed 15-day language that
24 significantly improves the fee regulation. However, there
25 is one improvement they have not yet made that I would

□

65

1 like to highlight for you this morning. Like the July
2 version, today's proposed regulations still applies a fee
3 to both the import leg and the export leg of an electric
4 utilities exchange arrangement with an out-of-state
5 counterparty.

6 For example, for Riverside's agreement with BPA
7 in Oregon, the fee would be applied to the electricity
8 that Riverside imports from BPA in the summertime. The
9 fee would be applied again when Riverside generates in the
10 winter to return electricity to BPA.

11 If Riverside simply generated in the summer
12 instead of seasonally exchanging with BPA and realizing
13 the resulting economies, Riverside would pay only one fee.

14 By applying the fee twice instead of once on exchanges,
15 the fee discourages socially beneficial economy exchange
16 arrangements.

17 The fee also discriminates against interstate
18 commerce. If a southern California utility enters into an
19 exchange agreement with a northern California utility, the
20 southern California utility pays no fee on the electricity
21 that would be received from the northern California
22 utility. It would pay a fee only once upon generating
23 electricity to return to the northern California utility.

24 However, if the southern California utility
25 enters into an exchange arrangement with an Oregon

□

66

1 utility, a fee would be paid both on the electricity
2 received from the Oregon utility and on electricity
3 returned to the Oregon utility. Placing the double burden
4 on exchanges with out-of-state counterparties while
5 placing a single burden on exchange with interstate
6 counterparties unconstitutionally discriminates against
7 interstate commerce in favor of intrastate commerce.

8 Thus, for both public policy and legal reasons,
9 we urge the Board to relook at the treatment of imports
10 and exports under electricity utility economy exchange
11 agreements. SCAPA has filed written comments proposing

12 some fixes.

13 And thank you very much, Chairman Nichols.

14 CHAIRPERSON NICHOLS: Thank you.

15 Mr. Schlageter.

16 MR. SCHLAGETER: Thank you. Martin Schlageter

17 with the Coalition for Clean Air. And glad to have the

18 Board here in Diamond Bar this month.

19 I'm here to support this fee, because I support

20 as do so many of my environmental colleagues the strong

21 implementation of AB 32 to reduce global warming

22 pollution. We know this pollution is on top of and

23 related to the pollution that so many communities are

24 already burdened with. And while I hear concerns about

25 whether the time that your staff is going to spend exactly

□

67

1 matches this fee, let me just say if there is any

2 over-estimate there, I have plenty of work for the staff

3 to do. So we are going to make sure you got plenty of

4 work to fill any gaps in that administrative fee. But I

5 know that's a lighthearted way of saying there's more work

6 to do and this fee is necessary, essentially believe that

7 your numbers are going to be accurate and appropriate and

8 publicly acceptable.

9 This fee is just along the way to an appropriate
10 pricing of carbon in the global warming pollution that is
11 causing such damage that and has the prospect for such
12 greater damage that is requiring the leadership of
13 California and this fee which at the consumer level is so
14 small and which the Board here and the staff here is
15 appropriately considering putting up for upstream, this
16 will help mitigate some of the financial damage that comes
17 with global warming and climate change and the burden that
18 has on already over-burdened communities. So I urge you
19 to expeditiously adopt this fee so that we can continue on
20 the path of implementing AB 32 to reduce global warming
21 pollution. And appreciate your time today. Thank you.

22 CHAIRPERSON NICHOLS: Thank you.

23 Mr. Marquez.

24 MR. MARQUEZ: Chair Nichols and members of the
25 Board, it's a pleasure to be here today at this public

□

68

1 hearing.

2 My name is Jesse Marquez. I'm the Executive
3 Director for the Coalition for Safe Environment. We're an
4 environmental justice organization headquartered in
5 Wilmington with membership in over 25 cities in the state
6 of California.

7 I'm happy to state that we are here to support
8 the AB 32 cost implementation fee. We believe that CARB
9 needs sufficient funds for the administration and
10 enforcement of AB 32. We believe that major greenhouse
11 gas emitters should pay for their violation of AB 32. We
12 believe that polluters should pay for the assessment of
13 their illegal greenhouse gas emissions. We believe that a
14 fee should not be passed on to the public, as has been
15 mentioned, if the emissions are due to the negligence,
16 failure to incorporate the maximum achievable control
17 technologies, or the failure to replace parts, equipment,
18 and systems on a regular basis, which has been causing
19 regular breakdowns and malfunctions.

20 We do wish to have some modifications of what
21 you're proposing. In section -- where it says
22 applicability A, three refineries, we believe that you
23 should add a D category, which means -- states something
24 to the effect of planned and unplanned flare events.
25 Today, our refinery in Wilmington had a major breakdown

□

69

1 fire. There are hundreds and hundreds and hundreds of
2 tons of PM, NOx, SOX, and greenhouse gases that are being
3 emitted right now as we speak. The television has

4 reported there are over 100 fire engines there putting it
5 out.

6 We cannot just include just the regular
7 day-to-day operations. When you have major incidents like
8 this, one day can equal one or two months. So we ask that
9 you add that as another section.

10 We ask there be another section added that is B
11 that there is no exemption for emissions caused by planned
12 and unplanned flare events. So we don't want that to be
13 left out of the loop. So we want that to basically
14 include both process emissions and non-process emissions.
15 And that's what we're asking that be included in the
16 language. Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 Okay. That completes my list of witnesses. It's
19 now time to return to the staff for any further comments.
20 And I'm sure Board members will have questions or comments
21 as well. Mr. Goldstene.

22 EXECUTIVE OFFICER GOLDSTENE: I think it might be
23 easiest if we talk about the mandatory reporting issue and
24 CAPCOA issue first. I'd like to do that and then have
25 staff respond to any other questions relative to the

□

2 CHAIRPERSON NICHOLS: Sounds good.

3 EXECUTIVE OFFICER GOLDSTENE: I'll ask Lynn Terry
4 to provide an overview on what we heard from CAPCOA
5 members.

6 DEPUTY EXECUTIVE OFFICER TERRY: Happy to say
7 we're all on the same page. As of this week, we now have
8 a new federal mandatory reporting requirement, and we need
9 to get to work together to have a system that is
10 efficient. And so we are very happy to see CAPCOA step up
11 and work with us and the federal government to devise the
12 most efficient way to both comply with State greenhouse
13 gas reporting as well as federal.

14 We certainly have been encouraging EPA to
15 consider a data sharing concept so that it would be a very
16 simple way for multiple parties to have access to the
17 data. So that is our goal as we move forward in this
18 program. And we have proposed some language that's a
19 little bit broader than the CAPCOA language, which
20 mentions only air districts, because we see with the
21 adoption of the federal rule this week it's really a much
22 broader issue.

23 So we would hope the Board would consider this
24 broad language that we give the Executive Officer the
25 flexibility to approve a tool in the future that will

□

1 guarantee compliance with both our mandatory reporting
2 regulation and the fee regulation, as well as enable us to
3 have an efficient system as we work with the federal
4 government.

5 CHAIRPERSON NICHOLS: Okay. I believe the
6 language has been distributed to the Board members. Any
7 questions or comments?

8 BOARD MEMBER LOVERIDGE: Does CAPCOA sign off on
9 what is being proposed by CARB staff or do they have a
10 different take?

11 CHAIRPERSON NICHOLS: We could certainly ask
12 them.

13 It seems to me this incorporates their proposal
14 but adds onto it, the possibility that there might be
15 other entities that would also be submitting reporting
16 tools that could be approved. So definitely gives the ARB
17 Executive Officer a wider range to choose from.

18 Maybe we should give them a moment to caucus
19 before we call them up.

20 I'm assuming they've seen this language. Well,
21 you better distribute it to them then. That would be
22 helpful. Okay. We have some copies here.

23 While they are caucusing on this point, maybe we
24 should then address some of the other issues --

25 BOARD MEMBER TELLES: Mary, the language that

□

72

1 CAPCOA suggested is actually very broad.

2 CHAIRPERSON NICHOLS: But it does only mention
3 them.

4 BOARD MEMBER TELLES: No, it doesn't. Says "or
5 any other reporting tool approved by the Executive
6 Officer." Is this CAPCOA's or --

7 CHAIRPERSON NICHOLS: No. This is the staff.
8 That's the staff language. Sorry.

9 The CAPCOA language here, I have copies of this.
10 I'm sorry. I had it, and it was in front of me, but it
11 wasn't in front of everybody else. So here you all are.

12 BOARD MEMBER TELLES: That would be inconclusive
13 of the CAPCOA recommendation.

14 CHAIRPERSON NICHOLS: Yeah.

15 EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
16 we can project this up in a moment so everybody can see
17 it.

18 CHAIRPERSON NICHOLS: Okay. They can probably
19 project it on to the screen. Okay. This is the ARB staff
20 language.

21 MR. SADREDIN: Thank you for your considerations.
22 I think the word that we object is to "identical."
23 Because if you have two identical systems essentially --
24 we've seen how that works in government where you look at
25 the line-by-line identical as opposed -- we suggest to

□

73

1 replace that word with "equivalent."

2 CHAIRPERSON NICHOLS: How about if we don't do
3 either of those, but instead scratch out "receipt of data
4 required by ARB's mandatory reporting regulation," so it
5 doesn't say identical to that. It doesn't say equivalent
6 to that. It just says the data there's required. Would
7 that do it for you? Then we don't have to quibble.

8 MR. SADREDIN: Exactly.

9 CHAIRPERSON NICHOLS: Saves a couple of words,
10 too.

11 UNIDENTIFIED SPEAKER: Excuse me. One more minor
12 point. There are two different places that this would
13 have to go, not just Section 95204 but also in the other
14 rule as well, because it's in the fee rule and the
15 mandatory reporting. If the language mirrored there, we'd
16 be happy.

17 CHAIRPERSON NICHOLS: I see Ms. Terry nodding we
18 agree.

19 We will take that as a proposed amendment then
20 when we discuss the full rule -- when we act on the full
21 rule.

22 Okay. Let's now go back to the fee regulation.
23 Obviously, there remains some very significant issues and

24 concerns that are being raised by several important
25 business organizations. Certainly, the language that

□

74

1 they've used here at the hearing today and in their
2 written comments suggest that there is likely to be
3 further litigation about this fee. This is one of the
4 things that we had hoped to avoid or at least to narrow as
5 a result of the extra time that we took. And I think I
6 hear that we've made progress. But there still are some
7 very basic issues that people want to raise. So I don't
8 expect that we can make that issue go away.

9 But I do want to hear from our counsel. And then
10 I'd like to say just to kind of sum up a little bit I
11 think what the rational is for moving forward.

12 CHIEF COUNSEL PETER: Yes, Chairman Nichols and
13 the Board, this is Ellen Peter, Chief Counsel.

14 Initially, I wanted to discuss briefly the Public
15 Records Act lawsuit that was referred to here today. And
16 that lawsuit was filed the day before the initial
17 statement of reasons and the draft regulation was put out
18 on the public.

19 And the plaintiffs in that case included the
20 Chamber of Commerce, the California Manufacturers'

21 Association, Western States Petroleum Association, and
22 eight other groups. And they were very capably
23 represented by the Pillsbury firm. And two of their
24 lawyers who are here this morning.

25 And just as a side note here, the court totally,

□

75

1 absolutely agreed with ARB in its view of how it handled
2 the Public Records Act issue. We had a nine-page total
3 victory, just as a note on that point. I'm not sure if
4 the other side will appeal. And if they do, then I'm
5 confident that our position will be withheld.

6 What the court focused on was what -- and there
7 was mention of the number of pages that was not released.
8 It sounds like a large number. But what they are are
9 drafts. The 140-page ISOR, they were circulated. There
10 were lots of pages that were going around. Those don't
11 have to be given to the other side, and they weren't, and
12 the court agreed with that.

13 There was also some deliberative discussions
14 about where to put the point of regulation. That early
15 preliminary kind of discussion is not things that the
16 Board said that we had to give up. So once again, they
17 absolutely -- the court absolutely agreed with ARB's
18 position.

19 Now, in terms of the numbers in the staff report,
20 there's been some broad statements here this morning that
21 no documents were given up. They hadn't gotten anything,
22 and that's simply not correct.

23 What was given up was summaries of the
24 documentation that was posted on the website for the
25 public. Additional documentation will be coming up. And

□

76

1 we are going to have a very transparent process here.

2 One thing I just wanted to also mention. The
3 court talked about the efficiency of the State agencies
4 being able to do the rulemaking. And I think he was
5 talking about the public interest in that. The Public
6 Records Act litigation consumed hundreds of hours of our
7 legal staff, the attorney general's office, and the OCC
8 staff in terms of responding to making privileged logs of
9 each document we withheld.

10 So I just wanted to comment that the court noted
11 there was a public interest in letting the rulemaking go
12 ahead, and not every single piece of paper has to be given
13 over in response to Public Records Act requests.

14 Now turning to the merits, there was some
15 complaints that no documents were given up. That's

16 incorrect. There were summary documents. We related it
17 by person. We withheld the names of the people that were
18 doing the work. And we have it broken out as by person,
19 what kinds of programs they worked on, an estimate of the
20 percentage of time that they did. A lot of these staff
21 people, their only job is AB 32. So those are easier
22 positions, because 100 percent of their time is on that.

23 ARB has never had a time sheet kind of process by
24 project. Some of the lawyers that testified here are used
25 to the every six minutes you say what you wrote on and you

□

77

1 bill it to a client. ARB does not use that kind of a time
2 sheet process. We obviously keep track of our times and
3 projects. But we don't have the absolute every six
4 minutes this is what I did on AB 32.

5 And that issue had been raised in other fee cases
6 in court about 15 years ago. And courts have said you
7 don't have to keep time records of that degree of detail.

8 So the comments here that we don't have records,
9 we didn't give anything up, those are overstated.

10 I think based on the litigation so far that we
11 are -- I strongly suspect we're going to get sued on this
12 record. As the court noted, we have an obligation to pull
13 that information together. The court was quoting from

14 what we said we were going to do. We're going to put out
15 information. We're going to put out more information
16 during the next comment period, which will be open for
17 people to comment.

18 So in terms of the other legal claims that were
19 here, the illegal delegation, on the commerce clause
20 issues, we think we got it right. But we also will be
21 looking at all the written comments and the testimony
22 today and make sure we get it right, because we'd like to
23 have a regulation that will withstand the litigation,
24 which I fear is inevitable. But in terms of -- I just
25 want to correct a few of the comments about documentation

□

78

1 that was not produced.

2 CHAIRPERSON NICHOLS: Well, thank you, Ms. Peter.

3 And, Mr. Goldstene, I'm assuming that this is one
4 of those regulations that we will also be revisiting on a
5 regular basis, at least to make some adjustments as we've
6 learned from our experience actually implementing it.

7 EXECUTIVE OFFICER GOLDSTENE: That's right. Not
8 only will we keep the Board advised as we move forward on
9 the program, but through the regulator annual budget
10 process and through the Department of Finance and to the

11 legislative process, everything we do will be very public
12 and transparent. And we will have to justify all of the
13 support we need for the program every year.

14 Of course, our goal is to make sure that
15 everything we do, we do as efficiently as possible.
16 I'm simply responding to that Ms. Reheis-Boyd was
17 articulating. We have done what we could to be as
18 conservative as possible in our estimates, and we will
19 continue to do that to make sure we are running the staff
20 operation as lean as possible, but also able to get the
21 work done.

22 CHAIRPERSON NICHOLS: Thank you. Okay. Well, I
23 think we're at the point now where we need to put the
24 resolution in front of the Board.

25 I just wanted to make a comment. First of all, I

□

79

1 think we do need to close the record formally, but make it
2 clear at the end of our action today, the record will be
3 reopened when a 15-day notice of public availability is
4 issued. Written or oral comments received after today,
5 but before the 15-day notice won't be accepted as part of
6 the official record. But when the reopening occurs, there
7 will be an opportunity for open public comment, and that
8 will be considered and responded to as part of the final

9 statement of reasons for a regulation.

10 And I also have to call for ex partes before we
11 move as well.

12 I just wanted to add to the discussion that we've
13 already heard two brief points. First of all, just to
14 reiterate that AB 32 contained within it a requirement
15 that the ARB developed the rule that we're doing today,
16 and I think it did so for sound reason. It's never
17 pleasant to be in the position of asking consumers to pay.
18 But if you're going to start a new program, I think it
19 makes a lot of sense to be asking that it be a
20 pay-as-you-go program. And that's exactly what we have
21 here.

22 So we're not simply pretending that this doesn't
23 cost any money. We're, in fact, indicating that it does
24 cost money to run this program and giving the public the
25 opportunity to weigh in on what those costs are.

□

80

1 Secondly, I do think it's worth at least saying
2 that we yesterday celebrated the third anniversary of AB
3 32. I wasn't here with the Board, because I was in
4 San Francisco with the Governor and with Fran Pavley, one
5 of the principle authors of AB 32, while we celebrated the

6 third anniversary of this bill being signed.

7 And while we still are a long way from achieving
8 all the goals of AB 32, we, in fact, have adopted the
9 rules that will get us 40 percent of the emissions that
10 are called for in the 2020 time line of that rule and are
11 well on our way to meeting the rest of the goals.

12 So just in terms of how the Board is actually
13 doing with the task that was assigned to us, I'd like to
14 say that my report card is that we're doing a really
15 excellent job thanks to all of you as well as to our
16 staff.

17 And I also would like to simply bring back the
18 overwhelming affirmation that we received from the
19 Governor and his remarks at the Commonwealth Club and from
20 many others as well, including representatives of the
21 business community in the Bay Area for the fact that while
22 we are asking for investments here, these are investments
23 that are being made as our economy begins to come back
24 from the worst recession since the Great Depression and
25 that the investments are all designed to make our state

□

81

1 more resilient, more capable of withstanding the oil
2 shocks that we know are coming. And so it's a phased
3 investment that the bill calls for. It doesn't all hit at

4 once but, in fact, will ramp up as the economy begins to
5 come back as well. And so I just wanted to bring you the
6 encouraging word from the Administration and from the
7 Governor that there is very strong support for what we are
8 doing here.

9 And with that --

10 BOARD MEMBER LOVERIDGE: Mary, before you go to
11 the resolution, can I ask a question? It's a narrow
12 parochial question, but it was prompted by Norman Pedersen
13 siting of Riverside. It's really four-and-a-half million
14 residents or users electricity may have the same question.
15 If he could explain to me the import/export exchange and
16 that question that was raised why --

17 CHAIRPERSON NICHOLS: Why we're doing it?

18 BOARD MEMBER LOVERIDGE: Why we're doing it the
19 way we're doing it.

20 CHAIRPERSON NICHOLS: Explain it.

21 MR. COSTANTINO: This is John Costantino.

22 And we are putting the fee on all imported power
23 into the state as AB 32 requires us to look at those
24 emissions and count them as California emissions and all
25 California emissions that are generated in state.

□

1 The scenario that Mr. Pedersen explained about
2 intrastate state trades not having to pay the fee is
3 actually incorrect, because if the power is generated in
4 northern California and then traded to southern
5 California, the fee will have already been paid by the
6 northern California utility. Whereas, something coming
7 from out of state would not have had that fee assessed on
8 it. So there will not be double counting of emissions or
9 an inequity in the way that we have structured it.

10 So power that comes from out of state that
11 immediately leaves the state to another state will not be
12 covered, because that never is considered California
13 power. But anything that's generated in the state is an
14 in-state emission and any power that is generated out of
15 state and used for California is counted as a California
16 emission.

17 CHAIRPERSON NICHOLS: And that's under AB 32?

18 MR. COSTANTINO: Yes.

19 CHAIRPERSON NICHOLS: Other questions before we
20 move.

21 Barbara and then --

22 BOARD MEMBER RIORDAN: Just a comment, Madam
23 Chair.

24 I had missed the June meeting. And for the
25 record, I'd like the audience to know that I have reviewed

□

1 and read the June transcript, and so I think I can
2 participate fully with the discussion and the final vote.

3 Having said that, Madam Chair, maybe it would be
4 appropriate. This is not as a part of the resolution
5 necessarily, but a suggestion going forward. It seems to
6 me that there are some concerns about how we determine
7 what the costs of implementing AB 32 are. And it might
8 be, for the staff, wise to put together a Committee of
9 stakeholders of particularly some of the industries that
10 are going to be paying a part of this, some of the
11 environmental community. Not a huge Committee, but enough
12 of a Committee that you could review your working document
13 and how you get to the numbers in the future. I'm not
14 talking about going back. But in the future. And it just
15 might make for a better process.

16 I think sometimes we can learn a great deal and
17 it can be very helpful if the industries have an
18 opportunity to be a part of the discussion of where
19 numbers come from and how they are then actually
20 administered in terms of a fee later in the year. So I
21 just make that as a suggestion.

22 CHAIRPERSON NICHOLS: Okay. Thank you.

23 Ms. Berg.

24 BOARD MEMBER BERG: Thank you, Chairman.

25 Is that logic that we were talking about the

□

84

1 import and export, not the double counting, does not that
2 also apply to the transportation fuels? In other words,
3 all transportation fuels, regardless where they go, if
4 they're generated in California, they will also be subject
5 to the fee?

6 MR. COSTANTINO: No, that is not the way it
7 works. Only transportation fuels destined for California
8 are subject to the fee. Transportation fuels that are
9 made in California but exported and recorded on the forms
10 that are required will not be assessed a fee.

11 The emissions from the refinery associated with
12 it are in -- the production emissions will be subject to
13 the fee, but the actual fuel which is exported out of the
14 state will not be subject to the fee.

15 BOARD MEMBER BERG: Okay. So the comment by WSPA
16 that we would be including fuels that would be going out
17 of state, such as Nevada I believe was mentioned, that is
18 not correct?

19 MR. COSTANTINO: You're correct, that's not
20 correct.

21 CHAIRPERSON NICHOLS: Ms. Kennard.

22 BOARD MEMBER BERG: I just have one other
23 question, and that was on the collecting the fees which is
24 necessary for past expenditures. But it is 41.3 percent
25 of the total for the next four years approximately. Are

□

85

1 we to then reasonably assume that the fee amount will drop
2 in 2015?

3 MR. COSTANTINO: Yes. The next four years have
4 to pay for the loan amounts that were given to us. And
5 that's a statutory obligation to pay them back at a set
6 rate by a certain date. Once those fees are paid, then
7 the fee will go down to only the operating cost, which as
8 you said, is much less than the total cost we have to
9 collect in the first couple years.

10 MR. COSTANTINO: Ms. Kennard.

11 BOARD MEMBER KENNARD: I'm always troubled when
12 we can't seem to work out a compromise with industry. And
13 I'm struck by Ms. Peters' comments about the status of the
14 litigation and the fact there will be continuing
15 litigation.

16 So Ms. Riordan is always the most diplomatic
17 person I know. And I think her recommendation is well
18 taken that if there is any way that you can continue to
19 communicate with industry and at least communicate the
20 information basis upon which you're making these fee
21 decisions, I think it would be enormously helpful as the
22 process goes forward.

23 EXECUTIVE OFFICER GOLDSTENE: We will continue to
24 do that. And in addition, as I said earlier, the entire
25 budgeting process every year is a very open and

□

86

1 transparent process and everyone gets to participate, and
2 they do quite actively.

3 Both through that process and through our ongoing
4 discussions and interactions with industry through our
5 stakeholder processes, through our workshops, through
6 Board meetings, there will be lots of information sharing.

7 CHAIRPERSON NICHOLS: All right. Are there any
8 additional comments?

9 If not, I'll ask for the moving and seconding of
10 the resolution. And then we can do the ex parte
11 statements.

12 Is there a motion?

13 BOARD MEMBER KENNARD: So moved.

14 CHAIRPERSON NICHOLS: A second?

15 BOARD MEMBER BALMES: I'll second.

16 CHAIRPERSON NICHOLS: All right. Do we have any
17 ex parte communications that need to be noted for the
18 record?

19 All right. If not, then I think I will just ask
20 for a vote. Would all in favor -- and this resolution, by

21 the way, is subject to the amended language on mandatory
22 reporting; correct?

23 EXECUTIVE OFFICER GOLDSTENE: Right.

24 CHAIRPERSON NICHOLS: That change is being made.

25 BOARD MEMBER TELLES: I have a question. The

□

87

1 last recommendations that Barbara Riordan and other
2 members have made, is that going to be an amendment also?

