APPEARANCES

BOARD MEMBERS
Ms. Mary Nichols, Chairperson
Ms. Doreene D'Adamo
Mr. Hector De La Torre
Mr. Ronald Loveridge
Mrs. Barbara Riordan
Mr. Ron Roberts
Dr. Daniel Sperling
Mr. Ken Yeager

STAFF
Mr. James Goldstene, Executive Officer
Mr. Tom Cackette, Chief Deputy Executive Officer
Mr. Bob Fletcher, Deputy Executive Officer
Ms. Lynn Terry, Deputy Executive Officer
Ms. Mary Alice Morency, Board Clerk
Dr. Alvaro Alvarado, Manager, Heath and Ecosystems Assessment Branch, RD
Ms. Jennifer Gress, Legislative Director
Mr. Kirk Oliver, Senior Staff Counsel
Mr. Jim Ryden, Chief, Enforcement Division
Ms. Anna Wong, Air Pollution Specialist, MSCD
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Randy Harvey, GM
Ms. Bonnie Holmes-Gen, American Lung Association
Mr. Rick McVaigh, San Joaquin Valley APCD
Mr. Ken Percival
Mr. John B. Rogers, Jr., Local Motors Inc.
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CHAIRPERSON NICHOLS: Good morning, ladies and gentlemen. The November 17th, 2011, public meeting of the Air Resources Board will come to order.

I want to apologize in advance for my voice. May be a good thing I'm quiet, but I do have laryngitis. It's the tail end of a cold. Otherwise, I'm feeling fine.

This morning, we will begin as we normally do with the Pledge of Allegiance. And I'm going to ask our esteemed Vice Chair to lead, because she has a better voice than I do.

BOARD MEMBER RIORDAN: Would you rise and join me in the pledge to our flag.

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

CHAIRPERSON NICHOLS: Thank you.

Madam Clerk, would you please call the roll?

BOARD CLERK MORENCY: Dr. Balmes?

Ms. Berg?

Ms. D'Adamo?

BOARD MEMBER D'ADAMO: Here.

BOARD CLERK MORENCY: Mr. De La Torre?

BOARD MEMBER DE LA TORRE: Here.

BOARD CLERK MORENCY: Mayor Loveridge?

BOARD MEMBER LOVERIDGE: Here.
BOARD CLERK MORENCY: Mrs. Riordan?
BOARD MEMBER RIORDAN: Here.
BOARD CLERK MORENCY: Supervisor Roberts?
BOARD MEMBER ROBERTS: Here.
BOARD CLERK MORENCY: Professor Sperling?
BOARD MEMBER SPERLING: Here.
BOARD CLERK MORENCY: Supervisor Yeager?
BOARD MEMBER YEAGER: Here.
BOARD CLERK MORENCY: Chairman Nichols?
CHAIRPERSON NICHOLS: Here.
BOARD CLERK MORENCY: Madam Chairman, we have a quorum.
CHAIRPERSON NICHOLS: Thank you very much.
Before we get started this morning, I have a couple of housekeeping items that I want to mention.
First of all, as some of you noted at the last meeting, there's been a little bit of confusion about how we formally handle the issue of ex parte communications on rulemaking actions. In the past, following the custom of the Coastal Commission, Board members have verbally disclosed their ex parte communications at each meeting. And we also have kept written records of these communications for each Board member.
We have found that these verbal descriptions of the ex parte communications at Board meetings often takes
a significant amount of time, because on major rulemaking
items, our Board members do seek out and receive a lot of
input from members of the public, which is appropriate
and, in fact, is encouraged. This can lead to a real
consumption of time for no particularly good purpose. So
the plan at this point, unless anybody feels strongly to
the contrary, is to continue to keep written records for
each Board member's ex parte communications on each
rulemaking item to make these items public record so that
they're available to anyone who wishes to look at them
upon request by contacting our clerk of the Board. If any
of you feel strongly to the contrary, you can let me know
afterwards and we'll consider changing this. But I think
it would really be a benefit for all of us.

I'm also asked to mention that we have
interpretation services available in Spanish today for
those who need it for Item 11-9-3. The notice of the
meetings always indicates that anyone who wants
interpretation service can have it if they ask for it in
advance. We do ask people to ask in advance. In this
case, because we anticipated that there might be a
likelihood that there would be people needing it, we've
gone ahead and taken the precaution of getting the
headsets and interpreter.

I'll now ask the interpreter to interpret my
words in Spanish.

(Whereupon the announcement was translated into Spanish by the interpreter.)

CHAIRPERSON NICHOLS: Thank you very much.

Now for the rest of the announcements, anyone who wishes to testify and has not signed up online should fill out a request to speak card available in the lobby outside the auditorium. Please turn it into the clerk of the Board as soon as possible. You have the option to include your name on the speaker card.

If you've already taken advantage of the online sign-up feature, you do not need to fill out a request to speak card. However, you need to check in with the clerk of the Board or your name will be removed from the speakers' list. So even if you signed up in advance, you still need to go speak to the clerk.

Also, speakers should be aware that the Board will impose a three-minute time limit on all speakers. We ask you to state your name when you come up to the podium and then to put the testimony in your own words, as opposed to reading your written testimony. It's much easier for us to follow and you'll have a more receptive audience if you can go straight to your main points rather than reading the written testimony. But the written testimony will be entered into the record.
I'm also required to remind people that, for safety reasons, the emergency exits are in the rear of the room, as well as on both sides of the podium here. And that if we have a fire alarm ring, we're to evacuate the building immediately, go down the stairs, and wait outside the building until we get an all-clear signal. I think that's it for all the pre-announcements.

And with that, we can turn to our first item on the agenda, which is a public hearing to consider California certification procedures for light-duty engine packages for use in light-duty specially constructed vehicles for 2012 and subsequent model years.

Mr. Goldstene.

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

There are thousands of specially constructed vehicles registered in California, with hundreds more being built in garages and shops each year. These vehicles are an integral part of the California car culture and hobbyists put many hours of work and passion into their vehicles.

Staff's proposal will for the first time give these hobbyists the option to purchase a certified low-emitting engine for installation into their kit cars. Staff developed a certification procedure that will keep
certified engine packages as low emitting as possible, nearly as clean as a new light-duty vehicle, while providing the flexibility to allow these engines to be installed in unique, specially constructed vehicles.

This approach will result in a low-emitting engine option for hobbyists and cleaner vehicles for California.

Anna Wong of the Mobile Source Control Division will now provide the staff presentation. Anna.

(Thereupon an overhead presentation was presented as follows.)

AIR POLLUTION SPECIALIST WONG: Thank you, Mr. Goldstene. Good morning, Chairman Nichols and members of the Board.

Today, we are here to propose a new certification process for engines intended for use in specially constructed vehicles, also known as kit cars. Engine manufacturers approached staff with the idea of certifying engine packages for kit cars based on the engine from a modern emissions compliant car.

Traditionally, ARB has only certified passenger cars on a complete vehicles basis to evaluate all emissions associated with the vehicle. Hence, prior to this proposal, ARB did not have a process to evaluate or certify such an engine.
This proposal would create that process, while giving hobbyists the option to use the lower-emitting engines in their kit cars.

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AIR POLLUTION SPECIALIST WONG: This morning, I will review the background and unique issues surrounding specially constructed vehicles, the regulatory development process, which took place throughout this year, the proposed certification procedures, and staff's recommendation.

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AIR POLLUTION SPECIALIST WONG: So what do I mean when I say a specially constructed vehicle, or SPCNS? Specially constructed vehicles are vehicles built for private use, meaning they are not for resale and not constructed by a manufacturer. Some hobbyists build their specially constructed vehicles completely on their own. Others contract out parts of the building process. For example, paying to have the engine installed. California law defines a specially constructed vehicle as those that may be built from a kit or from a combination of new or used parts.

Staff's proposal today concerns the engines certified for use in specially constructed vehicles, or kit cars.
AIR POLLUTION SPECIALIST WONG: Kit cars are an integral part of California's car culture. As one can see at the many car shows held across the state each weekend, hobbyists who build specially constructed vehicles consider the cars they build an art form. There are thousands of these vehicle registered in California, with many more currently being built in garages and shops.

AIR POLLUTION SPECIALIST WONG: Specially constructed vehicles are unique and do not fit well into California's current registration process. So, how do they currently get registered to drive on California's roads?

Well, the Legislature in 2001 put in place a special program for them, called SB 100. The SB 100 process allows up to 500 specially constructed vehicles to be registered each year in California and essentially exempted from the smog check requirements.

The demand for registering specially constructed vehicles has been great. Since the SB 100 process was put in place, all 500 certificates have been handed out each year, with certificates in some years running out in January. Hobbyists who find themselves unable to get a certificate through the SB 100 process must wait until the
following year to apply for registration or find ways to circumvent the registration process all together.

Vehicle owners that circumvent the registration process, for example, by improperly registering their vehicle out of state, represent lost revenue in registration fees to California.

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AIR POLLUTION SPECIALIST WONG: Several years ago, the issue of improperly registered specially constructed vehicles came to the attention of the California Attorney General, who estimated there were about 70,000 such improperly titled vehicles in the state. As a result of the AG's investigation, legislation for a special amnesty program to encourage vehicle owners to re-register their vehicles and pay the appropriate fees was enacted and is now in effect through June 30 of next year.

Because many hobbyists building specially constructed vehicles desire to replicate older vehicles, some use uncontrolled engines removed from old vehicles. Others use new uncontrolled engines intended to be similar to those from older vehicles.

Because their engines lack emissions controls, specially constructed vehicles are high emitters.

According to smog check data, on a per mile basis,
specially constructed vehicles today emit on average 30
times more than a vehicle meeting current vehicle
emissions standards.

So today, we have high emitting vehicles, 500 of
which can be legally registered each year, and unknown
numbers that may be getting on the road illegally and no
ARB mechanism to certify a cleaner alternative.

We believe the proposal we have before you today
will help resolve these unique issues related to specially
constructed vehicles and give hobbyists an option outside
of SB 100 to register their vehicle.

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AIR POLLUTION SPECIALIST WONG: Overall, the
purpose of staff's proposal is to allow engine
manufacturers to certify emissions-compliant engines for
specially constructed vehicles. The proposed regulations
and procedures would not impose any new mandated
requirements on engine manufacturers or hobbyists.
Instead, certifying engine packages via the new process
would be optional for engine manufacturers, and hobbyists
could choose whether to purchase a certified engine
package.

Staff is hopeful our new certification process
will encourage hobbyists to choose clean engines and
encourage fewer vehicle owners to attempt to circumvent
the registration process.

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AIR POLLUTION SPECIALIST WONG: Staff begin this rulemaking process in spring of this year. We held two public workshops that were well-attended by engine manufacturers, car enthusiasts, engine installers and other interested parties, such as Specially Equipment Manufacturers Association, or SEMA.

After the staff's proposal was released, we also reached out to kit car and hot rod publications with a media advisory. We also sent out letters to dozens of California engine installers known to have installed engine packages in specially constructed vehicles. Throughout the year, we have also coordinated with the Bureau of Automotive Repair, Department of Motor Vehicles, and the California Highway Patrol to ensure our new certification process will work with their existing registration process.

In order to fully incorporate ARB's new engine certification process into smog check, BAR will need to do their own rulemaking. BAR staff has advised us that they plan to begin this soon after our process is approved by the Board.

Now let me describe staff's proposal.

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AIR POLLUTION SPECIALIST WONG: As I'll discuss further, our proposal would require engine manufacturers pursuing certification to demonstrate their engine package is low emitting and will remain so and to furnish installation instructions. Engine installers and hobbyists will need to install engine packages properly so they remain low emitting. Overall, engine packages certified via the new process will give hobbyists a low emitting option that was not previously available.

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AIR POLLUTION SPECIALIST WONG: Under staff's proposal, engine manufacturers desiring certification would need to build a modern, low-emitting engine that meets current new vehicle exhaust and evaporative standards. The package would include emission controls like a three-way catalyst and evaporative canister. It would also need to have an on-board diagnostic system to detect emissions malfunctions and alert the driver to their presence.

Manufacturers would need to provide test data to demonstrate that the engine package is low emitting. Although manufacturers could develop engines specifically for specially constructed vehicles, we expect most will derive engine packages from engines and previously certified vehicles; hence, be able to use existing data.
As a part of the engine package, engine manufacturers would also provide detailed installation instructions, as well as a label providing emissions control information. The label would state that the engine in the vehicle is intended only for a specially constructed vehicle, and would be required to be placed in a readily visible location.

Finally, the proposed regulation include warrantee and recall provisions for the engine package similar to those for new cars.

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AIR POLLUTION SPECIALIST WONG: I talked about what the engine manufacturers would need to do under staff's proposal. Now let's discuss what engine installers would need to do.

Engine installers include anyone who installs a certified engine package in a specially constructed vehicle for compensation. Installers include engine shops and garages, but a hobbyist who puts an engine in their own kit car is not considered an installer.

Installers would need to install the engine per the manufacturer's instructions, sign an affidavit stating they did so, and comply with recordkeeping and reporting requirements.

Finally, installers would be required to offer a
one year, 12,000 mile installation warrantee covering proper installation of the engine package.

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AIR POLLUTION SPECIALIST WONG: Now let's talk about the end users, the hobbyists who have so much fashion for these cars. A hobbyist who chooses to purchase and install his own certified engine package would need to install it in his vehicle following the manufacturer's instructions. In order to get registered without relying on SB 100 process I described earlier, the hobbyist would then take the vehicle to a referee station for a visual inspection. A referee station is a State-contracted test facility that offers specialized inspection services. The referee would ensure that it is possible to test the vehicle for evaporative leaks, that the vehicle's check engine light is functional, and that the engine has been installed to the manufacturer's specifications. To ensure that their warrantee would be honored, the hobbyist would also need to submit their warrantee card to the engine manufacturer.

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AIR POLLUTION SPECIALIST WONG: We are proposing several changes to the version of the regulation included in the Initial Statement of Reasons. Those changes are described in Attachment C, hard copies of which are
available in the back of the room.

First, so that the proposed procedures will work in future years, staff would like to incorporate the forthcoming light-duty vehicle emission standards for 1215 and subsequent model years, which the Board will consider in January.

