

ORIGINAL

MEETING

CALIFORNIA AIR RESOURCES BOARD

94-9-1
Public Hearing to Consider New Specifications
for Diesel Engine Certification Fuel, Proposed
Amendments to the Oxygen Specification for
Natural Gas Certification Fuel, and Proposed
Amendments to the Commercial Motor Vehicle
Liquefied Petroleum Gas Fuel Regulations

94-9-4
Public Meeting to Consider an Update
on California's State Implementation Plans

94-9-2
Public Hearing to Consider Adoption of the
Alternative Control Plan (ACP) for Consumer
Products

94-9-3
Public Meeting to Consider the Annual Report
to the Governor and the Legislature on the
Air Resources Board's Atmospheric Acidity
Protection Program

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Location: HYATT AT LOS ANGELES AIRPORT
International Ballroom
6225 West Century Blvd.
Los Angeles, CA

Date and Time: Thursday, September 22, 1994
9:30 a.m. to 5:00 p.m.

Reported by: JOANNE P. CUNNINGHAM, CSR 2734

Job No. 25783JC

A P P E A R A N C E S

Members Present:

MS. JACQUELINE E. SCHAFER, Chairwoman
SUPERVISOR BRIAN P. BILBRAY
SUPERVISOR DOUG VAGIM
MAYOR M. PATRICIA HILLIGOSS
MR. JOHN S. LAGARIAS
SUPERVISOR HARRIETT WIEDER
MR. JACK C. PARNELL
SUPERVISOR BARBARA RIORDAN
MR. JOSEPH C. CALHOUN
MS. LYNNE T. EDGERTON

Staff present:

JAMES D. BOYD, Executive Officer
TOM CACKETTE, Chief Deputy Executive Officer
MIKE SCHEIBLE, Deputy Executive Officer
MICHAEL KENNY, Chief Counsel
PETER VENTURINI, Chief, Stationary
Source Division
DEAN SIMEROTH, Chief, Criteria Pollutants
Branch, SSD
JOSE GOMEZ, SSD
TOM JENNINGS, Senior Staff Counsel,
Office of Legal Affairs
DON AMES, Assistant Chief, SSD
GENEVIEVE SHIROMA, Chief, Toxic Air Contaminant
Identification Branch, SSD
PEGGY TARICCO, Manager, Solvents Control
Section, SSD
FLOYD VERGARA, Staff, SSD
REZA MAHDAVI, Economic Studies Section,
Research Division
BOB JENNE, Senior Staff Counsel, Office of
Legal Affairs
DR. JACK HOLMES, Chief, Research Division
BOB BARHAM, Assistant Chief, RD
MANJIT AHUJA, Manager, Emissions Control
Technology Section, RD
DR. STEPHEN BROWN, Staff, RD
KURT KAPEROS, Staff
LYNN TERRY, Magr., No. CA Liaison Section
PATRICIA HUTCHENS, Board Secretary
BILL VALDEZ
WENDY PENDLETON

I N D E X

	Page
1	
2	
3	Call to order and roll call 7
4	Opening statement by Chairwoman Schafer 8
5	Agenda Item 94-9-1
6	Public Hearing to Consider New Specifications
7	for Diesel Engine Certification Fuel, Proposed
8	Amendments to the Oxygen Specification for
9	Natural Gas Certification Fuel, and Proposed
10	Amendments to the Commercial Motor Vehicle
11	Liquefied Petroleum Gas Fuel Regulations
12	Staff Presentation:
13	James Boyd, Executive Officer 12
14	Staff Report, Jose Gomez, SSD 14
15	Questions/Comments 24
16	Public Comments:
17	Melissa Chapman, WSPA 28
18	Questions/Comments 34
19	Glenn Keller, EMA 46
20	Questions/Comments 51
21	Warren Slodowske, 52
22	Navistar
23	Questions/Comments 56
24	Paul Wuebben, 57, 60
25	SCAQMD
	Questions/Comments 59, 61
	Summary of written comments:
	Dean Simeroth, Chief 62
	Criteria Pollutants Branch, SSD

1	Motion to Approve Resolution No. 94-53.	65
2	Second	65
3	Roll Call Vote	65
4		
5	Agenda Item 94-9-4.	
6	Public Meeting to Consider an Update	
7	on California's State Implementation Plans	
8	Opening Statement by Chairwoman Schafer	66
9	Staff Presentation:	
10	James Boyd, Executive Officer	71
11	Staff Report, Mike Scheible	73
12	Deputy Executive Officer	
13	Questions/Comments	91
14	Public Comments:	
15	Veronica Kun, NRDC	120
16	Questions/Comments	131
17	Dennis Zane,	140
18	Coalition for Clean Air	
19	Questions/Comments	149
20		
21	Lunch Recess	
22		
23		
24		
25		

1	Agenda Item 94-9-2	
2	Public Hearing to Consider Adoption of the	
3	Alternative Control Plan (ACP) for Consumer	
4	Products	
4	Opening statement by Chairwoman Schafer	150
5	Staff Presentation:	
6	James Boyd, Executive Officer	154
7	Staff Report, Floyd Vergara,	156
8	Staff, SSD	
9	Questions/Comments	176
10	Public Comments:	
11	Mike Thompson,	186
12	Chemical Specialties Manufacturers	
13	Assoc.	
14	Questions/Comments	192
15	Doug Raymond,	194
16	Specialties Div. of Sherwin-Williams	
17	Questions/Comments	196
18	James Mattesich, CTFA	198
19	Questions/Comments	206
20	Philip Geis, Ph.D.,	214
21	Procter & Gamble	
22	Questions/Comments	224
23	Ted Wernick, The Gillette Company	226
24	Bryan Ruble,	227
25	S. C. Johnson Wax Co.	
	Questions/Comments	229
	Dan Knoth, 3M	236

1	Summary of written comments:	
2	Peggy Tarrico, Manager	239
3	Solvents Control Section, SSD	
4	Staff comments, Genevieve Shiroma	244
5	Questions/Comments	248
6	Motion to Approve Resolution 94-54	249
7	Second	249
8	Discussion	250
9	Roll Call Vote	250
10	Agenda Item 94-9-3	
11	Public Meeting to Consider the Annual Report	
12	to the Governor and the Legislature on the	
13	Air Resources Board's Atmospheric Acidity	
14	Protection Program	
15	Staff Presentation:	
16	James Boyd, Executive Officer	252
17	Staff Presentation,	253
18	Dr. Stephen Brown, Staff, RD	
19	Questions/Comments	266
20	Summary of written comments:	
21	Dr. John Holmes	272
22	Chief, Research Division	
23	Motion to Approve Resolution 94-55	274
24	Second	274
25	Roll Call Vote	275

1 appreciate that as well as adding my thanks to you
2 publicly for your excellent testimony at the LEV/ZEV
3 hearing and for your presentation and organization --
4 presentation of the -- of the ad hoc committee's report
5 at the El Monte workshop last week.

6 So thank you very much, Dennis.

7 MR. ZANE: Thank you. I'm looking forward
8 to success together.

9 CHAIRWOMAN SCHAFER: Thank you very much.

10 At this point we'll break for lunch. I would
11 like to suggest coming back at 1:30 to begin the board
12 item that -- the Board Item No. 2, and that is the
13 Alternate Control Plan.

14 Thank you very much.

15 (Lunch recess was taken.)

16 CHAIRWOMAN SCHAFER: I think we have a
17 quorum in the room. I'd like to remind those in the
18 audience who would like to testify on this next board
19 agenda item, please sign up with the board secretary.

20 The next item on the agenda this afternoon
21 is 94-9-2, a public hearing to consider adoption of the
22 Alternative Control Plan for consumer products. That's
23 known as the ACP.

24 As you all know, the California Clean Air Act
25 requires the board to adopt regulations to achieve

1 reductions in volatile organic compound emissions from
2 the consumer products. The reduction of the VOC
3 emissions from consumer products is an important element
4 in our overall strategy to attain state and federal
5 ambient air quality standards.

6 The importance of consumer products as a
7 significant source of VOCs is recognized by the U.S.
8 Environmental Protection Agency, which has included
9 measures to regulate consumer products in their Federal
10 Implementation Plan for the South Coast, Ventura, and
11 Sacramento.

12 In 1989, '90, and '92, the board adopted
13 regulations placing emission limits on 27 types of
14 consumer products. These include antiperspirants and
15 deodorants, hairsprays, and various automotive,
16 cleaning, and household products. The board's consumer
17 products program is bringing about significant
18 reductions in ozone-forming pollutants.

19 To illustrate, we projected consumer product
20 VOC emissions in the South Coast Air Basin to grow to
21 approximately 162 tons a day by the year 2010 without
22 the consumer products program. That level of consumer
23 products would comprise 20 percent of the total
24 stationary source VOC emissions in the South Coast
25 basin. Without our regulating, consumer product VOC

1 emissions would -- will -- I'm sorry.

2 With our regulations the consumer product VOC
3 emissions will be reduced by 30 percent statewide or
4 approximately 27 tons per day of VOC emissions in the
5 South Coast basin by the year 2000.

6 Even with the current regulations, however,
7 further reductions in consumer product emissions will
8 likely be necessary to achieve federal and state air
9 quality objectives. Even within CARB regulations,
10 consumer product emissions in the South Coast in 2010
11 will account for roughly 30 percent of the allowable VOC
12 emissions to meet the federal ozone standard.

13 Clearly, more reduction in VOC emissions from
14 consumer products are needed if we are to meet federal
15 and state air quality standards.

16 To assist the board to determine what
17 options we have to seek further reductions, I've
18 scheduled a special symposium for tomorrow, right here
19 in this room. This will provide an opportunity for
20 manufacturers of consumer products and others to
21 present us with their ideas on how best to achieve that
22 objective as we move towards the assembly of our State
23 Implementation Plan.

24 Our task today, however, will be to focus on
25 the Alternative Control Plan regulation. The ACP is

1 designed to supplement the existing consumer products
2 regulation by using market incentives to provide
3 manufacturers with additional flexibility while
4 preserving the significant emission reductions in the
5 existing regulations.

6 To this end, the board directed the staff
7 back in 1992 to investigate the feasibility of
8 developing a market-based program to supplement the
9 existing regulations. The regulation before us today is
10 a result of that directive.

11 During these challenging economic times, we
12 are all concerned with the costs of achieving clean
13 air. In response to this challenge, the staff has over
14 the past two and a half years worked closely with the
15 consumer products industry to develop the proposal
16 before us today. Innovative control programs like the
17 ACP provides manufacturers with flexibility in meeting
18 our air quality goals.

19 With the cooperative partnership approach
20 that's been used to develop the ACP, marketlike
21 principles can be powerful tools in achieving
22 environmental goals while building a strong economy.

23 At this point, with that background, I'd like
24 Mr. Boyd to introduce this item and begin the staff
25 presentation.

1 Mr. Boyd.

2 MR. BOYD: Thank you, Chairwoman Schafer,
3 members of the board. As the chairwoman indicated, the
4 purpose of the Alternative Control Plan -- or ACP, as we
5 call it -- is indeed to provide consumer product
6 manufacturers an additional voluntary compliance
7 option.

8 At present the manufacturers have two options
9 to use to comply with our consumer product regulations.
10 First, they can just comply directly with the
11 established VOC standards. Second, they can formulate
12 and sell product that meets the innovative product
13 provision of the current regulation.

14 We're not proposing it replace the existing
15 regulation or any of the options; rather, we're
16 proposing a third compliance option that manufacturers
17 may select to reduce emissions from their products.

18 This approach relies on market principles, as
19 the chairwoman indicated, to provide consumer product
20 manufacturers flexibility in deciding the method of
21 reducing emissions from their mix of products.

22 This approach, while providing flexibility to
23 manufacturers, also preserves fully the air quality
24 benefits of our regulation and the intent of our
25 regulation.

1 Over the last two and a half years, we and
2 the staff have worked very closely with representatives
3 of the consumer product industry to develop the proposal
4 that we're bringing before you today. We conducted
5 seven public workshops, held enumerable meetings with
6 the U.S. EPA staff, and met, of course, with the
7 industry and industry association representatives.

8 You may recall that we provided your board a
9 status report on the progress with the ACP in March of
10 this year.

11 At this time I'd like to take the opportunity
12 to express my appreciation to those members of the
13 industry and others who spent a considerable amount of
14 time with the staff in the development of this
15 proposal. We very much appreciate the partnership that
16 has been formed in this area, and we look forward to
17 continuing in the future.

18 Finally, I'd like to take note that in
19 addition to providing flexibility to consumer product
20 manufacturers, implementing this ACP proposal will
21 provide us at the board the opportunity to obtain real
22 world experience with this emission control approach.
23 We'll use this experience to help us identify additional
24 opportunities for using this or similar market-based air
25 pollution control approaches in the future.

1 And with that brief background, I'd like to
2 now call upon Mr. Floyd Vergara of the stationary source
3 division to present the proposed ACP regulations for
4 consumer products.

5 Floyd, if you would.

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

7 (Slide presented.)

8 Chairwoman Schafer and members of the board,
9 today we are proposing for your consideration the
10 Alternative Control Plan, or ACP, regulation for
11 consumer products.

12 (Slide presented.)

13 I'll begin my presentation by providing you
14 with a background on the regulation of consumer
15 products. I will then discuss the development, the
16 concepts, the elements, and some of the potential
17 impacts of the proposed regulation.

18 (Slide presented.)

19 In the California Clean Air Act of 1988,
20 consumer products are defined very broadly to include
21 any chemically formulated product used by household and
22 institutional consumers. These include a wide variety
23 of household cleaning, personal care, pesticide,
24 automotive, and other types of products.

25 (Slide presented.)

1 Consumer products are a large source of
2 volatile organic compounds, or VOCs. At first glance
3 the VOC emissions from an individual can of hair spray
4 or engine degreaser may seem small. However, as this
5 slide indicates, the combined use of consumer products
6 by 30 million people in California results in
7 approximately 250 tons per day of VOC emissions, or over
8 91,000 tons per year, based on the ARB's 1991 emissions
9 inventory.

10 (Slide presented.)

