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MEETING  
CALIFORNIA AIR RESOURCES BOARD

CALIFORNIA AIR RESOURCES BOARD  
HEARING ROOM  
2020 L STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 8, 1993  
9:40 A.M.

Nadine J. Parks  
Shorthand Reporter

## MEMBERS PRESENT

Jananne Sharpless, Chairwoman  
Eugene Boston, M.D.  
M. Patricia Hilligoss  
Betty Ichikawa  
Jack Lagarias  
Barbara Riordan  
Harriett Wieder  
Andrew Wortman, Ph.D.

Staff:

James Boyd, Executive Officer  
Mike Scheible, Deputy Executive Officer  
Michael Kenny, Chief Counsel

Peter Venturini, Chief, Stationary Source Division  
Don Ames, Assistant Chief, SSD  
Bob Fletcher, Chief, TACCB, SSD  
Dan Donohoue, Manager, TAS, SSD  
Alexander Santos, Staff, SSD  
Kirk Oliver, Staff Counsel

Genevieve Shiroma, Chief, TACB, SSD  
Janette Brooks, Manager, Special Projects Section, SSD  
Roger Korenberg, Staff, Special Projects Section, SSD

Terry McGuire, Chief, Technical Support Division  
Rich Bradley, Chief, AQDB, Technical Support Division  
Debbie Popejoy, Manager, AQAS, TSD  
Larry Larsen, Statistical Methods Analyst, TSD  
Marci Nystrom, Staff, TSD  
Bob Jenne, Staff Counsel

Also Present:

Dr. Carol Henry, Director  
Office of Environmental Health Hazard Assessment

Dr. George Alexeeff  
Office of Environmental Health Hazard Assessment

Patricia Hutchens, Board Secretary  
Bill Valdez

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## AFTERNOON SESSION

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CHAIRWOMAN SHARPLESS: If I can have your attention, I'd ask you to take your seats, and we'll start on our next item.

Well, after this morning's discussion, we are still talking about the toxics program, only this time we're shifting to how we pay for these programs and how we assess the fees.

So, we will be considering amendments to the air toxics hot spot fee regulation in this item. These are amendments to the air toxic hot spot fee regulation for fiscal year 1993-94. The Hot Spot Act requires California industries to inventory their toxic air emissions, to notify the public health risk -- if they happen to be significant -- and because of recent changes in the law, to reduce these significant emissions.

The Act also places extensive responsibilities on local air districts, the Office of Environmental Health Hazard Assessment, and the ARB. The Legislature established the Hot Spots Act as a fee-supported program. The Act is clear that the revenues needed by public agencies to implement the program are to be provided by the industries that emit the toxic air contaminants.

As the Board is well aware, we've made some very

1 extensive changes to the hot spots program last night --

2 (Laughter.)

3 CHAIRWOMAN SHARPLESS: Not last night. Last  
4 month, when we reviewed the reporting requirements. We  
5 approved substantial streamlining of the toxics emission  
6 inventory reporting requirements. And although these  
7 changes did not involve the fees that are paid, they will  
8 result in dramatic reductions in the cost that industry must  
9 bear over the next couple of years.

10 I know that some industries are concerned that  
11 today's proposal will increase their fees. As part of their  
12 presentation, staff is prepared to present the net effect  
13 that both last month's actions and today's proposal would  
14 have on the total cost of the hot spots program.

15 In addition, the staff will project how costs will  
16 be reduced for the program over the next five years.

17 Before I turn the presentation over to Mr. Boyd,  
18 I'd like to recognize my colleague, Dr. Carol Henry, and  
19 thank her for taking the time. I saw her in the audience  
20 this morning, and she's back again this afternoon. She is  
21 the Director of the Office of Environmental Health Hazard  
22 Assessment and a wonderful addition to the California  
23 Environmental Protection Agency, and we're very happy to  
24 have you here today, Dr. Henry.

25 Mr. Boyd, would you like to carry on with the

1 presentation?

2 MR. BOYD: Thank you, Chairwoman Sharpless,  
3 members of the Board.

4 As you noted, Chairwoman Sharpless, the purpose of  
5 the fee regulation is to provide revenues and to equitably  
6 allocate the costs the districts, the Board, and the Office  
7 of Environmental Health Hazard Assessment incur because of  
8 the statutory mandates of the hot spots program.

9 The regulation that we have before you today sets  
10 forth the amount each district is to remit to the State to  
11 recover costs. The regulation also establishes the fee  
12 schedules for those 12 districts who requested to be  
13 included in the State regulations. The others will process  
14 their own fee regulations.

15 As the Board members may recall, this Board first  
16 adopted a regulation to recover the State and local  
17 government costs of the program in 1988. We have amended  
18 the fee regulation annually to reflect changing costs and  
19 changes in the number of facilities that are included in the  
20 program.

21 Now, as you directed the staff -- and as now  
22 frankly, required by the law -- the proposal before you  
23 today shifts the basis for the fees away from criteria  
24 pollutants to a toxic risk and a program workload basis.

25 In addition, the proposed regulation will generate

1 additional revenues that are essential to implementing new  
2 provisions of the hot spots program. Both of the major  
3 changes we are proposing today are in response to recent  
4 legislation. The first major amendment is to increase fees  
5 to provide revenue to fund the legislatively mandated  
6 expansion of the program.

7 As you know, last year, at the fee regulation  
8 hearing, I stated to you that we expect the cost of the  
9 program to stabilize for fiscal year 1993-94. Had the  
10 program not been changed by the Legislature, this would have  
11 been the case.

12 However, Senate Bill 1731 by Senator Calderon was  
13 enacted at the end of the last legislative year, and it adds  
14 substantial requirements to the air toxic hot spots program.

15 These new elements generate additional program  
16 costs, thus necessitate additional fee revenue. This was  
17 known to the Legislature when it passed the bill and it was  
18 known to the Governor when he signed the bill into law.

19 Senate Bill 1731 adds a major new component to the  
20 program that requires facilities with significant risk to  
21 prepare plans and carry out measures to reduce this risk.  
22 The ARB is required to assist smaller businesses in  
23 preparing these risk reduction audits and plans.

24 We anticipate developing several industry-specific  
25 audit and plan guidance documents to fulfill this

1 requirement.

2 And it's our feeling that this work will result in  
3 substantial cost savings to businesses who benefit from the  
4 guidance that we develop.

5 Senate Bill 1731 also requires the Office of  
6 Environmental Health Hazard Assessment to adopt  
7 comprehensive, new risk assessment guidelines. And you  
8 certainly heard plenty about that this morning.

9 These guidelines will address, hopefully,  
10 uncertainty in risk assessment. Now, to comply with these  
11 new mandates, an increase in program cost was included in  
12 the proposed Governor's Budget. However, because of the  
13 current economic climate and in response to comments  
14 received about this climate, we are proposing a reduction of  
15 \$457,000 from the increase included in the Governor's  
16 Budget.

17 As Chairwoman Sharpless mentioned, we have also  
18 developed a five-year program, or a projection of the  
19 program, that proposes a substantial reduction in the State  
20 hot spot resources over the next five years.

21 The second major change being proposed involves  
22 changing the basis for calculating fees from the criteria  
23 pollutant inventory that the law originally established to  
24 one based on toxic releases and facility risk priority.

25 This change is required by Senate Bill 1378 by

1 Senator McCorquodale. The fee basis you are considering  
2 today is the result of a detailed and thorough development  
3 process which we began in May of last year. We have worked  
4 very hard to develop a proposal that is equitable for the  
5 sources, that is workable for the districts, that complies  
6 with Senate Bill 1378, and hopefully allows a smooth  
7 transition away from the existing system.

8 We have held seven public workshops, met with all  
9 Cal-EPA agencies, met with representatives of the districts,  
10 held four meetings with the Fee Regulation Committee, and  
11 met numerous times with affected industries and affected  
12 industry associations.

13 And not unlike this morning's item, these issues  
14 really are almost in tandem. This also has been subjected  
15 to perhaps the most exhaustive public consultation process  
16 that I've experienced.

17 Finally, to follow up on Chairwoman Sharpless'  
18 remarks on the total cost of the hot spots program to  
19 California's industry, I'd like to note that California  
20 industry will see much lower costs -- we think in the order  
21 of a \$12 million reduction per year -- to comply with the  
22 hot spots program beginning in 1994, as compared to 1993.

23 To put the proposed cost increase into  
24 perspective, sources in aggregate should realize a savings  
25 that is about 10 times the amount of the cost increase.

1 Now, with that, I'd like to turn the program over  
2 to the staff to make the detailed presentation. That will  
3 be done by Mr. Roger Korenberg of the Special Projects  
4 Section of our Toxic Air Contaminant Identification Branch.  
5 And with that, Mr. Korenberg, if you would.

6 MR. KORENBERG: Thank you, Mr. Boyd.

7 Madam Chairwoman and members of the Board, my  
8 presentation today will discuss the staff's proposal to  
9 amend the air toxics hot spots fee regulation for fiscal  
10 year 1993-94.

11 For today's presentation, I will first give a  
12 short overview of our proposal and briefly review the  
13 program areas of responsibility for the Air Resources Board,  
14 the Office of Environmental Health Hazard Assessment, or  
15 OEHHA, and the local air districts.

16 Next, I'll move on to the major changes and other  
17 amendments which are contained in our staff report.

18 Following that, I'll discuss the program costs for  
19 the coming fiscal year and our future plans. I will  
20 conclude with the additional modifications we are proposing  
21 today.

22 Beginning with an overview of our proposal, then:  
23 We are proposing to change the method used for calculating  
24 fees from criteria pollutants to a method based on toxics  
25 risk priority. The method is also workload related.

1           We told this Board last year that State program  
2 costs were stabilizing and we did not expect any cost  
3 increases, because the program was peaking. However, Senate  
4 Bill 1731, Calderon, was passed late last year. And it  
5 imposes significant new mandates on the program which  
6 require additional resources.

7           We believe that these new requirements are  
8 important, because they focus on the pollutants and  
9 facilities that pose the greatest risk to public health.  
10 Under the new program requirements, these facilities must  
11 reduce their risk. In addition, OEHHA's required to address  
12 the uncertainty in risk assessment.

13           As you just heard in the last item, the  
14 uncertainty in risk assessment is a key concern for  
15 industry. Both of these new requirements will produce  
16 tangible results. Ultimately, the public, as well as  
17 industry, will benefit.

18           To fulfill those requirements, the State signed  
19 budget includes a \$1.9 million increase for the program,  
20 which would bring the State portion of the program to \$5.6  
21 million.

22           However, we are sensitive to the current economic  
23 conditions. As a result, we are proposing an immediate  
24 reduction of approximately one-half million in the proposed  
25 increase, which will bring the increase to \$1.4 million.

1 This will mean certain program requirements will not be  
2 addressed this year, and the State program would be reduced  
3 to \$5.1 million.

4 Even with this increase, district costs are two-  
5 thirds of the total implementation costs, and State costs  
6 are one-third.

7 We also examined program requirements for the next  
8 five years. We are committed to scaling back the program  
9 as the program needs diminish. And we have a five-year  
10 resource plan that we will present later.

11 The plan shows a reduction in overall ARB costs of  
12 about 40 percent, and also about 40 percent for OEHHA, which  
13 would reduce the total program cost in five years by about  
14 2.1 million. Without any further legislation, we project  
15 the costs to go down.

16 Ultimately, industry will pay less this year  
17 and in subsequent years for this program. Even though State  
18 costs are increasing this year, the total cost to industry  
19 will go down immediately as a result of the emission  
20 inventory changes this Board approved last month.

21 I will describe these points in more detail in  
22 this presentation.

23 Before describing the specific amendments, I would  
24 like to briefly outline the program activities. Previous to  
25 this year, the program had three basic program elements --

1 emission inventory, risk assessment, and public  
2 notification.

3 As we noted previously, Senate Bill 1731, added  
4 new requirements in the risk assessment area -- shown in the  
5 red box on the slide -- and added a fourth program element,  
6 risk reduction, shown in the green box.

7 In the risk assessment area, OEHHA evaluates the  
8 health impact of the assessment. Senate 1731 now requires  
9 OEHHA to adopt new statewide facility risk assessment  
10 guideline, following a public review process.

11 Senate Bill 1731 also added risk reduction  
12 requirements to the program. The bill requires that  
13 facilities, whose emissions of toxics pose significant  
14 potential health risks, to conduct a toxic risk reduction  
15 audit. Based on the audit, they must also develop a plan  
16 that uses risk reduction measures to reduce the risk below  
17 significant levels defined by the districts.

18 The ARB is required to assist smaller businesses  
19 in complying in complying with the risk reduction audit and  
20 plan requirements of Senate Bill 1731.

21 The ARB would develop risk reductions guidelines,  
22 each covering a different small business category.

23 I will now discuss the amendments we are asking  
24 you to consider today. The first major amendment that we  
25 are proposing is to move away from fees based on criteria

1 pollutants to fees related to toxics. This is in response  
2 to the Board's direction as well as our intent.

3 We now have enough program information to propose  
4 this change. Recent legislation, Senate Bill 1378,  
5 McCorquodale, also requires us to move in this direction.

6 We are proposing a significant change in the  
7 method we use to calculate fees and distribute State costs.  
8 Since the beginning of the program, distribution of State  
9 costs and fees were based on criteria pollutant emissions.  
10 Under this method, emitters of high amounts of criteria  
11 pollutants paid the highest fees without regard to their  
12 toxic emissions.

13 However, we now have sufficient information to  
14 change the fee basis. We will continue to reevaluate the  
15 method and change it in future years as necessary.

16 We were directed by this Board in June, 1991 to  
17 consider an alternative basis for fees for fiscal year 93-  
18 94. In addition, in 1992, the Hot Spots Act was amended by  
19 Senate Bill 1378. This bill requires the ARB to adopt a  
20 regulation that bases fees on toxic emissions and facility  
21 risk priority to the extent information is available. Our  
22 proposal for a new fee basis is the result of a thorough  
23 development process, which began last year.

24 As stated by Mr. Boyd, we have worked to develop a  
25 basis that complies with Senate Bill 1378, allows a smooth

1 transition, and we believe is fair and equitable. We've  
2 involved the districts, industry, and the general public  
3 throughout our process.

4 Our proposal today is a result of compromises to  
5 make it workable across diverse districts. Our approach  
6 balances the requirements of Senate Bill 1378 with facility  
7 complexity. We call this a program category approach.

8 We developed several program categories in our fee  
9 basis which parallel the program elements I covered earlier.  
10 In calculating fees, we apply several resource indexes to  
11 balance workload or complexity of the facility with the risk  
12 priority.

13 As shown on this graph, there are six major  
14 program categories under this approach: survey,  
15 industrywide, plan and report, risk assessment,  
16 notification, and audit and plan.

17 These categories correspond to the program  
18 requirements and risk priorities outlined in the Act. The  
19 first three categories -- survey, industrywide, and plan and  
20 report -- refer to emissions inventory categories. The fees  
21 are the lowest for the emissions inventory categories and  
22 increase with risk priority and workload. Ninety-eight  
23 percent of the facilities fall in the inventory categories.

24 We believe that most small businesses fall into  
25 the first two categories -- survey and industrywide -- and

1 would pay the lowest fees. Depending on a facility's  
2 status, it is placed into one of these categories and pays  
3 the fee associated only with that category.

4 The proposed method of allocating fees has  
5 benefits over other methods. Toxics emissions and risk  
6 priority are considered in the method. The method is also  
7 related to the proportion of work the State does for  
8 individual districts and the amount of work the districts do  
9 for the facility categories.

10 We believe the method is equitable, since the  
11 facility only pays a category fee for the time they are in  
12 that category. For example, under this method, if a  
13 facility in the risk assessment category is determined not  
14 to pose a significant risk, then that facility returns the  
15 next year to the lower plan and report category and would  
16 pay a lower plan and report fee.

17 As I mentioned, most of the facilities in the  
18 program are in the emission inventory phase. The average  
19 fees for the emission inventory categories for the 12  
20 districts for which we are adopting fee schedules are as  
21 indicated. These fees include both State and district  
22 costs.

23 Since this is a new method, it is difficult to  
24 make a direct comparison with previous years. However,  
25 last year, a large criteria pollutant emitter, but low risk

1 facility, could have paid a few many times the \$4,000 fee it  
2 would pay this year.

3 There are several other amendments we are  
4 proposing for the fee regulation. These amendments were all  
5 included in the staff report.

6 The regulation currently allows fees to be waived  
7 for facilities in the survey category if they have  
8 previously paid fees and are low risk.

9 We propose extending this provision to the  
10 industrywide program category.

11 For small businesses in any category, we are  
12 proposing a fee cap if \$700. A small business is defined as  
13 a business with 10 or fewer employees and total annual gross  
14 receipts less than \$500,000.

15 We are proposing a maximum fee of \$1,000 for the  
16 plan and report simple category at the district's option.

17 This amendment was requested by San Bernardino  
18 County APCD to ensure that the plan and report fee for  
19 simple facilities is less than the corresponding fee for a  
20 facility preparing a risk assessment.

21 Mendocino is the only other district that has  
22 chosen to use this option.

23 Senate Bill 1731 contains provisions for the  
24 submission of supplemental risk assessment information and  
25 specifically requires us to provide a fee to review that

1 information, and specifically requires us to provide a fee  
2 to review that information. The State is not assessing an  
3 extra fee for its review, but the districts may charge the  
4 supplemental fee. We propose to set the supplemental fee at  
5 \$2,000.

6 We are adding clarifying language, which was  
7 requested by Colusa County APCD concerning the annual  
8 adoption of fee rules. The new language states that the  
9 regulations shall be reviewed annually and may be amended if  
10 necessary.

11 Colusa felt that this would provide the  
12 flexibility contained in the law for the districts.

13 We are proposing to update the fee schedules, as  
14 necessary, to reflect the change in fee basis, program  
15 costs, specified fees in the list of district toxics  
16 inventories, and to reflect that 12 districts requested ARB  
17 adoption of their fee schedules. The other 22 districts  
18 will be adopting their own fee regulations.

19 We are proposing to delete the list of substances  
20 from the fee regulation and make appropriate reference to  
21 the list in the emission inventory criteria and guidelines  
22 regulation.

23 As I stated, these proposed amendments were all  
24 included in the staff report.

25 The second major amendment we are proposing today

1 is an amendment to program costs. The Hot Spots Act  
2 requires that the State and district costs of implementing  
3 the program be fully funded by facilities subject to the  
4 Act.

