

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

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

WEDNESDAY, DECEMBER 9, 2009

9:14 A.M.

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APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Dr. John R. Balmes

Ms. Sandra Berg

Ms. Doreene D'Adamo

Ms. Lydia Kennard

Mr. Ronald O. Loveridge

Mr. Ron Roberts

Ms. Barbara Riordan

Dr. Daniel Sperling

Dr. John Telles

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Ms. La Ronda Bowen, Ombudsman

Mr. Tom Cackette, Chief Deputy Executive Officer

Ms. Ellen Peter, Chief Counsel

Mr. Michael Scheible, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

Ms. Lori Andreoni, Board Clerk

Mr. Tony Andreoni, Chief, Research and Economic Studies,

RD

APPEARANCES CONTINUED

STAFF

Mr. Tony Brasil, Manager, In-Use Control Measures Section

Mr. Richard Corey, Assistant Chief, Research Division

Mr. Chuck Seidler, Air Pollution Specialist, Greenhouse Gas Reduction Strategies Section, Research Division

Mr. Erik White, Chief, Heavy Duty Diesel In-Use Strategies Branch

ALSO PRESENT

Mr. Bill Aboudi, AB Trucking

Dr. Janet Abshire, California Medical Association

Mr. Miguel Alejandre, Mandela High School

Ms. Yessica Alejandre, Mandela High School

Mr. Larry Allen, CAPCOA

Mr. Don Anair, Union of Concerned Scientists

Mr. Myles Anderson, Anderson Logging, Inc.

Ms. Jenny Bard, American Lung Association of California

Mr. Albert Batteate, CCA Batteate Livestock Trans.

Ms. Nidia Bautista, Coalition for Clean Air

Mr. Jeffrey Becker, Royal Trucking

Mr. Ron Berkan, Technicians

Mr. Bob Berry, Berry Brothers Towing & Transport

Assemblyman Bill Berryhill, 26th Asembly District

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Scott Blevins, Mountain Valley Express

Mr. David Blohm, Golden State Bridge, Inc.

Mr. Bryan Bloom, Priority Moving, Inc.

Mr. Steve Brink, California Forestry Association

Mr. Doug Britton, Britton Trucking Co.

Mr. Kevin Brown, KFB Engine Control Systems

Mr. Grant Campbell, Target Express, Inc.

Mr. Eric Carleson, Associated California Loggers

Mr. David Chidester, Central Cal Transportation

Mr. Michael Collier, C.D. Matthes, Inc.

Mr. Manual Cuhna Jr., Nisei Farmers League

Mr. Spencer Defty, Diamond D General Engineering

Mr. Ron Dacus, Northern California Port & Rail Truckers
Association

Mr. Sean Edgar, Clean Fleets Coalition

Mr. Tim Fortier, CTI

Mr. Randal Friedman, U.S. Navy

Ms. Michelle Garcia, Fresno Madera Medical Society

Mr. Glen Ghilotti, Team Ghilotti

Mr. John Hakel, AGC California

Ms. Fran Hammond, Marty Skoff

Assemblywoman Diane Harkey, 73rd Assembly District

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Dave Harrison, Operating Engineers Local 3

Mr. Robert Hassebrock, Weatherford

Mr. Mike Herron, EUCA

Ms. Bonnie Holmes-Gen, American Lung Association of California

Mr. Roger Isom, California Cotton Ginners and Growers Association

Mr. Jim Jacobs, Operating Engineers Local 3

Mr. Scott Kelleher, Redwood Coast Petroleum

Mr. Brandon Kitigawa, RAMP

Dr. Joseph Kubsh, MECA

Ms. Camille Kustin, Environmental Defense Fund

Mr. Marty Lassen, Johnson Matthey

Mr. Richard Lee

Mr. Michael Lewis, Construction Industry Air Quality Coalition

Ms. Doris Lo, U.S. EPA

Assemblyman Dan Logue, 3rd Assembly District

Ms. Gayle Lopopolo, Ganduglia Trucking

Mr. Bill Magavern, Sierra Club of California

Mr. Adriano Martinez, Natural Resources Defense Council

Dr. Steven Maxwell, American Lung Association of California

Mr. Robert McClernon, Trucking

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Jay McKeeman, CIOMA

Mr. Richard Mello, Northern Refrigerated Transportation,
Inc.

Mr. Rodney Michaelson, Bay Cities Paving & Grading, Inc.

Mr. William Miner, Jr. Tow & Salvage, Inc.

Assemblyman Roger Niello, 5th Assembly District

Assemblyman Jim Nielsen,

Mr. Albert Nunes, ACT Trucking, Inc.

Mr. Tim O'Connor, Environmental Defense Fund

Ms. Sofia Parino, CRPE

Mr. Anthony Patchett, National Port Drivers Association

Mr. Nick Pfiefer, Granite Construction, Inc.

Ms. Betty Plowman, CDTOA

Ms. Sofia Quinonez, National Port Drivers Association

Ms. Christina Ramorino, Roadstar Trucking, Inc.

Mr. Robert Ramorino, Roadstar Trucking, Inc.

Mr. Charley Rea, CAL CIMA

Mr. Peggy Reynolds, American Cancer Society

Mr. Ron Riemenschneider, Ideal Tractor, Inc.

Mr. Miguel Rocha, Mandela High School

Mr. Joe Rosa, L&M Renner, Inc.

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Julie Sauls, California Trucking Association

Mr. Matthew Schrap, CTA

Mr. Kevin Shanahan, Cleaire Advanced Emission Control

Ms. Sarah Sharpe, Fresno Metro Ministry

Mr. Chris Shrader, Cemex

Mr. Mike Shuemake, CVTR

Mr. Dan Souza, Mountain Valley Express

Mr. Michael Steel, Associated General Contractors of America

Mr. Grant Stickney, Peterson Tractor Co.

Ms. Pamela Tapia, Mandela High School

Mr. Robert Tennies, Western Truck Center

Mr. James Thomas, Nabors Well Services

Mr. Richard Tognoli, Tognoli Trucking & Grading

Mr. Doug Van Allen, BJ Services Company

Mr. Sean Venables, Duran & Venables, Inc.

Dr. Barry Wallerstein, South Coast AQMD

Mr. Corey Wardlaw, Wardlaw Trucking

Ms. Jane Warner, American Lung Association of California

Mr. John Yandell, Yandell Truckaway, Inc.

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1 PROCEEDINGS

2 CHAIRPERSON NICHOLS: Good morning, ladies and
3 gentlemen.

4 The reason for the delay is we have several Board
5 members who are trapped at airports because of de-icing of
6 planes. And so they had asked us if we could make an
7 adjustment in this schedule, which we're in the process of
8 trying to do.

9 So before we formally begin the meeting, just so
10 you all can plan accordingly, what we are going to do is
11 to open the meeting, take care of the consent calendar,
12 and move up the item on refrigerants, which is a
13 rulemaking item. And then after that, we hope that we
14 will have at least a couple of the delayed Board members
15 here and we can get started on the truck item, which I
16 assume is what most of you are here for.

17 The other thing I want to explain is that
18 although we don't generally take testimony out of order --
19 we take testimony in the order that people signed up -- we
20 make one exception for that, and that's for the people who
21 pay our salaries, and that's the Legislature. So we are
22 expecting a couple of legislators to show up. And when
23 they do, we will take them out of order, regardless of
24 what the item is that we're considering so they can get
25 back to their jobs.

1 So that's about as much as I can tell you for
2 purposes of planning. Obviously, everyone is welcome to
3 stay. But if you have some other errand that you need to
4 do or some other business that you need to do and you
5 wanted to step out, you would be very safe in coming back
6 no earlier than an hour from now.

7 And with that, I think we're just getting our
8 chairs settled here, and we'll get started in just a
9 minute.

10 I want to welcome everyone to the December 9,
11 2009, public meeting of the Air Resources Board. The
12 Board will come to order.

13 And we will begin, as we normally do, by saying
14 the Pledge of Allegiance. So would you please rise?

15 (Thereupon the Pledge of Allegiance was
16 Recited in unison.)

17 CHAIRPERSON NICHOLS: All right. The Clerk will
18 please call the roll.

19 BOARD CLERK ANDREONI: Dr. Balmes?

20 BOARD MEMBER BALMES: Here.

21 BOARD CLERK ANDREONI: Ms. Berg?

22 BOARD MEMBER BERG: Here.

23 BOARD CLERK ANDREONI: Ms. D'Adamo?

24 BOARD MEMBER D'ADAMO: Here.

25 BOARD CLERK ANDREONI: Ms. Kennard?

1 Mayor Loveridge?

2 Ms. Riordan?

3 Supervisor Roberts?

4 BOARD MEMBER ROBERTS: Here.

5 BOARD CLERK ANDREONI: Professor Sperling?

6 BOARD MEMBER SPERLING: Here.

7 BOARD CLERK ANDREONI: Dr. Telles?

8 BOARD MEMBER TELLES: Present.

9 BOARD CLERK ANDREONI: Supervisor Yeager?

10 BOARD MEMBER YEAGER: Here.

11 BOARD CLERK ANDREONI: Chairman Nichols?

12 CHAIRPERSON NICHOLS: Here.

13 BOARD CLERK ANDREONI: Madam Chair, we have a
14 quorum.

15 CHAIRPERSON NICHOLS: Very good. Thank you.

16 Before we get underway, I want to mention one
17 change which has been recently implemented. I believe it
18 was begun at the last meeting. And that is the use of a
19 consent calendar for items which we believe there is no
20 public comment called for where we haven't heard the
21 public wants to comment on issue. And it's just designed
22 to make our work more efficient by sparing us the lengthy
23 staff presentation that we used to normally get on these
24 items.

25 So at the beginning of each Board hearing, we

1 will consider and vote on the consent items as a group.
2 And so what I would do is just call up the item, and then
3 assuming that we don't hear from anybody who wishes to
4 speak on it, we would close the item, ask members to
5 disclose any ex parte communications, review the
6 resolution, and then take a vote. All the items on the
7 consent calendar would then be considered as a group
8 rather than separately. And there would not be any time
9 for staff presentation or further discussion.

10 However, this is not intended to preclude the
11 possibility that someone might wish to discuss an item.
12 And so if any Board member wishes to take an item off of
13 the consent calendar, they are welcome to do so.

14 We've described this process in the public
15 agenda. And so if there is anybody in the audience who's
16 here to testify on either of the two items on today's
17 consent calendar, I would appreciate it if you would
18 please notify the clerk right away, because otherwise,
19 we're going to be voting on the first consent items in
20 about two minutes.

21 For your information, the first two items on
22 today's consent calendar are eight research proposals and
23 consideration of proposed amendments to the regulation for
24 limiting ozone emissions from indoor air cleaning devices.

25 So I'm not seeing anybody moving, so I'm assuming

1 nobody is actually here to testify on either of those two
2 items.

3 Now are the remainder of my general
4 announcements.

5 I hope that you will sign up if you intend to
6 testify. There were staff outside the auditorium -- there
7 still are I believe -- with cards. And although you're
8 not required to, we strongly encourage you to include your
9 name on the speaker card.

10 And just as a little tip or saving time for
11 everybody, if you will put your name on the card, I will
12 have it in front of me. I will call your name when you
13 come up to the podium, and then you don't have to repeat
14 your name because we'll already know your name because
15 we'll have it on the card and in the record.

16 We are going to be imposing a three-minute limit
17 to begin with. If we have really overwhelming numbers of
18 speakers, we might limit the testimony even more so. But
19 normally we are able to give everybody three minutes.

20 And we really do appreciate it, if you have
21 written testimony, you not read the written testimony,
22 because we can read it much faster than you can say it.
23 So it's easier if you just speak in your own words and try
24 to summarize your main points rather than to read a
25 lengthy statement. The written testimony will be entered

1 into the record.

2 Now, I also am required to tell you that there
3 are emergency exists in the rear of the room. And if
4 there is a fire alarm, we are required to evacuate the
5 room and go downstairs and out of the building where we
6 are supposed to assemble in the park across the street and
7 wait until we get an all-clear signal. This has happened
8 in the past, so please be aware.

9 Otherwise, I think staff are available to direct
10 you to rest rooms, cafeteria, et cetera, if you're not
11 familiar with our procedures.

12 Do we have any other staff items that we need
13 before we begin with the consent calendar?

14 Well, actually, there is one item that we have to
15 do before we get to the consent calendar. And that is a
16 Resolution.

17 This is an important transition time in the life
18 of the Air Resources Board, because we are in the process
19 of going through a major demographic shift I would say,
20 speaking as one of those who's on the senior end of this
21 shift. A lot of people who came to work for State
22 government back in the 70s are now retiring.

23 And one of the key people who is retiring from
24 the Air Resources Board is somebody who's been a very key
25 member of our staff for quite some time now, and that's

1 Mike Scheible, who happens to be sitting at the table
2 right in front of us this morning. So I have a Resolution
3 that I want to read about Mike. And I'm hoping that my
4 fellow Board members will be willing to endorse it.

5 "Whereas, Michael H. Scheible has officially
6 announced his retirement from public service
7 after a successful 36-year career with the Air
8 Resources Board, faithfully serving six Governors
9 and every Chairman.

10 "Whereas, Mike began his career as a Peace
11 Corps volunteer in Brazil after graduating from
12 the University of Maryland with a Bachelor's
13 degree in chemical engineering and a Master's
14 degree in air pollution control.

15 "Whereas, Mike represented a new breed of
16 engineers that brought an awareness of both the
17 environmental and social implications of his work
18 to ARB in 1973 and quickly developed a reputation
19 for finding practical solutions to vexing
20 problems and seemingly impossible mandates, with
21 innovative analyses and tenacity of purpose.

22 "Whereas, Mike quickly rose through the ranks
23 and, in 1982, was appointed to be Chief of the
24 infamous Office of Program Planning, Evaluation,
25 and Control, ensuring that the agency spent not

1 one dime more than necessary."

2 There are people who will testify to that.

3 "Whereas, in recognition of his keen
4 intellect and outstanding leadership qualities,
5 Mike was appointed as a Deputy Executive Officer
6 in 1987 where he has faithfully served for over
7 20 years, earning admiration for his devotion to
8 the mission of cleaning up the air and reducing
9 public health risk.

10 "Whereas, Mike has consistently made sound
11 technical and policy recommendations to this
12 Board on a variety of air pollution control
13 programs, including, but not limited to, State
14 Implementation Plans, transportation fuels, air
15 toxics, identification and control, diesel risk
16 reduction, consumer products, goods movement,
17 energy, public health research, and most recently
18 played a critical role in developing California's
19 Scoping Plan for reducing greenhouse gas
20 emissions and was the co-founder and primary
21 architect of the low-carbon fuel standard.

22 "Whereas, Mike personified the can-do
23 attitude of the Board, motivating staff to go
24 above and beyond the norm, never accepting no for
25 an answer when staff pleaded there was a lack of

1 data and insisting they go out and find them;
2 using elegant calculations to inevitably and
3 annoyingly prove that his analysis was correct.

4 "Whereas, Mike was a one-man emissions
5 inventory machine, routinely finding the one
6 error in hundreds of pages of numbers or quickly
7 estimating emissions for any category.

8 "Whereas, Mike retires with a tremendous
9 respect of Board members and staff, regulated
10 industry, environmental advocates, the air
11 pollution control community, and every
12 Californian who breathes cleaner air.

13 "Whereas, Mike always took time to visit his
14 colleagues, especially those with dark chocolates
15 on their desk, often parting with a famous, 'bye,
16 bye, farewell.'

17 "Whereas, Mike walked the talk in his
18 personal life, commuting to work by a bicycle,
19 bus, carpool, or train for his career at ARB,
20 except for the one year he had access to free
21 parking because he was on a grand jury.

22 "Whereas, Mike has prepared well for this
23 transition in his life, having developed many
24 personal and professional friendships, a golf
25 game that includes four holes in one, and a

1 bright new red MINI Cooper.

2 "Now, therefore be it resolved, that the
3 Board gives tribute to Michael H. Scheible for
4 his contributions to the people of California and
5 extends a heartfelt thank you for his
6 accomplishments and the significant role he
7 played in shaping ARB into the innovative and
8 effective world leader in air pollution control
9 that it is today.

10 "Be it further resolved, that the Board
11 directs Mike to enjoy his retirement, traveling
12 the world, sampling culture cuisine, and of
13 course the regional brews of many interesting
14 locales.

15 "Executed at Sacramento, California, this
16 30th day of December" -- which is when he
17 actually retires -- "2009."

18 So I hope that I can get a second for this
19 resolution --

20 BOARD MEMBER SPERLING: Second.

21 BOARD MEMBER BERG: Second.

22 CHAIRPERSON NICHOLS: -- and that you will join
23 me in making this a unanimous resolution of thanks to
24 Mike.

25 Mike, thank you.

1 (Applause)

2 CHAIRPERSON NICHOLS: Yes, you are allowed to
3 speak for three minutes.

4 (Laughter)

5 DEPUTY EXECUTIVE OFFICER SCHEIBLE: Need to turn
6 the timer on.

7 Thank you very much, Chairman Nichols. It was an
8 honor to have you as Chair and Board members various times
9 in my career.

10 As you mentioned, I had the honor of working for
11 every Chair of the Air Resources Board that's been
12 appointed, starting with Dr. Haagen-Smit, when I tried to
13 cause trouble coming out of college in the late 60s.

14 I can't think of any better way I could have
15 spent 36 years as a professional career other than here in
16 California at the Air Resources Board. I thought I would
17 come to California, be here for a couple years, explore
18 the mountains and the coast, and go do other things.

19 But the job of trying to clean up the air,
20 especially in southern California, the innovativeness of
21 the Air Board, and mostly the teamwork of the hundreds and
22 hundreds and hundreds of staff people that I've worked
23 with, hopefully inspired -- I heard that many of them
24 feared me for a while but that lately I've mellowed and
25 it's been more of a collaborative relationship in terms of

1 challenging them intellectually. And all of you and all
2 of them have my utmost respect.

3 And we were just able over time to have a
4 tremendous, tremendous accomplishment when you see how
5 clean the air is now. It's not clean enough; but relative
6 to what it was when I started.

7 And little things, like when I walked into my
8 garage in the 70s, it smelled like gasoline. Hasn't
9 smelled like gasoline for a long time because of the
10 efforts of this Board. We've led the nation. I've
11 traveled around the world, and we've seen many of the
12 innovations going on there.

13 And just thank you very much for all the kind
14 words.

15 (Applause)

16 CHAIRPERSON NICHOLS: I want to add for anybody
17 who thinks they may have seen the last of Mike, he has
18 agreed to make himself available as a consultant to us on
19 some matters he has worked on before. So I expect we're
20 going to actually have a chance to see him around. He may
21 be getting away from the day-to-day responsibilities of
22 managing a large organization, but he's still going to be
23 giving us the benefit of his very large brain, which is
24 really something that is unique.

25 So thanks again, Mike.

1 Okay. We now turn to the consent calendar. The
2 first item on the consent calendar is Agenda Item Number
3 09-10-1, consideration of eight research proposals.

4 I'd like to ask the Board Clerk if there are any
5 witnesses who signed up to testify on this item.

6 BOARD CLERK ANDREONI: No, there are not.

7 CHAIRPERSON NICHOLS: Are there any Board members
8 who want to remove this item from the consent calendar and
9 have further discussion on it?

10 Seeing none, then we don't need to close the
11 record, because there's no need to close the record. If
12 all the Board members have had an opportunity to review
13 the proposals, could I please have a motion --

14 BOARD MEMBER ROBERTS: So moved.

15 CHAIRPERSON NICHOLS: -- to adopt the Resolutions
16 57 through 64.

17 BOARD MEMBER BERG: Second.

18 CHAIRPERSON NICHOLS: So moved and seconded.

19 All in favor please say -- oh, comment.

20 BOARD MEMBER SPERLING: I need to recuse myself,
21 because several of those are from U.C. Davis.

22 CHAIRPERSON NICHOLS: Okay. Thank you.

23 Are there any others who have ex parte
24 communication?

25 BOARD MEMBER BALMES: I think U.C. Berkeley also

1 is involved with one or more.

2 CHAIRPERSON NICHOLS: That leads us then -- we
3 will hear then from everybody other than Dr. Balmes and
4 Dr. Sperling.

5 All in favor, please say aye.

6 (Ayes)

7 CHAIRPERSON NICHOLS: Any opposed?

8 Great. Well, that works pretty well.

9 The next item on the consent calendar is Agenda
10 Item Number 09-10-2, proposed amendments to the regulation
11 for limiting ozone emissions from indoor air cleaning
12 devices.

13 This is a matter that we've reviewed extensively
14 in the past, and these are minor technical amendments.

15 Have any members of the public signed up?

16 BOARD CLERK ANDREONI: No one has signed up.

17 CHAIRPERSON NICHOLS: Any Board members want to
18 be taking this off the calendar?

19 All right. Then I will close the record on this
20 item, but I will indicate that the record will be reopened
21 when the 15-day notice of public availability is issued
22 and that any written or oral comments received after this
23 date, but before the notice, will not be accepted.
24 However, when the record is reopened, the public may
25 submit written comments on the proposed changes, and they

1 will be considered and responded to in the Final Statement
2 of Reasons for the regulation.

3 Are there any ex parte communications that any
4 Board members need to disclose?

5 Seeing none, we have before us Resolution 09-65.

6 Could I have a motion and a second?

7 BOARD MEMBER BERG: So moved.

8 BOARD MEMBER YEAGER: Second.

9 CHAIRPERSON NICHOLS: All in favor, please say
10 aye.

11 (Ayes)

12 CHAIRPERSON NICHOLS: Any opposed?

13 Very good. And it passes.

14 All right. We now turn then to Item 09-7, which
15 is a greenhouse gas regulation focusing on reducing
16 refrigerant leaks from commercial stationary refrigeration
17 systems.

18 The refrigerants that are used in these systems
19 are typically thousands of times more potent than carbon
20 dioxide, with leaks adding up to millions of tons of
21 carbon dioxide equivalent emissions.

22 Of all of the measures that are in the Scoping
23 Plan, this one stands to achieve the fifth largest
24 reduction in total greenhouse gas emissions. So it is a
25 very important step towards meeting our 2020 target that

1 is called for in AB 32.

2 Mr. Goldstene, would you please introduce this
3 item?

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

6 The high global warming potential sector is the
7 fastest growing sector on a percentage basis, thus
8 strategies to reduce emissions from existing and new
9 sources were an important feature of the Scoping Plan.
10 The Board has already considered and approved some early
11 actions for this sector.

12 Today, we will focus on existing commercial and
13 industrial refrigeration systems and how they are
14 serviced. This category represents one of the largest
15 sources of emissions in the high global warming sector.
16 The staff proposal is based on the use of best management
17 practices to reduce leaks and was developed through
18 extensive public process over the past year and a half.

19 Mr. Chuck Seidler from the Research Division will
20 provide the Board with the details of the proposal.

21 Chuck.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 AIR POLLUTION SPECIALIST SEIDLER: Thank you, Mr.
25 Goldstene.

1 Good morning, Madam Chairman and members of the
2 Board.

3 The regulation we are proposing today is the
4 Refrigerant Management Program, which addresses existing,
5 non-residential, stationary refrigeration systems.

6 I will begin with a brief overview of what we
7 will cover in this presentation, and a summary of key
8 points of the proposal.

9 --o0o--

10 AIR POLLUTION SPECIALIST SEIDLER: The
11 presentation is organized according to the topics listed
12 on the slide. We will present a summary of the proposed
13 regulations, give a brief background of the high global
14 warming potential sector, and discuss the extensive
15 stakeholder process used to develop the proposed
16 regulation.

17 We will also look at key provisions of the
18 proposed regulation, the environmental and economic
19 impacts, proposed modifications, rule implementation
20 steps, and finish with conclusions and a recommendation.

21 --o0o--

22 AIR POLLUTION SPECIALIST SEIDLER: The proposed
23 rule is one of the highest emission reduction strategies
24 from the AB 32 Scoping Plan. The goal of the proposed
25 regulation is to reduce leaks of high-global warming

1 potential refrigerants by requiring refrigerant leak
2 inspection and repair of large commercial refrigeration
3 systems.

4 The proposed regulation is cost-effective and
5 results in an overall net savings of about \$2 per metric
6 ton of CO2 equivalent reduced.

7 And we are developing a comprehensive
8 implementation plan that includes outreach and training.

9 --oOo--

10 AIR POLLUTION SPECIALIST SEIDLER: Before we
11 discuss the proposed regulation, I will provide some
12 background on the high-GWP sector.

13 --oOo--

14 AIR POLLUTION SPECIALIST SEIDLER: High-GWP gases
15 are compounds that are typically thousands of times more
16 potent as global warming agents than an equivalent weight
17 of carbon dioxide.

18 The proposed regulation addresses high-GWP
19 refrigerants, such as hydroflourocarbon, or HFC
20 refrigerants, which are greenhouse gases covered under the
21 Kyoto protocol and identified under AB 32.

22 The proposed regulation also addresses
23 ozone-depleting refrigerants that are also potent
24 greenhouse gases that have been used for decades but are
25 being phased out of production in response to the Montreal

1 Protocol due to concerns of their impact on stratospheric
2 ozone.

3 There are other high-GWP gases that make up the
4 sector. But as indicated, they are not used for
5 refrigeration and are therefore not addressed under this
6 proposal.

7 --o0o--

8 AIR POLLUTION SPECIALIST SEIDLER: Greenhouse gas
9 emission sources in the high-GWP sector include
10 refrigerants, halon fire suppressants, foam expansion
11 agents, and aerosol propellants.

12 --o0o--

13 AIR POLLUTION SPECIALIST SEIDLER: Large
14 commercial refrigeration systems, the category that the
15 proposal focuses on and shown in dark red, represents
16 about 34 percent of the emissions from the high-GWP sector
17 based on current business as usual, or BAU, estimates.

18 The other categories shown will be addressed
19 through separate measures that the Board has already
20 adopted or will be considering over the next two years.

21 --o0o--

22 AIR POLLUTION SPECIALIST SEIDLER: Under the
23 business as usual scenario, high-GWP greenhouse gases will
24 play an increasingly significant role in the future. This
25 is because we are used as substitutes for ozone-depleting

1 refrigerants, which are being phased out.

2 --o0o--

3 AIR POLLUTION SPECIALIST SEIDLER: Next, we will
4 summarize the extensive stakeholder process used to
5 develop the proposed regulation.

6 --o0o--

7 AIR POLLUTION SPECIALIST SEIDLER: For
8 approximately two years, staff has worked with a broad
9 spectrum of stakeholders to develop the proposal,
10 including facility owners and operators, refrigerant
11 manufacturers and distributors, the U.S. EPA, CAPCOA,
12 non-governmental organizations, trade associations,
13 technicians, and contractors.

14 We held five technical work group meetings and
15 seven public workshops throughout the state.

16 Technician and service contractor surveys,
17 numerous site visits, and many independent stakeholder
18 meetings were also conducted to ensure that we receive the
19 input needed to develop an effective regulation.

20 --o0o--

21 AIR POLLUTION SPECIALIST SEIDLER: Stakeholder
22 outreach included top-down strategies focusing on
23 contacting trade associations to discuss the proposal
24 throughout its development.

25 Trade associations and affected sectors contacted

1 included small business associations, agriculture, state
2 and local governments, as well as supermarkets and retail
3 food, medical facilities, manufacturing facilities, and
4 property management.

5 Stakeholders helped distribute information about
6 the proposed regulation, including frequently asked
7 questions and a refrigerant best management practices
8 brochure that ARB developed.

9 Bottom-up strategies were also employed and
10 included technician and contractor surveys, business
11 surveys, and a facility outreach pilot study conducted in
12 the city of Industry and city of Merced.

13 --o0o--

14 AIR POLLUTION SPECIALIST SEIDLER: Four key
15 themes emerged from stakeholder input and are reflected in
16 the proposed regulation, which are:

17 To focus on obtaining the greatest emission
18 reductions at the least cost;

19 Limit rules to common-sense best management
20 practices;

21 Create a level playing field by requiring that
22 all businesses use refrigerant best management practices
23 that have proven to be effective;

24 And, compliment existing federal rules and the
25 South Coast Air Quality Management District Rule 1415,

1 which are specific only to ozone-depleting refrigerants.

2 --o0o--

3 AIR POLLUTION SPECIALIST SEIDLER: Now we will
4 look at the specifics of the proposed regulation.

5 --o0o--

6 AIR POLLUTION SPECIALIST SEIDLER: The regulation
7 focuses on refrigeration systems containing more than 50
8 pounds of a high-GWP refrigerant as they result in the
9 greatest refrigerant leaks.

10 These are big systems. To put this into
11 perspective, that's as much refrigerant as used in
12 approximately 100 household refrigerator freezers or 23
13 stand-alone produce coolers. Thus, even the small systems
14 impacted by the regulation are actually quite large.

15 --o0o--

16 AIR POLLUTION SPECIALIST SEIDLER: The types of
17 businesses affected by the proposed regulation are those
18 with refrigeration systems containing more than 50 pounds
19 of a high-GWP refrigerant, which generally include
20 supermarkets and grocery stores, food and beverage
21 processors, cold storage warehouses, and industrial
22 process cooling.

23 These same businesses are already affected by
24 federal rules and/or the South Coast Air Quality
25 Management District Rule 1415 requirement, including leak

1 inspection, repair, and fees, although those rules are
2 specific only to ozone-depleting refrigerants and do not
3 address the growing problem of HFC refrigerant emissions.

4 Other types of businesses use smaller
5 refrigeration systems that typically use less than 50
6 pounds of refrigerant, and these businesses would not be
7 subject to the proposed regulation, other than required
8 service practices.

9 These businesses would include bars and
10 restaurants, gas stations, liquor stores, bakeries, as
11 well as office buildings.

12 Additionally, the rule would not apply to any
13 ammonia or carbon-dioxide-based refrigeration systems.

14 --o0o--

15 AIR POLLUTION SPECIALIST SEIDLER: Staff's
16 regulatory proposal has four main components. Those are:
17 Refrigerant leak inspection and repair; required service
18 practices; refrigerant sale, use, and disposal; and
19 facility, registration, reporting, and fees.

20 --o0o--

21 AIR POLLUTION SPECIALIST SEIDLER: The leak
22 detection and monitoring requirements ensure that leaks
23 are identified early. The systems with the greatest
24 potential emissions require more frequent oversight. For
25 example, automatic leak detection systems are required for

1 proposed regulation.

2 --o0o--

3 AIR POLLUTION SPECIALIST SEIDLER: The
4 Refrigerant Management Program will result in a reduction
5 of emissions of 8.1 million metric tons of CO2 equivalent
6 in 2020, which is the fifth largest greenhouse gas
7 reduction measure.

8 --o0o--

9 AIR POLLUTION SPECIALIST SEIDLER: Understanding
10 it is difficult to visualize eight million metric tons of
11 CO2 equivalent, as a comparison, a reduction of eight
12 million metric tons of CO2 equivalent will be similar to
13 removing 1.4 million vehicles from the road in a year or
14 saving the energy used in 1.5 million average California
15 homes for a year, or saving 18 million barrels of oil.

16 --o0o--

17 AIR POLLUTION SPECIALIST SEIDLER: Leak detection
18 and repair does add cost to businesses, but the added cost
19 to be offset by savings from reduced refrigerant leaks,
20 which means less refrigerant needs to be purchased.

21 The overall economic impact is an average savings
22 of \$2 per metric ton of CO2 equivalent reduced. The
23 economic impact for a given facility will vary. Some will
24 see a greater savings, whereas others would see a net
25 cost.

1 annual fees in the report will actually be used for
2 enforcement. And is that amount just over \$2 million per
3 year once we have fees completely phased in after 2016.

4 BOARD MEMBER TELLES: That's the number of costs
5 collected. But is that the cost for the enforcement?

6 AIR POLLUTION SPECIALIST SEIDLER: The fees are
7 based on the work with CAPCOA and enforcement staff and
8 are balanced with the need for enforcement. So they are
9 set to be approximately equal.

10 BOARD MEMBER TELLES: And what mechanism do you
11 have to get the fees out to the air districts which will
12 be doing the enforcement?

13 AIR POLLUTION SPECIALIST SEIDLER: To date, we
14 have been working with them for general agreements, and
15 there will have to be agreements scheduled and prepared
16 prior to the implementation in 2011 to formalize those
17 agreements.

18 CHAIRPERSON NICHOLS: Other Board members?

19 Yes, Ms. Berg.

20 BOARD MEMBER BERG: Good morning. I just have
21 one quick question for the recordkeeping and see that
22 we're also doing recordkeeping for sales, use, and
23 disposal.

24 And on the recordkeeping for sales, what's our
25 thinking? Why do we need that information specifically

1 from those that are selling the refrigerants?

2 AIR POLLUTION SPECIALIST SEIDLER: The primary
3 purpose is for the requirement for emissions verification.
4 Emissions will be verified based on what facility's report
5 is being produced with a broad comparison to statewide
6 sales. So the primary reason is for emission
7 verification.

8 BOARD MEMBER BERG: Thank you.

9 CHAIRPERSON NICHOLS: Okay. We do have a list of
10 witnesses who have signed up on this item. But as I
11 indicated earlier, we were expecting to have visits from
12 several members of the Legislature who have taken the
13 trouble to come across the way to speak us on the item
14 we're taking up later on trucks. A couple of them have
15 indicated they're willing to wait until the item is
16 called, but one is not able to stay. And so I would like
17 to call now and interrupt our presentation on the
18 refrigerant rule -- just put that aside for a moment --
19 and focus your mind on trucks instead.

20 And we will hear from Assemblymember Jim Nielsen.
21 Mr. Nielsen, good morning.

22 ASSEMBLYMAN NIELSEN: Good morning, Chairwoman
23 Nichols. And I thank you very much for the indulgence and
24 the courtesy, honorable members of the Air Board.

25 I appear here to intrigue your fastidious

1 adherence to weighing of economic as well as environmental
2 considerations of regulation.

3 Little historical perspective. As a new Senator
4 30 years ago, I worked with then Speaker of the Assembly
5 Leo McCarthy on something that was creating the Office of
6 Administrative Law, a means and a way to make sense of the
7 regulatory process in the state of California to allow
8 input. There is input here, of course, today. But one of
9 the key elements of that way back then was the
10 consideration of economic impacts of regulation.

11 One of the former leaders of that organization,
12 one of the formative leaders and I, have agreed over the
13 years that economic considerations have been given the
14 short shrift in terms of consideration of all agency's
15 regulations.

16 This particular one that you are entertaining
17 here a little bit later today has and will have profound
18 impacts. Driving down the Sacramento Valley this morning,
19 I passed some 80 trucks. And I was struck that may be a
20 little sad that maybe there weren't more trucks because
21 the economy is in dire straits.

22 So what I'm entreating the Board today is as you
23 deliberate and consider advancing your regulations that
24 those regulations be tailored and weighed -- not just
25 consider the economic impact, but actually weigh them and

1 consider all best economic regulations, that would ensure
2 that whatever we do does not displace businesses, does not
3 disemploy workers in the state of California.

4 And I don't argue just at this moment of great
5 economic strife in the United States and in California.
6 And I would argue that regulations have been no small
7 measure, a bigger impact on what the state of California's
8 economy is today than the macro economic imperatives that
9 we're dealing with.

10 And therefore we, as policy makers, must be
11 extraordinarily sensitive to those economic
12 considerations. And I know you've put this thing over for
13 additional economic consideration for nearly a year now.
14 But I would argue that it may well be in order to put it
15 over for even yet more time to consider that impact. Just
16 to consider it, but to also weigh the economic impact.

17 I do appreciate my opportunity to comment briefly
18 to you here today. I do not want to indulge you very
19 much, but I also would wish you a very Merry Christmas.
20 Thank you.

21 CHAIRPERSON NICHOLS: Thank you very much.
22 Appreciate your input.

23 (Applause)

24 CHAIRPERSON NICHOLS: Okay. We will now --
25 sorry. Did anybody else wish to be taken out of order?

1 Go ahead. Good morning, Mr. Logue. I just saw
2 you yesterday.

3 ASSEMBLYMAN LOGUE: Yes, thank you. Good to see
4 you again. Thank you very much.

5 My name is Assemblyman Dan Logue, and I'm
6 grateful for the opportunity to voice my opinion in this
7 important hearing.

8 I do not disagree that we should work
9 collectively to improve the state's air quality and
10 provide a healthy environment for our families and all
11 California. However, in this current form, the Board
12 regulation places a significant economic risk on the
13 businesses of today and jeopardizes the future of the
14 viability of the trucking industry, which is already
15 reeling from unprecedented financial turmoil and drastic
16 decline in business which has been brought about by a
17 natural decline in emissions.

18 There are several claims used to support the
19 implementation of the highly restrictive diesel
20 regulations, one of which is that diesel particulate
21 matter causes 4,000 premature deaths per year in
22 California. There is substantial epidemiological evidence
23 from six independent sources that there is no current
24 relationship between the fine particulate matter and the
25 premature deaths in California. The evidence CARB relies

1 on is not sufficient to establish the true casual
2 relationship in California.

3 Also, serious doubts have been raised about the
4 professional qualifications of CARB staff members who
5 prepared the key reports on PM2.5 and premature deaths.
6 Further, the final version of this report and relevant
7 public comments were never shown to outside peer reviewers
8 as required by state law. Diesel toxicity and PM
9 pollution in California are at record low levels.
10 California is the fourth lowest total adjusted death rate
11 among United States and the fewest premature deaths in the
12 county. Modifying diesel emission engines in the way
13 proposed by CARB may be of little value because the
14 particulate matter fallacy and chemical composition on PM
15 in California versus other states. The scientific issues
16 should be fully addressed by CARB before enacting
17 regulations which will cost upwards to \$10 billion to
18 implement.

19 On a legal note, after historical review of
20 CARB's scientific review panel on toxic air contaminants,
21 there was found substantial evidence that the appointments
22 of nine members of the SRP as of 1998 were not made in
23 accordance with relevant provisions in Section 39670 of
24 the California Health and Safety Code with the intent of
25 the original legislative bills created by AB 1807 (Tanner

1 and Laffeyette). These legal issues should be fully
2 addressed by CARB before implementing costly regulations
3 on the people of California.

4 In passing the December 12th, 2008, regulations,
5 CARB effectively ignored the economic arguments and placed
6 about 500 written or verbal public comments. One
7 California contractor gave particular telling comments:

8 "The effect on my company is 100 percent of my
9 portable equipment will be illegal to use or sell in
10 California, 100 percent of my trucks, 90 percent
11 off-highway. These regulations all at once, this is a
12 destruction of my capital. I spent 44 years in business
13 gaining this equity. These regulations have destroyed it
14 all at once, destroys the business middle for the
15 entrepreneur who saves money, invests it, and provides
16 employment for tax basis for our economy."

17 I'd like to conclude that as an Assemblyperson
18 who's the Vice Chairperson of Jobs and Economic Recovery,
19 this state is in an economic crisis, and that this is not
20 the time to move forward on diesel emissions when the
21 science has not been proven, that there is so much
22 disagreement in the public's view that this is a time to
23 step back from this issue and allow the science to be
24 provided to prove whether or not this is an issue that is
25 damaging the health of Californians.

1 I will say this. If you look at people's life
2 expectancy being greatly reduced, it will be because they
3 don't have jobs and through the stress of not being able
4 to pay for their bills and support their family.

5 I know that you have a tough task ahead of you.
6 I respect all the work that you do. But I'm urging you --
7 and I also have a letter here from 52 legislators in the
8 State Assembly that are asking you to do the same, to
9 please back off on this issue and give these truckers and
10 the businesses of California a break.

11 Thank you very much.

12 (Applause)

13 CHAIRPERSON NICHOLS: Mr. Logue, I want to ask a
14 question.

15 Many of the points you made we will be discussing
16 later when the item is before us on the agenda. But there
17 were A number of comments that I heard in your oral
18 testimony that I know have been discussed before or were
19 commented on in the record and in letters back and forth.

20 But there were a couple points that you made that
21 I hadn't heard before, so I'm wondering if you have a
22 written version of the testimony that you just gave us.
23 And if you could leave that with our staff or give it to
24 us, we would appreciate it.

25 ASSEMBLYMAN LOGUE: I will not only be happy to

1 leave it with you, but I'd like to have your response on
2 it if you would. Thank you very much.

3 CHAIRPERSON NICHOLS: Thank you.

4 (Applause)

5 CHAIRPERSON NICHOLS: We're not dealing with this
6 issue at this time.

7 BOARD MEMBER TELLES: I wanted to comment on --

8 CHAIRPERSON NICHOLS: Okay.

9 BOARD MEMBER TELLES: I wanted to make a comment
10 on the letter that was sent to the Board members dated
11 September 9th, 2009.

12 This is a letter written by the 52 legislators
13 you've referred to. The Board didn't get that letter
14 until November 17th. And only after a request by Board
15 members did I have a copy of the letter. It was not
16 forwarded by the staff to the Board. I just wanted to
17 make a public announcement of that.

18 CHAIRPERSON NICHOLS: Thank you.

19 It was responded to, as is the normal practice of
20 the Board, by the legislative staff.

21 We've got another member here.

22 ASSEMBLYMAN BERRYHILL: Thank you, Chairman.

23 Assemblyman Bill Berryhill. I appreciate the
24 opportunity to come and speak before the Board.

25 I'm here today to strongly urge this Board to

1 consider delaying the implementation of the truck and bus
2 regulation and the in-use off-road diesel regulations.
3 The implications of these regulations and the questions
4 surrounding their formation are so great they desperately
5 require more time for review. We're currently, as
6 Assemblymember Logue eluded to, we're in the greatest
7 recession since the Great Depression. And the fact this
8 Board is considering adopting these regulations without
9 fully assessing the economic impact is simply appalling to
10 me.

11 CARB staff was asked last year to monitor the
12 economy and assess its impact on the trucking industry and
13 the emissions. However, what I believe staff most
14 importantly failed to do is adequately assess how the
15 trucking industry could afford to comply with these new
16 regulations at this time should they be implemented.

17 My constituents have consistently informed me
18 that the \$2 billion in proposed assistance for compliance
19 with these new regs has failed to materialize and will
20 only be accessible for major companies, if at all.

21 In some cases, some companies will be forced to
22 replace entire trucks, rather than replacing or
23 retrofitting an engine at the cost of about 250,000 or
24 more. During these economic times, that is simply
25 unattainable for most of these small businesses.

1 The recent study completed by Sacramento State
2 University on the economic impact of regulations to the
3 State found that the total cost of regulation in 2007 was
4 nearly half a trillion dollars, or more than five times
5 our annual budget, and costs us nearly 4 million jobs.
6 You all know what our budget is like. You all know what
7 the economy is like.

8 Folks, I want you to remember those numbers as
9 you consider whether or not to postpone these regulations
10 and especially at a time when we struggle harder than ever
11 to solve our budget crisis.

12 Let me say this in some uncertain terms. These
13 regulations will further imperil our state budget and
14 economy by causing us jobs and tax revenue.

15 I also want you to consider another cost that I
16 don't believe your staff has adequately considered. Your
17 staff was charged with assessing the health risk posed by
18 agricultural trucks exempted from the truck and bus
19 regulation. Well, I would like you to ask your staff to
20 review the health risks of not exempting trucks from this
21 regulation. But these health risks are not measured by
22 particulate matter in the air. These health risks are
23 measured by more people on public assistance, because they
24 have been laid off by their employers in order so that
25 businesses can afford to comply with these regulations.

1 Again, this is costing jobs, and it's putting people in
2 food lines. And we can't afford to do this right now.

3 I ask you, is this healthy for this state? Is it
4 healthy to have more children whose parents can't provide
5 them adequate health care because we've put them out of
6 business?

7 I also find it very troubling that this Board
8 would consider implementing regulations based on the work
9 of a staffer who was fraudulent in asserting the very
10 qualifications that they needed to do the work. This is
11 crucial to me.

12 I also find it extremely disturbing that not all
13 members of this Board were informed of this fraudulent
14 activity when they convened to deliberate the truck rule.
15 In fact, it took nine months for the full Board to learn
16 of this disaster, despite staff and the Chair being aware
17 of it. That's unconscionable to me. It is that kind of
18 closed-door policies and arrogant defiance of a fair
19 process that has led to the public's current loss of faith
20 of government.

21 Dr. Telles further notes that the study in
22 question was not authored by a single professional
23 statistician, a study that requires valid statistical and
24 scientific research.

25 I simply ask that these studies conducted that

1 lead to the development of these regulations be given
2 sufficient time to be thoroughly peer reviewed before the
3 regulations are implemented. I urge you to do so for your
4 own credibility as a governing agency, if for nothing else
5 if you wish to be seen as a body with any sort of
6 scientific credibility and not a political entity with a
7 skewed agenda.

8 Finally, members, I leave you with a reminder
9 that earlier this year nearly half of the legislators --
10 as Assemblymember Logue pointed out, legislators sent
11 letters to the Governor and CARB urging them to delay
12 these regulations. This is in addition to the thousands
13 of comments the Board has received from members of the
14 public protesting these regulations.

15 To implement these regs without further review
16 would send a very sad message to the people of this state
17 and would mark a very low point of an unelected
18 bureaucracy with a reputation of one that is out of touch
19 with reality and unconcerned with the plight of this
20 state, willing to pursue their own personal agenda.

21 Ladies and gentlemen of this Board, I implore you
22 not to let this happen for your own credibility and your
23 own reputation, if not for the welfare of the state.