11 These 250 tons per day of VOC emissions,
12 including aerosol paints, represent approximately 13
13 percent of the total nonvehicular VOC emissions shown
14 here by the red slice. As compared to all solvent use
15 categories, consumer products ranks among the largest
16 sources, comprising approximately 42 percent of the
17 total VOC emissions from solvent use categories shown
18 here as the combined red and dark blue slices.

19 Clearly, consumer product VOC emissions are
20 significant and without emission limitations will
21 continue to grow as the population increases.

22 (Slide presented.)

23 As you know, VOCs react with oxides of
24 nitrogen, or NOx, in the presence of sunlight to form
25 ground level ozone. VOCs are also precursors to PM₁₀.

1 (Slide presented.)

2 Ozone and PM10 are major respiratory air
3 tents in California. As this slide shows, over
4 90 percent of the state's population live in urban areas
5 where the state air quality standards for ozone and PM10
6 are frequently exceeded.

7 For instance, the two bars on the extreme
8 left show that the state standards for ozone and PM10
9 were exceeded in approximately two out of every three
10 days in the South Coast Los Angeles area in 1992.

11 (Slide presented.)

12 The legislature recognized the contribution
13 of consumer products to the air quality problems in the
14 state and incorporated provisions specific to consumer
15 products in the California Clean Air Act of 1988. These
16 provisions require the ARB to adopt regulations to
17 achieve the maximum feasible reductions in VOC emissions
18 from consumer products. The Act also requires that such
19 regulations be technologically and commercially
20 feasible, be necessary to achieve reductions, and be
21 supported by adequate data.

22 (Slide presented.)

23 What have we done so far to comply with the
24 California Clean Air Act's mandates? In 1989 the board
25 adopted the Consumer Product Control Plan, which

1 outlined various control strategies to be investigated
2 for reducing VOC emissions from consumer products.
3 Later that year the board adopted the nation's first
4 consumer products VOC regulation for antiperspirants and
5 deodorants. In 1990 the board adopted the more
6 comprehensive Phase 1 statewide regulation covering 16
7 additional product categories. And in 1992 the board
8 adopted the Phase 2 amendments to the statewide
9 regulations and the antiperspirant and deodorant
10 regulations adding an additional ten product
11 categories.

12 (Slide presented.)

13 So in total there are 27 product categories
14 subject to the existing regulations, ranging from
15 personal care products, like hair sprays, to automotive
16 windshield washer fluids and charcoal lighter material
17 products.

18 (Slide presented.)

19 The existing regulations are phased in
20 from 1993 to 1999, so that VOC emissions are reduced by
21 a total of about 60 tons per day statewide by 1999.

22 (Slide presented.)

23 What are the options manufacturers have for
24 complying with the existing regulations? The primary
25 compliance option available to manufacturers is to

1 comply with product-specific standards in the
2 regulations. These standards reduce VOC emissions by
3 limiting the amount of VOC in each of the 27 regulated
4 product categories.

5 (Slide presented.)

6 To provide flexibility to manufacturers and
7 to encourage creative solutions for reducing VOC
8 emissions, the existing regulations provide a second
9 option to manufacturers, known as the innovative
10 products provision.

11 An innovative product is a product that does
12 not meet the VOC standard in the regulation, yet results
13 in less VOC emissions than a product which meets the VOC
14 standard. Over its lifetime an innovative product emits
15 less than a product which meets the standard because of
16 its unique design or formulation.

17 (Slide presented.)

18 So as you can see, the existing regulations
19 already provide flexibility by giving manufacturers two
20 available compliance options. Today we are proposing a
21 third compliance option, the Alternative Control Plan,
22 that will provide an even higher level of flexibility
23 for manufacturers while preserving the emission
24 reductions in the existing regulations.

25 (Slide presented.)

1 When the board adopted the Phase 2 amendments
2 in 1992, we were directed to investigate and develop a
3 market-based program that would supplement the existing
4 regulations. This directive was consistent with
5 industry's desire for additional flexibility and lower
6 compliance costs.

7 (Slide presented.)

8 In the extensive development process for the
9 ACP, we were able to discuss several control strategies
10 and reach a consensus on many issues with the workshop
11 participants. Overall, our public outreach process has
12 resulted in a very comprehensive and cooperative effort
13 among ARB staff, industry representatives, and other
14 interested parties.

15 The development process has involved seven
16 public workshops, five meetings with the industry's ACP
17 task force, meetings with our sister agencies to address
18 their concerns, a survey to determine the ACP's
19 potential economic impacts, and an extensive literature
20 search to -- of past and present market-based programs
21 similar to the ACP.

22 We also provided a midcourse status report on
23 the ACP's development to the board in March of 1993.
24 Both the board and industry representatives reaffirmed
25 their desire for an ACP regulation.

1 (Slide presented.)

2 The industry's ACP task force participated in
3 the entire workshop process. This group consists of
4 representatives from the Chemical Specialties
5 Manufacturers Association, the Cosmetic, Toiletry, and
6 Fragrance Association, and individual company
7 representatives.

8 As I stated earlier, representatives from our
9 sister agencies at the U.S. EPA and the local districts
10 also participated in the development process.

11 (Slide presented.)

12 Early in the development process, the
13 workshop participants mutually agreed on a set of common
14 goals to guide in development of the ACP regulation.
15 These goals state that the ACP should be a voluntary
16 option, treat all manufacturers and products fairly,
17 provide flexibility to manufacturers to make key
18 production and marketing decisions without excessive
19 restrictions, allow for growth and expansion of product
20 market share, and sales, apply to as many product
21 categories as possible, be enforceable, and last, but
22 not least, the ACP should be a binding commitment for
23 both the ARB and the manufacturer to provide certainty
24 for long-term planning.

25 (Slide presented.)

1 I will now talk about the general concepts
2 of the ACP and then discuss the elements of the
3 regulation.

4 (Slide presented.)

5 The ACP is a market-based program that places
6 an emissions cap over the aggregate VOC emissions from a
7 group of products that are subject to the Phase 1 and
8 Phase 2 regulation. The program achieves emission
9 reductions which are equivalent to the existing
10 regulation. The ACP, therefore, preserves the emission
11 reduction benefits of the existing regulation while
12 providing a high level of flexibility. The emission
13 caps can shrink or grow to reflect actual market
14 conditions, thereby accounting for growth in product
15 sales and market share.

16 (Slide presented.)

17 The ACP is a simple concept. Under the
18 existing regulations, the manufacturer of two
19 noncomplying products would have to reformulate both
20 products to comply with each individual VOC standard, as
21 shown by the two products on the left. However, under
22 the ACP, the manufacturer could leave the first product
23 alone and reformulate the second product below its VOC
24 standard, as shown by the two products on the right.
25 The VOC emissions from both products, under the

1 emissions cap, would be equivalent to the emissions
2 under the existing regulation.

3 (Slide presented.)

4 Why do we believe an ACP would be useful
5 to manufacturers? Well, it allows manufacturers to
6 maintain an existing product line at its current
7 formulation by reformulating another product line to
8 achieve excess emission reductions.

9 An ACP also provides manufacturers additional
10 time to reformulate a product if the manufacturer
11 reformulates another product line before its specified
12 compliance date.

13 These are just two examples of how the ACP
14 regulation can benefit manufacturers while preserving
15 emission reductions.

16 (Slide presented.)

17 At this point I would like to cover the
18 elements of the regulation which govern how it is
19 implemented, including the approval of a proposed ACP
20 plan and how an approved plan is managed.

21 (Slide presented.)

22 As I stated previously, the ACP is a
23 voluntary program, providing manufacturers with a third
24 compliance option. At this time the ACP applies to
25 the -- applies only to the 26 product categories subject

1 to the Phase 1 and 2 existing regulation. The ACP does
2 not include antiperspirants and deodorants at this time
3 because of fundamental differences between the
4 antiperspirant and deodorant regulation and the Phase 1
5 and 2 regulation. These differences make emissions
6 averaging between these two regulations very difficult
7 to implement. This was mutually agreed upon by the ARB
8 staff and the industry representatives during the
9 development process.

10 To ensure that the ARB and participating
11 manufacturers are speaking the same language, we are
12 proposing an extensive set of definitions. These
13 definitions, along with the definitions in the existing
14 Phase 1 and 2 regulation, will ensure clarity,
15 consistency, and enforceability.

16 (Slide presented.)

17 Once the ACP program is chosen, the
18 manufacturer develops a comprehensive ACP plan for the
19 executive officer's approval. In essence, the proposed
20 ACP plan needs to show that for the time the ACP plan
21 will be in effect, the aggregate VOC emissions from the
22 selected products will be no greater than they would be
23 under the existing regulation.

24 If the proposed plan meets the regulatory
25 requirements, the executive officer issues an executive

1 order with specific permit conditions to ensure the
2 enforceability of the plan.

3 The approval process is conducted within a
4 specified time frame to ensure that the plans are
5 processed in a timely manner.

6 (Slide presented.)

7 To be approvable, a proposed ACP plan must
8 contain specific information and demonstrations. The
9 submitted plan must demonstrate that the sales records
10 accurately reflect the amount of products which are sold
11 in California. The plan must also be termed under the
12 compliance period. Manufacturers can choose compliance
13 periods up to one year. Compliance with the emissions
14 cap is determined at the end of these compliance
15 periods.

16 In addition, the plan must clearly specify
17 how the manufacturer will reconcile shortfalls in the --
18 in its emission reduction commitments.

19 By requiring these measures in the approval
20 process, we ensure that both the ARB and the
21 manufacturer know what to expect and how to reconcile
22 shortfalls if such an event occurs.

23 This information, along with other required
24 data, is used by the executive officer to specify
25 enforceable permit conditions that will ensure the

1 emissions under an ACP will not exceed the specified
2 emissions caps.

3 (Slide presented.)

4 To this point I have discussed how a
5 manufacturer obtains approval for an ACP plan. Now I
6 would like to discuss other aspects of implementing ACP
7 plans.

8 At the end of each compliance period, the
9 data reported by the manufacturer will show one of three
10 possible outcomes:

11 1. The VOC emissions equal the emissions
12 cap, in which case the manufacturer has met its
13 requirements and is in compliance.

14 2. The VOC emissions are less than the
15 emissions cap, in which case the manufacturer is also in
16 compliance, but has resulted in what we call surplus
17 reductions.

18 3. The VOC emissions are greater than the
19 emissions cap, in which case the manufacturer is in
20 noncompliance and has resulted in what we call
21 shortfalls.

22 In the next two slides, I will discuss these
23 concepts of surplus reductions and shortfalls.

24 (Slide presented.)

25 If the emissions at the end of a compliance

1 period are less than the emissions cap, the manufacturer
2 has surplus reductions. This drawing simplifies the
3 surplus reductions credit provision. As shown, surplus
4 reduction credits result when the emissions from
5 products under an ACP are less than the specified
6 emissions cap. The surplus reductions shown here as the
7 blue area is the difference between the emissions in red
8 and the emissions cap, which is the green line.

9 Credits for surplus reductions are issued by
10 the executive officer at the end of each compliance
11 period. Manufacturers can take these surplus credits
12 and use them in the following compliance period, they
13 can sell them to a small or one-product business, or
14 they can sell them to another manufacturer who has
15 failed to meet its ACP emission reduction commitments.

16 Any surplus reductions that are traded must
17 be reported to the ARB, who will serve as a
18 clearinghouse for such information.

19 (Slide presented.)

20 If the emissions at the end of the compliance
21 period are greater than the emissions cap, the
22 manufacturer has shortfalls. As this simplification
23 shows, shortfalls are essentially the opposite of
24 surplus reductions. In this case, the manufacturer has
25 failed to meet its emission reduction commitments in the

1 plan. The shortfall represented in red is the
2 difference between the total emissions cap, the blue
3 area, and the product's actual emissions.

4 The manufacturer would reconcile this
5 shortfall by implementing its preapproved contingency
6 plan.

7 (Slide presented.)

8 We have included a violations provision,
9 because the ACP program is new and innovative. We
10 believe this provision is critical to the success of the
11 program, to ensure that both the ARB and participating
12 manufacturers will be speaking the same language.

13 This provision improves the enforceability of
14 the program by defining and clarifying the activities
15 that will be considered violations of the regulation.

16 As proposed, the violations provision is
17 consistent with applicable federal and state statutes.

18 (Slide presented.)

19 Some examples of the more critical violations
20 are: Operating an approved ACP plan that is based on
21 false data submitted during the approval process,
22 reporting false or inaccurate product sales or VOC
23 content data, exceeding the reported VOC content for any
24 product under an ACP, exceeding the specified emissions
25 cap, and failing to reconcile shortfalls as required by

1 the plan.

2 These are just a few of the different
3 activities that have been defined as violations of the
4 regulation.

5 (Slide presented.)

6 How are we going to enforce the emissions
7 caps? In the approved plan, the manufacturer would
8 report to the executive officer the product sales and
9 VOC content for each product. At the end of each
10 compliance period, the manufacturer uses the actual
11 sales and the reported VOC content data to determine for
12 itself whether its VOC emissions meet or exceed the
13 emissions cap.

14 For its part, the ARB would audit the sales
15 and manufacturing records to verify the reported
16 California sales. The ARB would also test the VOC
17 content of products manufactured under the ACP plan to
18 verify the reported VOC content levels.

19 Based on these data and additional
20 information, the ARB would determine if the manufacturer
21 has met, exceeded, or emitted less than its emissions
22 cap.

23 (Slide presented.)

24 The regulation allows the manufacturer to
25 cancel an ACP plan if the manufacturer can show that

1 continued operation under an approved plan will result
2 in extreme economic hardship. The executive officer can
3 also cancel an ACP plan if the manufacturer demonstrates
4 an inability to meet the requirements in the approved
5 plan.

6 Upon cancellation of an ACP, all remaining
7 shortfalls must be reconciled and all products under the
8 ACP must be in compliance with the VOC standards.

9 (Slide presented.)

10 Also included in the ACP regulation are
11 administrative requirements for record keeping,
12 modifications to an ACP plan by the manufacturer or the
13 executive officer, and the transfer of an ACP plan
14 between manufacturers in case of a company merger or
15 buyout.

16 (Slide presented.)

