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Dr. John R. Balmes
Ms. Sandra Berg
Ms. Doreene D'Adamo
Mr. Ronald O. Loveridge
Mr. Ron Roberts
Dr. Daniel Sperling
Dr. John Telles
Mr. Ken Yeager

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Mr. James Goldstene, Executive Officer
Ms. La Ronda Bowen, Ombudsman
Mr. Tom Cackette, Chief Deputy Executive Officer
Ms. Ellen Peter, Chief Counsel
Mr. Michael Scheible, Deputy Executive Officer
Ms. Lynn Terry, Deputy Executive Officer
Ms. Lori Andreoni, Board Clerk
APPEARANCES CONTINUED

STAFF

Mr. Joseph Gormley, Air Resources Engineer, Rule Evaluation Section, Stationary Source Division

Mr. Paul Henderick, Air Pollution Specialist, Retrofit Assessment Section, Mobile Source Control Division

Ms. Lucille Van Ommering, Manager, Program Development Section, Office of Climate Change

Mr. Jim Ryden, Chief, Enforcement Division

Ms. Annalisa Schilla, Air Pollution Specialist, Climate Action and Research Planning Section, RD

Mr. Erik White, Senior Staff Counsel, Office of Legal Affairs

ALSO PRESENT

Dr. Rasto Brezny, MECA

Deputy Attorney General Will Brieger

Mr. Skip Brown, Delta Construction Company

Mr. Anthony Brunello, Deputy Secretary, California Natural Resources Agency

Mr. Julian Canete, CA Hispanic Chambers of Commerce

Ms. Brenda Colman, California Chamber

Mr. William Davis, SCCA

Mr. Michael Endicott, Sierra Club Ca

Mr. Arthur Fulton, Diamond Well Drilling

Mr. Randal Friedman, U.S. Navy

Mr. Bill Gaines, Transfer Flow, Inc.
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Graboski, American Rental Association
Mr. Josh Gruen, CMI
Ms. Bonnie Holmes-Gen, American Lung Association
Mr. Alex Jackson, NRDC
Mr. Andy Katz, Breathe California
Mr. Karl Lany, SCEC
Mr. Michael Lewis, CIAQD
Mr. Gary Liss, Local Government Commission
Mr. Edwin Lombard, Cal Black Chamber
Mr. Bill Magavern, Sierra Club Ca
Ms. Sabrina Means, California Transit Association
Mr. Mike Mortenson, California Groundwater Association
Mr. Brian Nowicki, Center for Biological Diversity
Mr. Alan Osofsky, West State Alliance
Mr. Joseph Partransky, Healthy Ports and Ships
Ms. Mary Pitto, Regional Council of Rural Counties
Ms. Betty Plowman, CA Dump Truck Owners Association
Ms. Catherine Reheis-Boyd, WSPA
Ms. Marisa Rimland, Public Health Institute
Ms. Erin Rogers, Union of Concerned Scientists
Ms. Patty Senecal, IWLA
Mr. Tom Swenson, Cleaire
APPEARANCES CONTINUED

ALSO PRESENT

Mr. James Thomas, Nabors Well Services Company

Mr. Doug Van Allen, BJ Services Company

Mr. Matt Vander Sluis, Planning and Conservation League

Mr. Derek Walker, EDF

Mr. Barry Wallerstein, South Coast AQMD

Mr. Mel Zeldin, CAPCOA
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CHAIRPERSON NICHOLS: Welcome to the January 28th, 2010, public meeting of the Air Resources Board. The meeting will come to order. And we will begin, as we normally do, by saying the Pledge of Allegiance to the flag.

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

CHAIRPERSON NICHOLS: The Clerk will call the roll, please.

BOARD CLERK ANDREONI: Dr. Balmes?

BOARD MEMBER BALMES: Here.

BOARD CLERK ANDREONI: Ms. Berg?

BOARD MEMBER BERG: Here.

BOARD CLERK ANDREONI: Ms. D'Adamo?

Ms. Kennard?

Mayor Loveridge?

Mrs. Riordan?