24 And let me just further add that the cloud that
25 is over this Board right now and this agency by the

1 fraudulent gentleman who did the study is a very bad
2 cloud, and it sends a bad message for all agencies and all
3 the scientific community. You're talking about real
4 lives, real jobs, that you have the power to regulate one
5 of the few businesses in California that you can actually
6 lay down \$20,000 and have your own business. And you are
7 on the edge of putting all these folks out of business at
8 a time when our state and our budget is absolutely in the
9 tank and getting worse.

10 I implore you to not implement these regulations
11 at this time, to do further peer review, and let's get it
12 right when we get it. Thank you.

13 (Applause)

14 CHAIRPERSON NICHOLS: Thank you, Mr. Berryhill.

15 I want you to know that when we get to the point
16 where we're actually holding a hearing, I'm not going to
17 let you interrupt the proceedings with either applause or
18 boos or anything else.

19 Mr. Berryhill, we appreciate you coming over.
20 I'm sorry that you can't stay, but I assure you that we
21 will take your comments. And I hope you will have
22 representatives here who will report back to you on the
23 discussion and the consideration this Board will go
24 through. It will be extensive, I assure you.

25 We had one other member of the Legislature who

1 was here who had indicated he could wait. But since we
2 heard from three of your colleagues, if Mr. Niello is here
3 and would like to speak, we should probably do this all at
4 once.

5 BOARD CLERK ANDREONI: He's not here.

6 CHAIRPERSON NICHOLS: He'll come back later.

7 Very good. Thank you.

8 Can we get back now to the refrigeration rule
9 then?

10 We had a list of witnesses. We have ten of them
11 beginning with Randal Friedman representing the
12 United States Navy, followed by Larry Allen on behalf of
13 CAPCOA, and Janet Abshire from the California Medical
14 Association.

15 Good morning.

16 MR. FRIEDMAN: Good morning, Chairman Nichols and
17 Board members.

18 Randal Friedman on behalf of the U.S. Navy.

19 Very quickly, we have no general issues with this
20 rule as it applies to our installation facilities and
21 stationary equipment used for buildings.

22 We did have concerns as it applied to our
23 tactical equipment that services weapon systems. We've
24 worked with your staff. We're very appreciative of their
25 open mind in looking at this and looking at some

1 contractual issues with the rule. I think we have
2 everything worked out, and I just want to again express
3 our appreciation for the work your staff did. Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 Larry.

6 MR. ALLEN: Good morning, Madam Chair and members
7 of the Board.

8 I'm Larry Allen, Air Pollution Control Officer
9 for San Luis Obispo Air Pollution Control District, and
10 here today representing CAPCOA.

11 And I'd like to start by commending your staff on
12 the very comprehensive evaluation analysis that they've
13 performed on this regulation for over two years now. They
14 first came to CAPCOA to talk about the need for this
15 regulation back in early 2008, and they've worked with us
16 throughout the process. They kept us apprised every step
17 of the way. I would say it's a model of collaboration
18 between ARB and the districts. They've worked with us in
19 estimating the number of sources that would be affected
20 and the size range of those sources and in developing a
21 fee structure that could support the compliance efforts
22 that the air districts will undertake in implementing this
23 regulation.

24 So CAPCOA believes that the regulation is quite
25 an important piece in implementing AB 32. It will provide

1 significant emission reductions of very high global
2 warming potential pollutants. It's highly cost effective.
3 And it's going to keep us moving down the path of reducing
4 greenhouse gases and protecting the climate in California
5 and actually our economic future that depends on keeping
6 temperatures at a certain level here.

7 So we look forward to continuing to work with the
8 Air Resources Board and with your staff in implementing
9 this regulation. We would urge your Board's adoption of
10 it.

11 And if I could take just a moment more, I'd like
12 to offer my personal congratulations to Mike Scheible on a
13 well-deserved retirement. And on behalf of CAPCOA, thank
14 him for all of the work that he has done for the Air
15 Resources Board and working with the air districts in
16 helping to maintain the partnership that we enjoy with
17 ARB.

18 He leaves behind a tremendous breadth of
19 knowledge that will be sorely missed in the state of
20 California. And he has an incredibly high level of
21 integrity that we appreciate. You always know where you
22 stand with Mike. And we appreciate that and wish him well
23 in his retirement.

24 CHAIRPERSON NICHOLS: Thank you very much.
25 Appreciate that.

1 Janet Abshire, are you here, California Medical
2 Association?

3 Barry Wallerstein from the South Coast Air
4 Quality Management District.

5 DR. WALLERSTEIN: Good morning, Chairman Nichols,
6 member of the Board.

7 I'm here also to lend our agency's support to the
8 proposed regulation that is before you.

9 As you heard in the staff report, we actually
10 have a similar regulation that we established back in
11 1991, and we have worked very closely with your staff on
12 the development of the proposal that is in front of you.

13 We intend upon your approval of the staff
14 proposal to conform our local regulation to the State
15 regulation. And we will move forward also as proposed
16 with some sort of memorandum of agreement or something of
17 that nature to work on the compliance side of implementing
18 this program. We think it's a very, very important
19 program and also believe that this has really been a model
20 for the air districts working with the State Air Resources
21 Board on climate change and something we hope to duplicate
22 as we hope to move forward. So we urge your yes vote.

23 CHAIRPERSON NICHOLS: Thank you, Dr. Wallerstein.

24 This is one area where the South Coast has moved
25 forward on its own. And you've already accomplished a

1 lot. So we're building on your good work as well. Thank
2 you.

3 Okay. Tim O'Connor from the Environmental
4 Defense Fund, and then Don Anair from the Union of
5 Concerned Scientists.

6 MR. O'CONNOR: Hi. Good morning.

7 My name is Tim O'Connor, an attorney with the
8 Environmental Defense Fund located here in Sacramento.

9 We've been participating in this rulemaking
10 since -- probably for about a year, year and a half now.
11 I'd just like to tell the Board the staff has done a great
12 job on putting this together working with both the
13 environmental community -- actually, outreaching to the
14 environmental community to say we'd really like for you
15 guys to take part in this. And we've tried to step up to
16 that challenge and become versed in this issue.

17 I think the reg before you does achieve some
18 really important things. Not only is it going to reduce
19 costs on businesses through reduced leaks that are leaving
20 their equipment that they're paying every month or every
21 year to be refilling their refrigerant that's leaking, but
22 it's also saving a tremendous amount of emissions. Eight
23 million metric tons by 2020 is obviously nothing to laugh
24 at.

25 It is important to note that this industry will

1 still have another eight million metric tons that it's
2 still going to be emitting after full implementation of
3 this rule. We'd like to urge the Board not to check the
4 box this sector is taken care of once we hopefully pass
5 this rule at the end of the day today.

6 There is one important improvement that the
7 environmental community, EDF, aligned with many other
8 NGOs, which you'll probably be hearing after me, would
9 like to bring to your attention. And I've spoken to a few
10 of you about this important change that we feel is
11 necessary and would achieve both increased emission
12 reductions and cost savings on a statewide basis.

13 The easiest thing that businesses can do under
14 this regulation is to go online and file a small report
15 with the agency about where they're located, what type of
16 equipment they have, and sort of what business they are.

17 Right now, it's important to note that the
18 numbers we have for affected business is really an
19 estimate based on an extrapolation of data from South
20 Coast, as we heard both from Barry and from Larry. And
21 that really means that we don't necessarily know where all
22 the businesses that are affected by this particular
23 regulation are going to be located, where we need to focus
24 our outreach efforts, where the enforcement programs need
25 to be developed and implemented. And creating a reporting

1 tool like the staff is going to be doing is going to be
2 key to doing that.

3 However, what we're looking at is a delay of that
4 reporting framework for the majority of businesses for
5 four and six years down the road. By creating a reporting
6 tool and requiring businesses to actually take part in it
7 in the early stages of the program, what we do is provide
8 information to enforcement programs and public awareness
9 programs to help create an outreach campaign, which is
10 necessary, as well as we create a dedicated interaction
11 between businesses and the State that's going to improve
12 the non-compliance rate that we've seen by South Coast's
13 program as being possible when we don't have active
14 oversight.

15 There, after a decade of implementation of the
16 rule, we had a 20 percent compliance rate. We can't have
17 that here. If we have a six-year delay in the
18 registration with businesses with the State, we could be
19 seeing a tremendous amount of non-compliance and would be
20 undermining the ability of the regulation to achieve both
21 reductions as well as emissions as well as costs.

22 So we implore you to consider that when you're
23 considering final adoption of the regulation. And I
24 appreciate the time here today. Thank you.

25 CHAIRPERSON NICHOLS: Thank you.

1 Mr. Anair.

2 MR. ANAIR: Good morning, Chairman Nichols,
3 members of the Board.

4 I just wanted to state our support for this
5 regulation that's been proposed on high-GWP gases. Union
6 of Concerned Scientists obviously recognizes that CO2 is
7 not the only greenhouse gas that's important. And,
8 clearly, we support ARB's efforts in looking at all
9 sources of greenhouse gases and would offer our support
10 for this regulation today.

11 And we did submit comments along with Mr.
12 O'Connor and other groups that state some of our concerns
13 with the rule. And basically we're supportive of it, but
14 we would like you to consider accelerating some of the
15 reporting of the medium and small facilities that Mr.
16 O'Connor mentioned just briefly before.

17 So I will just close with thank you again for
18 proposing this regulation and urge you to adopt the rule.
19 Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 Bonnie Holmes-Gen.

22 MS. HOLMES-GEN: Good morning, Chairman Nichols
23 and Board members.

24 Bonnie Holmes-Gen with the American Lung
25 Association of California.

1 And the American Lung Association is also here to
2 join with our colleagues in support of this regulation and
3 the mitigation of high global warming potential
4 refrigerant gases.

5 And we think this is an important component of
6 the State's efforts to meet AB 32 targets. And we believe
7 this regulation has been well designed and it's a cost
8 effective regulation.

9 We do also support the recommendations of our
10 colleague from Environmental Defense Fund to strengthen
11 the regulation.

12 And, of course, the American Lung Association has
13 been very concerned about global warming because of the
14 increased temperatures that pose a significant threat to
15 air quality and public health. We're very concerned about
16 increases in ozone pollution, heat waves, wildfires,
17 harmful smoke exposures. And this measure, along with the
18 other package of measures you're adopting under AB 32,
19 will do a great deal to greatly mitigate those impacts.

20 So we urge you to move forward, and we thank you
21 for the chance to testify. Thank you.

22 CHAIRPERSON NICHOLS: Thank you.

23 Before we go further, staff, do you want to
24 report on your rationale for the lengthy delay for the
25 medium and smaller size units?

1 RESEARCH DIVISION ASSISTANT CHIEF COREY: Yes.

2 This is Richard Corey.

3 And very much appreciate Tim and the other
4 comments. And this is something they've discussed with
5 us. And it's about the moving up the registration
6 reporting. And they've been very helpful throughout the
7 process, constructive.

8 But with respect to this issue, here's the
9 primary concerns we've had. They relate to the phased-in
10 nature. We looked at the number of businesses impacted,
11 the need to conduct outreach, the need to train those
12 ultimately impacted by the businesses, we arrived at a
13 phased-in approach. We think we need the time to, one,
14 have the initial large facilities; they come in first.
15 All facilities repair leaks -- conduct inspections and
16 repair leaks from the outset.

17 What is staggered are the registration reporting;
18 large coming first in 2012, and 2014 medium. We think we
19 need, one, that time to conduct the training and outreach
20 necessary. We want to make sure the web-based reporting
21 system is in place and effective, which is really a
22 critical element to make the reporting effective. And,
23 two, we think we can learn from that initial reporting
24 phase and maybe make adjustments if they're necessary
25 before the much larger number of businesses come in.

1 This is opposed to having them all come in, due
2 date, on a single day. We think using a phased-in element
3 will allow for more effective implementation of the
4 program, which we think is critical to ultimately making
5 this thing work.

6 CHAIRPERSON NICHOLS: Thank you.

7 Ron Berkan representing technicians.

8 MR. BERKAN: Good morning.

9 I've been involved with, let's say, the technical
10 side and explaining how refrigeration systems and so forth
11 work with the counterparts on this particular project.
12 And I think they've been doing a pretty good job.

13 One of the things that I think has been missed is
14 responsibility of the manufacturers of the refrigerants,
15 because a lot of these things are blended refrigerants and
16 they have to be destroyed, because they won't allow people
17 to reconstitute them into a new product, like the R-22.
18 And that's one of the big problems is it could cost
19 two-and-a-half dollars a pound to destroy it. And during
20 these economic times -- and I handle a lot of
21 refrigerants. I know that my handling has gone down 90
22 percent. So people are just dumping it.

23 So I think the manufacturers should, since they
24 make it, actually be responsible to take it back at no
25 charge since they formulated it. And this would increase

1 the recycling or proper handling of the refrigerants.

2 There's other things that happen. Like, they're
3 constituting new refrigerants all the time. And these
4 guys make billions of dollars. And, you know, refrigerant
5 probably can sell for \$0.89 a pound and make money. It's
6 ten bucks a pound now. And with no justification. Nobody
7 argues about it, like, why does the chemical composition
8 cost this and this? And it costs more to destroy it than
9 what it costs them to make it.

10 So I think one of the things that should be added
11 to your effort is a responsibility -- like the tire
12 industry, the television industry, they have a cost. Does
13 that --

14 CHAIRPERSON NICHOLS: Built in for the take back.

15 MR. BERKAN: Built in. So that was my thought,
16 that -- forget the leak. The guy that's recovering it is
17 probably dumping more gas than grandma's refrigerator is
18 leaking.

19 CHAIRPERSON NICHOLS: Thanks. This rule won't
20 yet get us to grandma's refrigerator, but still it's some
21 pretty big --

22 MR. BERKAN: Well, they got a law that the
23 refrigerant that's in your hose is called de minimous and
24 you can destroy that. Most hoses have more refrigerant
25 than grandma's refrigerator and it costs her 100 bucks to

1 -- anyway, that's my point.

2 CHAIRPERSON NICHOLS: Thank you, sir.

3 Jill Why not, did you want to testify on this
4 item?

5 DR. WALLERSTEIN: She left for another meeting.

6 CHAIRPERSON NICHOLS: And Bill Magavern.

7 MR. MAGAVERN: Good morning, Madam Chair and
8 Board members.

9 Bill Magavern, Director of Sierra Club,
10 California in support.

11 We don't hear a lot about refrigerants as a
12 source of greenhouse gas emissions. But it's a reminder I
13 think that getting our greenhouse gas emissions reduced is
14 going to take not just the solar panels and electric
15 vehicles that people are justifiably very excited about,
16 but also some more mundane measures like plugging leaks in
17 refrigerants. This, as you know, is a significant source
18 of greenhouse gas.

19 And also reminder that carbon dioxide is not the
20 only greenhouse gas, and we need to take action across a
21 range of them.

22 So we appreciate the staff's work on this. We do
23 support the strengthening proposal from Environmental
24 Defense Fund that we speed up the implementation of the
25 reporting, because we can't afford to lose a lot of time

1 in bringing people into compliance.

2 I also really second the proposal by Mr. Berkan
3 that manufacturers be required to take back the
4 refrigerants. Extended producer responsibility is a
5 policy adopted by the Integrated Waste Management Board.
6 It's part of the safer alternatives legislation for toxic
7 in products that's being implemented by the Department of
8 Toxic Substances Control, and I think it really makes a
9 lot of sense that the entities that are producing should
10 be responsible for end-of-life disposition.

11 So we recommend that you adopt and hope that
12 addressing this problem will also go to the national
13 level, because we've got cost savings here as well as
14 greenhouse gas reductions. And we cannot lose the
15 opportunity to do the kind of common sense good
16 housekeeping that would be called for by this rule.

17 Thank you.

18 CHAIRPERSON NICHOLS: Thank you, Mr. Magavern.

19 That concludes the list of witnesses that was
20 presented to me.

21 Is there anybody else who was here who wanted to
22 comment?

23 Seeing none, I think we can then close the
24 record.

25 But, Mr. Goldstene, did you have any further

1 comments?

2 EXECUTIVE OFFICER GOLDSTONE: Well, Chairman
3 Nichols and Board members, I want to recognize staff's
4 work with stakeholders to arrive at a balanced proposal
5 that delivers very large reductions cost effectively.

6 I also want to note staff's work with the South
7 Coast AQMD and U.S. EPA to ensure the proposal harmonizes
8 with the existing requirements.

9 And in addition, I want to acknowledge the very
10 important role that our partnership with CAPCOA has
11 played. I know that was already mentioned by Larry and
12 Barry. But that really was very good work and effort.

13 CHAIRPERSON NICHOLS: Thank you.

14 I would be interested in some further staff
15 response on the take back concept. As indicated by Mr.
16 Magavern, this is a policy that's being increasing
17 utilized in other areas of handling chemicals, especially
18 toxic chemicals. And I'm curious about why that wasn't
19 pursued here.

20 RESEARCH AND ECONOMIC STUDIES CHIEF ANDREONI:
21 Hi. This is Tony Andreoni. I'll try to go ahead and
22 respond to that.

23 The comment that Ron Berkan makes is very timely.
24 It's something we would like to consider, and it's
25 something we have kind of started the discussion on.

1 Two areas that we think are already in existence
2 is the fact that we have a number of California-based
3 reclaimers, recyclers. They're in business to actually
4 take this refrigerant, go through a process of reusing it,
5 and being able to reestablish that refrigerant for
6 specific uses.

7 We think those businesses are in place to be able
8 to handle that. And as we look forward to working on
9 further efforts on new systems working with the California
10 Energy Commission, that's something we may look very
11 closely at on establishing new refrigerants for those
12 specific purposes and including those as part of maybe a
13 take-back program.

14 CHAIRPERSON NICHOLS: Okay. Thank you.

15 BOARD MEMBER D'ADAMO: Madam Chair.

16 CHAIRPERSON NICHOLS: Sorry. I didn't see your
17 hand.

18 BOARD MEMBER D'ADAMO: Well, I would encourage
19 staff to do that. That really makes sense. And I'm just
20 wondering why such a lengthy phase-in period. It's a
21 total of six years from today's date to a four-year
22 period. We've adopted entire rules that mandate much more
23 than reporting to be completed in that kind of time frame.
24 So I'm just thinking, you know, maybe a three-year period
25 instead of a four-year period. I'd like your comments on

1 that.

2 RESEARCH AND ECONOMIC STUDIES CHIEF ANDREONI:

3 Thank you for that comment.

4 What we're trying to do in developing this is
5 balance the fact that we're impacting a large number of
6 businesses. As was mentioned in Chuck's opening report,
7 26,00 facilities is our estimate. And one of the biggest
8 challenges we've had and what we've learned from doing the
9 initial rule is getting out and outreaching to every
10 single company is very difficult.

11 So what we initially focused on were the larger
12 leaks. And that's what was presented today is going after
13 those first.

14 There is a fee associated to help us with
15 enforcement, which is vital. And so what we've been able
16 to do is allow a little bit more time to let the industry
17 know what's coming, what they're going to have to be
18 responsible for, and for paying for the rule itself.

19 So without us being able to spend time initially
20 doing the outreach, versus going after facilities that may
21 or may not know to report, was kind of the balance that we
22 were walking under in developing the time frame needed.

23 BOARD MEMBER D'ADAMO: I would think, though, we
24 can use the manufacturers to assist us. How many are
25 there?

1 RESEARCH AND ECONOMIC STUDIES CHIEF ANDREONI:

2 There's a number of different manufactures in systems.
3 And systems are normally designed for specific
4 applications. So depending on the size of the
5 refrigeration system, they're normally application
6 specific, and there's not only the manufacturers involved
7 but also the contractors. So we're going to have to work
8 very closely with the manufacturers, but focus on the fact
9 that there are so many entities involved in bringing those
10 folks forward so we can collect the information. It's
11 important.

12 As we also looked at through the South Coast
13 rule, we found that a number of facilities were not
14 necessarily reporting. So we had a small number of
15 facilities that actually came forward with the report. So
16 we're trying to improve that.

17 We also see that the largest number of facilities
18 that we're going after initially which are the 2,000 are
19 90 percent of the emissions and cover 41 percent of the
20 facilities statewide. So we're really focusing our big
21 effort on the biggest portion of it and allowing more time
22 to outreach to smaller facilities that don't have as big
23 of an impact as the large facilities.

24 CHAIRPERSON NICHOLS: Dr. Telles.

25 BOARD MEMBER TELLES: I'm still concerned about

1 the enforcement. It was mentioned by Tim O'Connor from
2 Environmental Defense Fund that the compliance with the
3 South Coast rule was only 20 percent. And I would
4 wonder -- and we're contributing about \$200 per facility
5 to do this enforcement. Is that going to be enough to get
6 a higher compliance rate than the 20 percent that South
7 Coast -- or maybe the South Coast Air Pollution Control
8 Officer can comment on that, too.

9 RESEARCH AND ECONOMIC STUDIES CHIEF ANDREONI:
10 Those are good questions. If they would like to comment,
11 that's fine.

12 Right now, they're reporting every other year on
13 facilities. We would be requiring an annual report which
14 is certainly a higher frequency.

15 One of the things that we did notice in going
16 through the development of the rule again is not everybody
17 recognizes the fact they needed to report. And so our job
18 is going to really be to focus on letting folks know
19 what's required.

20 The database we're setting up is very different
21 than what South Coast is using. They initially used a
22 paper form. We're going to electronically transfer
23 information. In some cases, some of the businesses have
24 already recorded a lot of their information
25 electronically. So we're going to make it easier for them

1 to report to us once that's up and running.

2 CHAIRPERSON NICHOLS: It's kind of interesting
3 that we're dealing with, as has been pointed out here, a
4 very diverse set of businesses here characterized by a
5 larger number of rather small businesses, even though they
6 may have a large refrigerant unit as well as a smaller
7 number of larger businesses.

8 I gather the smaller ones have not been organized
9 in the trade associations that speak on their behalf
10 either, which is unlike, for example, the truckers who
11 have very well developed networks of getting information
12 out. This may be a group that's going to be a little
13 harder for us to get to.

14 We have our Small Business Ombudsman here, La
15 Ronda Bowen. Do you want to comment on this issue?

16 OMBUDSMAN BOWEN: Thank you, Chairman Nichols.

17 I have been informed and able to work with the
18 staff on this particular rule. And I know that the small
19 business owners and operators are a much more difficult
20 group to reach. And I think the fact that staff is
21 targeting 90 percent of the facilities with this rule and
22 the largest portion of the emissions and that they're
23 setting up a new process -- so the process is one that
24 they'll be able to prove the reporting and the outreach,
25 is it effective with this group? They're the largest

1 group, and they're the ones that are most able to absorb
2 any errors or mistakes that staff might make in that
3 process.

4 Then moving out to the larger number of small
5 businesses, I think that the staff has taken a very
6 rational approach. Perhaps they can report back as they
7 implement this to accommodate some of the concerns of
8 other Board members. And if it's possible to move up the
9 deadline, then work on it that way.

10 CHAIRPERSON NICHOLS: I think this is an
11 interesting case study. When I first learned about this
12 rule being under development, I have to say, you know, I
13 was concerned just that we were taking on a whole new
14 group of businesses and business owners that had never had
15 to deal with the ARB before. And that's not normally a
16 welcome experience when people hear they've got a new set
17 of regulations to deal with, regardless of whether you're
18 in a good economy or not.

19 And we wanted to try to do something that would
20 really be a model for how ARB can interact with sectors of
21 the economy that we haven't traditionally dealt with
22 before.

23 I don't know if this is going to be the perfect
24 solution, but it seems like it's a pretty good way to
25 begin to balance the interests that are at stake here. So

1 I think we ought to at least give it a try to get started
2 and maybe ask for a report back on how it's going, either
3 formally or informally, to see if we could speed up the
4 compliance.

5 BOARD MEMBER D'ADAMO: Yeah. I think that's a
6 good idea. And also as staff considers the role of
7 manufacturers, maybe considering the label on refrigerants
8 that indicate that in California there is a requirement
9 that they report.

10 CHAIRPERSON NICHOLS: Okay. I'm going to close
11 the record on this item and remind anybody in the audience
12 who's here to follow this item that the record will be
13 reopened when the 15-day notice of public availability is
14 issued. And that written or oral comments received after
15 this hearing date but before that notice are not accepted
16 as part of the record. But then when the record is
17 reopened, we will except written comments on the proposed
18 changes. And they will be responded to as part of the
19 Final Statement of Reasons.

20 I'm now going to remind our Board members about
21 our policies concerning ex parte communications with the
22 public. We are encouraged actually to communicate with
23 people outside of the Board meetings, but we're required
24 to report on the record the nature and contents of any
25 information that we've received outside of the public

1 hearing process after there's been an agenda.

2 Are there any ex partes?

3 Yes, Ms. Berg.

4 BOARD MEMBER BERG: Thank you.

5 On December 4th, I had a phone call with Tim

6 O'Connor from the Environmental Defense Fund.

7 CHAIRPERSON NICHOLS: Thank you.

8 Anybody else?

9 Dr. Sperling.

10 BOARD MEMBER SPERLING: On December 7th, similar

11 phone call with Tim O'Connor from EDF which reflected his

12 testimony.

13 BOARD MEMBER D'ADAMO: Same here. Tim was very

14 busy on December 7th.

15 CHAIRPERSON NICHOLS: Anybody else?

16 No.

17 Then I'm ready to proceed on this item. We have

18 before us Resolution 09-68.

19 Do I have a motion?

20 BOARD MEMBER D'ADAMO: So moved.

21 BOARD MEMBER SPERLING: Second.

22 CHAIRPERSON NICHOLS: Seconded.

23 Any further discussion?

24 BOARD MEMBER ROBERTS: Just one point.

25 Being with a local Air Board, I'm don't know what

1 the nature of this agreement is going to be. Will we have
2 that to look at at some point?

3 CHAIRPERSON NICHOLS: In terms of how the
4 enforcement will work? Mr. Goldstene, do you want to
5 respond to that?

6 EXECUTIVE OFFICER GOLDSTENE: In agreements, for
7 example, that we entered into recently with the Bay Area
8 Air Quality Management District to help us with
9 enforcement, we did not bring it to you directly. But we
10 certainly could if you'd like to see it beforehand.

11 BOARD MEMBER ROBERTS: At the local level,
12 there's a fear of having agreements with the State that
13 seems to divert funds that are marked for special things,
14 State programs, and don't arrive down to the local level.
15 I'm just wondering what protections are going to be in
16 there.

17 DEPUTY EXECUTIVE OFFICER SCHEIBLE: Maybe I can
18 add.

19 What's envisioned is it's entered involuntarily
20 by the district, and we agree that for a set amount of
21 assistance the district will conduct a defined amount of
22 enforcement activity.

23 BOARD MEMBER ROBERTS: So you're really
24 contracting and they're free to --

25 DEPUTY EXECUTIVE OFFICER SCHEIBLE: It's like a

1 contract --

2 BOARD MEMBER ROBERTS: If you or somebody above
3 you does not pay the bills --

4 EXECUTIVE OFFICER GOLDSTENE: You don't have to
5 do the work.

6 BOARD MEMBER ROBERTS: -- the local agency can
7 opt out of the program. Okay. Thank you.

8 EXECUTIVE OFFICER GOLDSTENE: You're welcome.

9 BOARD MEMBER ROBERTS: I don't want to sound
10 distrustful of the State, heaven forbid.

11 CHAIRPERSON NICHOLS: Right. But you'll be
12 presenting the bill in person.

13 Okay. I think we will do this on a voice vote
14 then. All in favor, please signify by saying aye.

15 (Ayes)

16 CHAIRPERSON NICHOLS: Opposed?

17 All right. The regulation is adopted. I think
18 we need about a five-minute break here to change staff at
19 the front here. And I believe Board members could use a
20 break as well.

21 (Thereupon a recess was taken.)

22 CHAIRPERSON NICHOLS: Our next item is a report
23 on the truck rule. This is not a regulatory item. It's a
24 report by staff that was requested by the Board.

25 And I'm going to make a couple of comments before

1 we begin the discussion this morning, because obviously
2 with the interest that we've received in this matter, the
3 audience that's here today, legislators who have come and
4 so forth, I think it's important that we set what we're
5 doing in some kind of context.

6 So want to make it clear that we're here today to
7 receive information and give directions to staff regarding
8 the heavy-duty truck rule, and in particular, the affect
9 of the economy on that rule.

10 I know that there are probably some of you who
11 are here to talk about other diesel regulations such as
12 the construction equipment rule or the port truck rule,
13 and since this isn't a formal public hearing, we're going
14 to let people comment on whatever they want to comment on
15 that's relevant to this rule. But we would appreciate
16 it -- and I asked the staff to try to figure out when
17 people signed up if you're here to talk about some other
18 rule versus the one that we're actually trying to focus on
19 today.

20 But I want to make a couple of comments. First
21 of all, it's been terrific so far. You've been very
22 polite and very patient. And I really appreciate that.
23 We had heard rumors and comments coming out of the
24 workshop and elsewhere that there were going to be all
25 kinds of demonstrations, there were going to be people

1 making all kinds of threats and attacking staff and
2 attacking others. I will very much appreciate it if you
3 don't do that. It's not very effective. It doesn't
4 really make the Board respond very well to whatever it is
5 you're saying.

6 We are here because we care. Our job is to
7 listen and to pay attention and try to reflect. Every
8 single person here is an appointee of the Governor. We
9 come from diverse regions of the state. We have different
10 political affiliations and different backgrounds. But
11 we're all here because we took an oath to protect and
12 defend the constitution of the State of California as well
13 as U.S. We really believe in that. And that means we all
14 should behave respectfully.

15 And so if I sound like a kindergarten teacher,
16 it's because I actually believe in those values that we
17 all learned in kindergarten.

18 So one of the things that I've learned along the
19 way is that if you need to slow down and take a deep
20 breath, you should do that.

21 And the other thing is -- one of the other things
22 that I've learned, having been involved in government off
23 and on for quite a while, is that if you make a mistake,
24 you should apologize for it. And so I'm going to be doing
25 that in just a minute. But I need to give you a little

1 bit of background here before I get to that point.

2 A year ago this month, the ARB adopted a rule
3 that was designed to cut the health-harming emissions from
4 heavy-duty trucks over a period of 13 years. This rule
5 plays out over a period of 13 years requiring that we
6 retrofit the oldest and dirtiest trucks with particles,
7 particles traps, and requiring turnover of the fleet to
8 cleaner engines.

9 This rule is a very expensive rule. We knew that
10 at the time, and we tried to draft it in a way that would
11 make sure that the smallest owners and operators would not
12 face any obligations at all in the beginning of this rule
13 for the first three years, and that others would be able
14 to phase into it gradually. Nobody was facing any
15 requirements to do anything to any truck before 2011.

16 This rule came more than a decade after the
17 United States Environmental Protection Agency adopted its
18 first national ambient air quality standard for fine
19 particles. I know about that, because I was there. I was
20 the Assistant Administrator for Air, and we were
21 immediately sued by the American Trucking Association
22 challenging the science about diesel particulate. That
23 standard was upheld by the United States Supreme Court in
24 2001 and remanded to a lower court and later went into
25 effect.

1 In the mean time, the State Air Resources Board,
2 which was also acting under California law that requires
3 us to reduce exposures to toxic air contaminants declared
4 diesel particulate to be a toxic air contaminant in 1998.
5 And in that same year, they adopted a risk factor for
6 diesel particulate.

7 Two years later, the Board adopted a risk
8 reduction plan also as required by law. That plan
9 required a 75 percent reduction in risk by 2010 and an 85
10 percent reduction by 2020.

11 We're going to miss that 2010 deadline no matter
12 what we do as of now. But in fairness, the Air Resources
13 Board was also working under a federal law that required
14 us to reduce both nitrogen oxides and particulate matter
15 in the San Joaquin Valley and the South Coast air basin
16 and was driven by the need to meet the national standards
17 by 2014.

18 One reason why this has been so hard, of course,
19 is, as I said before, because the rule is costly and
20 cleaner new diesel engines are only beginning to come on
21 line for the 2010 model year.

22 Of course, if Congress or the Legislature has
23 simply followed Dr. Telles' advise as he recommended last
24 December and imposed a small tax on diesel fuel, we would
25 have been able to fund the fleet turnover. As it is,

1 we've had to put together grants and loans from various
2 bond and other sources, and we know that the money is not
3 sufficient to cover the full cost of compliance with this
4 rule.

5 Now, let me bring us back here for a minute to
6 what we are here to do today.

7 When we adopted this rule, we asked the staff to
8 return in a year to report on conditions in the industry
9 and in the economy and to make recommendations for any
10 needed changes to the rule. We will be hearing from staff
11 in a moment. But I believe I can speak for the entire
12 Board when I say that we're well aware of the fact that
13 the bad economy has hurt the trucking industry worse than
14 many others and that we are prepared to direct staff to
15 make adjustments to reflect those facts, including the
16 fact that emissions have also declined at the same time
17 that business activity has declined.

18 We are particularly sensitive to the impact on
19 small business, and we've been reminded of that in recent
20 days again by the Governor.

21 But what we are not going to do is to back away
22 or back down from the need to make progress on reducing
23 the single most serious cause of health-harming air
24 pollutants in this state. The Governor and I remain
25 committed to the pledges we've made to improve air

1 quality, especially in the poorest communities that are
2 often the most impacted by the engine of goods movement.

3 What we must do, however, is to continually
4 assure that the scientific basis for our rules is up to
5 date and that the process by which it is reviewed is as
6 open and transparent as possible.

7 For that reason, I have asked staff to organize a
8 special review of the science on the health effects of
9 diesel emissions to be convened in February. This will be
10 done in open session with all Board members encouraged to
11 attend.

12 I'm also going to invite the members of our
13 Research Screening Committee, and I'm hoping that all
14 Board members, especially those with scientific or
15 technical backgrounds, will be present and participate
16 actively. We will be inviting researchers whose work has
17 been cited in our various staff reports, as well as those
18 who disagree or who feel their work has been ignored to
19 participate. And when it's all over, we will use that
20 information to either support or modify our overall
21 strategy.

22 In the mean time, the long, weighty, and powerful
23 record of health research that forms the basis for the
24 current truck rule and other rules affecting diesel
25 equipment has been challenged once again, this time

1 because of the ethical lapse of an ARB employee. This is
2 a serious matter.

3 A single employee, whose name has been now
4 mentioned in the press many times, Hien Tran, a
5 statistician who has compiled or contributed to portions
6 of several ARB health reports, including the most recent
7 review and analysis of the effects of diesel particulate
8 on mortality, falsely claimed to have a Ph.D. from U.C.
9 Davis.

10 It was brought to ARB's attention that he did
11 not. And although initially he denied it, he finally
12 admitted that he did have a Ph.D., but it was in a
13 non-recognized institution.

14 A disciplinary hearing was conducted. He
15 forfeited two months of salary and was demoted. He has
16 been removed from the Health Effects Research Section.
17 And as a practical matter, his professional reputation is
18 ruined.

19 But the stain he cast over the work he
20 participated in can't be so easily erased. And for that
21 alone, we need to expedite the public review and bring in
22 as many independent experts as we can muster to speak
23 about the state of the science.

24 The Tran episode has caused ARB to institute some
25 changes in personnel practice, including a formal degree

1 review, but the harm does not stop there.

2 The facts of the situation were brought to my
3 attention during the December Board meeting. And having
4 concurred with the recommendation that immediate
5 disciplinary action and review of Mr. Tran's work by an
6 independent peer review panel was required, I did not
7 promptly inform my fellow Board members about this issue.

8 I would note that the independent reviewers who
9 completed their work in April concluded that Mr. Tran had
10 used approved EPA statistical models, had done no
11 independent work of his own, and that there was no way he
12 could have manipulated the results. Never the less, the
13 harm was done.

14 There are excuses: We're in the middle of a
15 hearing; I believed that the remedial actions I've
16 described were adequate. And I knew that the tainted
17 report was only one piece of a very extensive body of
18 evidence that supports the need for reduction in exposure
19 to diesel particulates.

20 But the fact is that this was a mistake on my
21 part. I should have shared this information with my
22 fellow Board members as a matter of course. If I were in
23 their shoes, I would want to have all the relevant
24 information myself, even if at the end of the day I
25 decided it did not call for any change in the truck rule

1 or in the timing of the hearing.

2 My mistake in judgment, although honestly
3 intended, led the others making some wild and I frankly
4 think unjustified claims that call into question the
5 Board's hard-earned reputation for open and deliberative
6 process. All I can say is I apologize.

7 Now I understand that there are others who may
8 wish to comment before we begin the staff presentation,
9 and I will call on any Board member who wishes to be
10 recognized for the purpose of making preliminary comments
11 before we go to the staff report today.

12 Recognize Dr. Telles.

13 BOARD MEMBER TELLES: Thank you for your words
14 there.

15 In your comments, you mentioned that the lead
16 author compiled the report, he participated in the report,
17 and he had no work done himself.

18 But let me just read to you the part of the
19 report that he actually wrote. He wrote the introduction.
20 He wrote the methodology. He wrote the USPA elicitation
21 process. He wrote the applicability of U.S. EPA expert
22 elicitation results California. He did the methodology.
23 He did the peer review process. He did the results. He
24 did the discussion. He did the uncertainties and
25 limitations. He did the conclusion. He did the

1 references. He did Appendix 1, Appendix 2, and Appendix
2 4.

3 If you look the report, the report was written
4 over 50 percent of it by an author which had
5 misrepresented his education. To me, that means the
6 report is not acceptable. And basically this is a report
7 written by a fraudulent person.

8 I do not think that, despite everything that has
9 been recently said, that this report can be accepted by
10 this Board or by the people of the state of California.

11 And I, as mentioned in the last meeting, propose
12 that we set aside the rule until this report be redone,
13 not in a process where we invite people to come in and
14 review the science.

15 I've read many of the scientific papers in
16 regards to the 78 scientific papers supporting this, and
17 I, of all people on the Board, am probably more aware of
18 the health impacts of PM2.5.

19 But I think the acceptance of a fraudulent report
20 by this Committee kind of trumps that, and it has to be
21 done correctly by someone who has not falsified his
22 credentials.

23 And I think it needs to be done quickly, and we
24 can probably do this process rather quickly. I don't
25 think having a meeting in February, inviting a bunch of

1 scientists, is going to satisfy the public's desire for
2 transparency here.

3 And I think we need to move in a different
4 process and basically redo the report, set aside the rule
5 until the report be completed. And I would anticipate
6 that not take too long. And it be done by someone who has
7 the credentials that are not falsified.

8 Thank you.

9 (Applause)

10 CHAIRPERSON NICHOLS: Additional comments by
11 Board members?

12 Yes.

13 BOARD MEMBER ROBERTS: Yeah, first of all, I
14 would compliment you on what you've had to say here that
15 you've recognized that an error was made, that you're
16 scheduling a research review in February.

17 I'm a little maybe confused by wild and erroneous
18 statements that may have been made by Board members. At
19 the risk of assuming I might be one of them, I'd like to
20 go over the record and some of the things that haven't
21 been said here today.

22 What this researcher did I think goes well beyond
23 the leniency with which he's been dealt. That's an issue
24 for others to decide and not for me. But I can tell you
25 at the County of San Diego, using a fraudulent credential

1 for such a ranking official engaged in such an important
2 analysis would have been grounds for immediate dismissal.

3 Number two, it wasn't just the Chairman that knew
4 about this prior to the meeting. What has been
5 conveniently left out is that a number of staff members
6 knew without question that these credentials were false
7 and fraudulent, and that was not mentioned. And also knew
8 that few Board members had that information, and that was
9 not brought up at any time until during the hearing or
10 shared with any of us for months.

11 This Board has had a history I think of operating
12 with a great deal of transparency, and I'd like to think
13 in the almost 15 years I've served here that I have been
14 faithfully a part of that.

15 I can't remember an instance in all of that time
16 where staff and Board members were in possession of what
17 proved to be such important information that not only was
18 not shared, but the meetings that led up to that were not
19 disclosed as part of the public record. I'm not sure what
20 our disclosure rules are or even mean anymore.

21 The fact that this happened I think gave us a
22 major issue to deal with. And I think the events that
23 transpired since then have given me even greater concern.
24 At no point did anyone say let's have a full and open
25 hearing and find out what happened and why it happened.

1 I've been on this Board for long enough to have
2 been a key part of declaring diesel a toxic contaminant,
3 and I'm not going to have to apologize for my being
4 concerned about the dishonesty that's involved in this
5 issue.

6 Some of us have struggled with this. We haven't
7 been given a good solution and an acceptable path.

8 This Board is dependent on a public trust, a
9 public trust not only of those people that agree with us
10 when we have a regulation, but a public trust for those
11 people who may be the regulated and disagree with us. And
12 I think that the actions of Mr. Tran, of members of this
13 Board, and members of the staff have done a disservice and
14 have injured that public trust.

15 I think there should be a hearing, but there
16 should be a full hearing where all the information who
17 knew what is put on the table. And to read editorials,
18 there's no dishonesty, nothing has happened, this is okay,
19 it was only a small part of what was going on I think is
20 an attempt to defuse and to make far less important
21 something that I think is terribly significant and needs
22 to be addressed.

23 Dr. Telles in his original comments thought maybe
24 the only way is to go back to ground zero, and that seemed
25 to me to be a reasonable solution.

1 I understand the economic issues that we have yet
2 to consider. And those are important, absolutely
3 important. And as important as those are, there is
4 something far more fundamental here in the way this public
5 process was conducted and the information that was not
6 shared.

7 In good conscious, I can't just simply set that
8 aside and say nothing happened. At a time when the
9 science on an international level is being questioned, it
10 seems to me we need to do everything possible to make sure
11 whatever our decision is that it's been arrived at openly
12 and with full information flowing to every one of these
13 Board members. Didn't happen. And there seems even to
14 this point be an attitude that we don't have to share
15 everything that's happened and when it happened and why it
16 happened.

17 With that, I'll be quiet.

18 (Applause)

19 CHAIRPERSON NICHOLS: Is there any further
20 comment by any other Board members before we turn to the
21 staff?

22 Yes, Dr. Balmes.

23 BOARD MEMBER BALMES: Well, first of all, I do
24 share with Chairman Nichols the need for a public apology
25 about the way this matter was handled.

1 As has been put forth in the media, I was one of
2 the Board members that knew in advance of the
3 misrepresentation by Mr. Tran of his lack of a Ph.D. I
4 learned about it I think the day before the vote, but I
5 can't be precise about -- it was close to that time.

6 And I personally didn't feel that the
7 misrepresentation was a problem with regard to the
8 science, because the science I believe stands on its own.

9 When we do a re-evaluation of the science to
10 create a new report, which I think we should do -- I agree
11 with Dr. Telles we need a new report, a new analysis of
12 the science -- I think we'll come up with pretty much the
13 same thing that Mr. Tran did. There may be a shifting of
14 the number of deaths related to fine particulate matter
15 and diesel exhaust particles in particular, but they'll
16 still be deaths related to this, and there will still be a
17 public health imperative to do something about it.

18 That said, I think this agency does have a
19 reputation for being science based, and therefore we have
20 to be squeaky clean about our science. So I do support a
21 re-doing of the Tran report.

22 CHAIRPERSON NICHOLS: Okay. Any other comments?

23 All right. We will then move to the staff report
24 and then to public comment.

25 Mr. Goldstene.

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

3 The Board directed staff to address a number of
4 items in today's update. At the hearing last December,
5 when the Board approved the regulation, the Board asked
6 staff to come back with an update on the implementation
7 status with the regulation, the localized risk associated
8 with the agricultural truck provisions, the information on
9 changes in school bus transportation, the impact of the
10 economy on emissions, and information on funding
11 assistance for trucks. Clearly, the most significant item
12 is the impact of the economy.

13 But before I address that, I'll briefly summarize
14 staff's responses to other items the Board raised so we
15 can spend most of the time discussing the economic impact.

16 The first issue I'll address relates to off-road
17 construction equipment. Earlier this year, you asked
18 staff to provide an update on construction activity of
19 fleets subject to the in-use off-road vehicle regulation
20 and to come back in the summer with an emissions analysis
21 that accounts for changes in activity and the impact on
22 emissions.

23 Large construction fleets will be reporting their
24 fleet information in March. And staff will use the new
25 information to perform the analysis.

1 In short, recent indicators of construction
2 activity show that overall activity is down more than 30
3 percent from the peak.

4 Now I'll address the items regarding trucks and
5 buses. You asked us to provide an update on
6 implementation and outreach activities. Staff has made
7 significant progress in getting the word out and
8 recognizes that much more needs to be done. Staff has
9 taken steps to improve access to information by
10 coordinating information about multiple regulations in one
11 place. Fleet owners can now call a single toll-free
12 number in English, Spanish, or Punjabi before we head up
13 to 12 separate lines or visit our user-friendly website
14 called the "truck stop" that helps truck owners find
15 information about several ARB regulations and funding
16 opportunities and helps them learn what compliance
17 trajectory they're on. The "truck stop" website is also
18 available in Spanish now.

19 Staff is working to improve awareness by mailing
20 postcards directly to 150,000 diesel vehicle owners by
21 giving presentations at 86 different events so far and
22 meetings. And we've been holding classes in multiple
23 locations throughout the state. We visited more than
24 2,000 individual fleets at their businesses and have been
25 distributing outreach material and other locations such as

1 truck stops.