Second, we are working with BAR on some other minor changes related to warrantee repairs.

Finally, we propose to make some minor corrections and clarifying changes. We plan to make all these changes available for the required 15-day comment period.

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AIR POLLUTION SPECIALIST WONG: We believe that the proposed regulation and certification procedures will: Allow manufacturers to certify light-duty engines for specially constructed vehicles, provide hobbyists a certified low-emitting engine option, help allow kit car hobbyists to register their vehicles, and encourage fewer hobbyists to circumvent the registration process.

To the extent that hobbyists choose certified engine packages rather than the uncontrolled crate engines they choose today, specially constructed vehicles in the future will have dramatically lower emissions.

Overall, staff recommends the Board adopt the
proposed regulation and certification procedures and
direct staff to propose 15-day changes as described in the
previous slide.

CHAIRPERSON NICHOLS: Do you have any closing
comments, Mr. Goldstene?

EXECUTIVE OFFICER GOLDSTENE: We have been
working with the kit car hobbyists for many years, and we
think that this regulation will allow many of them to do
what many of them have wanted to do for a long time, which
is to be able to install a clean engine into their car.

CHAIRPERSON NICHOLS: Seems like a good step
forward.

We have only two witnesses who signed up to
speak: Randy Harvey from GM, and then John Rogers from
Local Motors, Inc.

Would you please come forward, Mr. Harvey?

Mr. HARVEY: Good morning. My name is Randy
Harvey, the Manager of the Compliance and Certification
Group at the GM for Milford Proving Grounds in Michigan.
And General Motors commends CARB for proposing these
unique engine kit regulations that we think will promote
the use of clean emission controls technology.

We think that the regulations proposed today
represent an opportunity for the kit car, or SCV owners to
purchase and register emissions compliant engines as an
alternative to the SB 100 exemption process. We think it's basically a positive step forward.

Back in 2010, late 2010, GM introduced at the SEMA show a new emission control engine called the eRide based on an LS33 Camero package that was touted at that SEMA show. And it's a 6.2 liter engine. It's a Camero-based engine that was equipped for the first time with an emission control system that had the ability to meet the current LEV-II standard. It was basically leveraged off our existing packages.

At that time, General Motors discussed certification options with the staff. And at that time, we decided to develop a path that would enable GM to certify emission compliant engines kits that could be legally registered in California. What we did initially, what we were able to do at that time was to use the aftermarket exemption process for engine replacements. So we certified through an ABARS aftermarket group a package for the pre-1995 vehicles, non-OBD-II vehicles would go into production and make available the owners as replacement engines.

And at that time though, the staff determined that in spite of our efforts that we would have to -- they would have to draft new regulations to be able to certify new vehicles for kit car owners.
And we, of course, support reasonable regulations for streamline emission certification of SCVs. And if the regulations that are proposed today are adopted, our plan is to certify an LS3 package at the 2012 model year engine kit. We're already working with staff to do that. But it's important to recognize that we need these regulations that are adopted to be effectively minimized costs and resources of SCV certification with streamlined information requirements in allowing us to utilize emission and OBD data of existing OEM packages.

And in addition, we strongly support flexible registration or registration of our customer vehicles, simple warrantee administration, and easy verification of the specially constructed vehicles in BART stations.

I've exceeded my time. Okay. Well, thank you very much.

CHAIRPERSON NICHOLS: Thank you. Sorry for the coughing.

MR. HARVEY: That's all right.

CHAIRPERSON NICHOLS: Does anybody have any questions? Great.

Mr. Rogers.

MR. ROGERS: Good morning. I'm Jay Rogers, the CEO and co-founder of Local Motors. And joining you today with our customers from Phoenix, Arizona. That's where
our business is located, and we have an online community in a business of over 13,000 people around the world.

We represent a new American car company that's trying to bring advanced vehicle concepts to market as quickly as possible.

In 2007, I left the United States Marine Corps where I had been serving for seven years in order to be able to start this business. It was my belief that the pace of technology development in automobiles was not moving fast enough.

One of the largest markets for advanced technology vehicles is the state of California, at least in the United States. And it was our intention to be able to start a vehicle company that could make a difference quickly.

As we started, the we developed the first light-weight vehicle with our community, the lightest-weight vehicle the industry has seen and put on the market as part of a specialty constructed vehicle project. We then brought that vehicle to market using the aforementioned system that my colleague from General Motors has brought forward, on the assumption we would be able to bring it to market. There's much more to making an advanced technology vehicle than just the engine itself.
And in order to be able to do this, we formed a company. I went out raised the money to make it happen. And we enjoined 13,000 people from around the world to help us do this. It's a concept called crowd sourcing. Crowd sourcing allows us to be able to bring technology and ideas from everyone to be able to put them on the road.

We built this vehicle, and we took 140 deposits for it as a specially constructed vehicle around the world, and 40 percent of those are in the state of California. Not one of our customers would actually take their deposit and move it into a purchase until they knew they would actually be able to register the vehicle on the road.

Using this GM E-ROD kit, we were unable to ensure that our customers could register under SB 100. The reason is they have to buy the car. They have to build the car. They then have to show up and go through the process, which is onerous. And then they may or may not be able to be available to have a Certificate of Sequence supplied to their purchase, in which case it puts us in a very difficult position as a company of being willing to buy back their car if they don't get this Certificate of Sequence. And all told, what it ends up doing is stops the pace of technology development in these cars.
So we joined with GM and staff. I have great respect for Annette Hebert's office, Jackie Lourenco, Anna Wong, Kim Heroy-Rogalski, John Gruszecki. They've done a fantastic job in looking at the issues that are there for us to get the advanced technology vehicles on the road. And the legislation that's written is exactly what we need.

Thank you for the comments. I'm happy to take any questions.

CHAIRPERSON NICHOLS: Thank you for your testimony. I have to say this is a new concept to me. I've not heard about your business before. And it sounds to me as though you're in a unique nitch, which is great. But I have to think at some point you're going to turn into a car company; right? I mean, when you get to a certain size, is that --

MR. ROGERS: I think really the way -- Madam Chairman, the way we look at what we do is we want to poke the box of technology. So it's not so much about being a car company as it is if we get these specially constructed vehicles on the road and we show here's a 3,000 pound vehicle in an SUV class size and something that can actually be more efficient and be a lower emitter, then we've really change the pace of technology.

I would love to be able to then take that
technology and sell it to people who want to buy it. I would love to be able to make people think that is possible in developing nations for when they go forward to develop a vehicle. It's not so much about being a car company as being a technology provider.

CHAIRPERSON NICHOLS: Interesting. Do you have your hand up, Ms. D'Adamo?

BOARD MEMBER D'ADAMO: Yeah. I actually had more general questions. But while you're up here, I just don't feel that I understand enough about this car culture and the desire of -- hopefully, the desire of those that have vehicles that are not currently registered, the desire to actually register them. So this looks like this proposal is going to help along those lines.

But what about those that just aren't interested in registering? And what can we do to get at that problem? I just don't know the extent of that problem. Could you comment on it?

MR. ROGERS: I can comment to some agree, having been involved in this culture a good amount. I've been a car enthusiastic all my life, and my grandfather owned the Indian Motorcycle Company, which was a fantastic failure back in the 1950s. It was an amazing company. It had an amazing legacy. It failed.

And one of reasons it failed is because they
tried to adopt a new square cylinder engine. And they were backed by a whole bunch of people that were really fantastic in thinking about new technology. These are the sort of enthusiasts that are out there. They're the ones that will lionize and tell you about the history of Indian and other things like that.

I think what comes about is sometimes people feel like their rights are being stepped on or they can't move forward to get these things in a way that makes sense to them for a multi-various number of reasons that are out there.

I think that as I've been through, this does not hurt any of those people under the current legislation if you believe that SB 100 is something they can still apply for. So it's not an impingement. Some of those people I'm sure believe by making a rule like this there will be no more head room to be able to achieve the things they may want to do in the future. And to that, I can't speak.

What I can say is this culture is one of great enthusiasm for adoption of new technology, great enthusiasm for the art form of automobiles. And I think that with an option like this -- and GM started it, but there are other engine manufacturers out there. Take Ford, for example. Today, you saw a lot of the hot rodders. You saw a lot of Cobras up on the screen. A lot
of hot rodders build Ford historical products, too. And you'll find with some of them, they take umbrage to putting a Chevrolet engine in a Ford historical product. Give Ford the opportunity to be able to create a product that they can put in, and you may find they will join the market, too. Sometimes you find, for them, the desire to want to register and have something -- and you'll hear "sulta vulche" at BAR stations. I tried to register my vehicle, and I was this far off of the specification. If you give them a Ford engine without hurting the SB 100 process that allows a large majority of people who want to future a Ford stamp on their 33 Ford, I think you would have a lot of people that would join. At least that's my impression.

BOARD MEMBER D'ADAMO: And then in follow up, if staff could comment on the enforcement side of things. Anything more that can be done in order to encourage folks to take this route. For those that are driving around, I guess, with an unregistered vehicle, why aren't they getting caught? I just?

MOBILE SOURCE OPERATIONS DIVISION CHIEF HERBERT: As we mentioned, some of them were getting caught, or at least caught registering vehicles not representing what they really were. You know, saying it was a 1960 engine -- vehicle, but it had a brand-new engine in it.
And that's been the history.

As far as enforcement, I mean, we do keep our eye out and we do look for it. But sometimes we'll go to these hobbyists gatherings and keep our eye out. So it's, you know, the enforcement group is looking into it. And hopefully that this whole effort will turn some of that over. If we do catch people, they'll have a clean option engine to switch out and go through the legal registration process.

BOARD MEMBER D'ADAMO: I'm just noticing in the staff report here it says an uncontrolled vehicle can emit up to 200 times more emissions. So it -- I suppose especially if this is occurring in a localized area, if they're at getting together, that's quite a bit of exposure.

CHAIRPERSON NICHOLS: I think it becomes easier to think about doing some sort of selective, you know, education and then enforcement once we've got a process in place though to make this work in a systematic way. Otherwise, it just looks like you're singling out a group of people, and that could create some problems I think in terms of the community as a whole.

So thank you very much. I appreciate your testimony.

We have a resolution in front of us. But before
I get to that, I do want to close the record, since we have no more witnesses signed up, and indicate the record will be reopened when the 15-day notice is issued for changes that the staff has indicated they're planning to propose for basically technical cleanup.

So any comments that are received after this hearing will not be considered, but there will be a public comment period when the 15-day notice comes out.

So are there any questions that the Board members have at this point? Have you had a chance to review the Resolution?

BOARD MEMBER RIORDAN: Madam Chairman, let me first just congratulate staff and those that worked with the staff, because I think this is an excellent opportunity for some very positive things to happen in the future. And because of people who are interested in new technologies, this is a great opportunity. And with that, I'd like to move the approval of Resolution 11-38.

BOARD MEMBER D'ADAMO: Second.

CHAIRPERSON NICHOLS: All in favor, please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposition?

All right. Great. Thank you.

And now we have a couple of interesting public
meeting items, not regulatory in nature. And while the staff is assembling, I can say that the next item which is a report on the ARB's policies and action for environmental justice was put here, as you will recall, at my request, because I realize that we were coming up to the 10th anniversary of our environmental justice policy document. I was not here at the time that the policy was adopted, and neither were quite a few of us.

But the fact is that was a pioneering document at the time, and it has had a lasting influence on the Air Resources Board's day to day operations. By and large, the policies have stood up well, even as the concept of environmental justice as well as the recognition of the issue has evolved.

Certainly, one of the focuses of environmental justice organizing and activity has been to assure the public processes and decision making are open and inconclusive of all communities. But process alone doesn't necessarily address differential environmental impacts if they occur. The outcome of actions to improve public health and the environment must be monitored from an environmental justice perspective if we are to meet the spirit and the intent of our policies.

There is a lot of territory to cover in looking at this whole field over a decade. But I think there is
some key themes that emerge as we look at the topic of environmental justice and air pollution. And certainly if you look back over the last ten years at where the Board has spent time and effort, I think the issue of risk reduction in environmental justice communities is one of the themes that really rises to the top.

One of the things that is new, of course, since the policy was adopted is the Board's role in implementing California's program to reduce greenhouse gases. Staff has integrated environmental justice considerations into program development as called for by AB 32 as they have in the past in dealing with toxics and criteria air pollutants. But the whole topic of global warming by its very nature raises some new and interesting issues of policy for us.

So with that, I'm going to ask Mr. Goldstene to introduce the item and then look forward to some discussion after the staff report.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

In December 2001, the Board approved the policies and actions for environmental justice. The policies were drafted by a work group chaired by former ARB Board member Matt McKinnon that included community representatives, air district, and others. The overarching policy is to
integrate environmental justice into all ARB programs.

In the last decade, environmental justice considerations have helped inform ARB's priorities and shape its programs, especially the Board's action to reduce the health risk from diesel emissions.

In addition, a number of other actions were included with the policies. And after a decade, it's a good time for a retrospective look at the implementation of ARB's policies and how environmental justice thinking went into them.

Dr. Alvaro Alvarado of the Research Division is now going to provide the staff presentation.

(Thereupon an overhead presentation was presented as follows.)

HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER ALVARADO: Thank you, Mr. Goldstene. Good morning, Chairman Nichols and members of the Board.

My presentation on ARB's environmental justice policies and actions will be a ten-year retrospective highlighting key programs activities and accomplishments.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER ALVARADO: ARB's work on environmental justice began in 1999 with the initiation of community assessment work that helped pave the way for development of the Board's
policies. The policies were also designed to reflect 1999 legislation on environmental justice which directed that environmental justice be made an integral part of environmental programs and policies.

In December 2001, the Board adopted the policies and actions for environmental justice, which set out broad goals and recommended a suite of specific actions. Today, we mark the 10th anniversary by reporting on what we've achieved, what we've learned, and where we're headed.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER ALVARADO: The Board adopted seven key policies. Their purpose is to promote environmental equity and fair treatment of all Californians as ARB carries out our air quality programs. The policies address both how we do our work and our goal of ensuring that public health benefits are achieved in all communities.

The first policy sets the overall direction. Our goal is to incorporate environmental justice into all ARB programs. Meeting air quality standards and reducing health risks from toxic air pollutants is central to this goal. Vigorous enforcement, community assessments, engaging local agencies, and research on vulnerable communities are a part of the picture as well.