5 Last year, we stated that we anticipated that  
6 State costs would stabilize for this fiscal year. However,  
7 legislation enacted last year imposes significant new  
8 requirements on the program which will require additional  
9 resources.

10 We are proposing a State program cost increase of  
11 1.4 million. This change is necessary to perform the work  
12 required by Senate Bill 1731. Senate Bill 1731 requires  
13 OEHHA to develop new risk assessment guidelines and requires  
14 the ARB to assist smaller businesses complying with risk  
15 reduction provisions.

16 The new legislation is specific as to the  
17 development process for the new risk assessment guidelines.  
18 OEHHA's required to adopt new facility risk assessment  
19 guidelines after consulting with the California Air  
20 Pollution Control Officers Association's Risk Assessment  
21 Committee and the ARB; circulating the guidelines to the  
22 public and regulated community; submitting the guidelines to  
23 the Scientific Review Panel on Toxic Air Contaminants; and  
24 holding public workshops.

25 These newly mandated risk assessment guidelines

1 will require development of a large database to allow  
2 facility operators to include alternative risk parameters.  
3 Guidance on addressing uncertainty in parameter values must  
4 be in the guidelines.

5           The second new requirement mandated by Senate Bill  
6 1731 is for risk reduction. Facilities whose emissions of  
7 toxics pose significant potential health risks, must conduct  
8 a toxic risk reduction audit and develop a plan that  
9 evaluates risk reduction measures. These facilities must  
10 submit plans that describe how toxics emissions will be  
11 lowered below a significance level.

12           The bill requires the ARB and the districts to  
13 assist smaller businesses in obtaining information,  
14 assessing risk reduction methods, and applying risk  
15 reduction techniques.

16           To comply with this, ARB would develop industry-  
17 specific guidelines, each covering different smaller  
18 business categories. The ARB is also to develop self-  
19 conducted audit and checklists for smaller businesses to  
20 assist them to meet the new requirements.

21           The development of industry-specific guidance and  
22 the checklist is expected to save affected industries the  
23 costs of individually evaluating risk reduction methods.

24           We have already initiated discussions with the  
25 California Air Pollution Control Officers Association to

1 begin setting the framework on how best to implement these  
2 new provisions.

3 Staff is proposing reductions of \$.5 million for  
4 the State program to implement the provisions of Senate Bill  
5 1731. To fulfill the requirements of Senate Bill 1731, the  
6 State budget for the air toxics hot spots program for fiscal  
7 year 93-94 reflects an increase of about 1.9 million. This  
8 is about 1.4 million for the OEHHA and .5 million for ARB.

9 However, as a result of the comments we received  
10 at the workshops and in recognition of the current economic  
11 climate, we propose that the increase be reduced by  
12 \$457,000, to a total of about 1.4 million. This would  
13 result in an increase of .9 million for the OEHHA and .5  
14 million for ARB.

15 The reduced budget will affect planned program  
16 activities. OEHHA will not be able to evaluate risk  
17 reduction audits and plans the coming fiscal year. OEHHA  
18 also will not address air quality modeling and emissions  
19 uncertainty analysis in the new risk assessment guidelines.

20 Fewer microenvironmental factors will be evaluated  
21 for uncertainty. Our proposal includes an additional  
22 reduction in total State costs. We included in the State  
23 budget a reduction in program costs for the ARB of \$221,000  
24 from the database budget.

25 The proposed for ARB, with the reduction, is 2.4

1 million. The proposed budget for OEHHA, with their  
2 reduction, is 2.7 million. The combined total for fiscal  
3 year 93-94 with the reductions is 5.1 million.

4 As in previous years, an adjustment factor of 5  
5 percent will be added to this amount to account for closing  
6 of businesses, nonpayment, and uncertainty in the number of  
7 facilities.

8 State costs are only one element of fees. At this  
9 graph depicts, the district costs account for approximately  
10 two-thirds of the total implementation costs. For fiscal  
11 year 93-94, 12 of the 34 districts are estimating increases  
12 in district program costs for a combined increase of \$1  
13 million. The other 22 districts are estimating a combined  
14 reduction in costs of \$540,000.

15 REcognizing that the program is now reaching full  
16 implementation, we have prepared a State five-year resource  
17 plan. This plan was prepared in conjunction with OEHHA to  
18 forecast the program requirements for the next five fiscal  
19 years.

20 We are sensitive to cost concerns and we looked  
21 for cost-effective reductions and streamlining wherever  
22 possible. We have carefully evaluated the mandated program  
23 tasks and the resources required to accomplish them.

24 We examined the program areas that I discussed in  
25 the first part of the presentation, assessed the people and

1 contract dollars that we have assigned to that area, and  
2 projected our requirements. The next series of slides  
3 presents the results of our analysis. The reductions were  
4 calculated using the State budget as the baseline.

5 The Air Resources Board staff proposes to reduce  
6 its hot spots resources by about 40 percent, from \$2.4  
7 million for this fiscal year to \$1.5 million by fiscal year  
8 97-97. Of the total reduction, one-third would occur in the  
9 next fiscal year.

10 We are able to do this because our needs will be  
11 decreasing in the following areas: fee regulation and  
12 inventory regulation development, source test methods  
13 development, air toxics emission database system, emission  
14 data collection and validation, risk assessment assistance,  
15 public notification assistance, and risk assessment  
16 guideline development assistance.

17 OEHHA proposes to reduce its resources by about 40  
18 percent, from 3.2 million in fiscal year 93-94 to 2 million  
19 in fiscal year 97-98. The cost reductions will be able to  
20 be realized because, as the program matures, OEHHA expects  
21 to receive fewer risk assessments to review by fiscal year  
22 97-98.

23 OEHHA anticipates increased efficiency in its  
24 review process when the OEHHA risk assessment guidelines are  
25 adopted and in place. Facilities following these guidelines

1 should produce risk assessments that are easier to review.

2           Once the guidelines have been adopted, OEHHA's  
3 resource needs for guidelines updates will be less than  
4 those initial costs of preparing the guidelines and carrying  
5 the guidelines to the Scientific Review Panel and public  
6 comments process.

7           The total combined reduction is 2.1 million, or  
8 about a 40 percent decrease. These projections are based on  
9 the assumption that there will be no new legislative  
10 mandates.

11           This slide shows the State costs from the  
12 beginning of the program through our five-year plan. We do  
13 not have projections for future district costs, but we  
14 expect that the districts will be looking at their five-year  
15 needs as well.

16           Thus far, we have focused on State and district  
17 costs. While this is an important element, it is only one  
18 part of the overall cost to industry. As shown here, for  
19 fiscal year 93-94 and subsequent years, industry will be  
20 saving on the order of \$12 million per year in ongoing  
21 program costs compared to previous years.

22           Ongoing program costs are for biennial emission  
23 updates, district costs, and State costs. Industry's costs  
24 to comply with Senate Bill 1731 were not included. Savings  
25 in ongoing costs will occur because of the action taken by

1 this Board last month to streamline the emission inventory  
2 regulation. Facilities will spend less on source tests,  
3 engineering analysis, and consulting costs to comply with  
4 the Act beginning this year.

5 Also, we would begin to implement our five-year  
6 resource plan, which will lower costs. This does not  
7 include any reduction in costs the districts may have.

8 I will now discuss modifications to the regulation  
9 that was published in the staff report. These changes are  
10 essentially technical in nature.

11 We have received information from the districts  
12 that changes the number of facilities and district costs.  
13 We are proposing changes for the following districts:  
14 Imperial, Lake, Kern, Mendocino, Sacramento, San Luis  
15 Obispo, Santa Barbara, and Yolo-Solano.

16 South Coast AQMD provided a new specified fee for  
17 the industrywide facility category, changing the fee from  
18 \$20 to \$25.

19 We are proposing, at the request of Santa Barbara  
20 District, that facilities in the Santa Barbara District that  
21 were categorized as intermediate priority and had a risk  
22 assessment prepared for them by the district be considered a  
23 plan and report facility for fee purposes.

24 We are also proposing to change the definition of  
25 small business contained in the staff report in response to

1 comments we received from small oil producers.

2 In our modified definition, we clarify that a  
3 business means a facility, that the facility must meet the  
4 criteria for the most recent calendar year, and that small  
5 businesses affiliated with other small businesses do not  
6 have to consider the combined activities to meet the  
7 criteria.

8 CHAIRWOMAN SHARPLESS: Excuse me.

9 MR. KORENBERG: Although not shown on the slide --

10 CHAIRWOMAN SHARPLESS: Excuse me, can you repeat  
11 that last element there on the proposed change for small  
12 business definition?

13 MR. KORENBERG: I'll read again the section on  
14 small business definition.

15 CHAIRWOMAN SHARPLESS: Okay.

16 MR. KORENBERG: We're proposing to change the  
17 definition of small business contained in the staff report  
18 in response to comments we received from small oil  
19 producers.

20 In our modified definition, we clarify that a  
21 business means a facility, that the facility must meet the  
22 criteria for the most recent calendar year, and that small  
23 businesses affiliated with other small businesses do not  
24 have to consider the combined activities to meet the  
25 criteria.

1 CHAIRWOMAN SHARPLESS: Thank you.

2 MR. KORENBERG: Although not shown on the slide,  
3 in response to comments, we are proposing to retain the  
4 requirement for annual State adoption of the fee regulation.

5 In our process of developing the proposed  
6 amendments, two major issues have been raised. These issues  
7 are, one, that fees should be based on a fee for service  
8 method; and, two, there should be no State cost increase for  
9 Senate Bill 1731, Calderon, work.

10 A fee for service option was one of the methods we  
11 considered and evaluated early in our development process  
12 with our fee committee. We had concluded that it was not  
13 feasible to apply a strict fee for service approach,  
14 because most of OEHHA and ARB's responsibilities are not the  
15 facility specific, but rather have statewide implication.

16 While our method does not assess individual  
17 facilities for time spent, we have incorporated the concept  
18 by using different program categories and subdividing  
19 categories for complexity.

20 Program categories which require more resource  
21 effort from the State and the district pay the higher fees.

22 However, we intend next year to reevaluate moving  
23 in the direction of fee for service where the method is  
24 applicable.

25 The second major issue was that there should be no

1 cost increase for Senate Bill 1731 work. Some commenters  
2 suggested that Senate bill 1731 costs could be absorbed in  
3 the current program.

4 Senate Bill 1731 mandates specific new  
5 requirements which are in addition to current  
6 responsibilities. Accomplishing the new tasks without  
7 additional resources would mean that the basic, or core,  
8 program would be adversely affected.

9 The work backlog would increase for both ARB and  
10 OEHHA. For ARB, inventory compilation and validation would  
11 be delayed. For OEHHA, a major impact would be an  
12 increasing backlog of risk assessment reviews.

13 We would be able to provide only limited  
14 assistance to the districts and facilities in source  
15 testing, risk assessment methods and engineering parameters,  
16 and public notification.

17 OEHHA would provide less assistance to the  
18 districts on risk assessments.

19 We would not be able to perform needed quality  
20 assurance checks on the inventory data. Effective  
21 streamlining of the inventory data reporting is based on  
22 having an initial round of accurate and reliable data.  
23 These are just a few examples of the negative impacts of  
24 absorbing 1731 costs into the current program.

25 The net result would be that there would be a

1 delay in providing the public exposure information and  
2 potential health risk. There also could be a delay in  
3 accomplishing risk reduction.

4 In summary, we are first proposing that the fee  
5 basis be changed to our program category method to reflect  
6 toxics risk priority and workload. We believe this method  
7 is fair and equitable.

8 Second, Senate Bill 1731, Calderon, imposes  
9 significant new and important requirements on the program  
10 which require additional resources. To fulfill those  
11 requirements, the State Budget includes a \$1.9 million  
12 increase for the program.

13 However, we are sensitive to the current economic  
14 conditions. As a result, we are proposing an immediate  
15 reduction of one-half million dollars in the State costs.

16 We also examined program requirements for the next  
17 five years. We are committed to scaling back the program,  
18 and we have a five-year resource plan that shows a reduction  
19 in overall State costs of about 40 percent. Without any  
20 further legislation, we project the costs will go down over  
21 the next five years.

22 Ultimately, industry will pay less this year and  
23 in subsequent years for this program. Even though State  
24 costs are increasing this year, the total cost to industry  
25 will go down immediately by approximately \$12 million per

1 year.

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

4 CHAIRWOMAN SHARPLESS: Okay. Thank you very much,  
5 staff? Are there questions at this point? Is there  
6 anything that -- Dr. Henry, do you have any comments that  
7 you would like to make at this point before we go to the  
8 witness list?

9 DR. HENRY: I don't have any specific comments,  
10 other than I think that the staff -- the ARB staff and the  
11 OEHHA staff -- have worked very hard at looking at these  
12 increased costs. We're very concerned about them. I think  
13 we've tried to keep the mandate of protecting the public  
14 health as our highest priority, and yet address the issues  
15 of moving forward with the program, given the economic  
16 conditions that are in existence today.

17 We'd be happy to try and discuss this further, if  
18 there are other issues to address, but I think that staff  
19 report and the public outreach that has gone on has -- it  
20 would be surprising if there are new issues raised.

21 So, I'm very pleased to be here and our staff, Dr.  
22 George Alexeeff and Dr. Melanie Marty, I think, have worked  
23 extensively to get the program in the shape that it's in  
24 right now.

25 So, I'd be happy to answer any other questions.

1 Thank you, Chairwoman Sharpless.

2 CHAIRWOMAN SHARPLESS: Thank you, Dr. Henry.

3 Let us start on our witness list, then, and I'm  
4 sure we will have some exchanges as people come up and  
5 express their views to us today.

6 I'd like to begin with Doug Allard from Santa  
7 Barbara APCD.

8 MR. ALLARD: Thank you, Madam Chair, members of  
9 the Board.

10 My name is Doug Allard. I'm the Planning Division  
11 Manager of the Santa Barbara Air Pollution Control District.  
12 And within our division, we have the AB 2588 hot spots  
13 program for Santa Barbara County.

14 We view the hot spots program as a very important  
15 program. We think it's the most effective program, with the  
16 possible exception of reducing automobile usage, for  
17 identifying, and now with the advent of SB 1731, for  
18 controlling the cancer-causing pollution that we all  
19 breathe.

20 We've also tried to be sensitive to business  
21 concerned -- concerns, and we've streamlined our program  
22 through automation extensively, to the point where we've  
23 been able now to reduce our costs by over 60 percent in the  
24 last two years, including a recent reduction to reflect your  
25 Board's streamlining of the emission inventory regulation.

1           Our automation efforts have included creating the  
2   Ace risk assessment program, which is now becoming, I think,  
3   a standard throughout the State. And we are the only  
4   district to perform risk assessments for our businesses,  
5   saving each of them between 50 -- 15 and \$50,000, which is  
6   what, I think, consultants normally charge for that kind of  
7   activity.

8           Now, we did send a letter in June to your Board,  
9   or to your staff, questioning the State cost increases.  
10   Since then, your staff has worked closely with us and with  
11   our industry, particularly to address some small business  
12   concerns.

13           We've seen the one-half million dollar reduction  
14   in the State costs in the fee regulation that your staff  
15   told you about today. We've received a letter from Mr. Boyd  
16   implying future cost increases. And now, today, we've seen  
17   the evidence of that -- about a five-year plan reflecting  
18   cost increases.

19           So, what these actions and these commitments for  
20   future cost reductions, we believe that your staff has made  
21   a sincere effort to address our concerns about needed cost  
22   reductions. However, we do strongly suggest that next  
23   year's fees be based solely on air toxic emissions, in  
24   accordance with SB 1378, and we will work with your staff to  
25   try to ensure that that happens. Thank you.

1 CHAIRWOMAN SHARPLESS: Thank you very much.

2 I'd like to call forward Tim Sturdavant, IEA.

3 MR. STURDAVANT: Madam Chairwoman, members of the  
4 Board, my name is Tim Sturdavant. I represent the San Diego  
5 Industrial Environmental Association.

6 And on behalf of that association, I'd like to  
7 express our sincere thanks to ARB staff for communicating  
8 with us on the issues of this fee regulation, and soliciting  
9 our involvement and participation in moving forward with the  
10 proposal.

11 We would like to say we strongly support the  
12 methodology that's being proposed in the fee regulation, in  
13 that it does, indeed, address McCorquodale's requirements,  
14 and it does try to break up the source categories to be more  
15 fair in assessing the fee regulation; again, not tying in to  
16 criteria pollutant emissions.

17 However, we do see one area, one real obvious area  
18 where fee for service can be implemented immediately. And  
19 that's primarily in the health risk assessment reviews. If  
20 I understand things correctly, the health risk assessment  
21 reviews are done on a facility-specific basis. Therefore,  
22 the amount of time that staff would put into doing that  
23 review, multiplied times a cost multiplier to cover  
24 overhead, and then charged directly back to the source might  
25 accomplish a real fair and adequate methodology for recovery

1 of fees for that process.

2 I would like to say -- again, supporting the  
3 changes that are being proposed, we have concerns about the  
4 price tag. And even the reductions, which are much  
5 appreciated, we feel probably don't go far enough. And I'll  
6 give you an example. In our industry or in business, a  
7 customer might require that we make some modifications in  
8 the widgets we produce. And we have three choices then.  
9 Either we make the modifications or changes and pass the  
10 cost off to the customer -- we might lose a few customers --  
11 or we don't make the modifications and we definitely lose  
12 the customer, or we make the modifications and perhaps  
13 find ways to be more efficient and productive and absorb the  
14 cost internally so that we don't lose the customer.

15 This is the kind of concept we're proposing to ARB  
16 staff and OEHHA, you know, in this -- in their involvement  
17 with the 2588 program.

18 I'd like to also say that when OEHHA does develop  
19 these health risk assessment guidelines, that they make them  
20 user friendly. I've heard from many of the districts and  
21 from industry that work in that effort in the past has not  
22 produced a product that's very useful. And I guess we're  
23 all learning in this process. And I'm sensitive to that, so  
24 I just would request that they solicit the involvement of  
25 all of the affected parties, including industry, in the

1 development of these guidelines, because we would gladly  
2 like to participate.