2 Also because of the national interest in the
3 rule, we've been working the satellite radio stations and
4 participating in interviews on those stations as often as
5 we can. And we plan to do so next year.

6 Staff is also working through an informal
7 committee comprised of 70 members representing a diverse
8 group of businesses to further improve outreach efforts
9 and to address implementation issues.

10 You've also asked us to evaluate the potential
11 localized risk associated with the agricultural truck
12 provisions and to return with any recommendations. Staff
13 has collected information about first processors and has
14 performed roadside counts in three areas in the San
15 Joaquin Valley, but we don't yet have sufficient
16 information to make a recommendation at this time.
17 Qualifying agricultural vehicles must report by the end of
18 March and must be labeled. Staff is proposing to collect
19 that additional information and to report back later next
20 year.

21 You also asked us to determine whether school bus
22 services were being curtailed as a result of the
23 regulation. We surveyed 139 school districts, and only
24 three responded they were reducing transportation services
25 because of the regulation. The majority of school

1 regulations say the decrease in transportation services is
2 due to budget constraints or decreasing ridership.

3 Finally, you requested information about funding
4 assistance for trucks. Although the state does not have
5 enough money to pay for all compliance costs, our goal is
6 to achieve the greatest emission reductions possible with
7 the available funding.

8 At previous Board hearings, staff has described
9 financial assistance of over one billion dollars to
10 support on-road and off-road fleets. In 2009, \$570
11 million has already been provided for early compliance
12 with the regulations. Over the next two years,
13 approximately \$760 million could be available depending on
14 State revenue and bond sales.

15 Now Mr. Erik White will present the analysis on
16 the impacts of the economy on emissions from fleets
17 affected by the truck and bus regulation. Erik.

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

20 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

21 WHITE: Thank you, Mr. Goldstene.

22 Good morning, Chairman Nichols and members of the
23 Board.

24 Today, I will present staff's assessment of the
25 current recession on emissions from the trucking sector.

1 I will provide a discussion of staff's approach, the data
2 sources evaluated, and staff's findings.

3 --o0o--

4 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
5 WHITE: Before I begin my discussion of staff's analysis,
6 it is important to highlight the significant benefits the
7 rule provides.

8 Overall, the rule is expected to avoid 9400
9 premature deaths, as well as significantly reduce
10 asthma-related symptoms and result in fewer lost work
11 days.

12 The rule will also significantly reduce the
13 cancer risk from the public's exposure to diesel
14 particulate matter.

15 These reductions are essential to meeting the
16 Board's goals to reduce exposure to diesel PM, as laid out
17 in the Diesel Risk Reduction Plan.

18 The emission reductions from the rule are also
19 critical towards meeting the combined PM 2.5 and NOx State
20 Implementation Plan targets in the San Joaquin Valley and
21 the South Coast regions. The SIP is California's
22 federally-mandated plan to meet federal clean air
23 standards, and no other measure in the SIP is able to
24 achieve the same level of reductions. Simply put, these
25 regions cannot attain the federal deadlines without the

1 rule.

2 --o0o--

3 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

4 WHITE: When the Board approved the rule in December 2008,
5 it directed staff to report back this month on the effects
6 of the economy on emissions.

7 We all recognize that the economic climate for
8 the trucking industry today is different than what was
9 expected when the rule was approved, and this has had an
10 impact on emissions from the trucking sector. To better
11 understand this impact, over the last 12 months, staff has
12 evaluated changes in a number of key trucking activity
13 indicators in order to evaluate the impact these changes
14 could have on emissions. Staff then developed revised
15 emission estimates, both for the current year and out to
16 2014, to evaluate the impact of these changes in activity
17 on the SIP. Staff then shared these findings with
18 stakeholders at a workshop last week in order to obtain
19 their input.

20 --o0o--

21 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

22 WHITE: The results of staff's assessment show that both
23 activity and emissions are below the levels previously
24 estimated when the rule was adopted. However, despite the
25 downturn in activity, these resulting emissions are still

1 higher than the emission levels achieved by the rule.

2 Simply put, the recession will not provide the
3 emission reductions necessary to meet clean air goals.

4 Because of this, the rule is still necessary towards
5 meeting the state's 2014 SIP obligations in the South
6 Coast and San Joaquin Valley air basins.

7 --o0o--

8 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

9 WHITE: I will now discuss in more detail staff's analysis
10 of the impact of the recession on trucking emissions.

11 --o0o--

12 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

13 WHITE: Staff's approach was to begin with the original
14 emission estimates that were developed in 2008 to support
15 the development of the rule.

16 Staff then evaluated nearly a dozen different
17 trucking economic indicators to estimate the effect of the
18 recession on emissions in 2009.

19 There are a number of forecasts predicting how
20 and when the California economy will recover. Staff
21 developed two truck activity growth scenarios in an
22 attempt to bound the potential range of 2014 emissions.
23 These scenarios modeled both slower growth in truck
24 activity and faster growth based on current and historical
25 data.

1 --o0o--

2 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

3 WHITE: Staff first looked at available economic data to
4 evaluate how the recession has reduced California trucking
5 activity. Overall, staff's assessment found that trucking
6 activity in the state is down between 10 and 18 percent
7 since 2007, with some individual fleets experiencing
8 greater reductions.

9 Nationally, new truck sales are at their lowest
10 level in 25 years and are 64 percent lower than they were
11 in 2005.

12 This reduction in new truck sales is consistent
13 with data from the California Department of Motor Vehicles
14 which shows that there has been no growth in the number of
15 registered trucks in California since 2007, and that the
16 fleet is getting older due to fewer new truck replacements
17 coming into the fleet. This has resulted in fewer new
18 cleaner trucks in the statewide fleet than originally
19 projected.

20 --o0o--

21 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

22 WHITE: Here is a more detailed listing of data sources
23 staff evaluated as part of this assessment. The data
24 sources included the most up to date fuel sales, traffic
25 and container counts, and activity indices that are

1 multiple economic forecasts and historical data to bound
2 potential emissions projections.

3 --o0o--

4 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

5 WHITE: The first scenario staff developed was a slower
6 growth scenario. This scenario was consistent with
7 California employment growth forecasts from the California
8 Legislative Analyst's office, UCLA, and the University of
9 the Pacific, which show little or no growth in overall
10 employment through 2010 and then slow growth in the job
11 sector after that.

12 Under this scenario, California truck activity
13 doesn't begin to recover until 2011 and then grows at
14 pre-recession averages thereafter.

15 Also under this scenario, truck sales do not
16 recover until 2012 and then grow modestly through 2014.

17 --o0o--

18 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

19 WHITE: The other scenario staff developed was a faster
20 growth scenario. The activity growth rates in this
21 scenario are based on growth forecasts from the
22 Congressional Budget Office, with an associated two-year
23 lag for California.

24 This scenario models an eight-year recovery
25 period, which is consistent with growth rates experienced

1 WHITE: The black line overlaid on the graph shows the
2 staff report estimate of how PM2.5 emissions were expected
3 to change with implementation of the rule.

4 Looking at 2011, you can see that the updated
5 emission estimate is below what we expected with the rule.

6 However, in 2012, the rule provides more
7 reductions than without the rule.

8 And by 2014, the rule results in substantially
9 lower emissions than would be achieved under either
10 scenario.

11 --o0o--

12 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

13 WHITE: I will now focus on staff's 2014 emission
14 estimates.

15 As I discussed earlier, 2014 is the federal
16 attainment deadline for PM2.5. The rule was designed to
17 achieve the emission reductions needed to meet our SIP
18 obligations in that year. The dashed red line represents
19 the SIP obligations for PM2.5 reductions that must be met
20 by 2014.

21 As can be seen, the economy alone does not meet
22 our PM2.5 SIP targets. Because of this, the next question
23 is what are the revised emission estimates combining the
24 rule and the recession under the two growth scenarios?

25 --o0o--

1 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

2 WHITE: As can be seen under the faster growth scenario
3 shown in blue, the rule would result in slightly lower
4 remaining PM2.5 emissions compared to the original 2008
5 staff estimate. And under a slower growth scenario, the
6 resulting emissions are lower.

7 While under either scenario the rule is still
8 needed to be able to meet SIP obligations in 2014, the
9 economy plus the rule provides greater PM2.5 reductions
10 than expected.

11 Next I will discuss the results for staff's
12 assessment of NOx emissions.

13 --o0o--

14 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

15 WHITE: The story for NOx is similar to that of PM2.5.
16 However, since NOx emission reductions are not required by
17 the rule until 2013, I will focus on 2013 and 2014.

18 As was done for PM2.5, the faster growth scenario
19 is shown in blue and the slower growth scenario is shown
20 in tan. As you can see, emissions without the rule
21 projected forward through 2014 are expected to decline
22 under either scenario.

23 --o0o--

24 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

25 WHITE: And similar to PM2.5, under both growth scenarios,

1 the rule provides for lower NOx emissions than with either
2 scenario alone.

3 --o0o--

4 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

5 WHITE: Similar to the earlier PM 2.5 slide, the dashed
6 red line represents the SIP goal for NOx. Like PM2.5, the
7 rule was designed to achieve the emission reductions
8 needed to meet our SIP obligations in 2014. As can be
9 seen under either scenario, the economy alone does not
10 meet our NOx SIP targets.

11 --o0o--

12 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

13 WHITE: However, as we calculate the benefits of the rule
14 with reduced activity, we see that under the faster shown
15 in blue, the rule would result in similar remaining
16 emissions compared to the original staff report estimate.
17 Under the slower growth scenario, the resulting emissions
18 would be somewhat lower. Because of the range of
19 emissions associated using the two scenarios, it is
20 unclear at this time if there are any excess NOx emission
21 benefits in 2014 associated with the effect of the economy
22 on the rule. However, similar to what we observed for
23 PM2.5, under either scenario, the rule is needed to meet
24 our SIP obligations in 2014.

25 --o0o--

1 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

2 WHITE: Overall, staff's assessment has shown that the
3 impact of the recession on activity and emissions is
4 significant, and that it may be possible to utilize some
5 lower than expected emissions towards additional near-term
6 flexibility. However, for both PM2.5 and NOx, staff's
7 assessment has also shown that the recession alone cannot
8 be relied upon as an effective emission control strategy
9 and that the rule is still needed to meet our SIP targets.

10 In addition, the rule is also needed to ensure
11 that each year we continue to reduce the cancer risk from
12 diesel PM in highly impacted communities, consistent with
13 the goals of the Diesel Risk Reduction Plan. Any
14 flexibility options must be balanced against the
15 substantial public health benefits the rule provides.

16 --o0o--

17 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

18 WHITE: As part of staff's assessment, staff presented our
19 preliminary findings with the stakeholders at a workshop
20 held in Sacramento on December 3rd. More than 150 people
21 attended the workshop. At the workshop, industry
22 associations and fleets commented that greater reductions
23 in vehicle miles traveled than have been recognized by
24 staff are occurring. Because of this, revenues have been
25 reduced such that fleets no longer have the economic

1 mid-sized fleets. Under this option, mid-sized fleets
2 could be fleets in the range of 20 to 50 trucks.

3 The second option would provide a two-year
4 deferral for about ten vehicles in any size fleet.

5 The third option would defer all of the first
6 year cleanup requirements for all vehicles in all fleets.

7 Staff is currently evaluating the emission and
8 economic impacts of these three options. Because of the
9 need to workshop any proposal, implement new rulemaking
10 procedures required under the AB 1085, and provide for a
11 public comment period, the earliest any such flexibility
12 could be considered by the Board is at its April 2010
13 hearing.

14 This concludes my presentation. Thank you.

15 CHAIRPERSON NICHOLS: Are there any questions at
16 this time for staff before we go to the witnesses? If
17 not, then let's proceed. And --

18 EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
19 Ms. D'Adamo has a question.

20 CHAIRPERSON NICHOLS: Sorry, Ms. D'Adamo.

21 BOARD MEMBER D'ADAMO: I know we're going to be
22 talking in detail as the day progresses, but the last
23 slide that was up on possible solutions, under any of
24 them, I think it would be useful for us to have identified
25 an emissions budget. It seems there's some type of

1 cushion as a result of the reduced economic activity. So
2 I know it would be impossible for us to make a decision
3 today on how many trucks and what type of actual deferral.
4 So I would favor an approach where we determine what that
5 budget is so that there might be some room for staff to
6 look at the flexibility, but at the same time preserving
7 the emissions benefit of the rule.

8 CHAIRPERSON NICHOLS: Do you want to respond,
9 please?

10 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

11 WHITE: I would say that as we looked for how we approach
12 this, that was exactly the approach we were looking to
13 take.

14 CHAIRPERSON NICHOLS: All right. We have 86
15 witnesses so far. And my plan is that we will go until
16 1:00 and then take a lunch break, because I think we're
17 all going to need it, at least a walking around break at
18 that point. So let's begin.

19 I'm going to first recognize Assemblymember
20 Niello, since he's taken the trouble to come over and
21 speak to us. Why don't you kick this off, please?

22 And he'll be followed by Doris Lo from the U.S.
23 Environmental Protection Agency.

24 ASSEMBLYMAN NIELLO: Thanks, Chair Nichols and
25 members of the Board. I very much appreciate the

1 accommodation.

2 I'm Roger Niello, a member of the California
3 State Assembly, and I represent District 5 here in
4 Sacramento.

5 I come here this morning to repeat and reinforce
6 the request that I coordinated, signed by over 50 members
7 of the Legislature, to delay implementation of the diesel
8 regulations until the economy recovers. We don't do this
9 without considerable consideration of the intent of the
10 regulations, public health.

11 While some experts might question the true
12 severity of the public health risks, I'm not here to argue
13 that point. My point today is economic health. Economic
14 health threatened by a terribly weak economy that actually
15 temporarily contributes to a lessening of the threat to
16 public health. At least temporarily, diesel emissions are
17 down significantly as trucking activity has declined with
18 the economy.

19 I've often actually sort of perversely joked that
20 unfortunately a lot of the ills of growth in modern
21 society with which we struggle could be easily cured if we
22 just destroyed the economy.

23 Now, I agree that's kind of a sick joke, but it
24 unfortunately is in a way being realized by the sick
25 economy.

1 I would urge your Board to consider the actual
2 contribution to your emission reduction mission while you
3 consider the fatal damage these regulations can impose
4 under the same circumstances of our collapsed economy,
5 especially -- and I really want to emphasize this --
6 especially on small and medium-sized trucking companies.

7 As you consider this, of course, you must also
8 consider the practical impacts of the now all too well
9 known digressions of your Mr. Tran.

10 And I know Ms. Nichols had said something before
11 that before. I wasn't here. But Twitter is a wonderful
12 thing these days. We find out immediately lots of things
13 we wouldn't otherwise know. At the very least, it would
14 seem to me wise to provide a temporary accommodation for
15 the doubts that his unfortunate involvement have created.

16 But I respectfully suggest, regardless of the
17 confidence that you otherwise have in the science,
18 economic health, given the very real temporary reduction
19 in emissions due to the same economic weakness that
20 threatens the economic health, should loam dominant in
21 your consideration.

22 To repeat from our letter, given the
23 multi-billion dollar cost associated with the
24 implementation of this regulation and the current economic
25 environment, I would urge you to delay this regulation and

1 also allow for a stay of enforcement at least until the
2 economy recovers.

3 Again, I thank you very much for the opportunity
4 and wish you well in the other 85 items of testimony that
5 you have, which will probably grow. That's how important
6 the issue is. Thanks for your consideration.

7 (Applause)

8 CHAIRPERSON NICHOLS: Thank you.

9 Ms. Lo.

10 BOARD MEMBER BERG: Excuse me, Chairman. This is
11 Sandy.

12 If the audience would like to clap, and I
13 understand they would like to do that, maybe we should
14 consider a reduction to two minutes and that way we can
15 accommodate. So we can either make a decision that we
16 want to clap or we want to have three minutes, if
17 possible?

18 You had an excellent hand waving that works
19 really well and allows people to visually let us know. So
20 if we could decide -- could you try it? And then
21 otherwise we might have to look at a reduction in time.

22 CHAIRPERSON NICHOLS: We do have to get through
23 today's agenda. We really do want to hear from everybody
24 who wishes to be heard.

25 So my recommendation for you, if you wish to

1 express enthusiasm for somebody's remarks, instead of
2 clapping, if you'll just raise your hands in the air like
3 that. We get to see you, and we know you're enthusiastic,
4 but it doesn't interrupt the flow. Thank you.

5 If you don't feel like clapping, just don't do
6 anything. Thank you.

7 Ms. Lo.

8 MS. LO: Good morning, Chairman Nichols and
9 Chairman of the Board.

10 I'm Doris Lo. I'm a Senior Air Program Policy
11 Advisor in the EPA Region 9 Office.

12 EPA appreciates the opportunity to come here and
13 provide support to the end-use truck and bus rule and
14 appreciate the efforts the Board has made in addressing
15 all the public concerns.

16 As you all know, meeting the standards of the
17 Clean Air Act is the joint responsibility between EPA and
18 the states. EPA sets the health-based standards that the
19 states must then go out and develop plans to achieve.

20 As you probably also know, California has
21 submitted to EPA an 8-hour ozone and a PM2.5 plan for the
22 South Coast and San Joaquin Valley. These plans show that
23 both areas, which are home to more than 19 million of the
24 state's residents, need significant emissions reductions
25 in NOx and PM2.5 to get to clean air.

1 The plans also show the reductions from in-use
2 truck and trucks and buses are essential to achieving
3 these needed reductions. We understand that by the year
4 2014 the rule will achieve approximately 60 tons of NOx
5 reductions and approximately four tons of PM2.5 reductions
6 in the San Joaquin Valley and South Coast. Without these
7 reductions from the rule, the California SIPS that EPA has
8 before it will not be able to demonstrate attainment of
9 the health standards. Thus, we believe it's critically
10 important that any changes made to the rule not impact the
11 needed reductions from these plans.

12 And finally, just like California Congress gave
13 EPA very limited authority in the Clean Air Act to control
14 emissions from in-use mobile sources, EPA has issued
15 national rules that cut emissions from new on-road and
16 non-road engines. And while EPA's rules help to ensure
17 progress in getting reductions from these new engines, it
18 doesn't get at most of the trucks that are already on the
19 road.

20 So we believe that the benefits from the in-use
21 truck rule are timely and vital to the State's efforts
22 meeting the Clean Air Act requirements and to improve and
23 protect public health.

24 Thank you for the opportunity to comment.

25 CHAIRPERSON NICHOLS: Thank you.

1 And appreciate your not booing, especially when
2 someone is here in an official capacity. She's delivering
3 a message from the U.S. EPA. Okay.

4 Christina Ramorino from Roadstar Trucking.

5 And Robert Ramorino from Roadstar Trucking, you
6 are next, followed by William Miner, Jr.

7 MS. RAMORINO: Good morning, Chairman Nichols and
8 Board. I'm third generation owner of Roadstar Trucking.

9 CHAIRPERSON NICHOLS: Your light hasn't come on.

10 I don't know how we're doing the timing. When
11 someone comes up, start the light. You should be
12 following it. So if it turns from green to yellow, you
13 know it's time to stop and I don't have to cut you off.

14 MS. RAMORINO: So I'm third generation owner of
15 Roadstar Trucking. We are based in Hayward, California.
16 We provide service throughout the state of northern
17 California. We deliver goods from food stuff, clothing
18 items, military supplies, packaging materials.

19 We employ 50 Californians with full-time jobs,
20 health benefits of 401(k) package.

21 Since 2007, we've had to reduce our number of
22 drivers by 19 percent, our administrative staff by 33
23 percent, which includes two of our highest paid senior
24 staff employees. And this is all due solely to the
25 economy, nothing in regards to what they had done at work.

1 I'm here today mainly because I'm 26 years old.
2 I'm starting my career. And I'm concerned that these
3 regulations could very well put us out of business,
4 strictly because of the time line that is involved.

5 A year ago, when you passed this regulation, I
6 was in the middle of reading Thomas Friedman's book, "Hot,
7 Flat, and Crowded." I think some of you may be familiar
8 with it.

9 I understand and agree with the need and value to
10 cleaning up our air and switching to cleaner technologies.
11 However, I strongly disagree with the stringent time line
12 set forth by the staff the Board approved.

13 His book stresses the need for us to go green, to
14 have clean technologies, but he also stresses the fact
15 that we need to all be on board. We need to consider all
16 parties affected, whether you be environmentally
17 concerned, in a business, having health impacts.

18 Throughout the two-day Board meeting last year,
19 we were continually told there's plenty of funding
20 available to pay for these mandatory purchases. With
21 everyone hurting for business, it's hard for us to pass
22 the cost along to our customers. They have come to us
23 this year saying we need two and three-year contracts at
24 lower rates.

25 We were proactive and last year applied for five

1 trucks to get funded. We were approved. And then it came
2 out we could not get the money.

3 On behalf of my family business, I'm asking this
4 Board to consider the current state of the economy, the
5 inability to get funding, and the effects this regulation
6 will have on the state.

7 I urge you to seriously consider all the
8 testimony and help to create a fair balance for everyone
9 involved.

10 Thank you.

11 CHAIRPERSON NICHOLS: Thank you for your
12 testimony.

13 I agree.

14 Robert Ramorino, followed by William Miner and
15 Janet Abshire, if you're here.

16 MR. RAMORINO: Good morning, Madam Chairwoman and
17 staff and Board members.

18 My daughter did a pretty good job of giving a
19 recap of our business.

20 A few other things. Our vehicle miles traveled
21 is down 20 percent. Revenue is down 20 percent. The
22 equity in our family business, down 41 percent. That
23 doesn't take into account the assets of our trucks, which
24 is primarily most of our assets, have very little resale
25 value because of this regulation.

1 One of the things that I'm really proud of is out
2 of our 50 employees, we provided medical and dental
3 benefits for 79 lives; 79 men, women, and children. That
4 cost \$250,000 a year. Now, if I was able and willing to
5 get rid of medical payments, I could finance ten brand-new
6 trucks. I won't make that trade-off.

7 A lot of my competitors are converting their
8 fleets to owner-operators and getting rid of employees so
9 they can save their medical expense.

10 I'm not going make the trade-off on the people
11 that have made our company successful for 50 years.

12 The problem for us is not the clean air
13 initiative. We 100 percent support that. What we need to
14 do is we need to have a few more years to roll in
15 equipment.

16 By 2014, we have to replace 100 percent of our
17 30-truck fleet. About a three-and-a-half million dollar
18 price tag. No bank is going to loan a small business like
19 ours money to replace 100 percent of your assets in a very
20 short period of time, not to grow the business, but to
21 just maintain the business.

22 We're also at a disadvantage, because
23 out-of-state trucking companies can easily comply with
24 this regulation by moving their newer trucks into
25 California and taking trucks exactly like mine and moving

1 them across state lines and continuing to utilize those
2 assets. We don't have that benefit.

3 Now a couple other quick statistics. We spend
4 three-and-a-half million dollars in wages and benefits.
5 We spend another million-and-a-half dollars in services.
6 When a local company like Roadstar buys a truck, we buy it
7 in Alameda County or Santa Clara County. Those
8 out-of-state truckers are going to buy it across state
9 lines. They're not going to pay any taxes to the State
10 and they're not going to provide money to all the vendors
11 that we support.

12 I urge you, extend it out a couple years. I want
13 to buy new trucks. I need to buy the new trucks, and I
14 want to provide more jobs. Thank you very much.

15 CHAIRPERSON NICHOLS: Thank you. And thank for
16 following the light.

17 William Miner, Jr., followed by Janet Abshire and
18 John Yandell.

19 MR. MINER: Good morning.

20 I'm the owner, William Miner, of a small tow
21 company in Morgan Hill, California. And I represent quite
22 a few operators in the area. And it changed when I came
23 in this morning about the Board here. I mean, I don't
24 know if you're confused or if you had bad information or
25 you have a misdirection. But I'm confused listening to

1 you about the information that you received and the laws
2 you're implementing on these people with trucks
3 according to the amount of bad pollutants they put in the
4 air.

5 Do you have the records to prove these
6 allegations? I mean, we're hurting people left and right.
7 We're in a bad economy. But we need good cleaner air. We
8 understand that.

9 But, you know, we built these trucks here in the
10 United States. We bought them under your standards. And
11 now you're telling us, well, they don't meet your
12 standards anymore.

13 So, you know, what are we doing? Shooting
14 ourselves in the foot here?

15 I mean, we got -- work with us. I mean, this
16 thing should be resolved. I agree. There's smoking
17 trucks that need to be fixed. But the guys that are
18 running clean operations, clean trucks -- tow companies,
19 emergency vehicles, we're there to help you. And you guys
20 are killing us. That's the bottom line. We're going to
21 die off. And we're emergency. We're here to help.

22 We bought these in good faith, these vehicles,
23 with stamps on that pass emissions. And now you're
24 telling us, well, they don't pass emissions. We need
25 2010s. Well, that's fine. I wish we all had money trees

1 that we could go out and purchase these vehicles, but we
2 don't.

3 And in this economy, it's bad. But we got to
4 live with it. I understand. I appreciate what you're
5 doing. But I hope that you understand where I'm coming
6 from. I'd like to see some really solid data that we're
7 creating the problem that you're going to create with this
8 law.

9 Thank you for your time.

10 CHAIRPERSON NICHOLS: Thank you.

11 Janet Abshire.

12 MS. ABSHIRE: Hello. Thank you for hearing us
13 today.

14 I'm Dr. Abshire. I have over 13 years of
15 experience in occupational environmental medicine. I
16 treat injured workers, including toxic exposures. I've
17 seen patients that were healthy young workers go to
18 chronic lung patients that actually totally changed
19 permanently their quality of life, their occupational
20 options, and also painfully their self image.

21 So I also understand the mechanisms of the
22 irreversible toxic lung injury that happens with diesel
23 exhaust. And I'm concerned -- and admittedly, personally,
24 it's for my five precious grandchildren. So the damage is
25 worse with children, because their lungs are developing.

1 And it's permanent. It leads to life-long increased
2 incidences of lung problems.

3 Over half a million children in California in the
4 last year experienced asthma symptoms, and it was strongly
5 correlated with communities that have a high level of air
6 pollution from diesel exhaust. The diesel pollution is
7 highly toxic and it's carcinogenic, and it can cause
8 short-term and long-term effects. It can trigger asthma
9 attacks, heart attacks, and other respiratory problems.

10 Truckers are one of the high risk groups. A
11 recent Harvard study concluded that truckers exposed to
12 diesel soot on a daily basis have a much higher rate of
13 lung and heart disease than most people. And long haul
14 truckers face up to two times the risk of developing lung
15 cancer.

16 There's compelling data for CARB to move forward
17 with diesel regulation on trucks, buses, and construction
18 equipment. Any delay means increased disease among
19 children, the elderly, those with existing lungs and heart
20 diseases, and other vulnerable populations, such as
21 truckers and those who simply live or work in close
22 proximity to freeways and other diesel hot spots.

23 The cost of State rules to clean up the diesel
24 trucks will be far outweighed by savings in public health
25 benefits, over \$48 billion from reduced medical and health

1 costs and reduced premature deaths.

2 Inaction will really not help the economy,
3 because health costs from exposure to diesel exhaust and
4 the burdens on the California health care system from
5 pollution-related illness will continue to rise.

6 I urge you to move forward with implementing this
7 life-saving regulation. Thank you.

8 CHAIRPERSON NICHOLS: Thank you.

9 John Yandell and then Jeffrey Becker.

10 Have you posted a list of the order that people
11 are?

12 If you could be ready. The list is outside.

13 But it's going to go Yandell, Becker, and then
14 Richard Lee.

15 MR. YANDELL: Good morning, members of the Board.

16 My family has been in the transportation business
17 solely in the state of California for 65 years. As we
18 have gone through many issues with the unions and the
19 Public Utilities Commission, I don't think we have seen
20 anything as devastating as what we're seeing right now.

21 The equipment has been devalued. You hate to as
22 you're going forward looking for financing, you can't get
23 that because of the devaluation.

24 You know, we're looking ahead to trying to get
25 the grant money you've asked us to get. We can't seem to

1 get that. And, of course, in our case, and so many in the
2 room, we've got not only the truck/bus rule to deal with,
3 but the greenhouse gas emissions with retrofitting the
4 training equipment where there is no funding.

5 So we do ask with that -- and of course I think
6 the industry is very concerned about cleaning up the air.
7 But I think at the same time we would certainly rather be
8 in a position -- since our sales, we're probably down 30
9 percent in our revenue and have laid off 30 people since
10 September of '08 that I think that you would rather see
11 the industry be able to be healthy, put these people back
12 to work. So we would ask that the ARB look very favorably
13 on suspending/delaying, to again with Assemblyman Niello,
14 that we can get some financial support to be able to
15 continue on with this program.

16 Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 Jeffrey Becker, Richard Lee.

19 MR. BECKER: Good afternoon.

20 Thank you for the opportunity to speak here
21 today.

22 We're a family owned/managed company in business
23 since 1965. This year, in 2009, Royal Trucking was
24 awarded the prestigious Board of Directors grand trophy
25 for safety by the California Trucking Association, an

1 award I thought we would never be able to obtain. Very,
2 very pleased that we were able to do that.

3 In order to qualify for this award, we're
4 required to maintain our fleet's annual miles.

5 In 2006, our fleet mileage was 11.6 million
6 miles.

7 In 2009, we're projected to operate 7.1 million
8 miles.

9 That's a reduction of four-and-a-half million
10 miles out of our one little fleet.

11 And I appreciate Erik White's slide. I think it
12 was number 25 that showed the input from last week's
13 meeting that he had that there was reduction in the
14 California fleets. I just think it really needs to be
15 considered. Everybody is talking about slowing down and
16 doing something that will allow us to recover. I think
17 it's very, very important.

18 I just wanted to share that information with you
19 from a family-operated second generation. Don't think
20 we'll make the third generation, like the young lady
21 talked about here earlier, because I don't see this
22 something I want my children to be facing in ten or 15
23 year from now.

24 The only other question I had is we talk about a
25 target in 2014 for the SIP. Is anybody talking about

1 delaying? Can we go -- will the federal government
2 talk -- listen to anybody in the state of California
3 about -- we have a pretty big economy here. And we need
4 some help. And we need to slow down. We're trying to
5 obtain a goal. And I don't know if anybody on staff has
6 gone back to the feds to say California needs a little bit
7 more time. Sure like to get an answer to that question
8 sometime later on today.

9 CHAIRPERSON NICHOLS: We'll ask staff to address
10 that. Thank you.

11 BOARD MEMBER ROBERTS: Madam Chairwoman, I wonder
12 if that could be addressed, because it seems so
13 fundamental to everything that was a major part of the
14 staff report.

15 CHAIRPERSON NICHOLS: I think actually that may
16 be a question for --

17 EXECUTIVE OFFICER GOLDSTENE: I think Ms. Terry.

18 BOARD MEMBER ROBERTS: We're having numerous
19 people ask for a delay, and nobody has suggested what the
20 implications of a delay are.

21 DEPUTY EXECUTIVE OFFICER TERRY: The direct
22 question is: Can we ask for more time?

23 And, actually, the deadlines are established in
24 the Federal Clean Air Act. And then EPA adopts
25 regulations to implement those deadlines. And so we are

1 given a 2014 deadline for compliance for PM2.5. And so
2 while we certainly can inform EPA staff of the difficulty
3 in achieving the reductions in that time frame, that is
4 the mandatory time frame.

5 BOARD MEMBER ROBERTS: So it would be a matter of
6 going back to the EPA?

7 CHAIRPERSON NICHOLS: It's Congress.

8 DEPUTY EXECUTIVE OFFICER TERRY: It would be a
9 change to the Federal Clean Air Act. It would be a change
10 to the Federal Clean Air Act, the structure that's set up
11 in the Act.

12 And, obviously, California is not the only state
13 in the country that has problems with PM2.5. We're one of
14 many. And I suppose Congress will be thinking about this,
15 but they haven't shown any inclination to take up any
16 amendments to the Clean Air Act.

17 BOARD MEMBER ROBERTS: Are you saying any delay
18 in this would have to be made up in some other sector in
19 California?

20 DEPUTY EXECUTIVE OFFICER TERRY: The deadline
21 could only be changed by Congress essentially. So
22 therefore, the --

23 BOARD MEMBER ROBERTS: I understand that Congress
24 is setting a deadline. I'm wondering what are the options
25 here.

1 DEPUTY EXECUTIVE OFFICER TERRY: And when we went
2 through a very extensive process in developing the South
3 Coast particulate SIP, it became very clear because diesel
4 engines dominate the emissions inventory, and same thing
5 goes for the San Joaquin Valley, that there are no other
6 ways to achieve the tons when the emissions are dominated
7 by the diesel sector.

8 So two major rules were essential to attainment
9 and are by far and away the new emissions reductions to be
10 achieved between now and 2014 are the construction rule
11 and the truck rule. And all of the other measures that we
12 have in place, light-duty vehicles, all the stationary
13 source, regulations on the books by the districts are
14 continuing to reduce emissions and contributing to the
15 downward trend. But when you look at the inventory -- so
16 perhaps we might provide an inventory slide to illustrate
17 the significance of trucking and construction in terms of
18 the attainment demonstration.

19 CHAIRPERSON NICHOLS: And, again, the staff was
20 trying to look at potential for delay that would still
21 meet the 2014 deadline. They weren't saying there was no
22 opportunity for adjustment in the rule. They were just
23 saying that that 2014 deadline was a hard target that they
24 had to meet.

25 BOARD MEMBER ROBERTS: I guess that's my

1 question: Is there an opportunity for adjustment or is
2 there not? It sounds like you're saying the federal
3 government has set a rule that we have to meet and there
4 is no other way of meeting it. Is that what we're saying?

5 DEPUTY EXECUTIVE OFFICER TERRY: In the year
6 2014. And so between now and 2014 is really the area
7 where the recommendations of staff to look at the three
8 different concepts for flexibility would have to be made
9 whole by the year 2014. But there is room to look at the
10 interim years between now and then.

11 CHAIRPERSON NICHOLS: And I'm not hearing --
12 well, I shouldn't say that. I've heard some people say
13 they think the whole rule should be tossed out.

14 But I think most of the witnesses we heard have
15 said, including the legislators, say they are not opposed
16 to the rule, per se, but they want delay. The question
17 is: What kind of delay is legitimate?

18 While we're having this conversation, we can
19 continue on I guess for a while.

20 BOARD MEMBER TELLES: I'm just trying to
21 understand this. It seems to me that in the past air
22 districts have asked for extensions of their SIP plans,
23 because they haven't been able to meet them. And they've
24 been approved by the federal government without Congress
25 acting on that. I'm a little confused on what exactly

1 you're saying.

2 DEPUTY EXECUTIVE OFFICER TERRY: That's a very
3 good question.

4 We're talking about the SIP for particulate
5 pollution, which is addressed by a different section of
6 the Federal Clean Air Act. You're probably remembering
7 the ozone plan for the San Joaquin Valley. And so what
8 happens is there are a number of -- there's a series of
9 deadlines based on the severity of the problem. The San
10 Joaquin Valley and the South Coast were bumped up to get
11 more time by becoming extreme ozone areas.

12 Now for particulate pollution, there's a
13 different section of the Clean Air Act that applies. And
14 so once an area is designated, they essentially have five
15 years with another five-year extension. So there is not
16 the same series of extensions possible as there is for
17 ozone. And that's just a matter of the way the law was
18 constructed.

19 BOARD MEMBER TELLES: Is there still available a
20 five-year extension then?

21 DEPUTY EXECUTIVE OFFICER TERRY: The 2014
22 includes the five-year extension.

23 CHAIRPERSON NICHOLS: We got the five-year
24 extension already to get to 2014 I think is the answer to
25 that one.

1 Okay. We'll continue on.

2 Sorry. You're Mr. Lee?

3 MR. LEE: Yes, I'm Richard Lee. Thank you.

4 As a fourth generation Californian, I've seen
5 what a great job your agency has done to clear the air in
6 California over the years and how profoundly our lives
7 have been touched by your decisions.

8 I'm a business consultant working with a
9 family-owned business with 50 employees operating 33
10 on-road dump trucks and various off-road equipment.
11 Despite the fact that they've never seen worse economic
12 conditions in the past 42 years, the owner believes he can
13 survive this economic downturn. Personally, I don't think
14 they got a snowball's chance of staying in business if he
15 has to comply with the truck and bus rule.

16 Over the next four years, compliance with the
17 truck and bus rule will cost this small business over four
18 million dollars. These are dollars they do not have and
19 never planned on spending. These are dollars far and
20 above any profits they can make. And these are dollars
21 well over what they we need just to stay in business in
22 the foreseeable future.

23 Everybody wants to breathe cleaner air, but truck
24 owners should not have to pay for it. It makes no sense
25 to saddle the trucking industry with a regulation that

1 absolutely assures the collapse of thousands of tax-paying
2 businesses and the loss of so many jobs. Implementing the
3 truck and bus rule at the current stage in the development
4 of the technology plus the present depressed state of the
5 economy is simply nuts. You'll hear a huge sigh of relief
6 in this room if you will simply vote to put a five-year
7 hold on the implementation of the truck and bus rule.

8 As an alternative to an arbitrary five-year hold,
9 an economic event based in reality might be employed to
10 trigger the implementation. If there are indications that
11 the economy is actually recovering, implementation might
12 be triggered in less than five years' time.

13 With my written submission, I suggested a short
14 list of economic recovery indicators that might be useful
15 in creating such a trigger, such as employment returning
16 to normal around five percent or housing prices starting
17 to rise. There is a longer list.

18 But as you assess the impact of this rule on the
19 California economy, please understand that the diesel
20 engine is to the state's economy much like the fuel pump
21 is to the engine in your car or that heart in your body
22 pumping the life blood of our economy.

23 CHAIRPERSON NICHOLS: Excuse me, Mr. Lee, your
24 time is up. But if you have submitted written testimony,
25 we will have a chance to look at that.

1 MR. LEE: Implementing the truck and bus rule
2 will be like stabbing a knife into the heart of the
3 California economy.

4 CHAIRPERSON NICHOLS: Thank you.

5 Jane Warner, followed by Peggy Reynolds, and
6 Robert Tennies.

7 MS. WARNER: Thank you.

8 My name is Jane Warner. I'm the president of the
9 American Lung Association California.

10 I want to thank this Board for allowing us to
11 speak today, and I'd also like to thank you for the hard
12 job that you do and that you have been doing for many
13 years.

14 You have been making tough decisions for many
15 years, unpopular decisions, and in many cases, thankless
16 decisions. But I want to thank you for the good work that
17 you've done and for the many lives that you have saved.

18 You've remained strong to your mission. Your
19 mission is to promote and protect public health, welfare,
20 and ecological resources. Your major goals are to provide
21 safe, clean air for all Californians, to protect the
22 public from toxic exposure. These are your goals.

23 The facts about diesel pollution are clear.
24 There is no question. There is comprehensive research
25 that shows the link between diesel pollution, cancer,

1 heart attacks, stroke, and numerous lung diseases and
2 conditions.

3 We know that diesel pollution causes 4500
4 premature deaths every year. And our research also shows
5 that, as been stated before today, that truckers who are
6 exposed to this pollutant are up to twice as likely to
7 develop lung cancer.

8 I grew up in the south, as you may be able to
9 tell. And I saw many families who had tobacco farm that
10 their families had run tobacco farms for generations. And
11 many of my friends and their families lost their homes,
12 their livelihoods and their farms. Why? Because laws
13 changed. Research showed that tobacco kills.

14 While none of us in this room -- and I know this
15 goes for those of you on the Board -- none of us want to
16 see anyone lose a job, a home, or a livelihood. But we
17 must protect our health first. If we don't have health,
18 we don't have anything.

19 I commend you for your job that you are doing.
20 You are protecting our health. You are protecting our
21 children, and for many generations to come, the lives of
22 the people in California. Thank you.

23 CHAIRPERSON NICHOLS: Thank you, Ms. Warner.
24 Appreciate that.

25 Peggy Reynolds from the American Cancer Society,

1 and then Robert Tennies from the Western Truck Center.

2 DR. REYNOLDS: Good afternoon.

3 I'm Dr. Peggy Reynolds. I'm a cancer
4 epidemiologist here representing the American Cancer
5 Society California Division.

6 The American Cancer Society supports the
7 California Air Resources Board regulation to reduce diesel
8 exhaust emissions from heavy-duty diesel trucks and
9 busses. And we urge these important public health
10 protections not be reversed.

11 As you know, diesel exhaust is classified as a
12 probable or likely carcinogen by the International Agency
13 for Research on Cancer, the U.S. National Toxicology
14 Program, the U.S. Environmental Protection Agency, and the
15 National Institute of Occupational Safety and Health. It
16 is classified as the substance known to the state of
17 California to cause cancer and as a toxic air contaminant
18 by the California Air Resources Board.

19 Lung cancer is the main cancer to have been
20 linked to diesel exhaust, but there's also suspicion that
21 other cancers, especially those of the larynx, pancreas,
22 bladder, and kidney, as well as non-Hodgkin lymphoma may
23 be associated with diesel exhaust exposure.

24 In addition, constituents of diesel exhaust, such
25 as soot and polycyclic aromatic hydrocarbons, have been

1 shown to cause cancer.

2 The American Cancer Society's concern also
3 pertains to the communities in California most exposed to
4 diesel exhaust emissions. There's good evidence that
5 exposure is highest near ports, rail yards, and along
6 volume truck traffic, thus preferentially affecting
7 low-income communities and communities of color already
8 disproportionately impacted by the cancer burden.

9 The American Cancer Society urges the Board to
10 continue leading the country with its health-based
11 strategies to reduce diesel emissions in the state.

12 Thank you for the opportunity to comment.

13 CHAIRPERSON NICHOLS: Thank you.

14 Mr. Tennies.

15 MR. TENNIES: Good morning.

16 My current occupation is truck sales.

17 I thank you for the opportunity to speak today.

18 We all want clean air and healthy environments.

19 But we are really screwed today. These new regulations
20 will affect every single person in the state.

21 I come before you today as a 54-year-old resident
22 and concerned citizen. My wife and I have raised three
23 boys. And I have four grandchildren. I've been in the
24 world of trucks for 36 years. As a middle-class resident
25 of this state, I'm tired of trying to keep up with the

1 government. The economy has swallowed retirement savings
2 and dreams of even living my entire life in this state.

3 My customers, trucking companies, are going out
4 of business every day. They're all locally owned and
5 supported companies. This has a domino effect on this
6 evidence in the 12 percent unemployment we're seeing
7 today.

8 I work for a dealership. We have no trucks
9 sales. As you saw earlier in the staff report, truck
10 sales are down 64 percent. Could you take a cut in pay of
11 64 percent to your wages?

12 No part sales. Trucks aren't moving in this
13 economy. Half the truck fleets are parked. We are
14 destined for a \$400,000 loss at our dealership this year.

15 In addition to that, you've offered funding,
16 funding of \$50,000 per truck. But people can't get
17 financed for the balance. The banks are offering interest
18 rates of 11, 16. As of yesterday, I saw one for 36
19 percent.

20 As long as the State continues to dump more
21 regulation on this industry and business in general, the
22 economy will suffer. Fifty-four percent of all state's
23 goods are transported by owner-operators and small
24 business. They have all lost the equity on their
25 equipment.

1 Our dealership itself has made a commitment this
2 year that we're going to take a million-dollar loss in
3 used equipment that we have offered for sale due to the
4 impact all based around those regulations.

5 Chairman Nichols, you and I met 14 months ago.
6 We talked about this specific issue. I shared my concern
7 for the economy and what effects these regulations would
8 have on the trucking industry. We are getting closer to a
9 meltdown than ever before. Are you and the Board prepared
10 for the results if, indeed, this regulation goes forth?

11 Speaking of life, liberty, pursuit of happiness,
12 the Declaration of Independence second paragraph says that
13 whenever any form of government becomes destructive of
14 these ends, it is the right of the people to alter or
15 abolish it.

16 Thank you. I don't have the answers, but I wish
17 we could find them.

18 CHAIRPERSON NICHOLS: Thank you for mostly
19 following the rules there.

20 We will now hear from Dr. Wallerstein, then
21 Albert Batteate, and Grant Stickney.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 DR. WALLERSTEIN: Good afternoon, Chairman
25 Nichols, members of the Board.

1 What I'd like to do is supplement some of the
2 information provided by your staff relative to air
3 quality, goods movement, and then an update on some of our
4 joint efforts to provide incentives.

5 --o0o--

6 DR. WALLERSTEIN: This is the data for the close
7 of the smog season. As shown under the column "days
8 exceeding the 8-hour ozone standard," it shows in South
9 Coast for about a third of the days we exceeded the
10 federal 8-hour ozone standard in South Coast.

11 The next slide, however --

12 --o0o--

13 DR. WALLERSTEIN: -- really tries to relate our
14 ozone levels to goods movement.

15 The black line is the number of containers moved
16 through the twin ports of Los Angeles and Long Beach and
17 shows the effect of the recession in terms of container
18 thru-put.

19 The yellow line is the peak ozone concentration.

20 The red bars are numbers of days of violation.
21 As you can see from that slide, there isn't a real strong
22 correlation between a decrease in goods movement and our
23 ozone values.