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ALVARADO: The Board's policy is for environmental justice to be incorporated into all of ARB's programs. Since 2001, each regulation taken to the Board includes an explicit discussion of environmental justice considerations. A majority of the funds for incentive programs and bonds to accelerate clean technologies are now directed to environmental justice communities. Many of our enforcement activities are in response to community complaints. And the Board's Research Screening Committee has an academic member specializing in environmental justice that ensures that our health and exposure research program reflects environmental justice considerations.

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ALVARADO: In response to the Board's environmental justice policies, we have strengthened our community outreach program through several actions: Evening workshops in environmental justice communities provide opportunities for local stakeholders to participate in the regulatory process. Translation services enable non-English speakers to participate in Board hearings and workshops, and we make fact sheets and compliance assistance available in appropriate languages depending on the program.
The joint ARB/California Air Pollution Control Officers Association complaint resolution protocol defines the responsibilities of the ARB and local districts in resolving air pollution complaints. And low-income assistance helps qualifying individuals comply with smog check requirements.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: We developed the public participation guide to provide community members with information on how to participate effectively in the decision-making process in California regarding the air pollution and how to file complaints. It gives a short overview of the government agencies responsible for controlling air pollution and their decision-making processes. This guide is available online in both English and Spanish, and copies are distributed to advocate groups and community meetings.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: The ARB's effort to reach out to Spanish speakers is worth special mention. A number of fact sheets, reports, and web pages have been made available in Spanish. This includes the public participation guide and compliance information targeted to individuals and small businesses.
Health and ecosystems assessment section manager

Alvarado: The Board's environmental justice policies have had a real influence on both regional air quality and in communities where air pollution impacts have historically been the greatest. Community concerns about sources of air pollution have resulted in substantial public investment in clean technology and affected the scope and design of ARB regulations.

I will highlight three programs: ARB's diesel, neighborhood air toxics, and climate change programs to illustrate the full breath of how environmental justice has been incorporated into every aspect of the work we do.

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Health and ecosystems assessment section manager

Alvarado: The first program I want to highlight is a program to reduce emissions and health risk from diesel engines.

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Health and ecosystems assessment section manager

Alvarado: In 1998, the Board identified diesel particulate matter as a toxic air contaminant and in 2000 adopted the Diesel Risk Reduction Plan. The plan identified control measures necessary to reduce health risk associated with diesel engines. The Board made
diesel particulate matter a high priority because there are one million diesel engines in California, collectively contributing 70 to 80 percent of the cancer risk from known air toxics in California.

The goal of the plan is to achieve an 85 percent reduction in diesel particles by 2020. At the same time, major new reductions in oxides of nitrogen and diesel engines are needed to meet the targets of the State Implementation Plans for ozone and PM2.5. Almost every type of diesel engine will need to be subject to controls to meet these targets.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER ALVARADO: While reducing diesel particulate matter was a cornerstone of ARB's regulatory actions starting in 2000, environmental justice considerations resulted in a special focus on actions to reduce diesel emissions from goods movement activities, ships, cargo handling equipment, trains, and trucks, the single largest source of air pollution in California.

Communities adjacent to the ports and transport corridors were increasingly concerned about the impact of diesel pollution from goods movement activities. Community members and their local elected officials urged air quality agencies to take aggressive action to protect
their health.

At the same time, cargo volumes were rising quickly and projected to triple by 2020. To meet this demand, the port, rail, and road infrastructure needed to be improved and expanded.

Taking into account expected cargo growth, infrastructure needs and community concerns, ARB developed the emissions reduction plan for ports and goods movement in 2005.

The goal of the Goods Movement Emission Reduction Plan is to reduce overall diesel PM risk by 85 percent by 2020. And while regional reductions in air pollution are expected to benefit every community, the greatest benefits are to communities adjacent to goods movement activities where there are environmental justice concerns.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: To incorporate environmental justice into the diesel program, ARB developed a wide range of tools that both public agencies and industry could use to meet diesel reduction targets. From interacting with environmental justice communities through workshops, assessments, and targeted research studies, to regulating drayage trucks and other sources, implementing enforceable agreements with rail roads, port initiatives, and targeted incentives
and enforcement. We have made great strides in reducing the risk from diesel emission in the most affected communities.

ARB staff has worked in collaboration with the South Coast, Bay Area, San Joaquin Valley, and other air districts on these efforts to reduce health risk from diesel particulate matter.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: Over the past decade, ARB prepared a number of risk assessments focused on health risks from diesel emissions at ports and rail yards. These assessments helped to prioritize our diesel rulemaking to achieve the fastest possible risk reduction in environmental justice communities. The next slide shows the scope of actions taken over the past few years.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: A comprehensive set of regulations was adopted to reduce emissions from goods movement activities. These include rules on ships, harbor craft, cargo handling equipment, and truck activities at ports, refrigeration units, and idling at distribution centers, and operating procedures at rail yards.

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ALVARADO: One of the concerns most frequently voiced by community members was the pollution from diesel trucks. A priority for the Board has been to reduce diesel emissions that impact neighborhoods, and the drayage rule and on-road truck rule will do just that.

The Board also adopted a measure limiting diesel truck idling and to improve compliance. The ARB stepped up inspections, performing over 6,000 in 2010. A hotline and web page were set up to facilitate public complaints.

Other agencies also pitched in. The Bay Area AQMD also monitors trucks. And we are working with the cities of Maywood, Mira Loma, and San Bernardino to be the first to post anti-idling signs.

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ALVARADO: Enhanced enforcement has played a crucial role in reducing community exposures, including environmental justice strike forces with the U.S. EPA and Cal/EPA and community working groups in environmental justice neighborhoods.

As indicated by the number of inspections for 2010 shown on this slide, ARB focused most of its enforcement activities on port communities, distribution centers, and rail yards in order to assist the most
impacted communities.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: California has invested several hundred million dollars on incentive funds to achieve early reductions in diesel emissions. Proposition 1(b) funding has channeled $460 million into upgrading diesel engines on trucks, locomotive, and ships at berth to reduce emissions as quickly as possible in heavily impacted communities.

Also, 50 percent of Carl Moyer Program funding for equipment upgrades and innovative projects is dedicated specifically to environmental justice communities.

These investments have helped speed up progress with measurable benefits in communities most exposed to diesel emissions.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: ARB's statewide regulations for trucks, cargo equipment, marine vessels, and fuels set the benchmark for a faster transition to cleaner equipment in California.

The Ports of Los Angeles and Long Beach are using their own authority and leverage to make the largest port complex in the United States the greenest, by far.

Even the much smaller Port of Oakland has enacted
a measure to prevent trucks that don't meet ARB's emission
standards from entering the port.

The results are tangible. Since just 2005, all
of these actions have reduced the toxic diesel soot
emissions by more than 50 percent of the state's busiest
ports and rail yards. But how well do these emissions
reductions translate into better air quality? The next
slide illustrates the Harbor Community Monitoring Study
designed to track our progress in cleaning up the air.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: The multi-year Harbor Communities Monitoring
Study in the communities downwind of the Ports of Los
Angeles and Long Beach neighborhood allows us to track the
progress of diesel controls. As shown on the map on the
right, the area went from only having three monitors in
2004 --

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: -- to one of the most instrumented in the
country. The residents participated in the study design
and even hosted air pollution monitors.

Among the key findings so far is the observation
of a 50 percent improvement in PM after the drayage truck,
low sulfur ship fuel, and cargo handling equipment rules
took effect.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: While most goods movement measures have already been implemented, a few remain to be implemented in the next two years. These include a rule to prevent dray-offs which is a way of circumventing the rule banning high-emitting diesel trucks from ports, phase-in of PM filters on truck fleets, and expanding clean fuel zone and port power rules to reduce emissions from oceangoing ships, and measures aimed at reducing emissions from rail yards and regional locomotives.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: But goods movement is not the only source of diesel pollution, and I would like to remind the Board that we are reducing other important sources of diesel particulate pollution.

The Cleaner School Bus Program is reducing children's toxic exposure from uncontrolled school buses. For example, thanks to incentives, thousands of school buses have been retrofit or replaced by newer cleaner ones.

Next, we'll examine the impact of incorporating environmental justice into ARB's air toxic program over
the last ten years.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: While diesel accounts for 70 percent of the known cancer risk from air toxics in California, other substance like Benzene, 1, 3 Butadiene, and hexavalent chromium make up the remaining 30 percent of cancer risk from air toxics in California. These substances often pose special concern in communities that are worried about the cumulative impact of local sources of toxics located in close proximity to homes and schools.

We conducted several community assessments, examining a diversity of exposures, and we applied the lessons learned from these assessments to create effective regulations, and worked with local districts on enhanced enforcement that reduce the toxic risk to all communities.

Another outcome of our work in communities is ARB's land use guidance document, which has also emerged as an important tool for informing land use decision makers about the importance of avoiding incompatible land uses.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: In Barrio Logan, a neighborhood of San Diego, ARB listened to community concerns, conducted monitoring
and research to assess problems, and partnered with local agencies to implement solutions.

Community members had expressed concerns about facilities like chrome platers in residential neighborhoods. ARB monitoring revealed that one local chrome plating facility was responsible for high concentrations. At a home next to the facility, measured concentrations were 200-fold higher than a school one mile away. We learned how much proximity matters.

Shutting down this facility reduced nearby hexavalent chromium concentrations by 93 percent. Based on this and other evidence, the Board tightened the chromium regulation and subsequently inspected over 100 facilities in cooperation with local districts. The lesson learned in Barrio Logan benefited all communities with chrome platers.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: Examples like Barrio Logan underscore the importance of enforcement in maintaining health improvements in California's communities. With thousands of facilities scattered throughout communities across the state, inspecting small operations like chrome platers and auto body shops is a large-scale effort. And local air quality agencies play a crucial role. For example, in
2011, the Sacramento, San Joaquin, and San Diego Air Districts combined inspected 515 auto body shops and 23 chrome platers.

In the South Coast, 500 auto body shops were inspected in 2011, and each chrome plating facility is inspected four times per year.

In the Bay Area in the last five years, nearly half of auto body facility's inspections and one-third of chrome plating inspections were in environmental justice areas.

Other districts also target EJ communities.

While small facilities can contribute to air toxics load in environmental justice communities, there is another equally important source of local air pollution: Roadway emissions. ARB selected the Boyle Heights community to investigate how roadway emissions can impact the local air quality. This neighborhood is southeast of downtown Los Angeles surrounded by freeways on three sides.

The community assessment conducted there found high levels of PM and other mobile source toxics near roadways, falling sharply with distance from the freeway. Confirmed by similar results from research projects, this finding demonstrates that the health effects of traffic pollution are magnified near freeways. Consequently,
ARB's diesel regulations achieve the greatest health benefits locally, in neighborhoods near freeways. The lessons learned from the Barrio Logan and Boyle Heights community assessments and other neighborhood assessments is that proximity to sources matters.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: And because proximity to local pollution sources is a key determinant of exposure, land use decisions can have an impact on public health. Although land use decisions are a local government responsibility, the ARB has developed a guidance document to acquaint planners with the consequences of land use decisions on air pollution and related health impacts. This information is advisory and is intended to inform land use decisions, along with other important considerations such as housing and transportation needs.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: Next, we'll discuss how environmental justice consideration have been incorporated into ARB's climate change programs.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: Ten years ago, when we developed the
environmental justice policies, ARB did not have any climate change responsibilities. But with the enactment of Assembly Bill 32, the California Global Warming Solutions Act of 2006, and its 2020 greenhouse gas reduction target, we have applied our environmental justice policies to this new ARB effort.

In addition to approaching AB 32 implementation with ARB's environmental policies in mind, the Board also established an Environmental Justice Advisory Committee as required by the bill. ARB provided staffing to support the Committee which was charged with advising the Board on AB 32 Scoping Plan development and other AB 32 related issues. The Advisory Committee met many times as the Board considered discrete early action measures and the Scoping Plan. Committee representatives testified at Board meetings and have provided written comments and recommendations.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER ALVARADO: We recognize that the consequences of greenhouse gas regulations could impact some communities more than others, and ARB is committed to ensuring progress on environmental justice while meeting its climate change goals.

Because the sources of greenhouse gases, criteria
pollutants, and air toxic are often the same, regulations to reduce greenhouse gases can impact emissions of other air pollutants. For example, there has been concern that the low-carbon fuel standard may increase localized pollutant emissions by encouraging the construction of new biorefineries. To address this concern, ARB has released draft biorefinery siting guidance to provide information to local communities in which these facilities may be built.

There have also been concerns expressed about potential disparate impacts on local communities from the cap and trade regulation. While we think that there will be a net benefit in air quality from the rule, the Adoptive Management Program adopted by the Board last month ensures that we will identify and act on any unexpected adverse impacts of the cap and trade regulation, including criteria pollutant and toxic emissions.

In addition, the state's 56 largest industrial facilities are currently identifying greenhouse gas reduction options for achieving on-site emission decreases. ARB staff plans to bring a proposed rule to the Board next year intended to achieve emissions reductions in these large facilities.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: With every climate change rulemaking, we will seek opportunities to reduce greenhouse gas, criteria pollutants, and air toxic emissions.

We are committed to strict enforcement of all regulations with environmental justice considerations in mind. We will monitor and address community impacts of the cap and trade regulation, and we will continue to seek new and more effective ways to seek input on all aspects of our climate change program from environmental justice advocates.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: Despite the successes of the past decades, there are still many challenges ahead of us to maintain and accelerate progress on EJ issues.

I will end the presentation with our ongoing research projects to improve our technical capabilities.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
ALVARADO: Community assessments are difficult and expensive, so we are investing in tools to improve our capabilities. We completed a major contract with environmental justice academics to develop a screening method that takes into account air pollution exposure and
health risk, hazard proximity, and social and health vulnerability.

The map shown on the right combines all these factors for part of Southern California, where the red areas indicate communities with both high air pollutant exposure and increased vulnerability.

This research has been completed for the San Francisco Bay Area and will begin soon for the San Joaquin Valley. In addition, U.C. Davis just released a report with a similar screening method of environmental hazards and vulnerability for the valley.