3 CHAIRPERSON NICHOLS: It's not being requested as
4 an amendment, because if we did that, we would have to
5 then I think get into more detail than we can at the
6 moment about who should be on it. But it is a statement
7 of Board direction, which I believe the staff hears. It
8 will be in the minutes, and it will be taken seriously by
9 them.

10 CHAIRPERSON NICHOLS: Okay. In that case, all in
11 favor of the resolution please signify by saying aye.

12 (Ayes)

13 CHAIRPERSON NICHOLS: Opposed?

14 Very good. Thank you. Thank you. All right.

15 We will take a break for the court reporter and
16 others. We'll be back in 15 minutes, please.

17 (Thereupon a recess was taken.)

18 CHAIRPERSON NICHOLS: Ladies and gentlemen, we're
19 going to be reconvening now, and I want to ask for your
20 help. If I may, for the people who are here, we have a
21 wonderful crowd of people. We are very, very pleased that
22 so many people have taken the time to come and be here
23 today. We appreciate your interest and your presence and
24 we want to hear from you.

25 The Board also wants to take action, and I want

□

88

1 to make something clear here. There is a staff report,
2 and the staff is making certain recommendations for what
3 they want the Board to do. After we hear from the staff,
4 we will then hear from the public; that's all of you. And
5 then the Board will need some time also to think and
6 reflect and respond to what we have heard. We are not a
7 rubber stamp. We do make changes and we give direction to
8 the staff, and we really want to hear from you.

9 But it's hard when we have such a large group of
10 people if everyone is saying the exact same thing over and
11 over and over again. We would appreciate it very much if
12 those of you who have come as part of a group of any kind
13 if you could get together.

14 We impose a time limit. Normally, on sort of a
15 standard item, it would be three minutes per speaker.

16 With so many speakers, we might have to go to a two-minute
17 limit. But we would also hear more and learn more if it's
18 possible for you to come together and have a few people
19 all have one person speak and speak on behalf of more than
20 one person. We see that you're here. You can come up.
21 You can say your name if you want to. But if you can
22 organize your time so that you only use three minutes for
23 several people to make one particular point, that would
24 help us really to absorb what you're saying and to respond
25 to it more effectively.

□

89

1 So I'm going to ask you while the staff is doing
2 their presentation for those of you who are planning to
3 speak, if you're here with a friend or a neighbor or an
4 organization, if you can consult in the back of the room
5 or outside preferably if you're going to be speaking, we
6 would really appreciate it.

7 And the other thing I want to say is for those of
8 you who have been here, I think you'll know what I mean.
9 We can hear when you're talking in the back of the room.
10 We really appreciate it if you'll take a seat rather than
11 standing. If you're going to be with us for the whole
12 time, try to find a seat. There are lots of seats around

13 here. And there's even an overflow room actually that's
14 available with all the sound and video equipment
15 available. So that's my preliminary plea.

16 And with that, I'd like to open up this item on
17 the railyards and ask staff to begin with their comments.

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

20 Over the last several years, the Board has been
21 very engaged in efforts to address emissions and risk
22 reductions from locomotives and railyards. This has
23 involved specific ARB regulatory measures to require the
24 best available controls for cargo handling equipment,
25 drayage trucks, transport refrigeration units, and cleaner

□

90

1 fuel for interstate locomotives.

2 Two agreements reached with the railroads will
3 ensure that significantly cleaner locomotives are used in
4 the South Coast area basin by 2010 that idle reduction
5 devices are installed on all interstate locomotives and
6 the cleaner fuel is used for most interstate locomotives.

7 The most recent agreement also required that ARB
8 work with the railyards to conduct health risk assessments
9 for 18 major railyards in the state. These are the first
10 such health risk assessments conducted anywhere and have

11 demonstrated that residents living near railyards
12 experience a significant increase in public health risk
13 from diesel particulate matter. The base year for these
14 assessments was 2005, before actions to significantly
15 reduce emissions were implemented.

16 With the above, the public health risk around
17 railyards is expected to decline by an average of about
18 one-third by 2010 and one-half by 2015. However, the risk
19 around the railyards will still be far too high.

20 Therefore, the April 2008 Board meeting, the
21 Board directed staff to identify measures that could be
22 implemented that would provide additional emissions and
23 risk reductions. As a result, we prepared a technical
24 assessment of 37 options that could provide further
25 locomotives and railyard emissions and risk reductions.

□

91

1 Each option was evaluated based on technical feasibility,
2 emissions reductions, cost, and cost effectiveness.

3 Staff released ARB's draft report in December and
4 recently posted a revised report. Based on the technical
5 options report, staff developed a series of
6 recommendations on how best to reduce the emissions and
7 risks from locomotives and railyards. These

8 recommendations are provided in the report before you
9 today. The highest priority recommendations are to work
10 cooperatively with all stakeholders, to seek incentive
11 funds in the very near term to reduce emissions from
12 locomotives.

13 As other reduction measures take effect,
14 locomotives represent the largest single source of diesel
15 particulate matter at the railyards. Locomotives are also
16 a major source of oxides of nitrogen, the prime component
17 of regional smog. Consequently, focusing efforts to
18 replace and retrofit locomotives represents the best and
19 most expeditious way to reduce emissions and public health
20 risks.

21 As staff will discuss, we are also providing a
22 number of other recommendations that are designed to
23 achieve additional reductions, facilitate longer term
24 regulations of locomotives, and improve our understanding
25 of emissions from locomotives and railyards.

□

92

1 I'll now ask Mr. Harold Holmes of our Stationary
2 Source Division to provide the staff presentation.
3 Harold.

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

6 MR. HOLMES: Thank you, Mr. Goldstene.

7 As you mentioned, today's presentation provides
8 staff's recommendation to provide further locomotive and
9 railyards emission reductions beyond those required by
10 U.S. EPA and ARB regulations and agreements.

11 --o0o--

12 MR. HOLMES: These are the five topics areas I
13 will cover today.

14 --o0o--

15 MR. HOLMES: Staff has identified three key
16 objectives which serve as the basis and the need for
17 further locomotive and railyard emissions reductions.

18 --o0o--

19 MR. HOLMES: These objectives are:

20 1. To reduce directly emitted diesel particulate
21 matter in and around the railyards and the associated
22 excess cancer risks and non-cancer health impacts.

23 2. To meet the State Implementation Plan targets
24 for both ozone and fine particulate matter. Both the
25 South Coast air basin and the San Joaquin Valley air basin

□

1 need additional emission reductions to meet State
2 Implementation Plan targets.

3 And 3. To continue to reduce greenhouse gas
4 emissions associated with goods movement.

5 --o0o--

6 MR. HOLMES: Prior to discussing the staff's
7 recommendations, I would like to present some background
8 on recent activities that impact locomotives and
9 railyards.

10 --o0o--

11 MR. HOLMES: As shown on this slide, there has
12 been a number of significant actions taken to address
13 locomotives and railyards.

14 In the next few slides, I will discuss each of
15 these actions as background to our specific
16 recommendations.

17 --o0o--

18 MR. HOLMES: The ARB has adopted a number of
19 regulations that specifically reduce both locomotive and
20 railyard emissions. These regulations include measures to
21 require the best available emission control technology for
22 drayage trucks, cargo handling equipment, and transport
23 refrigeration units, and cleaner fuel for intrastate
24 locomotives.

25 In addition, ARB has also two agreements with

□

1 Union Pacific and Berlington Northern Santa Fe that
2 provide significant diesel PM and oxides of nitrogen
3 emissions reduction. The first agreement, reached in
4 1998, requires on average that clean locomotives operate
5 in South Coast air basin by 2010. The 2005 railroad
6 agreement provides for idling reduction devices on
7 intrastate locomotives and for cleaner fuel for interstate
8 locomotives. This agreement applies statewide.

9 Finally, the two U.S. EPA locomotive regulations
10 in 1998 and 2008 provide significant locomotive oxides of
11 nitrogen and particulate matter emission reductions.

12 --o0o--

13 MR. HOLMES: The 2005 agreement also required ARB
14 in cooperation with Union Pacific and BNSF to complete
15 health risk assessments for the major railyards in
16 California. These health risk assessments, or HRAs, which
17 were based on 2005 railyard activities, were the first
18 comprehensive assessments of railyard emissions and public
19 health risk anywhere in the country.

20 The HRAs showed this living around a railyard
21 poses significant public health risks, adversely affecting
22 millions of California residents. Based on an analysis of
23 these railyards HRAs, the staff identified locomotives as
24 the major contributor to emissions and risks, particularly
25 at railyards where no intermodal activity takes place. At

□

1 intermodal railyards, trucks and cargo handling equipment
2 were significant in 2005, but their contribution drops off
3 steadily as the ARB regulations for these sources take
4 effect.

5 --o0o--

6 MR. HOLMES: Subsequent analysis of the available
7 information shows that the existing ARB and U.S. EPA
8 actions mentioned previously will significantly reduce
9 railyard diesel PM emissions from 2005 levels through
10 2020.

11 On average, across these 18 railyards, these
12 actions are expected to reduce emissions and risk around
13 railyards by about one-third in 2010, over half by 2015,
14 and about two-thirds, or 65 percent, by 2020.

15 Due to the time required to turn over the
16 locomotive fleet, the U.S. EPA regulations will have
17 significant benefits in later years, but only moderate
18 reductions in diesel PM and NOx during the next ten years.

19 --o0o--

20 MR. HOLMES: This slide shows graphically the
21 estimated railyard diesel particulate matter emissions
22 reductions from existing U.S. EPA and ARB regulations. As
23 you can see from this graph, diesel particulate matter
24 emissions are declining rapidly, but locomotives represent
25 over 85 percent of the remaining emissions in and around

25 MR. HOLMES: The major finding of the technical

□

97

1 options report was that the most cost effective and
2 expeditious way to achieve regional reductions in oxides
3 of nitrogen and diesel PM emissions and to reduce health
4 risks around the railyards is to reduce the emissions from
5 locomotives.

6 For the switch and medium horsepower locomotives,
7 the technology is either commercial or near commercial.
8 By way of introduction, switch locomotives typically
9 operate in and around railyards pushing rail cars to form
10 trains.

11 Medium horsepower locomotives serve as large
12 switch locomotives or they're helpers to get over hills,
13 or serve as intrastate line haul locomotives. They are
14 older locomotives that were typically used to be formerly
15 in line haul service. Other medium horsepower locomotives
16 are also used in passenger service.

17 For new Tier 4 line haul locomotives used in
18 interstate freight service, the technology is under
19 development, but is required by U.S. EPA to be
20 commercially produced beginning in 2015.

21 Other measures evaluated in the report may have
22 potential. But in general, they are not as cost effective

23 as the locomotive measures.

24 --o0o--

25 MR. HOLMES: Based on the technical options

□

98

1 document, staff identified five locomotive measures as the
2 highest priority options.

3 These measures provide the largest potential
4 emissions and risk reductions and were significantly more
5 cost effective than the other options evaluated.

6 To implement the five locomotive measures, staff
7 recommends the use of state and federal incentive funding,
8 but with particular emphasis in the near term.

9 Staff also identified additional recommendations
10 that should be pursued in parallel with the locomotive
11 measures. In particular, staff is recommending that focus
12 be placed on pursuing cost-effective railyard-specific
13 measures.

14 The staff's recommendations are presented in a
15 report that was released on September 9th. These
16 recommendations were also the subject of a public workshop
17 which was held at the city of Commerce on September 15th.

18 --o0o--

19 MR. HOLMES: At this point, I would now like to

20 discuss staff's recommendations in greater detail.

21 --o0o--

22 MR. HOLMES: The five locomotive measures are
23 presented in this slide. The first category is the switch
24 or the yard locomotives. These are locomotives that can
25 be 40 years or older and are about 2,000 horsepower, about

□

99

1 half of size of an interstate line haul locomotive.

2 Staff proposes to repower older switch
3 locomotives with commercially produced genset switch
4 locomotives powered with new Tier 3 non-road engines.
5 Ultimately, staff proposes to retrofit the new genset
6 switch locomotives with a diesel particulate filter and
7 selective catalytic reduction aftertreatment to achieve or
8 exceed Tier 4 emission levels.

9 The second large category is about 300 freight
10 medium horsepower locomotives. They are typically between
11 15 and 40 years old. The horsepower ranges between 2300
12 and can be up to 4400 horsepower.

13 There are also about 125 passenger locomotives
14 that are about 3,000 horsepower. And those units are
15 about 15 years old on average as well.

16 Staff proposes to repower medium horsepower
17 locomotives with commercially produced advanced Tier 2

13 Further, the capital costs do not incorporate any
14 contributions from the railroads or other funding sources,
15 and the estimated costs may be overstated for several
16 reasons.

17 --o0o--

18 MR. HOLMES: This slide illustrates the potential
19 additional diesel particulate matter emission reductions
20 that could be provided by the five locomotive measures
21 within the railyards.

22 The red bars represent the estimated emission
23 reductions due to existing regulations and agreements.

24 The lighter bars represent the additional
25 emission reductions that could be achieved over time with

□

102

1 the five locomotive measures. Overall, this would
2 represent nearly a 90 percent reduction in railyard diesel
3 PM emissions from 2005 levels.

4 Additional benefits would be expected beyond 2020
5 due to the accelerated introduction and full turn over of
6 the fleet to new Tier 4 interstate line haul locomotives
7 by 2025 under staff's proposal.

8 --o0o--

9 MR. HOLMES: On a regional basis, the five

10 locomotive measures would also provide significant oxides
11 of nitrogen emission reduction. NOx emissions would be
12 reduced by up to 85 percent beyond the existing U.S. EPA
13 locomotive regulations and ARB railroad agreements. The
14 estimated locomotive NOx reductions are also needed to
15 comply with the State Implementation Plan targets for both
16 the South Coast and the San Joaquin Valley air basins.

17 --o0o--

18 MR. HOLMES: Similarly, the five locomotive
19 measures would provide significant regional and statewide
20 diesel PM emission reductions. Diesel PM emissions could
21 be reduced up to 90 percent or more beyond the existing
22 U.S. EPA locomotive regulations and ARB railroad
23 agreements.

24 --o0o--

25 MR. HOLMES: To implement these measures, staff

□

103

1 is recommending that ARB lead a coalition of stakeholders
2 to seek incentive funds, particularly in the near-term,
3 for the switch and medium horsepower locomotives.

4 Staff considered other approaches, including
5 regulations and enforceable agreements, but believes that
6 the incentive approach provides the most expeditious and
7 effective way to achieve the reductions necessary to

8 reduce risk around railyards and to achieve 2014 SIP
9 targets.

10 ARB does have some limited regulatory authority
11 over older, uncontrolled locomotives. However, due to the
12 nature of the authority, staff is concerned that there are
13 realistic scenarios that would result in the minimum net
14 reduction in emissions.

15 In addition, regulatory action may adversely
16 affect the existing 1998 agreement. Both of these factors
17 may jeopardize our ability to meet State Implementation
18 Plan targets and also reduce railyard risk. And in the
19 worst-case scenario may actually result in an increase in
20 emissions. Consequently, we believe that incentives
21 provide a better option at this time.

22 We also considered an enforceable agreement
23 option. However, our experience here has been that it is
24 a slow and cumbersome process that would not be as
25 effective as pursuing incentives. This approach may play

□

104

1 a role in the future regarding the accelerated
2 introduction of new Tier 4 interstate line haul
3 locomotives.

4 --o0o--

5 MR. HOLMES: There are a number of potential
6 sources of incentive funding as listed in this slide. We
7 believe the bulk of the funds would need to come from
8 federal sources, however. ARB staff has successfully
9 secured about \$9 million to repower a minimum of eight
10 older switch locomotives in the South Coast air basin.
11 This is obviously just a down payment, but it is a start.

12 In addition, the public voted for Proposition 1B,
13 which included up to one billion for air quality
14 improvement projects. Under this program, up to \$100
15 million has been identified for potential locomotive
16 emission reduction projects with an emphasis on switch
17 locomotives. Should UP and BNSF match those funds, the
18 total could be up to \$200 million.

19 Two other ARB incentive funding programs are the
20 Carl Moyer and AB 118 air quality improvement programs.
21 These two programs combined can allocate up to \$190
22 million annually for all source categories, but also
23 including locomotives.

24 We believe that a concentrated and cooperative
25 effort from stakeholders might be effective in identifying

□

1 other sources of incentive funds.

3 MR. HOLMES: This table illustrates a potential
4 schedule of incentive funding that would be needed to
5 achieve the goals staff has outlined for the switch and
6 medium horsepower engine repowers and aftertreatment
7 retrofits.

8 As you may recall, there are about 650 switch and
9 medium horsepower locomotives that would need total
10 funding up to \$900 million for engine repowers and
11 aftertreatment retrofits.

12 In 2010 or 2011, staff would suggest a reliance
13 on Proposition 1B locomotive funding in which the ARB
14 would fund up to 100 million and UP and BNSF would match
15 those funds with an additional 100 million.

16 Once Proposition 1B locomotive funds are
17 exhausted, ARB staff would recommend potential projects be
18 funded through the Carl Moyer and air quality improvement
19 programs. In addition, ARB staff would continue to submit
20 proposals for federal DERA, Diesel Emission Reduction Act,
21 funding.

22 Clearly, a lot more incentive funding will be
23 needed to fully implement these measures. To acquire the
24 necessary funding, staff believes a broad coalition needs
25 to be formed that consists of ARB, other State agencies,

□

1 local air districts, and transportation agencies, local
2 residents, and the railroads to present our case and our
3 funding needs to the federal government.

4 --o0o--

5 MR. HOLMES: I would now like to discuss the
6 other staff recommendations.

7 --o0o--

8 MR. HOLMES: A key recommendation is to implement
9 railyard-specific measures that can reduce diesel PM
10 emissions and associated cancer risks. Some examples of
11 measures already implemented include manual shut-downs of
12 locomotives that would go beyond the existing 15-minute
13 shutdown limits programmed for locomotive idle reduction
14 devices.

15 For example, locomotive engineers could manually
16 shut down locomotives in five minutes if all locomotive
17 operational parameters had been met.

18 Another example is to move truck gate entrances
19 further away from where residents live and to reduce truck
20 idling and queuing at truck gate entrances through system
21 efficiencies.

22 A further example is to move service operations
23 such as maintenance facility and refueling centers further
24 away from residents to reduce risks.

25 Other measures that are currently being

25 emissions through engine repowers and aftertreatment

□

109

1 retrofits. Furthermore, greater fuel efficiencies may be
2 achieved that can also reduce greenhouse gas emissions.

3 --o0o--

4 MR. HOLMES: I would like to close with a brief
5 summary and an identification of our next steps.

6 --o0o--

7 MR. HOLMES: In summary, staff believes further
8 locomotive railyards emissions and risk reductions are
9 needed, beyond the substantial reductions provided by the
10 existing U.S. EPA and ARB regulations and agreements.

11 To reduce emissions, staff has recommended a
12 combination of high priority locomotive measures,
13 railyard-specific measures, and a number of additional
14 recommendations.

15 Staff has identified switch and medium horsepower
16 locomotives as the highest priority options, because they
17 are commercially produced or technically feasible in the
18 near term and they are extremely cost effective.

19 Staff believes incentive funding is critical to
20 being able to implement these measures. However, these
21 measures have significant capital costs that will require

22 a high degree of cofunding by the railyards.

23 Finally, staff believes that seeking changes in
24 federal laws and regulations is warranted.

25 --o0o--

□

110

1 MR. HOLMES: As to the next steps, staff
2 recommends that a broad coalition of stakeholders be
3 assembled to identify and solicit incentive funding for
4 the locomotive measures.

5 In addition, there needs to be a coordinated
6 effort by ARB, local governments, the railroads, and the
7 local air districts to work together to identify,
8 evaluate, and implement railyard-specific measures that
9 will provide real emissions and risk reductions in and
10 around railyards.

11 Also to pursue the changes in federal laws and
12 regulations, ARB staff intends to form a coalition of
13 interested stakeholders to propose appropriate changes.

14 Finally, we propose to continue our efforts to
15 implement the additional recommendations.

16 That concludes my presentation. We would be
17 happy to answer any questions you may have.

18 CHAIRPERSON NICHOLS: Thank you for that
19 excellent presentation. I think staff has done a really

20 good job of pulling together a comprehensive list of what
21 the issues are from a technical perspective.

22 There is one point that I would think may be a
23 little bit misleading. When you refer to incentive
24 funding and the need for funds for the transition that
25 you're talking about, you're not suggesting that the

□

111

1 government would have to bear the full cost of all of
2 these improvement, are you?

3 MR. HOLMES: No. As a matter of fact, we believe
4 what the key elements is leveraging the funds. We ask
5 that railroads and other agencies that would be involved
6 to contribute toward this funding.

7 What you will see in the slides is we assume
8 there was not one dollar contributed for the cost
9 effectiveness. The cost effectiveness is actually much
10 better if we were to get some kind of contribution from
11 other sources.

12 CHAIRPERSON NICHOLS: Okay. I think it's
13 important that we acknowledge at the beginning -- and you
14 did -- but I think I can speak for the Board, because this
15 is not the first time we've had a hearing on
16 railroad-related issues, although it is the first time I

17 guess in this location, to say that we are here to devote
18 a substantial additional time and effort because of the
19 size and scope of the problem.

20 There is nobody on this Board who doesn't
21 recognize that when it comes to risk and toxic air
22 contaminants that these issues are at the very top of our
23 agenda. And even though we have other responsibilities
24 that spread far and wide and are national and
25 international in their scope, all the work we do on

□

112

1 engines and fuels and so forth that when it comes to
2 actually impact on people in California, this is a very
3 high priority area for our concerns.

4 So I think it's good that we can look back and
5 see that much has been accomplished and it's important
6 that we acknowledge that. At the same time, we are
7 looking for every possible effective and cost effective
8 thing that we can do to move ahead further.

9 Okay. We have as, I said before, a very long
10 list of witnesses, and so we better get started. For
11 those who aren't familiar with the system here -- and I
12 know our first witness is -- there are two podiums and we
13 ask people to line up so that we don't have to spend time
14 waiting for people to come up to speak.

15 So I'll read ahead the first names. We're
16 starting with Joe Lyou, Governor's appointee to the South
17 Coast Air Quality Management District, followed by Peter
18 Greenwald and Mayor Morris of San Bernardino.

19 MR. LYOU: Good morning, Chairman Nichols and
20 members of the Board. I'm Dr. Joseph Lyou, the Governor's
21 appointee to the South Coast Air Quality Management
22 District Governing Board. I am also the Executive
23 Director of the California Environmental Rights Alliance,
24 a nonprofit environmental justice organization.

25 I appreciate the opportunity to address the Board

□

113

1 on behalf of the South Coast AQMD. My comments will be of
2 a general policy nature and will be followed by Mr. Peter
3 Greenwald of our staff who will provide additional
4 technical and legal details.

5 It's no secret that locomotives at railyard
6 emissions has been a significant area of tension between
7 our agencies in the past. And I'm pleased to report that
8 after a lot of hard work, the staff at our agencies is now
9 much closer to reaching complete agreement on the
10 available technologies and legal authority issues.

11 The task at hand, however, is to translate those

12 areas of agreement into an action plan to protect public
13 health and help us achieve our federal and clean air
14 standards.

15 Your findings about the health risks at major
16 railyards in California tell us that there is much more
17 that needs to be done and that we can't delay doing it.
18 For example, cancer risks of greater than 2,500 in a
19 million at the BNSP railyard in San Bernardino is just
20 unacceptable.

21 In addition, the failure of existing regulations
22 to address those issues and reduce that risk sufficiently
23 within 10 to 15 years is plainly unacceptable. Certainly
24 this cannot be our final response to this or other
25 communities that are impacted by railyard operations.

□

114

1 We must also remember that this is an
2 environmental justice issue. These impacted communities
3 are mostly low-income communities of color, and they have
4 a right to clean air and they have a right to equal
5 protection from exposure to toxic contaminants.

6 In addition to local impacts, these railyard
7 operations emit significant amounts of oxides of nitrogen
8 and particulate matter on a daily basis within our state.
9 And for us to meet our federal and state standards, we

10 must go beyond your existing goods movement regulations.

11 Our bottom line, and what we're asking your Board
12 to do today, is that you use the full array of strategies
13 available to you to address pollution at railyard
14 operations and locomotive operations. This includes
15 rulemaking proceedings to reduce emissions from railyards.
16 These rules should require the use of low to zero emission
17 equipment for railyard operations and address intrastate
18 and switch locomotives. This won't be easy, but it's
19 necessary to get real measurable pollution reductions in a
20 timely manner.