3 And the last item is the issue with compliance  
4 assistance. And we strongly support compliance assistance,  
5 but -- like with all things -- it has a price tag on it.  
6 Perhaps we need to establish some level where compliance  
7 assistance needs to convert to a fee for service breakpoint.  
8 In other words, if the amount of time -- ARB staff time --  
9 that's extended to a source to help them comply with the  
10 program is not that significant, then it can be absorbed in  
11 the program. But if we exceed that, I think maybe we need  
12 to consider charging the source for it.

13 We do the same thing in our business. Oftentimes,  
14 we get calls and questions from our customers, and we  
15 provide that service for them. But when it goes beyond a  
16 certain point, they're billed for it.

17 And generally speaking, though, overall, the  
18 proposed fee regulation is acceptable, except we need to  
19 think about the price tag.

20 Thank you very much.

21 CHAIRWOMAN SHARPLESS: Okay. Don't leave yet.  
22 First of all, you heard the staff say that, within the next  
23 year, they would be considering additional options for fee  
24 for service. And so, I would definitely solicit your  
25 organization's participation, and I know that staff would be

1 contacting you when that process began.

2 You mentioned -- not in our area, but in the  
3 Office of Environmental Health Hazard Assessment -- a fee  
4 for service on risk assessments. And I'm just going to give  
5 Dr. Henry, or George, or whoever -- Carol, you want to  
6 respond on whether or not you think that's a good idea? Are  
7 you considering it?

8 DR. HENRY: George has certainly thought about  
9 this, because this is not a new concept. So, let me ask him  
10 to make a couple of comments about the fact that we are not  
11 a business. We would like to operate in a businesslike  
12 and efficient manner, but we are not a business. So, let me  
13 ask him to perhaps point out why. We're not opposed to the  
14 concept; but I think, in its implementation, there would  
15 have to be some differences. So, George?

16 DR. ALEXEEFF: Yes. We did look at the concept of  
17 fee for service initially, and decided to go with ARB's  
18 general fee guidelines in the past several years.

19 And we are -- the risk assessment portion is  
20 simply a portion of our duties. Some of our  
21 responsibilities, such as developing guidelines or  
22 developing health guidance, would cover all facilities.

23 However, we're willing to -- there has been this  
24 interest raised again to try to look at that fee for  
25 service. So, we're willing to work with the CAPCOA

1 committees, and however else they integrate other  
2 individuals outside of the CAPCOA group, to see if some sort  
3 of fee for service process could be established, and if it  
4 would likely be an improvement over the current process.

5 CHAIRWOMAN SHARPLESS: I think I heard you say  
6 that you recognize, in some areas, fee for service doesn't  
7 have a practical application. That would be areas like the  
8 development of the risk assessment guidelines --

9 MR. STURDAVANT: Sure.

10 CHAIRWOMAN SHARPLESS: -- the public process.  
11 There's simply no easy way to do a fee for service in that  
12 area, because it impacts everybody equally. So, I think  
13 what your point is, though, in areas where it is applicable  
14 to take a good, strong look at it, and see if there isn't  
15 some way that we can work things out.

16 MR. STURDAVANT: Sure. I'd like to emphasize and  
17 respond to her comment earlier about government not being a  
18 business. Good point. And I respect that point of view.

19 But keep in mind, there are districts that have  
20 implemented fee for service in their fee recovery programs  
21 And, again, they're an agency, and it's been successful.  
22 And it's been well received by both the regulated community  
23 and the agency. And it provides -- and I say this with deep  
24 sincerity -- it provides an opportunity for you to even look  
25 at your own staff and try to -- pardon my expression, but

1 get rid of the dead wood.

2           You have certain engineers, certain people who do  
3 reviews that will be very productive and efficient, and  
4 certain people that aren't. And it allows you an  
5 opportunity to address it and perhaps bring them up to speed  
6 with the standard, for instance.

7           It's just a good mechanism to track labor, a good  
8 mechanism to track efficiency, plus districts are doing  
9 reviews on health risk assessments also. And if their  
10 reviews show that there's a flaw, because the OEHHA needs  
11 are much more extensive, let's say, then we can all learn  
12 from that process.

13           And that's why this kind of a tracking mechanism  
14 has tremendous benefit. And one other key point, too. In  
15 the area of permit streamlining, which IEA strongly supports  
16 and has been involved in San Diego extensively, this labor  
17 tracking mechanism has been ideal in looking for areas where  
18 streamlining would most benefit everybody involved in  
19 permitting processes.

20           So, there are benefits that aren't direct that  
21 come from such programs.

22           CHAIRWOMAN SHARPLESS: I would make one more  
23 point. I think what you're saying is correct. Obviously,  
24 there are areas where we can streamline. There are areas  
25 where we can be more efficient. There are tools that are

1 there that we can use that we're currently not using.

2 But I will make one point with regard to issues  
3 like small business. When the Legislature put that  
4 provision in the bill, it was with recognition that small  
5 business does not have the same resource capacity; that,  
6 oftentimes, they're working on lower margins than other  
7 businesses that -- and I know I'm going to probably have  
8 people thinking in the audience that I don't understand big  
9 business and the way it operates and their margins -- but  
10 they have less ability to spread the cost.

11 And I think the sensitivity was for small  
12 businesses. And because of that, there is a provision in  
13 this bill to give them some relief. Now, by giving them  
14 some relief, they're offering them some assistance from the  
15 Air Resources Board in helping them -- providing them a  
16 service that, if they were to go on to the outside, would  
17 probably individually cost them more money.

18 How you deal with the concept of giving relief and  
19 the concept of requiring a fee for service on small business  
20 is that sometimes there's a conflict there in trying to  
21 resolve that issue.

22 Now, you raised the point that you could give it  
23 up to a certain level and, then after a certain level, you  
24 know, you start charging them. And those are things we can  
25 look at. But I just wanted to kind of react to what you're

1 saying. There are cases, tax relief, tax incentives, where  
2 all of us taxpayers pay for incentives or whatever --  
3 credits or relief -- in recognition that there are special  
4 needs and special cases.

5 So, in those areas, I don't think that fee for  
6 service necessarily has application.

7 MR. STURDAVANT: We -- you recall the Air  
8 Resources Board embarked on a very effective compliance  
9 assistance program.

10 CHAIRWOMAN SHARPLESS: Not only embarked,  
11 continue.

12 MR. STURDAVANT: Remember the comic books?

13 CHAIRWOMAN SHARPLESS: Remember them, we continue  
14 to put them out. And thank you for the plug.

15 MR. STURDAVANT: They were very effective.

16 CHAIRWOMAN SHARPLESS: They are.

17 MR. STURDAVANT: I, being a former inspector  
18 myself in an agency, used those extensively, and what a  
19 great tool it was. Perhaps this is one of the tools that  
20 could be considered for this program. I don't know.  
21 Because, obviously, 2588 probably won't go away, and  
22 there'll be small businesses coming and going in the years  
23 to come. So, I throw that out as a suggestion to help in  
24 the compliance assistance world. You do it one time. You  
25 have a publication that's easy to understand and easy to

1 read that small business can readily address, and perhaps  
2 your immediate interaction diminishes a bit and, overall,  
3 the cost is reduced.

4 CHAIRWOMAN SHARPLESS: Well, that's exactly where  
5 the program is going. I think it's to lend that kind of  
6 assistance to the small business, not so much to explain the  
7 law, but to help industry categories -- develop audits for  
8 industry categories to make it easier for them to do the  
9 work rather than go out and have to contract with maybe a  
10 more expensive consulting firm to do that work.

11 So, on the one hand, it sounds like we're  
12 increasing fees; on the other hand, it can be seen as a cost  
13 cutting mechanism for small business costs. It just  
14 depends.

15 MR. STURDAVANT: What's called return on  
16 investment.

17 CHAIRWOMAN SHARPLESS: Right. That's exactly what  
18 it is.

19 MR. STURDAVANT: But, at any rate, thank you for  
20 considering my points.

21 CHAIRWOMAN SHARPLESS: Thank you. We'll ask  
22 William Sandman, Colusa County.

23 MR. SANDMAN: Good afternoon, Chairwoman Sharpless  
24 and Board members. I've been sitting in back for a good  
25 part of the day, and it's been pretty chilly back there.

1 But coming up here to the podium, it's a lot warmer. So --

2 (Laughter.)

3 SUPERVISOR WIEDER: It's been chilly up here, too.

4 MR. SANDMAN: I'd like to thank you for allowing  
5 me to comment on the proposed amendments to the hot spots  
6 fee regulations for 1993-94.

7 My name is William Sandman. I'm from Colusa  
8 County Air Pollution Control District. My boss is Harry  
9 Krug. He's the air pollution control officer for Colusa  
10 County. My comments relate to concerns of my district and  
11 other rural districts throughout the State.

12 First, though, I'd like to thank the ARB staff for  
13 working closely with my district and asking for input and  
14 other districts in the Sac Valley Air Basin.

15 The Air Toxics Hot Spots Information and  
16 Assessment Act of 1987 has been an information gathering  
17 process covering the emissions of toxic materials in the  
18 air. Sources were to submit a plan and report on how and  
19 what emissions entered the air. Once a report was  
20 submitted, the report was to be updated on a biennial basis.

21 Common sense would suggest that fees for operating  
22 a maintenance program should go down. We were told this by  
23 the ARB, and we relayed this information to our facilities.

24 In 1992, legislation passed requiring risk  
25 assessments for certain specified facilities. Of the 39

1 facilities in Colusa County with over 10 tons of emissions,  
2 there is not a single facility which will fall under the  
3 additional health risk assessment requirements of the Hot  
4 Spots Act.

5 In Table 4 on page 45 of the proposed amendments,  
6 the Colusa County District costs are reduced from \$27,200 in  
7 fiscal year 92-93, to \$13,750 for 93-94. This is a 49.5  
8 percent reduction in program costs, because the district is  
9 in a program maintenance phase of this Act.

10 If you look at Table 1 on the page marked Roman  
11 Numeral I-12, you can see that the ARB fee for this program  
12 has increased 41.6 percent for Colusa County, up from 13,697  
13 in fiscal year 92-93 to 23,441 in 93-94.

14 In this day and age of tight economic times, it is  
15 not the time to spread the cost on everyone. The added  
16 costs of the health risk assessments must be borne by the  
17 affected industries. If the cost of this program is too  
18 burdensome on the affected industries, then a legislative  
19 change is needed.

20 The proposed amendments to the fee regulation are  
21 clearly a case of trying to spread a noncost-effective  
22 program over a larger base of nonparticipatory businesses to  
23 make the program cost more bearable.

24 The Colusa County Air Pollution Control District  
25 does not agree with this practice, and feels it is unfair to

1 the many businesses throughout the State who have very  
2 limited toxic emissions.

3 The district strongly urges the Board to modify  
4 the proposed amendment to direct added costs to the specific  
5 portion of the program that is incurring those costs.

6 Let's not try and hide these excessive costs by  
7 spreading them out on the other businesses who are not under  
8 the legal requirements for the added risk information.

9 Finally, it makes the districts and the ARB look  
10 bad when we anticipate the reduced cost of a program and  
11 have it end up significantly increasing.

12 Thank you for your attention.

13 CHAIRWOMAN SHARPLESS: Thank you, Mr. Sandman.  
14 Are there any comments by staff?

15 SUPERVISOR WIEDER: I have a question.

16 CHAIRWOMAN SHARPLESS: Okay. Yes.

17 SUPERVISOR WIEDER: Do you not believe what we  
18 were told, that the -- as the program goes on, it's going to  
19 decrease?

20 MR. SANDMAN: Well, as of -- from what I  
21 understand, this next year -- 93-94, the program is  
22 increasing. And I think I'm looking at that year right now.  
23 And I'm all for the program decreasing in cost and looking  
24 forward to that.

25 SUPERVISOR WIEDER: Well, I'm looking forward to

1 the fact that it'll be different than when we were told down  
2 in Southern California -- of course, you Northerners won't  
3 understand this -- that we had to conserve on water, and we  
4 did that. And our bills went up. So, this, we hope, will  
5 not be like that.

6 CHAIRWOMAN SHARPLESS: Staff, would you like to  
7 comment on the concept of spreading costs only to those  
8 areas where there are facilities that have perhaps a greater  
9 risk than in areas where they have facilities, but they have  
10 no risk.

11 MS. SHIROMA: For the court reporter, I'm  
12 Genevieve Shiroma, Chief of the Toxic Air Contaminant  
13 Identification Branch.

14 Yes. And Colusa has been right there at our  
15 workshops and our district meetings working with us. We  
16 appreciate their efforts as well.

17 The way the method was developed, those districts  
18 that do, in fact, have risk assessment facilities or  
19 notification facilities will, in fact, pick up a higher  
20 portion of the cost. It is true that Colusa does not have  
21 these facilities. With the increased program cost, we did  
22 spread the increased cost across everyone. For example, for  
23 the risk reduction guideline work -- as we were discussing  
24 earlier -- the statute says it's for smaller businesses.

25 We do feel that it was fair to spread that,

1 because businesses in general will benefit from the  
2 technology development. And also, what we're looking at in  
3 our five-year plan is to reduce the cost, and then modifying  
4 it to accommodate your needs as well.

5 MR. SANDMAN: Fantastic.

6 MR. VENTURINI: Madam Chair?

7 CHAIRWOMAN SHARPLESS: Yes, Mr. Venturini.

8 MR. VENTURINI: A couple other observations. When  
9 we went to this new method, as you change from any method to  
10 another method, there are going to be some effects where  
11 some people may be having to pay a little more, some maybe  
12 having to pay less. And that is one of the outcomes of  
13 going to this method, which is more directed to the fee for  
14 service. This also means that, as each year goes by, we  
15 will reevaluate where facilities in a specific district are  
16 -- say, Colusa. And the next year, because those  
17 facilities have passed through a phase, their costs may be  
18 less. So, there'll be another redistribution. That's just  
19 the nature of going to this method that is really, in many  
20 respects, a fee for service concept to give us some  
21 confidence that this method that we had made some sense to  
22 us and was fair and equitable.

23 We did take a look at the total State costs and  
24 the percent of the total State costs each district was  
25 paying -- would be paying, and the percent of the larger

1 facilities each district had.

2 And when we took a look at that, we found there  
3 was a very good correlation between the percent of the State  
4 costs and the percent of the larger facilities, the more  
5 complex facilities in that district.

6 For example, for Colusa specifically, their  
7 percent of the State cost is on the order of .4 percent; the  
8 percent of the facilities is .7. And so, that gives us some  
9 confidence that we're apportioning the costs in a reasonable  
10 manner, and there's some equity amongst all of the  
11 districts.

12 CHAIRWOMAN SHARPLESS: Okay. Thank you very much,  
13 Mr. Sandman.

14 MR. SANDMAN: Thank you.

15 CHAIRWOMAN SHARPLESS: Mr. Kenneth Selover.

16 MS. CARRUTHERS: I am not Kenneth Selover. He had  
17 to leave. Kenneth Selover had to leave. He's the APCO with  
18 Yolo-Solano APCD.

19 I'm Annette Carruthers, the Enforcement Manager.  
20 So, I'll present his comments as best as I can.

21 I'd like to take this opportunity to thank you for  
22 allowing me the time to address the Board, and to the ARB  
23 staff for their continuing efforts to work with us, and  
24 allowing me to participate in the task force.

25 We're going to flash a few headlines for you from

1 our very active newspapers in the district. We recently,  
2 within the last year, increased our permit fees to the 80  
3 percent level of cost recovery, and it was no easy task.  
4 And we were really blasted in the newspapers as -- you can  
5 go ahead and just show them one after another.

6 So, here we are at the Yolo-Solano Air Pollution  
7 Control District, and are frankly puzzled as to how we can  
8 pass at this critical time a 400 percent increase onto our  
9 sources.

10 And we aren't convinced that the State has done  
11 everything they can to cut their budget and operate within  
12 the constraints of a budget that can be tolerated by  
13 businesses, particularly in this time of financial crisis.

14 Maybe an even more streamlined approach needs to  
15 be considered. Certainly, this has been the case at the  
16 district. With only 60 facilities involved in the AB 2588  
17 program, the district has been able to keep our expenses  
18 down to \$35,000 per year.

19 Conversely, our share of State costs is presently  
20 at somewhere between 47 and 52,000 for 94-94.

21 I guess we're one of the few districts that gets a  
22 cartoon in our name (remarking on the cartoon image  
23 displayed on screen).

24 As only two of our facilities are currently  
25 performing risk assessments, it is difficult for both the

1 district and affected sources to comprehend a need for a  
2 fee increase when the amount of work we are all required to  
3 perform is actually decreasing.

4 Please understand that, as a member of the task  
5 force that developed this methodology, we have no problem  
6 with the methodology itself. But no matter how you slice  
7 this budget pie to attempt to fairly divide the costs, the  
8 pie appears to be simply too big.

9 In conclusion, I have submitted some written  
10 comments. We suggest that working -- the budget be more  
11 drastically cut and the operation be streamlined to fit  
12 within that budget, and that the five-year reduction plan  
13 begin this year when California is in such a crisis. And  
14 some of these other -- I'm just showing you the increase to  
15 some of our sources, what it would look like for 93-94.  
16 They don't show up real well, but I have the hard copies for  
17 you.

18 CHAIRWOMAN SHARPLESS: Thank you. I'd like to ask  
19 Mr. Venturini maybe. Mr. Venturini, since they have six  
20 facilities in the program --

21 MS. CARRUTHERS: We have 60 facilities in the  
22 district --

23 CHAIRWOMAN SHARPLESS: Oh, 60.

24 MS. CARRUTHERS: -- two doing risk assessments.

25 CHAIRWOMAN SHARPLESS: Two doing risk assessments.

1     Wouldn't the fees for their area be going down and for their  
2     facilities be going down under this new methodology, where  
3     it depends on where you are in the workload as to how much  
4     you pay?

5             What happened to their facilities?

6             MR. VENTURINI:  Genevieve can explain why their  
7     fees are where they are.  And let me just mention once  
8     again, as a percent of the State costs, they're at about .96  
9     percent of State costs and 1.06 percent of larger  
10    facilities.

11            Genevieve can provide you with more specifics on  
12    the reason why the increase.

13            MS. SHIROMA:  The reason is because, last year,  
14    the allotment of the State portion of costs was based on  
15    criteria pollutants.  So, we basically took the straight-  
16    and-narrow criteria pollutant database and divided it up  
17    among all the different districts.