Cal/EPA and OEHHA are developing a screening method to assess the cumulative impacts of air and water pollutants, waste streams, and pesticides. Both screening tools benefit from a public process that includes community feedback through workshops and focus groups.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: We are also conducting our own research to inform the Board's environmental justice actions. Our testing of new vehicle technologies and fuels is focused on ensuring that both criteria pollutants and air toxics are reduced. We have developed an electric vehicle with monitoring equipment, as shown on the right, that gives us the ability to screen for pollution hot spots within
communities.

A major emphasis in the research plan adopted by the Board last September was to test the effectiveness of high efficiency filtration and reducing near-source risk as a complement to emission controls and our land use guidance. One study will investigate its effectiveness in preventing asthma attacks and controlling the disease for children, with a focus on low-income families.

The South Coast Air Quality Management District has a major program to install high efficiency filters in local schools located near roadways, and we have a research contract under development for testing the most effective technologies in school buses.

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HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

ALVARADO: In conclusion, since the Board's policies and actions were adopted ten years ago, the ARB partnered with local and community organizations, conducted dozens of assessments on communities, ports, and rail yards, adopted regulations, and re-focused our enforcement efforts and incentive programs all in support of environmental justice goals.

But the strongest influence environmental justice had on ARB programs is to change the way we approach regulations. In the past, we focused on the statewide and
regional benefits of reducing air pollution. As we subsequently recognized, not everyone is harmed equally by air pollution. Rather, people living in economically disadvantaged communities often suffer a disproportionate share of exposure. Our emphasis on environmental justice evolved into ensuring that all Californians benefit equally from improved air quality.

We look forward to today's discussion and any new direction from the Board. Thank you.

CHAIRPERSON NICHOLS: Thank you.

We have a couple of people who have indicated they'd like to speak to the Board on this item. So without objection, I think we can call on them first. This is the overall issue of the Board's environmental justice policy. So if you wish to speak on that issue, that's the topic at hand.

And I'm looking for my list. The first person who signed up is Ken Percival.

And you do have three minutes, Mr. Percival. We do have, by the way, a written statement.

MR. PERCIVAL: You may have attended a school Board meeting I might have gone to.

I'll try to be as brief as possible.

The first thing I'd be remiss without my first time here without thanking the Air Resources Board and
those Boards of the past that have managed to do things to
make sure the air of California has been clean and
pristine as possible. And in that, we share the same
goals.

I will submit, however, some problems do exist,
and that's what I'm here to talk about.

About a month ago, I called up this group and
asked a question. Simple question of science. And Mr.
Croes, we had a nice long conversation, upon which he did
everything possible to duck my question in every way he
possibly could. As of yet, I still remain unanswered.

The question is in what I offered to you folks.
Please read it. I asked for only communication, exchange
of views.

This similar thing happened about five years ago
when I was presented with a view of rising carbon dioxide
rising up from my car, my home, my place of business going
up to great greenhouse gas cloud in the sky that
apparently was blocking energy. I seemed confused. It
seems contrary to what I believe is science.

So I proceeded to take five minutes in the World
Book Encyclopedia. Read for five minutes. Called up the
Air Resources Board and asked them to explain to me how,
when they told me about the greenhouse gases two miles in
the sky lying in a layer, you know, blocking long wave
radiation heating up our atmosphere.

I asked them a very simple question: If they were aware of the weight of carbon dioxide, the weight of sulfur hexafluoride, and were they aware of gravity.

At that time, that was the last we heard of that scientific theory. In the period of about eight, nine months, I then chose to ask again your climate change guru. That's when Mr. Alvarado announced to me that carbon dioxide stores energy. Well, yes it does. So does everything else on the planet. And I began to look at things a different way.

I recognize in the act of combustion, burning, any use of energy, it is actually an act of oxidation. And in that process, there is only a prescribed amount of oxygen available in that oxidation. And it can attach itself either to sulfers, nitrogens, to carbon as a monoxide or turn out as an ozone. I would submit that any oxide we get to attach itself as a dioxide to carbon becomes a useful gas that is present in our environment. As a useful gas, it becomes part of photosynthesis and is returned to us as usable oxygen.

By allowing the carbon dioxide levels to rise -- could you turn that to where I can see it? I have no idea -- to allow that to exist by carbon dioxide, that allows you to reduce the levels of the other oxides.
I'm not green. I'm teal. And I only wish that someone would have perhaps a chance to communicate with me. I just have a question. That's all.

So any questions. If not, I'll happily go on my merry way and see you next month.

CHAIRPERSON NICHOLS: Thank you.

Our next witness is Rick McVaigh from the San Joaquin Valley Air Pollution Control District. Welcome.

MR. MC VAIGH: Thank you. I'm Rick McVaigh, the Deputy Air Pollution Control Officer for the San Joaquin Valley Air Pollution Control District.

Our Executive Director Seyed Sadredin wanted to come today. He was unable to attend. He asked me to sit in on your environmental justice presentation.

One of Seyed's prime objectives when he became Air Pollution Control Officer was to establish an Environmental Justice Advisory Group for the Valley to help incorporate environmental justice into our core activities at the district. We now have a 13 member Environmental Justice Advisory Group. The members are from a wide variety of communities throughout the valley. And they're appointed by the members of our Governing Board. They advise the Air Pollution Control Officer, the Citizens Advisory Committee, and the Governing Board on environmental justice issues, many of which you mentioned.
in your presentation.

Wanted to talk about a few of the things our Environmental Justice Advisory Group has done in the Valley. We've completed a number of key projects. One is we've helped develop environmental justice maps of the San Joaquin Valley. So you can go to our website, and we've identified the environmental justice areas. And our Environmental Justice Advisory Group helped provide input on that.

They also provided that input to the High Speed Rail Authority to help them with their outreach to environmental justice areas along the nation's first high-speed railroad, which is from Fresno to Bakersfield. One of the other things they've done is reviewed a lot of our outreach materials that we have at the district to ensure that they're culturally sensitive, appropriate, and effective both in English and Spanish.

One of the things we've challenged our Environmental Justice Advisory Group to do for this year is to go ahead and identify at least ten million dollars more in emission reduction incentive projects that would benefit environmental justice communities within the Valley. So that's one of the big things they're working on right now.

One of the areas of interest -- and it came up in
your presentation -- of our Environmental Justice Advisory Group was the relationship between environmental justice and climate change initiatives. And last summer, Nancy McKeever of your staff actually provided a detailed presentation on your climate change initiatives and was able to answer a number of questions of our group. That was very helpful and much appreciated.

So in summary, I just want to go ahead and applaud your efforts. We've been involved in a number of the ones that were mentioned in your presentation. We want to go ahead and thank you for your continued support of our Environmental Justice Advisory Group and our strategy and also say we look forward to working with you on future environmental justice initiatives.

CHAIRPERSON NICHOLS: Thank you. I want to commend you also for your efforts. I think it's important to recognize that local air districts are the organizations that deal most directly with the sources that are those that have historically been the most focused for environmental justice communities, that is stationary sources. So this is not something that we could possibly do without strong partnerships with the districts.

I think it's also interesting to see that at the local district level an Advisory Committee process can
often function more effectively I think just because it's
closer to where most of the people live and work. So it's
more possible for them to really actively participate. So
I appreciate the fact that the district has really taken a
strong role in this area. I think it's very good.

One of the things that I'm curious about, maybe
you or our staff can answer this question, is whether
within the CAPCOA process -- that is a group where all the
districts get together -- is there a Committee or a focus
on sharing best practices and initiatives in this area?
Or is that something that you think might be valuable?

MR. MC VAIGH: I don't believe there is a
specific committee. The CAPCOA does have an environmental
group of advisers that advise CAPCOA on environmental
issues.

CHAIRPERSON NICHOLS: I was speaking really for
the Air Pollution Officers themselves, when they get
together, would it be smart for them to share some of
their accomplishments and issues and concerns?

MR. MC VAIGH: It certainly would, yes.
CHAIRPERSON NICHOLS: Okay. Maybe that's
something we can bring up then. Thank you very much.

MR. MC VAIGH: Thank you.
CHAIRPERSON NICHOLS: Bonnie Holmes-Gen.

MS. HOLMES-GEN: Thank you, Chair Nichols and
Board members.

Bonnie Holmes-Gen with the American Lung Association of California. And I want to thank you for this comprehensive overview of environmental justice activities over the past decade. And I want to make sure that you know that the American Lung Association in California is very activity engaged in this whole effort and trying to better understand and address the public and pollution and health disparities in low income and ethnic communities.

The American Lung Association recently published an analysis focused on the burden of asthma on Hispanic populations as part of a series that we have on disparities in lung health. And this is a science-based analysis of some of the problems that are faced by different communities. And in this year's report, which was called the Chondel Report Del Ira (phonetic), which again is a focus on hispanic communities and the social environmental economic disadvantaged that make it harder to manage asthma, for example, in these communities. For example, when you look across the country, Hispanic populations are 165 more likely to live in areas with unhealthy levels of particle pollution. And we know these things intuitively, but it's helpful to have this science-based report to just point out the special issues
that are faced.

    And, of course, we think that the efforts that
3 the Air Board is doing in terms of diesel pollution
4 reduction is critical to addressing these issues. We
5 appreciate the progress that's been made that you've
6 outlined here. And just wanted to make a few points going
7 forward in terms of environmental justice and diesel
8 pollution reductions specifically.
9
    One thing is that the community assessments that
10 you've done have been very important and effective in
11 better identifying and addressing these localized risks.
12 And we hope that you can do more of these and we would
13 like to work with you on this effort.
14
    As I mentioned, the diesel pollution component is
15 extremely important. As you pointed out and are so very
16 well aware, the Carl Moyer funds and the Prop. 1(b) funds,
17 all these funding sources that get early reductions have
18 been so important. And we need to work together very
19 closely, and we have a big lift here to make sure that we
20 re authorize these funding sources so we have this
21 continued funding stream to ratchet down more on emissions
22 from trucks, buses, and goods movement sources. And we
23 need to work closely together on that.
24
    We're very much looking forward to the audit of
25 large industrial sources and again think that that's a
very important next step in looking at how we can address
the community risk from those sources.

And then finally, we hope you'll have continued
updates on environmental justice, including updates from
the air districts on their activities. I'm glad that you
raised that. We think it's extremely important that there
is a continued discussion at the Board level as to how
we're addressing environmental justice and what specific
achievements that we're making and how we can continue to
make progress.

CHAIRPERSON NICHOLS: Thank you very much.

That concludes the list of audience members who
had indicated they wanted to speak on this topic. So
let's get back to the Board now and we'll start down at
with Supervisor Yeager.

BOARD MEMBER YEAGER: Yes, thank you. And thank
you, staff, for a very good report.

And I can tell this is an issue that you're
taking very seriously and want to address in any number of
ways. And really came clear in the last slides when you
talked about it isn't just the whole state that we're
trying to improve the air quality, but that there's
certain impacted communities that we need to spend more
time because they are the ones that are most directly
impacted. So it was a very positive report.
But I was wondering if staff could talk a little bit about the areas where we still need to improve or areas where we're still being criticized. And I say that because we had an occupy Bay Area Air Quality Management District protest yesterday at our air district and it was not easy to put Bay Area Air Quality Management District on a placard. But so we know there is still lot of concerns. And these are not easy issues to address. Obviously, they're long standing. But they're still out there.

And I know that one of the list of demands that this group had was wanting the air district to address the cumulative impact of new and existing mobile and stationary sources of air pollution, particularly in disproportionately impacted communities by exploring and implementing new tools and methods to evaluate and reduce cumulative health impacts. And certainly, you talked about the cumulative health impacts. But, you know, it's just heartwrenching to listen to some of these community members talk about the really high rates of asthma, cancer, lung disease, and the very understandable request that we do as much as we can as fast as we can, that children are really -- their health is really being impacted.

And so again, we can look at the report you gave
and all of the programs. But there still, of course, is always that little bit of a disconnect where it's, that's fine, but we need you to do more and we need you to do it faster.

So I was wondering how we address that issue. And when people come before us, how we sort of directly address what they are talking about, rather than maybe some of the list of programs that are already being implemented.

EXECUTIVE OFFICER GOLDSTENE: That's an excellent question. And I think what we're trying to say here is that particularly over the past ten years, we've gotten better and better at making sure we take those sort of considerations.

Take the idea of making sure our rules account for disproportionate impacts with the goal of reducing them, identifying them, and reducing them as much as possible.

Part of your question is how do you go about identifying them. And that is an ongoing research challenge, which we're very much involved with. And maybe Bart or his staff can talk about some of the work we're doing in that area. I think that is key.

But even though we don't have the perfect information all the time, we certainly know that we want
to make sure that we don't cause harm and that in
everything we do we get reductions, particularly for
localized pollutants.

Bart, do you want to add any?

RESEARCH DIVISION CHIEF CROES:  Bart Croes.

Very good points. In terms of the issue you
brought up about rates of asthma and heart disease, yes,
we're very concerned about that. Heart outcomes like
heart attacks and premature deaths from heart disease
seems to be related to PM2.5. So I think the things we're
doing -- especially on diesel are going to yield a lot of
benefits in that area. Of course, there's other factors,
like diet and smoking that we don't have any control over.

We did put -- we have tried to do an emphasis on
what we can do about high asthma rates. We are very aware
of the disparities. We've tried to study the role of air
pollution in both causing new cases of asthma as well as
asthma attacks. And a study that the Board identified
last September, we'll see if we can directly affect how
people respond to or how to mitigate the effect of air
pollution on asthma by looking at the effectiveness of
high filtration. And we will do a concentration on EJ
communities for that study.

In terms of cumulative impacts of multiple
sources of air pollution as well as other environmental
factors, that's a pretty difficult problem to tackle. There's been some promising work coming out of OEHHA and U.C. Davis that we're following closely. And certainly the work that we're doing with our air pollution screening tool with researchers at Berkeley and USC, the work that we showed for Southern California and the Bay Area, we're trying to extend to the entire state. So hopefully those tools will be available in the next year or two.