24 --o0o--

25 DR. WALLERSTEIN: Now when we turn to PM2.5,

1 which has been most of the discussion here today, we do
2 see some effects of the downturn in the economy in terms
3 of PM2.5 level. But if we look at the next --

4 --o0o--

5 DR. WALLERSTEIN: -- slide, what we see is the
6 most dramatic impact if we're looking at the actual
7 elemental carbon portion of the PM2.5. And what I think
8 is most frankly impressive about this slide in terms of
9 direct correlation is that it occurs throughout the
10 southern California region. It isn't just in Long Beach,
11 but it's also in the Inland Empire.

12 So clearly there has been an impact on the
13 recession on our current air quality levels, at least with
14 respect to directly emitted particulate, which is the
15 surrogate for toxic emissions. And then also there has
16 been a correlation of sorts relative to our overall
17 particulate levels.

18 --o0o--

19 DR. WALLERSTEIN: The next slide, however, I
20 think may be one of the more important slides I'm going to
21 share with you this morning. This is from the port of Los
22 Angeles's most recent presentation to its Board last
23 summer regarding a revision to the forecast. And that red
24 circle indicates they expect in around 2014, that year
25 that's so critical for us for attaining the annual average

1 standard in 2015, that the cargo thru-put will in their
2 estimation achieve levels that matches their previous high
3 of 2007.

4 --o0o--

5 DR. WALLERSTEIN: Now I'd like to quickly turn to
6 just a brief update on some of the joint work we've done
7 on funding clean trucks. This shows that most recently
8 we've accepted 1,600 applications. About 42 percent of
9 the trucks being funded will be to single owner-operators.
10 And it's also important to note that CARB has shown some
11 flexibility here in terms of four-month leeway to allow
12 those trucks to come into the fleet.

13 --o0o--

14 DR. WALLERSTEIN: The next slide is an update on
15 the SOON Program. Bottom line is we had a \$120 million
16 goal, and we have in essence funded about a third of that
17 goal.

18 --o0o--

19 DR. WALLERSTEIN: Lastly, I would just say that
20 we will clearly work with your staff over the next few
21 months to identify flexibilities for this Board as you
22 work on this issue relative to attainment in 2015, but
23 let's not lose site. There is a 24-hour particulate
24 standard in 2019 we have to obtain, and we have to be on
25 the right glide path.

1 Thank you.

2 CHAIRPERSON NICHOLS: Thank you.

3 Our next witness is Albert Batteate and then
4 Grant Stickney and Jay McKeeman.

5 MR. BATTEATE: Good morning.

6 I'm Albert Batteate. I own Batteate Livestock
7 and Batteate Livestock Transportation.

8 And with the new CARB laws for the cab-over truck
9 and trailers, which I need to buy new equipment, that
10 equipment is not available and won't be available. So
11 that's one of my problems I have with that.

12 And the reason that cab-over is such a big deal
13 is truck and trailer combination, you need those to get in
14 and out of the mountain allotments for service allotments
15 and things like that. So the only truck that can get in
16 there to get the cattle in and out, fall and spring, and
17 they're not going to be any of those left if this law goes
18 through. And we're working with the staff and will
19 continue to work with the staff to try to come up with
20 some sort of deal that works for everybody.

21 CHAIRPERSON NICHOLS: Thank you.

22 MR. BATTEATE: Thank you.

23 CHAIRPERSON NICHOLS: Grant Stickney and then Jay
24 McKeeman.

25 MR. STICKNEY: Greetings, Chairman Nichols,

1 members of the Board.

2 My name is Grant Stickney, and I'm the emissions
3 specialist for Peterson Tractor.

4 Peterson Tractor is a Caterpillar machine
5 dealership providing machine sales, machine rentals,
6 product support, and service here in northern California.
7 We work with customers every day who are challenged with
8 complying with the new California diesel emissions
9 regulations. We, too, are trying to meet these
10 challenges.

11 For example, Peterson Tractor has 865 machines
12 with a total of 105,000 horsepower registered in the
13 off-road fleet. This fleet is made up of all types of
14 Tier 2 and Tier 3 construction equipment with an average
15 vehicle age of two-and-a-half to 2.7 years. This fleet is
16 compliant through 2013 for particulate matter.

17 As you can tell by the vehicle age, we normally
18 turn these machines over in sales to customers mainly in
19 California. This has been a good option for our customers
20 to purchase newer cleaner machines. With the new off-road
21 regulation coming into play, the sale of these machines
22 will bring a lower value in the California market because
23 of the current demand of machines with engines certified
24 to the highest tier level.

25 This is a current problem with dealer inventories

1 of new and newer equipment. California equipment dealers
2 are struggling with this. How can we sell Tier 2 machines
3 when Tier 3 machines are available? What is new enough?

4 Shifting gears over to on-highway truck
5 regulation, Peterson Tractor also has a fleet of 142
6 on-highway medium-duty trucks servicing customers in
7 California. Most of these trucks are specialized utility
8 service trucks with a PTO operated and compressor.
9 Average model year in this fleet is 2000. These trucks
10 are costly to own, operate, and maintain, and are
11 essential for providing customer support. You just don't
12 send a tow truck out to haul a piece of equipment into the
13 shop. These trucks provide emergency repairs and
14 maintenance on the spot from all our ten service locations
15 in California.

16 The new on-highway regulation will require
17 replacement of these trucks sooner than anticipated due to
18 the fact they cannot be retrofit because of the
19 specialized operations they perform. The engines in these
20 trucks run at PTO speeds for most of a daily shift and
21 more in times of emergency.

22 We have been struggling with how to meet the new
23 on-highway truck regulation and turn over the required
24 amount will cost Peterson Tractor much more than ever in a
25 time when we cannot afford.

1 Peterson Tractor and its employees have been
2 supporting customers in California since 1936 and have
3 endured tough times in the past years. Our goal is to
4 continue to provide the level of support needed by
5 retaining our dealer excellence at a level that meets the
6 demands of our customers.

7 CHAIRPERSON NICHOLS: I'm sorry. Excuse me. I'm
8 sorry to interrupt, but I didn't see the light go off, but
9 you are well over your time. So just finish your
10 sentence.

11 MR. STICKNEY: Well, I used a couple of seconds.
12 I apologize. And thank you for allowing us to speak
13 today.

14 CHAIRPERSON NICHOLS: Of course. We appreciate
15 it. It's your right and our pleasure. But we do have
16 trouble with the time limits.

17 Jay McKeeman and then Dr. Steven Maxwell and
18 Brandon Kitigawa.

19 MR. MC KEEMAN: Good morning.

20 I'm Jay McKeeman with the California Independent
21 Oil Marketers Association. We represent fuel distributors
22 in the state. Basically, our members are small
23 family-owned business having fleets of -- several up to 50
24 vehicles.

25 A problem that our members are having in terms of

1 the financial assistance is that for many reasons,
2 including the number of trucks, the mileage, their
3 location, they're not eligible for the financial
4 assistance. And I think we need to take a real good look
5 at the financial assistance package and determine whether
6 it's providing the assistance that's necessary for small
7 to medium-size fleets.

8 Really, what you have today is an issue before
9 you of affordability. I think I can speak for many
10 trucking associations and truckers in this state. We've
11 never had an argument against the regulation. We've had
12 an argument with the timing of the regulation. That's the
13 issue.

14 And I understand that the SIP commitment drives
15 this whole conversation, but it may be that the State has
16 to look at the federal government in the eye and say we
17 cannot do this. The people that are obligated to do this
18 cannot afford this regulation. And if that's the case, I
19 hope the State is the one that's looking the federal
20 government in the eye. If it's not the State, the
21 truckers will look the federal government in the eye and
22 there will be civil disobedience. I guarantee that.

23 So I think it's really important that we look at
24 the affordability of the regulation. I would task staff
25 with taking a look at how various sectors in the economy

1 are going to be able to afford this, develop some good
2 cost information about problems people are having in
3 affording this regulation, and take a look at the
4 affordability of the regulation as well as the commitment.

5 A year ago, Driving Towards a Cleaner California
6 put a proposal in front of this Board that basically got
7 you the emissions reductions at the end of the period.
8 There was flexibility in the middle of the regulation.
9 But at the end of the day, everybody was on the same page.
10 And I think that's kind of where we have to look at as a
11 template for going forward with this.

12 Thank you very much.

13 CHAIRPERSON NICHOLS: Thank you for your
14 testimony.

15 BOARD MEMBER D'ADAMO: Madam Chair?

16 CHAIRPERSON NICHOLS: Yes.

17 BOARD MEMBER D'ADAMO: I'd like to thank the
18 witness for his testimony. And it reminds me as we move
19 forward we need to be mindful of Carl Moyer and incentive
20 funds. Because if we change compliance dates, it might
21 result in some unintended consequences. So just staff
22 could add this to the laundry list of things that we look
23 at.

24 CHAIRPERSON NICHOLS: The whole financing issue
25 is a big part of any discussion about changes to the rule.

1 Steven Maxwell and then Brian Kitigawa.

2 DR. MAXWELL: Thank you, Chairman Nichols and
3 distinguished Board members.

4 My name is Steven Maxwell. I'm a thoracic
5 surgeon and lung cancer specialist here in Sacramento. I
6 also serve on the Leadership Board of the Sacramento
7 Region of the American Lung Association of California.

8 Every day, I see the impacts of lung disease and
9 lung cancer up close. I know suffering caused by toxic
10 air pollution and strongly support these life-saving
11 regulations to remove cancer-causing diesel soot from our
12 air.

13 Diesel exhaust is well known to be the largest
14 single source of airborne toxins in California and is
15 recognized by the United States Environmental Protection
16 Agency, the World Health Organization, and International
17 Agency for Research on Cancer as a threat to human health.

18 We've waited too long to address this issue.
19 CARB's truck and bus rule will cut 80 percent of the
20 carcinogenic diesel soot from all big rig trucks on
21 California roads and highways over the next decade. I
22 know we can't afford further delay. The construction
23 equipment regulation will also result in large reductions
24 in diesel soot.

25 I'm also here representing the Health Network for

1 Clean Air, a statewide group of medical and health
2 organizations deeply concerned about the health impacts of
3 air pollution. The Health Network for Clean Air has
4 submitted a letter signed by 22 state and local public
5 health and medical associations, including the American
6 Heart Association, the American Cancer Society, the
7 California Medical Association, and the American Academy
8 of Pediatrics. We strongly urge moving forward
9 particularly with the implementation, because any delay
10 will cause significant harm to public health.

11 The science demonstrating the toxicity of diesel
12 particles is not in question. And the actions of a single
13 researcher are reprehensible and inexcusable. But please
14 don't throw out the science in spite of the scientist.
15 Disregarding this one study has no bearing on the
16 conclusion of scores of previous reports. A large body of
17 perspective independently peer reviewed studies developed
18 over the last 20 years has clearly established that diesel
19 soot increases cancer risks and contributes to thousands
20 of premature deaths each year, as well as asthma attacks
21 and other respiratory symptoms, acute bronchitis, and
22 hospitalizations for respiratory and cardiac illnesses.

23 We know that making this decision is a difficult
24 one in light of the economy. The sensible rules proposed
25 by this Board to reduce toxics over time will protect

1 lives and save California far more in the long run than it
2 will cost.

3 The bottom line is that California must move
4 forward to reduce debilitating illnesses through
5 transitioning to cleaner trucks, buses, and construction
6 equipment, and implementing the statewide diesel
7 regulations.

8 Thank you for your time and consideration.

9 CHAIRPERSON NICHOLS: Thank you.

10 Brandon Kitigawa, followed by Pamela Tapia. And
11 Pamela is actually part of a group I see listed here of
12 high school students from Mandela High School. So perhaps
13 if they could get ready to come as a group, that would
14 help. Okay. Thank you.

15 MR. KITIGAWA: Good afternoon, Chair and Board
16 members.

17 My name is Brandon Kitigawa. I'm a policy
18 associate with Regional Asthma Management and Prevention.
19 We coordinate a statewide network of asthma coalitions
20 called Community Action to Fight Asthma, or CAFA.

21 This network allows local coalitions to
22 collectively advocate for regional and state policies that
23 reduce the burden of asthma in their communities.

24 First, we want to thank you for making the
25 difficult decision last year to adopt this rule, knowing

1 that we're in the middle of an ailing economy.

2 And second, recognizing that many are still
3 struggling economically, we want to remind you that what
4 was true last year is still true today. The diesel
5 regulations represent the best opportunity for California
6 to improve some of the dirtiest air in the nation and
7 reverse the trend that has seen the rate of asthma
8 prevalence in the state rise by 25 percent between 1995
9 and 2005.

10 We know that diesel trucks and buses are the
11 single largest source of diesel pollution in the state,
12 accounting for some 40 percent of diesel soot. Curbing
13 these emissions is vital to meeting federal air quality
14 standards and removing the health and economic burdens of
15 dirty air.

16 CAFA members deal with the effects of diesel
17 pollution every day. We see kids forced indoors for
18 recess. We see kids missing school and parents missing
19 work due to asthma attacks. And we see families spending
20 money on preventable health care costs.

21 One of our members, the Long Beach Alliance for
22 Children with Asthma, collected 122 signatures from
23 members in their community urging you to continue to
24 support this rule and protect our health.

25 Thank you.

1 CHAIRPERSON NICHOLS: Thank you.

2 Okay. So I called on Pamela Tapia. I don't know
3 how you folks want to organize your presentation.

4 UNIDENTIFIED SPEAKER: I think there are three
5 students who are going to speak and other students -- why
6 don't we all come and stand up together? And then we
7 don't have to feel so lonely up here.

8 MS. TAPIA: Good morning, Board members.

9 My name is Pamela Tapia. I attend Excel High
10 School in west Oakland.

11 Thank you for letting me speak to you again.

12 I live in west Oakland. I was born with asthma,
13 and I've been in and out of hospitals my whole life.

14 I'm not the only one whose health has been
15 affected by pollution. These people have watched their
16 kids go through the pain of an asthma attack. They have
17 watched their friends and neighbors die from cancer and
18 other diseases that have been caused by the killer impact
19 of pollution from different sources, including diesel
20 particulate pollution from the trucks on the freeways and
21 other trucks routes that go through to west Oakland.

22 Please use your authority to enforce the truck
23 rule as scheduled to protect the health of all residents
24 of all areas disproportionately impacted by diesel
25 pollution.

1 CHAIRPERSON NICHOLS: Okay. Next.

2 MS. ALEJANDRE: My name is Yessica Alejandre.

3 I'm a student Mandela High School.

4 Having a diesel reduction is important because it
5 will reduce the pollution that is in the air and prevent
6 deceases in our community.

7 In my community, we live close to truck roads.
8 We are located near the freeways and the port of Oakland.
9 This means there is a lot of pollution in the air. Asthma
10 is one of the problems caused by diesel because of the
11 small partical matters that is in the air which causes
12 people to have a hard time breathing.

13 My mom and sister both have asthma, and they have
14 to take medication every day to control it. Every time
15 they go outside for a walk, they have a hard time
16 breathing because the air is so polluted.

17 Also, the people that live close to the truck
18 route is being affected, because the youth from ages zero
19 to 14 have a large rate of asthma hospitalizations in the
20 Alameda County.

21 We need a truck rule that protects the community
22 health, because that way we can reduce the asthma
23 hospitalization rate in the community.

24 MR. ROCHA: Hello. My name is Miguel Rocha, and
25 I'm a student at Mandela High School in Oakland.

1 I believe the diesel reduction program is
2 important because, first of all, I live in Oakland, which
3 has a lot of trucks that pass by our schools and homes,
4 which these truck cause air pollution that results in
5 citizens in those areas to have high risk of having asthma
6 and other health problems. Asthma is a really big problem
7 here in California.

8 In order to stop the pollution caused by diesel
9 trucks, we need to put filters in trucks to stop the
10 particles from coming out into the air that we breathe in.
11 Therefore, we can try to make every city in California a
12 cleaner environment to live and breathe in.

13 Thank you.

14 CHAIRPERSON NICHOLS: Thank you.

15 And did we have one more speaker?

16 MR. ALEJANDRE: My name is Miguel Alejandro. I'm
17 a student at Mandela High School in west Oakland.

18 I think the diesel engine trucks have a big
19 impact on my city of Oakland. I live near a truck route
20 area in which the asthma rate is very high and is 49.6
21 percent of the neighbors that are Latino.

22 I think trucks should not be let near busy areas,
23 because it only cause asthma problems. The biggest
24 problem is with the trucks. The owners wouldn't want to
25 change the diesel engines with new one, because it is

1 expensive and some people cannot afford that.

2 Cleaner engines would improve truck drivers'
3 health, too. The best way would be to put filters on
4 truck engines to capture the pollution that make us sick.
5 Filters are cheaper.

6 I suggest that the government should help,
7 because it will also be hard to spend money for every
8 truck to have a filter when the economy is bad. Our
9 health cannot wait.

10 Thank you.

11 CHAIRPERSON NICHOLS: Okay. Well, thank you for
12 coming all of you. I feel like we're participants in a
13 civics project. And I'm happy to have played a role in
14 that and appreciate the fact that you have worked on this
15 issue. Thank you.

16 Our next witness is Don Anair and then Bonnie
17 Holmes-Gen.

18 MR. ANAIR: Hi, again. Don Anair, senior analyst
19 with the Union of Concerned Scientists.

20 Good afternoon. Thank you for visiting this rule
21 and looking at the economic impacts on truck emissions. I
22 think this is an important step forward.

23 I just want to offer some comments today in
24 support of the Board's long history in addressing diesel
25 emissions which have started over a decade ago. And the

1 body of evidence that prompted this Board to do so has
2 not, in fact, gotten weaker but gotten stronger over the
3 past decade with additional research, science, studies
4 showing stronger links between health end points such as
5 premature death, asthma, heart and lung disease, et
6 cetera. So I encourage you to continue with your efforts
7 to reduce diesel emissions.

8 In addition, as Chairman Nichols mentioned, ARB
9 adopted a goal to reduce diesel pollution 85 percent based
10 on the need for public health protection in all of
11 California's communities. We know this level of
12 protection will not be achieved without steady investment
13 in cleaner technologies, cleaner trucks, and other diesel
14 sources.

15 And, in addition, the economic benefits of
16 controlling diesel pollution are real. Time and again,
17 efforts to clean up diesel pollution show that through
18 reduced asthma attacks, hospitalizations, premature
19 deaths, the societal savings outweigh those costs. That
20 doesn't negate the issue of actually having to invest in
21 these technologies. And I understand that. And I think
22 that today the Board is being presented with a potential
23 to give some relief to the trucking industry based on the
24 emission reductions that have occurred due to the slow
25 economy.

1 And I just want to offer my support for Board
2 Member D'Adamo's comments earlier about looking at a
3 potential emissions budget that has basically been created
4 by the slowing economy and to design any options going
5 forward that essentially would use that budget as guidance
6 in terms of how those options are designed. I would hate
7 to see any option to really increase the burden on
8 communities that are already suffering from the severe
9 health impacts of diesel pollution and in addition to the
10 economic impacts that they are suffering. There are job
11 losses and economic uncertainty in all of these
12 communities across the state, and they shouldn't be the
13 ones who have to carry the burden of the changes.

14 So again, thank you for your support and your
15 continued efforts to reduce this public health threat.
16 Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 Bonnie Holmes-Gens, and then Jenny Bard and Dr.
19 Joseph Kubsh.

20 MS. HOLMES-GEN: Chairman Nichols and Board
21 members, Bonnie Holmes-Gen, Senior Policy Director,
22 American Lung Association. Thank you for the opportunity
23 to make a few comments.

24 I wanted to say clearly that the Board's
25 regulations on diesel trucks and buses and the regulations

1 on construction equipment are two of the most important
2 regulations you have adopted over this decade, because
3 they will save thousands of lives every year and protect
4 vulnerable populations. And we are extremely concerned
5 about those with asthma, emphysema, and chronic
6 bronchitis.

7 Your Board has demonstrated tremendous leadership
8 and courage in adopting these regulations, and now we need
9 you to continue that leadership in moving forward to
10 implement them and ensuring that the public does receive
11 the public health protection they're expecting.

12 You adopted these rules to address the public
13 health crisis created by diesel pollution and to ensure
14 that we meet our Federal Clean Air Act requirements for
15 reducing particulate pollution. While the public health
16 crisis has not changed since you adopted these
17 regulations, they will not be solved by the economy. And,
18 clearly, those deadlines are still looming under the
19 Federal Clean Air Act.

20 We're very aware of the economic problems that
21 you're hearing about today and faced by businesses and the
22 hardships of these difficult times have caused. But we're
23 also very concerned about the hardships experienced by
24 those who are suffering daily from lung health problems,
25 like asthma and chronic bronchitis and other lung

1 illnesses. We believe their voices need to be heard.

2 And I like to remember the woman I talked to with
3 long-time asthma who said there are retrofits available
4 for these trucks, but there are no retrofit device
5 available for my lungs. People are experiencing very,
6 very severe problems, and they want to be heard.

7 We appreciate that the Board has put tremendous
8 efforts toward helping truckers to comply with this
9 regulation, and we strongly support your efforts to ensure
10 that the one billion dollars in State moneys and State
11 incentive funds gets out the door. We think this would
12 help ease the implementation. And we certainly urge you
13 to do everything possible to make sure these funds are
14 distributed as quickly as possible.

15 And I did want to comment. You were presented
16 some options this morning by staff, and we wanted to
17 comment.

18 As you are reviewing these options, we urge you
19 to carefully investigate the public health impacts of each
20 of these options. How will these options effect the
21 reductions in premature death and illness? How will they
22 effect the reductions in asthma attacks and illnesses and
23 hospitalizations expected from these regulations? Because
24 we don't believe we can afford to give up any of those
25 public health benefits, and we would encourage you to not

1 make any specific recommendations until you get a very
2 clear understanding of those public health impacts.

3 CHAIRPERSON NICHOLS: Thank you. Your time is
4 up.

5 Jenny Bard, Joseph Kubsh, David Blohm, and then
6 we're going to break for lunch.

7 MS. BARD: Good afternoon, Chairman Nichols and
8 members of the Board.

9 I'm reading a statement for Andrea Rico. She's
10 Associate Professor of Preventative Medicine at the Keck
11 School of Medicine of the University of Southern
12 California.

13 She'll be focusing the brief comments on the peer
14 review of the ARB document concerning mortality related to
15 particulate matter, on the known research findings showing
16 diesel particulate is a cancer-causing material, and on
17 USC's southern California research. These are all
18 relevant to any discussion of the ARB diesel truck rule.

19 "At USC, we have a team of scientists who conduct
20 research on the effects of air pollution on children's
21 respiratory health. From that study, we know that
22 children who grow up in communities with higher PM2.5
23 levels are more likely to have reduced lung function than
24 if they grew up in less polluted communities. We know
25 that children who live close to busy roads and traffic are

1 more likely to have reduced lung function and a higher
2 prevalence of asthma."

3 Now turning to the studies about PM and mortality
4 and diesel and cancer, first, the PM mortality document
5 prepared by ARB had several independent scientific
6 advisors and was also peer reviewed by a team of
7 scientists with impeccable credentials who are widely
8 recognized as experts on the topic of mortality from PM.
9 Each of them has published independent research on the
10 health effects of particulate matter.

11 I'll site just a few recent papers. A January
12 2009 published paper of which ARB scientific advisor Dr.
13 C. Arden Pope was lead author concluded, "A reduction in
14 exposure to ambient fine particulate air pollution
15 contributed to significant and measurable improvements in
16 life expectancy in the United States."

17 Second, peer reviewer Dr. Jill Schwartz concluded
18 in a June 2009 paper, "Our analysis showed that a
19 reduction in exposure to ambient fine particulate air
20 pollution contributed to significant and measurable
21 improvements in life expectancy in the United States."

22 Turning to the U.S. EPA and recent statements
23 about diesel exhaust, the EPA reviewed effects of diesel
24 in its rule on locomotive and marine engine issues in 2008
25 and concluded "These pollutants, PM, contribute to serious

1 public health problems that include premature mortality,
2 aggravation of respiratory and cardiovascular disease, and
3 aggravation of existing asthma, acute respiratory systems,
4 and chronic bronchitis. Exposure to diesel exhaust has
5 been classified by EPA as being likely carcinogenic to
6 humans.

7 Finally, I would ask that we remember the groups
8 that U.S. EPA says are most at risk: Our children, people
9 with heart and lung diseases, and the elderly.

10 Thank you.

11 CHAIRPERSON NICHOLS: Okay. Thank you.

12 Dr. Joseph Kubsh and David Blohm.

13 DR. KUBSH: Good morning, Madam Chair, members of
14 the Board.

15 Joe Kubsh with the Manufacturers of Emissions
16 Controls Association.

17 My member companies have worked with your staff
18 to verify most of the retrofit filter technologies that
19 are available for both highway and off-road equipment here
20 in the state of California as well as applications outside
21 of California and in other marketplaces around the world.
22 Many of these companies have been involved with the
23 development of retrofit technologies for more than 10
24 years. And in some cases, some of these companies have
25 worked on these technologies for more than 20 years.

1 More than 100,000 filters have been installed on
2 trucks, buses, and off-road equipment around the world and
3 with more than 10,000 filters installed here in the state
4 of California already. And the experience with those
5 filters have been largely good. There certainly have been
6 some isolated instances of problems, but more often than
7 not those problems are associated with the way the actual
8 engine has been operating and not the design of the way
9 the filter has been put on those vehicles.

10 Retrofit filters are very similar to the
11 particulate filters that have been installed on new
12 heavy-duty vehicles here in the United States since 2007.
13 There are about a million of these filter-equipped trucks
14 now running on the highways of the United States. And
15 again the experience with these filters has been very
16 good.

17 Diesel particulate technologies that have been
18 installed either as retrofits or on new heavy-duty trucks
19 have been very successful in reducing diesel particulate
20 emissions by at least 85 percent. And they also reduce
21 black carbon emissions by more than 99 percent. And as we
22 know, black carbon is also an important climate change
23 agent. So these filters have impacts not only with
24 respect to the emissions and health benefits associated
25 with diesel particulate emissions, but also impact climate

1 change in a positive way.

2 Today's economic environment has put a
3 significant strain on businesses of all sizes, including
4 some of my members. But despite these severe economic
5 downturn, MECA members continue to make investments in
6 verifying retrofit technologies. A survey of our members
7 indicated that 65,000 green jobs in the United States are
8 associated with our industry and more than a thousand of
9 those jobs are here in California. And that doesn't even
10 include the growing number of jobs associated with the
11 installation and maintenance of retrofit technologies here
12 in California.

13 Our industry completed an independent economic
14 analysis recently that indicates that the compliance cost
15 of the truck rule provides significant green job
16 opportunities here in California. The truck and bus rule
17 alone, the annual compliance costs will create
18 approximately 20,000 jobs, and many of those jobs would be
19 here in California. And our industry strongly supports
20 your continued efforts in this regard.

21 Thank you.

22 CHAIRPERSON NICHOLS: Thank you. Appreciate the
23 fact that you speak for the people who have the business
24 and actually helping people comply.

25 Okay. David Blohm, and you will be the last

1 witness before our break.

2 MR. BLOHM: Thank you, ladies and gentlemen of
3 the Board.

4 I'm David Blohm with Golden State Bridge. We're
5 an engineering and contractor firm here in California. We
6 build bridges, and our science is very important.

7 I stand before the Board, in front of my
8 colleagues, with an engineering marvel: A rat trap. I
9 ask anybody on the Board to put their finger in the rat
10 trap, because my colleagues and myself feel these on-road
11 and off-road regulations are a rat trap. They will make
12 us bleed. They will break our bones. And they will kill
13 in the state of California.

14 Our fleet is a large fleet. It will cost us one
15 million dollars per year for the next ten years to comply
16 with these regulations. Our fleet average age is 6.5
17 years, and our engine age is 5.3 years. It's sad that we
18 do not comply with these regulations with such a new
19 fleet.

20 So I just want to thank you for your time and
21 letting me speak in front of the Board.

22 CHAIRPERSON NICHOLS: Excuse me. I had a
23 question for you, since you've still got time.

24 BOARD MEMBER LOVERIDGE: How many trucks in your
25 fleet?

1 MR. BLOHM: In our on-road fleet, we have 17. In
2 our off-road fleet, there's 39 pieces of equipment.

3 CHAIRPERSON NICHOLS: Okay. Thank you.

4 All right. I think we can try to be back here
5 promptly in our seats and ready to go again at 2:00.

6 (Thereupon a recess was taken.)

7 CHAIRPERSON NICHOLS: I'm making an announcement
8 right now both for those in the room and those who are
9 watching us on the web that we are going to cut off the
10 ability for people to sign up. We are up to number 91.
11 We've gotten through number 30. Anybody who hasn't signed
12 up can just give their comments to somebody else. I don't
13 believe there's anything that we would hear if we left
14 this list open that we're not going to hear by listening
15 to 91 witnesses.

16 So if you happen to be a person who's here
17 because you want to show your support for other people
18 from your group, whatever your group is, and you just want
19 to let them speak for you, that would be great. You can,
20 of course, speak and we will stay here as long as we have
21 witnesses to listen to.

22 We're going to call next on Manuel Cunha from the
23 Nisei Farmers League, followed by Grant Campbell and Chris
24 Shrader.

25 MR. CUNHA: Good afternoon. Thank you very much

1 Madam Chair, Board members; members of the San Joaquin
2 Valley Board, DeeDee D'Adamo, Dr. Telles. Thank you very
3 much for representing our valley in probably the most
4 important times that are going on in the country right
5 now. I thank you for all your help on the Board.

6 Again, Manuel Cunha, President, Nisei Farmers
7 League. I've been up for the last 48 hours trying to keep
8 my citrus grove alive in Fresno County. If I make it
9 through tonight, I think with enough coffee, I will be
10 able to make it tomorrow to a court hearing for one of my
11 growers. It's been a long 48 hours for those of us that
12 have to keep our groves alive and even our nursery stock.
13 It's been really cold. Thank you again.

14 I'm here today to emphasize the importance of
15 economics. I do see a role of how much of our businesses
16 across this country -- as I play a roll in the Federal
17 Reserve Board of the economics across the country. But
18 this state is a key pivotal part of this entire economy
19 and this country. The economics are important.

20 You've heard all the comments from the truck
21 dealers and several people who will speak even beyond
22 today. We need to figure out a way to move this out
23 because of the economics. It's great to say go ahead and
24 enforce the rule. But if you don't have businesses,
25 people are going to lose their jobs, and then they're

1 going to have health problems that are not going to be
2 heard about because people won't talk about a person going
3 into the clinic or to the hospital with a heart attack and
4 a heart attack was because of not having a job and
5 figuring out how to pay their house payment. So I'm
6 hoping that we do or the Board does somehow in the very
7 short term move this rule out.

8 Number two -- and I hope for the part on the ag,
9 I think that's important as well. Many of our farmers
10 don't know what's going down as far as the paperwork in
11 their hands of knowing how to register their trucks,
12 knowing that mileage has to be recorded on January 1 of
13 this coming year, 2010. That information is not out there
14 yet.

15 And I just think I'm having enough calls already
16 about what's going on with the Air Resources Board. And I
17 think we need to get over this thing and move forward,
18 because I think it's important to deal with the issues at
19 hand.

20 But I hope that we can move something of the ag
21 part of it for the registration part of it. I understand
22 the importance of it, and I know staff has worked hard
23 with us to try to figure out that information.

24 But right now there's enough pressure out there
25 in my industry. The water crisis is enough of a problem,

1 but now this freeze is even causing more problems.
2 Adrenaline is rising. There isn't enough coffee to make
3 that stop.

4 I just will say this in my last 13 seconds.
5 Responsibility, credibility, honesty, integrity are the
6 most important fabrics of this agency. And I've worked
7 with your agency for 20 years, and we have got to keep
8 that on track. If we lose that, we will have lost
9 everything.

10 So I would hope that we try to learn from things
11 in the future to go forward with honesty and work together
12 to achieve what we have to.

13 And thank you again for listening to me.

14 Dr. Telles, thank you for all the work you do on
15 our Board and the San Joaquin Valley.

16 DeeDee as well for coming and taking care and
17 addressing our issues in agriculture across the state.

18 Thank you so much, Madam Chair.

19 CHAIRPERSON NICHOLS: Thank you.

20 We'll hear next from Grant Campbell, Chris
21 Shrader, and Spencer Defty.

22 MR. CAMPBELL: Good afternoon, Chairman Nichols,
23 esteemed Board members, and the men and women that have
24 taken time away from their businesses to be here today.

25 My name is Grant Campbell. I represent Lee

1 Jennings Target Express and its 130 employees. We are a
2 California-based trucking company. Have been in business
3 for four decades and operate four terminals in California.
4 Our company is struggling with ever increasing fee
5 schedules from State oversight agencies and is limping
6 through the worst economy in our business history.

7 Although we are a small voice in the
8 transportation industry, our troubles are indicative of
9 the industry as a whole, and I thought you might like to
10 hear from us before this regulation forces us out of
11 business.

12 While CARB's goal to meet particulate matter and
13 nitrous oxide emission targets is notable, your
14 environmental policies are having the unfortunate side
15 effects of decimating the California trucking industry,
16 and the methods employed to accomplish it will put
17 thousands of people out of work.

18 Reduced to its lowest denominator, the truck and
19 bus rule calls for the wholesale replacement of existing
20 truck fleets at an unbearable cost to business and also
21 makes current equipment worthless on the used truck
22 market. This regulation alone will cost our company
23 almost \$8 million and create a debt retirement ratio of 24
24 percent over the first three years. As anyone with any
25 business experience will recognize, a 24 percent debt

1 retirement ratio is unsustainable.

2 Ironically, as we lay awake at night trying to
3 formulate a plan to save 130 jobs, CARB's website is
4 actively recruiting 22.

5 It is becoming increasingly difficult to do
6 business in California, and many companies we work with
7 are pursuing relocation strategies to business-friendly
8 states.

9 While out-of-state carriers will fill the void
10 and continue moving freight from ports and manufacturers
11 of our state, these same carriers will take payroll,
12 registration, payment for services, and other California
13 dollars from our weakened economy, extending the economic
14 meltdown and forcing thousands of middle income wage
15 earners onto unemployment rolls.

16 The inconvenient truth is simply this: The
17 creation of revenue from services and merchandise is what
18 pays for everything. And as this revenue dries up, so
19 will the state.

20 From the viewpoint of an organization that does
21 not have to make a profit, \$5.4 billion may not seem a
22 burdensome amount. However, the totality of taxes, fees,
23 and onerous regulation has become unbearable for many
24 companies.

25 We respectfully request consideration of an

1 extension of two years from the proposed implementation
2 date of the truck and bus rule to assist our industry in
3 helping you to meet emission reduction goals while helping
4 to ensure the continued existence of a California
5 domiciled trucking infrastructure. This minor delay will
6 allow trucking companies to re-capitalize their fleets at
7 a realistic debt retirement ratio and will save thousands
8 of jobs.

9 Thank you.

10 CHAIRPERSON NICHOLS: Thank you.

11 Chris Shrader.

12 MR. SHRADER: Good afternoon. Thank you for
13 letting me speak today.

14 I work for a company that's a global based
15 company and has a green policy in effect worldwide. We
16 were awarded an Energy Star award for our completeness
17 this year in California for burning biosolids and
18 alternative fuels to run our plants.

19 We have over 700 pieces of equipment that operate
20 in California.

21 I've been in this trucking business since I was
22 15 years old, and I'm 53 now. I started out as a young
23 man washing gasoline tankers in high cool and have been
24 able to reach the position I'm in today.

25 This economic impact that you're about to put on

1 the trucking industry is unfathomable. It's going to
2 damage -- as one gentleman has spoken, it's going to put a
3 knife through the heart of the trucking industry.

4 There's one last thing I would like to address --
5 it was Supervisor Roberts -- that the integrity of my past
6 in the business that I'm in, had I ever sent in a resume
7 that had been falsified by me, I would have been
8 terminated from my job. It would not be a furlough.
9 There would not be a demotion. It would be a total
10 termination. And I totally agree with your thoughts on
11 Dr. Tran.

12 Thank you very much.

13 CHAIRPERSON NICHOLS: Okay. Spencer Defty and
14 then Joe Crummett and then Kevin Shanahan.

15 And I'd appreciate it if you would be ready to
16 speak when your name is called, because it takes times to
17 get here. Thanks.

18 MR. DEFTY: I'll be taking Joe Crummett's three
19 minutes as well.

20 Good afternoon, members of the Board. Thank you
21 for allowing all of us to come and speak.

22 I'm Spencer Defty with Diamond D General
23 Engineering.

24 I was in this building just over a week ago to
25 receive the California Cool Green Award of the year for

1 small businesses. And upon receiving that award, I was
2 asked to speak as part of the receiving that award. And
3 I'm sure Chairman Nichols remembers.

4 CHAIRPERSON NICHOLS: I remember it well.

5 MR. DEFTY: And I'd like to thank you for that
6 award.

7 The thesis of my speech was that we as small
8 business are out there trying to do the right thing. That
9 was acknowledged by the award that we did receive from the
10 Air Resources Board and the Cal/EPA. But that we cannot
11 continue to do the right thing unless we are profitable.
12 As well as with all the noble intentions that this
13 regulatory agency has, it is my belief after viewing what
14 the policies that are being implemented and are due to be
15 implemented are going to be flawed in their
16 implementation. And they're actually going to create
17 higher greenhouse gas emissions than we could actually
18 achieve if this Board would direct staff to engage small
19 business, business and industry at large, as well as allow
20 us to have a voice on your Board.

21 There is only one Board member to my knowledge
22 that is in the business industry. And that's Ms. Berg;
23 correct? Two. Okay. So there's two.

24 Are any of you -- do any of you have anything to
25 do with the diesel industry at all? Just you. You have

1 some trucks on the road. So it's imperative in my opinion
2 that we as industry have a place on the Board.

3 A little example is last week I was here after
4 receiving the award for staff's presentation. Quite
5 frankly, I was quite set back by staff's presentation and
6 quite infuriated by it. And I say this without malice or
7 disrespect to staff. I felt it was very arrogant in their
8 presentation of telling us in industry how it was and how
9 there is no dissent, that this science is conclusive. And
10 it isn't.

11 I keep hearing from industry insiders here today
12 how the trucking industry has a higher propensity for lung
13 cancer. Well, yeah, they do. Most truckers smoke when
14 they're driving down the road. So of course they would.
15 But nobody is talking about that. We're putting it into
16 the diesel regulation category. So we need to inject a
17 little common sense into this equation.

18 And we want to collaboratively have a voice at
19 the table with all of you so that we can lower greenhouse
20 gas emissions, we can continue to have a sustainable
21 economy. Because as the guy before me spoke of, if we
22 don't have these revenues, if we're not generating the
23 revenues, we can't afford to buy the clean technology and
24 we also cannot afford to pay the revenues to the
25 government so that all of this can exist. So --

1 CHAIRPERSON NICHOLS: Excuse me, I'm sorry. You
2 know, I know you're here to engage in a conversation with
3 us, and we're not talking back. But if you could just
4 finish up your testimony, I would appreciate it. We don't
5 let people double their time and switch --

6 MR. DEFTY: Fine. Thank you very much.

7 CHAIRPERSON NICHOLS: Thank you.

8 Kevin Shanahan.

9 Same goes for everybody else here.

10 MR. SHANAHAN: Good afternoon, Chair Nichols,
11 Board, and staff.

12 My name is Kevin Shanahan. I'm the principle
13 owner of Cleaire Advanced Emission Controls.

14 Cleaire is headquartered in San Leandro,
15 California. And Cleaire manufacturers all six of our
16 retrofit designs in San Diego, California.

17 Our company was formed almost ten years ago under
18 response to CARB's diesel reduction rules. Cleair's
19 designs, manufactures, verifies, and sells advanced
20 emission control systems for diesel engines. More
21 commonly referred to as diesel retrofit systems.

22 The value of the diesel retrofit system is clear.
23 It offers an economic advantage over truck replacement,
24 because it reduces ultra fine PM emissions to the levels
25 of a brand-new truck for a fraction of the price.

1 Cleaire has sold more than 8,000 diesel retrofit
2 systems over the past eight years. These systems have
3 been installed in any number of challenging applications,
4 yet continue to meet and exceed CARB's very stringent
5 reliability standards.

6 Unfortunately, I find myself here today with the
7 future of my business at risk. My business is at risk,
8 because it appears the on-highway fleet rule may be
9 deleted. If this delay occurs, this will be the third
10 time a rule has been delayed. Past delays have had
11 devastating effects on our California-based business.

12 A third delay could well put the entire diesel
13 retrofit industry at risk of going out of business.
14 Should Cleaire and possibly the entire retrofit industry
15 fail to survive as a result of this third delay in the
16 rules, an unintended consequence is there will not be
17 diesel retrofit systems available to cost effectively
18 bring diesel engines into compliance in any on- or
19 off-road applications, whether they are currently under
20 rule or not. This will leave truck and equipment
21 replacement as the only option available for rule
22 compliance.

23 Another delay will mean our industry will be ill
24 prepared to provide diesel retrofit systems when they will
25 be needed the most. We will be unable to respond to the

1 compressed time lines created by continued delays. Truck
2 and equipment owners will have few, if any, options to
3 cost effectively comply with the rules.

4 However, having said all this, I'm well aware of
5 the effects of the economic downturn our state and nation
6 are experiencing. I'd like to just acknowledge we're in a
7 complex situation that's going to take a lot of creative
8 thinking and collaborative effort.

9 And should you be forced to delay the rule, I
10 think there is a number of things that I would really
11 encourage you to consider.

12 First would be to provide triple credit for
13 diesel retrofit systems installed during calendar year
14 2010.

15 The second one would be to provide double credit
16 for diesel retrofit systems installed during calendar year
17 2011.

18 Third would be to provide either extended life or
19 lifetime exemptions for a number of trucks or buses
20 retrofitted in either 2010 or 2011. Similar to Mr.
21 Batteate's cab-over livestock hauling trucks, those are
22 unique trucks, possibly he would be able to get a lifetime
23 exemption if he retrofitted the truck.

24 Also, number four, direct the State's current
25 incentive funds, Prop. 1B and Carl Moyer, to reduce the

1 costs of these retrofit systems installed in 2010 and
2 2011.

3 And, finally, we've talked about it earlier
4 today. I think we have really been put in a complex
5 situation because of what's happened with the economy.
6 And I think we really need to go to Congress to request a
7 delay in the federal ozone standard. I think we can then
8 take all of the State's incentive money and direct it to
9 retrofitting the State's fleet. That takes the economic
10 burden off of everyone that's been sharing their situation
11 today. It will eliminate the financial impact of the
12 entire on-road fleet and restores the equity in the
13 existing fleets, while reducing toxic PM by over 85
14 percent, sooner than projected.

15 CHAIRPERSON NICHOLS: I'm sorry. Your time is
16 up. We appreciate your suggestions and --

17 MR. SHANAHAN: And the added benefit is black
18 carbon reduction that would come along with that as it
19 contributes to climate change.

20 Thank you.

21 CHAIRPERSON NICHOLS: Very valuable. Thank you
22 very much. And please give us your written testimony if
23 you haven't already.

24 We've got Rodney Michaelson, Joe Rosa, David
25 McDawell.

1 MR. MICHAELSON: Afternoon, Board.

2 I'll just get right into it, because I have five
3 minutes worth to say in three minutes.

4 First page I'll just put off to the side and get
5 right to the meat.

6 I'm a member of the Off-Road Advisory Committee
7 representing one of three large fleets. There were four,
8 but one went bankrupt. There's three of us left in the
9 state.

10 Come here quarterly to advise Erik and his crew,
11 and I've advised for many months to CARB against the idea
12 of equipment retrofits. The current off-road emission
13 program is unmanageable, unenforceable, unworkable in its
14 current configuration. That, along with the on-road and
15 portable equipment regulations, creates the perfect storm
16 for the destruction of California-based construction
17 firms.

18 I predict in the near future the only one
19 standing will be national and multi-national civil
20 engineering firms that can move equipment in and out of
21 the state as they need to comply with the regulations.

22 Our company, at my guidance, has invested a
23 quarter million dollars of its own money with no
24 government assistance to retrofit nine horsepower machines
25 at a cost of \$105 per horsepower. We only did this,

1 because we were limited to -- by having it done at the end
2 of this year to get double horsepower credit.

3 Our fleet average is a relatively young 6.1
4 years. From my estimations working with the most accurate
5 data available to me, we can take all and any profits for
6 the next six years and invest it all in equipment and
7 still not reach CARB's emissions targets.

8 SCR technology is coming along on-line now and
9 will develop strongly over the next couple years actually.
10 SCR was actually discounted by the U.S. EPA as being
11 questionable technology just two years ago. And it is now
12 the leading technology to meet the 2010 on-highway
13 emission standards.

14 I don't know how many of you knew that, but
15 actually International was suing EPA because they said,
16 "Well, you told us it wasn't going to work, so we didn't
17 go that way." But it is now the leading technology that
18 they're going forward with.

19 If the Board still insists on retrofits, let me
20 advise the following:

21 There are currently only 711 retrofits in the
22 state of California on construction equipment, total.

23 At the last count, there was 132,000 machines
24 registered in the state. Many of these would require
25 retrofits in the near future to be compliant with the

1 current regulation.

2 Of the 711 installed up to this point, many have
3 had and continue to have maintenance problems and unsolved
4 safety issues. Large fleets were estimated 85 percent of
5 the total fleet horsepower in 2005. Now, after the
6 off-road diesel registration has been completed, the
7 number is down to 70 percent and still shrinking.

8 There could be fewer than 400 non-governmental or
9 PUC large fleets in the state. By the end of next year,
10 the number may be down to 300.