18            Well, as we've discussed before, and as you're  
19    aware, the criteria pollutant inventory is a very different  
20    inventory from the toxics inventory.  So, in compliance with  
21    McCorquodale and also in response to your direction to us,  
22    we went towards a toxics-based fee.  And in doing that, with  
23    the number of facilities in the Yolo-Solano area and the  
24    fact that they did have two risk assessment facilities, as  
25    we went through the 34 districts and allotted the fees,

1 their share, given the equation that we had devised, came to  
2 the amount that Annette referenced, the 45 to \$50,000.

3 And, therefore, their share increased. And, as  
4 Peter mentioned, the method will show an increase for some  
5 districts and a decrease for others, because we are going  
6 towards a toxics-based fee.

7 MR. VENTURINI: Let me just mention, Yolo-Solano  
8 is one of those districts that will be adopting their own  
9 fee schedule. So, we do not know how much they will be  
10 charging, how they will be distributing the fees to their  
11 individual facilities, because they will be doing their own  
12 fee regulation.

13 And, as Ms. Shiroma mentioned, since they do have  
14 some facilities in the risk assessment mode, depending on  
15 what happens with that -- when we do the reassessment next  
16 year -- if those facilities drop out of the risk assessment  
17 mode to a lower category, then the district's fees for State  
18 costs would go down. That's the dynamics of this new  
19 system. It's going to be fluid from year to year.

20 MS. SHIROMA: Also, as we implement our five-year  
21 plan and show reductions in our program costs next year,  
22 that will be reflected in the allotment among the 34  
23 districts, and should show a benefit for Yolo-Solano as  
24 well.

25 CHAIRWOMAN SHARPLESS: Of the facilities that they

1 have in their inventory, how many of them would fall within  
2 the small business criteria?

3 MS. SHIROMA: Annette, I'm not sure if you were  
4 able to quantify --

5 MS. CARRUTHERS: I don't think we had any.

6 MS. SHIROMA: You didn't have any.

7 MS. CARRUTHERS: We didn't have any.

8 MS. SHIROMA: But the other thing that is  
9 interesting about Yolo-Solano is that they do have a large  
10 percentage of the complex types of industries within their  
11 district. And that also affects the allotment. The more  
12 complex facilities there are in the districts, that will  
13 raise their share of the State costs.

14 MR. VENTURINI: One final point, on the small  
15 businesses, we are not imposing a State fee on those  
16 sources doing a survey or an industrywide inventory.

17 CHAIRWOMAN SHARPLESS: Well, I also noticed --

18 MR. VENTURINI: -- which are primarily the small  
19 businesses, so --

20 CHAIRWOMAN SHARPLESS: I also noticed --

21 MR. VENTURINI: -- there is no State charge.

22 CHAIRWOMAN SHARPLESS: Yes. I also noticed in the  
23 proposal that you had a cap of \$700 for small business under  
24 certain situations.

25 MR. VENTURINI: That's correct.

1 MS. SHIROMA: That's correct.

2 CHAIRWOMAN SHARPLESS: But you don't happen to  
3 fall into that category?

4 MS. CARRUTHERS: No. Our small businesses would  
5 fall into the industrywide or survey category.

6 CHAIRWOMAN SHARPLESS: But you don't have any of  
7 those.

8 MS. CARRUTHERS: We don't have any small  
9 businesses that are in the other fee structure.

10 CHAIRWOMAN SHARPLESS: I see.

11 MS. CARRUTHERS: And the two -- the two  
12 facilities that we presently have in the risk assessment  
13 category will remain in that, because it's a two-year -- you  
14 remain in the risk assessment category for two years. The  
15 first year, you would enter -- as this program is, and  
16 that's where we fall in, or these two facilities fall in.  
17 You fall into what's titled the risk assessment district  
18 level.

19 So, for this period of time, the district is  
20 reviewing the risk assessment. However, there is -- you  
21 know, it falls into the accumulation of State fees, also.  
22 And then, next year, those same two facilities would be in  
23 the next risk assessment category, which risk assessment-  
24 State, which is a higher fee level.

25 So, although it's true, we did not submit our

1 expenses so that we would be part of this fee calculation --  
2 the fee regulation, and we -- it's up to us to distribute  
3 those costs.

4 You can see that, because of those two facilities,  
5 our share of State costs will remain high at least for this  
6 year and next year. And if they then go into a notification  
7 category, they would also remain high and that's yet to be  
8 determined.

9  
10 CHAIRWOMAN SHARPLESS: Even though they're in that  
11 category, next year, the State fees -- based on the five-  
12 year plan -- will be going down.

13 MS. SHIROMA: That's correct. Also, we will be  
14 taking a look at other modifications we need to consider  
15 going towards the toxics-based fee allotment. So, we'll be  
16 taking a look at the methodology.

17 CHAIRWOMAN SHARPLESS: Any other questions of this  
18 witness?

19 Thank you very much.

20 MS. CARRUTHERS: Thank you.

21 CHAIRWOMAN SHARPLESS: Mr. Les Clark, Independent  
22 Oil Producers Association.

23 MR. CLARK: Madam Chairwoman, members of the  
24 Board, just more of a point of clarification. Could we  
25 revisit the small operator definition that was discussed?

1 I'm still not sure that I know what that means as far as --

2 CHAIRWOMAN SHARPLESS: You mean during the staff  
3 presentation --

4 MR. CLARK: Yes.

5 CHAIRWOMAN SHARPLESS: -- the one that was  
6 referred to that must meet the criteria for the most recent  
7 calendar year. And if it's affiliated, the combined  
8 activities will not be considered. Is that the definition  
9 you were talking --

10 MR. CLARK: That's the one. That's the one.

11 CHAIRWOMAN SHARPLESS: Sure. What do you want?  
12 Just a redefinition of it, Les?

13 MR. CLARK: Yeah.

14 MR. LAGARIAS: I'm glad you asked that question.

15 MR. CLARK: I'm still -- yeah, I just need a  
16 little bit of clarification. That would do it.

17 MS. SHIROMA: Okay. Why don't I step us through  
18 the proposed modified definition. And we had had some  
19 discussions earlier with Mr. Clark, and we can definitely  
20 clarify this.

21 We proposed the small definition in the event that  
22 there were businesses that might otherwise suffer an  
23 economic hardship. And what we indicated was that the  
24 definition would specify that the small business, which  
25 would be a facility, would have less than 10 employees or

1 less than \$500,000 gross receipts.

2 We also wanted to indicate that this definition  
3 would apply to those facilities that were not affiliated  
4 with large corporations or large businesses. So, we're  
5 proposing to add language which says that the affiliation of  
6 a small business must be with other small businesses. Okay?

7 And we were clarifying that we would look at the  
8 individual facility and then at those other affiliations.  
9 And what we were discussing earlier with Mr. Clark was how  
10 that would be applied in the San Joaquin Valley.

11 We'd also clarify that, when you look at gross  
12 receipts, you're looking at the last calendar year. So,  
13 again, the reader knows how to implement that definition.

14 CHAIRWOMAN SHARPLESS: Les, for our edification,  
15 what would be your concern? What are you concerned about?

16 MR. CLARK: As you know, in Kern County and Fresno  
17 County, we have a different source definition, and that  
18 source definition -- for example, I have one member that has  
19 13 members. And each one of the properties are probably --  
20 I think his largest property's two tons. And that's the  
21 extent of it. And other ones are about a half a ton to one  
22 ton.

23 And those properties are located on the west side  
24 of Kern County in a 30-mile stretch, if you will. With the  
25 current definition, as it was proposed and where we were

1 wanting a clarification on how he'd fit into this, he would  
2 actually be between 10 and 25 tons.

3 CHAIRWOMAN SHARPLESS: If you added them all up  
4 together.

5 MR. CLARK: If you add them altogether. So, with  
6 that, then this gentleman or lady that owns this property  
7 would, in fact, experience an increase in fees from --  
8 anywhere from \$400 -- well, from \$400, maybe up to \$4,000,  
9 which is completely out of line, as far as we were  
10 concerned, and why we had met for clarification on the  
11 definition.

12 We are also cognizant of the fact that you all are  
13 going to work this next year, and we appreciate the efforts  
14 that have gone on from your staff and also the local  
15 districts to -- you know, to discuss this issue with us.  
16 And we're willing to say that the \$700 cap, I can see where,  
17 you know, we're going to pay that. But to go up to \$4,000,  
18 there's just no way with that source definition, because  
19 that's not correct and that's not consistent with the rest  
20 of the State.

21 The law does not read that way when you read the  
22 law. It doesn't say, "except in Kern County or Fresno." We  
23 have a unique source definition. We're willing to work --  
24 and Mr. Weiss is in the back -- and also with your staff  
25 this upcoming year to discuss that more.

1 But in the interim, our suggestion was the \$700  
2 cap. And, you know, that's regardless if it's 10 to 25, or  
3 whatever, because -- and then, those less than 10 tons, we  
4 were asking for the hundred dollars. We know we're going to  
5 pay that.

6 So, we feel that that's a lot more equitable. And  
7 to put us in that category of going up -- possibly up to,  
8 like I say, the \$4,000, we just couldn't see it, because the  
9 bottom line on toxic hot spots is to address a toxic hot  
10 spot. It's not to talk about a property that's in Maricopa.  
11 For you guys who've been lucky enough to drive through  
12 Maricopa, close to my home --

13 MR. LAGARIAS: Yes.

14 MR. CLARK: -- and also the one up in -- another  
15 one in Devil's Den, for you people who've been lucky enough  
16 to go to Devil's Den. I mean, those are like 50 miles  
17 apart, and they're not toxic hot spots. So, that was our  
18 concern. And we would strongly encourage, you know,  
19 direction from the Board to instruct the staff to continue  
20 working with us to, you know, to address what we consider is  
21 something that's not with the spirit of the rule as it was  
22 originally adopted.

23 And we look forward to doing that and provide  
24 information. And I certainly wouldn't want to put anybody  
25 in the situation where that they didn't have information to

1 base a sound decision. So, we're willing to work and put  
2 some numbers together, and actually survey our membership to  
3 see where everybody would fit in that.

4 So, that's where I'm coming from on this. I --

5 CHAIRWOMAN SHARPLESS: Is this definition an  
6 interim that will help that situation, or avoid what Mr.  
7 Clark has indicated is the situation?

8 MS. SHIROMA: Yes. That's our intent, and that's  
9 what we were discussing earlier. And we've discussed this  
10 with the district as well. The intent here --

11 CHAIRWOMAN SHARPLESS: Excuse me. With whom?

12 MS. SHIROMA: Pardon?

13 CHAIRWOMAN SHARPLESS: With whom?

14 MS. SHIROMA: With the air pollution control  
15 district staff, San Joaquin Valley Unified staff.

16 We had a chance to discuss this with them earlier  
17 as well. And our intention is, that with the definition --  
18 that it will be implemented the same, whether you're in  
19 Santa Barbara, or South Coast, or San Joaquin. So, we'll  
20 clarify that we're looking on a lease facility basis in  
21 application of the small business criteria in the San  
22 Joaquin Valley, so it's consistently applied across the  
23 State.

24 CHAIRWOMAN SHARPLESS: Does that take some kind --  
25 the language that was proposed earlier -- Mr. Korenberg

1 proposed earlier -- is the language that carries out that  
2 intention, I take it?

3 MR. VENTURINI: We would have to add some  
4 additional language to make it clear that it would apply on  
5 a lease basis for these types of --

6 CHAIRWOMAN SHARPLESS: So, that would occur during  
7 a 15-day comment period?

8 MR. VENTURINI: That's correct.

9 MR. CLARK: I appreciate your time and for the  
10 clarification, and pledge to your staff, through the  
11 Chairwoman, that we'll be willing to work and put some  
12 numbers together. Looking forward to working with you.

13 Thanks a lot. Appreciate it.

14 CHAIRWOMAN SHARPLESS: Okay. Thank you.

15 Bruce Falkenhagen?

16 MR. FALKENHAGEN: Madam Chairman and members of  
17 the Board, my name is Bruce Falkenhagen. I'm here on behalf  
18 of my company, Energy Enterprises; my clients, the  
19 independent oil producers of Santa Barbara County; and COLAB  
20 of Santa Barbara, the Coalition of Labor, Agriculture, and  
21 Business.

22 I've prepared over 40 plans, reports, and risk  
23 assessments for five of the major districts. So, I feel  
24 like I'm qualified to speak before your Board.

25 Before I start, I'd like to let you be aware of

1 what I feel are some of the outstanding efforts by your  
2 regulators. Genevieve Shiroma and her staff have done a  
3 great job on a very difficult task.

4 While they may have changed some of the  
5 methodology, the factors in the algorithms, et cetera, the  
6 basic intent of the system, I feel, is fair.

7 I would also like to praise our district, the  
8 Santa Barbara APCD, in this program. While I've been one of  
9 the largest critics of the district on many issues, their  
10 efforts in the AB 2588 program are exemplary.

11 I feel the program has done what the Legislature's  
12 intent was. They've required every company to quantify all  
13 possible sources to the nth degree.

14 They have independently developed a system which  
15 is standardized across all businesses. And they have worked  
16 towards this day, when the risk assessments, and plans, and  
17 reports can be punched out like cookie cutters. Their  
18 efforts have definitely kept seven of the companies I  
19 represent in business in these difficult economic times.

20 I hope their guidance can be mimicked across the  
21 State, taking away the inequities that cause an uneven  
22 playing field across the State.

23 So much for the platitudes. Now, down to  
24 business.

25 The small business definition needs work. A small

1 business is defined as a company with less than 10 employees  
2 and gross receipts of less than a half a million dollars.

3 There are two independent problems with this  
4 approach. In the first situation, I represent a company  
5 that has five different operations in Santa Barbara,  
6 Ventura, and three in Los Angeles. Four of the operations  
7 produce a gross income of between \$50,000 to a hundred  
8 thousand dollars a year.

9 One in L.A. produces a gross income of \$600,000.  
10 Under the wording, as it's proposed now, this operator would  
11 have to pay as if all of the operations were large  
12 businesses. He'll have to pay approximately \$25,000.

13 I feel each facility must be treated separately.  
14 Looking at it on a facility-by-facility basis, his fee would  
15 drop to \$7,000, which seems more reasonable.

16 I want you to note that this change would make no  
17 change whatsoever in either the district or the Air  
18 Resources Board income. They did not know that the one  
19 facility was a large source.

20 Santa Barbara only expected income of \$700,000 and  
21 Ventura only \$700,000 (sic). \$4300 of this would be a  
22 windfall.

23 My other concern is the half-million dollar gross  
24 receipt limit for a small business for a single operation.  
25 The oil industry is very unique, in that it's the only

1 industry that is heavily capital intensive. Approximately  
2 20 percent of the gross income off the top goes straight to  
3 royalty -- it's gone -- leaving only \$400,000 available for  
4 income. No other industry in the State of California has  
5 this burden.

6 In the case of a heavy oil facility, the facility  
7 must also purchase a hundred thousand dollars of light oil  
8 to blend with the heavy oil to be able to sell the oil.  
9 That hundred thousand dollars, the way the wording is, comes  
10 back in as gross revenue. But it's an expense to get to it.

11 That drops the total gross receipts down to  
12 \$300,000 to qualify as a small business. From that must  
13 come employee wages, taxes, other air pollution fees, repair  
14 of equipment, capital replacement, et cetera.

15 Without seeing the detailed figures, I'm sure that  
16 each of you can see there's very little profit, if any, if  
17 one State (sic) starts with a half-million dollar gross  
18 receipts figure, and saying that is the small business  
19 level.

20 Also, think of it on a personal basis. Look at  
21 your own personal income. Most of you are married. Add in  
22 your spouse's income. You have a few investments. Add that  
23 in. Then look at the person next to you, add his in to  
24 yours. Between the two of you, you then are no longer a  
25 small business.

1           The change proposed by the ARB staff has the limit  
2 of a half-million dollars to prequalify. I'd like to see  
3 that level for a single operation raised to \$1 million.  
4 It's my understanding of the California codes that small  
5 businesses are defined in various places as between \$2  
6 million to \$6 million of gross receipts.

7           While not going to this level on a single  
8 operation, the level of a half-million dollars is  
9 unrealistic. I'm proposing a level of \$1 million. The ARB  
10 staff is concerned that numerous facilities will then drop  
11 into the small business category based on this increase.

12           Based on the Santa Barbara County operations that  
13 I'm aware of -- and I've looked at every one of the 82 that  
14 are part of this program -- only one or two more out of the  
15 82 facilities will qualify. This change will keep them in  
16 business.

17           The representative of Yolo-Solano may have more  
18 small businesses qualifying if you do increase this level.  
19 Because of this proposed change at such a late time, I  
20 encourage you to direct staff to report back to you on the  
21 impact of raising the level from a half-million to \$1  
22 million when they finalize this report.

23           If it's in the range that I believe it is, the  
24 cost increase for the small -- for the large sources to  
25 subsidize this may only be a hundreds per facility. It does

1 keep the small businesses in business.

2 The other concern I have with this fee schedule is  
3 that everyone needs to pay something into the program. The  
4 industrywide and survey facilities are paying an average  
5 amount of \$85. None of that money goes to the Air Resources  
6 Board or OEHHA. However, much of the efforts by these  
7 organizations over this next year are for these people.

8 \$390,000 of the proposed budget for the ARB is to  
9 develop a small business checklist and risk reduction  
10 guidelines. Some portion of the \$126,000 for OEHHA is for  
11 these minor sources also. It seems only fair that some  
12 money flow to the ARB from these sources.

13 For the 24,000 facilities in this category in this  
14 category, a surcharge of a hundred dollars would bring in  
15 \$2.4 million. This is a very small amount to be asked for.

16 With the exception of the independent oil  
17 producers, these small sources are truly the only ones who  
18 can pass on the cost to the consumer. Hence, there is no  
19 true financial impact. The corner dry cleaner competes with  
20 a similar dry cleaner across town. They both will have the  
21 \$100 increase. They both can raise the price to clean -- to  
22 dry clean a shirt by 5 cents to recover these costs. The  
23 same can be said about the corner gas station.

24 The survey and industrywide sources are all  
25 competing in the same area. The same increase is seen by

1 all.

2 The same cannot be said for the medium-size  
3 operations in the 10 to 25 ton sources or the independent  
4 oil companies. We must compete on a national and  
5 international market. We can't pass on those costs unless  
6 the bulk of our competitors have a similar fee. A roofing  
7 plant in Bakersfield competes against roofing plants in  
8 Arkansas, Arizona, or West Virginia.