Supervisor Roberts?

BOARD MEMBER ROBERTS: Here.

BOARD CLERK ANDREONI: Professor Sperling?

BOARD MEMBER SPERLING: Here.

BOARD CLERK ANDREONI: Dr. Telles?

Supervisor Yeager?

BOARD MEMBER YEAGER: Here.
BOARD CLERK ANDREONI: And Chairman Nichols?

CHAIRPERSON NICHOLS: Here.

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

CHAIRPERSON NICHOLS: Thank you.

We have several members who have called to tell us they're struggling to get here through the fog. So we expect our numbers to increase as the day goes on.

One of our Board members called last night and said she was ill, so we want to send our best wishes to Barbara Riordan and hope she has a speedy recovery and that it's not anything worse than a cold.

I have a couple of announcements that I need to make. One is the reminder that the emergency exits are at the rear of the room and that's the way we are to exit in the event of a fire alarm. We're supposed to go outside, downstairs, and outside the building until we get the all-clear signal.

Also if there's anybody here who's not familiar with our procedures, if you want to testify on any item or to speak during the open session, we need you to fill out a card and give it to the clerk of the Board. And we will impose our usual three-minute time limit on speakers. So it makes more sense if you're planning to speak if you can give us your written remarks so that we can read them, but
then just summarize them quickly to keep within the three-minute limit.

And beyond that, I think we're going to begin this morning with a report and an overview by the Executive Officer on the program priorities for the upcoming year. Kind of a good way to start the new year off is to focus on the overall agenda for the year.

And before I turn it over to Mr. Goldstene, I want to comment that in the front row here today of the staff that's in front of us, we have for the first time appearing as the successor to the not departed but retired Mike Scheible and taking up all of the myriad of responsibilities, Bob Fletcher. So welcome, Bob.

All right. So for the first agenda item, Mr. Goldstene, will you please begin the review of what I expect, to put it mildly, is going to be a busy year?

(Thereupon an overhead presentation was presented as follows.)

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

At the start, I'll take a few minutes to review last year's major accomplishments and move on to this year's highest priorities. Of course, there is a lot going on that we must do this year to meet a variety of state and federal requirements.
While I won't take the time to go through everything we're doing, it's important to recognize the broad scope of the technical, legal, and policy work that goes on to support our program.

EXECUTIVE OFFICER GOLDSTENE: In the climate change arena in 2009, we can characterize last year as the year in which we moved from planning to action. The Board adopted the Low-Carbon Fuel Standard for transportation fuels and seven other regulations to reduce greenhouse gas emissions.

We also adopted the fee regulation authorized by AB 32 to provide the necessary program resources.

The rules the Board has already adopted only one year after approving the AB 32 Scoping Plan achieve almost half the reductions needed to meet the 2020 emissions target.

In 2009, the Board also took action to reduce toxic air contaminants and ozone levels when it adopted new emission limits for several categories of consumer products. These amendments broke new ground by reducing smog-forming gases from consumer products and simultaneously establishing a cap on the use of high global warming ingredients in these products.
EXECUTIVE OFFICER GOLDSTENE: Last year, the Board supported the distribution of a variety of incentive funds for the purchase and development of clean technologies. The Board revised its guidelines for the use and distribution of Proposition 1B goods movement funds, as well as the Carl Moyer Program guidelines. The Board also adopted funding guidelines for the distribution of $50 million provided by Assembly Bill 118. Like the other incentive programs, the AB 118 Air Quality Improvement Program is designed to reduce both criteria and toxic pollutants from motor vehicles. These AQIP funds can also be used to support related research efforts, especially research related to the development of alternative fuels.

--o0o--

EXECUTIVE OFFICER GOLDSTENE: ARB staff was also busy implementing recently adopted regulations in 2009. Californians started to see air quality benefits from the Board's Goods Movement Emission Reduction Plan, as several of the pioneering rules in that plan took effect. The clean fuels and shore power requirements for ships became effective in 2009, as did the first phase of the retrofit or replacement requirements for the drayage trucks that service the ports and intermodal rail yards. These rules are now reducing toxic particulates in the
communities near the ports and helping us meet regional air quality goals for ozone and fine particulates. The first phase of emissions standards for transport refrigeration units on trucks also took effect. This rule will reduce diesel emissions throughout the state.