CHAIRPERSON NICHOLS: Could I just jump in for a second here? Because I want to sort of emphasize the distinction what can be done between science and research and what can be done with action, because sometimes they're not exactly the same. I think about this particularly with respect to community concerns about things like asthma rates or cancer clusters, because I've seen so many times over the years money spent on trying to establish whether the existence of some horrible toxic source in a community could be linked to the cancer rates in the community. And time after time, what happens is that the study is unable to detect a cause and affect relationship just because of how weak the tools of epidemiology are.

I wish John Balms were here to defend himself on epidemiology. But on his behalf, I would say they've gotten better in certain respects. But whenever people
demand, as they do from time to time, successfully that, you know, the State may come in and answer their questions about why they're experiencing these very bad health impacts, it seems as though we're not able to satisfy them with our science.

And yet at the same time, if we are able to actually using the legal tools that we have get somebody to clean up anyway, we may have accomplished at least a good piece of what was wanted. And I don't want to be cynical about this, but it does seem to me there is an element here of just responding to community concern, which shouldn't be confused with whether you can prove to everybody scientific satisfaction that something is actually the problem.

BOARD MEMBER YEAGER: And I think that's a very good point.

And I guess what I was partly asking as well is making sure that staff understood the criticism that is still out there and the reasons for it. So when we have community meetings or people wanting to address that, we really are understanding what their question is and giving them the answer, rather than perhaps, you know, an X amount of pages in a report saying look at all the things we're doing for you. How come you're not happy enough?

And I think those of us in public office are used
to this all the time, where we think we're passing the laws and policies and we understand the issue. And lo and behold, you know, it's an occupy Bay Area Air Quality Management District, and you go, wait a minute. What's wrong? There are a lot of different issues they're talking about, a lot of different factors. People want us to move faster than we can. We have a lot of policies in place, but they don't always address the cumulative effect.

I'm urging staff -- not that you haven't already, but I haven't really heard you say there's still issues out there and we just need to figure out the right way to address them.

EXECUTIVE OFFICER GOLDSTENE: Those are all very good points, Supervisor Yeager. And of course, the partnerships we have with the air districts are very key. And we understand that ultimately, for example, in the Barrio Logan area, you're on the front line, whether it's Bay Area or San Diego. And we want to continue that partnership and continue -- one of the reasons we brought this to you today was to say that we are continuing this work. And we're looking forward to continuing the discussion in every policy that we bring to you for consideration.

CHAIRPERSON NICHOLS: But I think the staff is
also open to some new thinking or direction on how to do a
better job on this topic, too. So don't be shocked.

Thanks.

Ms. D'Adamo.

BOARD MEMBER D'ADAMO: Slide 19 and 20, the
Harbor Communities Monitoring Study, just curious what all
went into this. How much did it cost? It would be nice
to see more of these.

Because I just think if we look at the statewide,
there's been tremendous progress statewide. But a lot of
folks in these impacted communities just say, "I'm not
feeling it." And so those statewide figures don't
translate to their specific situation. But perhaps in
this study area it does translate to improvement. So just
curious about how much it costs. Has this study been used
as a community outreach tool? Has it been helpful? What
can be done to do more of these?

RESEARCH DIVISION CHIEF CROES: Bart Croes again.
The study collectively cost about a million
dollars. We had major contractors from USC and University
of Nevada that participated.

In addition, the district, the local South Coast
district, and the ports have also made substantial
commitments to monitor air pollution.

We did have an extensive year-long program
working with the community. And the community brought a lot of complaints about idling trucks or other specific sources. So we did actually use community members to host monitoring sites, which seemed to be pretty successful. And we've brought back the results to the community and seemed to be well received.

We've made a multi-year commitment to this community to track the progress as the rules are implemented. So we have seen about a 50 percent improvement so far in air quality. And we're going to follow as further controls get implemented to make sure that they're working in that area.

So it does seem to be appreciated by the community and maybe Cynthia Marvin can add, because she's more directly dealing with them right now.

ASSISTANT DIVISION CHIEF MARVIN: Cynthia Marvin with the Stationary Source Division.

I just wanted to address the second part of your question, which was: When you do a study like this, what do those results mean and how do they get used?

Bart mentioned some of the community outreach. What I wanted to talk about was how powerful these sorts of results have been in prompting, for example, the Ports of Los Angeles and Long Beach to take their R&D clean air action plan from 2006. They took the results of this
monitoring, the monitoring done by the ports, by ARB, and others, and really stepped it up and set a whole new benchmark in terms of air quality goals for the port and all of its customers' activities. And that is driving together with ARB's regulations the progress that we continue to see down there from the shippers, the terminal operators, to the truckers. And hopefully that will be extending even further into the railroads' operations as well. So those sorts of studies and those sort of results are very powerful in terms of driving other local agencies, driving the industry action, and then really giving us feedback about what's working on our programs and giving us the direction to go forward and say where else do we need to do that.

EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOUE: This is Dan Donohoue, Stationary Source Division.

The other thing I wanted to comment on is one of the real interesting parts of this study is it does correlate well with what we predicted from modeling. It's a lot easier, quicker, cheaper than to do modeling. Oftentimes, people will say, can you validate the modeling? And the original work we did on the risk assessment of the ports of L.A. in 2004, what we thought would happen with respect to the regulations coming in are actually being shown here. So a lot of times -- if we can
get a little bit better belief in what the modeling can do based on things like this, I think that allows us to use this in other areas, particularly use our modeling capabilities to tell the story, to convince people what needs to be done, where it needs to be done, and really tailor some of the activities to those pockets within those communities that are more effective.

And we've seen that in the health risk assessments on the rail yards. There are certain actual areas of the facility that make more -- it makes more sense to try to do something in that area compared to another area because of the localized impacts.

CHAIRPERSON NICHOLS: Isn't it fair to say that this study also really arose out of work that was done by USC and the local community and that they brought to us the idea for doing the study or at least some of the suggestion for creating the study?

Did we create this ourselves? Or this was invented by the Air Resources Board? I just want to be clear, because these things take on a life of their own. I'm interested in figuring out how we do a better job and doing more of these kinds of things.

RESEARCH DIVISION CHIEF CROES: The origin of the study was to validate the modeling approaches Dan Donohoe was describing. Since we've done the study, USC has gone
in and worked with the local districts to compliment the
work that we started.

    CHAIRPERSON NICHOLS: Okay. So our funding was
directed to doing our monitoring work and not to research
that was being done at the community level already?

    RESEARCH DIVISION CHIEF CROES: Right. We did
actually fund USC to do some of the work. But again to
help complement --

    CHAIRPERSON NICHOLS: I'm not trying to decide
who should get the credit here. I'm trying to figure out
what the most effective way is to generate this kind of
work, as Dee Dee was suggesting that given the impact that
it had, would it be something that would make sense to try
to replicate or do in a different way in other areas where
we know we have environmental justice concerns.

    RESEARCH DIVISION CHIEF CROES: Well, I mean,
that's the intent of some of the tools. We tested a
variety of tools in this community, some which were low
cost, didn't use electricity. And those seem to be pretty
effective, as well as the electric vehicle that's
instrumented. We actually have gone into other
communities, like Boyle Heights to do measurements. And
it just gives USC the credit they deserve.

    The dimension that's missing from our study is
we've demonstrated that the emission controls are working
and reducing exposure. But they're adding the dimension of what's the health improvement in your community. So they're trying to get a fund --

CHAIRPERSON NICHOLS: It's obviously a real collaboration and involves a number of different groups.

I think when we finish having a discussion here, I'd like to make some suggestions of things that the Board can direct the staff to do going forward. I think something along this line is what we need to be getting at.

BOARD MEMBER D'ADAMO: Absolutely. I'm just thinking creative solutions so that the next study doesn't have to cost a million dollars.

And I'd like Dan, which you were talking about with respect to modeling, maybe those models and the study that's already been done can be used to encourage communities that their area can be studied, but it wouldn't cost a million dollars.

CHAIRPERSON NICHOLS: I think I saw Mayor Loveridge's hand up next.

BOARD MEMBER LOVERIDGE: I'm not entirely sure where I'm going with these comments. But it is very clear I think that the progress that's taken place over the past ten years, difference in approach. But I'd like to look at kind of prospective questions, because there's 482
cities and 58 counties that are making daily -- not
daily -- weekly or monthly land use choices. And I was
looking now at slide 28, which is land use guidance to
reduce near-source impacts. Sort of pondering what
those -- what that guidance is and what form it takes and
how visible it is and what kind of information electives
have to try to make this kind of sort between economic
growth and jobs and so forth.

I'm not sure that the land use guidance is
particularly good, speaking personally in terms of its
place on the agenda of our city or cities I know anything
about.

And there are a couple of other kind of related
thoughts. I know when you're approving some project
having to do with endangered species, you always have
mitigating measures. You have to do something.

But in cities, there's really kind of a real
emergence of interest and healthy lifestyles and choices.
Some of it's walking, biking, food. We, in Riverside,
call it being fit, fresh, and fun. That's our mantra that
we're trying to push as a city. It's more than simply a
physical side. It's lifestyle and quality of life.

So I'm not quite sure where I'm going with this,
except to say the land use guidance, we may have it on the
books, but I'm not sure how instructive or helpful it is
for elected officials are trying to sort out you qualify with the next bullet the one consideration among housing and transportation needs. And I recognize this composite decisions. But I think we can do better for providing information about near-source impacts.

BOARD MEMBER RIORDAN: Madam Chair, I --
CHAIRPERSON NICHOLS: I was going to ask Lynn Terry to respond to that quickly. If you wanted to add something on that, please.

BOARD MEMBER RIORDAN: It was.
CHAIRPERSON NICHOLS: Go ahead.
BOARD MEMBER RIORDAN: One of the things, Mayor Loveridge, that I said to the staff -- and I hope we can go back and look at it -- was that the guidance document is an excellent document and worked on over a period of time by Lynn Terry and Cynthia and a whole lot of other people.

The problem is that when it's issued and when we took it to the League of California Cities and to others, that's great, except everybody changes. Almost every two years, there is a change in the leadership in counties and cities. So we have to go back and re-educate. And I think that was one of my strong points at the time that we went over this document, which I still believe is a wonderful document. We just have to re-educate people,
because people change every two to four years in a city or a county. And the leadership changes, even planning departments change.

And so -- and now I'll turn it back to Lynn.

CHAIRPERSON NICHOLS: I have another hand from Supervisor Roberts. Let's get all the comments out and then Lynn can speak.

BOARD MEMBER ROBERTS: Well, let me just make a couple comments.

It's funny, because I didn't know that that handbook existed. I've already requested a box of them from James.

We have ongoing -- when you are planning a new community, it's relatively simple to say you're here and you're there. But in some of the older areas, Barrio Logan was used as an example, which was a long strenuous controversial cleanup of a preexisting industrial area that had been built up with housing not only around it, I mean like on top of it. And there were several chrome platers, not one. One that was the final one was acknowledged. And that was closed down quite a while ago. But the lessons were learned. I mean, those things were done in ignorance. And we know a lot more today about those relationships.

In San Diego, that doesn't mean we are not facing
those kinds of things. In fact, we have a very
controversial issue right now that has to do with one of
our major manufacturers and one of our enterprising
developers who wants to build a condo project -- excuse
me -- residential project right across the street and well
within the danger zone, which poses all sorts of major
risks for the continuation of those industrial processes.

And the industrial processes themselves are okay
until you move residential uses in right next to them. I
don't know what's in that handbook. I'm thinking I can
use that to enlighten some of the decision makers as to
the possible consequences of a land use decision that
could affect a major employer in our region. Not could.
Would absolutely effect them, because there's no way
they're going to continue to make investment in that plant
that could be closed down virtually overnight if something
were built there.

So I see a need for these things. I'm in
agreement. Education is not a static thing. You need to
keep going.

We have had very little change on our Board of
Supervisors. In fact, we've been together over 16 years.
And it's still a process of educating in terms of what is
and what is going on, what do we have to do as the air
district, since we're the air district along with being
the Board. And I think things like this could be helpful. I'm anxious to see it. I don't know why I didn't know it existed. But I've got a feeling you're going to see those in widespread use.

CHAIRPERSON NICHOLS: I think Lynn is going to hold one up.

Would you like to say a word about how this document is being used nowadays?

DEPUTY EXECUTIVE OFFICER TERRY: Sure. And it actually has been almost six years. And at the time, Supervisor Riordan was very active in helping us go through a very difficult process of adopting that document because of the challenge of the land use decision making. And so the document was intended to really highlight the value of avoiding new incompatible land use, as the example you just gave.

So we have a number of examples from chrome platers to other large industrial sources where we had done some modeling and so we came up with advise about a minimal distance where we could, from an exposure standpoint, reduce the exposure by about 80 percent. So it was not a risk assessment. But it was sort of a practical guide to you could substantially reduce the exposure with distance.

BOARD MEMBER ROBERTS: Maybe you need to put a
new cover on it and say new and improved.

CHAIRPERSON NICHOLS: Every two years change the color of the cover.

DEPUTY EXECUTIVE OFFICER TERRY: But I did want to also add there is a very pertinent new issue with respect to this document and SB 375. We did recognize even in 2005 there could be an inherent conflict between our advise not to site new homes, schools, sensitive receptors near freeways. And our recommendation was 500 feet. And that was where we saw the exposure reduced by 80 percent.

Obviously, you heard an earlier report about the progress we made of reducing diesel exposure. So the risk has been reduced substantially. None the less, the risk from being near roadways is going to be with us for a long time.

So as we have looked at SB 375 implementation and encouraging in-fill, mixed use development, transit oriented development, it's become a very live issue. And we have actually a State agency working group struggling with this as we speak. And I think that the SCAG sustainable communities strategy will bring this to light. And staff are working closely with SCAG on GIS mapping to look at the transportation system and as kind of a case study to see how we can maximize the SB 375 goals, but
also look in a realistic fashion at this guidance and what
it might mean.

And where we stand with the State agency work
group is the question has been posed: What is the impact
on our guidance on the ability to meet SB 375 goals? Are
they incompatible goals? We want to make the answer to
that be no, they're not incompatible. But it's going to
be a challenge to work through.

CHAIRPERSON NICHOLS: Thank you.
Mr. De La Torre.

BOARD MEMBER DE LA TORRE: Thank you, Chairman --
Chairwoman.

CHAIRPERSON NICHOLS: Whatever. Mary is fine.