9 A sugar plant competes against a sugar plant in  
10 Alabama or Hawaii. An oil operation competes against  
11 Alaska, Venezuela, and Iraq companies.

12 My point is that the industrywide and survey  
13 facilities need to help subsidize the program. They are  
14 receiving the direct benefits of the program; hence, must  
15 contribute.

16 A level of a hundred dollars does not seem  
17 unreasonable, considering that many of these facilities have  
18 gross receipts, as a small business, far in excess of the  
19 half a million to \$1 million level for a small business.

20 The fees now can't ever recover -- the fees, as  
21 they're set now, can never recover the cost, even to send  
22 out the invoices. If you look at Los Angeles, a \$25 fee  
23 doesn't even cover the cost to send out the invoice.

24 In today's era, other businesses can only afford  
25 to subsidize others only for so long. The \$100 surcharge

1 would cover all of the 49 percent increase in the 1993 fee  
2 increase. There's no excess money in the semi and large  
3 businesses these days. The free ride and subsidies are  
4 over. There is no money.

5 Chairwoman Sharpless, in your introduction for  
6 this agenda item, you stated that -- and I quote -- "Each  
7 industry must pay for their share of these costs." Everyone  
8 must contribute something. I hope that you will consider  
9 these changes.

10 Thank you for your time.

11 CHAIRWOMAN SHARPLESS: Thank you very much. I'm  
12 not quite sure -- oh, you've gone.

13 MR. FALKENHAGEN: I'm used to Santa Barbara  
14 County.

15 (Laughter.)

16 CHAIRWOMAN SHARPLESS: Yeah. I'm not quite sure  
17 where you got the million-dollar level that you would like  
18 to amend as the definition for small business. Where did  
19 you say that came from?

20 MR. FALKENHAGEN: I'm pulling that out of the air.

21 CHAIRWOMAN SHARPLESS: Excuse me?

22 MR. FALKENHAGEN: I'm pulling that out of the air,  
23 the same way that I think the half-million was pretty much  
24 pulled out of the air. The 2 million to \$6 million number  
25 is from the California codes as I understand it. Different

1 regulations have different levels of what qualifies as a  
2 small business. I'm just putting that -- throwing out a  
3 number, something greater than half a million, but shouldn't  
4 be up to the \$5 million level.

5 MR. LAGARIAS: Are you in Los Angeles County?

6 Is one of your businesses in Los Angeles?

7 MR. FALKENHAGEN: Yes, it is.

8 MR. LAGARIAS: From our report, it says that a  
9 small business is defined as a company that has 10 employees  
10 or less and gross income of \$500,000 or less. You indicate  
11 that one of your companies would not meet that definition.

12 MR. FALKENHAGEN: That's correct. One company --  
13 actually, there's many of my companies that don't meet that  
14 definition, because they're right at maybe 490,000 to  
15 520,000 or so. The one company in L.A., yes, they are  
16 income. They have only four employees, and they have a  
17 gross income of around \$620,000.

18 MR. LAGARIAS: And they're not defined as a small  
19 business in Los Angeles.

20 MR. FALKENHAGEN: No, they're not defined by this  
21 regulation as a small business. And what happens is that,  
22 because that one operation is not a small business, none of  
23 the other four are small businesses.

24 That's why this company will be paying \$25,000 in  
25 fees, which is the entire Yolo-Solano cost for the program.

1 That company will go bankrupt.

2 MR. LAGARIAS: Yeah. Well, the definition used in  
3 this report apparently was based on the South Coast's  
4 definition of a small business. Staff, could you look at  
5 that again? Or do you have any comment on that?

6 MS. SHIROMA: We also had discussions with Mr.  
7 Falkenhagen earlier, and are grappling with this. When we  
8 set about looking for a reasonable definition, we looked at  
9 all the many definitions that were in existence, to look for  
10 one that set a precedent. And many of those definitions  
11 involved extensive documentation and review. And the  
12 definition of the 10 employees and \$500,000 seemed to be one  
13 that districts could implement.

14 And, again, in working with our fee committee and  
15 with the affected parties, we struck what we thought was a  
16 reasonable compromise.

17 In fairness to Mr. Falkenhagen, he brings up an  
18 issue where, overall, it's a small business, and that the  
19 one knocks out the other four. And we've been -- what we're  
20 grappling with is, if we change this definition, what impact  
21 will it have on the rest of the types of facilities? And  
22 the rest of the cost revenues would have to be taken up by  
23 the other larger facilities. And what we're grappling with  
24 is we don't -- we aren't able to quantify that.

25 Now, we do have a report from the Department of

1 Commerce, which gives numbers of individuals whose taxable  
2 income ranges between various amounts. And we do note that,  
3 if we were to go up to \$750,000 or up to \$1 million, it does  
4 add -- well, a hundred to two hundred individuals involved  
5 in various kinds of businesses, whether it's retail or  
6 manufacturing, what have you. Again, what we're grappling  
7 with is the overall effect of making this change.

8 CHAIRWOMAN SHARPLESS: There's always that  
9 particular unique case that is very difficult to fit into a  
10 more generic term. Mrs. Ichikawa?

11 MRS. ICHIKAWA: I don't understand that. If he's  
12 got five businesses and one is not a small business, but  
13 just one being a big business knocks the other four into the  
14 big business category. How come it doesn't work the other  
15 way around? The four small businesses pull the one big  
16 business down into the small business?

17 MR. LAGARIAS: That's called a loophole.

18 (Laughter.)

19 MRS. ICHIKAWA: How do you figure that?

20 MS. SHIROMA: Well, what we were trying to address  
21 and we did discuss this with the larger companies -- what we  
22 were trying to address is that, when you do have the  
23 business affiliations, and if that fifth business were a  
24 large corporation, that there is that ability to influence  
25 the other four smaller businesses.

1           Mr. Falkenhagen brings up a unique case where his  
2 fifth business is a little over the cap. And we knew that,  
3 when we drew the line, there would be people very close to  
4 that line. Unfortunately, we didn't have the comprehensive  
5 data statewide that we thought we would be able to get. We  
6 did poll the districts as to what a million-dollar change  
7 would make -- going from 500,000 to a million dollars. And  
8 in truth, most of the districts did not know. And there was  
9 a concern about the shortfall, although we definitely  
10 understand Mr. Falkenhagen's situation here.

11           MRS. ICHIKAWA: Madam Chair, I really think this  
12 is important, because I do own a small business. And I'm  
13 thinking, too, like if I had four others and one does well,  
14 there's no way that the one that I'm working in now can come  
15 up with that kind of money. It just doesn't -- it's not  
16 making sense.

17           CHAIRWOMAN SHARPLESS: Well, if I understand what  
18 this witness said, the reason why this corporation finds  
19 itself in this particular situation is that, while it may be  
20 viewed as a million-dollar company, it really isn't. It's a  
21 \$300,000 company, because -- did I follow your argument? Or  
22 were you talking about some other business?

23           MR. FALKENHAGEN: No. That was a different issue.

24           CHAIRWOMAN SHARPLESS: Oh, that was a different  
25 issue?

1 MRS. ICHIKAWA: That was the classification of a  
2 small business.

3 MR. FALKENHAGEN: The company finds themselves  
4 (sic) as a large business because one operation produces  
5 over a half-million dollars. Now, you can go one step --  
6 one has gross receipts of over a half-million dollars.

7 This can go to the point that that -- that one  
8 operation -- I'm talking about just five tank operations,  
9 five little tank operations.

10 That one is over a half-million dollars. But one  
11 of the companies is located in Kansas. The way the rule is  
12 worded now, you're not limiting this to even the State of  
13 California.

14 That operation could be in Argentina. And still,  
15 if I have one operation getting gross receipts over a half-  
16 million dollars, every operation that comes under AB 2588 is  
17 a large business.

18 CHAIRWOMAN SHARPLESS: Well, I thought that that  
19 was the language that was being worked out by staff. I  
20 thought that the issue that Mr. Clark brought up was a  
21 similar issue concerning affiliated businesses. Was not  
22 that the same issue, and does this language that you're  
23 working to try to deal with Mr. Clark's problem also deal  
24 with this problem this gentleman is talking about?

25 MS. SHIROMA: No. I'm sorry. The issue that Mr.

1 Clark brought up dealt within the framework of the 10  
2 employees and \$500,000 gross for the leases within the San  
3 Joaquin Valley.

4 CHAIRWOMAN SHARPLESS: Oh, I see. I see the  
5 difference.

6 MS. SHIROMA: But I did want to clarify -- and I  
7 realized I needed to do this, Bruce -- that, when you look  
8 at the companies that are involved in your aggregate, that  
9 they are companies that would be subject to the hot spots  
10 program, so we are talking about California companies. You  
11 were mentioning about companies out in Kansas. But these  
12 would be companies that are actually subject to the  
13 California program.

14 MR. FALKENHAGEN: As long as you have that on the  
15 record, that's fine.

16 CHAIRWOMAN SHARPLESS: Does that take care of that  
17 problem?

18 MRS. ICHIKAWA: No.

19 MR. FALKENHAGEN: It takes care of the one  
20 problem, well, for one company.

21 MR. LAGARIAS: It takes care of Kansas.

22 MR. FALKENHAGEN: There are a lot of problems.  
23 Now, the company that has five different operations across  
24 different district boundaries -- as far as Santa Barbara was  
25 concerned, they were going to get \$700 as a small business

1 from them. As far as Ventura was concerned, they were going  
2 to get \$700 as a small business.

3 Because one facility over in L.A. makes it a large  
4 business, Santa Barbara and Ventura would receive -- if I  
5 were honest, I would tell them that there's another  
6 operation; that we do not qualify as a small business.

7 What I would suggest is that you make the  
8 definition be facility -- the gross income facility by  
9 facility.

10 Now, the Air Resources Board --

11 CHAIRWOMAN SHARPLESS: That seems to make more  
12 sense than trying to switch from 500,000 to a million.

13 MR. FALKENHAGEN: Well, no, they're two different  
14 issues.

15 CHAIRWOMAN SHARPLESS: Because you don't know what  
16 the impact is going to --

17 MR. FALKENHAGEN: That's two different issues.  
18 That's one issue. Then, the other question is, is the half-  
19 million dollars for one facility, is that an appropriate  
20 level?

21 CHAIRWOMAN SHARPLESS: Well, we're in a bind here.  
22 I mean, on the one hand, we're helping your client. On the  
23 other hand, we've got a whole bunch of people that will be  
24 impacted by us changing the definition by their fees going  
25 up, because you don't know how many or we don't know how

1 many will fall under the small business definition if we  
2 change the definition from 500,000 up to one million. And  
3 in the event that we do that, then that just means that the  
4 fees increase for everybody who's outside that one million  
5 dollar classification.

6 So, then what do you say? What if I'm a company  
7 that's, you know, \$1,500,000? There's always somebody just  
8 right over the edge that's going to be impacted.

9 MR. FALKENHAGEN: Okay. But if you have it high  
10 enough, people won't be arguing, because you're talking  
11 about a \$5,000 fee. When you're down at a half-million  
12 dollars and your gross profit is only \$10,000 a year, that  
13 \$5,000 is a big impact.

14 CHAIRWOMAN SHARPLESS: That's true.

15 MR. FALKENHAGEN: Okay. If --

16 CHAIRWOMAN SHARPLESS: But what about the  
17 intermediate companies?

18 MR. FALKENHAGEN: Well, you've asked -- okay.  
19 What I have suggested is that you direct staff that in the  
20 interim 15-day period, or when you work this thing through,  
21 see what the difference is by going from a half-million to a  
22 million. Based on my look at Santa Barbara County and 88  
23 facilities -- or 82 facilities there, only one or two of the  
24 88 (sic) would suddenly -- would qualify as a small  
25 business. Those one or two, you're going to lose income of

1 about \$8,000 from that, or \$8400. \$8400 spread over income  
2 of \$250,000 is going to work out to be somewhere less than  
3 \$100 per facility.

4 It's not a big increase.

5 CHAIRWOMAN SHARPLESS: If, in fact, the rest of  
6 the districts are anything like Santa Barbara;  
7 what if you get into an area like L.A., where it's a lot  
8 different?

9 MR. FALKENHAGEN: I can't speak for L.A.

10 CHAIRWOMAN SHARPLESS: Now, that's the problem.  
11 We've got 34 districts here. Mr. Venturini?

12 MR. VENTURINI: Maybe I can make a suggestion that  
13 maybe will hopefully deal with this. The main reason why we  
14 did not go facility by facility is because we didn't want to  
15 provide that small business relief to a very large  
16 corporation that would have a lot of small facilities.  
17 Maybe it'd be possible to go with the facility by facility,  
18 but then have an overall cap over all of the facilities,  
19 something on the order of maybe \$3 million. So, truly,  
20 someone, like in this case, that may have three or four  
21 small businesses, they could be looked at individually. But  
22 then you wouldn't pull in the multitude of facilities a  
23 major corporation would have, because they'd be obviously  
24 over the broader cap.

25 MR. FALKENHAGEN: I agree with what the gentleman

1 is saying. Except, ask yourself, conceptually, does it  
2 really matter if Mobil or Unocal has one or two facilities  
3 that are qualified as a small business? They operate as a  
4 business. If that one operation is not making money, it  
5 will be shut down.

6 That's going to be shut down. Now, if other parts  
7 of their operation must subsidize that, it doesn't make  
8 sense. From a business viewpoint, it doesn't make sense. I  
9 see no reason in --

10 CHAIRWOMAN SHARPLESS: Well --

11 MR. FALKENHAGEN: I don't understand the concern  
12 about this. Why should a major company not get the benefit  
13 of a small business? If they have one small operation  
14 somewhere up in Yolo County, why should they not get the  
15 benefit of it?

16 CHAIRWOMAN SHARPLESS: The problem I'm having with  
17 this discussion, this very interesting, theoretical,  
18 academic discussion is that none of this has really been  
19 costed out to figure out if what you're suggesting is fair  
20 and equitable to the majority of businesses in the State of  
21 California.

22 That's the problem I'm having with the line and  
23 direction. I'd like to see if we can't somehow come up with  
24 something that's reasonable that doesn't do -- make a major  
25 modification to the proposal that has already been

1 workshoped, and businesses are aware of and have already  
2 looked at the impacts.

3 But once you start making major changes in the  
4 calculation of this proposal, then I think it's only fair  
5 that, you know, that other businesses have a shot at it.  
6 And quite frankly, I think -- you know, after seven  
7 workshops, this thing has had plenty of opportunity to go  
8 through all of those various reviews and evaluations. I am  
9 sympathetic to this one situation, and I'm not quite sure  
10 how we deal with it. I'm not sure.

11 So, staff, you're making a suggestion that this is  
12 something that you could look at during the 15-day comment  
13 period?

14 MR. VENTURINI: Well, we could do it during that  
15 period of time, or we may be able to, if you wanted to, is  
16 while the discussion continues, look at it a little further  
17 here.

18 CHAIRWOMAN SHARPLESS: How much time would you  
19 take?

20 (Laughter.)

21 MR. VENTURINI: There probably isn't sufficient  
22 time, so probably during the 15-day --

23 CHAIRWOMAN SHARPLESS: Yeah, I was going to say.  
24 I hope we're not here until you have adequate time to run  
25 through all of the statistics of the State of California.

1 (Laughter.)

2 SUPERVISOR RIORDAN: Madam Chairman, if I might, I  
3 do think Mr. Venturini had a good idea that might  
4 accommodate some of the concerns. And that is that you  
5 place a cap. Where the cap goes is the question. But it  
6 seems very reasonable. Because that would offset, you  
7 know, the issue that perhaps is raised now, where somebody  
8 is just over the mark of what is considered a small  
9 business, but doesn't affect, necessarily, those others that  
10 are the small businesses.

11 But you better be sure of where to put that cap.

12 MR. LAGARIAS: But if that -- that raises more  
13 problems, though. Because if you put a cap -- if you have  
14 four employees at one place, and five employees at a second,  
15 and three at a third, you're going to add up more than 10  
16 employees.

17 SUPERVISOR RIORDAN: Well, no. These are separate  
18 facilities.

19 MR. LAGARIAS: But then you start dividing your  
20 staff up so that you have less than 10 --

21 SUPERVISOR RIORDAN: No, no, no. Not at all.

22 MR. VENTURINI: The cap would only have been on  
23 the dollar amount.

24 SUPERVISOR RIORDAN: The cap's on the dollar.

25 MR. LAGARIAS: That's right, but that dollar

1 amount does not cover -- may cover a lot more than 10  
2 employees.

3 MR. VENTURINI: But it was 10 employees per  
4 facility.

5 MR. LAGARIAS: That's --

6 MR. VENTURINI: Okay. I understand. Maybe what  
7 it sounds like -- maybe the best thing is to provide us the  
8 guidance and the direction, and then we can work on it  
9 during the 15 days.

10 CHAIRWOMAN SHARPLESS: I mean, if it obviously is  
11 not going to work out, I don't think this is something that  
12 the Board wants to buy into to complicate the process and  
13 cause inequities.

14 MR. LAGARIAS: I don't know if it makes sense or  
15 not to divide it and have 10 employees or a total gross  
16 sales of 500,000. I don't know what kind of problem that  
17 would present.

18 CHAIRWOMAN SHARPLESS: The real problem, once  
19 again, is that we try to give relief to small businesses.  
20 If we didn't put a cap on small businesses, then small  
21 businesses would be counted as a facility, and they would be  
22 charged a few based on where they are in the workload.

23 As it is, on the \$700 fee, they're just charged  
24 the \$700 fee and not charged on the workload, right? So,  
25 they are, you know, I mean they're getting a lot. They're

1 getting a lot, and other people are subsidizing them.

2 Now, if you've been here and you listen to the  
3 other folks who represent other businesses, they want to go  
4 for a fee for service. And so, here we are. Now listening  
5 to this other situation, which is --

6 MR. FALKENHAGEN: The fee for service --

7 CHAIRWOMAN SHARPLESS: -- relief.

8 MR. FALKENHAGEN: The fee for service makes good  
9 sense in certain cases. I think Santa Barbara County and  
10 the companies in Santa Barbara would probably think that it  
11 was a very good idea for the Air Resources Board to go  
12 completely that way. The reason being is that our Air  
13 Resources -- or our APCD has standardized things so well,  
14 the Air Resources Board couldn't spend \$97,000 the same  
15 looking plan 82 times. I think they'd want to go for a fee,  
16 you know.