17 As I stated previously, the ACP preserves
18 the emission reductions in the existing regulation.
19 Therefore, we anticipate the ACP will have no
20 significant adverse impacts on ozone and PM10, ozone
21 depletion, global warming, and other environmental
22 media.

23 (Slide presented.)

24 Because the ACP is voluntary, it is
25 reasonable to assume that manufacturers would not enter

1 and participate in the ACP program unless the program
2 will provide higher flexibility or lower compliance
3 cost. Therefore, the ACP should provide an overall
4 economic benefit to the consumer products industry and
5 to consumers.

6 (Slide presented.)

7 Industry representatives have requested very
8 limited credits for early reformulations below the VOC
9 standards. Only overcomplying reformulations which were
10 achieved in the compliance period prior to the submittal
11 of an ACP plan would be credited. Such credits would
12 have a lifetime of only one compliance period and would
13 be restricted for use solely to reconcile shortfalls in
14 the first compliance period of an approved ACP plan.
15 These credits would not be tradable to any other party.

16 This is really just a timing issue. Some
17 manufacturers recently have reformulated to be below
18 the 1995 or future standards; however, because the ACP
19 is being considered this year, instead of last year,
20 these early overcomplying reformulations would not --
21 would not have been credited.

22 We believe these limited one-time-use credits
23 will encourage manufacturers to participate in the
24 program by providing a cushion for reconciling
25 shortfalls in the initial stage of this new program.

1 We, therefore, recommend a modification to our proposal
2 to provide for such limited credits.

3 Some firms have expressed concerns about the
4 violations provision. As written, any exceedance of the
5 emissions cap would be a violation for every day in the
6 compliance period regardless of the size of the
7 exceedance.

8 For example, if the compliance period is one
9 year, any exceedance of the emissions cap would result
10 in 365 violations.

11 There has been extensive discussion among
12 staff, industry, and the U.S. EPA on this issue. These
13 discussions continued after the publication of the staff
14 report. As a result of these discussions, we are
15 recommending a modification to our proposal that would
16 determine the number of violations for an emissions cap
17 exceedance based on a one violation per 40 pounds
18 of exceedance.

19 So, for example, if the emissions cap is
20 exceeded by only 200 pounds, the number of violations
21 would be 5 -- 200 divided by 40 -- instead of 365.

22 The U.S. EPA has determined, based on their
23 experience with the acid rain program, that this
24 approach would be acceptable to them, because it is
25 enforceable, it provides adequate deterrence to

1 noncompliance, and it meets their economic incentives
2 program rule and the Federal Clean Air Act.

3 Industry representatives have requested
4 additional time to reconcile shortfalls. As you'll
5 recall, a shortfall is the amount of emissions in excess
6 of the emissions cap. The regulation, as proposed,
7 allows a maximum of 90 working days to reconcile
8 shortfalls, which we believe is an adequate period. We,
9 therefore, recommend no changes to the reconciliation of
10 the shortfalls provision.

11 (Slide presented.)

12 An industry representative has requested
13 expansion of the ACP to cover all consumer products
14 not those just currently subject to the existing
15 regulations. We recommend not expanding the ACP to
16 cover unregulated products at this time. We believe it
17 is inappropriate to expand the ACP at this time because
18 the ACP uses the existing VOC standards as the baseline
19 for determining whether emission reductions are real.
20 For products without VOC standards, we would not be able
21 to ensure that the emission reductions claims are real
22 or enforceable since there would be no baseline. We'd
23 also look to limit ACP to the existing regulation to
24 gain experience with this new program before expanding
25 it.

1 Lastly, some manufacturers are concerned that
2 the ARB will mandate the use of the ACP to reduce
3 emissions. We emphasize at this point that our proposal
4 before you today is voluntary and that any further use
5 of the ACP regulation will go through a full -- a full
6 rulemaking process.

7 (Slide presented.)

8 In conclusion, the ACP regulation was
9 developed with an extensive, cooperative effort among
10 ARB staff, industry, and other interested parties. We
11 believe the ACP will provide a valuable compliance tool
12 to manufacturers as their third voluntary option. The
13 ACP regulation preserves the emission reductions in the
14 existing regulation while providing a high level of
15 flexibility to manufacturers. We would, therefore,
16 recommend that the board adopt the ACP regulation with
17 the proposed modifications I described.

18 This concludes my presentation. We would be
19 happy to answer any questions you may have at this
20 time.

21 CHAIRWOMAN SCHAFFER: Thank you very much.

22 If I neglected to mention it before, I'd like
23 to now use the opportunity to remind those of you in the
24 audience who would like to testify on this agenda item
25 to please sign up with the board secretary.

1 At this point I would like to ask board
2 members if they have questions for the staff on the
3 presentation.

4 CHAIRWOMAN SCHAFFER: Mr. Parnell.

5 MR. PARNELL: Yes, if I may. It appears
6 that one of the fundamental questions is, In order to
7 determine whether the goal is being met is the
8 monitoring of sales, and that has to be accurate. It
9 has to be a program that can take -- I guess my question
10 is, Do we have physically the staff and wherewithal to
11 continue to do that, or are we continuing to build
12 infrastructure in this?

13 CHAIRWOMAN SCHAFFER: I suspect that it
14 is largely dependent, as often these things are, on
15 self-reporting and our monitoring of that.

16 Miss Shiroma.

17 MS. SHIROMA: The plain and simple answer
18 to your question is yes. We have staff dedicated to the
19 consumer products program, and also our compliance
20 division has staff that's devoted to the enforcement of
21 the program.

22 CHAIRWOMAN SCHAFFER: The question was
23 about the monitoring of sales.

24 MS. SHIROMA: And the monitoring of the
25 sales is that portion of looking at the plan to

1 determine whether or not the requirements are being met,
2 to assure that the reductions are enforceable, and they
3 are. They are real. And again, the answer is yes. We
4 have them looking at the mechanisms to ensure that the
5 sales have occurred, to anticipate what those sales
6 might be, and we do have staffing to be able to
7 implement that part of the program.

8 MR. PARNELL: Well, the age-old "You can
9 have your feet in the oven and your head on ice and on
10 average feel pretty good" kind of applies here, I
11 guess.

12 It seems as though we have products that are
13 totally in compliance and we have products that will not
14 comply, and on the average, they're pretty good. And it
15 concerns me that the monitoring has been well thought
16 out in order to be able to determine whether the goals
17 are being met.

18 The second question that I would have would
19 be in the area of VOCs in general. A lot of these
20 consumer products are used inside, and do we know
21 enough -- are those all emitted and become problematic
22 in air, or are they in entrained? Could they
23 potentially be entrained in draperies or something
24 inside? Do we know the answer to that? Or am I --

25 MS. TARICCO: This issue was addressed

1 when the board adopted the Phase 2 portion of the
2 regulation, and there have been some studies that looked
3 at indoor emissions and the transport of these emissions
4 to the outside. And there are certain chemicals that
5 will get entrained into interior objects, but what they
6 also found is that there's an equilibrium that gets set
7 up, and they desorb again. And in most of the houses in
8 California -- I don't know if I remember the exact
9 number. There's about seven air exchange rates per
10 hour, so eventually they do get to the outside. It may
11 not occur at the time you're applying the hair spray.
12 It may happen a little bit later, but there is a
13 constant push of these solvents out the window, I
14 guess.

15 MR. PARNELL: Good. Thanks.

16 CHAIRWOMAN SCHAFER: Any other questions
17 for board members at this time?

18 Miss Edgerton.

19 MS. EDGERTON: I'd like to follow up a
20 little on my colleague's question about the monitoring.
21 One of the concerns is that a program like this just
22 becomes a hyperbolic program, and there's been so much
23 that's gone into this, and it's so constructive.

24 But more specifically, is there a provision
25 for ARB to audit the -- say there's a plan approved.

1 Can ARB go in and audit the actual way that the company
2 goes about reporting its sales, and -- of different
3 products -- to independently verify what has been
4 represented?

5 MS. SHIROMA: Yes. The way the regulation
6 is fashioned, first of all, the company must apply to
7 the Air Resources Board and a full assessment of the VOC
8 content and the sales is made by our staff, and the
9 executive order is issued. Then throughout the life of
10 the ACP, at the end of each compliance period the Air
11 Resources Board has a role in that we will need to
12 review the report that's provided at the end of each
13 compliance period, and that compliance period may be up
14 to one year's time. So we will be reviewing each of
15 those compliance plans as they come in throughout the
16 lifetime of the program.

17 Also, we will be looking at the individual
18 products. Our compliance inspectors will be able to
19 pull parts off the shelf to verify that the VOC contents
20 are, in fact, complying with ACP plan that was agreed to
21 in a binding agreement between the company and
22 ourselves.

23 So we have two ways of looking at it, the
24 product off the shelf, and then at the end of each
25 compliance period, we review those plans and assure that

1 they are in compliance.

2 MS. EDGERTON: Well, so if I understand
3 you right, you will -- as part of reviewing the plan,
4 you'll look over a piece of paper that they submit?

5 MS. SHIROMA: Peggy is going to elaborate
6 on that.

7 MS. TARICCO: Yes, as part of the
8 preapproval process, they're going to have to
9 demonstrate to us that they can track their sales and
10 that there's a mechanism for us to check on that. And
11 in some cases it may be an independent auditing firm.
12 There's a couple of consumer product tracking programs,
13 Nielsen and IRI, that are fairly sophisticated, and
14 they're constantly looking at the sales of these
15 products. That may be one mechanism.

16 For some products we will be coordinating
17 with DPR to look at the meal (phonetic) tax assessment,
18 because pesticides are included in this regulation, and
19 we expect that there's going to be many other types of
20 ways that we will be doing the checking.

21 This was discussed at great length at many of
22 our workshops, and for many of the manufacturers, the
23 way they track their products is confidential, and so
24 the regulation was designed to give that flexibility so
25 that they can come in to us, show us this is how they

1 track their products, give us a way that we can
2 double-check, and then they can go into the plan.

3 MS. EDGERTON: So if I understand you,
4 there's going to be an approved mechanism that the Air
5 Resources Board will use that must be included in every
6 Alternate Control Plan?

7 MS. TARICCO: Yes. And that has to be set
8 up front before the plan is approved.

9 MS. EDGERTON: And it will be an
10 independent third party?

11 MS. TARICCO: In some cases, it may. Not
12 always. It's set up so that it can be done on a
13 case-by-case basis, because -- because of the diversity
14 of this market, there's many different ways that these
15 manufacturers monitor themselves. Some manufacturers
16 have told us that it's very difficult to do that. We
17 expect that those manufacturers won't be able to have
18 an approved ACP plan. Only manufacturers that can
19 demonstrate to us that the products can be tracked and
20 that we can monitor them will be allowed into ACP.

21 MS. EDGERTON: Well, I think that's key,
22 so I understand -- if I understand you right, it's
23 not -- you haven't done it yet, you don't know exactly
24 how you're going to do it, but from the standpoint of
25 our effectiveness of the regulation, obviously, that's

1 something that can't be overemphasized.

2 How good is -- how good is our ability to --
3 ARB's ability to assess the VOC emissions? And when we
4 do that in this plan, are we going to look at the whole
5 inventory of emissions from that particular product, or
6 are we only going to know what VOCs there are? And what
7 I'm driving at is obviously the ARB has responsibilities
8 beyond VOCs. We have all kinds of toxic air
9 contaminants and other obligations, and when we look at
10 a particular consumer product under this plan, will
11 we -- what will we know about that product? Only VOCs
12 or what will we know?

13 MS. TARICCO: I guess I'm not sure I
14 understood your question. Are you concerned that when
15 we look at the product, that we look at other impacts
16 besides the potential to contribute to the reaction that
17 forms photochemical smog?

18 CHAIRWOMAN SCHAFER: Mr. Venturini.

19 MR. VENTURINI: Maybe I can help on this.
20 Part of the consumer product regulations are designed
21 primarily for VOC reductions. When we take a look at
22 these plans, we will be looking primarily to make sure
23 that the emission reductions are consistent and assure
24 that this is what -- the Table of Standards that they're
25 working under in this ACP. But I think just as a matter

1 of course, we will be also looking at the plan to make
2 sure there aren't any other adverse impacts that may be
3 created, such as potentially an increase in toxic --
4 toxic emissions.

5 Now, in the adoption of VOC content
6 standards, if we're to look at toxic emissions, that's
7 done through our air toxic contaminant program, but
8 we've also -- whenever we evaluate the -- a product for
9 VOC reduction, you take a look at the full spectrum of
10 the emissions.

11 MS. EDGERTON: Good. So that is what my
12 question was, was that I didn't want to know a product
13 with higher VOCs -- didn't want ACP to go into place,
14 that inadvertently substituted a chemical that was
15 equally undesirable for us to -- we didn't want to
16 encourage it. So thank you.

17 MR. VENTURINI: I think the ACP covers
18 that.

19 Peggy, can you verify that the ACP covers the
20 other undesirable -- that they don't -- that the VOCs
21 aren't replaced with some other compound.

22 MS. TARICCO: I think there's many
23 different regulations in place that would prevent that
24 from happening. It's not just our system regulations,
25 but there's several regulations on this industry that

1 require them to be very careful with the different types
2 of compounds that they use in their products.

3 Another thing is that we do have a
4 registration provision in the consumer product
5 regulation that will allow us to request information
6 from manufacturers, and then we can take a step back and
7 look to see how people are reformulating their products
8 and whether or not there's any adverse environmental
9 impact.

10 MS. EDGERTON: Thank you. And one other
11 final question. What if somebody -- what if a company
12 completely replaces a product with something that has no
13 VOCs? Do they get credit?

14 MS. TARICCO: If they're in the ACP. If
15 it's set up that way, yes -- and it had been a
16 reformulation. Now, if they had done this several years
17 ago, then no, they wouldn't get credit for that. But if
18 they were in an ACP plan, and they reformulated that
19 product to remove all the VOCs, then yes, they would.

20 MS. EDGERTON: Thank you.

21 CHAIRWOMAN SCHAFER: Are there any other
22 questions from the board members for the staff at this
23 time?

24 If not, I'd like to --

25 MR. CALHOUN: Madam Chairman.

1 CHAIRWOMAN SCHAFER: Oh, I'm sorry.
2 Mr. Calhoun.

3 MR. CALHOUN: I understand that staff made
4 some changes to the proposal. Can you very briefly
5 repeat what those modifications were -- what they are.