21 The South Coast AQMD is prepared to provide any
22 assistance or partnership necessary for ARB to move
23 forward in this direction in an expeditious manner.

24 Chairman Nichols and members of the Board, we
25 truly appreciate the time, resources, and careful

□

115

1 consideration you've given to this important matter.

2 I'd like to turn it over to Mr. Peter Greenwald
3 for an opportunity to talk about our request in more
4 detail. Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 MR. GREENWALD: Thank you very much.

7 Peter Greenwald, Senior Policy advisor for the
8 South Coast Air Quality Management District.

9 I want to begin by commanding your staff for
10 their considerable technical work to identify railyard
11 emission control strategies.

12 However, the approaches proposed by your staff to
13 implement those strategies all involve much uncertainty.
14 The primary implementation approach is to provide public
15 funding. But acquiring the hundreds of millions dollars,
16 indeed, billions of dollars needed, is by no means
17 assured. And even if it was, will the railroads agree to
18 fund their share and take the needed actions?

19 Under these circumstances, we urge you to
20 concurrently use all the tools at your disposable,
21 including the tool that state law explicitly authorizes
22 you to utilize, which is rulemaking. The solid technical
23 work done by your staff already provides a strong basis to
24 commence rule development. The need for control has been
25 amply documented. Technical solutions have been

□

116

1 identified. And you have much authority.

2 Regarding need, let me site just one fact. Your
3 staff projects that with existing control programs cancer
4 risks at the BNSF San Bernardino yard will still be over

5 600 in a million in 2020. Clearly, more must be done.

6 Regarding authority, your staff has determined
7 that you may adopt emission standards for most, if not
8 all, sources other than locomotives. And for locomotives,
9 your staff has concluded that you have likely authority to
10 regulate relatively old switch or medium horsepower
11 locomotives that primarily operate intrastate. There are
12 hundreds of such locomotives in the state. And most
13 importantly, they are the dirtiest of all locomotives.

14 We urge you to commence development of rules to
15 accomplish three ends.

16 First: Require medium hours power locomotives to
17 achieve Tier 4. That's 90 percent control levels by 2014.

18 Second: Require enforceable health risk
19 reduction plans for railyards creating the greatest risks.
20 Specify needed risk reductions and dates certain for them
21 to be achieved.

22 And third: Require the most advanced level of
23 control for types of sources operating at high-risk
24 railyards. For example, require electrification of cargo
25 handling equipment where possible. Some electrified

□

117

1 equipment, such as gantry cranes, are available today and

2 are even proposed by the railroads when they are seeking
3 approval for new railyard projects. If it's good enough
4 for a new railyard, it ought to be good enough for
5 existing ones.

6 Also, please consider the greenhouse gas
7 cobenefits and our long-term need to move away from
8 combustion sources.

9 In closing, there's nothing incompatible between
10 developing such rules and concurrently pursuing the
11 funding and other approaches proposed by your staff.
12 Indeed, Appendix B to your staff report states that ARB
13 can pursue "a voluntary agreement or a regulation,
14 combined with a formal public incentive funding program."

15 AQMD is ready to assist any way it can. We would
16 be pleased to discuss with your staff whether the
17 district's use of the district's resources of a technical
18 nature or exercise of the district's indirect source
19 authority might compliment your actions.

20 Thank you again. And we urge you to take
21 decisive action to resolve this longstanding serious
22 public health problem.

23 CHAIRPERSON NICHOLS: Thank you very much for
24 those comments.

25 I would just acknowledge that in the staff report

□

1 and in my remarks as well, I hope that we understand that
2 this is a time when all the agencies that have any legal
3 authority need to be working together and collaborating.
4 I think technically we've made a lot of progress. But now
5 we all need to be looking at our legal authority. So I
6 appreciate your last comments about what the district is
7 willing to do well.

8 Question here.

9 BOARD MEMBER BALMES: In that spirit of
10 cooperation, your recommendations went by pretty fast and
11 you didn't provide written comments.

12 MR. GREENWALD: We did provide a written comment
13 letter.

14 BOARD MEMBER BALMES: So it's in my pile here.

15 CHAIRPERSON NICHOLS: We'll find it, okay. Thank
16 you.

17 Yes, Mayor Morris.

18 MAYOR MORRIS: Chairman Nichols, members of the
19 Board. I am the mayor of the city that's been referred to
20 twice now by the prior two speakers, a city that is the
21 poster child for the adverse effects of both locomotive
22 and truck diesel pollution on the health of the
23 surrounding community.

24 You know the data. It's in your reports. Mr.
25 Holmes has given it to us and has given it to you. Based

1 on your health risk assessment, there is an enormously
2 disproportionate level of risk in our city's intermodal
3 railyard. Our railyard has a 300 percent higher level of
4 risk than the second most polluting railyard in
5 California. It's 500 percent over the third most
6 polluting and a thousand percent over the fourth.

7 This is a valuable asset to our city. It employs
8 500 good peoples at living wage jobs.

9 But this issue of diesel pollution is an enormous
10 issue for our city and has been referred -- the community
11 that surrounds this, this historic community that
12 surrounds this railyard in our city is largely a community
13 of color and a community of poverty. And so their voices
14 are largely unheard. And they've endured generations of
15 this kind of environmental disaster.

16 Our city has done and will do all that we can to
17 address these issues. We've increased parking fines for
18 diesel trucks, provided barricades around the areas so
19 trucks don't park as they wait for the gates to open in
20 the morning when the railyard opens. We've issued flyers
21 to all the truckers to be good neighbors to the community.
22 We've done all we can in terms of parking and violations
23 enforcements around the yards.

24 We partnered with SANBAG and JB Hunt to replace a
25 large percentage of the local fleet with CNG trucks. We

□

120

1 have almost \$20 million in grants. We'll be the largest
2 fleet conversion in the nation to convert a diesel fleet
3 JB Hunt to a CNG fleet, and that is a major accomplishment
4 for our city, because 25 percent, according to Mr. Holmes'
5 report, of our pollution from comes from those
6 18-wheelers.

7 We partnered with BNSF to submit a \$3 million
8 application to AQMD's Prop. 1 Goods Movement Emission
9 Reduction Program to replace old switchers with genset
10 engines.

11 And we've partnered with Loma Linda University
12 School of Medicine to do research funding on the long-term
13 adverse impacts of this diesel pollution on our
14 surrounding community.

15 We've talked about -- Mr. Holmes talked about a
16 coalition of stakeholders. We are, by George, one of
17 those important stakeholders. We want to be in this
18 formulation with you and be advocating for major changes
19 in regulations as well as in resources.

20 You've got 18 railyards in this state. Limited
21 resources to apply. Let me suggest that you start at the
22 top, and that's my city. You focus on our city and its
23 intermodal yards, because it is the most adversely

24 impacted in the state.

25 I understand my time is up, but please consider

□

121

1 the fact that we should create a model, our city, a model
2 of cleanup, a template in our city to create the kind of
3 model that we hope other railroads would follow and other
4 yards would follow.

5 We have 5,000 people living within a mile of this
6 great intermodal railyard, people described by the prior
7 speakers and by me, people that are quite challenged in
8 many ways, who don't speak for themselves. And it
9 requires you and me to speak for them with our regulations
10 and with our investments.

11 So we're a stakeholder. Depend upon us to be a
12 partner with you. We're good partners. And together I
13 think we can solve the problem. But look at us first and
14 foremost. We are that poster child that needs attention.

15 Thank you very much.

16 CHAIRPERSON NICHOLS: Thank you for coming, Mayor
17 Morris. We really appreciate those comments.

18 Our next speakers are Andrea Hrico, Chi Ho, and
19 Bill Haller.

20 And while you're coming up, a lady who spoke
21 earlier, Ms. Zambrano, spoke on the fee regulation, but I

22 know she really meant her remarks to refer to the
23 locomotive item. I don't believe it's necessary for her
24 to come up and repeat her remarks. Ms. Zambrano, if
25 you're still with us, we'll just move your comments over

□

122

1 to the next so you don't have to worry about it. Thank
2 you.

3 MS. HRICKO: Thank you, Chair Nichols and Board
4 members.

5 My name is Andrea Hricko from the University of
6 Southern California Tech School of Medicine. I work with
7 a team of scientists who have conducted the children's
8 health study for probably 20 years at this point, first
9 with ARB funding and support. And we thank you for that
10 support.

11 As a result of that study funded by the ARB, we
12 now know that children who grow up in polluted communities
13 are more likely to suffer decreased lung function. We now
14 know that children living near busy roads and
15 traffic-related pollution are more likely to have reduced
16 lung function and asthma. We also know that particulate
17 matter -- that breathing particulate matter at elevated
18 levels is linked to heart disease and other problems.

19 Now from your health risk assessments of the 18
20 railyards, we know that there are significantly elevated
21 levels of diesel emissions and cancer risks in close
22 proximity to 18 railyards in California. I urge you to
23 take action to reduce railyard or we will lose another
24 generation of children to the adverse health effects of
25 diesel pollution.

□

123

1 I also urge the ARB to review its land use
2 guidelines issued several years ago and to consider
3 including a revised guideline on railyards in your
4 railyard recommendations that are part of today's issues
5 that you're considering.

6 Your current guidelines were written when you had
7 only completed the Roseville railyard HRA. The guidelines
8 say "do not site homes or schools within 1,000 feet of a
9 railyard and consider siting restrictions within one mile
10 of a railyard." Now you have 18 HRAs showing elevated
11 risks some at many railyards that are beyond even a mile.

12 So in that regard, I urge you to look
13 specifically at your railyard recommendations, in
14 particular, number four, which is on your page 22 of the
15 handout that they gave us up front, of additional measures
16 concerning ARB's involvement in two railyard expansion

17 projects, the BNSP SCIG and the UPICTF. Both of these
18 facilities would be within 1,000 feet of homes and schools
19 and playgrounds. From what ARB knows about railyard
20 emissions and how hard it is to get the railroads the
21 railyards cleaned up, I urge you to consider whether
22 having ARB staff's apparent support of putting these two
23 rail projects -- siting them within feet of homes and
24 schools is a wise land use and public health decision for
25 the ARB staff to be recommending.

□

124

1 Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 Chi Ho and then Bill Haller.

4 MS. HO: Dear Chairman Nichols and Board members
5 and staff, thank you for providing the opportunity to
6 speak about this important issue.

7 I'm Dr. Chi Ho. I'm here seeking on behalf of
8 the Office of Environmental Health and Safety for the Los
9 Angeles Unified School District.

10 The Los Angeles Unified School District educates
11 700,000 students, is second largest school district in the
12 nation. Five railyards are located within the LAUSD,
13 including the two largest in southern California, the ICTF

14 and the Cobar.

15 Approximately five percent, or 35,000, of our
16 students attend schools where the cancer risk from
17 railyards is greater than 50 in one million. These
18 children are missing school due to asthma and other
19 respiratory diseases and are at risk for long-term lung
20 disease due to their early life exposure.

21 The LAUSD is encouraged by the efforts of ARB as
22 well as the railyard companies to reduce emissions at the
23 source. The measures outlined in the staff report are
24 long overdue and their quick implementation is welcome.
25 Understandably, these major effect will take many years to

□

125

1 decades before health risks from railyards are at
2 acceptable levels. Unfortunately, our students will
3 continue to suffer during this implementation period and
4 the waiting is not a reasonable option.

5 More immediately measures to reduce health risk
6 are necessary in the short term. We recommend that a fund
7 be immediately established to provide mitigation, such as
8 enhanced filtration and/or asthma programs for the most
9 sensitive receptors such as schools. Most schools already
10 include HVAC system capable of filtration upgrade and are
11 centers of large sensitive population during period of

12 high emission activities. While reducing pollution effect
13 at receptor is not ideal, it can be the cost effective
14 measure to reduce health risk until more permanent source
15 reduction measure are fully implemented.

16 We look forward to continuing to work with all
17 stakeholders are on this important issue. Thank you.

18 CHAIRPERSON NICHOLS: Thank you very much.

19 Mr. Haller, followed by Jim Stewart and Gilbert
20 Estrada.

21 MR. HALLER: Madam Chair, honorable Board
22 members, Bill Haller, volunteer with Sierra Club
23 California.

24 I did miss the slide that included identifying
25 and evaluating incentive funding for children's clinics in

□

126

1 the affected railyard areas. We have a tendency to pay
2 attention to those machines, and we're going to give these
3 machines 10, 20 years to get their act together, but the
4 real immediate need happens to be the children. And we're
5 not looking for the incentive funding strategy to support
6 these children as they grow in those areas.

7 Sierra Club California stands with the East Yard
8 Communities and Coalition for Safe Environment and all of

9 our environmental justice friends.

10 The incentives are a great thing for great
11 companies. But, of course, bad companies either don't
12 comply or they sue no matter what. We encourage
13 regulations as strong as possible.

14 The reason the railyards and the railways
15 wouldn't clean up their pollution is because they didn't
16 have to. ARB has the power to say you have to. And we
17 look forward to hearing those words in the future stronger
18 regulations. Thank you.

19 CHAIRPERSON NICHOLS: Thank you.

20 Jim Stewart.

21 MR. STEWART: Jim Stewart, co-chair of the Air
22 Quality Global Warming Committee for the Sierra Club of
23 California. And I'm representing the 200,000 members of
24 the Sierra Club in California.

25 And we're, of course, supportive of the efforts

□

127

1 that your staff is making here, but they're woefully
2 inadequate to deal with this issue. We think that the
3 excellent recommendations put forth by the South Coast Air
4 Quality Management District need to be your guidelines.
5 In fact, I guess we'd actually go beyond what AQMD is
6 saying, and we'd like your staff to really look at that

7 issue of the 1998 voluntary agreement that has
8 questionable reductions from our perspective.

9 Is it really a block to your regulations? That's
10 what I gathered from the staff presentation was that they
11 didn't want to propose any regulations, because it might
12 eliminate that voluntary 1998 agreement. And we would
13 like to see the actual emissions results that are
14 happening from that agreement versus what could happen
15 from some good regulations that your staff can come up
16 with. So we encourage you to give your staff directions
17 to move on that.

18 Thirdly, I'd like to say that the Sierra Club
19 nationwide is concerned about this. We have 700,000
20 members, and we would really like to help you on this
21 federal business, right. So that anything that your staff
22 wants us to do to promote in other states, with the EPA,
23 with the various railyards, we need your input, because
24 we're not the experts. But we can mobilize volunteers
25 across the nation that can help us move ahead in getting

□

128

1 these federal regulations and law changed. So let's go
2 forward together.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 Is Gilbert Estrada here? He had to leave.

6 I have now 70 witnesses on the list, and we've
7 heard from seven. So in three minutes, I'm going to cut
8 off the list. If you were thinking about maybe
9 testifying, you weren't sure, this is your time to sign
10 up. And if not, we will close the list within three
11 minutes. Okay. Thank you. I see there are more cards
12 over there. So it's more than 70 anyway.

13 Kristina Santana, followed by George Osborn, and
14 Maria Chavez.

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

17 My name is Kristina Santana, and I'm a concerned
18 resident of the city of Commerce. Like many struggling
19 families today, my family cannot afford to be sick.

20 My mother, sister, and two nieces have asthma,
21 and I worry about them. I also worry what will happen if
22 one of us gets cancer and we're not able to pay the bills.

23 The cancer risk in our community is real, and
24 it's scary, especially when I know we can't afford it.

25 I'm here because I care about the environment and

□

1 I care about my family and friends. So not taking action

2 is not an option. I urge you to take the necessary
3 measures to clean the air and keep toxic particulate
4 matter out of our lungs now.

5 Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Mr. Osborn.

8 MR. OSBORN: Thank you, Madam Chair and members.

9 George Osborn representing Advance Cleanup
10 Technologies, Incorporated.

11 You may recall last year a presentation made to
12 you where the bonnet was fitted over an oceangoing ship.
13 I wanted to compliment your staff, frankly, for helping us
14 through with that project. They took the time to listen
15 to us, work with us. They reviewed our test protocols.
16 They suggested changes to the protocols, which we adopted.
17 They attended the testing. And they suggested changes to
18 the shore power regulations to allow the advanced maritime
19 emission control system as an alternative reduction
20 control technology now accepted at the ports.

21 There has been great cooperation between Union
22 Pacific, the Placer County Air Board, specifically at the
23 Roseville railyard, under the terrific leadership of Tom
24 Christoff, in the testing of the advanced locomotive
25 emission control system at that yard. We are looking

□

1 forward to the next phrase of that testing and hope that
2 CARB will participate both in helping to develop the test
3 protocols and with funding. We'd certainly appreciate
4 that as well.

5 But we do take exception to some of the report
6 before you today, specifically with the cost effectiveness
7 calculations having to do with the alex system. We've
8 done some additional analysis on the report, and we'd like
9 to have the opportunity to meet with and work again
10 closely with your staff in reviewing those findings on the
11 report before you finally adopt those recommendations.

12 And I'm happy to answer any questions if you have
13 any.

14 CHAIRPERSON NICHOLS: Not at this time. But I
15 appreciate the offer, and I hope you will get together
16 with the staff.

17 MR. OSBORN: We intend to do that. Thank you
18 very much for the opportunity.

19 CHAIRPERSON NICHOLS: Thank you, sir.

20 Ms. Chavez, I see you've brought several other
21 people with you. You have an interpreter.

22 MS. CHAVEZ: My name is Maria Chavez, and this is
23 Marelise Santiagos. We are here today with the Long Beach
24 Alliance for Children with Asthma, LBACA. And thank you
25 for allowing us to speak this morning.

□

131

1 I, Maria Chavez, live in front of Hudson
2 Elementary School in Long Beach -- in west Long Beach.
3 There are 1200 students at this school that daily breathe
4 in pollution from the nearby railyards. The State has the
5 obligation to regulate the pollution generated by diesel
6 that is harming our families and our communities. We want
7 healthy children, youth, and families, clean air without
8 pollution.

9 Thank you.

10 CHAIRPERSON NICHOLS: Thank you very much.

11 Jalene Forbis, Delphine Smith, and Juan Garibay.

12 MS. FORBIS: Chairman Nichols and Board, my name
13 is Jalene Forbis. I'm Executive Director of the
14 California Short Line Railroad Association. I represent
15 the 28 short lines that operate within California. We are
16 the small business of the railroad industry. And we're
17 absolutely essential in keeping our customers connected to
18 the national rail network.

19 A short line railroad is not defined by miles of
20 track that grows annual revenues, and most of our short
21 lines are actually spinoffs of unprofitable sections of
22 the Class 1s. We haul everything from containers
23 internationally that come in internationally, agricultural
24 products, and even some of our short line operators have
25 passenger operations as well. And most of our short lines

□

132

1 are locally owned and operated. And we're a vital part to
2 the local communities in which we operate.

3 The Short Line Association believes the Board
4 should pursue an incentive-based program and co-funded by
5 the railroads rather than the regulatory approach to
6 maximize the efficiency and the emission standards and
7 benefits of the rail industry.

8 Many short lines simply can't afford the
9 additional regulations without help of the incentive
10 programs. Many of our short lines are participating in
11 the Carl Moyer funding program. Pacific Harbor Line is
12 the one that you guys work with most that's closest to
13 this operation here.

14 And short lines like our Class 1 partners has
15 seen a major decline in the car loads because of the
16 economy. And we are facing the same difficulties due to
17 the current recession. So the design of the incentive
18 program will have to take the current financial crisis
19 into account.

20 According to the Pacific Maritime Association,
21 the period between January and June of this year, the
22 total number of containers handled in LA/Long Beach
23 designed 21.8 percent. Volumes were down 10.8 percent in

24 Oakland; 22.1 percent in Portland; and 22.1 percent in
25 Seattle Tacoma, compared to the first six months of 2008.

□

133

1 There is one other environmental benefit of rail
2 transportation I hope you will consider, and that is the
3 greenhouse gas benefit. Last year, the U.S. EPA stated
4 one method of controlling the greenhouse gas is to
5 increase the use of rail transportation. Diversion of
6 additional traffic from trucks to railroads would lead to
7 an overall net decrease in the greenhouse gas emissions.

8 By pursuing a rail incentive program, CARB will
9 reduce criteria pollutants, simultaneously reduce
10 greenhouse gas reductions.

11 CHAIRPERSON NICHOLS: Thank you. Your time is
12 up.

13 Ms. Smith.

14 MS. SMITH: Good morning. My name is Delphine
15 Smith, and I'm a resident of Richmond, California. And I
16 also live with BNSF in my front yard.

17 I come to you today to just ask you to make your
18 regulations stronger and harsher than what they've been,
19 because obviously if they were a little stronger, they
20 would do what they need to do.

21 Basically, I understand that the railroads are
22 part of our economy, but now they're affecting my health.
23 I have asthma. Two of my children have asthma. And since
24 this it affecting my health, I don't feel they should be
25 able to do what they do.

□

134

1 I'm also a member of -- I was part of project
2 12898. As a member the 12898, the west county group, we
3 came up with solutions that we have suggested to retrofit
4 train engines and railyard equipment to minimize diesel
5 pollution:

6 Create grade separation at key locations with
7 history of rail crossing related accidents or deaths.

8 Require fencing, shrubbery, or other physical
9 buffers to separate rail lines and railyard facilities
10 from residential areas.

11 Amend train schedule to avoid peak hours and be
12 more predictable and notify residents of train schedules
13 to minimize delays at intersections.

14 Place limits on the length of allowable freight
15 trains, particularly those passing at peak hours in order
16 to reduce traffic congestion at intersections.

17 Institute quiet zones to minimize train horn
18 noises in residential areas.

19 Take measures to prevent tanker cars storing
20 hazardous materials from being parked on rail line
21 adjacent to resident areas. This is very important,
22 because they sit for days and heat and everything in front
23 of residential areas.

24 Involve the community residents from directly
25 impacted neighborhood in identifying additional

□

135

1 site-specific areas to reduce these risks that rail
2 related land uses pose to community health and quality of
3 life.

4 I hope you take heed to all the words from my
5 brothers and sisters from all the neighborhoods all over
6 California, because we're here. We are not going away.
7 And we appreciate if you do something about it. Thank
8 you.

9 CHAIRPERSON NICHOLS: Thank you. Thank you for
10 traveling to be with us today.

11 Mr. Garibay.

12 MR. GARIBAY: Chairman Nichols and members of the
13 Board, I'm concerned the proposed recommendations fail to
14 include numerous measures that can reduce locomotive
15 engine and railyard toxic air emissions and public health

16 impacts from exposure to air emissions.

17 For example, we cannot only concentrate on the
18 overall air quality and air pollution high above the city,
19 but also the pollution that is created nearest and blown
20 into our faces and homes. That is, we are still allowing
21 trains to use routes that cut through our neighborhoods
22 and blow toxins into our windows.

23 At the BNSF Watson railyard in Wilmington, there
24 are two rail track routes to the railyard. One route
25 travels right through the middle of the residential

□

136

1 community of Wilmington, and one that goes around the
2 residential community in the industry area. BNSF uses a
3 route right through the middle of the residential
4 community. This simple change would reduce public
5 exposures to significantly. It is not a recommendation.

6 The BNSF Watson railyard is in the middle of
7 Wilmington residential community and near the port of
8 L.A., port of Long Beach, and numerous oil refineries.
9 BNSF can could use electric trains. We need to invest in
10 the development of alternative transportation
11 technologies. And this simple change would eliminate 100
12 percent of toxic emissions, yet it is not a
13 recommendation.

14 These smaller recommendations can directly and
15 immediately reduce the amount of sicknesses and disease in
16 our communities and reduces the amount of trips to and
17 money spent on the doctor, which could allow our residents
18 to use our small hard-earned income to actually improving
19 their lives, rather than fighting for their lives; towards
20 their children's education, rather than on their
21 children's asthma inhalers; and on local businesses,
22 improving the economy both in the short run and the long
23 run.

24 It is a disgrace that some families cannot spend
25 their afternoons actually enjoying their community with

□

137

1 their children and grandchildren, for example, a local
2 burger joint, but rather time is spend in an emergency
3 room of a local hospital.

4 The BNSF Watson railyard handles ethanol trail
5 cars, and I cannot find any health risk assessment for the
6 ambient leakage of VOCs from locomotive trains from the
7 incomplete burning of diesel fuel, fuel storage tanks, and
8 ground contamination.

9 Benzene is a VOC of diesel fuel which can cause
10 leukemia, lymphoma, myeloma and anemia, yet there is no

11 reference to any study of public health impacts of these
12 toxic chemicals. I ask you to reassess public health
13 impacts and increase the number of proposed measures.