17 This is a different matter. I don't really want  
18 to get into it.

19 CHAIRWOMAN SHARPLESS: No. I appreciate what  
20 you're saying, but I think that you ignore the fact that the  
21 program is bigger than that, and that it does more than  
22 that. And that, in some ways, those very businesses benefit  
23 from -- or in some cases, are even being subsidized from  
24 what's happening in the other aspects of the program, such  
25 as the small business assistance part of the program, such

1 as all of the risk assessment issues that we talked about  
2 earlier this morning and the impacts that they have on  
3 whether they're in or out of the program, and what their  
4 costs are in terms of 1731 and what their costs are in terms  
5 of where they fall in the ranking.

6 So, you know --

7 MR. FALKENHAGEN: I think --

8 CHAIRWOMAN SHARPLESS: -- you don't take that as a  
9 benefit, I guess, --

10 MR. FALKENHAGEN: Well, no, I look at --

11 CHAIRWOMAN SHARPLESS: -- on a few for service.

12 MR. FALKENHAGEN: -- what Santa Barbara did. I  
13 look at what we've done. We have -- we had a total -- let  
14 me give you some numbers here.

15 Santa Barbara County has a total of 82 plans and  
16 reports. 82 and a total of 65 health risk assessments. 79  
17 percent of all businesses did a health risk assessment in  
18 Santa Barbara County. The statewide average is 22.2  
19 percent. There were only, in San Bernardino, 9.4 percent of  
20 them did health risk assessments.

21 Santa Barbara's APCD has done such a good job  
22 because of standardizing things, making it cookie cutter. I  
23 give them a disk to run a risk assessment. They run it.  
24 And they've been able to keep control of their costs because  
25 of that.

1           Because of that, in all of these 65 risk  
2 assessments, only eight are going to be in the notification  
3 step. I think if you compare those percentages to any other  
4 district, you're going to find that every other district  
5 will have a lot more people into the notification steps than  
6 in Santa Barbara County. The reason being is that aa lot of  
7 these small facilities -- the one I told you in Santa  
8 Barbara County for this five operation (sic), in any other  
9 county, they would not have even been at the plan and report  
10 step. They would be in the industrywide survey.

11           I've got four companies in Santa Barbara that  
12 should be in the survey or industrywide survey. But because  
13 of decisions that were made by our Board of Supervisors,  
14 they are in the risk assessment level.

15           CHAIRWOMAN SHARPLESS: I appreciate that.

16           MR. FALKENHAGEN: I guess my point is --

17           CHAIRWOMAN SHARPLESS: And I -- but what I think  
18 that gets to is the district part of the program.

19           MR. FALKENHAGEN: No. We have been doing a lot  
20 more work in Santa Barbara County than should really have  
21 been submitted to the Air Resources Board. We've been doing  
22 a lot more. The benefits that you talked about that you're  
23 implying that someone else is subsidizing us -- and I don't  
24 think that's the case. I think that we are subsidizing.  
25 But it's a moot point.

1 CHAIRWOMAN SHARPLESS: It's not a moot point. I  
2 mean, the point is that what Santa Barbara did was how it  
3 implemented its district part of the program, how it carried  
4 out doing its industrywide risk assessments, and the fact  
5 that it made a decision that it was going to do the risk  
6 assessments. Other districts haven't chosen to do it that  
7 way. And so, their industries are in different situations.

8 What happens at the State level is entirely  
9 different than what's going on at the district level. And,  
10 you know, sometimes these distinctions, I think, are not  
11 recognized. And so, we kind of fall into the entire mix  
12 here. That's the only point I was making. I understand  
13 what your concerns are. I think staff will be attempting to  
14 see what possibilities are out there.

15 MR. FALKENHAGEN: Maybe one way around it --  
16 you've said that there is a concern for the definition of  
17 stationary source in effect, for San Joaquin. Maybe make  
18 the small business exemption be specific for a certain  
19 definition for San Joaquin to cover their particular  
20 problems, a specific definition for Santa Barbara County to  
21 handle the situation there in this particular case.

22 CHAIRWOMAN SHARPLESS: No. Because you're here  
23 for Santa Barbara --

24 MR. FALKENHAGEN: No, I'm --

25 CHAIRWOMAN SHARPLESS: -- what about everybody

1 else in the State?

2 MR. FALKENHAGEN: Well, I think Santa Barbara's  
3 definition would probably be close to the rest of the  
4 State's. But I'm just -- I'm giving an option. Maybe you  
5 can have two different definitions of small business to  
6 handle the San Joaquin problem.

7 CHAIRWOMAN SHARPLESS: Mrs. Ichikawa.

8 MRS. ICHIKAWA: I want to get to the first point.  
9 I mean, I don't want to prolong this. But the first point  
10 in your testimony about the inequity about the five small  
11 businesses. Well, one isn't small.

12 I think we do need to look into that. I just  
13 don't think it's fair for this one -- because one is  
14 considered a big business, then all five are categorized as  
15 big businesses. And they really aren't, not in the real  
16 world.

17 And I would like to see some information, another  
18 workshop, or something happen regarding this definition. It  
19 just doesn't seem right to me.

20 CHAIRWOMAN SHARPLESS: Well, I think the staff has  
21 made a commitment that, during the 15-day comment period,  
22 they are going to be looking at this issue.

23 MRS. ICHIKAWA: Okay.

24 CHAIRWOMAN SHARPLESS: I don't think we want to  
25 build in a different inequity by dealing with this inequity.

1 So, we have to be very careful as to how we deal with this.

2 DR. BOSTON: Question.

3 CHAIRWOMAN SHARPLESS: Yes, Dr. Boston.

4 DR. BOSTON: Mr. Lagarias just passed over  
5 something there that went by and I thought was a pretty good  
6 suggestion. I think he recommended changing the definition  
7 to -- of a small business to 10 employees or gross of  
8 \$500,000. That would seem to handle it completely.

9 MS. SHIROMA: Now, that is one set of criteria  
10 that we did take a look at. And it turns out that, in  
11 California, approximately 40 percent of the businesses have  
12 10 employees or less. And so, it -- we were trying to  
13 strike a balance in providing some relief.

14 DR. BOSTON: Well, if they have 50 employees and  
15 are making less than \$500,000, they need relief.

16 (Laughter.)

17 SUPERVISOR RIORDAN: They need a lot more than  
18 relief.

19 DR. WORTMAN: They are on relief.

20 (Laughter.)

21 SUPERVISOR RIORDAN: Right.

22 MS. SHIROMA: However, in response to the  
23 discussion, at the Board's direction, we will definitely  
24 look at Peter's suggestion of the cap, put that out for the  
25 15 day, and work on that during the 15-day notice.

1 MR. BOYD: Madam Chair, at the end of the day,  
2 when you've heard all the witnesses and you feel the same  
3 way, then you can give us direction to do pretty much as we  
4 said here, look at various alternatives and come up with  
5 some approach.

6 CHAIRWOMAN SHARPLESS: I appreciate that. Dr.  
7 Wortman.

8 DR. WORTMAN: I have some problems with this  
9 concern that was expressed by Mr. Venturini about a large  
10 corporation subdividing itself into many, many little units.  
11 They don't do that. They can't exist that way. If  
12 anything, they tend to consolidate operations to reduce  
13 cost.

14 And, secondly, along the same lines that Dr.  
15 Boston started here, 500,000 and 10 employees: If you have  
16 a cheap employee with a normal multiplier, "cheap" employee,  
17 that may be five employees.

18 Typical multiplier, about 3. So, 10 means nothing  
19 with regard to \$500,000, unless you're running illegal,  
20 cheap labor.

21 CHAIRWOMAN SHARPLESS: Was I mistaken, staff --  
22 I'll excuse this witness. Thank you very much.

23 (Laughter.)

24 MR. FALKENHAGEN: I'll still stay the night if you  
25 want.

1 CHAIRWOMAN SHARPLESS: No, no. I'd like you to --  
2 I'd like to really move this along, since we're at 4:30.

3 Was I mistaken, staff? Did you not look at the  
4 various options of the various different cut points on  
5 number of personnel to ratio of gross profits or --

6 SUPERVISOR RIORDAN: These aren't profits.

7 CHAIRWOMAN SHARPLESS: I meant gross receipts.

8 MS. SHIROMA: Yes. Acknowledgeably, there is a  
9 paucity of data out there. But we did look at the South  
10 Coast experience, using 10 employees and \$500,000 gross  
11 receipts, they estimated that, based on their experience, 15  
12 to 20 percent of their industries fall within that category.

13 CHAIRWOMAN SHARPLESS: Now, who made that  
14 evaluation?

15 MS. SHIROMA: The South Coast District themselves.  
16 They've been implementing this definition for some time now.  
17 Many of the other districts don't have an estimate as to how  
18 many industries will come in and verify that they are at the  
19 10 employees and 500,000.

20 In truth, we thought that the survey and  
21 industrywide categories would catch most of the small  
22 businesses -- dry cleaners, gas stations, et cetera.

23 And we do have some information on individuals,  
24 taxable receipts, the number count within California. So,  
25 that's what I was referring to earlier, that a hundred to

1 200 additional individuals may fall into this category.  
2 But, again, looking again at all kinds of businesses --  
3 retail, manufacturing, et cetera.

4 So, there is a paucity of data out there, and we  
5 have been concerned about that. The best data that we had  
6 was on the ten employees and \$500,000 gross receipts.

7 CHAIRWOMAN SHARPLESS: Business associations don't  
8 have that kind of data?

9 MRS. ICHIKAWA: I can probably get that.

10 MS. SHIROMA: We contacted the local districts and  
11 the Federal Government for the analyses that they had  
12 conducted on their small industries.

13 CHAIRWOMAN SHARPLESS: Excuse me. Say that again,  
14 Genevieve. I didn't hear it.

15 MS. SHIROMA: We had contacted the local  
16 districts. In fact, my staff called all the districts to  
17 query them on the one million/500,000 cut points. We also  
18 talked to the Department of Commerce.

19 And, as I say, we had thought that -- and through  
20 our workshop process -- that the small businesses that you  
21 normally think of -- the gas stations, dry cleaners, auto  
22 body shops, et cetera -- who are in the program, would be  
23 caught in that survey and industrywide category, which has  
24 the average fee or the \$85.

25 But we did include the small business definition

1 in the event that we did miss someone. And so, there will  
2 be facilities, such as in the San Joaquin Valley, which will  
3 be able to take the benefit of the small business  
4 definition.

5 CHAIRWOMAN SHARPLESS: I see. Yes, Dr. Wortman.

6 DR. WORTMAN: You can get data on the costs. The  
7 500,000 gross depends on what kind of business you're in.  
8 But you are dealing strictly in the labor-type business, you  
9 will never get by with a multiplier of less than about 2.8.  
10 So, a hundred thousand dollar a year person is probably  
11 getting a salary of about 30,000, 35,000, something like  
12 that.

13 So, these are very -- and if it's some sort of a  
14 business where they buy and replace things, half a million  
15 is nothing. It's not ten employees. It's probably four.  
16 Right now, in engineering, labor goes with a multiplier of  
17 3.6. You pay a man 50,000 a year, and you charge the  
18 Federal Government 180,000. And that's legitimate. You can  
19 count up all the costs. You pay his holidays, you pay his  
20 overheads, you provide him space. It's 180.

21 MR. LAGARIAS: Well, aren't we really talking  
22 about only those businesses that are in the permit programs  
23 of the various districts? So, it doesn't include a guitar  
24 player, or people that are not involved with some kind of  
25 activity.

1 (Laughter.)

2 MR. LAGARIAS: What's wrong with guitar players?

3 MS. SHIROMA: They're totally subject to the act.

4 SUPERVISOR RIORDAN: Well, they could be a toxic  
5 hot spot, some of them.

6 (Laughter.)

7 MR. LAGARIAS: What we're really concerned --

8 SUPERVISOR RIORDAN: We had a group called "The  
9 Poison" in our county not long ago.

10 MR. LAGARIAS: We're really concerned with  
11 businesses that may have large pass-through activities, like  
12 you buy five tractors for \$80,000 apiece, or eight tractors,  
13 or nine tractors at 80,000 apiece, and all of a sudden  
14 you're big business, because the gross sales of that are  
15 over 500,000. So, we're trying to find out how to separate  
16 those people that are just passing through a lot of  
17 activities without really doing much in the permitting  
18 operation. And that's where you're tying our hands when you  
19 put both of those -- number of employees and the gross  
20 volume sales.

21 CHAIRWOMAN SHARPLESS: Okay. Well, why don't --  
22 we know this is an issue, and we're going to have to deal  
23 with it. Why don't we go through the rest of the witness  
24 list and see what else pops up here.

25 Ask Roger Isom, California Cotton Ginners.

1 MR. ISOM: Madam Chairwoman and members of the  
2 Board, I have two very brief points, and I think one's  
3 already been addressed, but I just want to clarify that it  
4 has.

5 Earlier in Mr. Korenberg's report, we had asked  
6 that Section 90704(a) not be amended as proposed in the  
7 packet that's before you. And I just wanted to confirm that  
8 that has been done; that it won't be changed.

9 CHAIRWOMAN SHARPLESS: Is that the annual adoption  
10 of fees for the State level?

11 MS. SHIROMA: Yes, that's correct.

12 CHAIRWOMAN SHARPLESS: Okay.

13 MR. ISOM: Then, simply to move on, the second one  
14 is, we'd like to express our gratitude to Genevieve,  
15 Janette, and their staff. I've been involved with this  
16 since the inception, in that I used to work at Fresno County  
17 Air Pollution Control District and then the San Joaquin  
18 Valley Unified Air District. And I think this year in the  
19 fee regulation development, the criteria guidelines, and the  
20 risk management guidelines, that industry has been able to  
21 be involved in an industry-ARB type workshop meeting. And I  
22 think that that's gone a long way, as evidenced by just  
23 yesterday, we came up with this comment on the annual  
24 adoption, and we were able to get that corrected within a  
25 couple hours.

1           And the agriculture industry in the San Joaquin  
2 Valley would like to echo those sentiments. We really do  
3 appreciate it.

4           CHAIRWOMAN SHARPLESS: Thanks. You'll be  
5 receiving your bill at the end of the day.

6           (Laughter.)

7           CHAIRWOMAN SHARPLESS: Jack Caufield,  
8 environmental consultant.

9           MR. CAUFIELD: For the record, my name is Jack  
10 Caufield. My appearance today is sponsored by several small  
11 oil producers again.

12          CHAIRWOMAN SHARPLESS: If you could lift the mike  
13 close to your mouth or speak up, either one.

14          MR. CAUFIELD: Okay. My appearance today is  
15 sponsored by several small oil producers whose fees will  
16 increase as much as a factor of 10 times or more, and I know  
17 we've been talking about this already. But the problem is  
18 that I'm not seeing that some of them are going to have  
19 relief. They're still going to be caught going from \$400 to  
20 \$4,000, or \$800 to \$8,000, or some number even higher than  
21 that yet. And I know the staffs have been working on that  
22 language, but this small business thing that you've also  
23 been talking about also, you know, does hit them. And I do  
24 have some of those that, you know, they do make over --  
25 their gross is over 500,000. And so, they're going to be

1 caught by one of their properties, like the other gentleman,  
2 Bruce, I think his name was.

3 Some of these people that I have have similar  
4 problems. He's not unique. In other words, I have people  
5 that have a property in one little lease in Ventura County.  
6 They have a lease in the South Coast. And then they have a  
7 lease on the west side of Kern County, and leases over on  
8 the central side of Kern County.

9 That particular one, if they change the  
10 definition, he'd probably drop out. But there are other  
11 ones that do have that problem. And they have more than 114  
12 barrels on one lease. And so, that 500,000 cap is still  
13 going to be a problem with them, and they're still going to  
14 have to pay over \$4,000 where they paid \$400 before.

15 CHAIRWOMAN SHARPLESS: What would happen if they  
16 were under a million-dollar cap?

17 MR. CAUFIELD: Most of them -- it would help. It  
18 would help a lot. At least one of them, I think, would be  
19 just -- probably just over that, because they -- you know,  
20 whether their leases are actually all exactly contiguous,  
21 whether they're adjacent (sic) -- if it went by a lease by  
22 lease basis. But if you lump the leases together, because  
23 they happen to touch each other, then this one firm might  
24 still be caught, because his gross would be just a little  
25 bit over that.

1           If they separated all the leases, I don't know.  
2   You know, if he could separate his production from each one  
3   of his little leases, which I think he probably can, it  
4   might be that he would fall under the million then, because  
5   it would be -- part of it would be on one lease and part --  
6   you know. So, I don't know whether it would help him or  
7   not. It would definitely help the other one.

8           CHAIRWOMAN SHARPLESS: Okay, Mr. Caufield. Thank  
9   you very much.

10          MR. CAUFIELD: Thank you.

11          CHAIRWOMAN SHARPLESS: Dan Phelan?

12          MR. PHELAN: My name is Dan Phelan, representing  
13   the Bay Area League of Industrial Associations.

14          My remarks will be very short. We basically  
15   support the staff, and we think they've done a good job.  
16   Who pays is always a very hard decision. I might add that  
17   the Bay Area moved out ahead before the McCorquodale bill to  
18   toxic-related fees.

19          They've used the option to develop their own  
20   method of collecting. And it's a formula. We do it on  
21   emissions and potency by a formula. And the formula's  
22   changed several times through the years, but it seems like  
23   each time we changed it, it's gotten a little bit better.

24          And we find it's very difficult to allocate cost.  
25   In fact, it's a very complicated matter, and it would be

1 somewhat helpful to the staff there in helping them explain  
2 the system to their directors. We believe that the 93-94  
3 fees were very appropriate, even though some of our members  
4 that are hurt think they're expensive. But, when you look  
5 at it, we think that it's -- that it works. Like so many  
6 things in this complicated toxics area, if you stay with it,  
7 why, it goes -- we think you're going in the right  
8 direction.

9 I happen to know what the district does on a small  
10 business, but --

11 CHAIRWOMAN SHARPLESS: Good. Tell us.

12 (Laughter.)

13 MR. PHELAN: Would you like to know?

14 CHAIRWOMAN SHARPLESS: Yes.

15 MR. PHELAN: I wasn't sure.

16 (Laughter.)