The Board staff has continued to work to reduce rail yard emissions. ARB staff released its report on options for further reducing emissions from locomotives and is now refining its recommendations according to the Board's direction.

ARB staff also secured an $8.9 million federal grant that will be used to retrofit eleven switch locomotives operating in California with new cleaner engines.

EXECUTIVE OFFICER GOLDSTENE: We also made progress in several other programs. The first phase of the Board's composite wood products regulation took effect in 2009, limiting the levels of formaldehyde that can be emitted from new products sold in California. This regulation is important for reducing toxic emissions both indoors and outdoors. It has had a national and international impact as well, since many manufacturers are now producing only ARB-compliant materials.
The enhanced vapor recovery regulations for gasoline service stations also took effect last year. Working closely with local districts, we were able to ensure that implementation of this rule, which was originally adopted in 2000, went smoothly. And we are seeing a very high compliance rate with that rule.

California's largest industrial greenhouse gas emitters reported their emissions for the first time in 2009. And electricity retail providers and marketers reported their electricity transaction information. We have a 97 percent compliance rate with this new rule and we're working closely with other states, the National Climate Registry, and U.S. EPA on the development of a national reporting program.

Throughout the year, ARB also worked closely with local air districts and have reviewed and processed hundreds of applications for Proposition 1B and Carl Moyer program grants. These programs can help the owners of older trucks and off-road equipment retrofit, upgrade, or replace their polluting equipment.

EXECUTIVE OFFICER GOLDSTENE: Now moving on to our plans for 2010.

This year the Board will consider a number of key rulemakings to address both public health and climate
This slide provides an overview of the most complex and significant rulemakings the Board will consider this year, beginning with the proposed amendments to the truck and bus rule to reflect the emissions impact of the economic downturn.

Later this year, we will recommend major rulemakings to ensure that passenger vehicles of the future will be even cleaner than today, and support long-term greenhouse gas reduction goals.

By July, we are to develop a renewable electricity standard as outlined in Governor Schwarzenegger's September 2009 Executive Order. And in the fall, staff will propose a cap and trade rule.

EXECUTIVE OFFICER GOLDSTENE: Disbursing Prop. 1B bond funds and other incentive dollars as quickly as possible is essential to accelerating air quality progress by cleaning up diesel emissions. These expenditures are especially important to single owner/operators and many small fleets which have been given more time to comply with ARB's diesel regulations.

As part of this effort, Board Member Berg is guiding the review of the Carl Moyer Program incentive program that is designed to ensure that this 12-year-old
program will continue to provide mobile source emission
reductions into the future. The goal of this review is to
reflect newly adopted regulations and changes in the
economy, to bring more sources into the 12-year-old
program, and to increase the program's flexibility.

Another major item the Board will consider is the
adoption of regional greenhouse gas emission targets for
local transportation planning agencies, as required by SB
375. Staff is making good use of the SB 375 Advisory
Committee recommendations that were presented to the Board
last November.

Another priority is to continue working closely
with the Western Climate Initiative on regional cap and
trade greenhouse gas reduction programs in the Midwest and
in the northeast. In the absence of national action,
representatives of these three programs have been meeting
regularly to discuss options for linking these programs
together. In addition, we are collaborating with U.S. EPA
staff on a number of greenhouse gas reduction strategies,
including vehicles, fuels, and high global warming
potential pollutants.

We are also working with our partner state
agencies on the Governor's third Climate Change Summit,
which will take place this fall.

And this year, we will continue our efforts to
improve our Enforcement Program, which you'll hear more about later today.

Lastly, we must address a number of federal Clean Air Act issues related to air quality planning, including what we hope will be federal approval of the 2007 and 2008 SIPS.

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EXECUTIVE OFFICER GOLDSTENE: To follow up on direction from the December Board meeting, staff is preparing a new report on the health effects of particulate matter pollution. The report will be released for public comment and undergo an independent peer review.