11 I could go on, but I'm out of time.

12 CHAIRPERSON NICHOLS: You probably could. Thank
13 you.

14 MR. MICHAELSON: Thank you very much. And I
15 hope -- according to Erik White, you all got a copy of
16 this from AGC, a fresh look.

17 CHAIRPERSON NICHOLS: I think we have one
18 question for you before you depart.

19 BOARD MEMBER LOVERIDGE: In 20 seconds, what's
20 your recommendation?

21 MR. MICHAELSON: What is my recommendation? Let
22 SCR technology take its course. It is a great technology.
23 It's new. But it actually takes care of NOx, PM, allows
24 the engines to run well. And it will work. But we don't
25 have the infrastructure to do it. It takes that special

1 ingredient that we all have to get used to. We can do it.

2 We have to have time.

3 But retrofits do not work. They work in long
4 distance trucking. That's it.

5 CHAIRPERSON NICHOLS: Thank you.

6 Joe Rosa -- lots of waves. Duly noted.

7 Joe Rosa, David McDawell, Michael Steel, come on
8 down.

9 MR. ROSA: Good morning, Board.

10 I represent a family-owned business, 63 years of
11 business in northern California. We're an independent oil
12 marketer.

13 I'd just like to tell you a little bit about our
14 situation in the rural counties of northern California.
15 Sometimes this gets overlooked, the impact that these
16 kinds of things have on rural counties.

17 In our fleet of 16 power units, at any given time
18 now, you can drive by our yard and 25 percent of our fleet
19 is stationary and parked in our yard.

20 We have reduced our miles due just to the
21 economic impact on our business. The average local trucks
22 from around 50,000 miles a year to down well into the 30s.
23 Just that alone in our area has caused some decreases in
24 the emissions.

25 We service all of our customers out of a terminal

1 in Eureka, California. It is the only terminal up in that
2 area. The closest terminal to us is Chico, California and
3 the Bay Area.

4 So I would suggest to you that virtually all of
5 diesel fuels that go out to our customers in those five
6 rural counties that we service and some others come out of
7 that terminal.

8 We went back and got some numbers, the thru-put
9 for diesel in that terminal, and those numbers were
10 provided to Mr. Brasil earlier here. And we went through
11 to August I believe of this year. From 2007 through 2009,
12 that terminal has reduced in volume in diesel sales by 52
13 percent. I know on your slide it says 15 percent. But in
14 rural counties, we're getting hit very hard by the
15 economy.

16 The retrofit devices and the money for those
17 devices do not make it to our neck of the woods. There is
18 no Prop. 1B money available to us in northern California.
19 The Moyer fund is approximately \$300,000 for that area,
20 which is just a drop in the bucket if you start
21 retrofitting trucks with that amount of money. And the
22 DERA money that was part of the federal stimulus program
23 never did come by. We were awarded five retrofits on
24 that, and we were turned down because the money was not
25 there.

1 The other issue that I have is I notice in your
2 slides there the analysts that came up with the numbers
3 for your recession and economic impact of that were
4 obviously mostly overestimated by those guys and staff's
5 admission -- those are still the same analysts that gave
6 us the number we're looking at for recovery of the
7 economy. And I'm not so sure they're able to look into
8 any glass crystal ball and tell us exactly when our
9 economy is going to actually come back and give us the
10 opportunity to start generating the revenues that we need
11 to comply with this bill.

12 I strongly urge the Board to delay and rescind
13 this legislation for a period of one year and put a stay
14 on the enforcement of it for an additional year. Thank
15 you.

16 CHAIRPERSON NICHOLS: Thank you.

17 David McDawell, is that who's next?

18 Michael Steel, and then Bill Applebee and Sean
19 Edgar.

20 MR. STEEL: Good afternoon, ladies and gentlemen
21 of the Board.

22 I'm Michael Steel. I'm here on behalf of the
23 Associated General Contractors of America and their 33,000
24 members.

25 I was last here before you in January of 2009

1 when we reported to you on the very dramatic effects of
2 the recession on the construction industry. And at that
3 hearing, you directed staff to work with us to further
4 evaluate the economic impact. And we have done that over
5 the last year at AGC. I don't believe staff has actually
6 accomplished the review, but we met with them last week
7 and presented the results of modeling.

8 What we did was took the same exact model that
9 ARB staff used when it developed the off-road rule and we
10 used all the same assumptions, assumptions of growth and
11 so on. All we did was plugged in the current inventory
12 data that comes from the staff's rule, the data that was
13 reported in April through August of this year. By
14 plugging that real life data in place of the projections,
15 the predictions that were made back when the rule was
16 adopted, we came up with the two slides that I have handed
17 around to you, which compare the results of the analysis.

18 If we can start with the previous one, NOx --
19 it's kind of hard to see, but the red line is the
20 projection staff came up with in 2005 for NOx emissions
21 over time without the rule.

22 The white line is the benefits that the rule was
23 to achieve.

24 And the green line at the bottom is the actual
25 2009 inventory without the rule.

1 So what you can see if you use Commissioner
2 D'Adamo reference to a budget, and do we have a budget for
3 something that we can work with in order to provide relief
4 under this rule, you can see that for NOx and PM there is
5 a budget available. NOx in particular, even without the
6 rule, you never really need the NOx rule. You can see
7 that that green line on the NOx page stays below the rule
8 line, the white line, throughout the life of the rule.

9 For PM, the lines actually cross in a couple
10 years. And so the PM rule would yield additional benefits
11 beyond the current recession beginning in a couple of
12 years. But you don't need as draconian measures in order
13 to achieve the goals that you had. You can scale back the
14 requirements of the PM rule and still achieve everything
15 that the original rule was designed to achieve.

16 When we were here back in January, we said we're
17 not opposed to the concept of achieving these goals that
18 you need to achieve for the SIP. What we want to
19 determine is, is there a buffer available? Is there room
20 to work? And this analysis clearly shows that there is
21 using your own data and your own models.

22 I think I'm out of time.

23 CHAIRPERSON NICHOLS: I think you are. Thank you
24 for that chart. Okay.

25 Bill Applebee, Sean Edgar, and Dave Harrison.

1 Bill Applebee?

2 Sean Edgar.

3 MR. EDGAR: Chair Nichols and Board members, Sean
4 Edgar. I'm the Executive Director of the Clean Fleets
5 Coalition. Thanks for the opportunity to speak with you.

6 We'll miss Mr. Scheible. This is only my tenth
7 year testifying in front of your Board. So hopefully I'll
8 be able to keep a few hairs on top as I proceed forward.

9 But actively over the last six years I've spent
10 implementing the fleet rules that you've handed the
11 members of our Coalition. I serve on the Truck
12 Regulations Advisory Committee, TRAC. And so a few of the
13 comments that I'll offer in my limited time will be geared
14 really toward how we can make some of the principles that
15 staff has laid out and in the light of day with
16 transparency do the fine tuning that is going to be needed
17 to determine -- or rather to make sure that what staff is
18 laying out will actually get some relief to those folks
19 who are requesting relief.

20 And in particular, Ms. D'Adamo's budget concept
21 was very advisable. And in light of what Mr. Steel just
22 spoke to you about, there may be a bank in there. So it's
23 going to take the next several months, and in
24 January/February, we'll redouble our efforts. I'm sure
25 the other vocational truck associations, including my

1 group, will also do that.

2 Just to touch very quickly on the two-year
3 deferral, staff had mentioned 20 to 50 trucks. I'm not
4 sure how that would apply as an example. Devil is always
5 in the details on some of these things. What does that
6 mean for fleets four to 19 trucks? I'm not sure.

7 If you look in particular at the construction
8 sector -- and we just heard a little bit from Mr. Steel
9 about their membership's concerns on the cumulative
10 impacts and, as an example, construction trucking which is
11 part of our segment is subject to the same really
12 tremendous downturn that AGC has noted. In the context of
13 understanding who's mid-size, I'll use the analogy
14 whenever I happen to get into a rental as I fly around the
15 state of California talking to fleet owners about your
16 rules, I ask for a mid size car and oftentimes it doesn't
17 seem to fit me very well. So I'd love to work with you on
18 the issue of what the deferral needs of who's a mid size
19 fleet.

20 Secondly, the provision about ten trucks in any
21 fleet could be deferred. I guess the goal would be to
22 give some partial relief. However, how does that
23 interplay with the existing compliance options that you
24 gave out there. So working with staff, we'll need to work
25 through several of those items.

1 And on the last item, I would just ask your
2 indulgence on deferring the first year requirements. I
3 would ask that we've had a recent experience with the
4 off-road fleets with the DOORS aspect. You have reporting
5 that's due next year. In the case of DOORS, that's
6 actually allowed you and industry to make some conclusions
7 off the information that's submitted in there.

8 So I would encourage you if at all possible to
9 keep some reporting in 2010, even if that means deferring
10 by a short amount of time. I would encourage you to
11 consider keeping that, because I think it can be valuable
12 as we participate in track and the workshops that will
13 come during 2010 on rolling out this rule.

14 So thank you for your time.

15 CHAIRPERSON NICHOLS: Thank you. Good timing.

16 Dave Harrison and Jim Jacobs and then Corey
17 Wardlaw.

18 MR. HARRISON: Members of the Board, staff, my
19 name is Dave Harrison. I'm the director of safety for the
20 Operating Engineers Local 3, the largest construction
21 union in the state and the country.

22 I'm here today to speak about the current
23 regulation and how they're affecting our members and the
24 companies that employ them.

25 Mr. Goldstene reported earlier that construction

1 equipment off-road usage has decreased by 30 percent.
2 First, I'd like to say that from 2006 until now our hours
3 are down 40 percent, considerably more than what Mr.
4 Goldstene reported. Way above the state's unemployment
5 rate as well. We've been hit very hard in the
6 construction industry through this economy. Those hours
7 are in direct relations to the emissions created by the
8 equipment we run.

9 Local 3 has been intimately involved in the
10 off-road Implementation Advisory Firm Group from its
11 inception, for obvious reasons. The off-road rule is and
12 will continue to directly affect our members.

13 The most current issue with the off-road group is
14 safety. I heard a lady from the California Lung
15 Association state earlier today that without our health,
16 we have nothing.

17 The retrofits that CARB is requiring to be
18 installed on the off-road equipment is creating some huge
19 safety hazards, burn and fire hazards, as well as the
20 obstruction of vision of the people running this
21 equipment.

22 Now, less than three months from our March 1st
23 deadline for our large fleets, in an economy that we
24 haven't seen since the Great Depression and after our
25 fleets have spent millions of dollars to comply on time,

1 CARB is attempting to mitigate the blockage of vision
2 hazard with an immeasurable safety exemption. They
3 proposed just two days ago to issue a safety exemption
4 based on methodology that not even Cal/OSHA has approved.
5 I'd like to add that Cal/OSHA and the division of the
6 president had a meeting on Monday and had no comment on
7 the methodology that was proposed.

8 When I asked who's going to pay for all this, the
9 initial install, the re-install based on the new
10 methodology, and then the possible re-re-install after
11 Cal/OSHA has their way with this methodology, nobody had
12 an answer. Less than three months.

13 So I would ask that before we rush our fleets
14 into compliance and out of business, the same thing we
15 asked two years ago, to add three years to all compliance
16 dates for the off-road.

17 Thank you

18 CHAIRPERSON NICHOLS: Okay. Thank you.

19 Mr. Jacobs, are you here?

20 Corey Wardlaw.

21 MR. JACOBS: Madam Chair, members of the Board,
22 my name is Jim Jacobs. I'm a business representative for
23 the Operating Engineers. More specifically, I work
24 directly with the crane industry and the operators that
25 run them.

1 Like to take a minute to thank you and your staff
2 for working with the crane industry, listening to our
3 specific problems, and creating language for us that would
4 help us and our unique and specialized industry meet the
5 regs and still get reductions of emissions. And we really
6 appreciate that.

7 That being said, I'd like to take this
8 opportunity to also ask you to please do the same with the
9 construction industry and the trucking industry,
10 especially with the current economic times that we're
11 facing. It's one of those deals if you bought it at a
12 store, it got there by a truck. If you're in a building,
13 it got built by construction workers. And we don't want
14 to shut these people down. Keep that in mind.

15 And thanks for your time.

16 CHAIRPERSON NICHOLS: Thank you.

17 Corey Wardlaw -- how come when somebody says
18 something nice about ARB -- okay, we got a wave. Thank
19 you. We never get a wave when someone says anything good.

20 Corey Wardlaw.

21 MR. WARDLAW: Like most other people here, I just
22 have one truck. My wife and I own one truck.

23 Because of the economy, I have not worked that
24 much this year. And I'm not going to be putting any money
25 into savings, and it's going to be a very hard winter. So

1 going through and figuring by 2014 I'll need to do
2 something with my truck, I might not have the money for a
3 down payment and also moving my boxes around and such. So
4 I would say I'd like to see this held off.

5 But also the other thing that has been brought up
6 by the Assembly people that have been here and Supervisor
7 Roberts and I'm wondering about, is there any room for you
8 to delay or not? It sounded like there is not, that the
9 federal government is holding it over your head or the
10 State's head that this has to be done by 2014. If that's
11 the case, then you guys have no room to delay. So we
12 wouldn't be -- there's no room for discussion on that.
13 You have to do it or you don't.

14 CHAIRPERSON NICHOLS: I think what the staff was
15 trying to say is they did have room in 2010 and 2011.
16 What they didn't have room for was to reach the goal by
17 2014, unless the law was changed.

18 But what I want to ask you, since you're up here,
19 is given your situation, that you're one guy with one
20 truck, why would you ever have -- I mean, what is the year
21 that would somehow make this okay? Assuming you were in
22 favor of it. You see what I'm saying?

23 MR. WARDLAW: What would make me in favor of
24 doing this --

25 CHAIRPERSON NICHOLS: Are you saying you don't

1 want to ever comply? Or are you saying you want to comply
2 some day? How do we ever find a day when you could
3 comply?

4 MR. WARDLAW: I think that falls back to the
5 economics that we're going through. You know, a couple
6 years ago, I was making enough money. I was actually
7 putting into savings or retirement or something like that.
8 But especially with the economics right now -- I just got
9 done making my last payment in July for my new dump box
10 back from 2004. I don't want to take on another payment
11 now. I just -- things are that tight, personal budget and
12 all.

13 CHAIRPERSON NICHOLS: Sure. No. I get what
14 you're saying. I'm just trying to figure out how we
15 factor that into a bigger rule.

16 MR. WARDLAW: I think one of the Assemblypersons
17 said something about delaying it until the economy picks
18 up -- unemployment goes back to 5.5 percent and is that
19 way for four quarters.

20 CHAIRPERSON NICHOLS: That's what's in their
21 initiative to relates to AB 32. And interestingly, we've
22 looked back and tried to see when employment has ever been
23 below 5.5 for consecutive quarters. I think in 30 years,
24 that's happened a handful of times. That basically never
25 happens. California routinely runs unemployment above

1 five-and-a-half percent. It's more like seven,
2 seven-and-a-half all the time, even in boom times.

3 MR. WARDLAW: Maybe that's a number that needs to
4 be looked at. I mean, something needs to be done. But
5 some kind of trigger.

6 CHAIRPERSON NICHOLS: Okay.

7 MR. WARDLAW: Or you can call me in a couple
8 years when the economy picks up and go I can afford it
9 now, I can do it.

10 But I still think it comes back to like
11 Supervisor Roberts is if the 2014 is an absolute deadline
12 by the federal government that you have to meet that
13 standard regardless --

14 CHAIRPERSON NICHOLS: Well, we have to get the
15 tons out of the air is the law, somehow. But we're trying
16 to figure out how to do it. Okay. Thanks.

17 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:
18 To clarify, the regulation as approved for a one truck
19 owner with a 2004 engine would need to install a
20 particulate filter by January of 2014 and could continue
21 to operate that until January of 2019 before needing to
22 upgrade.

23 CHAIRPERSON NICHOLS: So they put the filter on,
24 and then they got another five years before they actually
25 have to change trucks.

1 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:

2 That's correct.

3 MR. WARDLAW: Can I make a comment?

4 CHAIRPERSON NICHOLS: Yeah.

5 MR. WARDLAW: It's a 1993 model year Kenworth. I
6 put a 2000 model year engine in in 2008. When -- yes, by
7 2014, I would have to put another engine in, 2004 or
8 newer, plus the particulate filter. And then would give
9 me until 2019. Then I have to do NOx reduction. And your
10 staff's reports, if I remember right, they said nobody
11 will be able to afford a NOx reduction device or retrofit.
12 That's what I remember.

13 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:

14 To clarify, when we did our cost analysis, we used truck
15 replacement costs and stated in the staff report that if
16 NOx controls were available and a lower cost option, we
17 would obviously expect people to use them. We did not
18 include them because of the uncertainty of their
19 availability.

20 CHAIRPERSON NICHOLS: Kind of sounds like there's
21 some individual discussion that needs to take place here.

22 MR. WARDLAW: But as he said, that no NOx
23 reduction retrofits are available yet.

24 CHAIRPERSON NICHOLS: Right.

25 MR. WARDLAW: And I also remember saying it's

1 going to be very prohibitively expensive. So that number
2 is not thrown out. So when 2014 comes along, I'll be
3 looking to see if NOx retrofit is available to see if I
4 would do a PM filter retrofit and an engine. But if it's
5 not available, then I'll be buying a new truck.

6 CHAIRPERSON NICHOLS: You're a good speaker and
7 we've spent a lot of time with you. Thank you.

8 Gale Lopopolo, and then Albert Nunes and Dan
9 Souza.

10 MS. LOPOPOLO: Good afternoon.

11 Jim Ganduglia and I are owners of Ganduglia
12 Trucking, a 70-year-old trucking company. Our revenue
13 over the last two years is down 53 percent, because we are
14 primarily a construction and ag-related carrier. However,
15 staff's slide seven reports only a 10 to 18 percent
16 downturn for the same time.

17 Our mileage is down 39 percent. Two of our major
18 customers have cut our rates. We have laid off seven
19 drivers. That's 39 percent of our driver pool. We have
20 laid off one shop employee, one office employee. That's a
21 25 percent reduction. And all remaining employees have
22 reduced hours.

23 Jim Ganduglia is our new dispatcher, which
24 explains for his absence today. Not one of our customers
25 foresees an upturn in 2010, let alone rate increases.

1 Per the Bureau of Economic Analysis of the U.S.
2 Department of Commerce, California's GDP growth slowed to
3 four-tenths of a percent in 2008, a virtual standstill. I
4 do not believe the staff's report adequately reflects the
5 impact the economy has had on the trucking industry.

6 The staff's faster growth scenario of economic
7 recovery on slide 15 is doubtful at best. On the
8 emissions side, due to less mileage, our PM contribution
9 has decreased 34 percent, a reduction of two-tenths of a
10 ton. NOx has decreased 45 percent, a reduction of 11
11 tons.

12 As for the funds to help us purchase equipment,
13 we have been accepted for \$100,000 of Prop. 1B funds.
14 These purchases will increase our debt load by \$172,000.
15 Our lenders will not allow it. And we were recently
16 offered \$1500 for power units that prior to the truck rule
17 were worth between five and \$8,000 in trade.

18 Lastly, I was going to address the Tran issue,
19 but I think enough has been said about that. My only
20 comment to you as a Board is that your personal
21 integrities are at stake if you except Mr. Tran's work
22 without review.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 Albert Nunes, Dan Souza, and Scott Blevins.

1 MR. NUNES: Al Nunes, AC Trucking, operator of a
2 38-year-old trucking company.

3 Our business model has been down 23 percent just
4 since I was last here a year ago meeting before this
5 Board. Our mileage is down 23 percent.

6 We have done everything we can possibly do at
7 this point to bring our fleet into compliance. Five of
8 our trucks have retrofit exhaust systems on them for PM.
9 We have five '07 or newer trucks that meet your standards.
10 I'm waiting for awards from the San Joaquin Valley Air
11 District. Have received contracts, but no money
12 whatsoever.

13 The problem comes in 2014 when the retrofits are
14 no longer acceptable and I cannot in my business model put
15 together enough capital to buy the trucks and make those
16 monthly payments that I would have to do.

17 It is not a situation that I want to have happen.
18 I want to make clean air. We feel very strongly that this
19 rule can be accomplished. But it needs to be done over a
20 longer period of time. You've up-fronted this thing so to
21 the front of it that none of us can comply. We all want
22 to. We want clean air.

23 Thank you.

24 CHAIRPERSON NICHOLS: Thank you, sir.

25 Dan Souza, then Scott Blevins, and Doug Britton.

1 MR. SOUZA: Madam Chair, Board members, thank you
2 for having us today, staff.

3 I've worked with many of your staff members in
4 the last couple of years at the workshops.

5 I do want to put out a thank you to one of the
6 Board members, Sandra Berg, for your interest and support
7 with stakeholders trying to get information from us and
8 attending the TRAC meetings. It's very encouraging and
9 I'd like to thank you for that.

10 I represent Mountain Valley Express. We're a
11 California carrier. We've been in business over 30 years.
12 We run a fleet of 150-plus trucks and employ a little over
13 300 employees in the state of California.

14 We believe cleaner air in California is very
15 important, and we strive to do our part with early
16 upgrades with our trucks and auto fleets since 2007.
17 We've improved the average age of our fleets about five
18 years in that time frame. We've been very proactive when
19 it comes to the environment, but we still have a major
20 concern with the time line schedule of staff's proposal.

21 The aggressive time frame places a very heavy
22 economical burden on our company through 2014 as many of
23 the people here today have mentioned. The cost will
24 exceed over \$8 million through the next five years for us
25 to comply with the regulation and still have to incur more

1 costs through that time frame, which I won't get into
2 today.

3 The most aggressive date will be 2013, and that
4 will require an over three million dollar investment if we
5 elect to average our fleet using the fleet calculator that
6 staff has given industry to use.

7 Incentive funds are out there, and I just don't
8 feel there is going to be enough out there for all of us
9 to comply with this regulation obviously.

10 Staff has recommended that we raise our rates and
11 pass them onto our customers to help offset the costs.
12 There's no hope for this offset. We're finding in the
13 current economic climate that we are hauling more for
14 less. The rates are so depressed that we are finding it
15 hard to make a profit on a simple shipment. Do you truly
16 believe the shippers will be so willing to give carriers
17 an increase to offset these types of costs? I don't think
18 so.

19 After working the numbers, we found that on
20 average we would have to ask for an eight to 12 percent
21 increase to our customers to help us offset these costs.
22 Mountain Valley Express is asking that the Board consider
23 a one-year delay and a one-year stay of enforcement as
24 proposed in the Niello letter to the Board and to the
25 Chair.

1 And we definitely support Dr. Telles and
2 Supervisor Roberts and your comments to looking into the
3 health impact study of Dr. Tran.

4 Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Scott Blevins, Doug Britton, and then Michael
7 Collier.

8 MR. BLEVINS: Scott Blevins, president and owner,
9 Mountain Valley Express, California's overnight freight
10 service, your go green trucking company. Now you can do
11 the wave.

12 We just participated in a state distribution
13 program of surgical masks with General Services
14 Administration this past couple weeks. These were masks
15 that were purchased by the State. And by the way, we do
16 quite a bit of business with the State, and we do
17 certainly appreciate that. We were summoned to GSA with
18 regards to helping to distribute the masks where there was
19 no money budgeted. And we were asked to do this free of
20 charge, and we obliged.

21 We were recognized in a press conference down in
22 southern California last Friday and one this morning in
23 San Francisco.

24 So I say that because again good stuff trucks
25 bring it. And we all need trucks in our state. And with

1 diesel fuel, that's our only option to power those trucks.
2 Until somebody comes up with a better solution, we're
3 certainly all for that.

4 We employ 385 families in our company statewide
5 as well as Nevada and Arizona. We provide health care
6 coverage for those families, up to 200 insured lives, to
7 the tune of \$2.1 million in annual premium costs. That's
8 a huge cost for us. Health care is a major issue for our
9 company, as it is for anybody that provides for their
10 employees.

11 I beg to differ in some of the testimony today in
12 regards to if we are not viable and profitable, we can no
13 longer provide those benefits. And now where do we go
14 with health care and sickness and illness and so on?
15 That's a huge issue for us going forward. Maybe Mr. Obama
16 has the answer in national health care.

17 Our general commodity business -- because we have
18 two operations: LTL, that's less than truckload. That's
19 general commodities. A lot of stuff we all buy and see in
20 this room, we haul. That, year over year, is down 24
21 percent in our total volume.

22 And in light of that reduction, we've reduced our
23 fleet size by eleven trucks since we were standing here
24 last December in 2008. Hard to believe it's been a year
25 already. But that netted out to a reduction in mileage of

1 1.2 million annual miles, resulting in 28.9 tons of NOx
2 reduced and 1.06 tons of PM not being produced.

3 One major hit that's coming into California March
4 31st of 2010, which I'm sure most of you I hope are aware
5 of, is the closure of the only west coast auto
6 manufacturing company in the state, New United Motors,
7 Toyota. It is our largest account. When it closes March
8 31st, 5,000 jobs from that factory alone go away and
9 another 15,000 jobs statewide that support that factory go
10 away, that will result in another 25 percent of our volume
11 going away, with that business piece of business, equating
12 to 24 drivers of diesel-powered trucks, all stopped,
13 reducing 20,205 gallons of fuel unburned in a month,
14 142,000 miles not driven in a month, equating to 3.42
15 metrics ton reduced of NOx and .13 tons reduction of
16 particulate matter.

17 I would simply ask staff to consider the impact
18 of NUMMI's closure on the regulation. We're not the only
19 trucker that goes in and out of there.

20 I thank you.

21 CHAIRPERSON NICHOLS: Okay. Thank you.

22 Doug Britton, Michael Collier, Ron
23 Riemenschneider.

24 MR. BRITTON: Doug Britton, Britton Trucking. I
25 have ten trucks in Farwell, California.

1 Last spring, I received early grant money for
2 four trucks. I had to sell three trailers, 15 percent of
3 my trailer fleet, to make my down payment. I now have an
4 extra 35,000 in truck payments per year. I now have an
5 extra 15,000 in collision insurance cost per year.

6 I just laid off my dispatcher, my only
7 non-driving employee for the winter.

8 Anybody who thinks these numbers are
9 insignificant, anybody who wants to move forward with this
10 rule, I invite you to dig into your own wallet and help us
11 out. It's easy to tell somebody else to dig into their
12 wallet, but it happens to be my wallet. I'm tired of it.

13 I'll have to buy three more trucks before these
14 are paid for. This is not just front loaded. This is all
15 loaded up front, 80, 90, 100 percent in the next five
16 years.

17 I tell you this so you realize that just because
18 someone gets grant money, there are other expenses that go
19 along with it. I feel sorry for the people who do not
20 qualify for grant money.

21 On the cost estimate to industry, \$125,000 times
22 40,000 trucks is five million. I think there's more than
23 40,000 trucks affected by this rule, like hundreds of
24 thousands.

25 Enforcement, since I'm spending the money to

1 comply with this rule that will go into effect some day, I
2 hope you will come up with a good program to enforce it,
3 like tying it to the bid program or DMV renewal.

4 After hearing the exemptions that were handed out
5 like Christmastime to questionable reasons for the truck
6 drayage rule, my faith in your ability to enforce this
7 rule is shaken, to say the least. I know some of my
8 competitors will literally run for years while I compete
9 against them. They will run until they are caught. Then
10 they'll file bankruptcy. In the mean time, they run two
11 or three years against me.

12 And comment on the retrofits. The retrofits are
13 only for the newer trucks. Trucks that are 1993 or older,
14 no retrofits to apply to them.

15 Thank you. Have a nice day.

16 CHAIRPERSON NICHOLS: Thank you.

17 Michael Collier, Ron Riemenschneider, Bryan
18 Bloom.

19 MR. COLLIER: My name is Michael Collier, and I
20 represent C.D. Matthes Trucking in Fresno. We're a small
21 company with 28 power units and 45/57-foot trailers.
22 We're the only exclusive 50-foot trailer outfit in
23 California.

24 Your rule puts us out of business in four years.
25 Our trucks are irreplaceable. No one builds them anymore.

1 Retrofit devices will not fit and allow us to operate.

2 And new engines will not fit existing trucks.

3 Over the last year, we've lost 30 percent of our
4 business. I've been fortunate enough not to have to lay
5 off any drivers, but each of them is working 30 percent
6 less than what they were this time last year.

7 This business has been around for 26 years. Jan
8 has worked very hard to build it. She's 73 years old.
9 She doesn't know what she's going to do.

10 We have bought four brand-new trucks to try to
11 expand to other areas of business. Those four trucks we
12 took delivery of on December 1st. They will not survive
13 the length of your rule, because they will not meet NOx
14 requirements. And they are brand-new and have never even
15 been hooked to a trailer.

16 We've got to do something. We agree that clean
17 air is absolutely necessary. What we don't agree on is
18 the process of getting there. I don't think the trucking
19 industry in this state can survive this rule, and I
20 definitely do not believe this is the best way of going
21 about it. There has to be some sort of a compromise to
22 get there.

23 Your rule will create one company that will be a
24 monopoly for 57-foot trailers. And under the fleet
25 averaging rule, they won't retrofit any piece of equipment

1 for at least five years.

2 That all I have to say.

3 BOARD MEMBER LOVERIDGE: Your recommendation?

4 MR. COLLIER: As far as our trucks go, Cleaire
5 builds the system, the Cleaire Longview that will work
6 under both PM and NOx. It will not clean up NOx well
7 enough to accomplish the rule. But it will fit on our
8 trucks. It will do something, but it won't do enough.
9 Maybe that is an option.

10 I believe I submitted a written comment to that
11 effect in September.

12 CHAIRPERSON NICHOLS: Thank you.

13 Ron Riemenschneider and then Bryan Bloom and Nick
14 Pfeifer.

15 MR. RIEMENSCHNEIDER: Ladies and gentlemen, thank
16 you.

17 I own a small business in west Sacramento. We
18 sell and rent out used construction equipment. I know
19 most people here today are in the construction industry.

20 Some of the numbers on our rental fleet.

21 '08, we were down from our high of '06 over
22 50 percent.

23 '09 year to date, we're down over 30 percent from
24 '08.

25 Rental rates are down across the board about 20

1 percent from what they were. It has us back to almost
2 20-year-old rental rates, and our costs are sure a lot
3 more than what they were there.

4 My sales in-state are down to about ten percent
5 of our total volume. And in years past, they were over 60
6 percent.

7 Most of my local customers that I rented and sell
8 equipment to in years past, I'm selling their fleet for
9 them. It's going out of state. They're trying to stay in
10 compliance with CARB regulations and to keep payments made
11 on their other equipment, some they've just bought to
12 upgrade their fleets.

13 If I understand Mr. Goldstene correctly, you said
14 your numbers show the construction fleet usage is down
15 around 30 percent. I think when your findings come out in
16 March you said you're probably going to see it's probably
17 close to double that. At least most people in the
18 business I know are closer to that.

19 My personal business, we've got six employees.
20 I've had to lay off one. Everybody else is on furlough
21 days. I've taken a big cut in my own salary.

22 We do offer -- to get good help, we offer
23 benefits package. The cost for that stays almost
24 unchanged, even though I have people working less days.
25 Most of our fixed costs/overhead stay the same, even

1 though there's less income to keep our bills paid.

2 Also, banks are very cautious in loaning money to
3 anyone in the construction industry. But even if you can
4 borrow the funds to buy newer equipment, we currently
5 don't have the market to do it. We have several pieces of
6 equipment that haven't been out of our yard the entire
7 season. And we don't have income to make the payments on
8 the newer equipment.

9 My personal opinion is I feel we need at least a
10 two-year stay from the implementation of the AB 32
11 regulations.

12 But one thing, whatever you guys do, I would hope
13 that you keep it simple. Most businesses impacted by your
14 regulations are small businesses. They don't have the
15 resources to hire the staff or consultants to help keep
16 them so they understand the regulations and keep their
17 fleets in compliance. So again, whatever you do, just
18 please keep it simple.

19 Thank you.

20 CHAIRPERSON NICHOLS: Thank you.

21 We have next Bryan Bloom, Nick Pfeifer, Fran
22 Hammond.

23 MR. BLOOM: Madam Chairman and members of the
24 Board, my name is Brian Bloom. I'm the owner of Priority
25 Moving in San Diego. My academic credentials include a

1 degree in economics and chemistry from UCSD and an MBA
2 from Berkeley. And I have a little bit of different -- or
3 ability to understand the both science aspects and
4 economic impacts of the diesel rules.

5 I'm also today speaking on behalf of the
6 California Moving and Storage Association. In our
7 association, there are over 1100 permitted movers in the
8 state employing in excess of 10,000 employees with an
9 estimated economic impact of right around \$1.4 billion to
10 the state's economy.

11 My company is similar to other moving companies
12 in the state. A compliance cost to the diesel rules done
13 for me by Sean Edgar, who spoke earlier, indicates a cost
14 over three years of one million dollars to comply. This
15 leaves me looking at losing my business and leaving my 50
16 employees without jobs. Multiply that upon thousands and
17 thousands of moving and similar businesses, and you're
18 looking at the economic impacts of these rules.

19 Also I'd like to make a note that there is a
20 difference in trucking between high mileage and low
21 mileage users. The low mileage users are the ones that
22 essentially go to the job site, do the work, and then just
23 drive home. Local moving, lots of construction as opposed
24 to the high mileage users who are out on the road every
25 day driving, driving, et cetera.

1 There is an economic model that exists today that
2 works very well that whereby the high mileage users are
3 consistently replacing their fleets for obvious reasons.
4 And they're selling them to the low mileage users like us
5 where we use them for a couple of years and then
6 ultimately replace those. We'd like to see that economic
7 model stay in existence, because we feel that speaks to
8 the rule in that the entire fleet is being renewed and
9 made younger.

10 What we're asking -- what the California Moving
11 and Storage Association and myself am asking is:

12 One. We would like staff to look at some kind of
13 exemption or special rule for trucks that drive less than
14 30,000 miles a year. Obviously, those are producing less
15 PM2.5.

16 Based on the state's economy, we need the rules
17 delayed two years plus. And we need the implementation
18 stretched out over a longer period. It's the only way our
19 industry and our members will be able to comply with the
20 rule and stay in business at the same time.

21 Last, our organization would like to join the
22 growing course of academia, legislators, media, and
23 businesses in supporting the statements by Supervisor
24 Roberts and Board Member Telles in the ongoing
25 investigation of Tran and that issue.

1 And also lastly, I would like to thank Board
2 Member Berg for being heavily involved in trying to find a
3 way for us to -- am I going to blow up -- for us to
4 survive economically and come up with economic ways so
5 that we can survive this rule.

6 Thank you, Chairman.

7 CHAIRPERSON NICHOLS: Thank you.

8 Nick Pfeifer, and then Fran Hammond and Charlie
9 Rea.

10 MR. PFEIFER: I'm Nick Pfeifer with Granite
11 Construction Corporate Equipment Department. I'm also a
12 member of the Truck Rule Advisory Committee and the
13 Off-Road Implementation Advisory Group.

14 Granite owns and operates a diverse fleet of
15 equipment in California. The two biggest portions of that
16 fleet are off-road equipment and our diesel trucks. We
17 currently own and operate 962 pieces of off-road equipment
18 and 866 diesel trucks to support our California
19 operations.

20 We also own and operate equipment that falls
21 under the portable stationary and large spark ignition
22 rules.

23 I want to share three points with you today:
24 Granite's reduced activity in California; our concerns
25 about the retrofitability of our truck fleet; and the

1 importance of strict and equitable enforcement.

2 I looked back to our records through 2006 to
3 determine what our activity level was this year. Looking
4 back to last year, our equipment activity for our combined
5 fleets -- so this reflects both our off-road and on-road
6 activity -- is off by 30.7 percent.

7 Going back to 2007, we're off by 38.7 percent.

8 And going back three years to 2006, our activity
9 is off by 46 percent.

10 Couple this with the fact that we park our oldest
11 equipment first and are running our newest equipment, and
12 our reduction in emissions is well over 50 percent by
13 2006.

14 To attach these numbers to people, Granite had
15 3,545 employees in California in 2006. Our peak
16 employment this year was 2,077. That's 1,468 employees
17 out of work, or 41.4 percent of our workforce.

18 Next I want to talk about retrofits. We've
19 successfully completed 40 retrofits of our off-road
20 equipment. I like to think that we kind of know what
21 we're doing and we've been fairly proactive in putting
22 these devices on. So we're not just dodging the
23 technology. But the majority of our truck fleet is
24 vocational in nature, runs at a very low load and is
25 fairly specified equipment. It's boom trucks, utility

1 trucks, fuel lube trucks. And the nature of their
2 operation just simply will not work with retrofits. We've
3 even had issues with our 2007 and newer trucks that come
4 with OEM filters and those filters plugging.

5 And so the realistic option that we're looking at
6 is turning these trucks over to new. So the 2014 deadline
7 for retrofits for us essentially means we have to have all
8 new trucks by 2014. This will take our average truck age
9 in California from 11 years to three years. I'm asking
10 you to consider rolling back the rule to allow enough time
11 to replace our trucks.

12 Thank you.

13 CHAIRPERSON NICHOLS: Thank you very much.

14 BOARD MEMBER YEAGER: Madam Chair, if I could ask
15 staff a question.

16 Erik, in your presentation in your slides, you
17 mentioned the economy alone does not achieve the expected
18 reductions in a number of areas.

19 Do you agree with some of the statistics that
20 we're getting from the speakers, particularly the
21 gentleman from Granite as far as what you've seen and what
22 you're comparing your analysis to? Is everybody talking
23 about the same downturn in the economy? And even with
24 those numbers we're still not going to be able to meet our
25 goals?

1 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

2 WHITE: Yes. I think we need to keep in mind there's two
3 sets of numbers out there. Mr. Goldstene identified the
4 downturn in the construction industry. We're not pegging
5 the number at 30. The data shows it's at least 30 percent
6 down, if not higher. So I think the numbers we're hearing
7 from the construction companies are very consistent with
8 the data we've seen regarding construction activity.

9 On the truck side, the 10 to 18 percent that I
10 sited was a statewide average. And certainly that
11 includes a number of different sectors, the trucking
12 industry, the construction trucking, ground support
13 equipment, retail, and those kinds of things.

14 So certainly we heard the same thing last week at
15 the workshop that individual fleets are experiencing more
16 significant downturns than that. So the numbers we have
17 are an average assessment of the industry. We're going to
18 have some that are seeing less of an impact and some
19 clearly we're hearing that today are experiencing more of
20 an impact.

21 BOARD MEMBER YEAGER: Thank you.

22 CHAIRPERSON NICHOLS: So there is anecdotal
23 information that is valid for the people who give it to
24 us, and there is a few sources of statistics like fuel
25 sales that you can look at that. But there is no

1 independent third-party industry or association that just
2 tracks trucking activity, per se, which just makes it more
3 challenging.

4 You're Fran Hammond, I bet.

5 MS. HAMMOND: Yes, I'm Fran Hammond. I represent
6 a small California dump truck company. We've been in
7 business for over 40 years.

8 Like many of the people that have spoken today,
9 our business is off by at least 50 percent. We've laid
10 off half our employees. The employees we have left were
11 making between 40 and 50,000 a year and now are only
12 making about 20 to 25.

13 We pay the health insurance, which we can barely
14 afford. And with the economic downturn, we're pushed
15 between a rock and a hard place.

16 But aside from that, I have 20 vehicles. They
17 are all older vehicles. I've spent about two hours this
18 morning outside talking to the grant people. I have been
19 turned down for Carl Moyer. I have been -- when it was
20 available to larger fleets. I have been turned down for
21 DERA. Why? Because I don't go enough miles.

22 So for companies like ours that only work
23 approximately 100 to 120 days a year and keep the state
24 running by making sure you have viable roads to drive on
25 and drive your bicycles on, we just don't know where we're

1 going with this.

2 We can't get funding. We can't borrow money.
3 Our profit margin is down to nothing. And we also feel
4 that the options that the government and the country has
5 provided for new technology is very poor.

6 The tow truck company we work with said that 80
7 percent of their tows this year for large trucks have been
8 brand-new trucks going back to the dealership with
9 problems with the particulate filters that are installed.
10 We have mechanics who say they install these particulate
11 filters on used vehicles and it blows the engines up.
12 They don't work in all applications. Trucking is
13 extremely varied.

14 So we feel that -- we know that you're trying.
15 We want to comply. But we don't want to buy a truck that
16 five years after we buy it or two years after we buy it
17 somebody says this truck is producing more carcinogens
18 than the diesel truck was. And we made a mistake. Now
19 you got to buy all new something else.

20 We don't feel the technology has reached the
21 level of the regulation. And I'd like to see some more of
22 that. How about no diesel trucks? If diesel is so bad,
23 give us something else we can use in my application where
24 I'm traveling short distances, putting on low miles, that
25 will work where I can run my trucks double shift so I can

1 stay in business long enough to pay my taxes to pay for
2 the roads.

3 Thank you very much.

4 CHAIRPERSON NICHOLS: Thank you.

5 Charlie Rea, Mike Herron, John Hakel.

6 MR. REA: Hello. Charlie Rea with California
7 Construction Industrial Materials Association. We're a
8 trade association for aggregate and ready-mix concrete
9 producers throughout California.

10 Our member fleets are typified by low mileage
11 vehicles that travel short distances. For instance, like
12 a ready-mix concrete delivery truck usually delivers
13 material within 15 miles of the plant site.

14 They also tend to be somewhat complex vehicles,
15 and they have a longer turnover life, which causes some
16 difficulties in deploying the filter technology,
17 particularly in that they have the low mileage and low use
18 that makes it difficult to get the efficiencies.

19 We're really here today to just ask that you try
20 to make some changes or flexibility in the rule to make it
21 easier for everyone to comply, given the economic times
22 and the lower emissions that have resulted. So we're
23 really glad to see you're considering some proposals and
24 primarily want to encourage that -- hopefully that can
25 come together and we can get some things that work for

1 everyone.

2 I know in our own comments we suggested several
3 ideas that we hope get considered possibly to stretch out
4 some of the compliance dates for low-use vehicles, maybe
5 more analysis or demonstration of some of the retrofit
6 technologies before they're applied.

7 And I think finally, too, I just add that we know
8 the SIP date is just a real tough one for everyone and
9 maybe that is something that needs more thought or more
10 priority put on to try to make a run at that. It seems
11 given the size of our state and everything there may be a
12 reasonable chance.

13 That's it.

14 CHAIRPERSON NICHOLS: Thank you.

15 Mike Herron, John Hakel, and Sophia Parino.

16 MR. HERRON: Chair Nichols, members of the Board,
17 and CARB staff, thank you for giving us this opportunity
18 to speak today.

19 My name is Mike Herron. I'm with the Engineering
20 and Utility Contractors Association. We represent over
21 250 general engineering and heavy civil contractors in the
22 state of California who work primarily in public works.
23 Our contractors employ over 10,000 union craftsmen and
24 women.

25 Our members are subject to both the on-road,

1 off-road, portable equipment, and various other rules
2 promulgated by this Board.

3 I want to first start by thanking Board Members
4 Telles and Roberts for having the courage to do what
5 you're doing, to stand up and call a fowl when you see a
6 fowl. And in the order of the day, I'm going to throw out
7 one of these and hope the guys behind me are joining in.

8 This ties into my main point is that there is a
9 public perception issue with the Air Resources Board. The
10 public's perception earned or otherwise is that you have
11 an agenda and that you're going to drive it through and
12 force it on industry, regardless of the cost, regardless
13 of the process, and regardless of the economic impacts on
14 our state, on our workers, and on the businesses that are
15 represented behind me.

16 This perception is what causes us to question the
17 honesty and the integrity of the rulemaking process and
18 what we are left with once you provide us with the rule.

19 What my members want to know is has the State of
20 California really gotten to the point where we have to
21 come out and ask for transparency and honesty in the
22 rulemaking process?

23 You know, the construction industry has been hit
24 harder than any other industry in the state in this
25 economic downturn. As a result, the pie has shrunk. The

1 private market is gone. Everybody is going to public
2 works. That means there's less work for every contractor,
3 less money, less revenue. And the work that's out there,
4 there's no profit in it. And the profits they make are
5 what pay for compliance with off-road, with on-road, with
6 portable equipment rules.

7 So as a result of this shrinking of the pie, our
8 members have experienced not the 30 percent reduction that
9 we're hearing from staff, but more on the order of 40 to
10 60 percent reduction in volume, in revenue, and in work.

11 I have members who throughout the last year to
12 two years have spent hundreds of thousands of dollars in
13 compliance costs trying to meet both the on- and off-road
14 compliance hurdles. At that same time, they've reduced
15 their staffs by half to two-thirds in some instances. And
16 those are all -- every one of those staff is represented
17 by a spouse, by other dependants. It's not just that one
18 person. And I think that it's a shame that those people
19 don't appear to have been taken into account when we talk
20 about the economics of this, when we talk about the health
21 effects, the health effects of unemployment. What about
22 all those people what have gone off of their benefits?

23 CHAIRPERSON NICHOLS: Your time is up.

24 MR. HERRON: Thank you.

25 CHAIRPERSON NICHOLS: John Hakel, Sofia Parino,

1 Scott Kelleher.

2 MR. HAKEL: Good afternoon, Chairman, Board.

3 I'm John Hakel, Vice President, Government
4 Relations for the AGC of California. I'm really here just
5 to speak for a few moments on the off-road diesel
6 regulation.