6 MR. VERGARA: Yes. Basically there were
7 two proposed modifications, one is to the violations
8 provision. And what we're proposing is to -- we're
9 proposing modification that will determine the number of
10 emissions violations of the cap to be based on a one
11 violation for 40 pounds of exceedance increment.

12 So in other words, you take the amount over
13 the -- over the especially the cap, and divide that
14 by 40, and that would be your number of emissions
15 violations. Okay. So that's the first proposed
16 modification.

17 The second one is to provide for credit
18 for early overcomplying reformulation, where the
19 manufacturer in the compliance period, say the year
20 before the -- it -- the manufacturer submits its ACP
21 plan -- if in the year before that, that manufacturer
22 had achieved a reformulation which went below the
23 standard, then they would get credit, a one-time, very
24 limited credit for that reformulation, which they could
25 use to reconcile shortfalls in the first compliance

1 period of that plan.

2 So basically, as I said, it's a timing
3 issue. If the ACP had gone into effect last year, the
4 program would have worked to give that reformulation
5 credit under -- you know, under the existing proposal.
6 So it's just those two proposals.

7 CHAIRWOMAN SCHAFER: Okay. Good.
8 Thank you.

9 I think it's time that we moved on now to the
10 witnesses who'd like to make presentations today. I'd
11 like to first call on Mr. Mike Thompson, with the
12 Chemical Specialties Manufacturers Association. Welcome
13 at this time. Good afternoon, Mr. Thompson.

14 MR. THOMPSON: Thank you,
15 Madam Chairwoman. My name is Mike Thompson. Our
16 president, Ralph Engel (phonetic), is unable to attend
17 today and has asked that I present the views of the
18 Chemical Specialties Manufacturers Association
19 concerning the ARB's proposed ACP.

20 Briefly, CSMA is a nonprofit trade
21 association representing more than 440 firms engaged
22 in the manufacture, formulation, distribution and sales
23 of consumer and specialty products for household,
24 institutional, and industrial use. CSMA and this
25 industry have worked closely and cooperatively for

1 several years with CARB staff along with members of
2 the entire consumer products coalition.

3 Dr. Dan Knoth of 3M serves as chairman
4 of an industrywide ACP task force which includes
5 representatives of all areas of the consumer products
6 industry. Douglas Raymond, from Sprayon Industries,
7 serves as vice chairman of the task force. Both
8 Dr. Knoth and Mr. Raymond will present their views
9 later.

10 CSMA has and continues to support the
11 development of an alternative method of complying with
12 the requirements of the existing VOC limits for consumer
13 and commercial products. Our task force has appreciated
14 the cooperation of the CARB staff in this area. As we
15 have stated in previous comments to both CARB staff and
16 before this board, the development of an effective and
17 workable ACP is a most difficult task.

18 At the third workshop considerable discussion
19 took place concerning the goals of the ACP. This
20 November '93 workshop provided valuable goals which were
21 agreed to both by CARB staff and the industry for the
22 development of the ACP. Mr. Vergara has presented
23 those, and I will not repeat those goals which are part
24 of his presentation, which were -- which we fully
25 support.

1 We have no specific comments today concerning
2 the applicability section of this rule. Here we find
3 that it's a difficult position because we have members
4 that have differing views. Individual members feel that
5 it should cover only the Table of Standards products,
6 while some other members feel that it could cover all
7 consumer products, and others feel it should cover all
8 VOCs.

9 CSMA does not oppose the proposal as it's
10 written today concerning the applicability, although our
11 members have varying views.

12 We appreciate all of the efforts that have
13 been made to this regulation throughout, and I think
14 the best way we can describe it was to make it as
15 user-friendly as possible to avoid confusion to either
16 the applicant or the ARB. We do acknowledge that ACP
17 applicant will have additional burdens, however, we have
18 strongly encouraged CARB to minimize the paperwork and
19 the administrative burdens on both the agency and the
20 applicant. This will benefit both long term.

21 The ACP, as proposed today, is not a perfect
22 document, but it is an effort to provide an additional
23 tool for consumer products and manufacturers. It by no
24 means should be the primary option for a manufacturer.
25 Rather, this is another voluntary alternative option

1 which joins the innovative products in the existing
2 variance procedure for consumer products.

3 Concerning the areas of discussion that have
4 come down towards the end, where there's been some areas
5 of disagreement, in the area of early compliance, we
6 support the concept that was put forward by staff today
7 for manufacturers, subject to the rule, who may have a
8 one-time, one-year emissions credit that would be
9 applied to the ACP. We feel that this is a logical
10 compromise. Although some in the industry would like to
11 have received greater credits for early reductions, we
12 feel that this is an important compromise. It allows
13 for early compliance or a benefit to someone who
14 complies early.

15 In the violation section, our industry is
16 very concerned by the proposal that was put forward, and
17 the concept that one would be in -- if you were out of
18 compliance by one pound, that you would be in violation
19 for 365 days was not a workable concept. Here again, we
20 support the proposed amendments that were put forward by
21 staff today.

22 Another one, which is the time to reconcile
23 shortfalls in 90 working days, frankly, I think that we
24 have a fairly workable approach. The only concern that
25 we have at this point in time is the area of seasonal

1 products and whether there would be adequate time for
2 those products within the ACP.

3 We look forward to continuing discussions for
4 working on that. That has not been fully resolved, but
5 it is again confined only to those seasonal products
6 that may have a shortfall, that would have to be
7 reconciled possibly one year later.

8 Concerning the two questions that were
9 brought up -- and let me elaborate, if I might take the
10 liberty on two of them. I have to compliment the staff
11 on a creative way when it comes to monitoring sales and
12 doing it with minimal paperwork burdens.

13 In the enforceable sales records provisions,
14 there is a provision that allows an interagency transfer
15 of records for, for example, pesticide products, within
16 Cal EPA from the Department of Pesticide Regulation.
17 Here they have currently existing sales records in which
18 they have auditors who are doing this currently. That
19 is one method which would allow those existing records
20 to be transferred over to the Air Resources Board, and
21 we feel that that is a creative way to do it and would
22 hopefully reduce the burden on both the agency and the
23 applicant.

24 In the area of use of the products --
25 Mr. Parnell brought this up -- according to our

1 information, about 95 percent of the product usage is
2 indoors, and we continue to see that this is a major
3 concern for the industry, and we question whether they
4 are fully emitted into the atmosphere.

5 At this point in time -- I think you brought
6 up an excellent point that we may bring back tomorrow,
7 and that is an area of research that may be needed in
8 regards to consumer products and what is actually
9 emitted.

10 In summary, CSMA members support the concept
11 of the ACP; however, some of our members fear that the
12 voluntary plan will become mandatory and ignore some of
13 the onerous provisions found in some of the
14 technology-forcing standards.

15 CARB has approved standards which are in some
16 cases impossible to meet. We have actively opposed any
17 effort to make the ACP anything other than a voluntary
18 method of complying with the Table of Standards.

19 Let me repeat that. Excuse me. CSMA members
20 fear this voluntary plan will become mandatory and
21 ignore the onerous provisions found in certain of the
22 technology-forcing standards. CARB has approved
23 standards which are in some cases impossible to meet.

24 We would actively oppose any effort to make
25 the ACP an involuntary method of complying with future

1 effective dates which are not technologically and
2 commercially feasible. CSMA views the ACP as a
3 voluntary alternative to the Table of Standards. We do
4 not view the ACP a replacement for the command and
5 control regulations. This ACP is not the vehicle for
6 regulating other nonregulated consumer products.

7 Again, I appreciate the opportunity to
8 express the views of CSMA, and another special thanks to
9 the CARB staff for an outstanding job in three years'
10 worth of work in developing this proposal.

11 Thank you.

12 CHAIRWOMAN SCHAFER: Thank you very much.
13 Mr. Thompson.

14 Are there any questions for Mr. Thompson from
15 the board members at this time?

16 MR. THOMPSON: Thank you.

17 CHAIRWOMAN SCHAFER: I'd like to raise a
18 view. Are we making this too complicated? Or do you
19 think this is about as good as we can do until we get
20 some experience?

21 MR. THOMPSON: Let's put it this way: I
22 think that may be something that would probably be
23 better answered by the individual applicants. As a
24 trade association, we would not be an applicant for an
25 ACP. I think others who will speak later are much more

1 qualified to answer that question, potential
2 applicants. At this point I think you have to balance
3 your need for information with the need for the plan,
4 and that might be appropriate for others to take a crack
5 at that question.

6 CHAIRWOMAN SCHAFER: Do you think a lot of
7 your members will, in fact, prepare plans?

8 MR. THOMPSON: Frankly, no. I would not
9 anticipate this as being --

10 CHAIRWOMAN SCHAFER: That's why I asked
11 the question.

12 MR. THOMPSON: -- the major activity. I
13 would see a manufacturer first going to the Table of
14 Standards, and that being the primary method of
15 compliance. We have estimated this as being a second or
16 third or fourth option that someone would go to.

17 Yes, there is additional paperwork burdens,
18 there are additional requirements, and I would not
19 envision someone, if you could comply with the Table of
20 Standards, needing to go into an ACP.

21 CHAIRWOMAN SCHAFER: Okay. Well, we put a
22 lot of effort into it, and I'm just hoping that it will
23 pay off some dividends. I assume there is some demand
24 for this out there and that --

25 MR. THOMPSON: There is, and hopefully, as

1 with other provisions, similar to the innovative product
2 provision, it will foster and encourage technology
3 within the industry. And so it is something that
4 although a -- certain portions of the industry support
5 and some oppose, I think conceptually it is a good
6 plan.

7 CHAIRWOMAN SCHAFER: Very good. Thank you
8 very much for --

9 MR. THOMPSON: Thank you.

10 CHAIRWOMAN SCHAFER: -- your testimony
11 this afternoon, Mr. Thompson.

12 Our next witness is Mr. Doug Raymond with the
13 Specialties Division of Sherwin-Williams.

14 MR. RAYMOND: My name is Doug Raymond, and
15 I'm the Divisional Director of Regulatory Affairs for
16 the Specialty Division of Sherwin-Williams. We are a
17 large custom manufacturer of consumer products and a
18 large marketer of aerosol coatings.

19 The Specialties Division has supported the
20 ACP concept from the beginning, and we would like to
21 start by thanking the staff for their time and their
22 consideration and all the hard work that they've done on
23 this issue. This has taken over two years and numerous
24 workshops.

25 The Specialty Division has some of the same

1 concerns as CSMA, and we support the amendments being
2 put forth today by the staff. We believe that the
3 regulation that is being put forward is the best
4 possible one that we could make at this time, however,
5 we think that further refinements in this concept are
6 going to be needed in the future.

7 For example, the first is the extension of
8 coverage of sources regulated by this rule. The
9 Sherwin-Williams Company believes that all consumer
10 products and all sources of VOC emissions should fall
11 under this rule. And we also understand the staff
12 prefers to keep this small until they can find if it's a
13 workable rule. However, we would urge the board at this
14 time to make a commitment to add aerosol spray paints to
15 this ACP as soon as they are regulated in January. We
16 have worked long and hard on this regulation, and we
17 think it will be a very important tool in the future.

18 Second, we believe that further inclusion
19 into this ACP should be a concept of emission trading.
20 I think that will be an important tool for the future,
21 and we think it should be started to be researched right
22 now.

23 Again, we'd like to thank the staff for
24 their time and their hard work on this issue, and this
25 regulation provides a new option for our industry, and I

1 urge the board to support it and to adopt it today.

2 Thank you.

3 CHAIRWOMAN SCHAFER: Thank you very much,
4 Mr. Raymond.

5 Are there any questions?

6 Excuse me, Mr. Raymond, if you'd step back
7 to the podium. Mr. Calhoun would like to ask you a
8 question.

9 MR. CALHOUN: Mr. Raymond, you are urging
10 the board to commit at this time to include other
11 compounds in the regulation?

12 MR. RAYMOND: Yes, I do.

13 MR. CALHOUN: And the staff is somewhat
14 reluctant. They've taken a small bite here in order to
15 develop this learning curve that we all need, and I'm
16 just wondering if the staff has any comment to make in
17 that regard.

18 MR. RAYMOND: Well, I could explain a
19 little bit about what I'm talking about. The reason --
20 we've had extensive conversations with staff on this
21 issue. The reason it is not in the rule today is
22 because there is no regulation on aerosol spray paint.
23 Aerosol spray paint is a consumer product, by California
24 law, and it will be adopted -- a regulation on aerosol
25 spray paint will be adopted in January, and I would like

1 to get this issue brought to you before we come to you
2 in January and say, "With the aerosol paint regulation,
3 we'd also like it to be put into the ACP," because it is
4 a consumer product and it should have all the advantages
5 that all the rest of the consumer products do have.

6 CHAIRWOMAN SCHAFFER: Mr. Venturini, could
7 you comment on Mr. Calhoun's question.

8 MR. VENTURINI: I just want to indicate
9 with respect to the aerosol paint regulation which is
10 now scheduled to come before you in January, we're in
11 the process now of continuing the discussions with the
12 industry, and I think one of the things that's under the
13 discussion is including aerosol paints into the ACP.

14 With respect to expanding, say, this concept
15 to other products, even -- I think what Mr. Raymond
16 would like to see is unregulated products, so that
17 presents us some difficulties which how do you develop a
18 baseline and your starting point and so forth. And we
19 really felt it was important to take this first step to
20 learn how this program works and get basically the bugs
21 out of it, and -- but that doesn't prevent us, while
22 we're doing that, to continue discussions with the
23 industry about concepts and how we might be able to look
24 for other opportunities for this type of a market-based
25 approach.

1 CHAIRWOMAN SCHAFER: Are there any other
2 board members who would look to ask Sherwin-Williams at
3 this time any further questions?

4 If not, thank you very much.

5 MR. RAYMOND: One more comment. You asked
6 a question about whether this was too complicated to be
7 implemented. We have done some research on this issue
8 and to see how viable it is for our company, and we
9 don't think it's going to be that complicated to be able
10 to comply with.