14 I also have many signatures of residents.

15 CHAIRPERSON NICHOLS: Thank you very much.

16 Ms. Prakash, and then Alex Pugh and Sophia
17 Carrillo.

18 MS. PRAKASH: Good morning. Thank you, Chair
19 Nichols.

20 My name is Swati Prakash, and I work with the
21 Pacific Institute. And we're also members of the Ditching
22 Dirty Diesel Collaborative.

23 We submitted a letter that's on green paper for
24 you today. There should be an attached map. And the
25 Ditching Dirty Diesel Collaborative is coalition of over

□

138

1 20 organizations working to reduce diesel pollution in the
2 San Francisco Bay Area and in particular in low-income
3 communities of color.

4 And there's been about ten of us who traveled
5 over seven hours by car yesterday to come testify before
6 you, and that's because there are four communities in our
7 coalition that have railyards in them. Two of these are
8 considered major railyards, in West Oakland, the UP

9 railyard, and in Richmond, the BNSF railyard. But there's
10 also two smaller railyards in San Leandro and southeast
11 San Francisco which are not considered major railyards but
12 have significant health risks and impacts on legal
13 residents.

14 And all of those railyards and associated
15 infrastructure are in lower income neighborhoods and
16 communities of color, which really reflect a statewide
17 pattern of rail infrastructure being located in the most
18 vulnerable communities with the highest asthma rates and
19 the least access to resources to mitigate the impacts of
20 diesel pollution.

21 This is clearly an environmental justice issue.
22 And one of the maps that we present shows the regional
23 impact of rail infrastructure in lower income
24 neighborhoods. Actually, show the flip side is the
25 Richmond map which shows the proximity of the BNSF

□

139

1 railyard to residential neighborhoods and to the Perez
2 Elementary School, as well as the iron triangle
3 neighborhood which is boxed in by rail lines.

4 Thank you.

5 And so we see that the California Air Resources

6 Board has before you the opportunity to address this
7 grave, grave environmental justice issue and to protect
8 the health of all California residents by doing three
9 things.

10 We would like to ask you to direct staff to
11 initiate rulemaking to implement some of the excellent
12 measures that they, themselves, have pointed out can
13 significantly reduce diesel pollution from trains and from
14 railyards and to finalize site-specific mitigation plans
15 for the 18 major railyards. But we urge you not to stop
16 at those 18 major railyards. Like southeast San Francisco
17 and San Leandro, there's many smaller railyards throughout
18 California that didn't make the cutoff in 2005 when the
19 MOU was signed to be considered major, but since then have
20 grown significantly and will only continue to grow and
21 have significant impacts on the neighborhoods.

22 And we also urge you to advance concurrent
23 reductions in health risks from things not directly
24 related to diesel pollution. Things like noise and too
25 many pedestrian fatalities we have, because rail lines are

□

1 not separated from streets and yards by tying or
2 prioritizing the awarding of publicly-funded incentive
3 funds to those projects that both reduce diesel pollution

4 and that also reduce other health risks.

5 For example, building sound walls or creating
6 barriers or grade separations can both potentially result
7 in a reduction in diesel pollution as well as reduce
8 health risks we have from pedestrian fatalities. Thank
9 you very much.

10 And I have a lot of postcards.

11 CHAIRPERSON NICHOLS: Okay. We can add them to
12 our collection. Silent applause from the back, too.

13 Alex Pugh, Sofia Carrillo, and Jennifer Renteria.

14 MR. PUGH: Thank you, Chairman Nichols and
15 members of the ARB Board.

16 My name is Alex Pugh. I'm with the Los Angeles
17 area Chamber of Commerce. We are the oldest and largest
18 chamber in LA County, serving 1,600 member businesses and
19 over 700,000 employees.

20 As a trustee for the region, we champion economic
21 prosperity and quality of life. So we are here in support
22 of staff recommendations to provide an incentive to reduce
23 emissions from local railyards.

24 One thing we would like for you to consider is
25 that the goods movement industry is very important to our

□

1 region. It's a driver of business and we need to protect
2 it. It's been surpassed as the largest industry in
3 southern California, and Los Angeles County specifically.
4 And there are a lot of other regions that are gunning for
5 our traffic.

6 So we certainly believe incentives are the
7 quickest and most efficient way to achieve the emissions
8 reductions, but more importantly, it sends a good signal
9 to the international trade community and the international
10 shipping community that southern California and California
11 as a whole is open for business.

12 We thank you for recognizing the importance of
13 incentives. And we urge you to provide them going
14 forward. Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 Sophia Carrillo.

17 MS. CARRILLO: Good morning. My name is Sophia
18 Carrillo.

19 I have reviewed the proposed recommendation and
20 wish to comment they are not adequate to reduce toxic air
21 pollution and prevent public health impacts.

22 There are hundreds of families that live near to
23 the fence line to the BNSF Watson railyard in Wilmington.
24 The communities who lives there are being serious impacted
25 every day.

□

1 CARB staff did not recommend numerous possible
2 that could reduce air pollution and reduce public exposure
3 and air pollution.

4 Number one, to reduce air pollution, CARB can
5 electric trains and Maglev trains with zero air pollution.

6 Number two, to reduce public exposure, CARB can
7 install air purification system in resident's homes,
8 public schools, senior citizen housing, and all sensitive
9 receptors with 1,500 feet. I ask that you adopt all
10 possible air pollution reduction and public exposure
11 mitigation measures. Thank you.

12 THE INTERPRETER: I have another history. Okay.
13 In February, woman of 34-years-old died of an asthma
14 attack. She arrived too late to get treatments at the
15 hospital, because she didn't have the money to pay for the
16 medical care. And furthermore, the family did not have
17 the funds to actually pay for the funeral services, so
18 they actually to fund-raise for two weeks to pay for the
19 services.

20 This is just an example of what our community is
21 facing for not having health insurance and also not
22 having -- dealing with the impacts from poor air quality.
23 It is only just that the companies that have the funds to
24 pay for these costs pay for them.

25 Thank you.

□

143

1 CHAIRPERSON NICHOLS: Thank you.

2 Jennifer Renteria, Jesse Marquez, and Daniela
3 Esparza.

4 MS. RENTERIA: Hello. My name is Jennifer
5 Renteria. I'm a life-long resident of the city of
6 Commerce as well as a graduate student at the U.C. School
7 of Architecture. And I'm also a member of the East Yard
8 Communities for Environmental Justice.

9 And I'd like to take this moment to share a
10 letter with you that was composed by 33 different
11 organizations all dedicated to the cause that is
12 environmental justice.

13 "We, the undersigned, public health,
14 environmental, and environmental justice organizations ask
15 you to exercise your authority in protecting the public
16 health of California communities by taking aggressive
17 steps to reduce emissions from railyards and locomotives.

18 "In 2008, the California Air Resources Board
19 completed health risk assessments for 18 railyards in the
20 state of California. The HRAs demonstrate these 18
21 railyards pose an unacceptable level of diesel exposure to
22 California residents. In total, these railyards are
23 responsible for 210 tons of diesel pollution a year and
24 put more than three million Californians at greatly
25 elevated risk of cancer.

□

144

1 "The CARB staff has generated the technical
2 analysis titled, 'Technical Options to Achieve Additional
3 Emissions and Risk Reductions from California Locomotives
4 and Railyards,' and has also released ARB's locomotive and
5 railyard recommendations documents titled 'Recommendations
6 to Implement Further Locomotive and Railyard Emissions
7 Reductions.'

8 "While we appreciate the recommendations provided
9 by ARB staff do show a reduction in real emissions, we are
10 concerned by the overreliance on incentive programs as the
11 main strategy to achieve reductions from this pollution
12 source. An incentive program does not guarantee those
13 reductions will be achieved purely through incentives or
14 that they will be enough to bring health risks down to
15 acceptable levels.

16 "The State has the authority and duty to regulate
17 the railyards in California, because they are a
18 significant source of pollution in the local area region.

19 "We need rules and regulations to ensure that the
20 public health is prioritized. The California Health and
21 Safety Code Sections 43013, 43018 provide the duty that
22 California ARB achieve maximum reductions possible for

23 mobile sources to comply with the national ambient air
24 quality standard and state standards, unless preempted by
25 federal law. To achieve the maximum reductions possible,

□

145

1 locomotives cannot be the only emission sources considered
2 in these recommendation documents. Diesel emissions from
3 other sources of pollution, such as cargo handling
4 equipment and heavy-duty trucks, also contribute
5 significantly.

6 "Approximately 48 percent of intermodal railyards
7 the exceedance of the state and federal ozone and
8 particulate matter standard in many California air basins
9 and therefore should be considered for additional
10 reduction of opportunities."

11 As you see there, the letter continues on. I see
12 that my time is up.

13 CHAIRPERSON NICHOLS: We do have your letter.

14 MS. RENTERIA: And we urge you to continue with
15 that.

16 But most importantly, I'd like you to all keep in
17 mind that child that -- whose life in its entirety and
18 whose understanding -- scope of understanding is
19 completely bounded by the physical boundaries that are
20 placed before him by freeways, railyards, rendering

21 plants, heavily-trafficked polluted streets, who liked
22 attends and underfunded, over-crowded school and is likely
23 uninsured. I'd like you to consider how you can take this
24 moment to make this child -- provide that opportunity to
25 succeed to become a civically-engaged American citizen and

□

146

1 provide for himself. Thank you.

2 CHAIRPERSON NICHOLS: Thank you for your
3 testimony.

4 Jesse.

5 MR. MARQUEZ: Jesse Marquez, Executive Director,
6 Coalition for a Safe Environment with members in over 25
7 cities.

8 The Coalition is one of the petitioners for
9 rulemaking in which this public meeting is being held to
10 adopt the new railroad industry measures.

11 We support the new CARB staff recommended
12 measures. However, the few measures being recommended are
13 not adequate to mitigate all of the environmental toxic
14 air emissions and the significant public health impacts.
15 If CARB decides to adopt an incentive-only measures
16 program, then CARB is required to conduct a CEQA review
17 and analysis of all requested alternatives, significant

18 environmental and public health impacts.

19 CARB is also required to assess the feasibility
20 and cost effectiveness of all requested mitigation
21 measures.

22 CARB is also required to provide the basis,
23 rational, and justification for all of its final decision
24 making.

25 We would also like to add additional measures to

□

147

1 be considered that there be a prohibition of more than
2 five locomotive engines operating within 500 feet of fence
3 lines communities for more than one hour; a prohibition of
4 more than ten locomotives operating within a 1,000 feet of
5 fence line residents for more than one hour.

6 We had an opportunity to review the advantaged
7 locomotive engine control system in its operation. We
8 also found that in doing research through the publications
9 that you provided and the data that your cost
10 effectiveness information was outdated. And that was part
11 of the reason we were told that was not included as a
12 valid mitigation measure.

13 And I have now since talked with the principles
14 of Advanced Control Systems Technology, and they have
15 advised me that when they reviewed the data of the CARB

16 staff, they found it was not accurate and that they are
17 completely cost effective. And I ask that this Board get
18 together with the Advanced Control Technology staff to
19 update its information.

20 We also realize that locomotive engines can also
21 be replaced with electric trains as well as Maglev trains,
22 and we see these as two viable technologies that exist
23 today and now. And we ask that you move forward in
24 recommending these as also viable measures.

25 In addition to the health risk assessments that

□

148

1 have been performed, we realize they are not complete and
2 do not provide a comprehensive review and assessment of
3 public health impacts. Therefore, we would also like to
4 ask that the CARB include the conducting of a health
5 impact assessment. Both Los Angeles County Department of
6 Health and U.S. EPA Region 9 recommend that health impact
7 assessments be performed. So we ask that that be
8 included.

9 In addition to air pollution regulations, we also
10 think you should consider sound impacts of the railroad
11 industry in neighborhoods and provide sound proofing also
12 be provided to protect the public as another health

13 measure.

14 We have additional cards to turn in. I thank you
15 for this time.

16 CHAIRPERSON NICHOLS: Thank you.

17 Daniela Esparza.

18 MS. ESPARZA: Good morning.

19 My name is Daniela Esparza. I want to thank you
20 for allowing me to speak before you today.

21 As a Pacoima resident and a member of Pacoima
22 Beautiful, I can say that we are being affected by diesel
23 trucks. And that is why we urge you and the Board to
24 adopt more regulatory measures that will protect the
25 health of our community from deadly locomotive and

□

149

1 railyard pollution.

2 My friend's, family, and community's health
3 depends on your support. And why that is why we have
4 postcards asking for your support. Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Ms. Ramirez, followed by Gideon Kracov and Angelo
7 Logan.

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

10 MS. RAMIREZ: Good morning, Chairman Nichols and

11 members of the Board. I'm Isela Ramirez here with East
12 Yard Communities for Environmental Justice.

13 Before I begin the presentation, I just want to
14 thank you for allowing us to present the presentation,
15 which will be divided by three. I will do the first part
16 and then I be followed by attorney Gideon Kracov who will
17 be followed by our executive director.

18 Next slide.

19 --o0o--

20 MS. RAMIREZ: So to begin with, I'll begin with
21 the basics is that is California ARB, or the people here
22 sitting in front of me, have the duty to adopt enforceable
23 locomotive and railyard pollution control measures to
24 address significant health risks with diesel particulates
25 at California railyards to meet the SIP's criteria

□

150

1 standards for ozone and PM.

2 This presentation will provide you with facts
3 concerning California railyard activities, the regulatory
4 record, and the review of the options recommend and ARB
5 regulatory approaches. The 18 intermodal and
6 classification railyards in the state of California --
7 next slide.

8

--o0o--

9

MS. RAMIREZ: The 18 intermodal and
classification railyards in the state of California cause
significant emissions of criteria and toxic air
contaminants, including diesel PM. And despite the
downfall in the economy, the railroads predict and are
planning for growth. I can point to the ITCF and the SCIG
as prime examples of that point.

16

Furthermore, locomotives alone are a big source
of pollution as they account for 4.8 tons per day of PM
and 158 tons per day of NOx in the state of California.

19

In the chart below, you can see for the eight
intermodal railyards that locomotives account for about 40
percent of the emissions, followed by heavy-duty diesel
trucks with 27 percent, and then cargo handling equipment
with about 20 percent followed TRUs.

24

Next slide.

25

--o0o--

□

151

1

MS. RAMIREZ: The evidence is clear, and it shows
that California's railyards are among the largest single
source of airborne human health risk, up to 3,300 in a
million cancer risk, as is the case for the community near
the BNSF San Bernardino in comparison to the accepted

3 resolution, a detailed comment letter, which has just been
4 read, and an expert evaluation for the record. This
5 concludes my portion of the presentation.

6 CHAIRPERSON NICHOLS: Time for the hand off.

7 MS. RAMIREZ: And I will now pass it on to
8 Gideon.

9 MR. KRACOV: Good afternoon now. My name is
10 Gideon Kracov for the East Yard.

11 --o0o--

12 MR. KRACOV: I'm starting here. Years ago, when
13 we started working on this, the question from your Board
14 was show us what's not preempted. And that's what I'd
15 like to do today in these two-and-a-half remaining
16 minutes.

17 California Health and Safety Code gives your
18 Board a duty to adopt and implement controlled measures
19 that are necessary, cost effective, and technologically
20 feasible for these sources, unless preempted by federal
21 law. And that's the standard that governs your decisions
22 today. To meet this charge, it's true. You adopted many
23 goods movement regulations, but you have been loathe to
24 directly regulate railroads. Instead, favoring the 1998
25 and 2005 MOUs.

□

1 MR. KRACOV: As a result, look at your staff
2 presentation today at appendix 6 through 8 concluding that
3 many of the measures we're talking about are not preempted
4 by federal law. These are your staff's own quotes. I'll
5 read just a few.

6 "ARB staff believes that ARB likely possesses
7 authority to establish emission standards for switcher and
8 medium horsepower locomotive for a little bit lower."

9 ARB thus has authority under California law and
10 Clean Air Act Section 209(e)(2) to adopt emission sources
11 for most, if not all, of the sources covered by these
12 options.

13 So, years later, after all this work, the answer
14 is you can't regulate everything. But there are literally
15 hundreds of locomotives and numerous site-specific
16 measures that you can adopt, and we urge you to do so.
17 Come for a position of strength like you do with other
18 goods movement sources, like trucks and ships.

19 Finally, we've heard about the railroads possibly
20 suing or speculation they might terminate the 1998 MOU.
21 Please take that with a grain of salt. They're seeking
22 approvals here in the South Coast for the same areas where
23 those locomotives are used.

24 And in any event, the point is, you have
25 authority and a duty to regulate these sources. And

□

155

1 Angelo is going to talk more about those options.

2 MR. LOGAN: Hello, Chairman Nichols and members
3 of the Board.

4 Angelo Logan with East Yard Communities.

5 And so after hearing the two previous presenters,
6 we would like to propose that the California Air Resources
7 Board implement regulations and finalize site-specific
8 mitigation plans.

9 In the options report, staff had determined that
10 numerous control measures are economically and
11 technologically feasible to dramatically reduce criteria
12 pollutants and health risk.

13 As a result, ARB has a duty to employ available
14 implementation mechanisms for these measures, including
15 rulemaking. We do believe that incentive program needs to
16 be part of this program, but an incentive-only approach is
17 not comprehensive and disempowers the State in its ability
18 to regulate these sources.

19 Also, petitioners agree that interstate
20 locomotives, such as options one, two, five, and seven are
21 cost effective and feasible. And this would be
22 replacement, repowering, and retrofitting locomotives.
23 However, locomotive options are not the only non-preempted
24 options that will have significant impacts on emissions.

25 In addition, options 11, 35, 36, and 37 are also feasible

□

156

1 and cost effective, and some of these measures would
2 include advanced locomotive emission controls and moving
3 railyard emission sources away from the nearby residents.

4 --o0o--

5 MR. LOGAN: These site-specific measures can be
6 implemented to reduce public health exposure and emissions
7 from these railyards throughout California.

8 In 2008, your staff was present at more than one
9 dozen community meetings to discuss railyard's draft
10 mitigation plans. Yet, the plans are not finalized or
11 enforceable. It is time to do so.

12 Significant reductions can be achieved through
13 relocation of maintenance facilities, staging areas, and
14 yard entrances or by requiring higher emission controls
15 near high risk residential areas.

16 Also, monitoring is needed to back up staff's
17 modeling. So therefore, ARB should -- next slide.

18 --o0o--

19 MR. LOGAN: ARB should initiate a rulemaking
20 within 60 days for older non-preemptive switcher and
21 medium horsepower locomotives.

22 A regulatory approach would give us the ability

23 to analyze the cost and benefits of each measure.

24 So we are asking you to direct staff to report to
25 the Board within 120 days to finalize site-specific diesel

□

157

1 particulate matter mitigation plans for the 18 railyards
2 in California and the additional ones that are also
3 gaining in size.

4 We also ask that you direct staff to report back
5 to the Board within 120 days on other recommended actions.

6 And to sum it up, we, the petitioners, would
7 respectfully urge the Board to satisfy its mandatory duty
8 to regulate through all available mechanisms, including
9 rulemaking, for non-preempted California locomotives and
10 railyard sources. California communities, our health
11 depend on it. Thank you.

12 CHAIRPERSON NICHOLS: Thank you very much. And
13 thank you for that excellent and well coordinated
14 presentation. It's very helpful.

15 Before we move on to the next group of speakers,
16 I want to suggest so that people know the timing, we've
17 just gotten beyond one page, and we have two-and-a-half
18 more pages to go. So rather than taking a break, I'm
19 going to propose that we get food for the Board and staff

20 that want to have something to eat back in the staff room.
21 And people just leave for a few minutes, you know, in
22 staggered groups rather than trying to take a formal
23 break.

24 For those of you in the audience, if you can see
25 where you are on the agenda, you could do the same thing.

□

158

1 I know there are people who got up very early this morning
2 and possibly even some with diabetes or other needs that
3 would require them to eat at a particular time. So we'll
4 understand if somebody isn't here when they were called.
5 But I think we should just move along.

6 BOARD MEMBER LOVERIDGE: There is a very good
7 cafeteria not very far from here. You can walk a few
8 paces down and to the left.

9 CHAIRPERSON NICHOLS: So people can go to the
10 cafeteria and get the food when they need something.

11 MR. WRIGHT: Madam Chair, if you could let the
12 audience know the Board members are able to view the
13 proceedings as well. And audience members can watch on
14 the cafeteria monitors as well.

15 CHAIRPERSON NICHOLS: If you need to the
16 cafeteria, you will not be cut off from the proceedings.
17 And the same is true for Board members if they go to the

18 back room. Okay. Thanks very much. We'll press on then.

19 And our next witness is Penny Newman, followed by
20 Maria Birruetta and Maria Hernandez. Are they here?

21 MS. NEWMAN: I'm Penny Newman. I'm the Executive
22 Director of the Center for Community Action and
23 Environmental Justice out in the Riverside/San Bernardino
24 Counties.

25 Mira Loma has the highest level of particulate

□

159

1 pollution in the nation. Mira Loma children have the
2 weakest lung capacity and slowest lung growth of all
3 children studied in southern California due to particulate
4 pollution.

5 People living near the BNSF railyard in San
6 Bernardino face the highest cancer risk of all railyards
7 in California at a whopping 3300 in a million. That is
8 not the ten in a million that we typically talk about in
9 the Clean Air Act. It is 3300. It is astronomical.
10 These alarming statistics are the reality of the
11 hard-working Latino residents in the communities of Mira
12 Loma and the west side of San Bernardino.

13 For more than six years, CCAEJ communities have
14 urged action on the critical health issue. For more than

15 six years, ARB has refused to step forward and use its
16 regulatory authority to reduce the impacts on our
17 families. To date, our calls for action have been
18 disregarded by this agency in favor of deals and voluntary
19 measures.

20 At times, the agency staff has appeared to be
21 more of a PR arm of the railroads than the champion for
22 clean healthy air.

23 ARB actively opposed bills in the state
24 Legislature which would have lead to the reduction of rail
25 pollution, opting instead to enter into that secretly

□

160

1 negotiated agreements, the infamous 2005 MOU, that
2 undercut our community's effort to regulate the railroads.

3 In April of 2005, CCAEJ, along with our sister
4 organizations, petitioned this Board to adopt regulations
5 to control criteria and toxic emissions from railroad
6 sources. After first denying our petition, upon
7 reconsideration, we now find ourselves in this hearing. I
8 want to point out this was in the initiated by this
9 agency. This was pushed on the ARB due to a lawsuit by
10 East Yards and by the petition with CCAEJ and other
11 communities.

12 To our disappointment, but I have to say not our

13 surprise, ARB staff has once again proposed incentives to
14 deal with railroad instead of the enforceable regulations.
15 Your conciliatory actions with the railroad have prolonged
16 our misery and resulted in more people being harmed. We
17 have had enough.

18 To address this critical health issue, we cannot
19 rely on the whims of whether the railroad wants to
20 voluntarily do something or not. They have to be forced
21 to.

22 I want to address real quickly two procedural
23 things. We heard earlier that people living near these
24 railyards really don't have a voice in these proceedings.
25 That is not due to their choice. It is because agencies

□

161

1 hold their hearings during the day when people have to
2 work, and many of our people are going to have to leave
3 before they have the opportunity to speak because they
4 have to pick up their children or get back to work. They
5 can't spend all day here.

6 I was appalled to come in here today in this day
7 and time in 2009 when all of the agencies have EJ advisory
8 counsels to find that there is no translation available.
9 While we may be able to get people to translate what

10 people are saying to you, they can't hear what you're
11 saying. And you have eliminated them from being heard.
12 That is unconscionable in this day and time. To come to
13 southern California with the demographics we have, to be
14 dealing with an issue that hits not just the general
15 public, but these specific communities and you not make
16 conditions for them is unconscionable.

17 And I hope that you will look into the future
18 into your rules and how you operate to make sure that
19 everyone has an opportunity to participate and that their
20 voices are heard loudly, clearly, and translated. Thank
21 you

22 CHAIRPERSON NICHOLS: Thank you.

23 I would just comment the scheduling of this
24 hearing for this morning was done at the specific request
25 of representatives of the groups that are here today, as

□

162

1 opposed to continuing it on into the night on Friday
2 night. There was a choice between those two.

3 MS. NEWMAN: If I understood, the choice was
4 Thursday or Friday. And we tried to get it for Friday
5 because it was easier for people to get off work.