7 Our association, our national association, AGC of
8 America, put together a study that you all have. We made
9 sure each and every one of you have it. We've shared this
10 with Erik and his staff. I think what you ought to do is
11 take some time. It's about 63 pages. But it's striking
12 what we were able to do given the DOORS data that Erik
13 gave us. We ran our own modeling using the same matrix
14 that Erik was using. And I think you ought to look at
15 that. There is tremendous downturn in where I think Erik
16 and the staff thought we were going to be, but because of
17 the economy and because of the proactive contractors who
18 have cleaned up their fleets, a lot of the target dates
19 not only have been met, they've been blown by. I ask that
20 you look at this and take a really seriously hard look at
21 this data.

22 What we're also asking if it's possible to in the
23 January meeting to have an ongoing, open, transparent
24 meeting with this data, walk through it for you so you can
25 see what we're able to find using the CARB's DOORS data.

1 I think it's an eye opener. And I believe that the
2 opportunity to sit down with the staff again to go back
3 and look at these numbers will greatly show that we need
4 to get the foot off of the throat.

5 The number have already been met and will be met
6 for tens of years. And we want to sit down with the staff
7 again, reopen, and see where we can go with the data.

8 CHAIRPERSON NICHOLS: Okay. I think you can do
9 that. The door is open. I don't think you have to do it
10 as a Board meeting that's noticed and agendized where you
11 sit around with the entire Board sitting there. I think
12 you need to present your report and go through it with
13 staff.

14 But as far as I know, they've never refused to
15 look at a study. And if you want to have it open to the
16 world, have it open to the world.

17 BOARD MEMBER RIORDAN: Madam Chair, if I might.

18 In talking to the staff during the time that they
19 were briefing me, I think we have an opportunity later
20 when we come back to talk about some of these construction
21 numbers. And it might not be January that we do it. But
22 it seems to me that -- and I know this is a long way away
23 for John to think about.

24 But clearly, in July, we are scheduled for some
25 sort of review. Prior to that time, we need to have those

1 meetings that really flush out the information. Now, it
2 may be that staff can come back earlier than July. But
3 we've got that target date of July to work on this. And
4 so --

5 CHAIRPERSON NICHOLS: That's all I was trying to
6 say. We have time between now and July.

7 BOARD MEMBER RIORDAN: And if there is something
8 that can be done prior to, we can aim for that. But at
9 least we have the target and the interaction can take
10 place during that time.

11 MR. HAKEL: Great. Thank you.

12 CHAIRPERSON NICHOLS: Just a second.

13 BOARD MEMBER LOVERIDGE: I do think in addition
14 to that exchange with staff would be helpful for the Board
15 members to get some kind of memo or some kind of analysis
16 of what the data represents.

17 CHAIRPERSON NICHOLS: Yeah. You can send us
18 reports, and we can read them. But that doesn't mean we
19 have a context to put them into.

20 MR. HAKEL: We'd be open to do whatever we need
21 to make this process work.

22 CHAIRPERSON NICHOLS: Okay. I think we are
23 definitely open to receiving information and taking a look
24 at it. So we will ask for review and have that be part of
25 the ongoing review that leads up to potential

1 consideration of changes in the rule.

2 MR. HAKEL: Thank you.

3 CHAIRPERSON NICHOLS: Thank you. Thanks for your
4 work on this.

5 Sofia Parino.

6 MS. SHARPE: Good afternoon. Actually, Sofia was
7 gracious to let me go instead. My name is Sarah Sharpe.
8 We're going to trade spots, because I was supposed to be
9 on a call at 3:30.

10 Again, my name is Sarah Sharpe. I'm the
11 Environmental Health Director with Fresno Metro Ministry,
12 and we're also a proud member of the Central Valley Air
13 Quality Coalition.

14 Once again, we've made a long trip up here to
15 come and remind you of the public health crisis that we
16 have in the San Joaquin Valley. We are very sensitive,
17 and my heart goes out to the trucking industry and people
18 that have lost their jobs. We know it's hitting all of us
19 in many different ways. And I think we can almost
20 guarantee that the economy is not improving our public
21 health crisis that we have in the San Joaquin Valley.
22 Last I heard, almost one in three children in Fresno
23 County have asthma.

24 Last December, we came with a group of over 20
25 residents of Fresno to support a strong truck regulation

1 because we cannot achieve clean air in the San Joaquin
2 Valley without it. If you remember the 2007 SIP, which
3 was a long, arduous process that many of us participated
4 in, we realize that heavy-duty diesel trucks are by far
5 the largest source of NOx in our region, and we really
6 can't reach our ozone standards, much less our PM2.5,
7 without cleaning up our trucks.

8 So even then, we probably won't even reach clean
9 air until 2015. We still have this huge black box that we
10 don't know where it's going to come from. If we stop
11 getting what we need from trucks, my toddler son will be
12 at least 16 by the time we have federally defined clean
13 air, which in our opinion is not quite healthy in itself.

14 So we understand that the economy has affected us
15 all negatively. And, in fact, I can share a personal
16 story. As I heard many mention that, you know, our health
17 benefits have been cut because of the economy. That's
18 happened to us at my organization. And my maintenance
19 inhaler that I normally use to keep my asthma controlled
20 has gone up in price with the new insurance plan, probably
21 quadrupled. So I've decided I can no longer afford to pay
22 it, because I have a lot of other bills and I'm the sole
23 provider for my family. So I just rely on my emergency
24 inhale or whatever else I can do. I haven't had luckily
25 any asthma attacks that I need to go to the hospital.

1 But I'm still fortunate enough to still have a
2 job. Imagine those who are not fortunate to have a job.
3 They're on unemployment or they have no health insurance
4 and they are working hard.

5 So we honestly cannot afford delays in cleaning
6 our air. Unfortunately, that includes our diesel trucks.
7 We all know it. Despite the state of our economy,
8 children in the San Joaquin Valley continue to get sick,
9 miss school, and ends up in the ER with asthma attacks.
10 And despite the state of our economy, my son's lungs may
11 develop with below-average lung capacity. My family
12 members may develop heart disease or cancer, and other
13 people in our valley may have shortened lives due to
14 life-long exposure to unhealthy levels of air pollution.
15 These are all the reality we're living with.

16 As I mentioned before, the residents of San
17 Joaquin Valley cannot afford any delay. We urge you to
18 maintain the level of diesel emissions reductions that you
19 committed to last year. And we look forward to working
20 with you until April to figure out what kind of options
21 we're going to have.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Scott Kelleher, are you here? Yes, you are.

25 Richard Mello, Tim Fortier.

1 MR. KELLEHER: Good afternoon.

2 My name is Scott Kelleher. I'm here with Redwood
3 Coast Petroleum, a petroleum distributor out of Santa
4 Rosa, California. We have plants in Hayward and Benecia,
5 California as well and we employ 100 people.

6 Currently, we operate a fleet of 43 units. A
7 little less than half will have to be replaced. A little
8 more than half will be able to be retrofitted.

9 Between here and 2014, it's estimated that we're
10 going to have to spend about three million dollars in
11 order to accomplish this. Currently, the company's
12 capital structure is not capable of financing a three
13 million dollar investment. That doesn't appear to be
14 changing any time between here and 2014.

15 What that essentially means is there is potential
16 that myself and the other 90-plus employees of Redwood
17 Coast Petroleum will be unemployed.

18 I believe that there is some middle ground that
19 can be obtained here such as the regulation can be written
20 where it is attainable. As a business manager, I've
21 certainly been guilty of setting goals that were perhaps a
22 little bit beyond what was reality. This goal here I
23 believe is beyond reality for not only my company, but
24 many of the people you see here. If I miss one of my
25 business goals, perhaps I'm disappointed. It's just kind

1 of a shame we didn't get to where we wanted to go. In the
2 event your goal is held to, it's going to be the demise of
3 my company, as well as many of the other people that are
4 here today.

5 So I do believe that by involving businesses and
6 coming up with a reasonable solution, both goals can be
7 met. Thank you very much.

8 BOARD MEMBER LOVERIDGE: What is your reasonable
9 solution?

10 MR. KELLEHER: Unfortunately, it's time. I think
11 that the goal is attainable, but it's just impossible to
12 do from a financing basis. That's what we're talking
13 about here is financing the improvements that are
14 necessary to reach the goal. And in today's economy,
15 capital as tight as it is, the money just simply is not
16 available to the trucking industry to make the goal by
17 2014.

18 CHAIRPERSON NICHOLS: Thank you.

19 Richard Mello and then Tim Fortier.

20 MR. MELLO: Thank you. Thank you, Madam Chair
21 and Board members.

22 I've had the pleasure of meeting several of you
23 before with our TRU Committee that we had with CTA.
24 Again, I thank you for time today and thank you for the
25 time in the past.

1 As I've stated in the past, and I had in my
2 packet also that has been provided for you, is that our
3 companies both require -- want to have clean air in
4 California, and that we have actually done some things on
5 our own to increase I guess the air quality on our own.

6 But like with our company as many other
7 companies, times are tough right now in California. And
8 it has been a bit of a struggle as far as in our
9 particular business.

10 Some of the things that I got there on that
11 packet for you is just sort of a little personal data on
12 our two companies that we have to support some of what
13 you've heard already.

14 Our overall revenue if you take away fuel is down
15 about 12 percent in this last year. Our tonnage is down
16 about 9 percent. Our miles are down 24 percent. Our
17 gallons of fuel used are down 16 percent. And employees
18 are down approximately 20 percent.

19 As you can see, that's kind of an effect as far
20 as our particular company. Again, there is a lot of
21 information in that packet that we presented and there
22 certainly isn't time to talk about all that.

23 So I suppose that one thing, too, that we had
24 heard in the past is that perhaps what carriers might be
25 able to do is pass on some of this cost to our shippers

1 and let the general public pay for it, because it was
2 going to be a small amount of money. Unfortunately,
3 that's not the case, especially in today's environment.
4 We have seen rates just get destroyed based on just the
5 shear competition right now.

6 My controller reported to me the other day he had
7 a report showing that in the last six months the carriers
8 have given away over nine years worth of increase. I,
9 myself, have seen that our particular rate structure has
10 dropped dramatically.

11 So in closing, I simply would ask that the Board
12 reconsider the time line, but not only on this particular
13 rule, but also on the upcoming TRU rule and some of the
14 other rules that are coming into effect.

15 Thank you.

16 CHAIRPERSON NICHOLS: Okay. Thank you.

17 Tim Fortier, Miles Anderson, Sean Venables.

18 MR. FORTIER: I'm with Commercial Transfer,
19 president of the company. We've had five generations work
20 in our trucking business in Fresno. We were established
21 in 1891. I would have brought our original team of horses
22 and buck board here, but I don't think we can get it into
23 the audience here. So it seems that you want to go back
24 to those days where I guess there was just a little bit of
25 the methane gas that was exerted in those days.

1 We've had a 35 percent reduction in straight
2 across fuel usage, employees, overhead the last few years.

3 What I really want to address though is the
4 policy level and subjects that came up through the various
5 discussions here earlier. The policy with regards to the
6 staff is that you seem to have ignored the industry, what
7 we have to offer in practical advice. We're not your
8 enemy as you have insinuated in your opening remarks with
9 regards to the demonstrations. It's a negative comment.
10 There is a lot of good people here that make an honest
11 living for years. And I think to be addressed like some
12 hoodlum, like we're some gangbangers out here, I find it
13 insulting. And some of my other friends here were
14 insulted.

15 CHAIRPERSON NICHOLS: Excuse me. I --

16 MR. FORTIER: I'll take your apology.

17 CHAIRPERSON NICHOLS: No. No. No. You can take
18 whatever you like, but I just want to clarify here. I
19 said --

20 MR. FORTIER: You're wasting my time now.

21 CHAIRPERSON NICHOLS: No. It will be deducted
22 from your time, sir. Stop the clock right this second.
23 All right.

24 I was not addressing the people in the audience
25 as being gangbangers or demonstrators. I was saying we

1 had heard that there were going to be such people --

2 MR. FORTIER: That's a negative remark.

3 CHAIRPERSON NICHOLS: -- and I was appreciative
4 of the fact that that was not what was going on.

5 MR. FORTIER: But that's how you perceive us.

6 CHAIRPERSON NICHOLS: No, that's not how I
7 perceive you.

8 MR. FORTIER: You said it. I didn't. You didn't
9 have to bring it up. You should have been relieved there
10 wasn't any demonstration out here.

11 CHAIRPERSON NICHOLS: I was. That was what I was
12 trying to say.

13 MR. FORTIER: I found it insulting as well as
14 several of my friends here.

15 CHAIRPERSON NICHOLS: You're really --

16 MR. FORTIER: Your statistics with regards to
17 your --

18 CHAIRPERSON NICHOLS: You're anxious to be
19 insulted, sir.

20 MR. FORTIER: May I finish?

21 CHAIRPERSON NICHOLS: You may finish right now.

22 MR. FORTIER: Thank you.

23 Your statistics have a stated agenda. It seems
24 that you go through the process of the end justifying the
25 means. Your credibility has just been destroyed with this

1 episode with this Tran. That's deplorable.

2 But what's more deplorable is that your own staff
3 and several members of the Board hid it from the other
4 members. That's shameful. Something as important to this
5 economy and this state you have omitted.

6 I have served on five different boards. If that
7 happened to one of my staff or to the staff that directed
8 that to me, I'd have fired them all. Your credibility is
9 absolutely destroyed in the eyes of the public. You live
10 with that.

11 (Applause)

12 CHAIRPERSON NICHOLS: I'm going to take a
13 five-minute break right now. We'll come back in five
14 minutes.

15 (Thereupon a recess was taken.)

16 CHAIRPERSON NICHOLS: We're ready to start now.
17 They do have access to the sound.

18 ASSEMBLYWOMAN HARKEY: My comments are not going
19 to be that profound.

20 I'm Assemblywoman Diane Harkey. I serve the 73rd
21 Assembly District, which includes north San Diego County
22 and south Orange County.

23 I've been listening to some of the testimony
24 that's gone on here today. And without getting very
25 technical, I appreciate your goals. Your goals are very

1 laudable. What we're having in the state right now is a
2 real meltdown in the financial system as you all know. We
3 are fundamentally bankrupt in the state of California. So
4 what many of us are trying to do is to find out how it is
5 that we encourage business to stay here, number one, to
6 remain profitable so that we may reap some taxes. And so
7 anything that we can do to that end is going to be very
8 helpful.

9 Our revenues are down. Personal income tax is
10 down by over a billion this last quarter. Corporate
11 income tax is down by over a half a billion. Sales tax
12 revenues are down so low that we had to restructure our
13 emergency revenue bonds that we placed as debt the last
14 time we were in the tailspin during the dot-com bust.
15 That's how bad the state is.

16 We have billions of dollars coming due in 2011
17 and no method in which to pay for it. We are dependent
18 totally on the outside capital markets to help fund our
19 shortfall. We have eight billion dollars in a deficit now
20 that we know about that could be up to 21 to 25 billion by
21 the time we get it corrected.

22 So that being said, on the Biotech Committee, on
23 Jobs Committee and other things I've working on, we're
24 trying very hard to figure out what it is that we can do
25 help alleviate some of the strain right now that

1 businesses are feeling.

2 We need to keep our people employed. It's an
3 absolute must. We've got over -- what -- 10, 12 percent
4 unemployment, 20 percent in the central valley. I know
5 there's 9.-something percent in Orange County, san Diego.
6 It's devastating out there. And these are some of the
7 better districts.

8 So what we're finding is that regulation is
9 really, really difficult right now. Compliance would not
10 be a problem over time, but right now, there's just no
11 money to do so. They're barely keeping the doors open,
12 barely keeping people employed. So whatever you can do to
13 accommodate this will be in the general welfare of the
14 state of California and general welfare of continuing the
15 EPA's good work.

16 And all of our efforts in the Assembly to try to
17 cobble together something that will keep education going,
18 basic fundamental services, public safety, and those other
19 things that we so much need, because we are going to see
20 roughly 15 percent of our budget go for debt and maybe
21 pension over the next couple of years. That cuts into the
22 general fund tremendously. We have to increase our
23 revenues. Our revenues are just immensely down. And we
24 can't even afford to collect more taxes. There's nothing
25 left. We've hit a tax ceiling.

1 So whatever you can do to help in that. If you
2 can extend, however, you can cooperate and work with us, I
3 would truly appreciate it. I appreciate your work. Your
4 services are greatly appreciated. This is a fabulous
5 state. And we need to keep it rolling. Thank you so
6 much.

7 CHAIRPERSON NICHOLS: Thank you for those
8 comments.

9 (Applause)

10 CHAIRPERSON NICHOLS: Very thoughtful and helpful
11 remarks, especially in contrast to what we just heard a
12 little earlier I have to say.

13 Back to the agenda. Are you Miles Anderson?

14 MR. ANDERSON: Yes, I am. Thank you.

15 Rural California, attainment areas, logging
16 trucks - three very hot topics last year in this room. I
17 haven't heard it at all today from anyone. I thought in
18 the economic analysis I would hear at least one of them;
19 not a word.

20 Sitting in the room this year, I would be led to
21 believe the entire state has exactly the same air problem.
22 That's not the case. In fact, our Air Quality Control
23 Officer in Mendocino County stated in a letter, "We do not
24 need reductions from vehicles to meet our attainment
25 goals." Yet, we have to comply with the regulation as

1 with everyone else.

2 One little difference, there is no funding. CARB
3 sent some people to Mendocino County this year with some
4 information on a voucher program, Carl Moyer voucher
5 program. We filled a room. About a thousand trucks in
6 our county. They figured there was enough money for three
7 trucks, until our Air Quality Management District said
8 they don't have the matching funds. And that was it.
9 Zero funds in 2009 in Mendocino County.

10 I'm sorry that South Coast and San Joaquin have
11 bad air. But we don't. And this regulation, putting this
12 burden on us to replace all these trucks isn't going to
13 help the air down there.

14 I read some of the reports from OAL the answer to
15 some of our public comment that was prepared by staff, and
16 it says emissions from attainment areas could drift into
17 non-attainment areas and that's the reason that we need to
18 have all these controls on trucks in attainment areas. If
19 that's true, I hope that next is adjoining states and
20 countries will also be putting on some of this that could
21 drift into places that have bad air.

22 I'm representing the hundred people that we
23 employed previous to this year. In Fort Bragg,
24 California, a town of 6,000 people, next closest town is
25 40 miles away, and it's smaller. There isn't a lot of

1 employment opportunities. In fact, we were the third
2 largest employer behind the government and the hospital.
3 Not anymore. We're down 48 percent from last year.
4 That's truck mileage. And I would hope that anybody in
5 this room that's only down 10 to 18 percent would say
6 that, because I haven't heard it yet.

7 If we were to comply with the PM portion with our
8 trucking fleet, it's going to cost us \$500,000 a year to
9 meet that deadline. Our gross revenue in 2009 was
10 \$850,000.

11 Thank you.

12 CHAIRPERSON NICHOLS: Thank you.

13 We've heard from -- I'd like to actually
14 reference communication that I had, even though this is
15 not ex parte, per se, with Wes Chesbro who represents that
16 area and who has been an effective spokesperson for the
17 idea that the rural counties need to be given special
18 consideration as we look at some changes to this rule.

19 So just want to note that that input has been
20 received. And I told him that we would think long and
21 hard about what we could do to address that issue.

22 It is a complex set of rules that we're dealing
23 with here. We are one state and don't have any fences at
24 the boundaries of our counties or our attainment areas.
25 And so what seems fair to one person may not look so fair

1 to another person. But I agree the economies of these
2 areas are different and that we do need to find ways to
3 try to address that. So I just wanted to comment on that
4 right now.

5 Next hear from Sean Venables, Glen Ghilotti, and
6 Robert McClernon.

7 MR. VENABLES: Madam Chair, esteemed Board,
8 staff, thank you for letting us talk today.

9 I'm the president of Duran and Venables, a
10 general engineering contractor in Milpitas, Sacramento,
11 and Stockton. We've been in business for 30 years.

12 Eighteen months ago, we had a workforce of 150
13 people working for us and a fleet of 8600 horsepower of
14 off-road.

15 Today, our reduced workforce is only 60 people.
16 That's a 60 percent reduction. In addition, we have
17 reduced our fleet 35 percent to 5600 horsepower, which
18 still leaves us as a large fleet.

19 We have less employees, because of a 53 percent
20 drop in construction revenues over the last two years.
21 There is no profit margin in this environment that we can
22 figure out. The fleet reduction was an attempt in which
23 to comply with the impending regulations for off-road.

24 The 90 former employees who are not working for
25 me -- and I might put a little spin on this. About half

1 the people in this room represent about 90 people. And
2 other than our recent retiree, if you got a pink slip
3 today, it would impact you greatly.

4 I hear from them. They're running out of banked
5 hours, union benefits, and health insurance. Many are
6 completely without health insurance. Some have lost their
7 homes. Some are losing their homes.

8 We currently have spent over 500,000 trying to
9 comply with the regulations. And we see in the future to
10 comply with CARB regulations approximately \$300,000 per
11 year in retrofits and \$800,000 in repowering per year.
12 And that's not even addressing the on-road.

13 We're faced with further reductions in business.
14 In the coming years, it's forecasted by the Construction
15 Industry Research Board in their November 23rd, 2009,
16 report for California heavy construction, they forecasted
17 a drop in heavy construction. And they have reported a 60
18 percent drop in construction revenues since 2006 to 2009.

19 With future prospects of new work dimming and
20 profit margin non-existent, there's no source of money to
21 fund the kinds of costs for retrofits and repowers.

22 It's come to my conclusion that the only solution
23 for me is to sell my fleet in order to comply with the
24 regulations. Not exactly the best long-term business
25 strategy.

1 I want to comply because, like you, I live in
2 California and I care about our environment. I also want
3 my business to succeed. Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 Glen Ghilotti.

6 MR. GHILOTTI: Thank you for a chance to speak.

7 I'm a third generation contractor. My
8 grandfather came to America 97 years ago. And he sought
9 fortuna. His sought his fortune. He became a
10 United States citizen, and he had the American dream.

11 And I, too, have that American dream. I quit my
12 partner two-and-a-half years ago, and I started my own
13 company. No better time than a little downturn in the
14 economy to start a company. But I had 25 percent growth
15 my second year, and I'll have five percent growth this
16 year.

17 I have about 135 pieces of rolling stock between
18 off-road and on-road and broke 75 employees couple weeks
19 ago, \$150,000 a week. That's something to lose sleep
20 about.

21 And I thought, what am I going to talk about
22 today? But I wanted to take a little bit of time and my
23 time to talk about the one driver that has that American
24 dream. I want to talk about the little guy out there.
25 And the reality is that I have multiple contracts with

1 Caltrans, and what's a fair rate for a truck on the road.
2 Caltrans tells me. I don't tell them. They have a book
3 of rates out there.

4 And so the current on-highway rate for a
5 five-axle dump truck is \$81.13 an hour. That was with
6 markup on it. And the driver clocks out at \$71.34 an
7 hour. I get \$152.47 an hour working for Caltrans. I use
8 that was a base rate.

9 I looked for a truck to fill one of my projects I
10 have in Vacaville yesterday, and I got a price of \$80 an
11 hour, because that's what the competition is like out
12 there. So supply and demand.

13 These poor drivers are getting 80 bucks an hour.
14 If you take the commission of five percent off of it, it's
15 \$76 an hour. If you take \$30 away for fuel, they're down
16 to \$46 left.

17 Now you start talking about yearly cost quoted
18 this morning from 101 international and my local area of
19 \$525 for oil changes, for filters, fuel filters, air
20 filters, oil changes, service, you do six of those years,
21 \$3,150.

22 Costs \$2700 to register that truck a year; 6,000
23 a year in tires; 4,000 a year in small repairs; \$6,000 for
24 insurance. That's \$22,000 a year.

25 These guys working half time, a thousand hours a

1 year, that's all they're banging out there. That's 22
2 bucks an hour to take care of the hard costs that you're
3 dealt with owning a truck.

4 You take that away from the \$46 left, and we have
5 just forced the average American dream into poverty level
6 of \$24,000 a year income.

7 There is no replacement cost. That replacement
8 cost if he was forced at one thousand hours a year would
9 be 42 to \$48 an hour to replace the truck. It's not
10 there, folks.

11 CHAIRPERSON NICHOLS: Thank you.

12 Is Roger Isom here? Roger, are you here? He was
13 before. I just looked down on my list. If you saw me
14 smile, it's because I was looking ahead.

15 You know, we've just finished hearing from 66
16 witnesses on this item, and we've got another page and a
17 half or so to go.

18 But Roger, who's appeared before us a number of
19 times, had his identification transposed to be Cotton
20 Genius. I just thought that was great. So sorry. Small
21 inside joke. I apologize. Okay.

22 We will now hear from Robert McClernon.

23 MR. MC CLERNON: Good afternoon.

24 I own a business here in Sacramento. And I have
25 gone from nine trucks down to three trucks. Out of those,

1 three trucks I'm barely able to keep one truck working.

2 And this economy is sour. Everybody here knows that.

3 This regulation you have, guys like me and
4 everybody else don't have the money to reinvest in all
5 these tricks of the trade that you guys are coming up
6 with.

7 The Bank of America I do business with won't even
8 entertain any idea of refinance anything.

9 I have employees I've had for 15 years. I've
10 been in business since 1977. And my old employees that
11 I've had, you know, they're going through bankruptcies,
12 everything under the sun. They never could put away, even
13 in the good years to weather this two years we've had so
14 far.

15 We're not going to invest in new stuff. To stay
16 this thing for a couple of years, there's fine. We'll
17 keep going at it. But you know what it really needs to be
18 is we need the money to put the equipment back on the
19 road. You guys are asking us for a big ticket item and
20 with no way to pay for it.

21 If you took the money that you guys put into all
22 the scientific studies and everything else you've done and
23 took that money away from UCLA and all these people and
24 gave it to us, we'd have trucks to run. It's real simple
25 math. You guys spend so much money on overhead, it's no

1 wonder you don't run a business.

2 We run a business. We're in survival mode for
3 the last couple years. It hurts. You guys need to
4 understand that. You guys need to learn how to do it,
5 too, like the Assemblyman that was just here. The state
6 of California is in survival mode. Figure it out. It
7 hurts everybody.

8 You need to make decisions. And one of them is
9 that somebody that's working at the Lung Association
10 telling me about how me, that's grown my whole life
11 driving trucks and being around heavy equipment -- you
12 know, if I've got some problem with my lungs, you know,
13 it's just what's out there. I don't want it for anybody
14 else. But, you know, my mom smoked the day she had me in
15 the hospital. You know, things are a little different
16 nowadays, and health is getting better and the skies are
17 getting better. But you can't legislate this stuff and
18 kill us in the mean time. Thank you.

19 CHAIRPERSON NICHOLS: Thank you.

20 Eric Carleson, David Chidester, and Ron Dacus.

21 MR. CARLESON: This will be on point to the
22 Chair's remarks a short time ago.

23 I'm Eric Carleson, Associated California Loggers.

24 I'm reading from the transcript of the Board
25 hearing January 22nd, 2009, hearing of this Board.

1 Chairperson Nichols directing staff with regard to
2 logging-related issues.

3 "CHAIRPERSON NICHOLS: We would like to ask
4 the staff in conjunction with the economic review
5 that they will be working on anyway to put a
6 special focus on the issue of the logging trucks
7 and this industry and to come back with
8 recommendations that would deal specifically with
9 their situation."

10 So that was stated at the Air Board hearing back
11 in January.

12 Now, we did ask staff this week as to the status
13 of the Chair's request on the logging trucks, given the
14 December 2009 economic report deadline is here. Their
15 response, they were unable to complete work on our issue
16 by the Chair's deadline. They had nothing to offer us.

17 We are sympathetic to the staff. It's hard to
18 meet a deadline with a short time line, limited resources,
19 and a horrible economy. Staff missed their deadline, and
20 we feel that's all the better reason to extend our
21 deadlines.

22 However, we believe Chair's request on logging
23 trucks and rural counties remain strong and operative, and
24 backed, we believe, by quite a significant number of other
25 Board members. And we look forward to the staff's

1 completion of the plan for relief as requested by the
2 Chair.

3 Thank you.

4 CHAIRPERSON NICHOLS: Thank you.

5 David Chidester.

6 MR. CHIDESTER: I don't normally speak, so I'm
7 going to read. I'm a terrible speaker. I don't get out
8 much.

9 My name is Dave Chidester. I'm the president of
10 Central Cal Transportation based in Fresno. Central Cal
11 Transportation is a drayage company founded 15 years ago.
12 We currently operate 139 trucks. Our fleet's comprised of
13 100 owner-operators and 39 company-owned trucks. Out of
14 our company fleet of 39 trucks, 26 of them are 2009 and
15 2010 models that we purchased this year to comply with
16 your 2010 date at an average cost of \$120,000 per truck.

17 We're also taking delivery this week of an
18 additional 40 2010 trucks at an average cost of \$125,000
19 per truck. This represents a total investment of \$8.1
20 million.

21 We had applied for 1B funding replacement almost
22 two years ago for our eight non-compliant trucks and were
23 approved for five. This was later cut back to three due
24 to funding issues, and we have not received any funding as
25 of today, all though supposedly it's still pending.

1 I researched retrofitting our fleet of
2 non-complaint trucks, and with the additional NOx retrofit
3 looming a few years out, the option does not pencil out.
4 To put \$25,000 into a \$5,000 truck for a couple years and
5 then have to retrofit it again at an unknown cost does not
6 make sense, either using government or private funds.
7 It's proving difficult to even get insurance on the
8 retrofit devices as our insurance company does not view
9 them as adding any dollars to the value of the truck.

10 I'm going to stop reading.

11 Our fleet of 100 owner-operators is not just
12 owner-operators. It's Able Lopez. It's Ishmeal
13 Valenzuela. It's Israel Flores. It's Abraham Garcia.
14 It's Sargi Sang, Harbuta Ticar (phonetic).

15 Out of these 40 trucks that we just got financing
16 for and we've taken delivery, we're going to release these
17 two, the owner-operators, to try to keep 40 of them in
18 business. I don't know how we got the financing. I
19 wouldn't have lent me money. We've lost money this year.

20 I'm a snapshot of where everybody else in this
21 room is going to be in two years. I'm up against a
22 deadline of two-and-a-half weeks trying to comply.

23 I'm torn. As a member of the trucking community,
24 I would like it put off to give people time in this
25 economic situation to react. As president of Central Cal,

1 I don't want it put off. I've stepped up. Somehow, I've
2 been able to come up with the \$8 million financed
3 privately to do it, and I don't want to compete on an
4 unlevel playing field after the first of the year.

5 This would have been a very easy fix. Madam
6 Chairman, you asked what is the way to get it fixed. The
7 truck manufacturers have already stepped up. They made
8 the changes. With this economic downturn, we're down 40
9 percent. The new trucks that are coming up -- we're
10 disrupting the total flow of the industry. The normal
11 flow of the industry, it goes to cross-country truckers
12 for four years. They filter down to people like us, and
13 then they filter down to owner-operators. All we had to
14 do was let nature take its course and ban the rebuilding of
15 the older horrible trucks. It would have been taken care
16 of. No meetings. No staff conferences. No boards. No
17 all of this other stuff. Nature would have taken its
18 course, and we would have saved billions of dollars.

19 Thank you.

20 BOARD MEMBER D'ADAMO: I have a question. What
21 percentage of your trucks will be in compliance? And you
22 probably already said this, but how many in your fleet?

23 MR. CHIDESTER: We will be in 50 percent
24 compliance, which means hopefully the rates are going to
25 go up, because the drayage industry as a whole is only

1 going to be 50 percent compliance in two-and-a-half weeks.

2 There was just a change that came out on your
3 site yesterday afternoon to where they're granting a
4 four-month extension to people that have ordered trucks
5 and the trucks have not come in. That was the third
6 phase. Up until before yesterday, there was two phases.
7 There was the people that were 1B money, which we are
8 still waiting for. And the retrofits devices which to me
9 don't pencil out. It's not a good use of money. Now all
10 of a sudden, we've come up with a new way yesterday to
11 where we're going to allow people to order trucks.

12 What's going to prevent some of our less than
13 honorable people from buying a truck from their neighbor
14 and not taking delivery until the end of April at the end
15 of this period and then having the sale fall through?
16 I've got to compete with them for another four months.
17 Just looking for a little level playing field and
18 accountability.

19 BOARD MEMBER D'ADAMO: You make a good point.

20 How many trucks in your fleet?

21 MR. CHIDESTER: There's 139. But we're down from
22 250 a year and a half ago.

23 BOARD MEMBER D'ADAMO: Thank you.

24 CHAIRPERSON NICHOLS: Okay. Thank you, sir.

25 Richard Dacus.

1 MR. DACUS: Ron Dacus. Good afternoon.

2 I'm here on behalf of the Northern California
3 Port and Rail Truckers Association. We have recently
4 established our association to speak for the issues of the
5 port drivers down in the port of Oakland. We've also
6 joined together with the National Port Drivers Association
7 down in Long Beach.

8 And I think to bring a little perspective from
9 the port drivers, we have about 500 members that we just
10 enrolled in the last three weeks, three-and-a-half weeks.
11 This morning, a caravan of about 300 trucks came from the
12 bay area -- we were all in here, so we didn't see it. But
13 you'll probably see it on TV. They came here to
14 Sacramento and to voice our opposition to the rule.

15 We've heard ad nauseam a lot of statements from a
16 lot of different companies, a lot of truckers about the
17 financial impact. You guys have no concept of exactly
18 what's going to happen if you start taking trucks out of
19 circulation in the port area.

20 I remember at a port of Oakland meeting, there
21 was a statement made that the 800 trucks that received the
22 grant money and the retrofits could service the whole
23 port. That's laughable. That would be a neat trick. Now
24 you have the port of Long Beach and the drivers down south
25 facing the same problem.

1 Now let's not talk about the truckers who
2 transport the stuff on the road. A lot of their stuff
3 comes from the port. And so if you congest that to where
4 these goods can't move, of course those drivers are going
5 to be out of work, too. It's just not feasible.

6 And I think it was a rush to implement something
7 to quiet the people who were making noise about the
8 environment.

9 I want to remind everybody in this room about one
10 stellar success that the California government put into
11 play. Four letters: MTBE. They imposed this regulation.
12 Made people dig up their storage tanks to put in this
13 MTBE, and the tanks leaked into the groundwater. I go on.

14 But on another personal note, I'm sick of hearing
15 about the statistics of asthma and this, that, and the
16 other. I care about the environment just like everybody
17 else. I'm an advocate.

18 I'm 39 years old. I've had asthma for 39 years.
19 When I came to visit my grandmother who lived in west
20 Oakland, she was afraid to keep me because my asthma
21 attacks were so bad. It had nothing to do with the
22 outside. We lived underneath the Cypress freeway. Trucks
23 were going by all the time. She had roaches in her
24 apartment, lots of them. When I was older, I moved to an
25 apartment in Richmond. It had roaches and a mildew

1 problem that kept me sick.

2 I've been a driver at the port of Oakland since
3 2004. Have not had one asthma attack since then.
4 Something to think about.

5 CHAIRPERSON NICHOLS: Okay. Thank you.

6 Richard Tognoli.

7 MR. TOGNOLI: It's Tognoli.

8 I'm an independent owner-operator. I had seven
9 trucks. I'm down to two. So that puts my compliance way
10 out.

11 But the one thing that I haven't really heard
12 about today, which is kind of interesting because you guys
13 have covered basically all the topics, where's the new
14 guys going to get their trucks?

15 I was able to start a company, because I could
16 buy a truck for \$14,000. I don't know anybody that can go
17 out and buy a \$125,000 truck to start a company. Are we
18 just going to stop starting new companies in California?

19 On the second note, I bought a trailer from Idaho
20 last year. Took me four days to get it delivered. I
21 shouldn't say that. After four days, I couldn't get it
22 delivered. I had to go get it. Nobody would bring it
23 into California. They didn't want to deal with
24 California. They didn't want to deal with the
25 regulations. They didn't want to deal with the higher

1 fuel costs. They didn't want to bring me my trailer. I
2 had to go get it.

3 You guys are wrecking the economy. Run
4 everything back a couple years. Slow it down a little
5 bit. The new technology is coming around. You didn't do
6 this to the car industry. You didn't force them to
7 retrofit. You phased stuff out. You brought new stuff
8 in. You guys are singling us out unfairly. Slow down.
9 Thank you.

10 CHAIRPERSON NICHOLS: Sofia Parino, are you here
11 now? Yes.

12 And Michelle Garcia and Steve Brink.

13 MS. PARINO: Good afternoon.

14 My name is Sofia Parino. I'm with the Center on
15 Race, Poverty, and the Environment.

16 I'm actually going to comment on the localized
17 risk assessment of ag exemption.

18 Our organization works with communities in the
19 San Joaquin Valley. And last year, we were here with
20 those communities asking that the ag industry and the
21 diesel trucks in that industry were not exempted or not
22 provisions for those trucks in this rule and that they
23 would also have to do their fair share of cleaning up
24 their trucks.

25 This Board allowed that provision to go through,

1 but also promised there would be a localized risk
2 assessment done of that provision for those communities to
3 make sure that that was the proper thing for this Board to
4 do and to come back and to take a look at that rule and
5 that provision. We're here a year later when that
6 assessment was supposed to be done and we don't have
7 anything. And we're told that may be next year.

8 This is unacceptable. This is a promise that
9 this Board made to come back a year for these communities
10 and to take a look at this provision, because they were
11 very concerned about their health. And every day that
12 passes, these communities are exposed. And they are very
13 vulnerable communities. And there is no study that was
14 promised of what this exemption, this provision is doing
15 for these communities, is doing to their health.

16 And so I'm asking this Board to direct staff to
17 come back and to come back as soon as possible with an
18 assessment, the assessment that was supposed to be done in
19 this year along with this economic assessment.

20 And then I just also would like to support the
21 other health and environmental advocates that have spoken
22 in support of this rule and understanding that while the
23 economy is a big problem for lots of people, there is an
24 obligation of this Board to protect the health of the
25 people of California. And there is a federal obligation.

1 And your staff has told you that this rule is required to
2 meet that obligation. And so I'm in support of the rule
3 and the process that it is now.

4 So thank you very much.

5 CHAIRPERSON NICHOLS: Okay. Thank you.

6 Michelle Garcia, Steve Brinks, Bob Berry.

7 MS. GARCIA: Good afternoon.

8 My name is Michelle Garcia, and I'm the Air
9 Quality Director the Fresno Madera Medical Society. And
10 I'm here today representing a group of physicians that I
11 work with who are very passionate about air quality but
12 could not be here today because they're seeing some of the
13 sickest people who are being affected by diesel pollution
14 in the valley.

15 First, our thanks to Dr. Telles for his work on
16 CARB and on the Board. We know there is no glory and lots
17 of time away from a physician's first priority, our
18 patients. We understand his concerns regarding a CARB
19 staff member's misrepresentation of credentials and the
20 delayed involvement of the entire Board. But we do not
21 feel that these issues warrant a suspension of the
22 proposed rule. Delaying needlessly undermines the years
23 of hard work on all sides that have gone into the rule
24 development.

25 Secondly, we want to address whether during a

1 down economy it is wise to enact a rule which will further
2 challenge some businesses. While we can't predict the
3 future, we know there will be ups and downs. We cannot
4 predict when the best economic time would be for such a
5 rule.

6 We can, however, make firm scientific estimates
7 of the adverse health consequences of diesel pollution.
8 And there's always the right time from a health
9 perspective to choose healthier behaviors, to choose rules
10 that lead to cleaner air, fewer cases of cancer, fewer ER
11 visits and hospitalizations for asthma.

12 So, today, we are urge the Board to continue
13 setting precedents in favor of improved health by moving
14 forward with the rule as originally planned.

15 Thank you.

16 CHAIRPERSON NICHOLS: Okay. Steve Brink, Bob
17 Berry, Michael Shuemake.

18 MR. BRINK: Thank you, Chair Nichols, Board
19 members, and staff.

20 I'm Steve Brink, California Forestry Association.
21 Our members are the wood products industry of the state,
22 many of the biomass power plants, forest landowners and
23 many forestry trucking fleets. Twelve quick points.

24 Number one, you've heard testimony previously the
25 Board directed staff to look specifically at the forestry

1 fleet, which they haven't been able to do yet. I would
2 remind the Board as we've previously commented in writing
3 about 98 percent of our VMT from forest to first point of
4 processing is outside of the San Joaquin and South Coast
5 air sheds.

6 Point two, our business is down 35 to 50 percent,
7 similar to what you've heard earlier in the northern rural
8 counties. And that parallels what you heard earlier about
9 fuel purchases in the northern counties being down over
10 50 percent.

11 Third, what I think that may be an indicator of
12 is staff's statewide analysis perhaps is masking to some
13 extent what's going on in the rural northern California
14 counties.

15 Fourth, filter technology. There is no
16 improvement for high horsepower older mechanical fuel
17 injection engines. The Hughes filter is the only verified
18 filter that will work on most of the older mechanical
19 fuel-injected engines. Since they're high horsepower in
20 our fleet, that means you have to have two filters. It's
21 a \$40,000 retrofit for a \$10,000 truck. You can imagine
22 what the banks have to say. Forget it. That part of the
23 rule is simply not implementable.

24 Fifth, that leaves our forestry fleet owners with
25 the old trucks the only option is to use the limited

1 mileage exemption, which means they'll run their trucks
2 one or two months a year and then park them.

3 Six, as you heard all day, the recession is such
4 that replacing the trucks is simply not financially
5 possible in the current economic climate.

6 Seventh -- and you heard this from us before,
7 too -- we think a PM2.5 analysis similar to the NOx
8 analysis that lead to the 17 NOx-exempt counties in the
9 rule would be a fruitful exercise. And we think there
10 should be some use of the monitoring meters that are out
11 there actually measuring air pollution to supplement the
12 modeling being used. Right now, as I understand it,
13 everything you receive from staff is based on modeling
14 only. We believe you'll find there may be some more
15 emissions flexibility with these additional analyses I've
16 outlined.

17 Point eight, we know staff and Board probably
18 don't want to regionalize the rule. However, we think if
19 you look at the rural counties, particularly in northern
20 California, there may be ways to provide substantial
21 relief without missing any of the emission reduction
22 deadlines in San Joaquin and South Coast Air Districts.

23 Number nine, we think a two-year deferral is
24 probably appropriate given the economic recession.

25 CHAIRPERSON NICHOLS: Thank you.

1 Bob Berry.

2 MR. BERRY: Madam Chair and Board, I appreciate
3 the time to come and speak in front of you.

4 I've been in business in west Oakland for 37
5 years -- or just shy of 37 years. I don't want to
6 misrepresent that.

7 I closed last year when I talked to you with a
8 quote from Mark Twain. There are three kind of lies.
9 There are white lies. There are damn lies. And there's
10 statistics. And I think now I think I'd add number four,
11 Mr. Tran, to that list.

12 The unfortunate thing is that this kind of has
13 put appall over everything that you're trying to do. We
14 all understand that air needs to be cleaner, as clean as
15 possible. We on this side are trying to pay for it. And
16 it's a very expensive proposition in my business.

17 I own 16 tow trucks. I have replaced six of my
18 light-duty tow trucks with 2008 or newer. I've taken
19 delivery this week of a 2010 with SCR a Detroit diesel to
20 replace one of my heavy duties.

21 The problem is we've hit the wall economically.
22 We can't do any more. And we have to have time to pay
23 this stuff off before we can buy more stuff.

24 And the problem is we're replacing equipment that
25 doesn't need to be replaced. It's not worn out. It's not

1 in bad mechanical condition. We do our smoke tests each
2 year. We do very good maintenance on our trucks.

3 And we want to do the right thing. We don't want
4 to hurt our neighbors in any way, shape, or form. Our
5 city is our life.

6 And we would ask that you delay the total
7 implementation on this at least two years so that we can
8 finish our fleet off and not completely devalue what we
9 own.

10 And I thank you very much for your time.

11 CHAIRPERSON NICHOLS: Thank you.

12 Mike Shuemake.

13 MR. SHUEMAKE: Madam Chair, members of the Board,
14 I came here today -- I wrote a speech that was going to
15 last three minutes yesterday, and then I re-wrote it and
16 made it down to two, because I didn't know where we were
17 going to be. And all those things have been said. So I
18 re-wrote it, and I think it's been said again.

19 But the economy is horrible. This rule needs to
20 be looked at.

21 But the other thing I want to talk about today is
22 the fact that we're forgetting about the two rules that go
23 into effect this January that are also going to affect a
24 number of people in this building, and that's the
25 greenhouse gas rule that was voted on last year and the

1 TRU rule that was delayed in July of this year for
2 six months for reasons that have not changed. The economy
3 is still bad. The technology is still lacking. And so
4 nothing has really changed that's made that better, except
5 now we are at a hard deadline once again, and there's
6 still a lot of people that are not complying.

7 The greenhouse gas rule is going to affect a
8 number of these people in -- it starts 2010. They will be
9 retrofitting as far down the road as 2012. But we have
10 the opportunity I hope to at least look at the rule one
11 more time.

12 And the other thing I've got to do is ask this
13 side of the group to help this side of the group meet that
14 2014 SIP deadline. We're calling it a goal. If I give my
15 employee a goal, I'm going to sit down with him at the end
16 of the year and see if that goal can be adjusted. Did we
17 meet it? Or if we didn't, how come?