17 CHAIRWOMAN SHARPLESS: On this one you can feel  
18 comfortable.

19 MR. PHELAN: Thank you. Basically, you -- small  
20 business gets an exemption at \$5,000. And the definition is  
21 by Rule 209. The essence of it is -- well, I'll read it.

22 "A business which meets all of the following  
23 conditions: The principal office must be in  
24 California. The officers must live in California. It must  
25 be independently owned and operated. It must be not -- not

1 be dominant in its field of operation. It must not be an  
2 affiliate of a nonsmall business. If it is a  
3 nonmanufacturer, it can employ over -- cannot employ over 25  
4 persons, nor can its actual receipts exceed a million.

5 If it is a manufacturer, it cannot employ over 50  
6 persons, nor can its annual receipts exceed five million.  
7 As I say, it hasn't been a cure all. I could give you some  
8 stories about people being hurt. And each year it's a  
9 little different people that are hurt.

10 But generally, it seems to be working well.

11 CHAIRWOMAN SHARPLESS: The only part of this --  
12 well, I'm keying in on part of this definition. You don't  
13 allow the businesses to be affiliated. Did I hear you say  
14 that? They can't be affiliated.

15 MR. PHELAN: Okay. It must not be an affiliate of  
16 a nonsmall business.

17 CHAIRWOMAN SHARPLESS: Of a nonsmall business. So  
18 that wouldn't help the folks we've just heard from.

19 MS. SHIROMA: Also, the district's fee is \$5,000  
20 per facility, in contrast to our proposal of \$700.

21 CHAIRWOMAN SHARPLESS: No, I --

22 MS. SHIROMA: We did draw upon the part of the  
23 definition regarding the affiliations. Initially, we had  
24 said any affiliations must be in the aggregate added in.  
25 But then we went to the Bay Area District's definition,

1 which indicated that, as long as the affiliations were small  
2 businesses, then the facility in question would qualify for  
3 the fee.

4 CHAIRWOMAN SHARPLESS: How did you -- maybe you  
5 don't know this. But how did you figure out 50 persons and  
6 \$5 million for manufacturing, and 25 persons and \$1 million  
7 for the others?

8 MR. PHELAN: I don't really -- I don't really  
9 know. I can't --

10 CHAIRWOMAN SHARPLESS: You don't know the basis  
11 for that.

12 MR. PHELAN: It just seems to have worked out.  
13 The big -- when we originally started, it started out with  
14 simply taking the potencies times the emissions and rounding  
15 it out. That's the way we did it. The chrome people fees  
16 were reduced because of their high potencies. Some of the  
17 larger emitters were reduced because of their high  
18 emissions.

19 That's the way it started the first year. And  
20 then, as -- it was sort of a -- and then, as the public  
21 responded to the complaints, changes were made. So, it was  
22 evened out, and the number of complaints have started going  
23 down.

24 The last people -- from looking at this, the last  
25 people that were hurt were the hospitals when ethylene oxide

1 came out as a -- as a --

2 CHAIRWOMAN SHARPLESS: Toxic.

3 MR. PHELAN: As a toxic, why, they went up from --  
4 one hospital went up from 600 to 10,000. It's expensive.  
5 It's cost money to control toxics in the Bay Area. I think  
6 our total bill's about two and a half million bucks now.  
7 But, the law says to do it, and we're doing it. It's just  
8 difficult to allocate the -- allocate the money.

9 CHAIRWOMAN SHARPLESS: Thank you very much, Dan.  
10 I appreciate your comments.

11 John Donovan, California Independent Petroleum  
12 Association.

13 MR. DONOVAN: They're never long enough.  
14 (Speaking of microphone and the fact the microphone would  
15 not reach to his height.)

16 (Laughter.)

17 MR. DONOVAN: Good afternoon, Madam Chair and  
18 members of the Board.

19 My name is John Donovan, and I'm the Director of  
20 Environmental and Regulatory Affairs for the California  
21 Independent Petroleum Association.

22 CIPA is an association of approximately 550 oil  
23 and gas producers, royalty owners, and service and supply  
24 companies, and environmental consultants.

25 Approximately half of those members are oil and

1 gas producers. We understand that the bulk of these  
2 proposed fee increases can be attributed to the  
3 implementation of Senate Bill 1731. We appreciate the fact  
4 that these new requirements will result in new risk  
5 assessment guidelines and provide assistance to small  
6 businesses in preparing risk reduction audits and plans.

7           However, CIPA would like to express our concern  
8 that the small independent oil and gas producer cannot  
9 continually absorb these fee increases. The California oil  
10 and gas producer does not control the price that he receives  
11 for his oil. The independent producer does not have the  
12 luxury of passing on these costs to a consumer.

13           I want to thank Ms. Shiroma and her staff in their  
14 efforts for reworking the small business definition as a  
15 result of our concerns.

16           And we appreciate the fact that the ARB is  
17 considering the financial impacts their fees have on small  
18 businesses.

19           While CIPA acknowledges ARB's good-faith effort to  
20 define small business as those who have 10 employees or less  
21 and gross receipts of \$500,000. CIPA requests that the  
22 gross receipts cap be raised to a minimum of \$1 million.  
23 This concern echoes comments previously submitted by Mr.  
24 Falkenhagen and Mr. Caufield.

25           I am currently putting together a survey of our

1 members, of which I said is approximately 250 members, oil  
2 and gas producers, that will hopefully justify this request.  
3 And I'll be working with staff over the next couple weeks to  
4 see if we can get them those numbers.

5 I do have one question of staff that I haven't  
6 been able to ask them, and perhaps we can do this at another  
7 time, but I would like to know how staff applied its study  
8 approach to the independent oil and gas producer.

9 Appendix 7 of the document describes the study  
10 approach used by staff in evaluating the potential economic  
11 impacts of the fee increases on California businesses. And  
12 it says the approach was based on a sample of one to three  
13 businesses for each affected industry. I think, as you've  
14 heard today, the independent oil and gas industry is kind of  
15 unique. And I would just like to know if staff used a  
16 sample of independent oil and gas producers and if it took  
17 into account the small producers, the medium producers, and  
18 the large producers?

19 CHAIRWOMAN SHARPLESS: You're talking about the  
20 economic analysis --

21 MR. DONOVAN: Yes.

22 CHAIRWOMAN SHARPLESS: -- that was done?

23 Staff?

24 MR. KORENBERG: Yes. Our economic analysis was  
25 based on -- we took our inventory, and took the -- which as

1 broken down by SIC codes, standard industrial  
2 classification. We looked at about 400 different  
3 classifications of businesses, picked a random sample of  
4 three businesses out of each of those particular categories,  
5 and then calculated the return on equity for those  
6 individual facilities.

7 We used a standard -- if the return on equity was  
8 impacted by more than 10 percent, then that was an impact.  
9 We found that, on the average, the impact was around one  
10 percent.

11 MR. VENTURINI: We'd be more than willing to sit  
12 down with Mr. Donovan, maybe later, to go through details  
13 and the specifics of what was included and not included, as  
14 well, if you'd like.

15 MR. DONOVAN: Okay. I would appreciate that.

16 CHAIRWOMAN SHARPLESS: I think the bottom line,  
17 though, is your request to look at the small business  
18 definition.

19 MR. DONOVAN: Yes.

20 CHAIRWOMAN SHARPLESS: Right?

21 MR. DONOVAN: Yes.

22 I'd just like to take the time to thank the Board  
23 and the staff for hearing our concerns. And we acknowledge  
24 the efforts made by this Board and staff to reduce certain  
25 administrative costs associated with implementing this

1 program, and encourage you to continue to look for areas  
2 within the program that will result in lower costs to the  
3 State, districts, and the regulated community.

4 Thank you.

5 CHAIRWOMAN SHARPLESS: Thank you very much.

6 Mike Wang, WSPA.

7 MR. WANG: For those of us who are shorter than  
8 John --

9 (Laughter.)

10 MR. WANG: Much shorter --

11 MR. LAGARIAS: That's all of us.

12 CHAIRWOMAN SHARPLESS: This is a demonstration of  
13 the equity issue, right; some are short and some are tall.

14 MR. WANG: Well, when I started this business, I  
15 was 6'2".

16 CHAIRWOMAN SHARPLESS: Right.

17 (Laughter.)

18 MR. WANG: I appreciate the fine effort the ARB --  
19 you see the fine array of staff here; I was noticing that  
20 every seat is full -- the fine effort that ARB and OEHHHA  
21 made to communicate with the regulated industry. I think  
22 you've heard that over and over again. And I just want to  
23 reiterate how much we appreciated that.

24 We're supportive of the 40 percent fee reduction  
25 in the previous proposal -- certainly, we recognize that

1 that is a big step -- and the 40 percent five-year reduction  
2 over the next five years, which we heard this afternoon.

3 We're supportive of the change in the fee basis,  
4 which is the actual process change, from criteria pollutants  
5 to toxic pollutants. The changeover is consistent with  
6 legislation, both AB 2588, as initially passed, and  
7 subsequent legislation. And it's essentially what the  
8 legislation intended, which was to define emissions as a  
9 basis for program development and fee assessment.

10 The new methodology will provide improved equity  
11 in fee calculation, because larger criteria facilities have  
12 funded, to a great extent, the program by virtue of paying  
13 on a criteria pollutant basis.

14 And unless fees are assessed according to toxic  
15 emissions, then the relationship between toxic emissions and  
16 risk is somewhat lost.

17 We do support amendments suggested by speakers and  
18 staff concerning the small business side. Certainly, we  
19 recognize the unique problems of small business. And I know  
20 staff has some suggestions and has heard some suggestions  
21 about a new definition. That's certainly something that you  
22 all need to look at.

23 So, in conclusion, we support the basis for fee  
24 calculation and the need for program and program elements.  
25 We expect that streamlining of the process and elimination

1 of duplication between agencies, as was suggested by staff  
2 earlier, over the next five years will reduce costs even  
3 further. And this is, as you know, especially important in  
4 review of the harsh times, and the fact that many districts  
5 and sources will be asked to pay significant amounts of fund  
6 the program.

7 Thank you.

8 CHAIRWOMAN SHARPLESS: Thank you. Any questions?  
9 Thank you, Mr. Wang.

10 Mr. Wang was our last witness. I know that we've  
11 received plenty of written comment. How does staff propose  
12 that we handle the written comments into the record?

13 MR. VENTURINI: We have a number of letters that  
14 were submitted that were basic, updating information on  
15 facility counts and so forth. And those were acknowledged  
16 as part of the staff's presentation. So, I suggest that we  
17 not summarize those letters. They're basically technical.  
18 They'll be reflected in the 15-day comments.

19 We have a few other letters that we feel would be  
20 appropriate to briefly read into the record.

21 MS. SHIROMA: Yes. At the pleasure of the Board,  
22 I'll go ahead and briefly summarize those letters.

23 We had four districts expressing concerns  
24 regarding the staff proposal. We received a letter from the  
25 San Joaquin Valley Unified Air Pollution Control District

1 Board. The district board provides their staff's analysis  
2 of the ARB and OEHHA program costs. They do support the  
3 proposed method for calculating fees, and they do express  
4 their appreciation for the reductions included in our staff  
5 proposal.

6 They do go on to recommend further State cost cuts  
7 be made. They recommend that cuts be taken from the  
8 regulations development, health risk assessment, public  
9 notification, and risk reduction areas.

10 The reasons given for the budget reduction is that  
11 either there is no longer a need for the task, or the task  
12 should be delayed. Now, as we indicated in our  
13 presentation, we believe that any further reductions this  
14 year would compromise the program and impact ARB's and  
15 OEHHA's ability to provide an effective program.

16 As was discussed and as many individuals have  
17 emphasized, we do have a five-year resource plan that  
18 addresses how the State costs will be reduced as program  
19 needs diminish.

20 Glenn County APCD commented on the increase in the  
21 hot spots program budget. Specifically, Glenn County notes  
22 that their portion of State costs is increasing by 73  
23 percent and urges the Board to consider a smaller increase  
24 in light of the present economic situation.

25 Glenn County's costs are increasing by

1 approximately \$9,000. And most of this increase is due to  
2 the submittal of a complex risk assessment to the OEHHA for  
3 review. So, this comes up because of the new method.

4 We do note, as we've indicated before, that this  
5 is a one-time review fee and that their district costs, if  
6 we keep this element in our method, would be reduced next  
7 year, because that risk assessment will revert back to the  
8 inventory plan and report.

9 The San Diego County Air Pollution Control  
10 District commented on the proposed State budget and the  
11 method for distributing the State's costs. They indicated  
12 that their district board has placed a moratorium on  
13 additional regulatory fees, and they would not be able to  
14 collect the district's portion of their share of the State's  
15 costs.

16 They suggest that labor tracking be implemented  
17 and that State costs associated with specific districts and  
18 facilities be recovered from those districts and facilities;  
19 in other words, a fee for service.

20 They further question why State costs are  
21 increasing, even though most program development is  
22 completed, and suggest that funding that SB 1731 program  
23 development is excessive.

24 We do acknowledge that the San Diego APCD is one  
25 of the districts whose State share goes up due to the method

1 change. Approximately 50 percent of their increase is, in  
2 fact, due to the method change. This is because the number  
3 of facilities in the district and the number of risk  
4 assessments going through review -- because of the number  
5 count, as we were discussing earlier regarding Yolo-Solano  
6 and Colusa, applies also to San Diego.

7 In our previous discussion and presentation, we  
8 did discuss our justification for the proposed costs. And,  
9 again, we do believe that with the five-year plan, that we  
10 address the peaking of the program, its diminishing  
11 requirements, and steady State reductions.

12 Now, the South Coast has also submitted a letter,  
13 and Don Ames is going to summarize that letter.

14 MR. AMES: Mr. Mohsen Nazemi left the hearing  
15 about one hour ago, and asked that I relay his oral  
16 comments, which are as follows:

17 First of all, the increase of 1.7 million in State  
18 costs is lower than the South Coast District increase in  
19 costs of 1.9 million to be sent to the State.

20 Although the South Coast District supports the  
21 method change, the -- Mr. Nazemi feels it is not possible to  
22 increase the industry fees by 60 percent in one year, even  
23 with the five-year plan. And that's all the comments he  
24 asked that I relay to the Board.

25 MS. SHIROMA: Okay. Continuing on -- I'm sorry.

1 Don?

2 MR. AMES: Just one response. In response to  
3 that, if we look at last year's fee, the South Coast  
4 District sent the State about one-fourth of the dollars of  
5 all districts. This year, with the change in method, that  
6 they -- we feel it's more equitable, because now that one-  
7 fourth is about 50 percent, which we believe is reflective  
8 of their relative number of toxic sources within the State.

9 MS. SHIROMA: Okay. Another comment letter we  
10 received was from Spreckels Sugar Company. Spreckels does  
11 not support the collection of fees from low-risk facilities.  
12 They believe that the cost to implement SB 1731 should be  
13 borne by the higher risk facilities.

14 Spreckels Sugar is located in the Yolo-Solano  
15 District, and they're not -- which district is not included  
16 in our fee regulation. And you'd heard from Ms. Annette  
17 Carruthers earlier.

18 That district will be adopting its own rule in  
19 fiscal year -- in this fiscal year, 93-94.

20 We also received a letter from the Proline Paint  
21 Company of San Diego. The letter provides information on  
22 how their overall permit fees have increased, including the  
23 hot spots fees. They recommend that the State hot spots  
24 budget be frozen at the fiscal year 92-93 levels, and that  
25 additional mandated requirements be funded through savings

1 produced from the ARB streamlining efforts.

2 And they indicate the concern regarding small  
3 businesses remaining competitive with larger businesses.  
4 The San Diego District will be adopting its own fee  
5 regulation and determining its own methodology for spreading  
6 the costs.

7 And, again, we wanted to emphasize that we do  
8 intend to implement the five-year plan, which shows the  
9 overall steady reduction in State costs.

10 We also received 11 letters of partial or full  
11 support -- oh, I'm sorry. I forgot one more letter here.

12 The Manville Company, located in Glenn County,  
13 also sent a letter in opposition to the State's proposed  
14 cost increase and the resulting increase in Glenn County's  
15 cost. And you'd heard from a representative from Glenn  
16 County earlier -- excuse me. That was Colusa. I'm sorry.

17 The company stated that their fee would be  
18 increasing up to \$10,000, which reduces their ability to  
19 compete with businesses in other states.

20 Let's see. Okay. And again, it is the same issue  
21 that you've heard through these letters and from the various  
22 testifiers regarding the overall costs of the program.

23 And the method that we used allotted the State  
24 costs among the various 34 districts depending on the number  
25 of facilities within those districts.

1           We received 11 letters of partial or full support.  
2   The first letter is from the Northern Sonoma County Air  
3   Pollution Control District. They participated in the  
4   development of the amendments and they strongly support the  
5   changes being proposed. They feel the fee structure  
6   recognizes the number and complexity of facilities in the  
7   district through the use of the various program categories.

8           We received a letter from the Lake County Air  
9   Quality Management District. They indicate that they have  
10   followed and participated in the development of the  
11   proposal.

12           They indicate that they are acutely aware of the  
13   real and legal need for the changes proposed by the staff,  
14   and wish to make clear that they strongly support the  
15   adoption of the proposed amendments.

16           We also received a letter from the Bay Area Air  
17   Quality Management District. They indicate that the  
18   methodology of resource indices and program categories was  
19   reviewed by the fee committee and chosen as the best  
20   alternative to using a toxics emissions based fee.

21           They indicate that they are adopting their own  
22   regulation and have based their fee allotment on toxic  
23   emissions since 1990, and encouraged the State regulation to  
24   go in that direction.

25           They also indicate their support of the

1 development of the guidelines for the implementation of SB  
2 1731. They support streamlining the risk reduction planning  
3 requirements for small businesses by developing a simple  
4 checklist for facilities, such as dry cleaners, gas  
5 stations, and paint shops. They indicate that this will  
6 allow districts to implement SB 1731 more efficiently and  
7 will help minimize the cost to the program.

8           The County of Tuolumne Air Pollution Control  
9 District also commented, and indicated that the proposed fee  
10 calculation method based on facility program categories is a  
11 reasonable interim method and an improvement over the  
12 criteria pollutant emissions method.

13           They indicate that they recognize, as with any  
14 change in fee assessment technique, some will pay more and  
15 some will pay less. They indicate that they believe the  
16 proposed methodology of fee assessment is an improvement and  
17 should be adopted by the Board.