On February 26, ARB will hold a public PM2.5 science symposium on the subject. Chairman Nichols and other Board members will attend to hear the discussion.

Staff recently held three workshops to solicit comment on possible amendments to the truck and bus rule in the context of the Board's direction in December. A public hearing on these amendments is scheduled for April.

Also, in April, staff will provide an informational update on the effect of reduced economic activity on emissions from construction and other off-road equipment, and we'll have a more comprehensive review in July.

As you can see, staff's updating the Board
frequently this year on the status of our diesel rules and
the impact of the economy on emissions. And we also will
provide updates on the financial incentive programs I
mentioned earlier as we go through the year.

--o0o--

EXECUTIVE OFFICER GOLDSTENE: 2010 will be a
significant year for California's passenger vehicle
programs. Staff is developing new requirements affecting
our low-emission vehicle, Pavley, and zero-emission
vehicle regulations.

One proposal would strengthen the Pavley
greenhouse gas fleet standards for 2012 through 2016, as
well as strengthening the low-emission standards. This
rule will integrate our efforts to reduce greenhouse
gases, ozone-forming pollutants, particulate matter, and
toxics.

Another rulemaking is a revamping of the Zero
Emission Vehicle Program primarily to meet greenhouse gas
reduction targets into the future.

And we hope that last year's Rose Garden
commitments between the Obama administration, automakers,
and ARB set the stage for continued cooperation with the
auto industry and the federal government. It is important
that we continue to coordinate with our federal
counterparts on standards for both vehicles and fuels so
we can maximize emission reductions in California and the rest of the nation.

EXECUTIVE OFFICER GOLDSTENE: One important element of our Scoping Plan is increasing the use of renewable energy used to meet California's electricity needs.

Last year, the Legislature passed a bill that would have changed the renewable portfolio standard from 20 percent to 33 percent to meet the Scoping Plan goals. The Governor vetoed that bill because of some of its other provisions.

With the Executive Order that I referred to earlier, the Governor directed ARB to adopt a regulation requiring the state's electricity providers to meet a 33 percent renewable energy target by 2020. The rule is to be adopted by July 31st of this year. We are working closely with the Public Utilities Commission, Energy Commission, and Cal ISO in developing this proposal.

We've held two workshops and received public comments on concept paper as well as proposed approaches for economic, technical, and environmental analysis. And a third workshop will be held next week.

Given the accelerated rulemaking schedule, staff will brief the Board on the status of this item at our
March meeting. In addition, we will keep the Board apprised of any legislative action that may occur.

EXECUTIVE OFFICER GOLDSTENE: This year's climate change priorities are the renewable electricity standard, which I just mentioned, and the cap and trade regulations. ARB staff is developing a cap and trade proposal that would establish a declining cap to ensure emission reductions, while providing compliance flexibility through trading of allowances and offsets.

We released a preliminary draft regulation late last year to help focus the public discussion. Earlier this month, the Economic and Allocation Advisory Committee released its draft recommendations for the distribution and evaluation of greenhouse gas allowance created under this program. The Committee will discuss its recommendations at the March meeting.

Staff has held numerous workshops and met with many experts and stakeholders throughout the development of this proposal. This outreach and consultation will continue as we prepare the proposed regulation for the Board's consideration in October.

As the rule is being developed, staff is also proposing revisions to our current mandatory reporting regulation so that it will meet the needs of a Cap and
Trade Program. And to avoid duplication, this update will also be used to align our requirements with the new federal reporting requirements to meet our AB 32 program needs.

EXECUTIVE OFFICER GOLDSTENE: AB 375 was landmark legislation that aligns planning efforts for regional land use, transportation, housing, and greenhouse gas reductions. The Board's consideration of regional greenhouse gas reduction targets has the potential to achieve significant reductions through sustainable land use and transportation planning.

Staff is working with metropolitan planning agencies, or MPOs, to explore the greenhouse gas impacts of different planning scenarios and to share the information needed to set targets. This has been a very good process so far. And moving forward, staff will be holding workshops throughout the state over the next few months.