BOARD MEMBER DE LA TORRE: As I was looking
through the presentation and on some other issues that I
know have already been discussed and are going to continue
to be discussed, it seemed to me that a place -- piece of
information is missing, which is where are we talking
about? What is an environmental justice community? Where
do you have a combination of effects such that you have a
community that is disproportionately effected, compared to
everybody else? Is there a map of California that has
these locations?

And I understand the repercussions of it, of
being on that map. But it would be very important for
this discussion and for all of the other discussions in
terms of mitigation that we know where we're mitigating.
And I think it's -- I understand where it would be
problematic. But I think it's absolutely vital if you're
going to put resources into these communities to mitigate
this disproportionate effect that we know which
communities we're talking about.

DEPUTY EXECUTIVE OFFICER TERRY: The staff
presentation talked a little bit about the environmental
justice screening tool that we supported with our funding.
And Manual Pastor is the academic who was leading that
team. It has been completed for South Coast air basin and
Bay Area, and we're working on completing it for the San
Joaquin Valley.

And what that does is combine data layers on
socio-economic status, a variety of air pollution exposure
data from ozone, particulate matter, the toxic release
information, and really combining all of those different
data sets to say what is the overlay and where are the
communities where we see the most social vulnerability
combined with the highest potential emissions.

In some cases, we don't have the full set of
emissions data. We have exposure data that's monitored.
But this tool addresses a concern of the communities,
which is proximity to air pollution sources, multiple
sources, in particular. And even if we don't have the
emissions data for every source mapped, at least as a
screening indicator which we find a lot of sources
concentrated in a community, that is an indicator of
potential disproportionate impacts.

So there is a big challenge that I see going
forward moving from a screening tool to something that is
a more complete assessment. And that would really involve
understanding the actual emissions from these multiple
sources. And for that, we really need to be working with
the districts who possess that data and find out how we
can do a better job of geographically identifying the
actual emissions.

BOARD MEMBER DE LA TORRE: Thank you.

I think everything that's come in the past plus
now AB 32 you cannot move forward without having this.
And I made the comment earlier about I understand
the negative implications. I live -- I know there's no
doubt in my mind that I live in one of these communities
that's going to be on this chart. And so I'm still going
to live there. I'm not moving away. Just like most of
the people in any of these communities are not going to
move away. So we need to look at it very clear eyed so we
can put those resources where they belong.

CHAIRPERSON NICHOLS: Thank you for that comment.
I think there's been a lot of concern in the past about the negative impacts of the communities' sense of well being, maybe property values or whatever about putting labels on a map.

But we are also now talking about focusing significant resources on communities that are EJ communities. And ironically, there have been a couple of occasions where we've had disputes. I'm worse impacted than you are, people coming in to complain about they not being given adequate recognition for how bad their air is.

I think you're absolutely correct that we have got to find some way to do this that indicates that our position is perfect. And then particularly when it comes to boundary lines, we may not be able to judge them adequately, but that we're still going to have to do our best anyway to put lines on a map and put those color codes in there. You're absolutely right about that.

Other comments? Dr. Sperling?

I'd like to throw out a couple of things that this conversation has lead me to want to suggest and see if I can get the Board to endorse this approach.

So first of all, we've got to do a better job of outreach on the documents we've already got and remind people this land use guidance exists. And that if it needs to be updated, then to update it.
Secondly, with respect to tools that are being worked on, for example, the cumulative impact tool that you spoke about, I know this is a very high priority. It's not one we're doing ourselves. As I understand it, it's being done by OEHHA. But we need to do what we can to try to get that into some kind of shape that it can be better made available to the public. And if it has to be done in some sort of a rudimentary form or simpler form, I think that discussion should be had.

I think we need to find a process for prioritizing community assessments. We have these tools and we have resources as, for example, with this electric monitoring van that can be deployed where we can go out into an area. Now, we don't want to step on the toes of local districts, understood. It has to be part of the consideration.

But I think we should have a plan on an annual basis with some room in it for responding to crisis that may come up.

But basically, how are we going to affirmatively come out and start doing community assessments and making that information available to people. I think that would go a long way towards helping to create a sense that we really are there doing something of interest and also that it will give us, as Mr. Donohoue indicated earlier, the
ability to utilize the information to validate our models and otherwise update our work.

And then last, but not least, even though no one came here today to criticize us for this, you asked the question where are we being criticized. And I think it's important to recognize that everybody on the Board knows that we were sued over our AB 32 Scoping Plan by a coalition of environmental justice organizations and individuals, some of whom were members of our own Environmental Justice Advisory Committee, not all of them, but a number of them were. And it's clear that at least for those individuals and groups, there was a sense that the Board did not give adequate consideration to the recommendations that that Committee came up with in the course of the development of the Scoping Plan.

Now, I could spend quite a bit of time -- I came in in the middle of all this, so I only know a part of it. But I think I have a pretty good sense of where we went awry in that process. And a lot of it had to do with expectations at the beginning and how ARB staffed or didn't staffed their Committee or what they were able to do on their own. And it really was an illustration I think of some of the things that can happen with an Advisory Committee if you don't recognize at the outset what their objectives are and find a way to work with them
on those objectives.

So we're in a fortunate position at the moment that we seem to be in a period of some calm with respect to litigation, which is great. It's a good thing. But it doesn't mean that we shouldn't think about how to reformulate and re-activate or re-create an Environmental Justice Advisory Committee for ARB. And that, to me, even though AB 32 specifically required the creation of an EJAC, that doesn't mean that it should be limited to only advising by AB 32. I think that was actually part of the problem to begin with was the attempt to take concerns that the community had about sources in their communities and boost stuff onto AB 32, rather than sort of taking a fresh look at the overall health concerns and community concerns. And then where AB 32 is the right tool or part of the tool, use it. But not try to create, re-create a system that wasn't working as well as people wanted it to in the first place.

So on my list of things that I'd like to see going forward would be an indication from the Board that we do want to have an advisory group and direct the staff to come back with some suggestions about how best to do that.

BOARD MEMBER RIORDAN: I think that's a good idea, Madam Chair. And I'll tell you why.
Communication works both ways. We need to hear from our communities as well as they need to hear from us. I think we have a good story to tell. And part of maybe what happened to the Bay Area was they were uninformed, misinformed, whatever. I think we really need to tout some of the good work as well as listen to communities to know where our next steps need to be. And so I'm very supportive of bringing back an Advisory Committee and hoping to do some good outreach. As I say, both ways.

CHAIRPERSON NICHOLS: Any other -- I see heads nodding. Nobody has said absolutely not.

BOARD MEMBER D'ADAMO: I would just say in conjunction with the local air districts, how to --

CHAIRPERSON NICHOLS: Utilize the districts of the communities they already have, so we don't duplicate the wheel, so to speak.

Okay. Are those points acceptable and clear?

EXECUTIVE OFFICER GOLDSTENE: Acceptable and clear.

CHAIRPERSON NICHOLS: Okay. Thank you. Very good. Okay. Then I think this will conclude this item. And we will move on to our legislative update. Thank the staff. I know this was tough to pull together to go back and document or try to document what we've done over a decade and what we've done. There are probably some
pieces missing. But there is a lot of here. And this was
my real interest in the beginning is just to see whatever
happened to this thing.

        Thank you very much, Dr. Alvarado, and others.

While she's coming up, I'm going to introduce our
Legislative Director, who was not here last year. So
she's maybe new to some of you, Jennifer Gress. And I
feel like the guys from Click and Clack, the Tappet
Brothers. Even though Mark DeSaulnier would scream when
he heard me say this, we did steal her from the Senate
Transportation Committee where she appears to have been a
very valuable staff member, because every time I go over
there, I get harassing from people who are mad at us. But
they haven't done anything to lash out yet. So hopefully
we still have good relationships on both sides.

And we asked Jennifer to come and present an
overview of the last year in the Legislature just to give
the Board a flavor for what she's been up to and how the
ARB fairs in the Legislature.

(Thereupon an overhead presentation was
presented as follows.)

LEGISLATIVE DIRECTOR GRESS: Good morning. I'm
pleased to be here today to present the 2011 legislative
summary.

        I started at ARB just a few months ago in mid
June. As Mary mentioned prior to coming to ARB, I served as a consultant with the Senate Transportation and Housing Committee for six years. In that capacity, I worked on legislation related to air quality, goods movement, Proposition 1(b), public/private partnerships, toll facilities, sundry issues related to rules of the road, driver licensing, and most exciting, billboards.

I came to the Legislature in 2004 from gradual school at the University of California Irvine where I earned a doctorate in social ecology. As part of the Senate Fellows Program, I first worked for then Senator Tom Torlakson before joining the Committee in 2005.

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LEGISLATIVE DIRECTOR GRESS: So what occurred this year in the Legislature with regard to ARB?

Nearly 2400 bills were introduced and about 37 percent of those made it to the Governor's desk. The Governor signed 756 bills, which was about 86 percent of the bills that came before him, and he vetoed 128.

Concerns about the economy permeated the atmosphere of the Legislature, and job creation and improving the business climate in California were consistent themes in the legislative debate among both Democrats and Republicans.

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LEGISLATIVE DIRECTOR GRESS: With regard to ARB's legislative activity, over the past year, ARB tracked 235 bills related to air quality and climate change and participated in five special hearings.

By comparison, last year ARB tracked 280 bills and participated in 13 hearings.

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LEGISLATIVE DIRECTOR GRESS: This slide illustrates the number of bills by subject area that we tracked. As you can see, the majority of bills were related to climate change and energy. But a significant area of activity for us occurred in the admin category. This category includes bills that related to Board structure, Board operations, penalties and enforcement, and regulatory reform.

I've been asked how the legislative climate this year is different for ARB from last year. Last year was a very active year with efforts to roll back the on-road and off-road diesel rules. We did not see any serious efforts this year to undo ARB regulation. Where we did see significant activity that could affect ARB rulemaking is in the category of regulatory reform. We tracked 30 bills that affected the rule making process, which is about 13 percent of all bills that we tracked and a very high number when compared to previous years.
LEGISLATIVE DIRECTOR GRESS: This chart demonstrates the change in the number of regulatory reform bills that ARB has tracked over the past 12 years, which is the time period for which we have readily available information on bill tracking.

The premise underlying these bills is that regulation hampers economic activity and job creation, which were pervasive themes across the legislative spectrum given the sluggish economy.

Bills in this category generally sought to do one of three things:

One: Increase the amount of time, in some cases over a year, before the regulation may be implemented following adoption by the Office of Administrative Law.

Two: Require assessments of the economic impact of a regulation on business, with an emphasis on small business.

And three: Require periodic reviews of the impact of regulation subsequent to their implementation.

LEGISLATIVE DIRECTOR GRESS: This year, the Legislature passed and the Governor signed one such bill, SB 617. This bill requires the Department of Finance to adopt a methodology for preparing economic analyses, and
it requires agencies to prepare these analyses when
considering regulation and submit them to Finance for
review and comment.

This bill requires some additional analysis, but
ARB already conducts comprehensive economic analyses of
its regulations, so it will have less impact on ARB than
it will have on other agencies.

Anxiety about ARB regulations was also expressed
through AB 1095, which requires ARB to establish a hearing
Board to hear disputes and requests for variances related
to the AB 32 programs on a facility-by-facility basis.

The Senate Environmental Quality Committee is
currently convening stakeholder meetings to better
understand the problem the sponsor and authors seek to
address.

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LEGISLATIVE DIRECTOR GRESS: Two bills sought to
change the structure of the Board, both of which repeated
past efforts to achieve the same goal.

AB 135 required at least one Board member to have
been a small business owner within the past five years.
At least three of you have experience as a small business
owner, which the Governor noted in his veto message.

The second bill, AB 146, originally added two
members to the Board, one who has climate change expertise
and one who represents an air district in the Sacramento non-attainment area for ozone. To reduce the costs associated with increasing the number of Board members, the Senate Appropriations Committee amended the bill to delete the addition of two members and to require instead that the seat that currently rotates among different air districts alternate between the air district in the Sacramento area and any other district.

Upon passage, the author placed the bill on the inactive file while he sought other avenues to ensure that the Sacramento region is represented on the Board.

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LEGISLATIVE DIRECTOR GRESS: The next area where there was significant bill activity relates to AB 32 programs. While we tracked 84 bills in this area, two stand out.

The first is AB 341, which among other things requires certain businesses and multi-family dwellings to arrange for recycling services by July 1 of next year. As you may recall, ARB staff has been working with CalRecycle to develop a regulation to require commercial recycling. Because this bill contains many of the same provisions as ARB's proposed regulation and it provides CalRecycle clear authority over the program, ARB is not moving forward with its regulation.
A bill you may recognize is SB 535. This bill is a reintroduction of AB 1405, which the Governor vetoed last year. SB 535 sets aside ten percent of AB 32 revenues to fund projects that reduce greenhouse gas emissions, mitigate the direct health impacts of climate change, and provide training for green collar jobs.

ARB is tasked with identifying the most impacted disadvantaged communities and developing a funding plan that includes specific projects every three years.

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LEGISLATIVE DIRECTOR GRESS: Energy was an active area for the legislative office this year, comprising about 30 percent of the bills that we tracked.

Two important issues were the re-authorization of the public goods charge and the renewables portfolio standard. The PGC is a utility surcharge paid by customers, raising about $356 million annually to fund public benefit programs focusing on renewable energy, energy efficiency, and research and development. It sunsets at the end of this year, and eight bills were introduced to reauthorize it and re-cast each of these three program areas.

At the end of session, two bills supported by the administration emerged as the primary vehicles the Senate and Assembly would use to re-authorize the PGC. AB 724
would have re-authorized the PGC and required the Public Utility Commission to develop mechanisms to finance comprehensive energy efficiency programs for residential, commercial, industrial, and public building sectors and to support distributed generation.

The Senate vehicle, SB 870, would have replaced the existing research and development program, which included climate research, with a program of a more narrow scope.

With the Legislature unable to pass re-authorizing legislation, the PUC is conducting a proceeding to continue the fee under its existing authority. An area of further work will involve identifying priorities for the funds that they will secure.

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LEGISLATIVE DIRECTOR GRESS: The Legislature authorized about ten bills related to the RPS.