11 Thank you.

12 CHAIRWOMAN SCHAFER: Good. Thank you very
13 much. I appreciate it.

14 Our next witness is Mr. Jim Mattesich with
15 the CTFA.

16 If you could spell out CTFA. I was going to
17 make a stab at it, because that's all that's written
18 here, and I know I'm going to get something out of
19 order.

20 MR. MATTESICH: Madam Chair, members, my
21 name is Jim Mattesich. CTFA stands for the Cosmetic,
22 Toiletries and Fragrance Association. And I realized
23 when I signed the sign-up list that there was an order
24 at the top of it, and you somewhat adjusted the order.
25 One of the principal member companies of CTFA is

1 Procter & Gamble, and the representative of Procter &
2 Gamble is here and had signed up ahead of me. And so I
3 wanted to simply ask whether or not our important member
4 wanted to testify.

5 CHAIRWOMAN SCHAFER: No, no. We'll put
6 Mr. -- we'll put Dr. Geis on next. Why don't you go
7 ahead. I'm trying to get a big picture first.

8 MR. MATTESICH: I understand.

9 CHAIRWOMAN SCHAFER: Okay.

10 MR. MATTESICH: My name is Jim Mattesich,
11 and I am here today on behalf of CTFA. I am with the
12 law firm of Livingston & Mattesich in Sacramento. And
13 we're here obviously on this issue which we have been
14 involved in as well. You saw so many slides, I think
15 you have probably forgotten that CTFA's name was up
16 there as one of the groups that was involved in this.

17 CTFA, in brief, is a hundred-year-old
18 association of personal care products manufacturers.
19 There are 500 members in the association. Half of those
20 members are actively engaged in producing consumer
21 products, personal care products, many of which are sold
22 nationally and internationally and are already subject
23 to regulations in your Phase 1 and Phase 2, and in the
24 antiperspirant and deodorant area, as well, such as hair
25 care products, nail polishes, shaving creams, and

1 personal fragrance products. The remaining half of the
2 membership are the businesses that provide goods and
3 services to those active manufacturers. Those are
4 affiliate members, and they are the companies that
5 provide ingredients in the packaging for the
6 manufacturers. All of those companies are directly
7 affected by your original antiperspirant Phase 1 and
8 Phase 2 regulations as well as this particular
9 proposal.

10 We appreciate the effort that's gone into
11 this on the part of your staff and on the part of
12 industry, and we appreciate the intent of the board to
13 provide flexibility to manufacturers in ways that makes
14 it a -- them able to comply with consumer product VOC
15 regulations. We think the provisions like the
16 innovative products rule, which already exists and has
17 been utilized by some of our membership and other trade
18 association members, are good ideas, and they've worked
19 well. They encourage innovation, they encourage what
20 you want, which is manufacturers to spend some R&D money
21 to figure out ways to reduce the VOCs in their products
22 and therefore reduce VOC emissions.

23 We think that you need to continue to look
24 at ways to build flexibility into your regulations.
25 However, having said that, after almost the three years

1 that have gone into this effort, we regret to tell you
2 today that CTFA is unable to support the proposal.

3 After serious consideration by much of the
4 membership that are directly affected by this, they have
5 come to the conclusion that the present plan offers them
6 no discernible benefit to either the manufacturers or
7 the distributors of personal care products, and it's
8 principally for three reasons.

9 First, the world of VOC regulations has
10 changed since staff began this proposal two and a half
11 years ago. At that time the Air Resources Board here in
12 California was the de facto national regulatory agency
13 for VOCs in consumer products. Only one other state,
14 New York, had regulated its consumer products
15 approximately at that time, and the U.S. EPA was at
16 the very beginning stages of its national regulatory
17 effort.

18 However, in the last few years, while this
19 project has been going on, other states have regulated
20 VOCs in consumer products, or they're in the process of
21 doing that, and those include Texas, Oregon, Rhode
22 Island, Massachusetts, Connecticut, New Jersey, and
23 others are beginning to do the same thing. But more
24 significantly, U.S. EPA, as you know, has already
25 embarked on the regulation process for consumer and

1 commercial products and is on the verge of having its
2 own national regulation in place.

3 Even, however, U.S. EPA is not consistent
4 within itself. As we well know, Region IX has proposed
5 Federal Implementation Plan, but -- and that plan would
6 make California regulations federally enforceable.
7 However, that implementation plan as proposed could end
8 up being inconsistent in practice with the California
9 regulations and possibly with the national regulations
10 which are being created back on the East Coast, away
11 from Region IX, but another separate arm of the U.S.
12 EPA.

13 The key fact here for us is that products
14 that comply with the California regulations as a part of
15 an ACP would not comply with the regulations of any
16 other state and wouldn't comply necessarily with
17 whatever regulations the U.S. EPA comes out with on a
18 national basis -- principally because of the bubbling
19 aspect of this regulation. We wouldn't be able to
20 produce product and sell it in other states simply
21 because we are able to produce it and sell it in
22 California.

23 The second reason why we have a problem with
24 the proposal is we have heard directly from other
25 regulators the misunderstanding caused by the

1 availability of an ACP in California. We're concerned
2 about a perception that's been voiced to us directly by
3 one federal air quality official that said we should no
4 longer be concerned about the future effective dates and
5 VOC levels for products that are existing in your
6 Phase 1 and Phase 2 regulations; that we have taken the
7 position with your staff for a long period of time that
8 these are not levels that we are going to be able to
9 reach.

10 But this federal official said, "Well, you'll
11 have an ACP, so the fact that we can't meet a 55 percent
12 hair spray standard in 1998, for example, really isn't
13 going to hurt you because you could bubble those hair
14 sprays with something else."

15 Well, that isn't true. That's a
16 misperception. There may be many manufacturers of hair
17 sprays that don't have products that would fit within a
18 bubbling concept, because they don't have the low level
19 reformulated product to offset the non-VOC-compliant
20 55 percent hair spray.

21 So those are a -- that is a major concern of
22 ours, that regulators would simply look to California's
23 ACP and say, "We can expect you to meet low levels
24 because there's an ACP in California."

25 Thirdly, we have a continuing concern that

1 while the plan -- that the plan will discriminate
2 against small or single-product-line manufacturers that
3 don't have another product to offset it because they're
4 a small manufacturer or your single-line manufacturer;
5 this ACP isn't good for you. Larger manufacturers, some
6 of the largest companies in the world, may have a
7 distinct competitive advantage if this ACP is adopted,
8 but the small and single-line companies will be put at a
9 disadvantage.

10 Now, we recognize that staff has attempted to
11 answer that question by the use of emissions trading
12 options. But we want you to remember that this is a
13 very -- especially in the consumer products area -- is a
14 very competitive industry, and the fact that one company
15 may be able to create emissions trading credits doesn't
16 necessarily mean that they will make them available or
17 sell them to a competitor.

18 In conclusion, CTFA can't support this
19 regulation. However, if the board should choose to
20 adopt it, we have provided language also to the staff
21 that we would like it see either in the board's
22 resolution or in the regulation itself to deal with the
23 three points that I've made.

24 Without the inclusion of that language, which
25 would clarify that participation in an ACP is a totally

1 voluntary alternative to compliance with the VOC content
2 limits in the Table of Standards; and secondly, that the
3 availability of the ACP for any specific product
4 category does not in any way affect the rigorous
5 standards to be applied in ensuring that compliance with
6 the VOC content limit for that product category is
7 technologically and commercially feasible, which is the
8 legal standard the board must comply with in terms of
9 consumer product regulation; and third, that the ARB
10 recognizes that participation in the ACP is not a viable
11 option for a single product or small companies,
12 necessarily.

13 Nevertheless, despite our concerns and our
14 opposition to the proposal, we want to reiterate that we
15 have worked with CARB and with its staff during the --
16 all three of the prior regulatory efforts, and we look
17 forward to continuing to work with you on future efforts
18 affecting consumer products. And we want to stress that
19 we appreciate the consideration, the patience, the
20 highly professional efforts of your staff in this
21 particular effort, especially Floyd Vergara, who put two
22 or three years of his life in this, and Peggy Vanicek --
23 pardon me -- Peggy Taricco -- working with us, even
24 though we are not at this juncture able to support this
25 regulation. It doesn't diminish our desire to work with

1 the board and to find ways to improve California's air
2 quality in the future, while maintaining a steady supply
3 of the products that our manufacturers present to
4 California consumers and that they have come to expect.

5 Thank you.

6 CHAIRWOMAN SCHAFFER: Thank you,
7 Mr. Mattesich.

8 Are there any members of CTFA that do support
9 the regulation change here or might apply for a plan
10 under this proposal?

11 MR. MATTESICH: I'm told by the vice
12 president of CTFA that I spoke to, and who attends to
13 the meetings in Washington, D.C., where the association
14 is located, that all of the members who have reviewed it
15 and been involved in it have indicated that they cannot
16 see any benefit to them.

17 CHAIRWOMAN SCHAFFER: Well, I can
18 understand, you know, that they may be going --

19 MR. MATTESICH: And they will not be using
20 it.

21 CHAIRWOMAN SCHAFFER: -- to use it or not,
22 but I'm a little puzzled as to why you would not want
23 someone else to have the opportunity to use it.

24 MR. MATTESICH: For the reasons that I
25 expressed, that we think that it will be misconstrued

1 elsewhere --

2 CHAIRWOMAN SCHAFFER: I mean, I think we
3 can't just let people be ignorant about how these things
4 are applied. We need to work on that, obviously, but I
5 don't think that's sufficiently reason to deny
6 flexibility to others who might be able to use it.

7 MR. MATTESICH: Chairwoman Schaffer, I
8 understand that position, but I also understand that it
9 was a very, very heartfelt concern of the membership
10 that considered this proposal and they are -- as you
11 will hear, I believe -- very concerned about how it's
12 going to be perceived in the rest of the nation.

13 CHAIRWOMAN SCHAFFER: Okay. Thank you.

14 Any other questions from board members? Yes,
15 Mr. Parnell.

16 MR. PARNELL: I just ask a question of
17 staff. You referred to a federal regulation that's
18 being drafted currently that may overlap or be
19 redundant. Can you speak to that just a moment?

20 MR. VENTURINI: Yes.

21 MS. TARICCO: Yes.

22 MR. VENTURINI: I'm going to ask
23 Miss Taricco if she can just summarize briefly what the
24 federal requirements are in this area.

25 MS. TARICCO: When the Clean Air Act was

1 amended, there was a requirement in there that U.S. EPA
2 do several studies on consumer products. And the
3 federal definition is different than ours in that it
4 encompasses all the different coatings and solvent
5 sources, they had a bigger universe. And they were to
6 look at this universe of emissions and determine how
7 they were going to regulate these sources. They were
8 supposed to rank them and then regulate so many every
9 two years, I think it was.

10 It's my understanding that the report was due
11 to Congress in November '93. It didn't get there, but
12 it is close to being delivered to OMB (phonetic), and
13 one of the higher priorities will be to look at some of
14 the traditional consumer products that we have
15 regulated.

16 Now, whatever they do, they will not be
17 preempting us unless they're more restrictive. I was
18 unaware that they were on the verge of having a
19 proposal, so that was news to us.

20 MR. VENTURINI: Mr. Parnell, I'd like to
21 just add from our staff's perspective as well. We've
22 been continuing communication with EPA technical staff
23 and sharing our technical information with them as they
24 develop their work and as they develop standards for the
25 various consumer products, particularly maybe some

1 categories that we haven't addressed yet. Basically,
2 our view, that we feel that the EPA standard is -- is a
3 good standard and an effective and appropriate
4 standard.

5 We wouldn't necessarily want to do something
6 different and would look to basically adopting a
7 consistent standard here for California to minimize any
8 duplication.

9 I think one of our frustrations has been the
10 slowness with which EPA has been moving with their --
11 with these measures, and we have to move along.

12 MR. PARNELL: My experience is that that's
13 not unusual.

14 CHAIRWOMAN SCHAFER: Well, we did hear
15 some testimony along those lines this morning earlier.

16 Mr. Calhoun.

17 MR. CALHOUN: Yes. I'd like to get some
18 clarification of the position of the association.

19 MR. MATTESICH: I'll try, sir.

20 MR. CALHOUN: The last paragraph on the
21 first page of the letter states something to the effect
22 that CTFA is unable to support the ACP. Now, supporting
23 something and opposing it are two different -- I guess
24 I'd like to get some clarification. You can't support
25 it or you oppose it?

1 MR. MATTESICH: Without the language
2 that we provided to staff to include in your board
3 resolution, our position would be to oppose.

4 CHAIRWOMAN SCHAFER: Miss Edgerton?

5 MS. EDGERTON: If I understand you
6 correctly, your -- well, your agency -- your trade
7 association has large and small companies.

8 MR. MATTESICH: It does.

9 MS. EDGERTON: So if I understand this
10 correctly, the small manufacturers oppose it because
11 they may have a single line or -- and so they won't be
12 able to use it. The large manufacturers oppose it
13 because, in any event, they have a national market,
14 therefore -- and they like to make single products --
15 and so they're going to -- the other states might have
16 small -- lower emissions or more emissions than -- VOC
17 reductions, lower standards, and so they're going to
18 have to make their products to the lowest emission
19 standards, anyway, and so they won't be able to use it
20 either.

21 MR. MATTESICH: That may be a
22 consideration of some of the larger ones, yes. You're
23 going to hear from one of the larger companies. I think
24 you can hear directly what their concerns are.

25 MS. EDGERTON: So to the extent that

1 they're trying to lead the way with their
2 environmentally sensitive claims on their products, if
3 they have to make a good product for New York, they'd
4 just as soon be able to make that nationally?

5 MR. MATTESICH: It may turn out, though,
6 Miss Edgerton, that we have standards in a wide number
7 of states that vary, one from the other. Some may be
8 higher than in California, some may be lower than in
9 California.

10 The same reason that the California
11 legislature decided to grant authority to the Air
12 Resources Board over consumer products in California was
13 to eliminate the possibility that we would have all of
14 the different air districts adopting rules which could
15 turn out to be inconsistent for products marketed not
16 just in California but nationally, so we would have all
17 kinds of different standards, so that it was all brought
18 to at the state level by California.