6 CHAIRPERSON NICHOLS: But there would have been
7 the opportunity to stay late in the evening on Thursday,

8 and Board members had indicated they were willing to stay
9 and so were staff. I don't want to argue. I just want to
10 note that, that was the reason why that decision was made

11 MS. NEWMAN: I want it noted there's a lot of
12 people you're going to be calling who aren't going to be
13 here because they simply couldn't stay longer.

14 CHAIRPERSON NICHOLS: I hear you.

15 For those who are wanting to know where they are
16 on the witness list, I just want to point out that there
17 is a list outside this auditorium immediately outside the
18 room so that you can tell where you are in the order and
19 know if you've got some time before you need to come back.

20 Okay. We'll hear now from Maria Birrueta, Maria
21 Hernandez, and Sylvia Betancourt.

22 MS. BIRRUETA: Hello. Hi. Good afternoon. My
23 name is Maria Birruetta. I live in the west side of San
24 Bernardino. And I'm a part of the organization CCAEJ. I
25 just came here to tell you that I have a young daughter

□

163

1 that suffers problems because of the bad air quality.

2 I live here in the red zone that you see up here
3 on the map. And I just want to tell you that my neighbors
4 have been dying from cancer. My animals have died

5 illnesses. I live across the street right in front of a
6 school, and the teachers have died from cancer from that
7 school.

8 The problem is huge, and you here in front of us
9 have the solution for those that are living in this area
10 of danger. You have the power to stop those companies
11 that have been intoxicating the air that we're breathing
12 right now. And basically we're just saying no more, no
13 more bad air quality. The number of people dying per
14 million has been extremely large, and now it's 3300 in a
15 million It's so much. So thank you so much for this time
16 and letting me speak.

17 CHAIRPERSON NICHOLS: Thank you for coming.

18 Maria Hernandez, Sylvia Betancourt, Susan
19 Negrete.

20 MS. HERNANDEZ: Good morning. My name is Maria
21 Hernandez. I live in San Bernardino. And my family moved
22 here from the -- to the city of San Bernardino two years
23 ago. And in such short time, my daughter of eight years
24 old suffers from hemorrhoids from her nose. And my son
25 suffers from headaches; he's 12 years old.

□

1 My family as well as others have the right the
2 breathe clean air. And you as an agency that regulates

3 the quality of air has the right to regulate our --
4 basically give us that right to breathe that clean air.
5 Thank you.

6 BOARD MEMBER LOVERIDGE: Could I ask a question?

7 CHAIRPERSON NICHOLS: A question. Excuse me.

8 BOARD MEMBER LOVERIDGE: As you chose to move in,
9 was there any information? Was there any notice about the
10 exposure that was there because the railroad yards? Did
11 you have any information before you moved?

12 MS. HERNANDEZ: We moved there in order to own a
13 home, a house, basically. Yet, we never knew how the
14 situation was in that area.

15 BOARD MEMBER LOVERIDGE: Thank you very much.

16 CHAIRPERSON NICHOLS: Ms. Betancourt and Susana
17 Negrete, and Rachel Lopez.

18 MS BETANCOURT: Good afternoon, Board members.

19 My name is Sylvia Betancourt, and I work with the
20 Center for Community Action and Environmental Justice
21 based in Riverside. We do our work in Riverside and in
22 San Bernardino.

23 I have come before this Board a number of times,
24 and one in particular in this room back in 2005 when CARB
25 signed the infamous MOU that at the time was widely

□

1 opposed by communities, especially environmental justice
2 communities. One of the things that it did yield was one
3 of the things that we already knew was there is a huge
4 health risk to living close to these rail facilities. And
5 that we found that in San Bernardino being the worst in
6 the state at 3300 in a million that it was confirming what
7 our community members, our role models, and our family
8 members already knew, that people were getting sick
9 because of their neighbors.

10 CARB has the legal authority and the
11 responsibility to do something about this problem. So I
12 stand here before you today to say an incentive program is
13 not enough. An incentive program doesn't guarantee that
14 emissions will be reduced. And by looking at the Power
15 Point, the expression of the additional recommendations or
16 measures for reductions would not be as cost effective as
17 some of the initial recommendations they were making.

18 Some of those additional recommendations are
19 actually the things that we would support. We would
20 support site-specific measures, like moving a gate, like
21 moving operations around so that they are further away
22 from community members.

23 And what we urge is that you take a step that has
24 some teeth behind it. A regulatory measure is what this
25 community -- these communities need across the state.

1 Thank you for your time.

2 CHAIRPERSON NICHOLS: Thank you.

3 Ms. Susana Negrete and then Rachel Lopez.

4 MS. NEGRETE: Good afternoon. My name is Susan
5 Negrete. I live in San Bernardino. I'm also a member of
6 CCAEJ.

7 I live across the street from the BNSF facility
8 railyard. I live like 200 feet away from their facility.

9 The issue that we're having in the east side of
10 San Bernardino is a well known for all of you and all of
11 us, especially for all of us who are living in that area.
12 3,300 in a million is not a small number not even to
13 count. It's a big huge number. Talking about lives.

14 How is it affecting me personally? It's
15 affecting me because in the last ten, years my children
16 and I have developed asthma. I have a nine-year-old boy
17 who wakes up in the middle of the night yelling for help
18 because he used to get heavily bloody nose.

19 How do you think I feel unable to help him? It's
20 so difficult and sad to have this kind of life. And it's
21 frequently. The next day I cannot perform 100 percent in
22 my work, because I'm tired and sleepy. And it's just me.
23 I'm talking about myself.

24 But you heard we are 5,000 families just like my
25 family within a mile away from BNSF. So we have a

□

167

1 problem. You have a solution. You have the power. You
2 have authority to do the regulations. You have to respond
3 for all of us.

4 So that's what I have to say. Thank you for the
5 time and to listen to us.

6 CHAIRPERSON NICHOLS: Of course. Thank you.

7 Ms. Lopez, followed by Josie Gaytan.

8 Ms. LOPEZ: Good afternoon, members of the Board.

9 My name is Rachel Lopez. And I work with the
10 Center for Communities Action Environmental Justice and a
11 resident of Mira Loma in the unincorporated area of
12 Riverside.

13 I come before you today, again as I have many
14 times before regarding these railroads -- the railroad
15 companies seeking for you to do what you need to do in our
16 communities.

17 Mira Loma also was part of that health risk
18 assessment. Although our numbers are comparatively
19 smaller, they're not any less critical, one hundred in a
20 million. And I know that's a smaller number than San
21 Bernardino, but 100 in a million is still too much. That
22 particular railroad, they've done some things there that
23 only through community organizing and support from CCAEJ
24 have been able to change some things in that particulate

25 railyard. However, the effects of the diesel exposure is

□

168

1 still there in all of our communities. We look at ARB and
2 the relationship that we've had in the past. We are here
3 again in front of you wanting to believe that you are here
4 for the communities and that you have the ability. You
5 have the authority to make rules and regulations.

6 Our organization, along with others, came before
7 you in Oakland in 2008 to present the rulemaking petition.
8 Again, we are waiting. We cannot wait any longer. Our
9 communities are dying. The residents in our communities
10 are dying on a daily basis. We cannot wait ten, 15, or 20
11 years. We won't be there in 10, 15 or 20 years. Many of
12 us will not be there.

13 It is your duty to make regulations, to make
14 rules, not allow these railroad companies to expand to
15 build new facilities until they've cleaned up the messes
16 they've made in our communities. Now, at this time they
17 need to clean up. We can no longer accept this type of
18 pollution in our communities.

19 Thank you.

20 CHAIRPERSON NICHOLS: Thank you very much.

21 You also were providing some translation services

22 also for -- did you help with the translation earlier? It
23 was the other lady behind you. Sorry -- also with the
24 gray t-shirt. Okay. Sorry. I just wanted to say thank
25 you. Appreciate it.

□

169

1 MS. GAYTAN: Good afternoon. My name is Josie
2 Gaytan, and I work for CCAEJ. And I live in Mira Loma and
3 I've lived there for 28 years. And I'm right now also
4 working in west San Bernardino.

5 I can sit here and tell you guys all the studies
6 and everything that everybody has been talking about. One
7 of the things to us, the numbers of very important. But
8 it's all the numbers that we're looking at, all our
9 friends and neighbors and all our communities members that
10 are dying of cancer. Those are the numbers that we are
11 looking at that nobody seems to be understanding us that
12 those are the numbers that are important. It's not the
13 other numbers you guys are all talking about or everybody
14 is talking about.

15 Several years ago I came and testified in front
16 of most of the Board that's up here and asked -- we're
17 talking about the railroads. And one of the intersections
18 that we have in Mira Loma, the trains sit there and idle
19 for 20 to 40 minutes. It's about half a block away from

20 one of the elementary schools. They idle. They get off
21 their train. They leave their train there, and they go
22 down and eat. And they leave the train in the middle of
23 street, stopping traffic, idling, and polluting the air.

24 At that time, somebody was going to do something
25 about it. Well, there's nothing done about it. That's

□

170

1 one of the little problems that we have in our community.
2 They're idling now we can see two or three trains a week
3 now that get off and eat and leave their train idling in
4 the middle of the streets.

5 And you guys don't do something. You guys put
6 stronger regulations. This is a small problem I'm telling
7 you about. The bigger problems -- they aren't doing
8 anything about the littler ones. Can you imagine if
9 they're going to do something about the big ones that we
10 have, killing our people, killing our neighbors, our
11 friends.

12 We're tired of waiting. The MOU, they're not
13 doing nothing about it. You guys are the only ones that
14 are going to have to put something there for them to have
15 a stronger regulation so they can do something about
16 killing our people, our neighbors, our friends.

17 So this is all I have to say. Thank you.
18 CHAIRPERSON NICHOLS: Thank you.
19 Jose Velasco, Teresa Flores, Rudi Flores.
20 MR. VELASCO: My name is Jose. I live in San
21 Bernardino. I had a story prepared telling you who I am,
22 where I live. Also that he is a member from CCAEC
23 investment team and that I guess instead of telling you my
24 story, I'm going to tell you about a story about a young
25 child that incidentally dropped a glass of water. And

□

171

1 what does he do? He tries to hide it so nobody sees that
2 he had just dropped the glass of water. The kid has two
3 solutions to his problem. One, he can hid it and then
4 like never happened. Or, two, try to fix it and know what
5 he did.

6 Well, the solution he found was that since he no
7 intention to drop the glass of water, he knew what to do
8 to fix the problem. He had no intention to commit that,
9 so therefore he just knows the solution so he does
10 whatever he can to fix it. Thank you very much for your
11 time

12 CHAIRPERSON NICHOLS: Okay. Thank you.
13 Teresa Flores, Rudi Flores.

14 MS. FLORES: Hello. My name is Teresa Flores. I

15 live in the city of San Bernardino. I'm a member of
16 CCAEJ.

17 I live right across the street from BNSF. What
18 separates me are four lanes, the street. I'm a stone's
19 throw away from the railyard.

20 I was here also in 2005 with the MOU. I went
21 back into my computer and I was looking for some documents
22 for that time. And when I started reading some of these
23 documents I had, I got very angry. And right now I'm very
24 emotional, because we're right back where we started.

25 And what I see across the street with these

□

172

1 locomotives smoking, I can't enjoy my evening and open my
2 windows, because I smell the pollution coming into my
3 house.

4 I'm being very dramatic right now, because this
5 is a 24-hour, seven-day a week facility. Not to mention
6 the noise at 3:00 in the morning from the racket from the
7 lifts picking up the cargo, dropping them, the truckers
8 going by and waving at each other honk, honk, honk. This
9 is 3:00 in the morning. How would you feel?

10 Our residents are getting sick. This place holds
11 300 people. Can you imagine 300 people getting sick in

12 your neighborhood?

13 You've been listening to these people for hours.
14 You know what you need to do -- because we're not going to
15 get any better. And working with the railroad and telling
16 you, oh, we're going to do this and we're going to do
17 that. And when you see it across the street, you know
18 they're not doing what they're supposed to be doing.

19 But you can enforce the laws. You can get them
20 to do it. You have the power to do it. And we're all
21 relying on you. And if you don't do it, you're showing us
22 that you let us down. Thank you.

23 CHAIRPERSON NICHOLS: Thank you. Okay.

24 Rudi Flores.

25 MR. FLORES: My name is Rudi Flores, and I live

□

173

1 in San Bernardino. Life-long resident there, except for
2 my military time. And I live about less than a mile from
3 the monstrosity belching out all this poison.

4 In one respect, I guess I'm speaking for the
5 other people that have died, from the grave. They're
6 asking you and I'm asking you, because I'm a cancer
7 patient myself, borderline COPD, do your job or you don't
8 need your job or we'll put somebody else in. Because like
9 I said, I'm speaking to you from the grave. I don't know

10 how much time I have left myself.

11 Here's a report that tells these companies, these
12 monstrosities where they can crap on us. Unless you've
13 been there -- I mean, these are just words to you. But,
14 you see, those aren't numbers. Those are real people that
15 were flesh at one time. They had pictures. They had
16 families. And now their families are deprived of them.
17 We're not asking you; we're telling you do something about
18 it. Do it. Otherwise, you don't need your jobs.

19 Thank you.

20 CHAIRPERSON NICHOLS: All right.

21 Martha Cota, followed by Erin Huffer and Allan
22 Lind.

23 We're going to run out of time and the translator
24 has not spoken.

25 MS. COTA: Good afternoon. My name is Martha

□

174

1 Cota. I represent hundreds of families with the Long
2 Beach Alliance for Children with Asthma. And the
3 families, because of the time you chose to hold this
4 hearing, they could not be here today.

5 And I wanted to tell you about that I'm a mother.
6 My son, Jose, is 19 years old, and he has been suffering

7 from asthma since he was a baby. And I experience the
8 difficulty that this causes him every day. Jose's life is
9 difficult because he has to live with asthma day after
10 day, an illness caused by multi-million dollar industry
11 that does not care about our families.

12 I also wanted to say that it's important for you
13 to listen to studies, such as a USC study, that shows that
14 children who grow up breathing polluted air have reduced
15 lung function. When they reach adulthood, that air
16 pollution is linked to increased school absences and as
17 well as to work absences for working adults, like myself.
18 That children with asthma suffer other health problems
19 when they're exposed to high levels of particulate matter
20 from diesel. And thousands of children that live near
21 railyards, busy roads, and freeways are more likely to
22 have asthma or reduced lung function.

23 CHAIRPERSON NICHOLS: Okay. Your time is up.
24 Could we just summarize or get to the bottom?

25 Ms. COTA: So I do not understand, just as the

□

175

1 last person mentioned, that if diesel emissions are
2 classified in California as toxic air contaminants and at
3 the federal level as hazardous air pollutant because of
4 concerns they cause cancer and other illnesses, then why

5 are you not doing your job? Why haven't diesel emission
6 been effectively regulated by either the State or federal
7 government?

8 CHAIRPERSON NICHOLS: We're going to let you
9 translate the last bit, and that's it.

10 MS. COTA: And I urge you to do your part as we
11 do our part to protect our families and our communities.
12 But you need to do your part to do your job.

13 Thank you. And I also have postcards.

14 CHAIRPERSON NICHOLS: I do just want to say while
15 we're moving along, the USC studies were supported by the
16 Air Resources Board. We are very mindful of them and very
17 interested in incorporating them into our work.

18 Okay. Erin Huffer, Allan Lind, Eric Coker.

19 MS. HUFFER: Good afternoon. My name is Erin
20 Huffer. I'm the Program Manager for Long Beach Alliance
21 for Children with Asthma.

22 As you may or may not know, Long Beach has some
23 of the highest rates of asthma in the nation. This
24 community is over-burdened by the effects of pollution and
25 a good portion of which is caused by railyard activity.

□

176

1 For instance, we have about eight schools, homes,

2 and other facilities with sensitive receptors, because
3 that as the term I understand, within one mile of
4 railyards. We need to prioritize public health. As
5 you've heard from many people today, this is not something
6 that we can keep putting on hold.

7 I therefore urge you to use your authority to
8 implement not just any regulations, but strong and
9 enforceable regulations that protect public health and are
10 ineffective in reducing emissions and the health risks
11 from railyards. Thank you.

12 CHAIRPERSON NICHOLS: Thank you.

13 Mr. Lind.

14 MR. LIND: Thank you, Madam Chair.

15 My name is Allan Lind. I'm here on behalf of the
16 California Council for Environmental and Economic Balance.
17 And CCEEB, I think you know, is a coalition of business
18 labor and public leaders that strives to advance
19 collaborative strategies for a strong economy and healthy
20 environment.

21 We're here to support the staff's
22 recommendations. We keenly appreciate the complexity of
23 this problem that you have taken on to solve here, and
24 we've been impressed with staff's work and the
25 collaborative efforts they've had with the stakeholders in

□

1 getting to the conclusions that you have before you today.

2 We're particularly appreciative of the incentive
3 approach that the staff is taking here. We have worked
4 extensively with CARB on incentive programs over the
5 years, and we think that CARB has had significant success
6 with their existing incentive programs. And we're pleased
7 that the Board is now looking at incentive programs
8 comprehensively with the guidance of Board Member Berg.
9 And we're an active participate in that process and
10 looking forward to improving all of the incentive programs
11 to achieve the outcomes of the programs like this.

12 I don't think anybody would dispute the fact that
13 transporting goods by rail is the most environmentally
14 sound way to move goods and goods movement. And goods
15 movement is vital to the economy in California. So the
16 work that you're doing today is going to be very important
17 to sustaining the vitality of California's economy. Well
18 targeted incentive programs, such as preferred by your
19 staff, is an ambitious plan for cleaning up the air and
20 will preserve competitiveness and efficiency.

21 And no pun intended, we do believe CARB and the
22 railroads are on the right track in this effort. CCEEB
23 looks forward to working with the Board and with the
24 financial incentives working group to make sure that all
25 of the worth while programs like this one get the funding

□

178

1 they deserve. Thank you very much.

2 CHAIRPERSON NICHOLS: Thank you.

3 I neglected when I was coming up with my grand
4 scheme for moving us along to recognize the fact that our
5 court reporter is a human being also and may need a break.
6 How long should we give you? We'll take a ten-minute
7 break and resume the hearing at 1:15 sharp. Everybody can
8 stretch.

9 (Thereupon a recess was taken.)

10 CHAIRPERSON NICHOLS: The Board will resume the
11 hearing.

12 I believe our next witness is Eric Coker,
13 followed by DePrima Mayo and Robert Cabrales.

14 MR. COKER: Hello. And thank you for holding
15 this hearing today.

16 I'm appreciative the fact the Board is taking on
17 this issue. I've traveled from the Bay Area. And I'm
18 here today to advocate for the Board to protect the health
19 of people living near railyards.

20 As you know, the diesel pollution specifically
21 particulate matter less than 2.5 micrometers spewing from
22 these railyards are harmful to respiratory and heart
23 health and increases the chance of cancer.

24 Numerous epidemiology studies have demonstrated
25 that close proximity to major roadways and freeways is

□

179

1 associated with increased risk with the respiratory
2 disease and heart diseases.

3 There is no reason to believe that living next to
4 a rail -- living in close or working and going to school
5 in close proximity to a major polluting railroad is any
6 different from that.

7 Just last night I toured the railyard in
8 Commerce, California, which is not very far from here.
9 While there, I observed a residential neighborhood right
10 next to in massive rail facility. I noticed a young child
11 in her front yard. A railyard was no more than 30 feet
12 from where she plays in her front yard and where the fine
13 particulate matter and ozone emissions are able to
14 penetrate into her home living area.

15 So I'm going to be brief here. So I urge the
16 Board to mandate drastic change at these railyards. One
17 specific change that can be made is for railyards to
18 switch to less polluting fuel sources aside from diesel,
19 such as electrification of their systems.

20 And a big contention I have with the
21 recommendations from the staff here is the issue of not
22 having mandatory regulations. The incentive process comes
23 with great uncertainty, and the graph that was showed

24 earlier with regard to the anticipated reductions in
25 emissions, I think it would be nice to see another graph

□

180

1 that takes into account the uncertainty. And it seems
2 like you're basing that graph on the assumption that the
3 incentive process will work and that the funds will be
4 generated somehow. And so it would be nice to see just a
5 worst-case scenario, best-case scenario type of
6 presentation.

7 That's all I have. Thank you.

8 CHAIRPERSON NICHOLS: Thank you. Thank for
9 making the journey. Okay.

10 DePrima Mayo, are you here? And then Robert
11 Cabrales and Cassandra Martin.

12 MS. MAYO: Hello. My name is DePrima Mayo.

13 This is my first trip out here to Los Angeles
14 with my grandmother. I have never been to any event like
15 this that I've seen since last night. I went out to the
16 railyard, and I seen such pollution in the skies of the
17 railyards of the smoke and all that. And people live
18 right next door to the railyard is something that I would
19 not like to experience ever again. Okay.

20 Thank you.

21 CHAIRPERSON NICHOLS: Thank you.

22 Robert Cabrales, are you here?
23 Cassandra Martin.
24 MS. MARTIN: Hello. My name is Cassandra Martin,
25 and I'm with West Oakland Environmental Land Project and

□

181

1 Ditching Dirty Diesel. And I'm going to give you a brief
2 summary of what I've gone through.
3 I'm from Indiana and railyard was right in my
4 front yard. And I remember as a kid playing in the
5 railyards. And at least 20 to 30 of the members of my
6 family have died from cancer. My oldest sister recently
7 had a mastectomy and I, myself, even had problems with my
8 breasts.
9 And I have three children, 31, 21, and 16. Both
10 of my boys have asthma. My daughter has upper respiratory
11 problems.
12 I now have allergies where I'm scared to go
13 outside, because every time the air hits my skin, I break
14 out in hives. And sometimes I'm rushed to the hospital
15 and I have to have shots and take medication, and it's
16 scary.
17 And coming to your railyard here and visiting it
18 and seeing all the children there in this environment

19 breathing these toxic fumes is just horrendous. Totally
20 horrendous.

21 And will someone stand up for us people that need
22 your help? Thank you.

23 CHAIRPERSON NICHOLS: Thank you, Ms. Martin.

24 Elena Rodriguez, are you here?

25 Margaret Gordon.

□

182

1 MS. GORDON: Good afternoon. Hi. I'm Margaret
2 Gordon the West Oakland Environmental Indicators Project.

3 CHAIRPERSON NICHOLS: I was with you in Oakland.

4 MS. GORDON: I'm one of the 15 people who
5 traveled down all the way from Oakland, California to come
6 and talk to you about railyards and the goods movement and
7 how trains and transportation impacts on community.

8 I live in west Oakland. I'm surrounded by three
9 freeways, the port on one side of me, a railyard on one
10 side. And we have a 24-hours, seven days a week truck
11 traffic, either getting to a train or trying to get on
12 rail or trying to get to a ship.

13 And one of the things we have found out is that
14 within the last two years, we have had an increase of
15 train traffic blowing in the wee hours. We have not had
16 that before. So we know that there is movement going on

17 from the goods movement. Even though they say the economy
18 is down, we're still being impacted by the trains and the
19 trucks and the ships.

20 And in retrospect to the resolution that we want
21 CARB to really start caring about the community, really
22 start caring about us. And with many of the ports in the
23 state of California, who will be doing the CIP projects?
24 There will be some increases.

25 So we have to start thinking about no net

□

183

1 processes as well as mitigation processes for the other
2 communities that will be suffering or look Commerce
3 railyard in the next five, ten, 15 years.

4 We've known in Oakland there is a new expansion
5 program that's going to happen at the old army base. We
6 know that there are a company called Ports America is
7 going to be coming into West Oakland. There's going to be
8 increase. There's not going to be less traffic. There's
9 going to be more traffic.

10 So my hope is that CARB needs to start caring
11 about the communities that are going to be impacted by all
12 these expansions. It's good to have business. But when
13 is business going to be responsible and have new business

14 models where the people are being cared for as they
15 make -- change the economy?

16 You need to ask the automobile industry. They
17 had to change their business model to survive. The
18 railroads need to start doing the same thing. You can't
19 have all these operations of the maintenance yards, the
20 trucks, the trains, all these activities going on at the
21 same time to impact our communities.

22 So one thing that we need to have is new models
23 of how to do these things without harming people. Thank
24 you very much.

25 And I also want to give signature cards that we

□

184

1 collected on our own also.