18           The Calpine Geothermal Company in Northern  
19 California also provided a letter, indicating that they  
20 followed the proposed amendments and strongly support the  
21 proposed fee structure.

22           The Homestake Mining Company also wrote a letter  
23 to communicate their support of the staff changes. They  
24 indicate they believe the changes demonstrate a fair and  
25 equitable approach to fee regulation.

1 A Unocal distributor, owned by Jim Jonas,  
2 Incorporated, submitted a letter indicating that the  
3 proposed changes will result in a more equitable fee  
4 application. And, as a business owner badly in need of  
5 regulatory relief, he supports these changes.

6 The Aggrellite Rock, volcanic cinder products,  
7 Company also submitted a letter. They indicate that, as a  
8 quarry operator, they support the fee approach; that it is  
9 the equitable way of spreading costs to those who are  
10 included in the program.

11 We received a letter of support for the fee  
12 regulation adoption from a Victor Magistrale from South  
13 Pasadena.

14 And finally, we received a letter from the  
15 California Council for Environmental and Economic Balance.  
16 They indicate that they support the amendments to the  
17 proposed fee regulation. They support the underlying  
18 direction of the proposal, which is to move towards a fee  
19 for service. They participated in many of the forums that  
20 we provided. They acknowledge that, as a result of the  
21 amendments adopted last month by this Board, the cost for  
22 the program should decrease significantly over the next few  
23 years, and acknowledge our five-year resource plan to  
24 accomplish this.

25 They commend us for coming forth with the plan at

1 this time and recommend, overall, that the ARB adopt the  
2 amendments.

3 That concludes my summary of the written letters.

4 CHAIRWOMAN SHARPLESS: Okay. Thank you very much.

5 I believe that then completes the record for this  
6 item. So, I would like to just remind those in the audience  
7 that the record on this item will be closed; however, if the  
8 Board takes an action that changes the proposal -- and the  
9 staff has already suggested several changes -- there will be  
10 a 15-day comment period.

11 Written or oral comments received after this  
12 hearing date but before the 15-day notice is issued will not  
13 be accepted as part of the official record on this agenda  
14 item. However, when the record is reopened for a 15-day  
15 comment period, the public may submit written comments on  
16 the proposed changes, which will be considered and responded  
17 to in the final statement of reasons for this regulation.

18 Since this is a rule, we do have a procedure here  
19 that, if there has been any excommunicate -- ex parte  
20 communications -- excommunications! -- ex parte  
21 communications, that we so state it in the record by the  
22 Board members. So, at this moment, we'll survey the faces  
23 here. It appears not. So, we have accomplished that.

24 And we are now to the part in our deliberations  
25 where the staff has passed out -- the staff has passed out!

1 (Laughter.)

2 CHAIRWOMAN SHARPLESS: The staff has handed out a  
3 resolution, 93-48, which -- staff, perhaps you could  
4 indicate how many of the changes are included in this  
5 resolution that we have discussed thus far. That includes  
6 the primary proposal, plus changes that were mentioned  
7 earlier in the day. Which changes were those?

8 MR. VENTURINI: It includes the modifications that  
9 we mentioned in the staff presentation. It does not include  
10 the modification that we recommended regarding the -- for  
11 the San Joaquin Valley, modifying the definition for oil  
12 producers to apply the fee on a lease basis.

13 It does not include the recommendation to require  
14 the State to annually adopt a fee regulation. And then  
15 there's the small business question that was discussed  
16 earlier.

17 CHAIRWOMAN SHARPLESS: Okay. On the annual  
18 adoption of the State, I was under the impression that all  
19 we needed to do there was clarify. Do we need to actually  
20 make a motion?

21 MR. VENTURINI: You need to make a change to  
22 what's in the staff proposal.

23 CHAIRWOMAN SHARPLESS: Okay. So, we do need to  
24 include that in our motion.

25 MR. VENTURINI: Yes.

1 CHAIRWOMAN SHARPLESS: Okay. And then the small  
2 business issue is not dealt with in this.

3 Okay. One question on the first one, the issue  
4 that deals with the small independent oil producers on the  
5 lease basis. Was that a recommendation that was being made  
6 by staff?

7 MR. VENTURINI: Yes, it was.

8 CHAIRWOMAN SHARPLESS: That they -- what is the  
9 precise language for that?

10 MR. VENTURINI: I don't believe we have the  
11 precise language --

12 CHAIRWOMAN SHARPLESS: Well, how about a summary  
13 of --

14 MR. VENTURINI: Basically --

15 CHAIRWOMAN SHARPLESS: -- what we might include in  
16 the motion.

17 MR. VENTURINI: Basically, what we're trying to do  
18 is deal with the unique situation in the Southern San  
19 Joaquin Valley, where the current definition of a stationary  
20 source for other purposes includes the whole west and east  
21 part of the Valley, so you have a large area.

22 So, our proposal would be to modify -- to add a  
23 definition into the regulation to indicate for the -- in  
24 essence, for the San Joaquin Valley oil producers, the fee  
25 be done on a lease basis.

1 CHAIRWOMAN SHARPLESS: Would you want to be so  
2 specific as to say only San Joaquin Valley? Is it only a  
3 situation in the San Joaquin Valley?

4 MS. SHIROMA: That's correct, because of their  
5 unique stationary source definition.

6 CHAIRWOMAN SHARPLESS: Oh, that's right. Okay.  
7 So, there are basically three issues that have been  
8 discussed during the course of this afternoon that are not  
9 dealt with in the staff proposal.

10 MR. VENTURINI: Correct.

11 CHAIRWOMAN SHARPLESS: Okay. What is the pleasure  
12 of the Board at this point? More questions? More dialogue?  
13 Or a motion?

14 DR. BOSTON: Question.

15 CHAIRWOMAN SHARPLESS: Yes.

16 DR. BOSTON: If this resolution is adopted with  
17 changes, as suggested by Mr. Venturini, how would we get to  
18 see it again to see what the definition of small business  
19 turns out to be?

20 CHAIRWOMAN SHARPLESS: Yes.

21 DR. WORTMAN: Faith.

22 CHAIRWOMAN SHARPLESS: No, I don't think faith is  
23 the issue.

24 (Laughter.)

25 CHAIRWOMAN SHARPLESS: Let me -- let me ask staff,

1 because timing is always an issue here.

2 Yes, Mr. Kenny?

3 MR. KENNY: Yes, Madam Chair, there's actually a  
4 couple of ways that that could be done. The most -- I guess  
5 the easiest way would be that the 15-day changes will be  
6 proposed, and the Board could be -- the Board would have the  
7 opportunity to review those 15-day changes during the 15-day  
8 comment period.

9 If the Board wanted to review the proposed  
10 modifications as a Board sitting in this particular  
11 capacity, then we would need to postpone until some later  
12 point in time.

13 So, there isn't really a way for the Board to like  
14 see the recommendations specifically on an individual basis  
15 outside the context of sitting as a Board.

16 But the Board can see, basically, the  
17 modifications in the context of the 15-day proposals that  
18 will be made, and can then make any comments it wants to  
19 make, basically, to the staff.

20 DR. BOSTON: How about if they worked all night  
21 and showed it to us tomorrow?

22 (Laughter.)

23 CHAIRWOMAN SHARPLESS: No, because I think that  
24 the -- like Mr. Donovan was going to provide information to  
25 the staff on the million-dollar issue -- the million-dollar

1 question.

2 MR. KENNY: The 15-day modifications can be made,  
3 and that would then basically go into the regulation. If  
4 the Board had some difficulty with the language that was  
5 then put into the regulation, the Board could then review  
6 that regulation again at some point in the future and modify  
7 it. But, again, it's going to be a cumbersome process.

8 CHAIRWOMAN SHARPLESS: Well, we're talking -- on  
9 the 15-day comment period, it takes time for the staff to  
10 put out a 15-day notice. It takes time, then, for --  
11 there's 15 days, obviously, for people to comment. And then  
12 there's time for you to respond to those comments.

13 MR. KENNY: That's correct.

14 CHAIRWOMAN SHARPLESS: During that period of time,  
15 is it not possible for you to send a memorandum out to the  
16 Board members explaining what the recommendation of the  
17 staff would be? And if there's some concern about it, we  
18 could --

19 MR. KENNY: The difficulty is that there's no  
20 problem with the former. But, basically, where you led off  
21 there, that the Board could then do something, that's where  
22 the difficulty arises. Because the Board would, then,  
23 essentially be meeting to essentially direct the staff in a  
24 new direction. And the Board would need to do that in a  
25 public hearing setting.

1 CHAIRWOMAN SHARPLESS: No. I'm not suggesting if  
2 they wanted -- if they wanted a new direction, then we would  
3 have another Board meeting.

4 MR. KENNY: Correct.

5 CHAIRWOMAN SHARPLESS: If they saw the language  
6 and everybody was okay with it, then it would t go forward.

7 MR. KENNY: That'd be fine. That can be done.

8 I'm worried about the -- sort of the alternative,  
9 I guess, a little bit.

10 MR. BOYD: Madam Chair, it does get a little bit  
11 back to a comment that was made earlier. If you can give  
12 some general direction to the staff, to the Executive  
13 Officer, we can put out some kind of a proposal that we  
14 think tries to meet the general direction and, yes, you'd  
15 have an opportunity to review this, as with the public, and  
16 you would have to give some indication -- you know, there  
17 would have to be an indication to me that collectively -- I  
18 would have to assess that I sense the Board is not satisfied  
19 with the approach that we're taking. And then, we would  
20 have to, in effect -- I would have to make a determination  
21 that the resolution is not within the purview of the  
22 Executive Officer's delegation from the Board, and call for  
23 a new meeting of the Board to deal with the issue.

24 CHAIRWOMAN SHARPLESS: Well, here's --

25 MR. BOYD: That's historically what we do.

1 CHAIRWOMAN SHARPLESS: Here's the bind. I mean,  
2 the bind is that I don't think that we want to go through  
3 another entire Board meeting rehashing all of the issues  
4 that we've done today.

5 I think that, mainly, we're stuck on the small  
6 business definition. But there's not enough information --  
7 I mean, we can give you direction. But, really, our  
8 direction is based on going out and getting more information  
9 on what happens if you do this versus that. And so, without  
10 finding out whether this or that happens, you know, that's  
11 the part of the process where we're trying to figure out --  
12 let the Board take a look at it and see if it's okay, and  
13 then pass it by if it's not -- if it doesn't pass the okay  
14 test -- I know (reacting to Mr. Kenny's shaking his head).

15 MR. KENNY: The difficulty is that the Board --

16 CHAIRWOMAN SHARPLESS: Do you want us to put this  
17 over? No.

18 MR. KENNY: Well, the difficulty is that the Board  
19 can't really meet outside of a public forum.

20 CHAIRWOMAN SHARPLESS: No. I'm not suggesting we  
21 meet.

22 MR. KENNY: Well, even like a review, basically,  
23 of a particular document, where a decision was made by the  
24 Board would be considered to be within the context of the  
25 Open Meeting Act. And to the extent that the public didn't

1 have an opportunity to hear the Board's deliberations and to  
2 provide comments to the Board, that would be a problem.

3 MR. BOYD: Mr. Kenny, my comment was that it's my  
4 responsibility to get a sense of my Board members on the  
5 issue, and it's on my head to determine, without, you know,  
6 benefit of a vote or a formal survey, that the proposal  
7 we're pursuing does not sit well and is not consistent with  
8 the direction the Board would like to see us go. And then,  
9 I would have to then determine that there is no alternative  
10 but to call for a new Board meeting on the issue.

11 MR. KENNY: And actually, that is consistent and  
12 appropriate under the law. Basically, what happens then is  
13 that the delegation basically provides to the Executive  
14 Officer is carried out. That delegation does have a  
15 limitation on it, as Mr. Boyd explained, and that limitation  
16 would be one that he would make the call on.

17 (Thereupon, there was a brief pause to allow the  
18 court reporter to replenish her paper.)

19 CHAIRWOMAN SHARPLESS: The other option is that  
20 the Board itself could just say -- it could just say one  
21 million and 25 persons or something.

22 Supervisor Riordan?

23 SUPERVISOR RIORDAN: Let me ask if -- and I would  
24 agree, we don't want to really hear this in its entirety.  
25 But, oftentimes -- and I understand counties do things

1 differently than I suspect the State on occasion. But,  
2 perhaps, following along with Mr. Boyd's comments, we could  
3 narrowly ask that only the item of the definition of small  
4 business, should this Board express some concern to Mr. Boyd  
5 individually, that that be brought back, not the whole issue  
6 be brought back, just that very narrow definition.

7 I certainly wouldn't mind spending a little time  
8 with that if what staff works out is not acceptable. But I  
9 think the staff has probably got a pretty clear idea of what  
10 our problem is and just trying to figure out what the answer  
11 is.

12 I think we're expressed our concern now.

13 CHAIRWOMAN SHARPLESS: Yeah. No, that's exactly  
14 the line we were going with. The problem is, you know,  
15 between the Open Meeting Act, and the Brown Act, and all the  
16 other acts that constrain regulators in solving problems,  
17 you know, we're boxed in here.

18 But Mr. Boyd has fine antennas, and I think that,  
19 if he got a sense from the Board that what the staff came up  
20 with, after we gave some general direction, he would let us  
21 know if it wasn't going to meet the satisfactory test.

22 MR. BOYD: I mean, we've already gotten the  
23 sentiment of the Board that the Board -- even the staff to  
24 some degree -- is not completely comfortable with the  
25 proposed definition. So, there's an indication of a desire

1 for change. We've talked about some alternatives. As  
2 indicated, we don't have enough data to make a hard-and-fast  
3 answer, or for you even to give us enough guidance to focus  
4 in on one, because you are as uncomfortable as we without  
5 having that background.

6 That gives us an indication that some change  
7 anticipated and expected. We have to define that change  
8 within the reason of the points made by the witnesses and  
9 the expressions of various Board members as to a desire to  
10 provide some relief from the dilemmas that were put forth.

11 So, yes, it falls upon my head then to do that.  
12 And I appreciate the recognition of my large antenna here.

13 MR. LAGARIAS: Well, we've made a point that the  
14 definition of a small business, as the South Coast Air  
15 Quality District has defined it, may not quite suit our  
16 purposes for setting fees for toxic emissions from small  
17 sources.

18 Now, it may cover dry cleaners and very specific  
19 manufacturing operations, but we've heard that there are  
20 other operations that would fit the definition of small  
21 business that might not fit the monetary limitations. And  
22 that's one of the issues that I hope you can work with to  
23 make sure that those industries that do put out toxic  
24 emissions that are small industries -- small operation  
25 industries do pay their fee, but that they not get lumped

1 into a large industry categorically for -- by some fluke of  
2 a definition, or that the monetary value be examined again  
3 to see whether a cut off, as the South Coast uses it, is  
4 appropriate and whether a better cutoff might suit our  
5 purposes.

6 CHAIRWOMAN SHARPLESS: I think that's very well  
7 put, Mr. Lagarias. It sounds like it should be part of a  
8 motion.

9 MR. LAGARIAS: It's part of a motion.

10 (Laughter.)

11 CHAIRWOMAN SHARPLESS: What's the other part of  
12 the motion, Mr. Lagarias?

13 MR. LAGARIAS: I move we adopt Resolution 93-48  
14 with the comments that have been put in the -- forth this  
15 afternoon and discussed at the Board here.

16 CHAIRWOMAN SHARPLESS: Okay. So, what the Board  
17 is considering here -- if I can restate the motion --

18 MR. LAGARIAS: You can.

19 CHAIRWOMAN SHARPLESS: -- for you, Mr. Lagarias?

20 (Laughter.)

21 CHAIRWOMAN SHARPLESS: He moves the staff proposal  
22 that includes modifications that were stated in the  
23 presentation. And, in addition to, will include a change in  
24 the language dealing with the San Joaquin Valley small  
25 independent oil producers to include their definition of

1 source, which I guess is on a lease basis. Okay.

2 And also to include the clarification that the  
3 Board -- that the State will annually adopt its fees; and,  
4 third, with the wonderful general direction that Mr.  
5 Lagarias stated on what we want to see done on the small  
6 business definition. Those three areas added to it.

7 SUPERVISOR RIORDAN: And I'll second it.

8 CHAIRWOMAN SHARPLESS: Okay. It's been moved and  
9 it's seconded. Is there any additional comment?

10 DR. BOSTON: I didn't think he stated the  
11 resolution number, 93-48.

12 CHAIRWOMAN SHARPLESS: We'll include that as an  
13 amendment to the motion. Okay. If there is no further  
14 discussion on this item, we'll ask the Board Secretary to  
15 please call roll.

16 MS. HUTCHENS: Boston?

17 DR. BOSTON: Yes.

18 MS. HUTCHENS: Hilligoss?

19 MAYOR HILLIGOSS: Aye.

20 MS. HUTCHENS: Ichikawa?

21 MRS. ICHIKAWA: Aye.

22 MS. HUTCHENS: Lagarias?

23 MR. LAGARIAS: Yes.

24 MS. HUTCHENS: Riordan

25 SUPERVISOR RIORDAN: Aye.

1 MS. HUTCHENS: Wortman

2 DR. WORTMAN: Aye.

3 MS. HUTCHENS: Madam Chairwoman?

4 CHAIRWOMAN SHARPLESS: Aye.

5 MS. HUTCHENS: Passes 7-0.

6 CHAIRWOMAN SHARPLESS: Thank you very much. Thank  
7 you, Dr. Henry, for your time. Thank you, staff, for your  
8 effort.

9 MRS. ICHIKAWA: I'd like to thank staff, too.

10 CHAIRWOMAN SHARPLESS: And all of those who were  
11 involved in the process. Thank you very much.

12 The Board members can't go. We have yet another  
13 Board item. We'll take a break for the court reporter.

14 (Thereupon, a recess was taken.)

15 CHAIRWOMAN SHARPLESS: Okay. We are getting  
16 close.

17 DR. WORTMAN: To exhaustion.

18 CHAIRWOMAN SHARPLESS: Close to exhaustion.

19 This is the third and final item for today. Of  
20 course, tomorrow, we have another item that will come up.

21 But we will be discussing on this item the  
22 identification of air quality-related indicators for  
23 reporting progress in attaining the State ambient air  
24 quality standards.

25 Now, this particular action has been necessitated