SB 2X is landmark legislation requiring that 33 percent of the State electricity sales come from renewable sources by 2020. This legislation has a somewhat tortured history.

In 2009, Governor Schwarzenegger vetoed a similar bill and subsequently ordered ARB to develop the renewable electricity standard to achieve the same 33 percent
standard. Senator Simitian re-introduced his legislation in 2010. But on the last night of session, the Legislature failed to take action on the measure.

The Board then adopted the RES regulation on September 23rd, 2010. Those who claim that the third time's a charm might be right in this case, as this year SB 2X was able to secure passage and win the Governor's signature. At that point, you may recall ARB choose not to pursue the RES.

This process has left some unresolved issues, with some issues the subject of cleanup legislation embodied in SB 23. Of relevance to ARB, the author added a provision to the bill prohibiting ARB from adopting a procurement standard for the electricity sector. This bill was held on the assembly floor, but it could move forward next year.

The other RPS bill of interest to ARB is AB 1391. This measure, sponsored by the Los Angeles Department of Water and Power and support by ARB, was an effort to consolidate RPS enforcement over the publicly-owned utilities within the Energy Commission, thereby eliminating the bifurcated and inefficient enforcement role shared between the Energy Commission and ARB under SB 2X. This bill failed passage on the Senate floor.

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LEGISLATIVE DIRECTOR GRESS: On a more positive note, a popular subject for legislation continues to be the Lower Emission School Bus Program. The Governor signed three bills that provide funding to ensure the cleanup of school buses. AB 462 allows an existing two dollar motor vehicle registration surcharge to be used to fund the replacement of CNG fuel tanks and fueling infrastructure in order to extend the life of CNG buses. And AB 470 allowed the same two dollar fee to be used to retrofit diesel school buses.

Finally, SB 570 allows the San Joaquin Valley to use interest revenue from the traffic congestion relief program to fund school bus retrofits and replacements.

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LEGISLATIVE DIRECTOR GRESS: Continuing on the themes of job creation and regulatory reform, two bills that received significant attention in the final days of session involved efforts to streamline the CEQA process for major projects.

SB 292 provides expedited judicial review of any CEQA challenges that arise for a specific stadium project in Los Angeles. The bill maintains the basic requirements of CEQA, but it provides that lawsuits head directly to the court of appeal and limits the number of days the court of appeal and the Supreme Court may take in deciding
the case.

The bill also ensures the mitigation of traffic congestion and air quality impacts by requiring that the project not result in a net increase in greenhouse gas emissions associated with vehicle trips to and from the stadium.

There was significant concern about creating a special process for a single sports and entertainment project, in particular, concern that other similar projects would not enjoy the same benefits and that there would be an avalanche of bills that sought a similar special process in the future.

To address these concerns, Senate democratic leadership crafted AB 900, which establishes a framework for granting a similar judicial review process for other large projects.

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LEGISLATIVE DIRECTOR GRESS: Under that bill, project developers apply to the Governor to certify their project as an environmental leadership project.

One of the requirements that the applicant must meet is a demonstration of the project will not increase greenhouse gas emissions. ARB is tasked with determining whether or not the project increases GHG emissions, and staff is currently working with the Governor's Office of
As I prepared my first legislative summary for ARB, one question that I had was: How is ARB's legislative activity this year similar to or different from previous years? To answer this, we looked at bill trends dating back twelve years to 1999 for which we have readily accessible data.

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LEGISLATIVE DIRECTOR GRESS: We looked at many trends in different issue areas, but four seem worth noting here.

Keep in mind that the data are presented for each two-year session. But because 2001 is the first year of the two-year session, the bars representing 2011 skew the picture somewhat.

This chart simply shows the volume of bills that the Legislative office has tracked each session. As you can see, the number of bills that ARB has tracked has more than doubled from 164 in the 1999-2000 session to 340 in the 2009-10 session.

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LEGISLATIVE DIRECTOR GRESS: This chart makes clear where much of that growth is occurring. The number of climate change bills that ARB tracks increased
dramatically after the passage of AB 32 in 2006.

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LEGISLATIVE DIRECTOR GRESS: In the energy sector, ARB's tracking of energy legislation aligns with the enactment of AB 32 and parallels California's interest in climate change and energy independence.

In the early 2000s, ARB tracked about 20 to 30 bills for air quality impacts associated with power plant siting, distributed generation, and the first RPS. This level of tracking continued until the enactment of AB 32 when climate change was added to ARB's portfolio. Since that time, our tracking of energy has more than doubled to about 70 to 80 bills in the last two sessions, and 70 in 2011 alone.

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LEGISLATIVE DIRECTOR GRESS: The last chart I will show documents the change in the number of goods movement related bills that the Legislative office has tracked. Goods movement is generally a small area of activity for us, so the scale on this chart is different than on previous charts in order to highlight the change over time more clearly. I find this chart to be most compelling of all that I looked at.

Goods movement activity is a direct reflection of economic activity. As the economy and goods movement
activity increased in 2005-2007, the impacts of this activity on air quality and traffic congestion also increased.

And as the chart shows, there is a corresponding increase in the number of bills relating to these issues, which drop off as the economy and goods movement activity slow.

During this same time period, ARB adopted a number of regulations to control diesel emissions from port operations, which have succeeded in reducing emissions from goods movement sources.

Another interpretation of the trend depicted on this chart is that as these regulations reduced emissions in the 2008-2009 and 2010 time frame, there was increasingly less need for legislation in this area. That's a great success for ARB.

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LEGISLATIVE DIRECTOR GRESS: Looking ahead to next year, one of the most significant tasks facing the Legislature will be to appropriate option proceeds generated from the Cap and Trade Program. I also expect we will see bills related to the Cap and Trade Program, in particular, offsets.

Regulatory reform is a questionmark. There are many two-year regulatory reform bills outstanding. Some
see the enactment of SB 617, however, as a tool to ward off further legislative activity in this area. If that, indeed, turns out to be the case, we will not see many of these two-year bills gain much traction next year.

Energy will continue to be a popular area for legislative action, and we will see bills regarding the PGC, RPS, and distributed generation, among other topics.

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LEGISLATIVE DIRECTOR GRESS: One of the things I have appreciated about ARB is the collaborative, team-oriented culture of the organization. The staff that make up the legislative office exemplify those principles. Every piece of work that this office puts out is a product of team work. And I want to acknowledge their outstanding work. Bruce Oulrey, our Chief of Staff; Ollie Awolowo, Ken Arnold, Jake Henshaw, Nicole Sotak, and Steve Trumbly. We also had help from Joe Calavita, Matt Plummer, who was ARB's Executive Fellow, and Candace Vahlsing. They, too, made important contributions to the legislative office this year.

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LEGISLATIVE DIRECTOR GRESS: A copy of the legislative report is included in your packets, and extra copies are available on the table outside the auditorium and via ARB's website.
LEGISLATIVE DIRECTOR GRESS: I'd be happy to answer any questions. Thank you.

CHAIRPERSON NICHOLS: Thank you, Jennifer. That it was a Really comprehensive report.

Any questions? Mayor Loveridge?

BOARD MEMBER LOVERIDGE: Thank you. This is a more a prospective question. I mean, I understand the importance of your office in terms of monitoring being a resource, occasionally playing defense.

And maybe this is out of order. But what is our offensive game for 2012? That is, not watching what the Legislature does, but do we have an offensive game?

LEGISLATIVE DIRECTOR GRESS: Well, I think cap and trade is obviously a huge area right now within ARB. We just adopted a final regulatory package, and the Legislature is now grappling with what exactly is cap and trade.

So one area where we have been and will continue to exert a lot of effort is in educating members and staff in the Legislature about what the Cap and Trade Program is about. So in terms of an offensive approach, I would just say it's more along education about what the program is.

CHAIRPERSON NICHOLS: I think though the question may regard any bills that we might be sponsoring or trying
to generate and how that process works. Is that your
question?

LEGISLATIVE DIRECTOR GRESS: Oh, okay.

Well, we are considering a couple of different
legislative proposals. And those are going through the
Governor's -- through the normal process of determining
legislation and determining what the Governor wants to
endorse this year. And --

BOARD MEMBER LOVERIDGE: It's okay. So if we
don't have offensive legislative --

CHAIRPERSON NICHOLS: I think it's fair to say
ARB is not putting forth any major policy initiatives,
that the bills we're proposing are what we think are
important fixes of a technical nature to the way we do our
business, which is pretty consistent what where we are in
the legislative process right now.

But we have been asked by the Governor's office
to participate in a couple of his areas of priority,
helping to develop what he's going to be putting forward
in January. And that is not just about revenue flow, but
also some of his energy initiatives.

I think what Jennifer said that I really want to
underscore is that when I came back to the Air Resources
Board in 2007, there had been a sea change in terms of
ARB's role within the administration. It was always
recognized as an important and potentially difficult agency because of the political importance of air pollution in the state. But we are now officially an energy agency because of AB 32. And, therefore, we are seen as being one of the handful of agencies that actually have to be involved in setting energy policies in the state of California, whether we looked or not. And mostly we do.

But it still has been an area where we've had to really up our game in a lot of areas related to fuels, thanks to the low carbon fuel standard and others and beyond transportation on electricity policy as well. So it's been an interesting change. Okay.

BOARD MEMBER SPERLING: One particular item I was curious about, is the Legislature getting involved in offsets. What is that about?

LEGISLATIVE DIRECTOR GRESS: Well, right now, the legislative office is receiving a lot of questions about offsets: What are they? What are the protocols? And that's sort of an indication that offices are starting to think -- this is the time of year when they're developing legislation for next year. So this kind of is a harbinger of things to come potentially.

But in addition, we have three bills outstanding that in some way deal with offsets. Either they set
standards for offsets or they sort of advance a new kind of protocol. So those are kind of the areas that we're seeing.

BOARD MEMBER SPERLING: It seems like this is a case of where we want to be in control because this should be a fairly technical process developing the criteria, creating the framework, not -- nothing you said and nothing I can imagine lends itself to a legislative process.

So may be that suggests that we should be a little more activist on this in creating some kind of stronger broad framework and principles or whatever. I know we're doing that. But if they're thinking that they need to intervene, maybe we need to up the ante a little bit there.

CHAIRPERSON NICHOLS: That's good advise.

LEGISLATIVE DIRECTOR GRESS: Thank you.

CHAIRPERSON NICHOLS: Other -- yes.

BOARD MEMBER YEAGER: Do you have a sense that with the defeat of Prop. 23 and with the election of our Governor and growing support for policies dealing with climate change that that is showing up in the type of legislation that's being proposed and rather now rather than -- which might explain why there's fewer climate bills and more regulatory bills?
LEGISLATIVE DIRECTOR GRESS: I don't know that we can say there are fewer climate bills right now. The chart you saw only had one year of data for a two-year session. But we certainly didn't see any bills serious bills that sought to roll back anything.

I think the defeat of Prop. 23 gave a lot of ARB's allies in the Legislature a clear argument they can use against threats to AB 32. So I do think it was very helpful.

BOARD MEMBER YEAGER: Also could you talk about the job creation bills and whether those are sort of large in scope or what sort of the general nature there as we try to work on green jobs and to try to sort of infuse the economy as well.

LEGISLATIVE DIRECTOR GRESS: I'm not clear exactly what the status of the job creation bills are. I know a lot of them were focused on the clean energy area, the PGC. And, you know, those didn't move forward last year. So what the Governor is thinking for the coming year, I'm not sure.

EXECUTIVE OFFICER GOLDSTENE: And also the bills to expedite permitting, like SB 900. That was part of that kind of thing. Anything that could be done to speed up permitting process would fall under that category.

BOARD MEMBER YEAGER: Thank you.
CHAIRPERSON NICHOLS: Okay. Thank you. Seeing no more questions, really appreciate the report. And we will look forward to next year's.

We have one last report. It's a quick one. I think it's important. We want to talk about the fact that ARB has been working for some time now to try to both improve and market if you will or explain our compliance policies that make the whole program of the enforcement more transparent.

The Enforcement Division staff held a workshop in October of 2009, which led to the publication of a penalty matrix and written guidance on several aspects of ARB's enforcement process. The staff, as some of you will recall, reported on their progress at the January 28th, 2010, Board meeting. And that time, they committed to developing a written penalty policy. Later that year, the California Legislature enacted SB 1402, which also requires the publication of an ARB penalty policy.

After extensive outreach efforts, the policy that is being presented today was finalized. The policy has now been published and has been discussed in the author's office and others, but thought it was important that there be an opportunity for the Board to hear a brief presentation about how it is that we believe this will strengthen and add transparency to ARB's enforcement
program, as well as improve the overall levels of compliance leading to cleaner air for all Californians.

I think it's also important to note that at the same time the penalty policy was being developed, ARB's Enforcement Division undertook a management review that has resulted in some management changes to overall improve the allocation of resources, manage resources within the division. And also that this division has been partnering very successfully with local air districts to maximize the deployment of our air quality enforcement assets statewide. And although that's not part of the policy, we've asked the staff to comment briefly on those issues as well.

Would you like to introduce this item?

EXECUTIVE OFFICER GOLDSTENE: Sure. Thank you, Chairman Nichols.

As you've noted, we've undertaken extensive outreach efforts in developing the penalty policy, including having many public workshops and face-to-face meetings with stakeholders.

The penalty policy has increased the transparency of our enforcement program, and we're happy to present it to you today.

In addition to describing the penalty policy, staff will briefly discuss the success of an internal
division review, which let to some organizational changes that should produce efficiencies in how we manage the enforcement program at ARB. Staff will also provide perspectives on the successful ongoing enforcement partnerships we foraged with the local air districts.

Kirk Oliver, Senior Staff Counsel, will give an overview. Jim Ryden, Chief of our Division, will brief you on the management review, and then we'll be available to answer any questions. Kirk.

(Whereupon a slide show presentation was presented as follows)

SENIOR STAFF COUNSEL OLIVER: Thank you, Mr. Goldstene.

It's a pleasure to be here today and to brief you all on ARB's penalty policy.

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SENIOR STAFF COUNSEL OLIVER: The penalty policy concerns a group that is seldom seen at ARB Board hearings, the ARB Enforcement Division. The Division is quite successful, but the penalty policy doesn't quite tell its full story. I'll take a moment to share some of that story with you before I brief you on the policy.