2 CHAIRPERSON NICHOLS: Thank you, Ms. Gordon.

3 Thank you.

4 Christine Cordero. Is Christine here?

5 MS. CORDERO: Good afternoon, Board members and
6 Chair.

7 Thank you for having us here. We have traveled
8 seven hours in the minivan and the car to really ask or to
9 tell you that we need you to exercise your full authority
10 to regulate the railyard emissions to protect our
11 community's health.

12 You have heard and will continue to hear
13 testimony from Oakland and Richmond residents who have
14 been living and dying from pollution from rail operations,
15 the cars, the cargo handling equipment, and the trucks.

16 Similarly, we stand with our sister organizations
17 and communities from the central valley and all through
18 southern California and with all the individuals that
19 couldn't are here from San Francisco, San Leandro, and
20 throughout the state who deal and can testify to the
21 unacceptable high risks to already overburdened
22 communities dealing with toxic exposure above and beyond
23 acceptable standards, above and beyond what we should be
24 paying in our health and our lives for goods movement
25 through this state.

□

185

1 In the Bay Area, as Margaret said, we are facing
2 expansion of rail cargo. They're talking about double
3 stacking the containers to go through Donner Pass and the
4 Tehachapi. They're talking about a 50-year lease with the
5 Port America which will double the overall cargo at the
6 Port of Oakland from what it is now. So these cargos will
7 move from the ports and through our communities. The
8 risks are already too high. And to add to that without

9 actual serious controls and regulatory measures is
10 unacceptable.

11 You have the full legal authority and duty to
12 regulate. We urge you to support the most health
13 protective options.

14 While incentives and voluntary measures are good,
15 they must be in addition to strong regulatory measures.
16 Incentives must be the icing on the cake, not the cake
17 itself. Incentives and voluntary measures alone have not
18 in the past, and nor can they now, guarantee the
19 protection of our people's health.

20 The rail companies are saying they not afford to
21 be regulated to clean up their operations. We are here to
22 say right now to ask you to exercise your full authority
23 to regulate these rail emissions to protect public health.
24 We, our communities, our children, our lungs, and our
25 bodies cannot afford for you to do anything less.

□

186

1 Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 We have Jose Torres and Adrian Martinez.

4 THE INTERPRETER: Elena Rodriguez was called, and
5 she was out. Can she do her public comment now?

6 CHAIRPERSON NICHOLS: Yes. I'll let her go.

7 MS. RODRIGUEZ: Good afternoon. My name is Elena
8 Rodriguez, and I'm here with the Long Beach Alliance for
9 Children with Asthma.

10 Thank you for coming down to L.A. and hearing our
11 concerns. I live in west Long Beach where there is an
12 average of 10,000 students that are minute by minute
13 impacted by pollution. One of the students is my daughter
14 who was diagnosed with the beginnings of asthma.

15 As you can see, the railyards are dangerous for
16 the health of our communities, especially children in the
17 first stages of development and the elderly who are
18 already afflicted with other health problems. All though
19 there have been efforts to reduce railyards emissions, the
20 levels of risk for cancer and asthma continues to be
21 unacceptable. It is still necessary to reduce the level
22 of emissions to a level that is healthier for our
23 community.

24 The railyards should not be located near
25 sensitive receptors. CARB should establish regulations

□

187

1 that guarantee that the railyards are located outside of
2 our communities and then specifically places like schools,
3 churches, parks, and homes.

4 In summary, our families are suffering from the
5 effects of pollution and you here have a solution. Thank
6 you.

7 CHAIRPERSON NICHOLS: Thank you.

8 Okay. We'll go back to the schedule then.

9 Hi there.

10 MS. MARTINEZ: Hi. Good afternoon, members of
11 the Board.

12 My name is Adrian Martinez, and I'm an attorney
13 for the Natural Resources Defense Council.

14 I will present some very brief comments, and I'm
15 just going to touch on three issues. The first is the
16 incentive approach here today. The second is the black
17 box issues in the South Coast and other areas of
18 California. And then also finally the 1998 MOU between
19 the railroads, CARB, and US EPA.

20 The first issue, as we're all aware, CARB is the
21 leading in battling diesel pollution. We've seen
22 significant regulations on sources such as marine fuels,
23 trucks, non-road equipment. And NRDC has been very
24 supportive along the way, even when industry challenges
25 these rules, we jump into court to help defend, because

□

1 they are so important to the health and welfare of people

2 throughout the state and NRDC's members.

3 So this first issue is the incentive-based
4 approach. I feel like we've been here and discussed this.
5 This is really what Prop 1B was about. NRDC and several
6 other groups have been very supportive of incentive
7 funding. That's why we were supportive of the Prop 1B and
8 the significant effort CARB staff put into developing
9 guidelines and providing funding to turn over these
10 facilities.

11 We do note, however, that the proposal today
12 entails almost half a billion dollars in incentive funding
13 for a handful of companies. Generally, it's been the
14 approach of CARB to help companies that need compliance,
15 whether it be through socioeconomic reasons, et cetera,
16 and this seems like a lot of incentive funding for a
17 handful of companies.

18 During the Prop 1B process, we actually
19 recommended there be a greater factor of contribution by
20 the railroads compared to every dollar spent by the State
21 or federal government.

22 The second issue is, as we all are aware, the
23 black box to obtain the ozone standard is quite
24 significant in places like the South Coast. We think what
25 this means is that a greater suite of measures needs to be

□

1 explored beyond incentives.

2 We also think there needs to be exploration
3 further about the control of rail electrification to help
4 meet our clean air goals and get us to attain the federal
5 clean air standards. We think a strategy of attainment is
6 definitely going to require the railroads to really shift
7 from a diesel to electric.

8 The final thing I want to go over is the 1998
9 MOU. There's been some fear that somehow the railroads
10 might leave or not comply with that agreement. I note
11 that in that agreement there is a backstop from U.S. EPA
12 where they said if the railroads do not comply, the U.S.
13 EPA committed to achieving the same amount of reductions.
14 We think that provides the support needed to go forward
15 with the broader suite of incentive and regulatory
16 measures.

17 Once again, thank you for the ability to comment
18 today.

19 CHAIRPERSON NICHOLS: Thank you.

20 We now have quite a contingent of people from the
21 East Yard Communities for Environmental Justice. And I'm
22 hoping that we can save some time if we can organize this
23 group and have you come forward at the same time. Jocelyn
24 Vivar, Nathen Mata, Maria Becerra, Madeline Clarke, Robert
25 Eula, and Anna Arriola, are any of these people here? Can

□

190

1 we get you to come forward then at this time, since you're
2 all residents of the same area? And I visited your
3 community at one point. I know something about the impact
4 of the railyard. So if I could get all of you to come
5 forward and speak, that would be great.

6 MS. ARRIOLA: I think they are on the bus. I
7 think they're leaving.

8 Good afternoon, Madam Chairman and Air Resources
9 Board.

10 My name is Anna Arriola. I live in the
11 Montebello Commerce area. I came in support of the
12 recommendations to provide further locomotion and railyard
13 emissions.

14 I live in an area where four railyards are
15 located. We understand the railroad companies have the
16 right to make money. It's a business. And we, the
17 people, have the right to clean air. We have -- you're in
18 the middle. So you're like a referee between us. We have
19 to create win-win solutions. We have to negotiate
20 regulations to lower the emissions. Your job is to create
21 the negotiations and make way -- create ways to lower the
22 emissions. We don't expect you to do it in one day. But
23 gradually, but fast, because we no more mañana. We want
24 it today.

25 Since you're in the middle, your job is to

□

191

1 protect the people. We need the clean air. Your job also
2 is to help the business. You're like our middle person
3 that talks to them and lets them know our needs and lets
4 them know that we understand their needs and we have to
5 help each other. We're in this planet together. We have
6 to exist together. We have to co-exist. And we have to
7 make some form of creating ways where we can exist
8 together; them not polluting the air.

9 And I don't mind if they make money. We need
10 them. They provide jobs, and they transfer materials,
11 food, everything that we consume. So we cannot live
12 without them. So it's up to you to create this atmosphere
13 where negotiations can be made and we can have the clean
14 air and they can make their money. But we want it now.
15 That's the big thing. So in the future, try to do as many
16 rules and regulations and help us. You are our savours.
17 Thank you.

18 CHAIRPERSON NICHOLS: Thank you.

19 Next?

20 MR. MATA: My name is Nathan, I'm with the East
21 Yard Communities for Environmental Justices. I'm here
22 today because I've been living in Commerce for 15 years
23 now. And I recently discovered -- it's been a year now

24 that I discovered that living so close to the railyards is
25 very dangerous. And I think that it's -- it was my

□

192

1 backyard growing up. I grew up in a house, and the only
2 thing that divided me from the railyards was an eight-foot
3 wall. You can imagine how bad that was.

4 To me, it feels like, you know, I should have
5 known this for all my life that it's bad, because, I mean,
6 growing up, my friends and family, they were all -- had
7 problems, you know. Some were asthmatic and other
8 respiratory problems. It feels like no one is actually
9 doing anything to protect the people. It feels like
10 everyone is thinking more about the railyards. And it
11 feels like you guys are being cowards to them. You're not
12 doing anything -- or you're not doing everything in your
13 power to protect the people, which is what you're supposed
14 to be doing is protecting us. It feels like it's getting
15 nowhere.

16 I hope with those new recommendations -- not the
17 staff recommendations, but the ones that were recommended
18 to you by the organizations that you do take these into
19 considerations, because I feel it's very important that
20 the generations that come after us, they don't have to

21 worry about the air they breathe and they won't have to
22 live like this in fear of what's going to happen to my
23 children, what's going to happen to me if I live here for
24 X amount of time. So I just hope that you make the right
25 decision in the end.

□

193

1 Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 MS. CLARKE: Hello, Ms. Nichols and Board. I'm
4 Madeline Clarke, and I live in Commerce. And I live every
5 day, day in and day out 35, 37 feet from a railroad track
6 that is constantly being used.

7 I'm here to represent my neighbors and my parents
8 who passed away with complications of living there.

9 Cancer, if you go down the block where I live,
10 which is cancer alley Aster Avenue, every other house has
11 an ill person with one form of cancer or another on Aster
12 Avenue.

13 Everything I say is going to be repeated, but
14 it's being repeated over and over again, but I also
15 brought a bunch of these forms to let you know the people
16 who could not come. And that is my statement.

17 And I hope you vote to help some of the people
18 who have to exist under these situations and environmental

19 problems in our neighborhood. If you help anybody, help
20 the people who are there who have to live under these
21 conditions.

22 And I thank you very much for your time.

23 CHAIRPERSON NICHOLS: Thank you.

24 Sir?

25 MR. EULA: Bob Eula, city of Commerce. Thank you

□

194

1 for coming and having us here.

2 I've been living there 64 years. I came when
3 there were Japanese farms behind my home, not the
4 railroad. The railroad is within 10, 15 feet of my back
5 doors.

6 The staff that you have given us if the railroad
7 does this, if the State does this, if the EPA does this,
8 but what is it doing for us?

9 The railroad the first quarter did 615 million;
10 second quarter, 404 million. That was BNFS UP; 362
11 million, 462 million. That's in the billions now.

12 I wonder if they could spend a few pennies and
13 move the containers from my back door that they wake us up
14 at 4:30, 5:00 in the morning, repairing them with air
15 compressors, changing tires, doing everything back there.

16 If they could move them into the railyards further in
17 where they used to be, and now they moved them to the
18 residential section.

19 Maybe they can spend a few pennies and move the
20 locomotives where they're load testing where they load the
21 test on the locomotives that go 15 minutes at a time at
22 full speed to see if they're capable of pulling a load.
23 That goes on. Last night, we had a load test, 45 minutes.

24 So nobody is shutting down engines or anything.
25 And we can't go along with voluntary with the railroad or

□

195

1 anything. We need things done. And if they can do these
2 little steps to help our neighborhood -- and I appreciate
3 Ms. Nichols and some of the Board that came down into my
4 neighborhood and I spoke to you about those matters.

5 It is critical not to say "if we can do this" or
6 "will we do this," it's to do it.

7 We used to have a lady come up here several times
8 in all these meetings, Maggie Holgein. She died of lung
9 cancer across from my home.

10 "Why do you stay there, Bob Eula?" Why do I stay
11 there? Because there's no property tax in the city of
12 Commerce. Where would I go and not have no property tax,
13 free bus, free medical, transportation?

14 Thank you.

15 CHAIRPERSON NICHOLS: Thank you, Mr. Eula.

16 Sir.

17 MR. AGUILAR: My name is Joe Aguilar.

18 I'm the mayor of the city of Commerce. You've
19 heard my community speak, and I'm here to let you know
20 that myself and the City Council are wholeheartedly behind
21 their concerns.

22 We're not asking for the railroad to voluntarily
23 do these things. We're asking that you, as a Board, put
24 some mandates on them. Give them some strong regulations
25 that they need to adhere to.

□

196

1 I worked for the city for 42 years. My children
2 grew up there. My grandchildren are now growing up there,
3 and I'm concerned about their welfare also.

4 I lived in a part that at Bandini Park that's
5 adjacent to the railroad and the 710 freeway.

6 So I'm probably -- maybe, hopefully not, I won't
7 get sick. Hopefully my children will not get sick. But
8 I'm here to ask for your support in these strong measures.

9 Thank you very much.

10 CHAIRPERSON NICHOLS: Thank you, sir.

11 All right. I believe that is the group from
12 Commerce. And I was next going to try to call on the
13 Excel High School group. I know you've traveled a long
14 way to get here, too.

15 MS. NATHANIEL: Hello. Hi name is Terranisha
16 Nathaniel, and I'm from Excel High School in the West
17 Oakland community.

18 I'm a Junior at Excel High School. My freshman
19 year at Excel High School, I joined a legal environmental
20 justice class. Our class focused on air pollution in the
21 neighborhood of our school. Me and the other students in
22 my legal studies class did an investigation on lead and
23 took samples from our school windowsills inside of our
24 classrooms. The samples were sent to a lab, and the
25 results indicated a high level of lead.

□

197

1 We also took indoor and outdoor samples and
2 continued to find high levels of lead in the air.

3 We identified a local metal resource recycling
4 company that seems to be the source. We use the media and
5 got in city council officials, fire departments, and
6 police departments to support and enforce the air
7 pollution laws.

8 This is an going process, and we are very pleased

9 with the support that we have received. However, this is
10 just one source of many in my neighborhood.

11 As we have learned more about air quality issues
12 and its effect on our environment, we have come to realize
13 that the cumulative impact of the pollution caused by
14 rail, trucks, and the port of Oakland is an ongoing
15 problem. The reason that I think this is important is the
16 railyard pollution to be reduced is because it is one of
17 many significant pollution sources in West Oakland.

18 Our class started with one source, and we are
19 seeing progress. We are hope you are willing to tighten
20 regulations since so many of my classmates and their
21 families live near the railyards. Please help us improve
22 the air we breathe.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 MS. WILSON: Hello. My name is Lexus, and I'm

□

198

1 here to speak on the health impacts of pollution in my
2 community.

3 I was a former resident of the West Oakland
4 community. I attend Excel High School, and I see the way
5 the air pollution effects my fellow classmates and family.

6 In class, my teacher gave me the county asthma rates, and
7 I saw that in the West Oakland community age groups zero
8 to 14, 112 per 10,000 hospital visits are children, but
9 only 18 per 10,000 for the entire state.

10 My nephew was two when he had a low level lead
11 poison caused by the air pollution in West Oakland. When
12 we moved, he was no longer effected by lead. He is now
13 four.

14 Railyards and locomotives are another type of air
15 pollution that affects our communities. I don't want
16 anybody else to go through what my nephew went through.
17 So I think we should do what we can to clean up the
18 railyards.

19 Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 MS. HILL: Hello. My name is Amber Hill. I'm a
22 student at Excel High School in West Oakland, California.
23 I'm also a resident of West Oakland.

24 My family visits schools and parks near the
25 railyards and my grandmother also lives on 10th Street

□

199

1 right near the Oakland railyard. The air pollution is
2 very big problem, because we breathe in unhealthy air
3 constantly.

4 I have asthma and have visited the hospital once
5 already due to the air pollution from the railyards. My
6 younger brother's fellow classmates also had to live with
7 having asthma and living in the neighbor that has polluted
8 air. The smell is unpleasant. And faster action is
9 needed to ensure that the railyards no longer put our
10 communities at risk.

11 Thank you.

12 CHAIRPERSON NICHOLS: Thank you.

13 MS. TOPIA: Good morning. My name is Pamela
14 Topia. I'm a student at Excel High School in West
15 Oakland.

16 According to the American Lung Association of the
17 State of California, long-term exposure to diesel
18 particles poses the highest cancer of any toxic air
19 contaminant. Cancer is not the only health problem caused
20 by diesel pollution. Exposure to diesel exhaust also
21 causes inflammation in the lungs, which may aggravate
22 chronic respiratory symptoms and increases the frequency
23 or intensity of asthmatics.

24 Because children's lungs and respiratory systems
25 are still developing, they are more susceptible than

□

1 adults to fine particles.

2 West Oakland asthma hospitalization rates are
3 almost five times higher than the state average for kids
4 ages zero to 14. We're not the only ones being affected
5 by diesel pollution. Richmond is another city with a
6 railyard, and asthma hospitalizations are almost three
7 times higher than the state average. We're counting on
8 you to make sure every kid in California has a chance to
9 live a healthy life.

10 Thank you.

11 BOARD MEMBER LOVERIDGE: Mary. Could I -- excuse
12 me.

13 CHAIRPERSON NICHOLS: Before you leave, just a
14 question here.

15 BOARD MEMBER LOVERIDGE: Are you a part of a
16 class at Excel, is that how you initially -- are you part
17 a club? What has brought you together as a class?

18 MS. TOPIA: It is actually the law academy.
19 We're taking the environmental justice class.

20 BOARD MEMBER LOVERIDGE: So it's a law academy at
21 Excel High School?

22 MS. TOPIA: Uh-huh.

23 BOARD MEMBER LOVERIDGE: All right. How did you
24 get down here today?

25 MS. TOPIA: We wanted to take a part and say

□

1 what's happening in our community. We want to advocate
2 for our families and our community about the pollution and
3 about the causes that are affecting our lives.

4 CHAIRPERSON NICHOLS: I think the question is did
5 you get a ride from someone or --

6 MS. TOPIA: No. We flew here.

7 BOARD MEMBER LOVERIDGE: And you've given this
8 message to other groups in Oakland, Bay Area --

9 MS. TOPIA: We actually -- this is our first
10 project since school started, and we're hoping to do many
11 more projects throughout the year.

12 BOARD MEMBER LOVERIDGE: Well, most high school
13 students never get to the point of doing this. So my
14 applause to the students at Excel High School.

15 CHAIRPERSON NICHOLS: We've met with some of your
16 fellow students -- I'm not sure about you personally --
17 have appeared before us in the past. So I think air
18 pollution organizing in your community has been very
19 effective.

20 I'll just start calling names from the list,
21 because I don't see any other organized groups that I can
22 put together here. Joy Williams from the Environmental
23 Health Coalition, and then Yolanda Chavez and Maria
24 Yolanda Lopez.

25 MS. WILLIAMS: Good afternoon. I'm Joy Williams.

□

202

1 I'm here from Environmental Health Coalition in San Diego
2 speaking on behalf of our members living downwind of San
3 Diego's railyard.

4 The San Diego railyard is a BNSF switch yard
5 immediately upwind of the environmental justice community
6 of Barrio Logan with impacts that extend far into down
7 town and across the bay to Coronado. It's one of the
8 smaller railyards with health risks approaching about 100
9 cancers per million at the nearest elementary school, but
10 that's very significant. It only seems small in
11 comparison to the really enormous risks at some of the
12 railyards.

13 BNSF is not committed to any mitigations for this
14 railyard. They're not required by the MOU or EPA. And in
15 their spoken comments at the community meeting on health
16 risk assessment, BNSF made it clear San Diego is not a
17 priority for their voluntary mitigations that they may be
18 willing to make elsewhere in California. So it's very
19 clear that communities downwind of this railyard will not
20 get any further reductions unless they're mandated to by
21 ARB.

22 I'd like to mention also that the health risk
23 assessment seriously underestimates the background risk
24 for these communities, because it left out the 10th Avenue
25 marine terminal, which is immediately adjacent to the

□

203

1 railyard and about a quarter mile from Perkins Elementary.
2 The health risk assessment included about six tons each of
3 diesel emissions from stationary sources and mobile
4 sources, but it left out the 32 tons from the 10th Avenue
5 marine terminal, which is right, here as you can see on
6 the map. I will give you handouts with this map on it.

7 So the impacted communities can't wait until BNSF
8 decides to do voluntary reductions. So I join with all
9 those who were here earlier and had to leave in asking for
10 strong enforceable rules to reduce the health impacts from
11 the railyards throughout California.

12 And thank you for your time.

13 CHAIRPERSON NICHOLS: Thank you. Thanks for
14 making the trip.

15 Couple of people who were earlier on the list I
16 skipped I just want to go back and call on to make sure
17 that they're called on if they're here. Maria Becerra,
18 Denise Heredia, Amarilis Mazariegos.

19 And we're down to number 59, Yolanda Chavez.

20 Maria Yolanda Lopez.

21 Martin Schlageter.

22 Mr. SCHLAGETER: This is Martin Schlageter with

23 the Coalition for Clean Air. I know Colleen Callahan is
24 next to me on the list, and she had to leave. And she has
25 submitted from American Lung Association comments in

□

204

1 general support of the overwhelming comments we've gotten
2 from the communities members here about the severity of
3 the issue.

4 I want to acknowledge ARB's health risk
5 assessment here. This, as was noted in the staff report,
6 is the first of its kind item and is a lot of work and
7 extremely important and has been of great help in
8 educating community members and ourselves about the risks
9 that we face. So thank you for that.

10 It does underscore the seriousness of the
11 situation and the need for action. The action that is
12 prioritized in the recommendations to you today, however,
13 is highly uncertain in its results, not that it couldn't
14 have the results. That's very clear in the documentation.
15 And we certainly support the pursuit of those results.
16 But there's a high degree of uncertainty both in whether
17 this money is going to appear and how it will be spent,
18 how it would be matched up with railroad industry money.
19 For example, your chart indicated a hope for a 50/50 split
20 throughout the chart. But in 2009, it looked more like a

21 25/75 split.

22 So this just is an underscore that we can't stop
23 at the recommendations for subsidy funds that certainly
24 would have a great impact, but need to continue to pursue
25 every means available to you and even pursuing means that

□

205

1 aren't today available to you, but that you seek to
2 increase your authority over, we encourage that.

3 What I would like to see is that full suite going
4 forward with some set of timelines to move this again to
5 certainly that there's progress advancing, stronger
6 federal action, more authority from your Board, and
7 certainly all the authority that you currently have being
8 used fully on some kind of timeline, including the cargo
9 handling regulations, which I believe can be tightened up.
10 And we can start by referring to our 2005 comments on that
11 matter about how that might be strengthened.

12 So I appreciate the time to be here in front of
13 you and encourage strong time-driven and ceaseless action.
14 Thank you.

15 CHAIRPERSON NICHOLS: Thank you.

16 Is Rita Rodarte here?

17 Chris Carney, you still with us?

18 MR. CARNEY: Hi. Good afternoon.

19 The Union of Concern Scientists strongly supports
20 efforts to reduce the health risks of exposure to diesel
21 exhaust and applauds the Air Resources Board for the
22 continued commitment.

23 Even with strong actions this Board has taken
24 over the past decade to control particulate emissions from
25 in-use and new diesel engines, there's still much work to

□

206

1 be done as evidenced by the health risk assessments of
2 California's railyards.

3 ARB staff has carried out an extensive review of
4 the technical options that are available to reduce diesel
5 pollution exposure at rail facilities and identified
6 numerous options from new cleaner locomotive technology,
7 in addition to changes in operational practices that can
8 further reduce exposure. And implementing these emission
9 reduction options will reduce PM, NOx, and in many cases
10 greenhouse gas emissions and are essential to protecting
11 the health of nearby residents. But to ensure these
12 measures are implemented and actually do reduce health
13 risks, there must also be accountability. Enforcement is
14 an essential tool of ensuring emission reductions occur
15 and that health risks are reduced. ARB's nearly weekly

16 announcements of diesel enforcement actions are a good
17 reminder of how important an enforcement component is to a
18 successful program.

19 Options to reducing diesel emission at railyards
20 also present a significant opportunity to reduce
21 greenhouse gas emissions. New railyard equipment often
22 emits less carbon emissions than the older equipment being
23 replaced. And electrification of equipment can provide
24 even greater NOx, PM and GHG benefits.