19 So we now have the phenomenon of a lot of
20 different states adopting what may turn out to be
21 different rules than California. Some could be more
22 strict, some could be less strict. All of that, because
23 it's in flux right now, and because the EPA has embarked
24 on its own consumer product regulations, causes us to be
25 concerned about this particular effort.

1 I understand what the board staff wants to
2 do. We've been involved for two and a half years with
3 them. But it is still a major concern of ours that this
4 particular effort will be misconstrued by other states
5 that aren't as sophisticated, that don't have the
6 talented staff you do -- because we've seen it happen
7 already, and we've already heard from one federal
8 official who didn't understand it enough, and simply
9 said to us, "Well, gee, whiz, if you're going to have a
10 problem down the road, just use the ACP. Put a bubble
11 around your products."

12 That isn't the real world. And we're
13 concerned that we're going to face that in state after
14 state after state.

15 MS. EDGERTON: So stay with me just a
16 minute more so I understand your point for the large
17 companies. So they say -- the concern -- if I
18 understand you, their concern is that there will be a
19 misunderstanding of the availability of the ACP --
20 explain it to me again. I'm having -- you know, I
21 understand that -- I'm kind of like -- a little bit of
22 the point that Miss Schafer is in. We can get it
23 straightened out so there wouldn't be a
24 misunderstanding. Explain to me again why the large
25 companies don't want it.

1 MR. MATTESICH: We provided language to
2 your staff which we thought if it was included in your
3 resolution would do exactly that; it would take care of
4 any perception out there about how this ACP should be
5 interpreted and how it would be used in California.

6 Staff, from my understanding, recommended
7 that you not take our language. But if you did take our
8 language, our position would be we do not oppose it any
9 longer; but as we stand here today, without that
10 language, we do oppose the adoption.

11 CHAIRWOMAN SCHAFER: And what does the
12 language say, Mr. Mattesich, on that point?

13 MR. MATTESICH: I'll read it to you.

14 CHAIRWOMAN SCHAFER: Thank you.

15 MR. MATTESICH: "The board is enacting
16 the Alternative" -- pardon me -- "the
17 Alternate" -- yes -- "Control Plan, ACP, for
18 the benefit of companies that are able to use
19 this as an alternative means of complying with
20 the ARB consumer product regulations. It is a
21 totally voluntary option, and the board
22 recognizes that many companies will not be able
23 to use the ACP. The ARB, therefore, recognizes
24 the continuing need to ensure that both present
25 and future VOC content limits for consumer

1 products are technologically and commercially
2 feasible. The ARB confirms its intent that the
3 availability of the ACP for any regulated
4 product category is not to be considered in
5 determining whether present or future VOC
6 limits for that product category are
7 technologically and commercially feasible."

8 I believe the language is there in front of
9 you. I believe staff provided it to you.

10 CHAIRWOMAN SCHAFER: Are there any other
11 questions for Mr. Mattesich at this time? If not --

12 MR. MATTESICH: Thank you for the
13 opportunity.

14 CHAIRWOMAN SCHAFER: Thank you very much.

15 I'd like to now recognize Dr. Philip Geis
16 with Procter & Gamble, undeniably a large organization.

17 DR. GEIS: Thank you very much. And
18 thanks to the staff and the board for listening to us
19 today and offering this opportunity to comment.

20 I would welcome the question that you had
21 when I am going to get to that stage in my
22 presentation.

23 Procter & Gamble, as you said, is a national
24 manufacturer, and that's what brings us here today. We
25 have worked with staff for a number of years, and I

1 think we have a pretty productive relationship in
2 developing regulations that are to satisfy your
3 environmental needs as well as maintaining the technical
4 and commercial feasibility of our products. We have the
5 greatest respect for your staff, and we think they're
6 probably as good as you're going to get in the whole
7 U.S., and that may be part of the whole crux of our
8 problem, they are pretty good.

9 They've brought to you today an ACP that is
10 technically very good, that shows a lot of good work and
11 effort that we actively participated in through the
12 first year or so of its inception and work. We entered
13 this with staff back in the good old days when
14 California was a leader.

15 California pretty much controlled the field
16 in this area, the consumer product regulation. New York
17 followed California, and then the best ideas came from
18 here.

19 The world has changed a lot since then,
20 fortunately. We have, as Jim said, regulations in
21 probably seven other states either now or soon to be
22 hitting the books, and we have a federal regulation.

23 And the crux of the matter is that we don't
24 have a difficulty with the technical elements of the
25 ACP; it's more the conceptual elements as all the other

1 states look at what's being done in the various areas of
2 the regulation -- and I'll give you an example in a
3 second -- they have started to monkey with the
4 regulation. Either they don't understand it or they
5 decide they can get a few more pounds out of the
6 regulation by changing this provision or just because
7 they forget to put in a section, despite the fact that
8 they call up Peggy and say, "Peggy, what should we do?"
9 And Peggy has very good advice and very good
10 instruction. These guys aren't as sharp as the folks
11 here are.

12 As I said before, we've worked for almost ten
13 years with staff, and we find ourselves in opposition to
14 the ACP today, the first time we've opposed any general
15 principle that the staff has proposed, and we regret to
16 be in this position. We were compelled to do so because
17 primarily of our experience with other states and the
18 federal government during the last year.

19 I guess there's basically two elements that
20 drive our opposition. The first is less important, but
21 it's critical. The second one is real important. The
22 first one is, we don't think that many people are going
23 to have the opportunity to use an ACP.

24 Procter & Gamble has a big line of products.
25 We market in many of the categories that are regulated

1 right now. And I've gone through very carefully the
2 products market to see where we might have the
3 opportunity to use the ACP, and I find virtually no
4 opportunity because of the need for balancing.

5 We have -- our biggest problem is in hair
6 sprays, which has a lot of VOCs in it. We have other
7 products that -- with small amounts of VOCs that -- the
8 unique product balance that's required to participate in
9 the ACP doesn't exist in our company.

10 More importantly, we have these regulations
11 in these other states. So that means that we can't --
12 and they don't have an ACP. So that means we can only
13 use an ACP here in California. Our distribution systems
14 don't allow us to isolate or sequester California. We
15 can't just ship products to California. We might have
16 some of it going into Arizona. In fact, we have the
17 same product now going nationwide. That is how our
18 economy is scaled. So the other states are really an
19 impediment to us in this regard.

20 So what you're looking at in terms of
21 application is a narrow group of companies who have a
22 unique product balance that can use the ACP. And even
23 more narrow, one that is a California-only company or
24 one that can isolate California. So you're down to
25 virtually a handful of companies now.

1 Certainly that wasn't anticipated back two or
2 three years ago when we started working on this, but
3 certainly that's the case we have today. The case we're
4 facing today is just a handful of companies can use it.
5 That in itself is not enough of a concern to kill us,
6 but the elements that my colleague just mentioned are
7 the ones that are of most concern to Procter & Gamble.

8 There's both internal and external factors.
9 The internal factors are the ones that are most
10 applicable to your consideration, I think the ones that
11 are going to happen here in California. One of them is
12 that this ACP would become mandatory.

13 Now, even if it became mandatory across the
14 nation, Procter & Gamble knows that our balance of
15 products doesn't let us use an ACP. If this was used
16 for Phase 3, we'd be in a lot of trouble. We would have
17 a hell of a time trying to comply. And we would comply,
18 but we would really be in a lot of trouble.

19 The other internal element is -- that Jim
20 also alluded to -- are the Phase 2 standards. Hair
21 sprays have a 55 percent VOC standard that goes into
22 effect in 1998. Now, when that was first developed, the
23 board realized that it was technology-forcing. It was
24 not something that the industry currently considered
25 something they could achieve. It was not technically or

1 commercially feasible at that time. But the standard
2 list identified and projected in 1988 to give us an
3 opportunity to work toward it, and we are indeed working
4 toward it right now.

5 In the same regulation, or in the same
6 regulatory exercise, the board adopted a resolution that
7 said this would be revisited. The staff would keep
8 track of our progress to satisfy this limit. And if it
9 wasn't feasible, it couldn't be hit, then it might be
10 revisited in the future, adjusted to what was
11 technically and commercially feasible, based on that
12 technology to be gained by 1998 or somewhat before
13 then.

14 Our concern is that this ACP will be
15 interpreted to establish a de facto technical and
16 commercial feasibility, because the presumption would be
17 that we would be able to bubble this hair spray, if it
18 wasn't achievable at 55 percent, with something else,
19 and hit it.

20 Those are basically our internal concerns.
21 One, it would be mandatory to go into an ACP to hit a
22 lower limit for Phase 3, and also that the current
23 Phase 2 limits that we don't think we can achieve at
24 this time will become de facto commercially and
25 technically feasible because we have an ACP.

1 The external ones you also heard about, and
2 let me go into some detail. These are the other
3 states. As I said, these guys are not as experienced
4 as the staff here is. An example might be, we have an
5 innovative product exemption in the -- in your guy's
6 regulation, and we're working real hard to get it into
7 all the other states that pass regulations like this.
8 Lot of them don't want to do it. They say, "It's too
9 much trouble; we don't understand."

10 But we argue with them, we talk to them.
11 They call Peggy, and then Peggy explains what the
12 concept is. So they pretty much have been putting into
13 place. But they typically don't have the staff to help
14 us set it up. They -- for perspective, our innovative
15 product that we have here in California took just a bit
16 of time to get it through. I think four or five
17 months. But when we went to New York to get the same
18 thing approved with the approval enhancement from the
19 executive officer, it took almost a year. It put us
20 right up against the date by which we would have to stop
21 manufacturing, because they didn't have the experience.
22 Despite the fact that they were willing to accept the
23 staff's (unintelligible) -- they didn't know how to get
24 it through the system.

25 CHAIRWOMAN SCHAFER: They don't even have

1 a board.

2 DR. GEIS: They don't, you're right. That
3 was part of the problem.

4 CHAIRWOMAN SCHAFFER: One member.

5 DR. GEIS: They had one person.

6 CHAIRWOMAN SCHAFFER: One person to make a
7 decision.

8 DR. GEIS: The delegations that went
9 around and around about that were very arcane, but they
10 finally approved it, and the VOC went into effect.

11 But they all -- and another state, very
12 recently, we had the innovative product concept there,
13 as well, but this state decided they didn't need the
14 equivalent perfume exemption. Your regulation currently
15 exempts perfume at 2 percent. And it's a complex
16 mixture. It's not worth messing with, because it's a
17 very small piece of the pie. But your regulation
18 excludes 2 percent of it for that very purpose. The
19 Connecticut regulation didn't exclude perfumes.

20 They said, "We don't want to give you an
21 exemption for perfumes."

22 We said, "Why wouldn't you do that?
23 California found it very feasible to do that."

24 Their response was, "You have the innovative
25 product exemption."

1 This is maybe a complex concept, but the
2 perfume, if it's in there at 1 percent or half
3 a percent, has nothing to do with being an innovative
4 product. Their interpretation of the innovative product
5 exemption was it would cover a multitude of odd things
6 in the regulation, so we would come to them for an
7 innovative product for each of our perfume components in
8 our products, showing a complete lack of understanding
9 of both the need for perfumes in products as well as the
10 need for the innovative product concept.

11 That kind of inability to accept the -- or to
12 understand the principles and the concepts that are
13 developed makes us worry that these guys -- and somebody
14 will adopt the ACP in another state -- they all won't,
15 but somebody will -- can use this inappropriately,
16 either lowering the VOC standards further and saying,
17 "You have the ACP, don't talk to us about this very low
18 standard," or are taking something else out, like the
19 perfume standard, saying, "You have the ACP. Bubble it
20 for the perfumes." So we're concerned about the
21 misapplication.

22 Jim Mattesich mentioned also the federal
23 official who said, "Your 55 percent hair spray is
24 achievable because you have the ACP."

25 So the two elements are this: We don't see

1 that many people using it. P&G can't use it, because
2 we're a national marketer. Our distribution channels
3 don't let us isolate California; and we also don't have
4 the mixture of products that allows us to proceed with
5 this.

6 The second element is even more worrisome,
7 that it can be misapplied, either here, by future
8 boards, or even in states like Connecticut or New York
9 or someplace else, where they see this ACP, they see
10 this marvelous new concept, but they can't grasp it,
11 they can't put it into effect in a meaningful manner;
12 but they can put it in there in an inappropriate manner
13 to burden us.

14 So based on these things, based on the fact
15 that we don't see many applications and we see a
16 downside, the Procter & Gamble Company opposes the
17 current ACP program. We request the board not approve
18 this.

19 Nevertheless, again, we praise staff for
20 their effort. We think they've done an excellent job in
21 a technical sense. The broader issues, the broader
22 concepts of the application across the United States
23 drive us to opposition.

24 CHAIRWOMAN SCHAFER: Thank you very much,
25 Dr. Geis.

1 Are there any questions for this witness from
2 members of the board?

3 Mr. Lagarias.

4 MR. LAGARIAS: Mr. Geis, do you support
5 the suggested board resolution language that CTFA has
6 suggested?

7 DR. GEIS: We support the board resolution
8 if the board proceeds to approve the ACP. We are in
9 opposition of the ACP with or without that language; we
10 would prefer to see the language in there. Here, too --

11 MR. LAGARIAS: What did I hear? Are you
12 for it or against it?

13 DR. GEIS: I'm against it. I'm for the
14 the CTFA language. I'm against the ACP in any case.
15 But if the board proceeds with it --

16 (General laughter.)

17 -- I would ask you to put it in.

18 MR. LAGARIAS: Well, let me ask the staff,
19 what is their reaction to the suggested language that
20 CTFA has proposed?

21 MR. JENNE: Mr. Lagarias, we're concerned
22 that the proposed language is ambiguous and would create
23 problems in the implementation of the consumer product
24 regulation; therefore, we're recommending that it not be
25 included.

1 MR. LAGARIAS: What do you mean by
2 ambiguous? What's the ambiguity.

3 MR. JENNE: Specifically, the last part of
4 it talks about the -- well, the first part talks about
5 whether the -- that the ACP is voluntary. We think that
6 part is not necessary because it's repeatedly stated in
7 the regulation and the staff report that it is
8 voluntary.