18 This doesn't appear to be a goal. We're looking
19 at the feds and letting them draw the line in the sand and
20 we're not going to cross it. We need to figure out what
21 it's going to take to sit down and tell them, look, we
22 can't kill our economy in order to meet your number.
23 We've got to look at that. Things change. And every one
24 of us can address that, that it's all changed in our
25 business in the last couple of years, I'm sure, except for

1 the gentleman that has a five percent increase. I applaud
2 that.

3 Anyway, thank you very much for the time. And
4 hopefully we can get a decision today.

5 CHAIRPERSON NICHOLS: Thank you for spending the
6 day with us.

7 Okay. Matthew Schrap from CTA, and Camille
8 Kustin from EDF, and Kevin Brown.

9 MR. SCHRAP: Thank you, Madam Chair, Board
10 members.

11 My name is Matthew Schrap. I'm the Director for
12 the California Trucking Association, also the co-chair of
13 the TRAC Outreach Subcommittee.

14 Before me today, you have heard me from dozens of
15 my friends and colleagues in our industry. These stories
16 are not scripted, nor are they cherry-picked anecdotes.
17 For every testimony you have heard today from our
18 industry, I can give you ten other companies in the same
19 fiscal crisis, resulting in thousands of lost jobs across
20 the state.

21 We are here today, as you have acknowledged, in
22 the midst of the worst economy since the 1930s.
23 Unemployment is at least 12 percent. And in our industry,
24 overall activity in VMT is down significantly. Our
25 equipment is worth pennies on the dollar. And

1 complicating the matter, our rates are being cut down
2 faster than a Christmas tree farm after Thanksgiving.

3 People are reeling in this economy. And while
4 job loss is a byproduct of any recession, the compounding
5 effects of this and several other ARB regulations are
6 forcing companies to make hard decisions, not related to
7 equipment purchases, but to staffing levels and total
8 overall employment. Losing your job, as Dr. Telles
9 pointed out almost one year ago, is the worst thing that
10 can happen to your health. This fact has been ignored by
11 staff.

12 Furthermore, despite their hard work, staff's
13 rosy estimates for our economic recovery are, for lack of
14 a better term, balderdash. Although emissions are lower
15 than previously estimated, the likelihood that the
16 recessionary impacts is recessionary emissions reductions
17 assumed in this report are even greater. No one disputes
18 emissions are down because of this economy. The question
19 is how much.

20 At issue here also is the potential emissions and
21 the methodology calculations that will never see the light
22 of day simply due to the fact that stakeholders have had
23 no access to the methods used to determine the inventory
24 impacts. Despite staff claims that this info would be
25 available to us prior to the Board hearing, it is not.

1 Outside of these data sharing issues, it is
2 imperative that all findings associated with this
3 regulation are reviewed and re-workshopped before initial
4 requirements are slated to go into effect. This includes
5 the economic impact analysis contained in the ISOR, which
6 by staff's own admission was done in a different economy,
7 as well as an additional economic impact study for all
8 facets of the regulation, including exemptions and other
9 provisions, of a study of any technological limitations
10 for any retrofit, additional incentives for early
11 compliance, and last but not least, addressing the
12 potential emissions reductions
13 associated with the economic downturn.

14 To truly understand how the emissions reductions
15 are impacting our ability to meet the SIP requirements for
16 2014, a serious peer-reviewed study should be embarked
17 upon to ensure that this is a sustainable and legitimate
18 rulemaking that achieves its intended outcome without
19 crippling an integral part of a California economy.

20 Today, staff is presenting a complicated overview
21 of their findings. However, nowhere do we see a staff
22 acknowledgement how this economy is impacting our ability
23 to manage assets for compliance.

24 Incentive funding is few and far between and full
25 of unintended consequences, as you heard. Companies are

1 struggling to survive. Thousands of jobs have disappeared
2 in our industry over the last year alone. If these
3 rulemakings are truly about protecting public health, staff
4 needs to be directed to include health impacts related to
5 job loss and any other standards related to this rule.

6 CHAIRPERSON NICHOLS: Thank you.

7 MR. SCHRAP: Our industry and our families
8 deserve it. Delay these requirements per Assemblyman
9 Niello's request. You owe it to us. You owe it to the
10 state of California.

11 CHAIRPERSON NICHOLS: Bravo. Okay. You're done.
12 Thank you.

13 Camille Kustin, Kevin Brown.

14 MS. KUSTIN: Good afternoon. I'm Camille Kustin
15 with the Environmental Defense Fund.

16 Even though today was supposed to be simply a
17 report to the Board on economic conditions of the truck
18 rule, CARB has also presented three options that may
19 undermine the health benefits of the regulation. I'm not
20 surprised these three options have been proposed, given
21 the bleak economy and financial hardships many are facing
22 and the resulting decreased vehicle use and emissions.

23 I am surprised, however, that staff choose to
24 present such specific options with specific bounds and
25 numbers behind the dates that have essentially come out of

1 thin air without any emissions or data behind them.

2 As the staff presentation has shown, there is a
3 great deal of speculation and uncertainty to what will
4 happen in the coming years.

5 So I urge CARB to complete a thorough analysis of
6 each of the three options keeping the bounds open and
7 first report to the Board in April on the results of the
8 findings and not present a proposal to be adopted. In the
9 mean time, stay the course with the rule.

10 After April, staff should then undergo a formal
11 rulemaking process and present the recommended option at a
12 later Board hearing. Such analysis should include health
13 and emissions impact, SIP compliance progress, health
14 costs, and the effects on jobs as more than just trucking
15 jobs would be impacted by any of these three changes that
16 have been proposed. The uncertainty in the projections
17 and what the future will hold, the importance this rule
18 has on health and lives, and the recent questioning of
19 CARB's research and integrity provide even more reason for
20 CARB to be especially methodical and thorough in their
21 approach and not act hastily when it comes to making
22 dramatic changes to such a critical rule.

23 Thank you.

24 CHAIRPERSON NICHOLS: Kevin Brown and then Adrian
25 Martinez.

1 MR. BROWN: Good afternoon, members of the Board.

2 I represent Engine Control Systems, a device
3 manufacturer. We have numerous verified products in the
4 state of California.

5 We have always done our best to support the Air
6 Resources Board emissions reductions initiatives and at
7 several different times even to our own detriment have
8 done this.

9 Our company is owned by Catalytic Solutions
10 headquartered in Ventura, California. We have gone
11 through, as everyone else in the room, the economic
12 decline, the crash in the automotive market.

13 We're also going through another economic unrest,
14 which is we are heavily invested in supplying the
15 regulations that you have developed. And I would ask you
16 to consider those companies that have put themselves in
17 that position. It is very important not just to halt
18 momentum, but to at least maintain a positive rate of
19 implementation.

20 Our supply chains are extensive. They involve
21 many suppliers. They stretch from California across the
22 United States and over to Europe for certain key
23 components and things like precious metals. When we
24 suddenly have a big hiccup -- and we've had several delays
25 in this program -- everything comes screeching to a halt.

1 And it takes a long time and a lot of investment to get it
2 back up and running. We have invested in technology
3 development, product development, verification, and to put
4 the mechanisms in place to supply these products and the
5 training. And we indirectly have a lot of people employed
6 in the state of California installing these devices and
7 selling these devices. And, again, a big delay -- many of
8 these places are truck dealerships that are supplementing
9 the loss of the economic benefit of selling new trucks by
10 providing the retrofits and installing them.

11 So again I would ask you to keep that in mind and
12 remember these companies that have invested to support and
13 to do your best to maintain a positive rate of
14 implementation so we don't have sudden abrupt changes in
15 this market.

16 Thank you.

17 CHAIRPERSON NICHOLS: Thank you.

18 Adrian Martinez.

19 MR. MARTINEZ: Good afternoon, Chair Nichols and
20 members of the Board.

21 My name is Adrian Martinez. I'm here on behalf
22 of the Natural Resources Defense Council.

23 As your Board is intimately aware, based on the
24 testimony from many of my colleagues in the environmental
25 community and the EPA and the South Coast Air Quality

1 Management District and your own staff, that this rule is
2 critical to the attainment of a federal health-based clean
3 air standards.

4 But since everybody has the economy on the mind
5 today, I will address two issues that I think haven't
6 really been touched upon today. And I think they're two
7 important issues moving forward.

8 And before I start that, I just want to note that
9 NRDC supports keeping the rule intact and specifically the
10 commitments made to achieve pollution reductions to meet
11 clean air standards.

12 The first issue I want to address are the
13 non-attainment fees that are assessed in regions when
14 there is a failure to attain clean air standards. Several
15 regions in California are going to face these fees,
16 including the San Joaquin Valley and the South Coast Air
17 Quality Management District. These fees are charged on
18 stationary sources of pollution.

19 I was at a recent meeting of the working group in
20 the South Coast that assesses the fee. And it was a
21 person who runs a fiberglass manufacturer and he was
22 complaining and he said, "Why are they charging these fees
23 on me? It's really the mobile sources." He said, "Quit
24 busting my chops on this issue of attainment. Go reduce
25 pollution from mobile sources." I assured them we were

1 working on all levels. But I think any analysis that
2 assesses delaying reductions from the truck rule needs to
3 look at how it impacts these stationary sources that will
4 be paying this fee until San Joaquin Valley and South
5 Coast attains clean air standards.

6 And the second issue related to the economy is
7 the conformity issue, and specifically transportation.
8 The 1990 amendments to the Clean Air Act tied
9 transportation funding to air quality improvement. The
10 truck rule is, quite simply stated, the most important
11 rule to achieving conformity in the region. And any
12 analysis needs to look at missing any of the interim
13 deadlines and the attainment deadlines, because there is a
14 lot at stake here. There's billions upon billions of
15 dollars in federal transportation dollars that could be
16 foregone if we can't show that we attain federal clean air
17 standards. And that would have a really large impact on
18 the economy.

19 Accordingly, we encourage that any changes that
20 are proposed to the rule be looked at the public health
21 impacts, and even more specifically, the emission impacts
22 and related to the commitments made by CARB in the most
23 recent state implementation plan. Thank you.

24 CHAIRPERSON NICHOLS: Thank you.

25 Next hear from Betty Plowman and then Mike Lewis

1 and then Sofia Quinonez.

2 MS. PLOWMAN: Thank you, Chairman Nichols.

3 Dr. Telles, Supervisor Roberts, my deepest thanks
4 for the courage that you have had to come forward.

5 To Cindy Berg, thank you so much for helping get
6 the economic impact workshop going last week. I hope we
7 were able to enlighten staff.

8 Chairman Nichols, I wanted to address a statement
9 that an owner-operator here made today and you asked him
10 when he might be ready.

11 In our organization, the California Dump Truck
12 Owners Association, we had 1,600 members just three years
13 ago. We are now just above 800.

14 The reason I say this, there's been a lot of talk
15 here today on incentive funding that wasn't available. I
16 would like to tell you that we have had some of our
17 members who have received grants up to the -- in fact,
18 here, in Sacramento, \$64,000 to a young gentleman who
19 salvaged his older truck. That truck has now been
20 repossessed, because even with incentive funding, he was
21 unable to make the payments. In fact, one of the people
22 here in the audience is with College Oak Towing, he's
23 towed many of these trucks back to the dealerships.

24 Unfortunately, a lot of them end up at the
25 auction now. And while we thought there were great hopes

1 for out-of-state buyers buying our equipment, that has not
2 materialized. In fact, the end of September, an auction
3 held at Ritchie Brothers, a 2009 complete unit transfer
4 sold for \$83,000. This was a unit that had been purchased
5 for \$210,000 just one year before. No work.

6 You also heard today we're back to operating at
7 about 1985 rates. So it is a blood bath out there.

8 On another note, I would just like to bring up
9 the effects of PM2.5 once again. And I took great joy I
10 guess at the gentleman with the ports who said he had
11 lived under the Cypress freeway and it ended up being the
12 roaches.

13 The fact is that I have learned, as I'm sure many
14 of you are aware, are the effects of losing your job and
15 the fact that your health is more highly impacted by the
16 loss of your job than it is from 2.5. That is documented.
17 And I have copies of that. Part of it was from your own
18 gentleman, Arden Pope. So the loss of the job is
19 devastating on one's health.

20 And I thank you.

21 CHAIRPERSON NICHOLS: Thank you.

22 I think we can all stipulate to that one.

23 Michael Lewis and then Sofia Quinonez.

24 MR. LEWIS: Thank you.

25 The construction industry vehicles represent

1 about 80 percent of the off-road rule and about 20 percent
2 of the on-road rule. Not only has the economy
3 significantly effected the industry, but new and accurate
4 data is clearly demonstrating significantly reduced
5 emissions from our fleets.

6 Construction employment has dropped from 950,000
7 to 614,000 since July of '06. That's the lowest it's been
8 since 1998. Thirty-five percent of the workforce is out
9 of work.

10 It took eight years to recover from the last
11 recession. It's not going to happen overnight. It's not
12 going to happen in two years. We have the time to get
13 this right, and we should take advantage of that.

14 Total construction value was originally projected
15 by your staff to be \$70 billion this year. It's 38
16 billion, down from 96 billion in '06.

17 The size of the off-road fleet was projected to
18 be 190,000 this year. There are 135,000 vehicles
19 registered in the DOORS program. We believe that is 95
20 percent or more of the fleet. We believe that it will
21 shrink further as the retirement credits have kicked in
22 and contractors will be selling that equipment in order to
23 comply with the rule. When you have no money, shrinking
24 your fleet is the only way to comply with these rules.

25 Lastly, the real measure of emissions is fuel

1 consumption for off-road and vehicles miles traveled for
2 on-road. Red die diesel used by the off-road equipment is
3 down better than 30 percent, probably more when you factor
4 out marine, ag, and railroads who actually had an increase
5 in diesel consumption. Unemployment amongst the operators
6 of this equipment is down greater than 40 percent.

7 When you adopted the on-road rule, you relied
8 heavily on vehicles miles traveled to set emission
9 estimates. Yet, your staff made no efforts to update VMT
10 for today's report. I believe VMT numbers would show
11 greater reductions than the 20 percent your staff seems
12 willing to accept. You need to direct them to look at
13 that figure as the best indicator of emissions from the
14 on-road fleet.

15 Finally, AGC has spent considerable dollars with
16 Sierra Research to document the current state of the
17 construction industry and emissions. That analysis
18 revealed some very interesting information.

19 First, there's no need for a NOx rule. We will
20 get to your goal without it.

21 Second, the PM rule can take effect in 2015 and
22 still meet the 2025 goal with only half the effort.

23 Given the cost of these rules, you need to
24 evaluate them as soon as possible. If they're being
25 written today with the information that we have today,

1 they would look completely different.

2 For the off-road rule, we want the opportunity to
3 show your whole Board the presentation of this new data.
4 And you should direct the staff to begin updating the
5 relevant on-road data before you consider the de minimis
6 options that your staff has proposed today.

7 We can't wait until July for a decision. Your
8 rule requires compliance on March 1st. We need to know
9 before then if this is going to happen or not. The relief
10 granted by the Legislature brought time for many
11 contractors, but not for all of them. Your staff has made
12 many hours of presentations to you about the health
13 effects of diesel. Why can't we get equal time to talk
14 about the well-documented economic impacts and what
15 they've done to get us to the goal that you originally
16 set?

17 Thank you.

18 CHAIRPERSON NICHOLS: Thank you, Mike.

19 We will now hear from Sofia Quinonez and then
20 Anthony Patchett.

21 MS. QUINONEZ: The reason I got involved in this
22 campaign was I was asked to go down to the port and serve
23 as a translator at a meeting with a bunch of truck
24 drivers.

25 And at that meeting I heard these words (in

1 Spanish). A man hung himself. Another man was murdered.
2 That voice within me said, listen, blood has been shed.
3 That's why I am here today.

4 As I sat through this meeting, I heard story
5 after story of the injustices that were taking place at
6 the port. I couldn't believe what I was hearing. I was
7 moved.

8 Then as an environmentalist, I started hearing
9 about this green truck program. I'm a member of the
10 Sierra Club. I am no way here speaking on their behalf.
11 But I said I have to see what's going on here.

12 So I met with Tony, and we started doing some
13 research. Started as an activist. I said, we have to
14 follow the money. Because if you follow the money, you
15 know how things roll in the system. Pulled up all the
16 grants and realized that most of the money went to
17 millionaires and a billionaire. We have a private eye.
18 We need to look into more of who these trucking companies
19 are.

20 I started reading the concession agreement, and I
21 thought, this can't be real. This is unconstitutional.
22 To me, it was only about truckers. It was about the
23 American dream. It was about all the laws I saw being
24 violated and how you have sanctioned this, that you are
25 part of a larger conspiracy taking place.

1 There are violations of the Federal Aviation
2 Administration Act, the Commerce Clause, the Sherman Act,
3 the Clayton Antitrust Act, the Consumer Protection Act,
4 the Civil Rights Act.

5 If there was going to be a ban, why didn't they
6 ban the sale of these trucks? Why didn't they ban the
7 registration the trucks? Why didn't they ban the finance
8 of these trucks? Why haven't you held the manufacturer
9 who makes these trucks, held them accountable? More
10 importantly, why haven't you held the big oil accountable?

11 I start receiving phone calls from across the
12 United States and across the country and outside of the
13 country. When I found out that truckers had contacted me
14 from Mexico saying they were using a new product, I said
15 you've got to talk to our scientists, because I've heard
16 of this hot fuel that we burn at 100 percent emissions,
17 but we have a 60 percent capacity. And here they put
18 something in their trucks right now that cost \$45 that
19 will give them 100 percent capacity. We can reduce
20 emissions. I said I want this product. So when I started
21 looking into the green truck program, it was nothing but a
22 Ponzi scheme.

23 CHAIRPERSON NICHOLS: Your time is up.

24 MS. QUINONEZ: A Ponzi scheme.

25 CHAIRPERSON NICHOLS: I hear you.

1 MS. QUINONEZ: I just want to say we are asking
2 for a federal investigation because of all the corruption
3 that has been taking place.

4 Although you guys are up here -- I ask you -- you
5 have all these reports. We want you to listen to what's
6 happening on the docks and how these truckers have been
7 singled out, how they can go to their chassis ten times --

8 CHAIRPERSON NICHOLS: Your time is up, ma'am.

9 MS. QUINONEZ: Yes. And one more thing.

10 Dr. Tran, as a member of the public, this is my
11 country. This is my constitution. You're fired. And I
12 will fire you, too, Ms. Mary Nichols. The public trust
13 has been lost.

14 CHAIRPERSON NICHOLS: Thank you.

15 Anthony Patchett.

16 MR. PATCHETT: I want to first read a letter to
17 you.

18 "Dear Board members, I'm writing this letter
19 in regards to the ARB's drayage truck regulation
20 from the perspective of my experience as the
21 ARB's Chief of Enforcement Division for over
22 20 years.

23 "The primary principle of ARB's regulation
24 has always been to allow a reasonable transition
25 period for new regulations so the regulated

1 community can come into compliance without undue
2 economic harm. In addition, there has always
3 been a provision to allow the extension of the
4 compliance data for individuals or a class of
5 impacted sources based on changing technical or
6 economic circumstances.

7 "My review of the drayage truck regulations
8 shows it violates the above principles. In
9 addition, it appears that the net effect of the
10 regulation thus far is to give preference to a
11 select group of trucking companies for entry to
12 the ports and rail yards of California or locking
13 out all other competition. In today's economic
14 climate, it is important that the ARB re-visit
15 this regulation to be sure it does not violate
16 the above principles.

17 "Sincerely, James Morgister."

18 I'm requesting that you declare under Section
19 22(c) of the regulation an emergency event will occur if
20 the drayage truck regulatory activities go into effect on
21 December 31st barring thousands of trucks from our ports
22 and harbors.

23 I'm requesting that you issue an emergency decree
24 under Section 23 for determination by the Executive
25 Officer that an emergency event will occur that requires

1 immediate temporary operation of drayage trucks at ports
2 and intermodal rail yard facilities.

3 Who am I? I am your former special prosecutor in
4 1997. I used to speak at your seminars on conspiracy.
5 And you have joined the biggest conspiracy with the city
6 and the ports of L.A. and Long Beach. You might not
7 realize it, but you're exposing the ARB to huge potential
8 civil violations.

9 I have put together an exhibit book. I have
10 taken this to three major law firms. One of them is going
11 to come and is going to sue you.

12 I have also written to Eric Holder and asked him
13 to start a civil rights investigation.

14 The only thing green about the green truck
15 program is the millions of dollars that have gone to the
16 major licensed motor carriers. Twenty-four companies have
17 over 4,000 trucks. The port of L.A. gave \$21.5 million to
18 ten companies for 117 trucks.

19 If you follow the money and you look at what
20 you've done, this is going to be worse than any
21 earthquake, tsunami, or flood in California. Unemployment
22 is going to continue through 2015. Right now, it's 12
23 percent. In the central valley, it's 25 percent.

24 I ask you, grant your own injunction.

25 CHAIRPERSON NICHOLS: If you haven't submitted a

1 copy of that letter, I would request that you do so,
2 please.

3 MR. PATCHETT: I'll be glad to give you that,
4 too, with my letter, too.

5 CHAIRPERSON NICHOLS: Good. Thank you.

6 Doug Van Allen. Are you here, Doug Van Allen?

7 And then Robert Hassebrock and James Thomas.

8 While you're coming up, I want to let people know
9 in case you don't have these lists in front of you, we're
10 now at number 84, and we have ten more witnesses to hear
11 from before we conclude the witnesses and then have an
12 opportunity to have any kind of Board discussion.

13 I think that we may need after this witness to
14 take a brief break just so people can stretch and then see
15 where we are. Thank you.

16 MR. VAN ALLEN: Ladies and gentlemen of the
17 Board, thank you for the opportunity to speak, along with
18 the staff.

19 My name is Doug Van Allen. I'm employed by BJ
20 Services Company. BJ Services is a high-pressure pumping
21 service company for the oil field industry. Our company
22 was founded by Byron Jackson in Woodland, California, over
23 130 years ago. It started off as a small business.
24 Worked its way up to medium size business, and now we're a
25 large business. BJ is considered a large fleet in all

1 CARB rules the way they've got the rules written.

2 I want to thank you for allowing me to speak to
3 you about the diesel particulate rules affecting
4 California business.

5 Last December, I testified before your Board that
6 the diesel rules were having a negative effect on
7 businesses, and I would like to explain what that effect
8 has had on BJ Services, the company I worked for.

9 In January of '09, we laid off 30 percent of our
10 employees here in the state of California. That was
11 because of a turn down in business. That was the first
12 layoff that we've had since the 1986 oil recession that we
13 had back in '86.

14 The very sad part about the layoff that we've had
15 this year is that over 20 percent of those employees we
16 laid off last January are still looking for jobs. They
17 haven't been able to find employment. That really bothers
18 us.

19 Since December '08, we've reduced our on-highway
20 truck fleet by 15 percent. Those trucks are no longer in
21 the state of California. They've left.

22 Since '08, we've reduced our diesel engine
23 powered pumps, which are under the PERP program, by 31
24 percent. Those engines are no longer in the state of
25 California.

1 Since December '08, we've reduced our customer
2 demand. Our services has been reduced by 30 percent as
3 well.

4 Last December, I testified that BJ Services would
5 be affected by the on-highway and off-road rules, but
6 we're also paying for replacement of portable equipment
7 that we've been working on for the last 13 years to change
8 out.

9 BJ Services believes in doing the right thing and
10 cleaning up the air. In the last eight years, we've spent
11 over \$20 million replacing engines on portable equipment
12 here in California. With all these very expensive rules
13 in an industry that is faltering, maybe this isn't the
14 right thing to do. We need to consider what's going on.

15 We'd like to have the Board please consider
16 pushing all the regulations, not just the truck fleet, but
17 the PERP rule, everything that has to do with diesel, if
18 we can slide it two years, it gives businesses a chance to
19 recover. And we'd also like consideration that large
20 businesses, small businesses, and medium fleets are all
21 having the same problems.

22 Merry Christmas. And thank you.

23 CHAIRPERSON NICHOLS: Thank you. Pretty much the
24 way we all feel right now.

25 I think I am going to call the break right now.

1 I'm sorry, but we haven't really had a break, except for a
2 five-minute stretch since 2:00. This is a long time to
3 sit. And it's a long time to absorb and to actually try
4 to think. So I'm going to ask you to come back at 5:15
5 and we'll see where we are at that point. Thank you.

6 (Thereupon a recess was taken.)

7 CHAIRPERSON NICHOLS: We're going to be losing
8 Board members. I know everybody is extremely anxious and
9 we are too. So all right.

10 Robert.

11 MR. HASSEBROCK: Thank you, Chair Nichols and the
12 Board and the staff, too.

13 It's been a long day. Thank you for the chance
14 to present some testimony.

15 My name is Robert Hassebrock. I'm with a company
16 called Weatherford Oil and Service, geothermal company.
17 And we, too, like the others you've seen, we've had about
18 a 30 percent reduction, about four-tiered layoff system.
19 The remaining employees have had about a seven-and-a half
20 percent exactly furlough. We've had layoffs, furloughs,
21 and we're struggling through.

22 My first point that I would like to bring up is
23 in regards to the experts involved I've heard so far in
24 the promulgation of the rule and the revision of the rule
25 that as we are considering the potential, there appears to

1 be somewhat of a lack of sound economics in that we've
2 heard 30, 40, 50 percent in some cases and we have from
3 staff 15, 18. I'm not sure how we arrived at various
4 things.

5 I would like to suggest that the economic experts
6 are the ones sitting in the crowd telling you the reality
7 of what's happened and what the impacts are and what the
8 impact of the rule will be going forward.

9 And then to address the aspect of health, because
10 we've heard various aspects of health. And finally
11 towards the end of afternoon, we've heard various people
12 take the issues that I have, and that is that there is
13 another impact that comes from air. And that is when we
14 cannot afford good dietary choices, medical attention, we
15 live with roaches or various conditions, it has another
16 impact upon health that we have to live with and should be
17 considered by the Board.

18 So I'll go from that to my second point. My
19 second point is that under rules of evidence and procedure
20 and witnesses, there is a means for impeaching a witness.
21 And I think they apply here. And that is that with the
22 author of the report being impeached from lack of
23 character and a bias that the report itself is certainly
24 in question. And I think the Board now has no science
25 supporting the rule currently and that the Board needs to

1 slide and slide implementation of this for at least
2 two years or in consideration of the economy, in
3 consideration of the science that there is a lack of
4 science to support going forward with this.

5 And three minutes goes fast.

6 CHAIRPERSON NICHOLS: I know.

7 MR. HASSEBROCK: But, you know, the importance of
8 the credibility for transparency, there needs to be --
9 take action.

10 And the last thing is anybody else in the private
11 sector, when you lie on an application and you get caught,
12 you're gone. You need to fire that guy. This is
13 ridiculous.

14 Thank you for your time.

15 CHAIRPERSON NICHOLS: Okay. Thank you.

16 James Thomas.

17 MR. THOMAS: Hello. My name is James Thomas with
18 Nabors Well Services.

19 Our company provides work-over rigs throughout
20 the state of California. And we are a large fleet.

21 I'd like to thank the Board and staff for taking
22 the time to review the impact of the downturn in the
23 economy.

24 And our company operates throughout all the
25 different states in the union. But what I'd like to do

1 today is share with you some information about my company.
2 And it's going to be on our California operations. And
3 I'm talking about from December of '08 to December of '09.

4 Working rigs have declined by 37 percent, which
5 is 68 rigs. All of the support equipment, trucks, and the
6 portable equipment that work at these rigs are not working
7 as well. And it has declined by the same percentage.

8 The utilization of these rigs has been reduced by
9 44 percent, and at the same time, our rates to our
10 customers have declined by 24 percent to remain
11 competitive in the marketplace.

12 And so we're talking about all the good news.
13 Now I'd like to talk about the sad side of the economy or
14 what the economy has done.

15 We have laid off 287 employees. That's 32
16 percent of our workforce. If you're fortunate to be one
17 of the ones that got to remain, you get a salary reduction
18 of seven-and-a-half percent.

19 We have a training program in our company that we
20 take a high school graduate and we would train those
21 people on how to work in the oil industry. And we
22 constantly kept 120 employees at all times in that
23 program. That program has been suspended due to the
24 economy.

25 Our capital budget has been reduced by 78

1 percent.

2 Our company is proactive in repowering equipment.
3 We have done it for years. This repowering activity was
4 funded by our company with our money.

5 And the PM reduction we have seen is 80 percent
6 in PM and 75 percent in NOx. We are committed to cleaning
7 up the air. And we put our money where our mouth is.

8 But this program of repowering has been placed on
9 hold due to capital. I just want you to realize that
10 large fleets are experiencing the same problems that small
11 companies are experiencing. The downturn is killing us.
12 We all need help. So extend help to everyone. Don't
13 carve out for medium fleets or small fleets. Do it for
14 all fleets. We need it.

15 Thank you.

16 CHAIRPERSON NICHOLS: Thank you.

17 Marty Lassen, and then Bill Aboudi and Gordon
18 Downs.

19 MR. LASSEN: Good afternoon, Chairman Nichols,
20 Board members, and staff.

21 My name is Marty Lassen. I'm representing
22 Johnson Matthey today. We're here in support of the
23 rules.

24 Johnson Matthey was founded in 1817, some
25 30-some-odd years before the Gold Rush and California's

1 statehood. We're a catalyst manufacturer, and we do
2 supply VDEC systems that are verified here for retrofit.
3 We supply diesel OE first fit systems, filters, and
4 catalysts.

5 We're very large in the gasoline automotive
6 market. Our experience centers around about 150,000
7 retrofits since the mid-90s, including about 10,000
8 off-road pieces of equipment.

9 For the 2007 to 2009 model year on-road engines,
10 we've provided over a million filters and catalysts, and
11 we're approaching 500 million catalysts for gasoline
12 automobiles since 1975.

13 The results from all of these products are very
14 positive on the retrofit side. I guess our warrantee
15 claim rate is less than a half a percent. So as long as
16 the filters are put in the right application, they work
17 very well.

18 2007 to 2009 filters, the active systems, there
19 was some initial hiccups. But overall impression of the
20 industry is that the filters work very well. And even the
21 American Trucking Association's transport topic magazine
22 sites very positive results for the 2007 systems.

23 We've already started supply for 2010 on-road,
24 and we're in the beginning stages of working on 2011
25 off-road work.

1 From all of this, retrofit does provide about 21
2 jobs per million dollars spent. And for new vehicles, new
3 machines, approximately 15 jobs per million dollars spent.
4 So we do promote job growth with the activities that we
5 undertake.

6 The economic impact no doubt has been great.
7 Diesel is down 30 to 50 percent in sales. Gas is down 40
8 percent. Retrofits are flat. With our market share,
9 we've taken a huge economic impact in both retrofit first
10 fit. We've had layoffs. We've had furloughs. So we have
11 actually seen big effect from the economic conditions.
12 But we do continue to invest.

13 But any delays in the California rules for
14 retrofit will have an impact on JM. We invested a lot of
15 money, a lot of time. And it may influence our management
16 to decide where to put our future resources.

17 The rules need to be there for health effects and
18 SIP attainment, but some flexibility is probably
19 appropriate, not so much for my company so much, but for
20 the marketplace.

21 So thank you.

22 CHAIRPERSON NICHOLS: Okay. Thank you for that.

23 Bill Aboudi and then Gordon Downs.

24 MR. ABOUDI: Good evening.

25 Bill Aboudi with AB Trucking out of Oakland,

1 California.

2 A little different here, because I fall under the
3 drayage truck rule. We're actually here to tell you not
4 to extend the deadlines anymore. But we want our money.

5 The money was promised to us. The money needs to be
6 delivered to the Oakland truckers.

7 So I really don't have a Ph.D. in common sense.
8 I have to declare that up front. But I'm going to give it
9 a shot.

10 We constantly get roadblocks. And the roadblocks
11 are the rules that are made by human beings. Rules can be
12 changed. The Carl Moyer is a perfect example of that.
13 Over the years, I have seen it come and go where we've
14 spent thousands and thousands of dollars trying to push a
15 Carl Moyer program onto people when it doesn't work.

16 But in this instance, for the port drayage,
17 you've got \$12 million for the Bay Air district they can't
18 use for us to get us compliant. You've got us half ass
19 taken care of at the port of Oakland. Half our fleet got
20 grants, is retrofitted, ready to work. And then we have
21 1200 people, 1200 families that can't work at the
22 beginning of the year.

23 The protesters were very clear today that they
24 weren't coming to clog up Sacramento. They circled.
25 They're letting you know, we're out here. All of this is

1 an example of what's going to happen in port drayage.

2 So typically in industry you build a prototype.

3 You see how it works. And then you produce it. And

4 that's what needs to happen here.

5 We are the prototype at the port drayage. Put
6 the money to us. Let us take it, figure out if it works.

7 Delay this rule until you're sure it works, and
8 then you can implement it. That's common sense.

9 So I urge you to ask staff to go ahead and
10 research and find out what needs to be done to get that
11 Carl Moyer money directed as quickly as possible to the
12 Bay Area district to the port truckers.

13 Thank you.

14 CHAIRPERSON NICHOLS: Thank you.

15 Gordon Downs, are you here? Gordon Downs, going
16 once. Going twice.

17 Roger Isom, I know you're here.

18 Followed by Lowell Robinson and Nidia Bautista.

19 MR. ISOM: Good evening.

20 Let me clarify for the record, it's Roger Isom
21 with California Cotton Ginners Association and Cotton
22 Growers Association and Western Agricultural Processors
23 Association.

24 I just want to make sure that the 23 people that
25 have e-mailed me and texted me out there in the Internet

1 world I'm not proclaiming myself a genius. Let me clarify
2 that for the record.

3 Two issues.

4 First one is about the science issue, and I'll
5 just call it that for lack of a better term. We spent a
6 year working with ARB staff and with members of the Board
7 to develop what we considered a reasonable rule under the
8 circumstances. And it was very difficult to many of our
9 members. To this day they still have a hard time
10 accepting it.

11 We are in the midst of beginning a statewide
12 survey of farm equipment in a prelude to the biggest rule
13 to affect agriculture in terms of air pollution.

14 I personally have spent hours on behalf of the ag
15 industry working with your staff on the health risk
16 assessment, lining up facilities to allow ARB staff to
17 come on site, to count trucks. And if you can imagine how
18 tough that is, it's been very difficult, especially from
19 members that aren't mine, other folks that aren't in the
20 cotton industry. Been very, very difficult. A lot of
21 trust there.

22 All I want to say is I would encourage you guys
23 to take whatever steps is necessary to preserve that
24 trust. Step back, analyze this thing. What happened in
25 the process, do whatever it takes to preserve that trust.

1 If we don't do it, if you don't take steps to do that,
2 it's going to be very, very difficult to develop this
3 tractor rule.

4 The second thing I want to talk about is the
5 economy. A lot of folks will question why is ag up here?
6 Ag got a sweet deal on the last rule. Let me tell you the
7 provisions in there in those extensions effect very few
8 trucks. For example, in the cotton industry, less than a
9 third of the trucks are eligible for those provisions. In
10 the tree nut industry, less than a quarter of the trucks
11 are eligible for those provisions. We are very, very
12 affected by all the provisions of the rule.

13 We would encourage you guys to step back on that
14 as well. Allow Prop. 1B funding to catch up. Allow the
15 economy to catch up. It's not a matter of the technology
16 being there.

17 As an example, the last year we worked with USDA
18 to get funding for tractors. We were overwhelmed with
19 applications. We replaced over 300 tractors in the very
20 first year, five years in advance of that rule on a
21 voluntary basis. Guess what. The ARB SIP for the tractor
22 rule says we need to get five to ten tons of NOx
23 reductions from that rule. We got two tons five years in
24 advance on a voluntary basis with that funding. Funding
25 is necessary if you guys are going to be successful in the

1 truck rule, the construction equipment rule, the farm
2 equipment rule. I encourage you guys to do whatever it
3 takes to allow the time to catch up on this.

4 Thank you.

5 CHAIRPERSON NICHOLS: Thank you.

6 Lowell Robinson, are you here? Lowell Robinson?

7 Nidia Bautista, you are the second to the last.

8 The last witness is going to be Julie Sauls.

9 MS. BAUTISTA: Good afternoon, Chair, members of
10 the Board, staff.

11 My name is Nidia Bautista. I'm the Policy
12 Director with the Coalition for Clean Air. We're a
13 statewide air quality advocacy organization with an office
14 in Los Angeles, Fresno, and Sacramento. And I'm here
15 today to basically express our support for this
16 regulation.

17 I'm also a member of the CARB's Truck Rule
18 Advisory Committee and very committed to working alongside
19 industry to ensure we have successful outreach for this
20 regulation.

21 As your staff presentation has acknowledged,
22 diesel trucks do represent a large source of air pollution
23 in our state and particularly in regions really suffering
24 with high levels of air pollution, including the San
25 Joaquin Valley and the South Coast. And those pollutants

1 include NOx and PM. And we know there is high levels of
2 toxicity associated with diesel pollution as well, not to
3 mention the greenhouse gas impacts as well.

4 To that end, if we are committed to clean air, we
5 can't overlook the trucks. We can't afford that. We must
6 support this life-saving regulation, one of the most
7 important regulations this Board has ever adopted. And we
8 understand that in doing so we're going to reduce the
9 harmful exposure as well as help attain our clean air
10 goals and help reduce climate change.

11 A year ago, you made a commitment to come back to
12 have an assessment on the economy and impacts. That's
13 part of the reason why we're here. We all understand
14 there has been a down turn in the economy. I don't think
15 anyone here is denying that. We know there's residents
16 across the state that have been impacted. It's not just
17 truckers. It's everyone.

18 But that said, your staff analysis does
19 demonstrate there is this opportunity to make some
20 modifications. And we're open to those modifications,
21 with one caveat. Those modifications need to be informed
22 by the emissions budget, as Board Member D'Adamo
23 mentioned. And we need to ensure there is an assessment
24 analysis done on that to ensure that we're not trading
25 things we can't afford to.

1 So, therefore, we will look forward to working
2 with you and with your staff to move forward in the public
3 process to develop these modifications.

4 And the other thing that there was a commitment
5 made on the localized assessments of ag operations in lieu
6 of the sweet deal that Roger, the genius, mentioned. We
7 just wanted to ensure that continues to move forward. We
8 know it's been a challenging year with furloughs. But
9 that said, these communities definitely deserve that
10 promise that you made a year ago and we want to make sure
11 that moves forward.

12 And the other thing just to mention that we've
13 historically and will continue to move forward to look for
14 and find incentive funding. I worked on a task force with
15 Board Member D'Adamo and working with Board Member Berg on
16 the incentives group. We know that's a challenging part,
17 because there may not be money for everybody. That's just
18 the truth. But we'll still continue to try to identify
19 where there is funding. Where we can maximize existing
20 funding, we will be there alongside with you and industry
21 to do that.

22 Thank you.

23 CHAIRPERSON NICHOLS: Thank you.

24 Okay. Our last speaker.

25 MS. SAULS: Good evening.

1 My name is Julie Sauls with the California
2 Trucking Association.

3 I want to thank you for your patience and the
4 interest you have shown to all of the speakers who have
5 come before me.

6 I also want to commend Dr. Telles and Supervisor
7 Roberts on their true concerns about the integrity of this
8 agency, as well as compliment Ms. Berg on her interest in
9 the workshop she attended last week on the economics. She
10 did express you are all very concerned about the economic
11 situation and what is happening here.

12 Yesterday, I opened up the morning report and was
13 half expecting to see a determined outcome for this
14 hearing already put as the press release for the event. I
15 was pleasantly surprised to see I believe it's the first
16 time you have publicly acknowledged a downturn in the
17 economy and the effect and the impact it is having on the
18 rule.

19 Today, you additionally saw during the staff's
20 presentation more evidence and as well you've heard over
21 and over by all the 93 or so speakers before me about the
22 economic impact that the rule is truly having. And you've
23 been presented with some options by your staff.

24 I truly hope that you will treat that as a floor
25 and certainly not as a ceiling for the opportunities and

1 options that you may want to explore as a Board in dealing
2 with this rule. This is very important. This is truly
3 having an impact on all of those. And this is your
4 opportunity to restore the good work that you have put out
5 there and the efforts that you are trying to do by doing
6 something that will help the trucking companies in this
7 time of this economy and in dealing with this regulation.

8 I thank you. Thank you very much.

9 CHAIRPERSON NICHOLS: Okay. That concludes our
10 list of witnesses.

11 I think it's been a long but informative day.

12 I want to congratulate the speakers on giving us
13 a lot of substantive information, specific information in
14 many instances, some of it very personal to their
15 businesses, some of it more industry wide. But clearly
16 we've heard a lot of different comments.

17 Today, we have only put before us the update on
18 the in-use on-road diesel vehicle rule, the truck and bus
19 rule. But obviously we've been entertaining comments on
20 all of our rules and in particular on all the diesel
21 rules, including the port trucks and the construction
22 off-road equipment rules as well because there is a fair
23 amount of overlap on a lot of these issues.

24 However, I think in light of the notice for this
25 hearing that direction that we would give to the staff

1 should be limited to things that we want them to do with
2 the on-road rule, even though we may express our opinions
3 about other things as well.

4 You know, I want to come back to kind of where we
5 were at the beginning. I believe that there is a
6 consensus on this Board that, given the gap between what
7 we thought the emissions would be and what the emissions
8 actually are as a result of the down economy, that we have
9 some room to work without compromising air quality and
10 within that window we clearly ought to be taking action.
11 I don't see any -- there's not even really any question of
12 that. If you've got the room and you've got conditions
13 that we've got, we should act.

14 I think the bigger question is whether and to
15 what extent we can afford to implement changes in the
16 rules that would have a negative impact on air quality and
17 still meet the legal requirements.

18 The bigger issue has been raised about whether
19 the federal government is going to back down on the
20 particulate standard, the deadlines that are in the
21 Federal Clean Air Act. I suppose anything is possible.
22 But I think it would be a mistake to bank on that.

23 California has been down that road before. We've
24 submitted plans that openly said we would not meet federal
25 standards. And what happens is we end up getting sued by

1 citizen organizations, environmental organizations. And
2 the effect of that is an injunction which ties up your
3 highway funds, other federal grant funds, as well as
4 putting a stop to any permits, which is the last thing you
5 want to do in a situation where you're trying to dig your
6 head out of a recession. So I don't think there is much
7 point in going down that path.

8 But, again, I think there's room. And the staff
9 has certainly presented us with a few ideas for ways in
10 which they could modify the rule.

11 There's also the issue of what to do about the
12 report that was based on the work of a person who was
13 exposed as being fraudulent. And I think that the work of
14 that individual does have to be withdrawn and redone
15 because of the problems that were created by his action.

16 It's unfortunate that other good people who had
17 no idea of what he was doing will suffer because of that,
18 because, you know, other people were involved in writing
19 this thing who had no idea what was going on. And so
20 they, too, are going to be put under a cloud, but so is
21 the whole organization. And that's just the reality of
22 what happened.

23 I think it's also necessary that we do hear a
24 report from the Executive Officer that lays out in detail
25 everything that happened and what is being done about it

1 as well.

2 And I'm still very keen on doing the bigger
3 review of the science behind the rule, because I was a
4 little bit surprised to hear today from people who I think
5 have been following this the notion that there isn't any
6 support for the health concerns over PM2.5. I mean, I
7 know there are people out there today that still think
8 that cigarettes are not really bad for you. But by and
9 large, after years and years of discussion, you think
10 these issues have been kind of put to rest.

11 And although the Tran report was recent and it
12 was certainly given a lot of publicity, it was coming
13 after years and years of studies, reviews, peer reviewed
14 articles, the federal record basis for the PM2.5 decision,
15 the work on carcinogenicity by our own Toxic Review
16 Board -- not the ARB's, but the Cal/EPA Board, et cetera,
17 et cetera. And I think there is a need for that to be
18 brought back out and for the critics and the skeptics who
19 obviously have had the opportunity now because of what Mr.
20 Tran did to call everything into question, I think that
21 needs to be engaged. And I think the Board needs to take
22 the time, at least a bunch of us -- and I certainly
23 will -- to sit and really listen to all of that, including
24 to the critics.

25 So I think those are the main areas that we're

1 talking about here. But I know that there are people who
2 have specific ideas that they'd like to raise. And so I
3 think we should take a little bit of time for some
4 discussion.

5 BOARD MEMBER LOVERIDGE: Can I just ask staff
6 before that if they could comment on what they heard today
7 referenced with the options --

8 CHAIRPERSON NICHOLS: The options in terms of the
9 options for delay or for changes.

10 BOARD MEMBER LOVERIDGE: Right. On item 27,
11 slide 27, you list the possible options that reflect the
12 state of the economy. I was wondering if you could ask
13 staff to draw on what they had heard today to comment on
14 the options that are identified here.

15 EXECUTIVE OFFICER GOLDSTENE: Would you like us
16 to do that now?

17 CHAIRPERSON NICHOLS: Yeah, that would be fine.

18 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
19 WHITE: Well, I think we heard that -- I think from a
20 number of people that a one-year delay is what many people
21 who commented today have asked for.

22 But I think we've also heard as well that relief
23 for medium/small fleets, fleets that are above our current
24 threshold, also need some specific relief. So I don't
25 think that we heard a consensus by any means that one was

1 preferable over the other.