25 Investing in solutions today that reduce all of

□

207

1 these pollutants will help California's meet its air
2 quality and climate change goals. And this especially
3 makes sense when making 20 and 30 year investment in
4 equipment and infrastructure. Solutions that provide
5 immediate relief to the communities directly impacted by
6 rail emissions must not be compromised. But GHG emission
7 reductions should be maximized whenever possible.

8 So in summary, like many of the groups here, we
9 would ask that ARB follow a regulatory course of action to
10 reduce diesel emissions at railyards that is consistent
11 with ARB's legal authority, and that, in addition, ARB
12 should expand their analysis to quantify in greater detail

13 the potential GHG reduction for measures outlined in the
14 technical report.

15 Cost effective calculations of options which
16 reduce significant greenhouse gas emissions should include
17 not only NOx and PM, but the GHG benefits so that we can
18 protect the public health now with actions that will also
19 pay dividends in the future to help us avoid the worst
20 consequences of climate change.

21 Thank you very much.

22 BOARD MEMBER BALMES: Thank you.

23 Next is Scott Carpenter.

24 MS. WELDON: My name is Sarah Weldon. I'm
25 testifying on behalf of Scott Carpenter who had to leave.

□

208

1 He works for RJ Corman Railpower. RJ Corman
2 railpower has hybrid and green goat and multi-engine
3 genset locomotives that are CARB recognized ultra-low
4 emitting and have been instrumental in reducing emissions
5 in California railyards, and especially in the L.A. basin.

6 There are currently 155 locomotives by RJ Corman
7 in multiple states. In California, they can be found in
8 Roseville, San Joaquin Valley, and the L.A. basin.

9 RJ Corman will continue to advance technologies
10 and plans to further significantly reduce emissions in the

11 latter part of 2010 from their genset locomotives from
12 current models.

13 To this end, RJ Corman urges the continuation of
14 carbon incentive programs, as this allows a wider spread
15 of technology and brings the most advanced technologies to
16 the regions with the greatest needs. An incentive program
17 preserves the competitiveness of the goods movement
18 system, secures continued market for locomotive
19 manufacturers, while reducing emissions effectively to
20 benefit all stakeholders in California.

21 Thank you, Madam Chair and members of the Board.

22 BOARD MEMBER BALMES: Thank you.

23 Next is Kenneth Hofacker.

24 MR. HOFACKER: Members of the Board, thank you
25 for allowing us to attend today. And I'd like to just

□

209

1 spend a couple minutes telling you about some advanced
2 technology.

3 My name is Ken Hofacker. I work for Progress
4 Rail. It's a Caterpillar company, and we're a relatively
5 new locomotive business. We've spent a lot of years in
6 the rail services business, but now we're part of the
7 Caterpillar family, we can leverage a number of their

8 technologies. And we've been very pleased to have worked
9 with your staff.

10 We're working with members of the Union Pacific
11 Southwest Research, and we have a product that now will
12 meet the NOx levels of Tier 4. It will meet the PM levels
13 of Tier 4. And this locomotives -- there's actually two
14 and soon be five -- they are in service. And this
15 technology is moving forward with testing, and this
16 testing is being done under the close watch of staff and
17 their participation so that we can validate the product's
18 performance and we validate its overall emissions
19 contributions.

20 And so while you've heard a lot in the last few
21 hours about Tier 4 and its benefits, we believe we have a
22 solution that is close to being production intent and can
23 meet some of the needs of California and your air quality
24 standards that are very high. And, as you well know,
25 they're recognized throughout the world.

□

210

1 And what we would like to do is have you to
2 continue the incentive programs. We think this brings
3 about innovation. We believe incentives bring about our
4 ability to move faster.

5 And we also would like you to avoid any type of

6 regulatory actions. We believe any type of regulations
7 would only create more roadblocks, slow the process. And
8 more important I believe if you go the regulatory route,
9 you're not going to get the results. I believe railroads
10 will look for lower, easier solutions, less cost
11 effective. And you may see where you will not get the
12 results that you would had you stayed with the incentive
13 programs.

14 I thank you for your time. We appreciate the
15 opportunity to speak today and look forward to your
16 decision.

17 BOARD MEMBER BALMES: I'm going to call several
18 names. Nidia Bautista, Lupe Valdez.

19 MS. BAUTISTA: Good afternoon, members of the
20 Board. Nidia Bautista with the Coalition for Clean Air.

21 I should say welcome to my home town, because I'm
22 a valley native.

23 I do want to just underscore some of the
24 pollution from trains, just add to the devastating figures
25 that have been shared today.

□

211

1 In terms of regional air quality, the nitrogen
2 oxides from trains represents the second largest source in

3 the Imperial Valley in the Salton sea air basin. In the
4 Mojave air basin, it's the third largest source. In the
5 Sacramento region, it's the fourth largest source. And in
6 the San Joaquin Valley, it's also the fourth largest
7 behind ag equipment, trucks, and off-road equipment. And
8 in the South Coast AQMD, it's one of the top ten in terms
9 of nitrogen oxide. So clearly there is much to be done
10 about this source. This is strictly just the trains.
11 We're not even looking at the full operations of the
12 railyards.

13 I want to applaud the work that CARB staff did on
14 the document. I think the technical work was really good.
15 And I think the challenge before us today is now how do we
16 move forward in terms of the policies to actually utilize
17 that foundation to protect and to also prevent future
18 harms for communities where there might be growth in
19 railyard operations.

20 To that end, I think that's where we would echo
21 many of the sentiments that have been shared today, that
22 we are very concerned by the overreliance on incentive
23 funding as the main strategy. That should be a
24 complimentary effort. It shouldn't be the primary way
25 that we are getting these reductions.

□

1 And your interest in really developing this
2 coalition I think would be of stakeholders. Clearly, you
3 see there's many stakeholders here who would be interested
4 in engaging in that. But I think one of the first steps
5 for CARB to really develop that faith and that trust would
6 be to make a commitment to some rulemaking and
7 regulations, because I think a coalition of strictly a
8 strategy that's strictly focused on incentives will not
9 get you the benefits of really having all the
10 stakeholders. So I really encourage you to do that.

11 I hope you exercise your authority.

12 With the last minute I have left, I do want to
13 see if Ray Pok, who is a representative with Counselwoman
14 Tonia Reyes Uranga's office, is available to comment as
15 well. He wasn't able to add his name to the list. I'm
16 hoping you'll oblige him. Thank you.

17 MR. POK: Hi. My name is Ray Pok. I'm Chief of
18 staff to Councilwoman Tonia Reyes Uranga in the city of
19 Long Beach.

20 Thank you for accommodating this.

21 You've heard a lot from Long Beach
22 representatives. The councilwoman's district is adjacent
23 to the UP ICTF and the proposed SCIG.

24 Just want to echo Martin's and other people's
25 comments about incorporating strong timelines in some of

1 these. And the councilwoman also sits ton AQMD Board and
2 in strong support of their recommendations.

3 Our district does include a number of senior and
4 homeless, children's facilities in the area. And we are
5 also in strong support of the advantaged technologies
6 bonnet system.

7 Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 After Lupe Valdez, Mark Stehly, and Michael Barr.

10 MS. VALDEZ: Good afternoon, members of the ARB
11 Board.

12 My name is Lupe Valdez. I'm here to provide you
13 with an update on community activities.

14 I serve as Director of Public Affairs for Union
15 Pacific. Previously, I served as the Deputy Executive
16 Officer for the South Coast AQMD, as well as Public
17 Affairs administrator for Metrolink.

18 Today, I wanted to bring you up to date on new
19 developments.

20 Since 2005, both railroads combined have convened
21 32 public meetings to listen to residents' concerns and to
22 answer questions, identify and discuss potential actions
23 to reduce emissions from our operations.

24 Based on the HRA results and community feedback,
25 UP began evaluating possible actions to further reduce

□

214

1 emissions from our railyards. Let me give you a couple of
2 examples.

3 We listened to neighbors near our Commerce yard.
4 We have bought 71 ultra-low-emission locomotives which
5 reduce emissions by 85 percent for the South Coast basin
6 and assigned between eight to ten of them to the city of
7 Commerce railyard.

8 Commerce residents will also benefit from UP's
9 decision to upgrade the engine's powering the
10 transportation refrigeration units, TRUs, on 5,000
11 refrigerated cars well in advance of the regulatory
12 deadline.

13 At our Mira Loma automotive distribution
14 facility, residents expressed concern regarding trucks
15 entering and leaving through the Golina gate due to the
16 proximity of the high school. First, UP conducted an
17 engineering study for \$250,000 to evaluate the costs of
18 moving the Golina gate. The study found alternative
19 locations would result in slight increase in total
20 emissions. It did not change the DPM isopleth. However,
21 to respond to community concerns, we have diverted the
22 auto transport trucks to another gate.

23 Second, locomotive emissions have been reduced by
24 50 percent by replacing the old switchers located at that

25 yard with ultra-low-emitting locomotive, either green

□

215

1 goats or gensets.

2 Finally, the location of truck maintenance,
3 idling, and parking activity has also been modified to
4 respond to community concerns.

5 The following quote submitted in a letter to your
6 Board that lives in a home adjacent best sums up the
7 progress.

8 "Since the ARB and UPRR signed a memorandum of
9 understanding in June of 2005, I have noticed a very
10 significant reduction in idling near my home. The number
11 of calls I have made to the railroad has dropped from an
12 average of more than one per week in early 2005 to a
13 current average of about once every other month. While not
14 perfect, the situation has vastly improved from the way
15 things were."

16 UP is committed to improve the environmental
17 performance of our locomotive fleet and our railyard
18 operations. We are open to discuss any ideas would
19 residents that will reduce emissions and risk, improve
20 safety, comply with federal standards and be both
21 technically and operationally feasible and cost effective.

22 We look forward to working with your staff to

23 continue to bring clean locomotives to California.

24 CHAIRPERSON NICHOLS: Thank you.

25 BOARD MEMBER LOVERIDGE: Can I make --

□

216

1 CHAIRPERSON NICHOLS: Yes, you may.

2 BOARD MEMBER LOVERIDGE: Just want to acknowledge

3 Lupe Valdez's role in southern California of talking to

4 communities and talking to cities and being not only a

5 face but someone who can have important conversations

6 with. And just she actually has been terrific in my

7 judgment in terms of her outreach to communities and to

8 cities. I just want to acknowledge that.

9 CHAIRPERSON NICHOLS: Thank you.

10 Mr. Stehly.

11 MR. STEHLY: Yes, Chair Nichols, Board members.

12 My name is Mark Stehly. I'm the Assistant Vice

13 President of Environment and Research and Development at

14 BNSF Railway.

15 I'd like to touch upon a few points. First, the

16 railroads agree CARB's preferred approach should be an

17 incentive program to maximize the efficiency and benefits

18 of rail transportation. The transporting of goods by

19 railroads yields criteria emissions benefits, greenhouse

20 gas benefits, and freeway congestion benefits.

21 Rails look forward to working together with CARB
22 staff on the cofunding expectations of both parties.

23 While the railroads will continue to work with
24 CARB staff and other stakeholders to explore additional
25 reduction opportunities at railyards, it's important to

□

217

1 recognize environmental improvements resulting from
2 implementation of 2005 MOU and the completed health risk
3 assessments. Action is taking place.

4 For example, at San Bernardino at the entry point
5 to our yard that's closest to the highest risk area
6 identified in health risk assessment, BNSF installed a
7 state-of-the-art auto gate processing system that reduces
8 overall amount of time trucks spend entering and leaving
9 the facility. Before the gate went in, it was 9.7 minutes
10 for one to enter and exit. And now it's down to 2.7
11 minutes, a reduction in time of almost seven minutes. And
12 that's a 72 percent reduction.

13 It also reduces the overall dwell in the yard by
14 37 percent. We've instituted shut-down procedures for
15 trucks that are cuing during approach to the yard gate.

16 We voluntarily installed idle control devices on
17 ten rubber-tired cranes that are currently operating at

18 the facility.

19 There's some draft workshop information about an
20 ARB effort for idle control on yard tractors. We're
21 already instituting that in advance of your rulemaking.

22 Our yard tractors are only -- the worst of them
23 is three years old. We turn them over in a much faster
24 manner than was required under the ARB rules.

25 The trucks are newer -- drayage trucks are newer

□

218

1 than we thought them to be when we did the initial HRAs.

2 The Mayor of San Bernardino talked about the 262
3 new LNG trucks for JB Hunt. Ninety-seven percent of the
4 locomotives that come into California have idle control
5 devices on them and working.

6 And while the 1998 MOU was mostly about NOx
7 benefits, but there are significant PM benefits as well as
8 some of the older locomotives. We keep them out of the
9 basin, because they won't meet the -- we can't use them to
10 meet the MOU. And we are bringing a hydrogen fuel cell
11 locomotive into southern California next month.

12 BOARD MEMBER LOVERIDGE: Mary, could I --

13 CHAIRPERSON NICHOLS: Excellent. Yes, go ahead.

14 BOARD MEMBER LOVERIDGE: Pat Morris referred to

15 the risk of the yard as being unacceptable. And I guess
16 I'd like you to respond to that.

17 And second, if you could -- one appreciates the
18 different changes and the work that's being done. But do
19 we have any idea how much difference this is making to the
20 risk to whatever number we're talking about? It seems to
21 me in addition to doing things, we need to understand what
22 consequences it has for the risks to the people who live
23 around there.

24 MR. STEHLY: The sum total of all the things that
25 we are doing I believe reduces the risk by the end of

□

219

1 2010, the end of next year, will be about a 50 percent
2 50 percent reduction in diesel PM inventory. That's a
3 50 percent reduction in risk from the 2005 baseline. So
4 that's while -- we all believe there's more to be done,
5 there has been a lot of progress.

6 BOARD MEMBER RIORDAN: Let me follow along just a
7 moment. Are you saying that's 50 percent for the San
8 Bernardino yard?

9 MR. STEHLY: Right.

10 BOARD MEMBER RIORDAN: Correct. Okay. I just
11 also wanted to ask the idling device -- just remind me --
12 and it's probably good to put on the record. The idling

13 devices, they are to achieve what? Just remind me the --

14 MR. STEHLY: It's a clock that when the
15 locomotive is not being needed for air conditioning for
16 the person, not needed air to pump up the brakes on the
17 train, if the battery is good and it's warm, it will
18 automatically shut down the engine after 15 minutes.

19 We are working with GE to change that clock
20 setting to five minutes. So we're going through the GE
21 locomotives and changing the clock setting.

22 They have a maximum number of shut down -- if
23 they shut down too frequently, then maybe it's
24 counterproductive. We are going to experiment with that
25 in order to try to have them shut down more often.

□

220

1 BOARD MEMBER RIORDAN: Thank you.

2 CHAIRPERSON NICHOLS: Okay. Thanks. Obviously
3 this has been progress, but it's good to have it noted.

4 Mike Barr.

5 MR. BARR: Thank you very much.

6 AAR's members worked like this with states and
7 local governments around the country and certainly in
8 California at every one of the railyards, and some that
9 haven't been mentioned.

10 UP and BNSF have already invested a massive
11 amount in complying with regulations, federal and state,
12 and also complying with the MOUs that are groundbreaking
13 and unique for California. And also a you can hear, a
14 yard by yard throughout California.

15 As a result, AAR supports continuing the ARB rail
16 partnership in California.

17 AAR also supports the recommendation of the staff
18 not to regulate locomotives at this point.

19 And AAR further supports the staff's
20 recommendation to pursue a robust suite of incentives.
21 You saw the list earlier today. It is the largest list
22 we've had. There's quite a few millions of dollars there,
23 and the railroads are in support of that.

24 However, we don't join in all of the staff's
25 reasoning or recommendations in this report. They're

□

221

1 quite a few there. Two in particular I should mention.

2 AAR cannot support the staff's recommendation to
3 seek changes in federal laws to eliminate federal
4 preemption in California. We can't agree to a patchwork
5 of controls within a state or across the states, and we
6 strongly disagree with some of the statements here today
7 and in the written comments who say that ARB has broad

8 authority to regulate locomotives, railyards, or rail
9 operations even within limited boundaries.

10 Secondly, AAR fully supported 2008 U.S. EPA
11 locomotive rulemaking that led to Tier 3 and 4 and
12 enhanced locomotive rebuilding standards for existing
13 locomotives. We believe those EPA standards are rigorous.
14 They're based on sound science, sound economic evaluation.
15 They will bring newer and cleaner technology to markets as
16 soon as feasible and practical. And we therefore cannot
17 support staff's recommendation to change those new EPA
18 federal regulations.

19 One huge benefit I should mention of a
20 cooperative approach -- and it's been proven out now for
21 15 years -- is the avoidance of years of legal wrangling
22 and litigation with perhaps very uncertain outcomes.

23 And so at the end, we -- staff concluded that the
24 regulatory approach would really freeze in place the
25 technology of the past Tier 0. The members are interested

□

222

1 in Tier 2 or higher. The program the staff has laid out
2 will achieve that type of focused improvement in
3 technology and further benefits in California.

4 One thing that the freight railroads cannot do

5 now is they can't be expected or required to fund or
6 cofund both a regulatory program and an incentive program.

7 Thank you very much.

8 CHAIRPERSON NICHOLS: Thank you.

9 Kirk.

10 MR. MARCKWALD: Madam Chair, my name is Kirk
11 Marckwald for the California railroad industry.

12 I'd like to touch on a few items. Member Riordan
13 asked a clarification of reductions. And your staff has
14 identified that overall reductions will -- and risk and
15 emissions will be about 66 percent by 2020. We actually
16 believe that figure will be achieved by 2015.

17 Secondly, as you've heard, there have been many
18 improvements at the railyards suggested by residents and
19 community members. And I would hope you would urge all of
20 us to continue to talk to each other. We need to find a
21 way other than institutional action to make progress. And
22 there's nothing like success on small items to, in fact,
23 build trust and move forward together. So I think we've
24 made a beginning on that, and we need to do even better in
25 the future.

□

1 The railroads are not alone in favoring a broad
2 incentive program with railroad cofunding. A diverse

3 group of about 30 commenters, some of whom talked today,
4 which include regional and local elected officials,
5 regional air quality management district, business
6 organizations, chambers of commerce, locomotive and
7 pollution control equipment manufacturers all support an
8 incentive pathway as the preferred approach.

9 Now, some have said, why don't you do the
10 regulatory pathway and the incentive pathway at the same
11 time. And we do not believe such an approach will work.
12 It will sacrifice the potential emission reductions and
13 risk reductions available from innovative technologies
14 Tier 2 and beyond. Such regulations, were you to go that
15 route, will require the railroads to invest in technology
16 of the past, Tier 0. They only have one pot of money
17 available. It will go to satisfy your regulations and,
18 thus, won't be available to cofund the innovative
19 technologies, some of which you heard about today and not
20 be available at the same time they could be in California.
21 And I will also point out, those innovative technologies
22 have substantial greenhouse gas benefits as well.

23 There are some details that need to be worked
24 out: What period of time? What are the funding
25 commitments from the railroads? What's the universe of

□

1 locomotives that might be repowered? What other changes
2 need to be made in order to make this particularly
3 effective? And those should be worked out over the next
4 year and perhaps coming back to your Board on an annual
5 basis with updates on progress in that area and progress
6 on real risk reductions at the railyards would be a
7 prudent way to proceed.

8 The railroads' track record of working to this
9 agency over the past 15 years is steadfast. Whatever they
10 commit to, they do; be that the '98 MOU, the particulate
11 research of innovative program, the 2005 MOU. And you can
12 count on such engagement and commitment going forward as
13 well.

14 Thank you very much.

15 CHAIRPERSON NICHOLS: Thank you.

16 The ringing that was going on up here was the
17 phone that's underneath the desk. And when I picked it
18 up, it was one of those recorded messages saying that you
19 have a credit balance. I don't know who's tracked me down
20 here.

21 MR. MARCKWALD: Glad you had a credit balance
22 rather than a debit.

23 CHAIRPERSON NICHOLS: I don't know. Okay.

24 The last witness that was on my list was Barbara
25 Baird. You are it.

1 MS. BAIRD: Good afternoon, Madam Chair and Board
2 members. Thank you very much for the opportunity to
3 testify today.

4 I'd like to commend your staff for their hard
5 work in bringing this matter before the Board and the
6 great amount of research they had done, as well as the
7 many meetings that they had with us in helping to prepare
8 for this meeting.

9 I'd like to address two issues. One is the '98
10 MOU issue that has been presented and then secondly the
11 risk of litigation mentioned by Mr. Barr on behalf of the
12 railroads.

13 The staff report and testimony today shows that
14 the situation requires action by all agencies at local,
15 State, and federal levels.

16 As Mr. Greenwald had testified earlier, we
17 suggest that the should include regulation by the State
18 Board. Now, the staff presentation was concerned that
19 such regulation would give the railroads the opportunity
20 to terminate the 1998 MOU, but we think that's unlikely.

21 First, the railroads have spent a decade touting
22 their green credentials based in large part upon this MOU.
23 And without it, it would be much harder to get their
24 proposed expansion projects approved. So what would be
25 their incentive to back off?

□

226

1 Secondly, the MOU as presented by your staff
2 reports has been largely complied with. Why go backwards?

3 And, finally, the failure to achieve and maintain
4 the MOU goals would subject the railroad to further EPA
5 regulation. As Mr. Martinez mentioned, when the railroads
6 signed the MOU, they also signed a statement of principles
7 signed by CARB and EPA which stated that EPA and CARB
8 believe that to fully satisfy their obligations pursuant
9 to EPA's approval of the '94 SIP, the agreement must be
10 accompanied by EPA's commitment to promulgate federal
11 regulations to ensure that the reductions called for in
12 the agreement are credited and achieved.

13 EPA intend to commit to adopt regulations as
14 necessary that would assure that emission reductions
15 called for in the agreement for the South Coast are
16 achieved. So there is a risk to the railroads in
17 abandoning the MOU.

18 And just briefly with response to potential
19 litigation, yes, you could get sued. But it's not case
20 that all state and local regulations is preempted by ICTA.
21 In 2001, the Association of American Railroads filed a
22 brief in a case in the Surface Transportation Board where
23 they convened that the proper test was a balancing test as
24 to whether the local restriction unduly restricts the

25 carrier from performing operations or unreasonably burdens

□

227

1 interstate commerce and that that was a fact-bound
2 question. In fact, the Surface Transportation Board has
3 said in 2008 federal environmental laws, including those
4 that may be implemented or enforced by State and local
5 authorities, typically are not preempted.

6 Thank you for the opportunity to testify.

7 CHAIRPERSON NICHOLS: Thank you.

8 That concludes the list of witnesses. We still
9 have a few people waiving out there.

10 We have no resolution formally before us today.
11 This was a report that we had asked our staff for. But I
12 think it's appropriate that we should give them some
13 direction coming from the Board in any event, because
14 clearly this is an issue which is not simply going to go
15 away of its own accord or resolve itself easily.

16 And I think it's -- I was particularly struck --
17 actually, there was a number of very cogent presentations
18 that were made today. But one of them was the lady from
19 Commerce who said that we stood in the middle between
20 them, the community, and the people who are impacted and
21 the railroad. I thought that was actually a different

22 formulation than we usually hear. And it caused me to
23 think in a slightly different way about what our role is.
24 Because it's true we are not in a one-way
25 discussion or just a two-way discussion between ourselves

□

228

1 and the railroads; that there is not just a public
2 interest, but a specific stakeholder interest in play
3 here.
4 And I think we all since we first began focusing
5 on this issue again -- at least for me -- was in our
6 Oakland meeting when we heard from the people who live
7 near the port up there about their unique concerns, which
8 we have helped to clarify as a result of the research that
9 we've done and the mapping that we've done and so forth.
10 We have put out the information that makes it very
11 apparent that while there are issues that are statewide in
12 nature, there are also issues that are quite unique to the
13 individual communities that are adjacent to the
14 agglomerations of diesel-related activities, which the
15 railroads are not alone in. The major yards that are the
16 biggest risk areas in our state also are characterized by
17 a lot of truck traffic, ship traffic, et cetera. It's not
18 only the railroads, per se, but it does cause us, I think,
19 to look at the sources in a different way.

20 And so I know Mayor Loveridge has been wrestling
21 with this issue for a while, and I think he wants to make
22 a proposal. I'm going to start off by calling on him.

23 BOARD MEMBER LOVERIDGE: Let me just make a
24 series of very quick comments.

25 One, I think the staff work has been excellent,

□

229

1 the technical work, the analysis that we've seen in the
2 presentation earlier this morning.