9 The last part of it talks about --
10 essentially attempts to define commercially and
11 technologically feasible in a very limited way. There
12 have been several lawsuits about consumer product
13 regulations, and we're concerned that the inclusion of
14 this language could adversely affect both pending
15 lawsuits and future -- possible future lawsuits.

16 MR. LAGARIAS: All right.

17 CHAIRWOMAN SCHAFER: Which I think is part
18 of the intent.

19 MR. LAGARIAS: Yes. When you read the
20 first part, it doesn't make any sense, because it's
21 clearly voluntary all the way, so the heart of the
22 matter is in that last sentence.

23 Thank you.

24 DR. GEIS: Did I answer your question,
25 sir?

1 MR. LAGARIAS: (Nods head.)

2 CHAIRWOMAN SCHAFER: Are there any other
3 questions for Dr. Geis from members of the board?

4 If not, thank you very much for your
5 testimony.

6 The next witness is Mr. Ted Wernick with The
7 Gillette Company.

8 MR. WERNICK: Thank you.

9 CHAIRWOMAN SCHAFER: Good afternoon.

10 MR. WERNICK: I'll be very brief. My name
11 is Ted Wernick. I'm Director of Scientific Regulatory
12 Affairs for The Gillette Company.

13 While we support the board's efforts to
14 provide an alternative method for compliance with the
15 VOC regulations, and we appreciate the staff's efforts,
16 particularly Peggy and Floyd, in providing the good
17 technical document, we are concerned that the plan will
18 become mandatory. Therefore, without the language to
19 ensure the voluntary nature of this alternate compliance
20 plan, we cannot support the plan. And we spent a lot of
21 time and effort on it, and we regret our position on
22 it.

23 Without going into a lot more detail, let me
24 just say that I -- we echo the comments of CSMA, CTFA,
25 and our colleagues at Procter & Gamble.

1 Thank you.

2 CHAIRWOMAN SCHAFFER: Thank you,
3 Mr. Wernick.

4 Are there any questions for Mr. Wernick from
5 members of the board?

6 Thank you very much.

7 The next witness is Mr. Bryan Ruble with the
8 S. C. Johnson Wax Corporation -- or the S. C. Johnson
9 Company. One of your products -- one of your products
10 is Johnson Wax.

11 MR. RUBLE: Madam Chair, board members,
12 staff, my name is Bryan Ruble, and I represent the S. C.
13 Johnson Wax Company of Racine, Wisconsin. S. C. Johnson
14 Wax is a worldwide manufacturer and distributor of
15 specialty household cleaning products, such as, to give
16 you an idea, Glade Air Freshener, Raid insecticides,
17 Windex glass cleaner, Pledge furniture polish.

18 We are a very environmental and innovative
19 company. As an example, we were the first to have an
20 innovative product under the California CARB.

21 We believe that the ACP would encourage
22 invasion and also to encourage the environmental issues
23 of the companies. I appreciate the opportunity to speak
24 to you today on the ACP.

25 First of all, I would personally like to

1 thank the staff for all their hard work, time, effort,
2 and cooperation with the industry in working these past
3 several years on the ACP. It was a very difficult
4 task.

5 As stated in previous workshops, in order for
6 the ACP to be effective, it must be voluntary, fair,
7 flexible, allow for growth, apply to many different
8 products, be enforceable, be binding to CARB and
9 industry.

10 As we look to the future and further
11 regulations in emissions, I believe the ACP, as did the
12 innovative products in the past -- and we do have
13 three -- will become an important voluntary tool for
14 industry. The ACP is another option in the menu system
15 for achieving VOC reductions. S. E. Johnson Wax
16 supports the ACP concept and process.

17 A few issues of concern to us, as outlined by
18 CSMA earlier, and I concur with their comments, are:
19 violation section, time for making up shortfalls,
20 particularly seasonal products, credit for early
21 compliance, and the ACP must be voluntary. These issues
22 have been addressed today, and although not perfect, the
23 latest language represents an acceptable resolution.

24 This is one company that is seriously looking
25 at using an ACP, and I recommend approval.

1 Thank you..

2 CHAIRWOMAN SCHAFER: Thank you very much,
3 Mr. Ruble. What are the products that are your
4 innovative products under California's rule?

5 MR. RUBLE: We have --

6 CHAIRWOMAN SCHAFER: Out of curiosity.

7 MR. RUBLE: The Glade plug-in, Lasting
8 Mist, and we had a hair spray.

9 CHAIRWOMAN SCHAFER: Earlier witnesses
10 suggested that this rule was useful only to a few firms
11 that had sort of a perfect balance of -- I wasn't clear
12 what it was that was balanced, but anyway it amounted to
13 an opportunity to use the rule.

14 Is that a fair statement, or do you think
15 that this has sufficient flexibility to be usable to a
16 variety of companies?

17 MR. RUBLE: I believe there's sufficient
18 flexibility that it can be used by many different types
19 of companies.

20 CHAIRWOMAN SCHAFER: Okay. Mr. Lagarias?

21 MR. LAGARIAS: Does your company feel that
22 this ACP regulation might be misconstrued or misapplied
23 in other states?

24 MR. RUBLE: That is a potential problem.
25 We are working with other states. And also other

1 states, even though they don't have an ACP, they do have
2 trading allowances, which are even more aggressive than
3 this.

4 MR. LAGARIAS: But you don't see it as
5 being an overwhelming impediment?

6 MR. RUBLE: No, we don't.

7 MR. LAGARIAS: All right. Thank you.

8 CHAIRWOMAN SCHAFER: Are there any other
9 questions from members of the board for Mr. Ruble at
10 this time?

11 I just wanted to comment that --

12 MR. PARNELL: Madam Chair, may I?

13 CHAIRWOMAN SCHAFER: Yes, Mr. Parnell.

14 MR. PARNELL: Only to revisit the concerns
15 as voiced by our friends from Procter & Gamble if it
16 relates to overlapping or perhaps a redundant, and we
17 know late federal regulations.

18 Would you speak to that issue. Obviously,
19 you don't have those same concerns.

20 MR. RUBLE: You're talking about to the
21 federal regulations?

22 MR. PARNELL: Federal regulations that may
23 or may not be promulgated at some point in time.

24 MR. RUBLE: Well, I would like to have
25 them, and I would like to have had them a couple of

1 years ago, but we don't. And we're going to have to
2 work with them to see what we can come up with that will
3 be acceptable to the federal government as well as the
4 ACP that we would like to use. Right now we don't
5 know. But I look at the ACP as another option.

6 When we first started innovative products, I
7 never thought we would use them, and we did. It's just
8 another option. So we're looking at the ACP as another
9 option that we can potentially use.

10 MR. PARNELL: Thank you.

11 SUPERVISOR VAGIM: Madam Chair.

12 CHAIRWOMAN SCHAFER: Yes,
13 Supervisor Vagim.

14 SUPERVISOR VAGIM: Does this rule tend to
15 favor those companies that have more products with VOCs
16 in them than companies that don't have as much of a
17 mix?

18 MR. RUBLE: If you're talking maybe a
19 single --

20 SUPERVISOR VAGIM: Single product.

21 MR. RUBLE: -- product, whatever -- my
22 understanding is the way it's set up, they could
23 purchase credits. Maybe they can use that. I mean,
24 obviously, we're not a small company, and --

25 SUPERVISOR VAGIM: Are you willing to sell

1 credits?

2 MR. RUBLE: Yes, we are.

3 SUPERVISOR VAGIM: Thank you.

4 CHAIRWOMAN SCHAFER: Miss Edgerton.

5 MS. EDGERTON: Could you tell me, Do you
6 anticipate being able to bubble within your company, or
7 do you think you are in surplus credits, or do you think
8 you purchase them?

9 MR. RUBLE: My understanding is we're not
10 allowed to purchase them, but we're going to do it
11 internally.

12 MS. EDGERTON: That's right. You would be
13 too big.

14 MR. RUBLE: We would do it internally. We
15 would do the bubble concept.

16 MS. EDGERTON: So you don't expect to have
17 surplus.

18 MR. RUBLE: There's a very good chance
19 that we will have a surplus. That's why I said we'd be
20 willing to sell them.

21 MS. EDGERTON: You'd be willing to sell
22 them.

23 What, in your opinion, happens with this
24 program if you phase out a product -- if you find a
25 completely benign substitute that you think you could

1 sell on the market as a green insecticide. For example,
2 I think of baking soda. Some people use it as something
3 that kills roaches, instead of Raid. What would you
4 do --

5 SUPERVISOR BILBRAY: Boric acid.

6 MS. EDGERTON: Boric acid. Not baking
7 soda. Whatever.

8 MR. RUBLE: It doesn't matter; either one
9 would work.

10 (General laughter.)

11 SUPERVISOR BILBRAY: But with the baking
12 soda, they smell better afterwards.

13 MR. RUBLE: Yes.

14 (General laughter.)

15 SUPERVISOR BILBRAY: Brush your teeth with
16 it. Oh, I'm not supposed to say that either.

17 MS. EDGERTON: I mean, you're as familiar
18 as I am, and probably much more familiar with the whole
19 concept of source reduction -- overall source reduction
20 issues. How would a regulation -- how do you see
21 that -- the entire substitution of a product line with a
22 completely benign product working in this ACP?

23 MR. RUBLE: Well, if we entered into an
24 ACP and a product like that came along, obviously we'd
25 have to wait for the conclusion of the ACP before we

1 could go into it, because we'd be bound and so would
2 CARB until the end of it. But that doesn't -- that
3 wouldn't prevent us from starting a different line using
4 that ingredient with no VOCs, if that's what you're
5 talking about, and then discontinue the product after
6 the ACP was over.

7 MR. PARNELL: And get some credit in the
8 process.

9 MR. RUBLE: In the process, right.

10 MS. EDGERTON: Thank you.

11 CHAIRWOMAN SCHAFER: Mr. Lagarias, did you
12 have another question?

13 MR. LAGARIAS: Yes. Have you considered
14 the possibility of combining some of your products, say
15 Raid and Windex, so that after you clean your window
16 with Windex, if a fly lands on it afterwards, he'll drop
17 dead?

18 (General laughter.)

19 MR. RUBLE: That's a good idea. I think
20 I'll write it down.

21 (General laughter.)

22 SUPERVISOR BILBRAY: Fly bait from window
23 washer.

24 CHAIRWOMAN SCHAFER: I just want to
25 comment for the benefit of members of the board, that

1 earlier this year I was privileged to attend an award
2 ceremony by the World Environment Center where they
3 singled out the S. C. Johnson Wax Company in Racine,
4 Wisconsin, for its exceptional efforts with respect to
5 environmental management and improvement.

6 You have singled yourselves out among your
7 peers in that forum, and I guess I -- after seeing how
8 this afternoon has proceeded, can understand why you
9 received that recognition. There is obviously some
10 risks in doing things in a little bit different way, and
11 I see that you have managed to eke out some opportunity
12 from those risks and not just the downside dangers. So
13 I thank you very much for your testimony today.

14 MR. RUBLE: Thank you.

15 MR. LAGARIAS: I don't recall, but is your
16 headquarters in a building designed by Frank Lloyd
17 Wright?

18 MR. RUBLE: Yes, it is.

19 MR. LAGARIAS: Is that where you get your
20 environmentally sensitive approach?

21 MR. RUBLE: Yes.

22 CHAIRWOMAN SCHAFER: It's in the walls.

23 SUPERVISOR BILBRAY: It's in the -- no, we
24 don't want to talk about emissions from the walls.

25 CHAIRWOMAN SCHAFER: Thank you very much,

1 Mr. Ruble, for coming this afternoon.

2 Our next witness -- I hope I get this
3 pronunciation right -- is it Dr. Dan Knoth? Is that
4 correct?

5 DR. KNOTH: Yes, ma'am.

6 CHAIRWOMAN SCHAFER: With 3M company.

7 DR. KNOTH: Madam Chair, members of the
8 board, staff, I'm speaking today as the Chair of the
9 Alternative Compliance Task Force, industry task force.

10 As indicated to the board, I'd like to
11 reiterate some statistics about how much work and how
12 much effort has gone into this. Some are interesting,
13 some may be a little redundant, and some might be
14 overstated here.

15 One of the things I'd like to do is to, of
16 course, thank the staff. Floyd and Peggy have been
17 absolutely outstanding to work with. They've both been
18 professional, very patient, and worked in a very
19 productive manner, and I really have to thank them for
20 all the work that they've put in here.

21 Sometimes I think that your staff works
22 for -- does a better job for the California board of
23 tourism. This is my 13th trip to California on the
24 alternative compliance plan.

25 I'd like to also thank Bob Olivero, from

1 the -- formerly of the S. C. Johnson Wax Company, who
2 preceded me as the chair of the industry task force.

3 I think one of the things that made this
4 successful or at least opened the doors for us to
5 communicate better was to set up a series of guidelines
6 that have been spoken to earlier. We did this early in
7 the process, and I want to restate these very quickly.

8 The process -- or the regulations should be
9 voluntary, it should be fair, it should be flexible,
10 allow product growth while still maintaining emission
11 standards, applicable to as many products as possible,
12 to be enforceable, and then, finally, binding on the
13 participants, both the industry members and the Air
14 Resources Board.

15 The concerns from the industry, as you can
16 see, is quite split and quite fractured at this time.
17 As the chair of the ACP task force for the CSMA, we
18 ended up with several concerns.

19 The earlier reduction of credit for first
20 year could be used for the first year, for shortfalls,
21 and the staff has recommended that to the board; the
22 violation provisions that would be less onerous than the
23 final draft that you see in front of you; and finally,
24 the recognition of the shortfall of -- recognition of
25 the making up of shortfall will be 90 days, which works

1 out -- 90 working days, which works out to about four
2 and a half months. And hopefully this 90-day period
3 will be sensitive to companies who have seasonal
4 products. And finally, I think there should be -- and
5 there is in the rule, and perhaps should be in the board
6 resolution itself, that this truly, indeed, is a
7 voluntary process. It's an alternative to the command
8 and control regulation. And I think that that's an
9 extremely important portion, to reiterate it as many
10 times to allow comfort in industry as possible. This is
11 truly, indeed, a voluntary program.