Who are the people of the ARB Enforcement Division? Well, first and foremost, they're air quality professionals, scientists, engineers, automotive
specialists, people from law enforcement, students and managers, all of whom have dedicated their careers to achieving ARB's mission out in the real word. What do they do?

At the direction of our Executive Officer, Mr. Goldstene; our Chief Counsel, Ms. Peter; our Division Chief, Mr. Ryden, and our division managers, they walk the line at truck fleets. They open the hoods on diesel trucks. They climb up smoke stacks and down into storage tanks. They board ships at the ports. They review reams of documents and hard drives full of digital information. And they teach the community how to comply with the laws that you adopt here.

They work with every division at the ARB, and with every air district in California, as well as with the national air quality regulators. They do what it takes to make sure that the things that get accomplished in this hearing room get accomplished in practice.

Are they good at what they do? The record speaks for itself. The numbers of violations they correct, the penalties they collect, and the impact they have on overall compliance and air quality make ARB's Enforcement Division one of the most effective environmental groups going.

ARB enforcement is known throughout the state,
the nation, and the world, and for good reason. And the
Enforcement Division never stops trying to do better.
That's what brings Mr. Ryden and me here today to talk to
you about the penalty policy and the other initiatives the
division has undertaken to improve itself.

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SENIOR STAFF COUNSEL OLIVER: The take away
message we'd like you to have regarding the penalty policy
is four-fold.

First of all, the policy increases the
transparency of ARB's enforcement program and will elevate
overall compliance.

Second of all, ARB's enforcement program is
designed to obtain immediate compliance, ensure a level
playing field, and stop future violations. Coincidentally
with adopting the policy, the ARB Enforcement Program is
effective, fair, and well regarded and SB 1402
memorialized ARB practices and added some other
requirements to what we do.

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SENIOR STAFF COUNSEL OLIVER: Now, there are
general policy principles that we follow that are laid out
in the policy.

First of all is deterrence. We want only to
deter the individual violator from continuing to violate
the law, but other potential violators as well. And we also when we craft a penalty is seek to deprive the violator of any economic benefit they might have enjoyed through their violation.

The second policy principle is fairness. And that requires us to be consistent in our results and as well to be flexible in the results that we craft in recognition of differing individual circumstances that apply in different violations.

And then third, swift resolution of both environmental problems and pending cases. This limits environmental harm, promotes good environmental practice, and enhances deterred effects. We undertook a rigorous public outreach process to develop the policy. And starting in 2009, we initiated that process primarily by holding a workshop, a public workshop, to solicit comments on how we might do our job better.

In 2010, in January, we reported back to the Board and committed to preparing a penalty policy for you. And that commitment was memorialized in Senate Bill 1402. In 2011, we released the penalty policy for public comment in two rounds, February and July. We held public workshops and multiple face-to-face meetings with stakeholders in this time period as well. And then released the policy as final in September of 2011.
SENIOR STAFF COUNSEL OLIVER: An overview of the policy shows that it has three main components. First, following the general policy principles I outlined, ARB's Enforcement Program is designed to obtain immediate compliance, ensuring a level playing field, and stop future violations.

Secondly, penalties are based on an evaluation of the facts of the case, the applicable statutes, which establish the maximum penalties, court decisions, other case settlements, enforcement goals, and relevant policies both ARB and at the Cal/EPA level.

Finally, in addition to publishing the penalty policy, Senate Bill 1402 requires ARB to provide certain penalty information in Notices of Violation and settlement agreements and published the settlement agreements on ARB's web page.

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SENIOR STAFF COUNSEL OLIVER: In conjunction with the penalty policy and this additional information that is now available on our web page, it adds another dynamic of transparency to our enforcement program, which we think will strengthen it and add to the overall compliance rate.

I'd like to introduce Mr. Jim Ryden, the Chief of the Enforcement Division, to take you through the program
ENFORCEMENT DIVISION CHIEF RYDEN: Good morning, Board members.

About a year ago, Mr. Goldstene came to me and said, you know, it's probably not a bad time to do a program review of the Enforcement Division. And I agreed. I thought it was a really good idea to do it at that time.

The Enforcement Division had been organized under a program structure for about ten years. Stationary source functions were all under the stationary source branch. Mobile source functions with all under the mobile source branch. Training and outreach functions were all under the training branch.

Subsequent to that time in the last ten years, our responsibilities have increased. The enforcement division now is responsible for 60-plus programs. When I became the Division Chief in 2002, we were doing about 1500 enforcement actions a year. We now do about 4,000, which means we resolve about two every hour of every working day.

The structure we were currently under was rapidly becoming unworkable. I had two of the largest branches at the Air Resources Board. I had two branches that had 60
people reporting to a Branch Chief.

So with the concurrence of Mr. Goldstene, we engaged a consultant who came in and worked with us and took a really hard look at what we do and how we do it. And one of the really good reasons that we're doing it is enforcement is a scarce resource. And it's also, given the budget situations that the State is facing, not likely to increase our resources. So we had to find ways to be more effective and more efficient. What we're going to do is propose a reorganization. We're reducing the span of controls of various sections and branches down to the 25 to 30 people in branch. That allows the management to effectively manage the case load and the resolution process. We're going to expand to four branches to what we now have is two, plus another branch.

Other improvements that we're going to do is expand the duties of the field reps that do more than just smoke inspections, but they can do out there and collect fuel samples, they can inspect cargo tanks, and do a lot of the inspection process that doesn't require an air pollution specialist level of skill.

Other improvements we're looking at is we're going to more efficiently and effectively use our laboratory resource. Right now, we have some backlogs especially in the consumer products area. And really with
the reorganization and how we acquired samples in that, we can more effectively use that resource so that we don't have these backlogs.

One of the big issues that came out in the enforcement review was that we needed expanded, more sophisticated data bases. This is something actually we had done over the years on an ad hoc basis to deal with the various programs that we have. We have to have a more unified system so that we can more effectively manage and track the increased number of cases that we're dealing with.

One of the other things that we're going to do too is increase our temporary reporting functions. It will take a while to develop the data bases to the level that we need them to do. So we're going to devise some practices so that, in fact, the Managers, the Branch Chiefs, and I can more effectively monitor what we do. We have a reporting process now. But they are somewhat antiquated.

So the other important thing is we're going to implement these recommendations as quickly as possible because we have an important job to do and we have to make sure of the fact we can do it effectively and fairly.

The other thing we wanted to talk to you about today was to give you a little update on our relationship
not only with the air districts, but with the enforcement folks at Region 9, the federal motor vehicle enforcement folks. We work with all these groups, but I'm going to highlight the CAPCOA relationship.

When I became the Division Chief, we actually didn't have a very effective partnership with the air districts. We were able to resolve the issues that we had and the differences. And even though my role is technically overnight, what I have with the districts is a full effective cooperative partnership. We're equal partners in what we do. We all came to the conclusion we're all in this together and we'll work together.

How do we do that? One thing we do, we offer training to the air district personnel. We have a comprehensive training program that has hundreds of courses. We regularly train thousands of people. Literally, it's like 8 or 9,000 people a year. That includes not only the air districts, it includes people from other states. It includes a lot of industry.

One of the things we've done in these hard economic times is we've waved any of the tuition requirements. We want people to come to the training programs. Training programs for industry is an effective and actually cost effective cheap way to get compliance. I would much rather discuss enforcement issues with
someone in the training program than across the table in a
settlement conference.

The other things we do frequently is we do joint
investigations, not only with CAPCOA air districts, but
with the Feds, too. And what do we do there? Well,
frequently we work together -- really, what we do is
supplement what the air districts can do. I have greater
resources than most of the air districts. I have greater
assets, like surveillance, than the air districts do.
Sometimes they just need an additional support to overcome
what can be local issues with certain enforcement actions.

Other things that we're doing to expand our
footprint and actually put more boots on the ground is
developed MOUs with some of the air districts so that, in
fact, they can do some of the inspections that we need to
have done.

The first one we had out of the box was with the
San Joaquin Valley Air District. And fundamentally what
that is they've taken over a lot of our diesel idling
inspections. They're somewhat time consuming. They're
usually pretty easy to do. The air districts are out in a
lot of those areas anyway. So it's very economical and
efficient way to deal with things.

One of our star programs is with the Bay Area Air
Quality Management District. We have a comprehensive MOU
with the air district to do joint inspections at the ports. And they are not only doing the simple idling inspections, they're doing drayage truck inspections and enforcement. They're starting oceangoing vessel inspections, sampling fuels and that as required by the oceangoing vessel regulations.

We also engage with them regularly on vapor recovery. Vapor recovery once you start is something you can't get away from. In 2009, the Enhanced Vapor Recovery Program compliance dates came into being. What that required the 10,000 gas stations in California to do was upgrade their equipment to make it more effective, durable, and efficient. It was quite a task to do, because at that time, given the economic downturn, there wasn't a lot of money available to finance the upgrades. So we had to come up with the districts with innovative solutions to achieve the compliance without materially harming the mom and pop operations of the gas stations.

How do we do this? Well, we came up with legal devices to put them on the road to compliance, like compliance agreements. Some of the districts went via abatement orders, which gave them compliance requirements and compliance dates.

And the important part of the program and the districts agreed, so we suspended penalties for a great
deal of time to allow 95 percent of the stations to come into compliance. Once we got to the 95 percent, there were some stations that just weren't going to do it. We instituted a penalty so that, in fact, the people who spent the money to comply weren't disadvantaged by the people who frankly didn't do it.

We're also in the process of working on greenhouse gas programs with the air districts. One in particular is the refrigeration management enforcement program. Refrigeration management facilities have about 40,000 facilities in the state. And honestly, there is no way that this Enforcement Division of the Air Resources Board could visit all those, even if we dedicated everybody to do it every day.

But the air districts are frequently out in those locations and in a variety of places like grocery stores and things like that. Places where the air districts do permit inspections anyway. We're in the process of developing the MOU so they can actually assist us in making sure that people are complying with the programs.

So with that, I'm going to send it back to Kirk.

SENIOR STAFF COUNSEL OLIVER: So in conclusion --

SENIOR STAFF COUNSEL OLIVER: -- we'd like to reiterate that ARB regulates activities that impact air
quality to ensure the health and safety of all Californians.

But the penalties we seek are a tool to achieve this and must take into consideration all relevant circumstances, including all the factors that are specified in the Health and Safety Code. And the penalty policy incorporates those concepts and will inform the public of how ARB penalties are determined and practiced.

Now, the policy was developed in an open, public process and is available on ARB's website. And we included the link there. ARB's enforcement program review will maximize the use of ARB's scarce enforcement resources. And ARB is partnering with the air districts to leverage enforcement assets statewide through a series of MOUs, refrigerant management, vapor recovery, training, and also very importantly, a deep and close relationship with the California Air Pollution Control Officers Association.

So if you have any questions, we'd be more than happy to answer them for you here today.

CHAIRPERSON NICHOLS: Are there any questions about the policy? I think it's all pretty straight forward.

Obviously, you have not succeeded in making everybody happy according to correspondence we have here
today. We have a letter from CCEERT indicating their objections to what you adopted. I looked through it briefly. But I don't have any -- I don't think there is much point in engaging at the moment, other than saying I hope you plan on some sort of a response. I think it's going to be necessary to respond to the letter.

SENIOR STAFF COUNSEL OLIVER: Thank you very much.

And I did a cursory review of the comment that we received, and it references a prior comment that we actually have a published response to as well as to a host of the other comments that we received in the process. That's also available on our website at the same place where the penalty policy is. But we will make sure that we do a response directed specifically --

CHAIRPERSON NICHOLS: Well, since the letter was addressed to the Board members, I think it would be good to also copy the Board on your response.

SENIOR STAFF COUNSEL OLIVER: Absolutely. We will prepare a response and copy each and every Board member.

CHAIRPERSON NICHOLS: We do have one person who signed up to testify on this item as well, Chris Shimoda from California Trucking Association.

MR. SHIMODA: Madam Chair, thanks for the
opportunity to speak today and to staff.

I apologize for being late to the party, but you
guys have been keeping us pretty busy. This is my first
opportunity to engine gauge here.

Number one, just wanted to offer up the comment
that the penalty policy does represent a step forward in
transparency in the enforcement process. I just wanted to
compliment staff there. There is some information in this
penalty policy that we've asked for for some time. That's
all included here. So can stop bothering Paul for that
information now.

The one critical or somewhat critical comment I
wanted to offer today was the issue of administrative
penalties where no emission impact actually occurs, an
example of which would be an easy one. IDNs affixed to a
TRU where the TRU may actually be in compliance, but some
of the labeling requirements were not met.

And I wanted to go back and speak to the eight
factor test that Senator Dutton's bill lays out for the
Board where the first two speak to the extent of harm and
magnitude of excess emissions associated with a violation
and just have the Board consider maybe memorializing a
process whereby regulated party that doesn't actually
increase the emissions of the state, but just have some
issue with their administrative process, can get into
compliance before a monetary penalty is assessed. I think to some extent that's already occurring with enforcement. But just to memorialize that particular process in the penalty process I think would be a value to the community. That's my comments. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Any comment or response?

SENIOR STAFF COUNSEL OLIVER: That echoes a comment that we received on the penalty policy itself and represents one of the areas in which we did change the penalty policy to make clear that we won't take substantial penalties in cases where there was a true paperwork violation that occurred.

However, there are other types of violations that some people might regard as paperwork or inconsequential that would threaten overall compliance with an important regulatory program. And in those instances, we reserve the right as the bill and the factors in the Health and Safety Code entitle us to do to take more than an inconsequential penalty.

CHAIRPERSON NICHOLS: I thought you did a really good job of responding to the comments, on making that distinction. I think it's an important one. One person's trivial paperwork violation is another person's flagrant disregard for the entire regulatory program. So sometimes
these things really do matter. So I think that's true.

Any other questions or comments from the Board?
If not, thank you very much for coming and presenting.
Appreciate it.

And that concludes our business for today. We do not have anybody signed up in the general public comment period. So I think we are ready to adjourn. If anybody objects? We're adjourned. Thank you.

(Whereupon the Air Resources Board adjourned.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, 2011.

TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277