3 Second, I'm a strong believer in faster freight
4 and cleaner air. I accept the premises that we all
5 benefit if more freight goes on rail than by truck.

6 It's also very clear to me, as somebody who's sat
7 here for a while, that we've come a long way. The MOU
8 there was a lot of controversy initially on, it's been
9 followed in good faith and we've come considerable
10 distance.

11 But at the same time, as you listen and ponder
12 today, it does seem to me that we need to do something
13 more, something more specific. As we focus on what works,
14 we're trying to deal with questions of health and
15 economics.

16 But as the mayor of Riverside -- I can look out

17 on the seventh floor I can see within sight line almost
18 this railroad yard in San Bernardino. And I thought Mayor
19 Morris' comments today were quite powerful that about the
20 impacts and his language was not acceptable.

21 It's clearly true there are many people that bare
22 responsibility for the land use decisions around that
23 railroad that not those that are in any way the railroad
24 companies have made.

25 But I would like to introduce -- and I think this

□

230

1 is less now a motion; more an idea. And I think I would
2 like to have Mary or James make comments about this.

3 But this is a direction again focused on the
4 high-risk railyards, in particular, the San Bernardino
5 yard. And I thought again that Pat Morris' call for a
6 potential template was an important idea.

7 You can see the motion that is written out before
8 you has four directions, although I think I at this time
9 withdraw the fourth one. But I think the most important
10 is the first, which would be to initiate a risk reduction
11 rule that would focus on high-risk railyards with
12 particular direction that the first in any such luck would
13 be the San Bernardino railyard.

14 The language here was, "the rule shall require

15 the railroads to implement the plan, except to the extent
16 that railroad established at this date is preempted from
17 requiring a specific mitigation measure and there's no
18 alternative non-preemptive measure available."

19 The question about potentially initiating further
20 control rules to try to get at the greatest achievement in
21 emission reductions from sources operating at high risk
22 railyards.

23 And the third was the opt-in applicability in
24 developing these rules, CARB staff should consider making
25 the rules applicable in an op-ed manner only to those

□

231

1 high-risk railyards for which local air districts request
2 applicability and committed to assist in providing the
3 technical legal support needed for plan development and
4 implementation.

5 Appreciated very much what Mark Stehly identified
6 as action. I think the problem is one probably of
7 monitoring the measurement. But seems to me given what
8 we've heard and given really the progress that's been
9 identified, we ought to know what is happening on these
10 yards and whether or not risks are actually being reduced.

11 I offer this as a kind of concept motion, and I

12 would ask either Mary or James if they would like to make
13 any comments.

14 CHAIRPERSON NICHOLS: I think I'm going to
15 actually defer to the staff at this point to respond in
16 terms of how they would -- essentially, these
17 recommendations were the ones that -- they pretty closely
18 track what the South Coast recommended in their testimony.
19 So we've obviously seen this before and had some
20 opportunity to comment on it.

21 Do you want to reflect how if staff would proceed
22 with this if the Board were to give you some direction?

23 I think the sense is we want to be giving not
24 only the public, but our own staff, a clear picture that
25 we are prepared to use regulatory authority in this area.

□

232

1 We are still very committed to the use of an
2 incentive-based program and to the work that's already
3 been done.

4 We're not intending to signal -- and actually,
5 except for one or two of the witnesses today, I didn't
6 hear a lot of inflammatory talk about the railroads
7 either. What I heard was people wanting to have the
8 certainty and the enforceability, if you will, of a
9 governmental action plan that they could look to and say

10 this is what is being done on our behalf as opposed to
11 simply being told we're taking care of it and we'll send
12 you a report, but we won't really let you be part of the
13 solution. So that's kind of the backdrop I think that is
14 coming from.

15 EXECUTIVE OFFICER GOLDSTENE: Clearly, it's going
16 to be a mix of efforts here that will get us to where we
17 all are trying to go.

18 I'd like to ask Bob Fletcher and Harold Holmes
19 who have seen Mayor Loveridge's proposal and the South
20 Coast letter to give us their thoughts on the different
21 ideas presented here.

22 STATIONARY SOURCE DIVISION CHIEF FLETCHER: This
23 is Bob Fletcher.

24 We certainly as staff have struggled with how to
25 affect the greatest reduction and risk at railyards.

□

233

1 The staff recommendations that we came up reflect
2 a lot of the technical work that we had done that
3 identifies where we see the largest potential for risk
4 reductions.

5 We've obviously struggled with the regulatory
6 approach. We have looked at the concept of risk reduction

7 audit and plan measures in the past. And as the South
8 Coast letter identifies that, you know, we would require
9 them to meet certain standards for reductions similar to
10 what we have for the California Hot Spots Program where
11 there is basically a standard in place set by the local
12 district that says you shall make a re-attempt to achieve
13 this. It's a little bit unclear as to what happens when
14 you don't achieve that as to whether you stop operating or
15 what exactly happens there.

16 But I think in this case in terms of establishing
17 the regulation, we'd have to look at the authority we have
18 for that. We haven't specifically looked at that
19 authority.

20 And then the question in my mind is, is the Board
21 then giving us direction also to include as part of that
22 risk reduction audit and plan the direction to proceed
23 with the regulation of the locomotives for which we have
24 control over? And those are the -- as we said before,
25 those are the older uncontrolled locomotives. We have a

□

1 concern that that may regulate us to the lowest tiers,
2 because the railroads would have the potential to simply
3 bring in Tier 0 locomotives and they are not subject to
4 our regulatory authority. And if you recall, we're trying

5 to get to Tier 3 and Tier 4.

6 So the federal preemptions would still play a
7 role. And I think in Mayor Loveridge's proposal as well
8 there's that caveat that you do as good as you can for
9 measures that are not preempted.

10 I think it is a rule that we could write. I
11 think it's physically possible. How we assess what the
12 cost and cost effectiveness of the measures are is a
13 little difficult, because it's going to be
14 railyard-specific in terms of how that's done. And what
15 we actually require in the railyards becomes a little bit
16 problematic because we don't necessarily know what sort of
17 operational measures they would come up with.

18 CHAIRPERSON NICHOLS: Let me interrupt here just
19 a moment.

20 Let's focus on number one, because I think it's
21 really the critical piece. It's a risk reduction rule for
22 each and every railyard. We've done the risk assessment.
23 We've asked the railroads to present us with their plans.
24 The plans were, in some instances, vague. In some cases,
25 they've actually done some things that would comport with

□

1 those plans.

2 This language says we would require them to put
3 into place the plan and implement it, except to the extent
4 they can show it's specifically preempted and there's no
5 other non-preempted measure available.

6 Now, obviously there's going to be a discussion
7 around that. That is going to require some serious
8 negotiation.

9 But this is the kind of thing where I think it
10 gives us an additional tool that we don't really have
11 today, at least that we haven't articulated that we have
12 today, to really focus these activities.

13 I mean, if every railroad had a Lupe Valdez or
14 equivalent who would go around to the communities and
15 figure out what needed to be done and had the power within
16 the organization to then actually get them to make some of
17 those changes, we'd probably be facing a different
18 situation today, because they are different. These
19 railyards are different from each other. We know they
20 don't all need exactly the same thing.

21 But on the other hand, we also, I think, are
22 facing a situation where people who live in these areas --
23 and particularly those, I must say, who they didn't move
24 there knowing there was a railyard there. The people in
25 Commerce were there before the railyard expanded to the

□

1 extent it has I think deserve something more specific and
2 concrete.

3 The San Bernardino situation may be a little bit
4 different.

5 But can we talk about, could we do this? Can we
6 get there?

7 BOARD MEMBER LOVERIDGE: I guess the other thing,
8 this was for only high risk. This wasn't for all 18.

9 CHAIRPERSON NICHOLS: You want to start with the
10 biggest ones.

11 BOARD MEMBER BERG: What is the definition of the
12 high risk, just so that I have some kind of --

13 CHAIRPERSON NICHOLS: There's an actual ranking
14 out there.

15 MR. HOLMES: There is a ranking and we use two
16 metrics. One is the maximum individual cancer risk, which
17 is the highest spot of exposure adjacent to the railyard.
18 And also we look at the broader exposure to the
19 individuals with greater than ten in a million. If you're
20 looking at those two metrics -- and that's somewhat of a
21 simplification, but probably the two most powerful
22 metrics. Then there will probably be three sets of yards
23 that clearly are above 500 a million for the maximum
24 individual cancer risk and effect more than 600,000 people
25 at greater than ten in a million. That would be BNSF San

1 Bernardino would be the four Commerce railyards and would
2 be UP ICTF, which is near the port.

3 BOARD MEMBER RIORDAN: Madam Chair, having had a
4 bit of a history with issues at the rail, I'd like to take
5 a little different approach, because I do think there is
6 something to be said for incentives and working together,
7 because I obviously have been a party to the negotiated
8 memorandums of understanding. And I think we've had some
9 real success.

10 CHAIRPERSON NICHOLS: I think we have.

11 BOARD MEMBER RIORDAN: And I think we have had a
12 good working relationship with most of the stakeholders,
13 including the communities, because certainly the
14 communities have participated.

15 There are people -- and I'm convinced there will
16 always be people who are unsatisfied. But by and large, I
17 think there has been progress.

18 I'm going to suggest maybe instead of initiating
19 a rule that we simply look at taking San Bernardino as the
20 prime example and say to the railroad, "Would you
21 participate with us in a risk reduction plan," and then
22 let's carry it out. And see if that approach works. It's
23 worked in the past. I don't have any reason to believe it
24 wouldn't work in the future.

25 I don't know if the folks that are here in the

□

238

1 room could commit to that at the moment. But I'd sure
2 like to give it a try and see if we couldn't use it as a
3 really good example, and not get caught up in the issues
4 of who has jurisdiction and whether or not we're going to
5 run into a court case. Just think we ought to give it a
6 try.

7 It takes time. There's no question it takes
8 time. But in your reference to the lady -- and I, too,
9 appreciated her conversation -- there is a balance here of
10 recognition of we need our railroads. We need the
11 operation in these railroads. We need the jobs in these
12 railroads. It moves our goods. And by golly, they're
13 very, very important to us.

14 At the same time, we have to be sensitive to the
15 neighborhoods. In some cases, the neighbors and the
16 railroads grew up together. And in the case of San
17 Bernardino, that's exactly what happened, because people
18 used to walk to work. And they came home for lunch, and
19 they walked back afterwards. This was a partnership. The
20 town grew right around that railroad.

21 So I think it's worth a try. I just happen to be
22 an optimist about that. I see the glass is half full and
23 not half empty.

24 CHAIRPERSON NICHOLS: Dr. Balmes had his hand up
25 next, if I may.

□

239

1 BOARD MEMBER BALMES: Actually wanted to take the
2 opportunity to support Mayor Loveridge's concept here. In
3 particular, I think we need to -- we may need to start at
4 San Bernardino, if that's number one on the list, but I
5 think there are other yards that also high risk that
6 communities live around. So I wouldn't be satisfied with
7 just a test case of San Bernardino.

8 And I feel as my role as the physician member of
9 the Board I have to point out something that I think is
10 obvious to everyone, but needs to be on the record, the
11 local impacts of diesel emissions are quite serious.
12 We're talking about cancer. We're talking about asthma.
13 And living right adjacent to these facilities is harmful
14 to one's health. It's that simple. So we have to take
15 action that's effective at reducing local impacts.

16 I appreciate as usual the Board staff has done an
17 incredible job with the technical evaluation of options.
18 And I understand very much why they made the
19 recommendations they did. It's really to get the biggest
20 bang for the buck, if you will. And that's an important
21 consideration. But I think we have to be mindful of the

22 trying to reduce the local impacts.

23 So I support the risk reduction rule concept that

24 Dr. -- giving you a degree now -- Mayor Loveridge put

25 forward.

□

240

1 And I guess I would say that while I'm very

2 supportive of the incentive approach, I think it's the

3 only way we're going to get improved locomotives.

4 I was pretty struck by how limited the resources

5 are now that are available for that incentive plan. I

6 don't think we are going to get very far towards the

7 billions of dollars that are needed with what we have in

8 place now. I mean, hopefully the economy will turn around

9 and we'll have greater resources available to the State to

10 provide public side of the incentive funds. But, you

11 know, I think it's a wish and a prayer right now we're

12 going to end up having enough to do this with just the

13 incentive program.

14 CHAIRPERSON NICHOLS: Ron, you had your hand up

15 next I think.

16 BOARD MEMBER LOVERIDGE: Just two points.

17 One, I was just looking at the handout that Pat

18 Morris had. He had down at the bottom after he talking

19 what's he done with the cooperation between BNSF and the
20 South Coast with JB Hunt and partnership with Loma Linda,
21 it says city of San Bernardino and its partners are
22 seeking over 24 million funding to help -- being sought to
23 help reduce air pollution, improve air quality in the city
24 of San Bernardino. I'm not sure how they arrived at 24
25 million, but I think this notion it's not simply a

□

241

1 railroad; it's a lot of stakeholders. And one of the
2 things that Pat Morris wanted was help. He said I need
3 help doing something about this.

4 But I would ask -- follow up Barbara Riordan if
5 Mark Stehly would respond to the question that was asked,
6 I would be interested in Mark's comment.

7 MR. STEHLY: In musing about listening to you
8 talk, I think Barbara's approach has a lot of merit. I'm
9 speaking with my upper management on the issues about this
10 in the ports on Thursday with our Executive VP of
11 Operations. And I certainly can take up it with them and
12 we can get a very early answer on how we'd be
13 interested -- how interested we are in doing it.

14 You already regulate transportation refrigeration
15 units, drayage trucks to our facilities, our yard
16 tractors, and our cranes. The only thing that's not under

17 regulation that really emits are the switch engines and
18 the line haul locomotives. And under the '98 MOU for
19 southern California, we will not have uncontrolled
20 locomotives or Tier 0 locomotives in the basin. So we
21 come right down to Tier 1 and Tier 2 locomotives. So you
22 already regulate almost everything there, except for what
23 EPA regulates as a mobile source.

24 BOARD MEMBER LOVERIDGE: Mary.

25 CHAIRPERSON NICHOLS: I'd like to respectfully

□

242

1 disagree with this. I mean, we do regulate pieces of
2 equipment. But that's where we're very good technically.

3 But what we haven't done is in a focused manner
4 with stakeholders, like local government, taken a look at
5 the overall operation of the yards. We heard a lot of
6 comments about which lines people are using through the
7 community, time of day, you know, the fence line, the
8 activities that could be conducted at the fence line
9 versus further inside the property.

10 I don't want to get in there and run a railyard.
11 I wasn't hired for that. I'm not trained for it.

12 But I think there is a concept here of looking at
13 a large source that's characterized by a lot of activities

14 which have individual regulations associated with them and
15 trying to come up with a plan that will reduce the overall
16 level of risk to the most immediately affected community.
17 That's really what we're talking about here.

18 Because I agree with you. We do have lots of
19 regulations. And I don't want to be put into a box of
20 saying that there's something wrong with what's going on
21 up until now, because I don't think there is. I think
22 we've been proceeding in a very systematic way. But I
23 think we've been proceeding in a narrow-minded way and not
24 looking as holistically as we should have or could have at
25 the problem and what the real impact on the communities

□

243

1 is.

2 So I guess I'm not going to be satisfied with
3 just an invitation to come talk. That's not going, to me,
4 reflect what an agency like this should be doing.

5 Now, obviously when ARB issues an invitation,
6 maybe it has A little more ump behind it than some -- or
7 other kind of non-governmental organization does it. But
8 I think we need to at least be prepared to indicate that,
9 you know, we will use the authorities that we have if
10 needed and as needed to actually make these plans work, or
11 we will be back here years from now with the children of

12 the people that were here testifying saying, you know,
13 where were you and what did you get accomplished? So
14 that's my concern, if we don't send that message.

15 And I realize there's been a lot of community
16 organizing done around these issues. I'm sure everybody
17 who was here saw the story in yesterday's Los Angeles
18 Times about the railyard issues and how people have come
19 together around them. And, you know, that doesn't mean
20 that they all the -- every illness that anybody attributes
21 to the living near a railyard is caused by railroads. I
22 think we can stipulate to that.

23 But we do know from research that we are,
24 ourselves, have done that these are the toxic hot spots
25 that we have in our state and that we're not doing all

□

244

1 that could conceivably be done to address it.

2 So it's a delicate balance. I understand. We've
3 tried very hard to forge a forthright and honorable
4 working relationship with the railroads. And I think they
5 have behaved in an honorable way. So I'm really trying
6 hard not to throw out the baby with the bath water, for
7 lack of a better clique.

8 But at the same time, I feel like we've been

9 hearing a steady drum beat of concern here and we haven't
10 been able to come up with anything up until now, other
11 than some good initiatives, but they're based on our sort
12 of traditional cost benefit, you know, dollars per pound
13 of conventional air pollutants. And we haven't
14 necessarily been exercising all of our creativity to the
15 extent that's appropriate given the size of the problem.

16 I see nodding, but not -- I welcome some
17 comments. We can still have some discussion here. Yes.

18 BOARD MEMBER BERG: I think the magnitude of the
19 problem, after visiting the UP yard yesterday and being
20 very involved with at least the East Yard Group and
21 attending several workshops, community workshops on the
22 rail issue, the question that I keep coming up in my mind
23 is if we were able to do everything on everybody's wish
24 list, is it possible for people to live across 30 feet
25 from a railyard cohesively, being there wouldn't be any

□

245

1 noise, there wouldn't be any pollution, is it that a
2 possible goal? Are they incompatible to begin with?

3 And I'm not saying that doesn't mean we didn't do
4 anything. I'm just saying there should be some realistic
5 expectations that I was amazed at the five-foot cement
6 block wall, that if I've gotten out of that truck, I could

7 have looked over into those people's yards. It's an
8 untenable situation.

9 And so given that and the fact that the four
10 measures on these lists, all of which I agree need to be
11 addressed, over what time frame and over what type of
12 investment that is going to be needed to make.

13 So what I don't want to do is mislead the
14 communities that we're going to be able to make a
15 significant difference in a short period of time, because
16 I'm a half-full glass kind of girl, but I just don't see
17 that that is very realistic.

18 And I do think we need to tackle it. I'm for
19 that. I'm for the risk reduction. I'm for getting the
20 railroads to the table. I'm for us exercising all the
21 authority we have. But this is a large problem, and I do
22 think that one of the areas where people are very
23 disappointed is when we give false expectations about what
24 truly can be done and the difference that can be made.

25 The load testing, I think that's probably a

□

1 federal requirement. And to pull these cars and those
2 types of things have to be done. And I don't think we are
3 in a position to be able to suggest to the railroad how,

4 like you said, they're going to run their business. If
5 we're in a position to be able to set performance
6 standards for clean air, absolutely. By how is that going
7 to control the noise? How is that going to control the
8 amount of cars that go up and down that line? I'm not
9 sure about that.

10 CHAIRPERSON NICHOLS: Well, I think that's a good
11 point. There are clearly other agencies that have to be
12 involved, including local government, as well as EPA, if
13 we're going to have an effective comprehensive approach.

14 I think the splintering of authority has been a
15 problem. And certainly there was a period of time when
16 the Air Quality Management District and ARB were at
17 loggerheads, which was a lost opportunity for sure. So
18 it's nice to see that we're coming back from that and have
19 an opportunity to move forward here.

20 I think we need to have a focus on this issue
21 that goes beyond just the rulemaking people at EPA -- at
22 ARB. I think it needs to be a team approach that includes
23 people from our legal division and people from our group
24 that works on environmental impact assessments.

25 I'm not only hopeful -- I'm convinced that

□

1 freight traffic is going to come roaring back and that the

2 railroads are going to do very well, because the nation
3 needs to have more goods going by rail. So this is not
4 a -- that's not even an option as far as I'm concerned.

5 The question is, as that begins to happen again,
6 can we direct some of the resources that are going to be
7 coming available and some of the new projects that are
8 going to be coming forward to clean up this last bit, not
9 so small last bit of impacted area in our state?

10 BOARD MEMBER LOVERIDGE: Well, I was trying to
11 emphasize the high risk, which is not everything. And
12 high risk is rather specific, rather than improve the
13 quality of life of everybody who lives around a railyard.
14 That was not the intent of the motion.

15 Can I ask one question? I'm not skilled with the
16 history of this, but has CARB looked at in the past any
17 kind of risk reduction kind of rules and what happened to
18 those looks?

19 STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well,
20 we have not looked at rules specifically for risk
21 reduction audit and plan. We have a lot of history with
22 the Hot Spots Program where essentially the plans were
23 laid out in statute. But we have not looked specifically
24 at a rule for this type of source category in the past.

25 CHAIRPERSON NICHOLS: I see Ellen with her head

□

1 down over there. She's been looking at the legal issues
2 here for a while. You want to weigh in on this?

3 CHIEF COUNSEL PETER: I think that there's
4 different concepts that have come up through this
5 discussion of the Board. And I think that one way to
6 approach it is to focus on the risk reduction regulations.

7 If we look at it from a performance type of view
8 and then try to move in a collaborative manner forward
9 with the railroads and community groups to not run the
10 railroads, but the basically look at the concept, it's
11 kind of a version of the indirect sources kind of view
12 of -- or hot spots kind of how to go forward. We can work
13 together with the local air districts and land use groups
14 and basically set a measurable level and a deadline and
15 then move forward in a collaborative way. And then base
16 the recognition and the direction from the Board that if
17 it doesn't seem to be working in a fairly short period of
18 time, then we go back to an initiating rulemaking.

19 The question is how do we put the -- what the
20 time line is, what kind of direction it would be. I think
21 a combination of the rule this risk rule approach and
22 using it with indirect sources and then linking it to
23 incentives. If we get a burst of incentive funds from
24 U.S. EPA next week when we have an opportunity to make a
25 pitch to the U.S. EPA people, that would give us a certain

□

249

1 amount of information.

2 But I also don't think that we can continue to
3 discuss it. We need to have like a plan forward,
4 timelines, and move forward with the regulatory backdrop.

5 So in terms of what to do here, I don't think
6 we -- you could do a motion. You could do direction to
7 the staff. You could give us concepts to look at.

8 But I think we do have a few different tools. I
9 was delighted to hear the South Coast management of
10 indirect sources earlier today when Peter Greenwald
11 testified, because I think that's something that kind of
12 is along the same kind of lines.

13 CHAIRPERSON NICHOLS: We want to look at
14 incentives.

15 We want to look at the South Coast authority.

16 We want to look at our own authorities in a more
17 focused way.

18 We want to invite the railroads to join with us
19 to have a discussion based at least initially I think on
20 the highest priority, most hazardous sites first, which
21 definitely puts San Bernardino at the top of the list and
22 perhaps use that as a template.

23 And we want to make it clear that regulation is
24 not just something never to be discussed, but that it, in
25 fact, we're going to be developing an approach to it as

□

250

1 part of the background of the whole program really. I've
2 never found it to be inconsistent in any other industry
3 that I've ever worked with to have a regulatory framework
4 and then have voluntary discussions. It's worked in every
5 other industry in every other type of rulemaking we've
6 been involved in that you can suspend the rules; you can
7 decide to put them in abeyance. But if you don't have
8 them, you don't really have very much to make sure that
9 everybody keeps the attention focused on making the
10 progress that needs to be made.

11 So I guess the way I would frame it is with those
12 elements, I'd like to see staff come back to us within a
13 pretty short space of time, like 120 days maximum, with a
14 specific plan. And I'd like there to have been some work
15 done in that period in terms of fleshing out these ideas
16 and having some conversations with the people that would
17 be our necessary partners in making this happen.

18 Is that sufficient guidance for you to know what
19 to do?

20 EXECUTIVE OFFICER GOLDSTENE: Yes, I think it is.

21 CHAIRPERSON NICHOLS: Do I see enough heads
22 nodding that I can say this is our direction?

23 All right. Then that's it.

24 EXECUTIVE OFFICER GOLDSTENE: Thank you.

25 CHAIRPERSON NICHOLS: You're very welcome. I

□

251

1 understand that we have nobody signed up for just the open
2 public comment period. So with that, we will be
3 adjourned. Thank everybody.

4 (Thereupon the California Air Resources Board
5 adjourned at 3:06 p.m.)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21
22
23
24
25

□

252

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, 2009.

ARB09250971.txt

18

19

20

21

22

TIFFANY C. KRAFT, CSR, RPR

23

Certified Shorthand Reporter

24

License No. 12277

25