2 And I think our original intent was to continue
3 to work on these and gather additional stakeholder input
4 on which would provide the most substantial and
5 significant relief within the emission bounds that I think
6 we've been talking about is how we would propose to
7 proceed on this.

8 CHAIRPERSON NICHOLS: Procedurally, you would
9 hold a workshop, put together a staff proposal. It would
10 be noticed. And then it would be brought back to the
11 Board for formal notice and comment rulemaking, because
12 we're doing this under the Administrative Procedures Act.
13 If we're going to give any relief, it's got to be in the
14 form of an actual change to the regulation. Otherwise,
15 it's just, you know, speculative as to what might actually
16 happen.

17 We have to follow the procedures. So we can put
18 out a notice and gather input, and the Board can certainly
19 express its general directions as to what they'd like to
20 see explored. But there can't be an actual vote until
21 we've gone through the 45-day notice process and filed our
22 proposals with the Office of Administrative Law, et
23 cetera. And I've been advised that the earliest that
24 could then happen would be at the April Board meeting.
25 But everybody would know what was going on, because we

1 would be marching through the various steps.

2 Ms. D'Adamo, did you have your pencil up there?

3 BOARD MEMBER D'ADAMO: Yes. I would just like to
4 maybe take a look at this a different way, comparing slide
5 27 to slide 17.

6 Slide 17, the economy alone does not achieve the
7 expected PM reductions. I really do think we need to make
8 adjustments along the lines of what you outlined. But I'm
9 concerned about that 2014 date. And I don't see Congress
10 changing the date, not unless the whole standards get
11 changed by EPA without going through Congress. I don't
12 know what the likelihood is of that. But I don't expect
13 to see it. We're kind of by ourselves out here. If there
14 were a lot of other states that had the same problem,
15 maybe the Congress would want to take this up.

16 So what I would like to see is something along
17 the lines of a faster growth scenario where we allow that
18 gap to be our emissions budget, so to speak, without
19 sacrificing any of the public health benefits that we have
20 gained in the rule.

21 And then we come back. We come back and see if
22 the economy continues to falter and make some further
23 adjustments.

24 What I don't want to see is that we take a slower
25 growth scenario, we turn out to be wrong. We can't meet

1 the 2014 date, and then we come back with a more stringent
2 rule. I think that's going to be a lot more problematic
3 for us.

4 CHAIRPERSON NICHOLS: I'm not sure they
5 understand what you would support then.

6 BOARD MEMBER D'ADAMO: Well, I would say using a
7 faster growth scenario where we take the gap between the
8 reductions as a result of the economy and where we would
9 have been under the rule, which shows that we can make
10 some adjustments in 2011, perhaps some additional ones in
11 2012, but not beyond that.

12 CHAIRPERSON NICHOLS: I see.

13 BOARD MEMBER D'ADAMO: Use that faster growth as
14 the base line for the budget.

15 CHAIRPERSON NICHOLS: I understand.

16 Ms. Riordan.

17 BOARD MEMBER RIORDAN: Madam Chair, if I might --
18 and I apologize to the audience and to staff, because I do
19 need to leave to be able to catch my plane.

20 But I'd respectfully maybe disagree a little bit
21 with Ms. D'Adamo. And the reason is I think we are going
22 to have a very slow recovery in California. And based on
23 all of the construction, or lack thereof, in southern
24 California, I just have this feeling that we're in for a
25 long difficult recovery. So if people would like to see

1 both analyses, that's fine. But I'd sure like to look at
2 the slower one.

3 One of the things that I took away from this
4 meeting, it's clear to me that we need to do some of the
5 things, Madam Chair, that you just indicated of looking at
6 possible ways to reflect the state of the economy and
7 provide some relief to our affected parties that have
8 spoken today.

9 But it also is good to have these hearings,
10 because something that I hadn't thought of and that I
11 clearly think needs to be put into play, and that is those
12 people who have made the investment in the technology to
13 assist all of us in trying to reduce these diesel
14 emissions, we need to be cognizant of their viability.

15 And I was sitting here thinking about what we
16 might do. And the only thing I can come up with
17 quickly -- and I think many heads and hours later you can
18 probably think of even better things -- but that would be
19 to again give a lot of early credit to people who do want
20 to retrofit. I think that is the way to try to stimulate
21 a market for those who are manufacturing retrofits and are
22 installing retrofits. But there are probably other ways,
23 too.

24 And then secondarily, it is my belief that we
25 must get the moneys that might still be available to again

1 the affected parties to provide assistance in doing the
2 retrofitting that's necessary for new engines.

3 And I'm told, for instance, that in the SOON
4 program -- and I'm only told this. I don't have this by
5 somebody like Dr. Wallerstein telling me this directly.
6 There's money there. There is a lot of money that could
7 still be used.

8 We heard again from the gentleman from Oakland
9 there's perhaps some money there that could be used that
10 needs to be gotten out. We need to get this money out
11 working for us. If we need to go back and re-evaluate the
12 kinds of contracts that we're drawing up to be able to use
13 those moneys, we need to really think about being very
14 positive and very helpful to people and again give them
15 credit for using this. We've got to incentivize the use
16 of the money that's there, because I think that will get
17 us some early action items that help the whole issue of
18 the amount of emissions and their reductions. But it will
19 also keep in business the people who are doing the R&D and
20 the manufacturing of the retrofits and all of the things
21 that we need.

22 And then, finally -- and I know, Madam Chair, you
23 said this was on the trucking, but we did notice for the
24 off-road rule, too.

25 I think we need to look at the inventory; start

1 talking soon. Because in March, I think there is a date
2 that we need to recognize. They're going to have to make
3 some decisions. And I think we initially need to get
4 working on looking at the numbers that they have produced
5 and if there is any conversation about what we need to do
6 and et cetera.

7 So those I think are my points for today. And I
8 thank you for your time.

9 (Applause)

10 CHAIRPERSON NICHOLS: Just to clarify, the March
11 date is for the reporting date?

12 EXECUTIVE OFFICER GOLDSTENE: Reporting date.

13 BOARD MEMBER RIORDAN: I thought to have to be in
14 compliance.

15 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

16 WHITE: Which rule --

17 BOARD MEMBER RIORDAN: Off-road.

18 CHAIRPERSON NICHOLS: On the off-road.

19 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF

20 WHITE: Let me just clarify a few dates.

21 The reporting for the off-road rule occurred this
22 year. So fleets reported this spring and summer.

23 The first compliance date for the large fleets is
24 March 1st of 2010, although we expect many, if not most,
25 fleets will -- and we heard many of them here today will

1 probably have sufficient credits to carry them through.

2 Yes.

3 BOARD MEMBER RIORDAN: We hope so.

4 But just thinking about maybe if there's somebody
5 that doesn't, we better know kind of where we're going.

6 CHAIRPERSON NICHOLS: We want a faster assessment
7 of where we are.

8 BOARD MEMBER RIORDAN: If we could just start the
9 process.

10 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
11 WHITE: I would say we have. The information from AGC --
12 we met with them on Thursday and saw that information for
13 the first time. We're working with them to get some
14 additional information on their assessment, look and try
15 to utilize what we've done for the truck here today and
16 apply it to that so we can quickly act on it. Certainly
17 try to get as much knowledge as we can before the
18 reporting for the reduced activities coming in this spring
19 2010.

20 CHAIRPERSON NICHOLS: Thank you.

21 There is some divergence among the witnesses and
22 I suspect probably just in terms of policy on the relief
23 issue as to whether you grant equal relief to all types of
24 trucking firms versus whether you focus it on smaller
25 businesses and in particular on the California-based

1 businesses, which tend to be the small and medium size,
2 however you want to define it, as I understand that.

3 And I guess that to the extent that we're going
4 to try to keep some momentum going forward to recognize
5 the firms that have invested in retrofits and in doing
6 retrofits, I think it's important that we give the
7 greatest consideration to the smaller businesses, because
8 those are the ones that are the most directly related to
9 the California economy. And the ones who have the ability
10 to pay and to continue are at least inherently more likely
11 to be the largest and especially the ones that are
12 involved in interstate work. So while I don't normally
13 like to discriminate, it seems to me there is a basis for
14 at least looking at some discrimination that's designed to
15 help our state in particular in a time that's bad for
16 everybody.

17 Other Board members want to speak?

18 Yes, Ms. Berg.

19 BOARD MEMBER BERG: Thank you.

20 I do agree with both Mary, your three actions;
21 and, Barbara, I also agree with your two.

22 One of the things that really struck me today was
23 what seems to be the misalignment of the ability to
24 comply. So the financial numbers continue from a year ago
25 still to be grand canyon apart.

1 So I would really like to see based on the fact
2 that our assumptions a year ago there would be freight
3 increases. And we know that freight rates are down. We
4 know that we were hoping that the incentive money that we
5 did have that would go a long way and the incentive money
6 was late getting out, plus we had difficulty getting some
7 incentive money.

8 I think the asset loss is a huge issue, and it
9 has undermined people's ability to even get funding if
10 they felt that that was a viable option for them.

11 So I would really like to see if within the
12 compliance area that we're going to look at these options
13 that we truly take another look at the ability, the way
14 that the rule is going to play out, and implement it if it
15 is financially feasible from a cash flow perspective. Not
16 an economic perspective, but a cash flow perspective,
17 because that's what keeps companies in business or out of
18 business.

19 CHAIRPERSON NICHOLS: I would like to support
20 that as well.

21 I think one of the things that this hearing
22 really focused on is that it's not just a matter of the
23 general economy and its situation. It's a question of can
24 people actually get financing to put the equipment on.

25 And, I mean, we know just from reading the

1 newspapers that everybody is having a hard time getting
2 financing for doing anything at this point. And obviously
3 that's particularly true if you can't back it up with the
4 asset value. So I think that's a very sound point, and it
5 is something we're going to have to get more information
6 and do a better analysis on.

7 (Thereupon Ms. Riordan exited the proceedings)

8 BOARD MEMBER BERG: We will reach out to the
9 industry to specifically get some help on getting the
10 database in order to get this information.

11 And one point we do have coming up, and that is
12 the registration for the first group of on-road vehicles
13 that is due March 31st, and that is the ag specialty
14 equipment. It also is for the retirement fleets is my
15 understanding. And is it also for the fleets that are
16 going to take Option 2 and 3 if you're going to do fleet
17 averaging or percentage, do you have to register then by
18 the 31st?

19 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:
20 The March 31st date reporting is for the fleets that have
21 done early retrofits and expect to take the credit, those
22 who expect to use the retirement credit in the future.
23 And the agricultural fleets, all of their vehicles would
24 be reported as well as the street sweepers that were
25 removed from the portable equipment program.

1 BOARD MEMBER BERG: So I'd like to hear from
2 staff your projection or if you feel that do you need
3 extra time to get some of these fleets registered? Do we
4 need all of them registered by the 31st, considering that
5 we don't have the program up and running yet and we're
6 probably looking to accomplish -- industry is going to
7 accomplish this registration period at maximum 90 days and
8 probably less than 90 days?

9 IN-USE CONTROL MEASURES SECTION MANAGER BRASIL:
10 The first emissions requirement compliance date is January
11 1st of 2011. So if there were a later date for reporting
12 to take advantage of early credits, we would not change
13 any of the emissions compliance.

14 The caveat being the street sweepers would have
15 normally been reporting for the portable engines we've
16 given exemptions for, and for the agricultural fleets, if
17 we do have their information earlier in and they will
18 label their vehicles, then it will be much more straight
19 forward to do the risk assessment and understand which
20 trucks would potentially qualify for the agricultural
21 provisions on the roadways as well. That might be a
22 consideration on those dates.

23 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF
24 WHITE: I would add, as we look at that reporting, the one
25 that's probably the highest priority in the near term is

1 going to be looking at the agricultural vehicle reporting,
2 simply because we've heard from a number of people about
3 the need to continue to move quickly on the health risk
4 assessment that the Board directed us to do. And so that
5 would allow us to continue to move forward quickly on
6 that. And the other elements could certainly look at some
7 perhaps alternative later dates in recognition of where we
8 are right now.

9 BOARD MEMBER BERG: So, Madam Chair, I would
10 recommend that we allow staff to include in the proposals
11 for April that the early credit and the other two areas
12 other than the ag could, in fact, report at a -- whatever
13 date you were to look at and to report back to the Board,
14 and then we really focus on the ag to get them registered.
15 And we really rally the outreach committee to put all of
16 our focus in on the ag to get that group done by March
17 31st.

18 CHAIRPERSON NICHOLS: Is there any objection? If
19 not, let's give that direction to staff as well.

20 Okay. Yes, Dr. Balmes.

21 BOARD MEMBER BALMES: While Ms. Berg has brought
22 up specifics about the agriculture industry, I'd like to
23 go back to a year ago when we heard a lot of testimony
24 from the logging industry. We heard some again today.
25 And some of you may recall that I was concerned about that

1 specific impact in the logging industry.

2 And I think that we should consider perhaps an
3 exemption to the 25,000 mile limit. As far as I'm
4 concerned, logging is a type of agriculture. And I think
5 the impacts have been pretty specifically tough in that
6 region that does have relatively clean air.

7 So I would propose that that also be considered
8 some kind of --

9 CHAIRPERSON NICHOLS: Reclassification.

10 BOARD MEMBER BALMES: -- another classification
11 for the logging industry.

12 CHAIRPERSON NICHOLS: Okay. Let's add that to
13 the list of potential to-dos.

14 Dr. Telles.

15 BOARD MEMBER TELLES: I think we're getting a
16 little ahead of ourselves. And I think the first order of
17 business would be to do what you suggested, and that's to
18 redo the report on the methodology and the health
19 assessment. And I think that the reason to do this is if
20 we're going to do anything with this regulated industry
21 that has lost respect for this organization, I think we
22 have to demonstrate to them that we will take the
23 necessary efforts to make sure that we have a report that
24 has honesty and integrity in it.

25 And in that regards, I would make this motion and

1 would hope that the Board would go on record to support it
2 primarily to get beyond this issue about our lack of
3 integrity. And this motion will be -- perhaps I may not
4 have a second. But I would recommend to the staff that we
5 temporarily suspend -- partially temporarily suspend the
6 truck rule, but to continue the registration, because that
7 will be helpful information for truckers as well as
8 proceeding ahead. But we temporary suspend this rule
9 until we have redone the methodology on the health
10 assessment. And until that's done, in a public manner,
11 that would be done in the same way that it was done
12 before, but with more credible people involved.

13 CHAIRPERSON NICHOLS: I think I understand the
14 motion.

15 Is there a second?

16 BOARD MEMBER ROBERTS: I'm inclined, but I
17 need -- I'm not sure what "temporarily suspend" means. I
18 don't know what the implications of that. I know the rest
19 of you know it.

20 BOARD MEMBER TELLES: Temporarily suspend until
21 the methodologies report be redone.

22 BOARD MEMBER KENNARD: I'd like to understand how
23 long that would take to redo the report.

24 RESEARCH DIVISION CHIEF CROES: Bart Croes, Chief
25 of Research.

1 To redo the report and then go through the public
2 process and the peer review process I think could be done
3 in as little as four months, if things go well. But
4 certainly the report we did took much longer than that,
5 and there is a possibility we could accelerate it.

6 It's really the factor that we don't have a lot
7 of control over is the peer review. And maybe there is
8 some steps we can take with the California university
9 system to expedite that.

10 BOARD MEMBER ROBERTS: Let me just ask a
11 question, because there's things here that, try as I
12 might, are very difficult to understand.

13 The original report and the guy that we have the
14 problem with is the statistician. I mean, is it possible
15 to look at the work, not by anybody connected with this
16 Board in any way, shape, or form, but somebody comparable
17 outside to review this work and to see if, in fact, we
18 have an argument with the work?

19 I mean, we know we have an argument with the
20 author. It seems like the question is do we have an
21 argument with the work product?

22 I mean, it seems to me we either got to quickly
23 figure out whether this report is of any value, or the
24 other option is just throw the report away. You know,
25 throw it away. Throw it out. This report, I hear it's

1 not important and I hear it is important. If it's not
2 important, we should be able to throw it away and whatever
3 money we spent on it.

4 But I think I would -- you know, I'd almost like
5 to have -- Dr. Telles, you had mentioned at one time get
6 an independent party.

7 BOARD MEMBER TELLES: I'm probably one of the few
8 Board members that actually read the report --

9 CHAIRPERSON NICHOLS: Excuse me.

10 BOARD MEMBER TELLES: Okay. I said few.

11 And the report is based upon a statistical
12 analysis and putting together a lot of information from
13 peer review journals. And I think it would possibly be
14 possible to have some statistician look at it.

15 Unfortunately, the methodology was written by a
16 gentleman who had falsified his credentials, and I think
17 it puts everything in that report in a doubtful light.
18 And I would feel more comfortable if the methodology was
19 redone by a separate statistician rather than just
20 fumbling through what has already been done.

21 CHAIRPERSON NICHOLS: I think Dr. Balmes might be
22 a useful contributor to this conversation, because he does
23 do epidemiology for a living and works with statistician.

24 BOARD MEMBER BALMES: Well, first of all, as I
25 said this morning, the science is there, whether Mr. Tran

1 had a Ph.D. or not. So roughly the same outcome will be
2 obtained from a redoing of the analysis.

3 Again, as I said this morning, there may be a few
4 less lives or a few more lives lost or saved, but
5 basically you'll get the same result.

6 CHAIRPERSON NICHOLS: But there could be --

7 BOARD MEMBER BALMES: Yeah. No -- so, and I
8 think the methodology isn't actually that sophisticated.
9 So, to me, the issue is one of credibility of the Board
10 has been brought up by multiple speakers, including
11 members of the Board.

12 And so I think in order to improve our
13 credibility with the affected parties, as Ms. Riordan
14 would say, I think we have to redo the report.

15 I don't think it needs to -- no new science has
16 to be done. There has to be the application of
17 appropriate statistical methodology to the peer-reviewed
18 scientific literature that exists already.

19 Now, there are two ongoing reviews of the same
20 literature. The U.S. EPA is considering whether there
21 should be even a stricter PM2.5 rule than is already out
22 there. And so they've done a review of the literature and
23 in the process of doing it. That's already been published
24 in draft form.

25 And then as part of the global burden of disease

1 effort that originally was World Health Organization, it's
2 been redone. There is a body of epidemiologists reviewing
3 the literature and coming up with a concentration response
4 function with an approach that would not be Mr. Tran's,
5 but would probably -- but would meet any kind of muster
6 because it's being peer reviewed internationally.

7 I've contacted the people that are doing that
8 review. They have already done that concentration
9 response function analysis. Totally independent of
10 anything Mr. Tran did. It wouldn't be published until, at
11 the earliest, the fall of 2010. So that wouldn't meet the
12 time line. But they've already completed the analysis.

13 So I think that, as Mr. Croes mentioned, it could
14 be -- especially if we partner with an effort that's
15 already ongoing that we can get something potentially done
16 sooner than later.

17 CHAIRPERSON NICHOLS: I guess the question that
18 your comment raises for me is why couldn't we take this
19 independent analysis that already exists out there
20 conveniently and have that then peer reviewed by U.C. or
21 other California-oriented peer reviewers and use that as
22 a --

23 BOARD MEMBER BALMES: That's what I was trying to
24 suggest. In my academic muddle, it didn't come out
25 clearly. Because we haven't formally --

1 CHAIRPERSON NICHOLS: I mean, Tran's report was
2 not published at the time that we considered it.

3 BOARD MEMBER BALMES: We haven't formally
4 negotiated with this group. But both Mr. Croes and I have
5 had conversation with Erin Cohen, who is the co-chair of
6 this International Committee that's doing this for the
7 Global Burden of Disease.

8 CHAIRPERSON NICHOLS: Dr. Telles, I think we
9 interrupted you.

10 BOARD MEMBER TELLES: I was going to -- I agree
11 with everything that Dr. Balmes says.

12 But to remind you that what the EPA does is it
13 doesn't make a rule on this. What it does is it
14 establishes a level of PM2.5 which is felt to be
15 detrimental to health. That's what the World Health
16 Organization does.

17 This health assessment doesn't do that.
18 Basically, the purpose of this health assessment is to use
19 that information and to tell us as Board members in the
20 state of California the impact of exposure to PM2.5 in the
21 state of California. So it has to be done to reflect that
22 information that's important for the Board to make
23 decisions on.

24 And I agree that, you know, there's plenty of
25 information here that has already been achieved and is

1 going to be achieved here in the next year or so that can
2 be used to do this. But I just think it has to be done
3 with the same intent that it was initially done for, and
4 that's to establish a risk assessment for the citizens of
5 California.

6 CHAIRPERSON NICHOLS: I see. Thank you for the
7 clarification.

8 Dr. Balmes.

9 BOARD MEMBER BALMES: Just a short follow-up,
10 because I know other Board members want to speak, is that
11 what the comparative risk assessment for the Global Burden
12 of Disease project is doing is coming up with the
13 concentration response function.

14 And then for the association between PM2.5 and
15 mortality, just like Mr. Tran's effort did, but then you
16 have to apply the California data about exposure to PM2.5
17 to that concentration response function. So I agree with
18 Dr. Telles.

19 CHAIRPERSON NICHOLS: Mayor Loveridge.

20 BOARD MEMBER LOVERIDGE: Three quick points.

21 One is just a general one. But I've never been
22 part of an organization where the major reports come from
23 somebody deep in the organization. Every organization
24 I've ever been a part of it comes from the people at the
25 top.

1 I think when a report comes forward, it's not a
2 report of some lowly member of staff. It's a report of
3 the organization. And I think in the future we ought to
4 have the senior members of the CARB staff be accountable
5 and responsible for the reports that come forward.

6 Two quick things. I mean, if there is agreement
7 we need to rework the report, I see value in doing that.

8 But as to suspending the rule, it seems to me
9 that creates enormous kind of uncertainty and consequences
10 that we talked at some length about.

11 So just one general, we need to change the
12 procedure of this Board in terms of what reports come.

13 But I do not favor the motion of suspending the
14 rule.

15 CHAIRPERSON NICHOLS: Okay.

16 DEPUTY EXECUTIVE OFFICER SCHEIBLE: If I could
17 address Supervisor Roberts --

18 BOARD MEMBER ROBERTS: You've kind of answered
19 part of the question.

20 DEPUTY EXECUTIVE OFFICER SCHEIBLE: What role did
21 the additional analysis play?

22 The Board adopted the Ports and Goods Movement
23 Emission Reduction Plan. It adopted a number of diesel
24 emission control measures, including the port trucking
25 rule and the off-road rule without this report, basically

1 based on a previous analysis of what was the relationship
2 between PM mortality and --

3 BOARD MEMBER ROBERTS: I understand that. And I
4 don't want to go down that road. Okay.

5 DEPUTY EXECUTIVE OFFICER SCHEIBLE: The report
6 was not an essential part --

7 BOARD MEMBER ROBERTS: No, but you guys are
8 missing the whole point when you say that. You've got a
9 major flawed report with our name on it.

10 DEPUTY EXECUTIVE OFFICER SCHEIBLE: Right.

11 BOARD MEMBER ROBERTS: And I understand.
12 Technically, maybe it wasn't the rock on which we based
13 everything. And that may be a legal answer; it's not a
14 good answer. Okay. It was very bad work. It was -- you
15 heard me earlier. I'm going to try to keep my blood
16 pressure down a little bit here.

17 We know the answer to -- I think I know the
18 answer to one. If we're going to redo this thing, it's
19 going to optimistically take about four months.

20 So the motion that had been made -- hasn't been
21 seconded yet -- was that we would have a partial
22 suspension. I don't know what that --

23 BOARD MEMBER TELLES: I'll clarify.

24 By "partial suspension," I think it's important
25 to continue to collect information on registration of

1 trucks. That's important information for truckers as well
2 as to be able to predict what's going to happen with the
3 economy. It gives us more solid information to make
4 decisions on in the future. That's part of the rule. I
5 think to continue that would be important.

6 But to enforce the rule -- in other words, to
7 require truckers to retrofit their trucks or replace them
8 while we're in the process of clearing the air, so to
9 speak, would be inappropriate.

10 That's what I meant by partial suspension: We
11 continue to collect information, but we don't enact the
12 rule until we get this cleared.

13 CHAIRPERSON NICHOLS: Well, technically, the rule
14 actually has been adopted. It was sent to OAL a year ago.
15 There was back and forth, and they've approved it.

16 CHIEF COUNSEL PETER: OAL has approved. The rule
17 is now final.

18 So in terms of what Dr. Telles was just saying,
19 in terms of enforcement, there is always discretion for
20 enforcement.

21 The only thing that's happening that's the
22 requirement that was laid out in the staff report this
23 morning, this year, the only thing that's required is data
24 collection, which I think you just indicated that you want
25 that to continue. So there's nothing really to suspend on

1 the enforcement.

2 And to actually suspend the rule formally would
3 actually have to do an amendment to the rule that already
4 is in place.

5 And I think you're discussing amendments with
6 respect to the submissions budget. But you couldn't
7 actually have a motion -- setting aside that it's not on
8 the agenda. But you couldn't make a motion to suspend the
9 rule without going through a notice package, okay, because
10 we have a final rule.

11 But the bottom line is you can enforce
12 enforcement. You can suspend enforcement. But, in fact,
13 there's nothing to enforce this year.

14 So it's a circle way around. I understand your
15 point, but I don't --

16 CHAIRPERSON NICHOLS: Procedurally, it may not be
17 possible.

18 CHIEF COUNSEL PETER: Procedurally, it doesn't
19 really have an effect.

20 CHAIRPERSON NICHOLS: We have two other Board
21 members that have --

22 BOARD MEMBER ROBERTS: Could I finish?

23 The problem -- let me tell you the discomfort I'm
24 having. It seems to me we're having a couple different
25 discussions here that are all interrelated.

1 If we simply -- if I understand the motion right,
2 we could -- even if we could do this and we suspended the
3 rule and get everything back four, five months, we're back
4 to reinstating the rule.

5 We've been having a discussion that the problem's
6 not much more than a five-month problem. That we're
7 looking at a solution that goes out much further than five
8 months. That it has impacts not only on the trucking, but
9 on off-road and every other -- agriculture, forestry, and
10 every other thing. That it seems to me we want that
11 process started. And it doesn't make sense to me to enter
12 into something that we're going to undo four months from
13 now.

14 I guess I'd like -- I'm trying to mix the two
15 things that I'm concerned about.

16 I think you have to redo this report.
17 Absolutely. No question about it.

18 And I think your recommendations -- you guys are
19 the professionals down there. I'm just a humble
20 architect. I don't get into those kinds of things. I'll
21 help you on land use later.

22 BOARD MEMBER BALMES: We should redo the report.

23 BOARD MEMBER ROBERTS: And a planner.

24 But I think we should do that at the same time as
25 we're directing staff on these other things.

1 I, for one, think our slow growth projection is
2 terribly optimistic. Okay. I don't think there's -- the
3 amount of equipment and trucking -- I mean, the trucking
4 industry is getting battered. The construction industry
5 is almost nonexistent today.

6 So there are some self-regulating things -- I
7 shouldn't say "self." There are things happening to them
8 that are going a lot further than we ever imagined in
9 cleaning up the air. And I think we need to use that to
10 help to at least create the breaks.

11 Barbara Riordon's comment about creating early
12 incentives to assist some of those companies that are
13 investing, I think these are great suggestions.

14 So I'm for redoing the study, finding ways to
15 postpone this that clearly are based on a less than fast
16 growth. In fact, I'd base it on a less than slow growth.
17 Because every prediction I've seen, every number I've
18 seen, everything I'm evidencing in San Diego is contrary
19 to what we see here.

20 And I don't know what the timing is. I don't
21 know how you orchestrate bringing all these things back.

22 CHAIRPERSON NICHOLS: I think it's pretty clear
23 the Board doesn't want to see any enforcement of this rule
24 until the report has been redone. I think that's come
25 through loud and clear.

1 Can we hear from the other Board members who
2 wanted to speak?

3 BOARD MEMBER KENNARD: Let me just first -- I see
4 this in two different segments. They're two different
5 issues we're dealing with.

6 The first is a transgression -- very serious
7 transgression on the part of a CARB staff member, which is
8 distinct in my mind from the rule and the current economic
9 conditions that are affecting the enforcement of the rule
10 and the ability of the industry to comply with the rule.

11 So let me just first share with my fellow Board
12 members my view on the transgression of staff.

13 And I respectfully disagree with my Board members
14 who want to throw out this report. Because certainly this
15 gentleman was dishonest. It was egregious. I think that
16 people that had knowledge and their failure to disclose
17 was a miscalculation. But I also don't believe it was
18 intentionally malicious or intentionally neglected.

19 You know, this is a very large organization with
20 a lot of moving parts and pieces. These things
21 unfortunately happen. I think that there was no intent to
22 misinform or mislead. And I just feel very, very strongly
23 that there's been a myriad of apologies by staff and by
24 our Chairman.

25 And we've been assured that this gentleman --

1 although some people would like to see him fired -- that
2 there are rules, there are civil service rules, there are
3 legal rules that probably prohibit staff from doing any
4 more than has already been done to him. Whether we like
5 it or not, that's the law. And I don't think that staff
6 intentionally did not do what they could do to punish him.

7 We've been assured that you do not have to have a
8 Ph.D. to have done this statistical analysis that he did.
9 It's been reviewed. And I, for one, don't want to spend
10 the resources to have this report done again. I think in
11 a time of very limited resources at the State level that
12 we would be lacking in our fiduciary duty to go and redo
13 this report based on the fact situation as I see it.

14 That being said, to the other issue, I strongly
15 believe that this is a point in history that is
16 unparalleled relative to our economic situation. And I'm
17 very supportive of us going back and seeing how we can
18 modify the implementation of this rule.

19 And I'd like to see if staff could look at some
20 kind of metrics, because all of us are kind of shooting in
21 the dark whether we're in a slow growth or a fast growth.
22 And we really don't know. If we all knew, we wouldn't be
23 sitting here.

24 So maybe as you do this analysis, you can look at
25 some kind of metrics, whether it's the GDP or the

1 unemployment rate or whatever --

2 CHAIRPERSON NICHOLS: Something objective.

3 BOARD MEMBER KENNARD: Something objective and
4 not some arbitrary time of two years or five years or what
5 have you. That would be my view.

6 And just as a final note, I cannot support the
7 motion that's been put forward.

8 CHAIRPERSON NICHOLS: Okay.

9 BOARD MEMBER YEAGER: Yeah. Just a couple random
10 thoughts here.

11 I also wouldn't support the motion. I think it
12 would create much more confusion and concern than is
13 really necessary if we suspended it all together.

14 But I did want to sort of tie it back to what Ms.
15 D'Adamo was referring to as well. If you look at that
16 chart on 17, it does look like obviously that we're making
17 the goals in 2011 and perhaps in 2012 as well when we come
18 back with the analysis.

19 I guess my thought of doing the additional
20 analysis won't really effect the overall goals that we're
21 trying to achieve by the rule. If we look at again doing
22 a modification, if we look at doing more of having more of
23 the impact of the regulation further down, we have that
24 four months to do the additional report.

25 Mr. Goldstene, is that correct? And depending

1 again what kind of modification we're looking at, the four
2 months wouldn't affect that?

3 EXECUTIVE OFFICER GOLDSTENE: That's right. We
4 could bring it back to the Board by April 22nd, which is
5 the date of the April Board meeting, publicly workshop
6 different options. You'll probably direct us tonight to
7 look at some specific options. Ms. Kennard's option of
8 indexing or finding metrics or something, we'll explore
9 different options.

10 We would put together a rule package that will go
11 through the 45-day comment period and then bring it to the
12 Board for consideration with the different options and the
13 detail.

14 BOARD MEMBER YEAGER: So my hope is that we can
15 accomplish both. One, get a new analysis, which I do
16 think if we don't do it now, we're going to regret it.
17 Hopefully, just takes that issue off the table. I don't
18 believe we're going to find anything substantially
19 different at all, for many of the reasons that Ms. Kennard
20 just said. I think staff reviewed it and went over it,
21 and they feel assured that the science itself was solid
22 and that we're not going to probably get a different
23 result. But I still think it's important to do.

24 EXECUTIVE OFFICER GOLDSTENE: I think I might
25 have misunderstood. Were you talking about an economic

1 analysis or --

2 BOARD MEMBER YEAGER: I'm talking about the --

3 EXECUTIVE OFFICER GOLDSTENE: Oh, the Tran
4 report. I'm sorry.

5 So I'm talking with Mike and Bart here about the
6 most expeditious way of looking at the methodology and the
7 statistical work and trying to get it peer reviewed.

8 The challenge sometimes is we don't control the
9 peer review process timing. So on that, it would be hard
10 to make a commitment to exactly April.

11 BOARD MEMBER ROBERTS: Could we just deal with
12 that first?

13 And if Dr. Telles would make that his motion to
14 instruct the staff to redo the report, I would gladly
15 second that. And we can deal with that.

16 CHAIRPERSON NICHOLS: I think that already is
17 sort of out there in my comments. But if you want to
18 formally make that a motion, go right ahead.

19 BOARD MEMBER TELLES: Say that one more time.

20 BOARD MEMBER ROBERTS: To redo the report. To
21 instruct staff to redo --

22 BOARD MEMBER YEAGER: But not to suspend the
23 rule?

24 CHAIRPERSON NICHOLS: Just asking for a separate
25 motion --

1 BOARD MEMBER TELLES: Before I say anything
2 again, I just wanted to address Ms. Kennard's statement.

3 She mentioned that the report had been reviewed
4 and that everybody felt good with that.

5 Actually, if you read the reviews of the report,
6 a couple of the reviewers -- one of them, Arden Pope, who
7 is probably the most prestigious of all the members on
8 that review, mentioned in his letter to CARB that he felt
9 comfortable with it as long as somebody ran the numbers
10 that Tran had directed.

11 Now, you have to understand that Tran was the
12 only statistician on this. So he had total control of
13 this report. And in other words, the reviewer himself did
14 not run the numbers.

15 And I don't know if you understand that, but
16 basically he's asking that the numbers do be run. And I
17 think -- and basically in a way saying, yeah, it's a good
18 report as long as it's good. But that's what needs to be
19 done.

20 And the process -- initially I thought that if --
21 and I don't think doing this precludes doing the other
22 things we're talking about, talking to industry and
23 talking to health and environmental groups to kind of redo
24 some things that could be acceptable for everybody. I
25 don't think it precludes that.

1 But I think it is a necessary component to get
2 everybody on board to say in a statement -- a very strong
3 statement that we are going to do it, and we are going to
4 suspend it until it be done the right way. "Partially
5 suspend" is the word I used.

6 CHAIRPERSON NICHOLS: That's where you're getting
7 off where the rest of us are ready to go.

8 BOARD MEMBER ROBERTS: Buried within that I think
9 is the motion I would like to second.

10 CHAIRPERSON NICHOLS: Do we -- Dr. Telles, if you
11 would retract for just a moment and --

12 BOARD MEMBER TELLES: Okay.

13 CHAIRPERSON NICHOLS: -- and allow Dr. Balmes to
14 state the motion.

15 BOARD MEMBER BALMES: As a procedural move, I
16 would like to make the motion that we redo the Tran
17 report.

18 CHAIRPERSON NICHOLS: Okay.

19 BOARD MEMBER ROBERTS: I thought that was --

20 BOARD MEMBER BALMES: Without the partial
21 suspension.

22 BOARD MEMBER ROBERTS: I just wanted to give him
23 an opportunity to do that. He doesn't want to do that?

24 CHAIRPERSON NICHOLS: He doesn't want to do that.

25 BOARD MEMBER ROBERTS: I'll second your motion.

1 CHAIRPERSON NICHOLS: We have a motion to redo
2 the report before us. Has been properly seconded.

3 Does everyone understand the motion?

4 Would all who are in favor please say aye.

5 (Ayes)

6 CHAIRPERSON NICHOLS: Any opposed?

7 (Whereupon Board Members Kennard and
8 Sperling voted nay.)

9 CHAIRPERSON NICHOLS: Two no.

10 BOARD MEMBER KENNARD: For different reasons.

11 CHAIRPERSON NICHOLS: For different reasons. But
12 that's okay. I'm sympathetic with Ms. Kennard's rational
13 here.

14 But I think that, you know, Dr. Telles has
15 really -- whether you agree with him or not, he has done a
16 huge amount of work on this issue. And because of his
17 lonely at first pursuit of it, he has made it an issue of
18 the Board's credibility. And so now we have to deal with
19 that. We have no choice. We have to deal with it. So I
20 think it passes anyhow. So here we are. We've agree to
21 redo the report.

22 Now, next, Mayor Loveridge.

23 BOARD MEMBER LOVERIDGE: Just as you listen
24 today, this problem of one-size-fits-all became difficult.
25 And we identified the question of the lumber trucks, the

1 cattle trucks. And I don't know anything about cabs or
2 something struck me as telling. I looked at the other
3 comments as telling.

4 I guess the only point I want to make is as you
5 listen to testimony and do your work in this, if there are
6 exceptions that don't fit, staff ought to bring them to us
7 for consideration.

8 CHAIRPERSON NICHOLS: Come back with any
9 additional cleanup that you think would be useful.

10 All right. Are there any further motions?

11 BOARD MEMBER ROBERTS: Do we need a motion to
12 direct staff?

13 CHAIRPERSON NICHOLS: We don't normally need to
14 do that, but I think we could. We could direct staff to
15 reflect on the options that you presented and on the
16 additional options that others have proposed, including
17 the idea of indexing in some way any relief to
18 improvements in the economy or upticks in emissions that
19 could be measured.

20 And the Board wants to see this back again and we
21 want to be in a position to vote on it before any
22 enforcement action is taken under the rule. So you've
23 indicated that you think that's April. I don't think we
24 need to be -- don't think the motion needs to include the
25 date, but I think it needs to include the intent that

1 there be additional information gathered and a draft put
2 out and go through the whole rulemaking process, if that's
3 an acceptable motion.

4 Do I have a second on that?

5 BOARD MEMBER LOVERIDGE: Second.

6 BOARD MEMBER ROBERTS: I guess my biggest concern
7 is as we get to April, I don't know when spending
8 requirements of any kind kicked in. And if they were even
9 a few months later, for a business to be waiting for us to
10 have a hearing to know what they're going to have to do
11 within a few months after that may be very problematic.
12 And I think we need to keep that -- we have to take that
13 into consideration.

14 CHAIRPERSON NICHOLS: I hear you. I just
15 remembered that I also wanted to add, if I may amend my
16 motion, one of the things we want staff to also look at is
17 the idea of any possible incentives that could be used in
18 lieu of just regulatory forciers that could help keep the
19 progress moving forward, but at the same time allow for
20 relief. So that should also be added to the motion.

21 Okay. We have a motion and a second. Any
22 further discussion?

23 The motion was to direct staff to prepare some
24 proposed amendments to the on-road heavy-duty truck rule
25 that reflect the fact that emissions are down and will be

1 down for at least another year or two at a minimum and
2 perhaps longer. And that would put this rule on track to
3 kick back in again. That's not very technical elegant
4 language. But to ramp back up again based on some
5 objective criteria about increases in emissions or
6 improvements in the economy. Sorry. You want to --

7 BOARD MEMBER ROBERTS: And the off-road.

8 CHAIRPERSON NICHOLS: We're also -- well, maybe
9 we can do the off-road separately, because I'm on a roll
10 here on this one.

11 We can take up the off-road. And that they would
12 look at -- among the options, they would look at ways of
13 creating additional incentives for people who can't afford
14 earlier compliance to comply. And also look at exceptions
15 that may have been considered in the past but not brought
16 forward that would carve out certain types of trucks or
17 uses of trucks that are of less concern from a health
18 perspective.

19 BOARD MEMBER Berg: Where in this process it
20 would include the financial review.

21 CHAIRPERSON NICHOLS: And the financial issue
22 would be included within that, not just the general state
23 of the economy, but specifically the affordability and
24 availability of credit and so forth.

25 If that is clear enough, I hope my seconder will

1 continue to second it and --

2 BOARD MEMBER ROBERTS: Yes.

3 CHAIRPERSON NICHOLS: Could we have a vote on
4 that one?

5 All in favor, please say aye.

6 (Ayes)

7 CHAIRPERSON NICHOLS: Opposed?

8 Now on the off-road.

9 BOARD MEMBER ROBERTS: Well, I think I want to
10 initiate a similar look. We've been talking that we're
11 going to have that data somewhere early in the year, if
12 that could be brought under the same track, so be it.

13 I would like to have the same kind of review with
14 the same intention as to what can be done to relieve the
15 economic impacts on an industry that is largely
16 disappearing right now in California.

17 CHAIRPERSON NICHOLS: Okay. Staff, did you --

18 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Right
19 now, per your direction, we're coming back to you in July
20 to do kind of what we did today for off-road. And we
21 would have the benefit of knowing which vehicles have
22 taken advantage of the legislatively-provided delays to
23 the program and which ones have gotten credits for
24 retiring vehicles, for scrapping vehicle, for parking
25 vehicles, various things like that that came out of the

1 budget review last year that you adopted as part of that
2 rule. We'll know what those are in March. That's why we
3 picked the July date, so we can see what's happened and
4 have better accurate metrics of --

5 BOARD MEMBER ROBERTS: Why can't we take a look
6 at it in April so we can have this kind of discussion we
7 had here today?

8 BOARD MEMBER LOVERIDGE: The data that the
9 General Contractors of America provided is at least one
10 way of looking at this question, the 63 page report which
11 used our modeling and data.

12 BOARD MEMBER ROBERTS: Well, yeah. They've given
13 us -- the staff I think just got that. But it seems to me
14 we have an awful lot of information that you're going to
15 have a lot of information early in the year. And it seems
16 to me we should be in a position to have the kind of
17 discussion that we had on trucks today on construction
18 equipment before July of next step year.

19 CHAIRPERSON NICHOLS: I feel there is a little
20 bit of perhaps some Board members received this report in
21 advance. I saw it for the first time today. I don't know
22 when the staff received it.

23 EXECUTIVE OFFICER GOLDSTONE: Thursday.

24 CHAIRPERSON NICHOLS: It was clear from the
25 testimony that a lot of work has gone into this and

1 they're very anxious to engage with us. And you guys have
2 not engaged with them, at least as I understand it. And
3 they really want to have an open process.

4 BOARD MEMBER ROBERTS: The staff testified they
5 got this last Thursday, I think is what I heard. And the
6 testimony -- I'm not asking to use this as the basis of
7 anything other than to prepare a report for us.

8 CHAIRPERSON NICHOLS: But it's certainly data
9 that we need to look at and review and get some comments
10 to the Board on. I'm looking for a process.

11 CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: The key
12 process is that we won't really know which companies have
13 been severely impacted by the economy, which companies
14 have been less severely impacted by the economy, because
15 that reporting and that information is what comes in in
16 March.

17 And so the problem is that we're going to get
18 that almost within weeks before you'd ask us to come back.
19 That's really key to the relief that the Legislature
20 already gave them. Because if, in fact, you are severely
21 impacted, essentially there is a two-year delay in the
22 rule. It's already in place. You've already amended the
23 rule to reflect what the Legislature's direction was.

24 And so the question is, well, what about the
25 companies that weren't as seriously impacted? What are

1 they doing? Are they just on the serious part? Or do
2 they still have problems getting money? Things like that.
3 We would at least know when they are, how many they are,
4 what size vehicles and size fleets they are in March.

5 But I don't know that we can completely turn that
6 around. And we can give you a sense of it, I guess, but I
7 don't know if we can do the proper analysis in a few
8 weeks, given we have to do the truck rule as well. I'm
9 just telling you that's why we picked July. Obviously,
10 we'll do whatever you like.

11 BOARD MEMBER ROBERTS: I'd like to see it in
12 April.

13 CHAIRPERSON NICHOLS: Why don't you plan on doing
14 the best you can with the data that you get in March and
15 we'll see where we get.

16 If things haven't turned around much, I think the
17 answer is that it's going to be pretty bad. But, you
18 know, you may have some bright spots that you've been able
19 to identify or at least get some ideas of ways in which
20 you could adjust to this.

21 I think the Board would like to hear at least a
22 preliminary review of this issue, regardless of where you
23 are. I mean, with the truck rule, we're expecting to have
24 a real regulatory hearing. With this one, it may be more
25 of just an assessment of where we are.

1 Okay. And I think that doesn't require a motion.

2 I think you get what it is we're looking for here.

3 BOARD MEMBER BERG: I think by April we'll be
4 through the first quarter of 2010. If those of us that
5 are very concerned that it's going to be slower than slow,
6 maybe we'll be pleasantly surprised after the first
7 quarter. And I think that that can also help in guiding
8 us on how we're going to perceive the rest of 2010.

9 CHAIRPERSON NICHOLS: That's a hopeful note.

10 Is there anything additional that we can do right
11 now?

12 I will tell you before I at least leave, we have
13 two people who signed up for regular public comment, and
14 not on any item on the agenda. If they're still here, we
15 are required to listen to them.

16 Do we have the people from Kern Oil and Refining
17 Company still with us this evening, or have they given up
18 on us? Well, they may have decided that -- they did
19 submit written comments. This is related -- is not
20 related to any of the rules we're dealing with. It's
21 actually related to the low carbon fuel standard. We'll
22 make sure the Board members see this. And that will
23 constitute the public comment.

24 All right. Without further ado, we will be
25 adjourned. Thank you all very much for your

1 participation.

2 (Thereupon the California Air Resources Board
3 recessed at 6:48 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 17th day of December, 2009.

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