12 I'll be glad to answer any questions.

13 CHAIRWOMAN SCHAFER: Thank you very much
14 for your comments and your support in this matter. I
15 never realized that it took a lot of dedication, but --
16 and I suppose if you time it right, a trip from time to
17 time from Minnesota or Wisconsin to California might be
18 a relief. The winters aren't quite as long here.

19 DR. KNOTH: Well, Madam Chair, it seemed
20 like all our meetings were in the summer. I'm not sure
21 exactly what --

22 (General laughter.)

23 CHAIRWOMAN SCHAFER: Rats.

24 Are there any questions for this witness from
25 members of the board? I think we covered a good deal of

1 territory here this afternoon.

2 MR. RUBLE: Thank you, Madam Chair.

3 CHAIRWOMAN SCHAFER: I appreciate your
4 coming.

5 Are there any other witnesses on this item?
6 I don't have any more on the list before me, so I think
7 it is time to ask the staff if we received any written
8 comments pertaining to this agenda item?

9 MR. JENNE: Yes, staff has some comments.

10 CHAIRWOMAN SCHAFER: Thank you.

11 MS. TARICCO: Yes, we received four
12 letters on this item. The first letter is from Macfee
13 Manufacturing Company in Illinois, from Mr. Robert
14 Bereman. Mr. Bereman had three comments, and we'll
15 briefly cover them here.

16 The first is that Mr. Bereman stated that he
17 believes that our definition of small business is too
18 relaxed; it's not small enough.

19 We believe that the definition that we have
20 in the regulation is appropriate for the ACP. There was
21 extension discussion on this definition during the
22 workshop process, and it was desired by those present
23 that we have a definition that doesn't confuse it with
24 other statutes. So the definition in proposed
25 regulation is the same one that's in the California

1 Administrative Procedures Act. We also think that this
2 definition will allow for sufficient availability of
3 emission credits to as many businesses as possible,
4 while just excluding truly the large businesses.

5 His second comment is that he doesn't think
6 it would be appropriate to allow a manufacturer that has
7 a product below the standard to reformulate that product
8 lower and still get credit.

9 And we would have to disagree with that,
10 because we think that is an appropriate use of the ACP.
11 If a manufacturer undertakes a reformulation effort that
12 results in emission reductions and under an approved ACP
13 plan, he could use that as credits.

14 And his last comment was that he believed
15 that the cost of compliance of the ACP should not be
16 calculated using paints and coatings.

17 And we think there was some misunderstanding
18 here. We believe maybe Mr. Bereman was looking at an
19 earlier version of the rule when at that time we were
20 considering inclusion of the aerosol paints.

21 The second comment letter is from Reckitt &
22 Colman Incorporated, Miss Eileen Moyer. Reckitt and
23 Colman indicated that they continue to support the
24 development of the adoption of options that give
25 compliance flexibility. They echoed the comments that

1 the CSMA task force made -- the ACP task force -- excuse
2 me. There were several comments. Most of them have
3 been covered already today in the discussion, so we'll
4 only mention the three remaining comments.

5 The first comment was that Reckitt and Colman
6 believe that the requirement whereby the ACP applicant
7 give us all the names and telephone numbers of the
8 persons from which we're going to be giving sales
9 information excessive and unnecessary.

10 We appreciate that comment. We think there
11 might have been a misunderstanding in the regulatory
12 language. Our intent is not to have the names of all
13 the sales clerks that sell these products, but we do
14 need to have a business contact person of whom -- who
15 will be providing sales information, so that we can
16 enforce the regulation.

17 So what we are proposing to do is that we
18 will go back and look at the language, and if there is
19 a way that we can clarify that, we would propose a
20 modification to the 15-day.

21 The second comment was that they believed it
22 is not appropriate to require the applicant to inform us
23 in their application of when they're planning on meeting
24 the Table of Standards.

25 And this was requested so that we have an

1 idea of how long an ACP plan is going to be in effect.
2 That's not to say a plan could go on forever, and so
3 the -- basically, the option is there. A manufacturer
4 can use the ACP just to get to the point where they can
5 have all their products at the Table of Standards, or
6 they can use it as long as they want and never reach the
7 Table of Standards as long as they continue to offset
8 the emissions of that product.

9 And in her last comment was that they
10 believed it was unreasonable to expect a product to
11 be in compliance with the VOC limits in the Table of
12 Standards upon cancellation of an ACP.

13 As a refresher, the ACP is a binding
14 commitment between both ARB and the applicant, and if an
15 applicant -- a manufacturer who has an ACP has the plan
16 canceled, then that commitment has been severed; and at
17 that point the products that that manufacturer had would
18 be subject to the Table of Standards. To do it any
19 other way would -- could constitute administrative
20 variance, and we don't have the authority to do that.

21 If -- there are are specific provisions in
22 the regulation that provide the guidelines for how an
23 ACP can be canceled, and this is something that is not
24 going to happen overnight. There will be some lead time
25 there so that manufacturers will have time to manage

1 their inventories and get all their products at the
2 Table of Standards.

3 The next letter is from Dow Brands, a
4 Mr. John G. Wood. Dow Brands is a manufacturer of
5 personal care products and household cleaning and
6 laundry products. Dow Brand stated that they supported
7 the concept and process of the proposed ACP, and also
8 echoed the concerns that were raised by the ACP task
9 force.

10 And as we have addressed all those concerns
11 earlier, we won't repeat the responses to those.

12 And the last letter is from David Howekamp at
13 the U.S. EPA Region IX. They stated that they support
14 the adoption of the current version of the proposed ACP
15 provided that we address some administrative issues
16 prior to submittal of the ACP to the SIP.

17 They indicated that this would not require
18 any language changes, only some administrative paperwork
19 that we need to do before we submit this reg.

20 We have discussed these concerns with EPA,
21 and we believe that we can meet these upon submittal of
22 this reg.

23 And I believe that's all the letters that we
24 received.

25 CHAIRWOMAN SCHAFFER: I'd like to ask the

1 staff to comment on the proposed amendments that were
2 proposed earlier today, just so that we can dispose
3 of them on the record.

4 Could I ask Mr. Venturini or one of the staff
5 members to address those three amendments that were
6 placed before us and your reasons for not including them
7 in the staff recommendation.

8 MR. VERGARA: Okay. The first proposal,
9 again, was the proposed modification to the violations
10 provision, where we would propose language to determine
11 that the number of -- the number of violations for an
12 exceedance of the emissions cap would be based on a one
13 violation per 40 pounds of exceedance increment.

14 CHAIRWOMAN SCHAFER: I'm sorry. What I'm
15 referring to was the proposed amendments that earlier
16 witnesses suggested, which I gather you did not include
17 in the staff recommendation. I want to hear your
18 reasons for not including those in our -- in the final
19 resolution.

20 MS. SHIROMA: Yes. There were three
21 points that they wanted to have included in the board
22 resolution. The first one was once again emphasize that
23 the ACP is totally voluntary. And we feel that we have
24 put sufficient language into both the resolution, the
25 staff report, and the regulation to emphasize that this

1 is such a regulation.

2 The second one was that they wanted the board
3 to commit that the ACP would not be used to require
4 compliance with either future regulations or with
5 current regulations.

6 And our point there is that the current
7 regulations were adopted through a (unintelligible)
8 process. We feel that we provided for documentation
9 which showed that they were technologically feasible.
10 There are some future effective standards. We work with
11 the industries to come into compliance with those
12 standards. If we encounter problems, and there may be
13 some companies who have some special problems -- but
14 after going through a full process with them, if we feel
15 there is a need to come back and revisit a regulation,
16 we would do it in that fashion.

17 So anything that we do as far as going
18 through implementation of current regulations or looking
19 at future proposals would go through a full board
20 process. It's not as though we just happened to decide
21 that an ACP would be used in some fashion other than as
22 is proposed here today.

23 CHAIRWOMAN SCHAFFER: All right. So, in
24 effect, it was preempting the board from acting in the
25 future in some particular fashion.

1 MS. SHIROMA: Correct.

2 CHAIRWOMAN SCHAFFER: All right. And the
3 third.

4 MS. SHIROMA: And the third was they
5 wanted us to indicate in the resolution that the ACP is
6 not a viable option for many companies.

7 And we do not agree. We have gone through a
8 two-and-a-half-year process of looking at the way this
9 program would work; we have looked at other similar
10 kinds of programs; we've looked at the possible effects
11 that there might be on companies; and we did not reach
12 the same conclusion as they propose.

13 CHAIRWOMAN SCHAFFER: All right.

14 MR. PARNELL: Madam Chair.

15 CHAIRWOMAN SCHAFFER: Yes,
16 Mr. Parnell.

17 MR. PARNELL: There was a common thread in
18 the testimony in both support and the centers (phonetic)
19 that addressed the issue of how we make up short- -- the
20 timing of making up shortfalls, particularly on a
21 seasonal time frame. How is that going to basically be
22 addressed or is it?

23 MS. SHIROMA: The concern that was
24 expressed was whether the 90 working days would be a
25 sufficient period of time for -- to reconcile

1 shortfalls.

2 Our view on this is that if a company decides
3 to apply for an ACP, in the components of that ACP,
4 there needs to be a thorough assessment of which product
5 lines, how that compliance is going to occur, and then
6 any mitigation measures which will go right into place
7 should a shortfall occur. And our thought was that with
8 those components up front and with a 90 working days,
9 which is four and a half months, that those two,
10 dovetailing, would be a sufficient amount of time and a
11 comprehensive program to provide for dealing with those
12 shortfalls. Again, with the common goal between the
13 company and ourselves that we wouldn't want them to get
14 into that shortfall situation in the first place, so
15 that the application and the program that they propose
16 addresses that up front.

17 In the unlikely event that there's a
18 shortfall, then there would be four and a half months to
19 reconcile that, and we felt that that would be a
20 sufficient amount of time to do that.

21 MR. PARNELL: Thank you.

22 CHAIRWOMAN SCHAFFER: Are there any other
23 questions from board members for the staff on the
24 regulation that's before us?

25 Yes, Mr. Lagarias.

1 MR. LAGARIAS: In suggesting that we have
2 an Alternative Control Plan, that suggests that it's an
3 option, and in itself, it's not mandated. So doesn't
4 that indicate that it may not be applicable to all
5 people?

6 MS. SHIROMA: And we agree that it may not
7 be applicable to all people.

8 MR. LAGARIAS: That means, in effect, it's
9 already saying that it may not be a viable option for
10 some companies.

11 MS. SHIROMA: For some companies.

12 MR. LAGARIAS: That's correct. And so
13 it's not mandated; it's just an alternative.

14 MS. SHIROMA: Right. And that was --

15 MR. LAGARIAS: And you can choose it or
16 not choose it.

17 Thank you.

18 SUPERVISOR RIORDAN: Excuse me,
19 Madam Chair, but it is very clear on the second page --
20 at least I've noted a couple of instances where there
21 are clauses of the resolution that's before us where the
22 word voluntary is very, very clear.

23 CHAIRWOMAN SCHAFFER: Thank you very much
24 for pointing that out.

25 If there are no other questions from members

1 of the board for the staff, I would now close the record
2 on this agenda item; however, I note that the record
3 will be reopened when a 15-day notice of public
4 availability is issued. Written or oral comments
5 received after this hearing date but before the 15-day
6 notice is issued will not be accepted as part of the
7 official record on this agenda item. When the record is
8 reopened for the 15-day comment period, the public may
9 submit written comments on the proposed changes, which
10 will be considered and responded to in the final
11 statement of reasons for the regulation.

12 Just a reminder at this point, if there are
13 any ex parte communications that need to be reported at
14 this time, we should do so.

15 Hearing none, you have the resolution before
16 you -- we have had for a few moments now -- and
17 obviously we've had a chance to read it.

18 Do I have a motion to adopt the proposal?

19 SUPERVISOR RIORDAN: Madam Chair, I would
20 so move that we adopt the resolution which
21 is 94-54.

22 CHAIRWOMAN SCHAFER: Thank you very much,
23 Supervisor Riordan.

24 Is there a second?

25 MR. PARNELL: Second.

1 CHAIRWOMAN SCHAFER: Mr. Parnell, thank
2 you.

3 If there's no further discussion among the
4 board members on this, and I hear none -- yes,
5 Mr. Lagarias.

6 MR. LAGARIAS: I'd like to respond to
7 one comment I heard, that other agencies or states may
8 adopt this regulation and misconstrue it in their
9 adoption. That may indeed be the case. It's very
10 common to scissor and paste regulations from one state
11 to another, and I guess we can't control what other
12 states do, but we try to be very clear in what the
13 intent of our regulation is. And hopefully that can be
14 conveyed to organizations that wish to consider this
15 approach.

16 CHAIRWOMAN SCHAFER: Very good.

17 At this point I would like to ask the
18 secretary to call the roll, please.

19 MS. HUTCHENS: Bilbray. Calhoun.

20 MR. CALHOUN: Aye.

21 MS. HUTCHENS: Edgerton.

22 MS. EDGERTON: Aye.

23 MS. HUTCHENS: Hilligoss.

24 MAYOR HILLIGOSS: Aye.

25 MS. HUTCHENS: Lagarias.

1 MR. LAGARIAS: Aye.
2 MS. HUTCHENS: Parnell.
3 MR. PARNELL: Aye.
4 MS. HUTCHENS: Riordan.
5 SUPERVISOR RIORDAN: Aye.
6 MS. HUTCHENS: Vagim.
7 SUPERVISOR VAGIM: Aye.
8 MS. HUTCHENS: Chairwoman Schafer.
9 CHAIRWOMAN SCHAFFER: Aye.
10 MS. HUTCHENS: Passes eight to zero.
11 CHAIRWOMAN SCHAFFER: Thank you very much
12 and congratulations to the staff that has spent so much
13 time working on this regulation. I appreciate it.
14 I'm going to take a five-minute break at this
15 point. Staff can change positions, and we'll take up
16 the last item.
17 (Brief recess was taken.)
18 CHAIRWOMAN SCHAFFER: The next item is
19 94-9-3. If there is anyone who would like to comment on
20 it, please let our board secretary know. This is a
21 board consideration of a draft annual report to the
22 governor and the legislature on the Air Resources
23 Board's Atmospheric Acidity Protection Program.
24 As -- since we appear to be preaching to the
25 choir, I don't intend to finish reading this statement.