Staff will propose draft targets by June for public comment and the Board will consider final targets in September.

A number of Board members have particular interest and expertise in this subject, and we look forward to your guidance as we proceed to develop draft
targets for your consideration.

EXECUTIVE OFFICER GOLDSTENE: We will be taking on this year's agenda amid significant fiscal, economic, and legal challenges. The state of the economy and the pace of California's recovery will be a consideration every step of the way. As staff, we will do our best to provide you with the most complete and accurate information possible.

From a staffing perspective, the state budget will continue to limit the resources available to deliver on these program priorities. We expect a three-day per month furlough to continue through June as proposed in the Governor's budget and to be replaced with a five percent cut in personnel expenditures.

This year's priorities reflect what must be done to meet our public health and AB 32 goals. Staff recognizes that how we go about it is important. We will strive to ensure transparency and the comprehensive public processes that have been an ARB hallmark over the years.

The Chairman's Offices of Legislation, Communications, and the Ombudsman are working harder than ever to expand our outreach efforts and to address questions raised in the press and elsewhere.

We greatly appreciate the leadership of each of
our Board members and look forward to a challenging and productive year.

Thank you.

CHAIRPERSON NICHOLS: Thank you, Mr. Goldstene.

Before we get into a general discussion, are there any questions about any of the specific items that were raised there as part of our 2010 agenda?

Obviously, those are the high level issues.

There will be numerous, I suspect, of the normal updates and changes to existing rules and processes that are part of what the Board does.

But in terms of the overview, I thought it was really useful to have the staff's roadmap, if you will, for what sometimes feels like it's going to be a long journey through 2010.

You know, I might just add that we have had -- we have enjoyed tremendous support from the Governor for the ARB and our work, since I've been here at least. And I'd like to say that, you know, from what I have seen in every way possible, you know, in a very tough and challenging budget time and also in a time when there's a great deal of backlash and resistance against government in all forms, some of which has been focused very specifically at our Board and our programs, the Governor has really taken it upon himself personally to be an advocate for the
importance of the work that we do.

And just as I think a lot of us were waiting somewhat breathlessly last night to see if President Obama would mention his support for doing something about climate change, and we're very pleased to hear that high up in his remarks was an affirmation of the need to focus on energy and on climate, we're seeing the same thing here in California.

Obviously, we all have to be smart about what we do and how we do it. We all have to be careful not to do things that either really don't make sense or that are in any way unduly burdensome and to try to find ways to make sure that we speak about what we're doing in ways that are more comprehensible to people than I think often we end up doing when we are caught up in our daily rounds of jargon and our scientific expertise shows, but maybe not our awareness, of the things that people actually care about.

So I'm actually thinking it's going to be a year of an enormous amount of accomplishment, but I don't want to minimize the effort it's going to take to get from here to there.

And I'd just like to echo James's comments about the Board. As the only person who gets paid to work here full time, sometimes, you know, I know, too, the Legislature think I'm the one they can point to whenever
there is anything that they would like to see changed or
done differently. But I'm very well aware of the fact
that in many parts of the state, in many communities and
constituencies, the face of the ARB is in fact the
individual Board members.

And I'm only aware, I'm sure, of a small portion
of what you all do, when I hear about it through Charlyn
because of speech requests or meetings that you're
outdoing or if you happen to call to check in with me or
give me good advice, which a few of you do from time to
time and which I really appreciate, even if I don't seem
grateful at the time.

(Laughter)

CHAIRPERSON NICHOLS: So with that, I would like
to say how pleased I am that we've had the activity that
we've had on the part of the Board members.

And if any of you feel inclined in the coming
year to take on more assignments, and particularly with
respect to fulfilling some of the invitations that we get
to go out and speak with groups around the state about
what we're doing, I am very happy and I know the staff
will be very happy to have you involved.

So with that, I'll open it up for any comments,
questions, remarks, speeches.

Okay. If you don't feel like weighing in right
now, that's okay, too, I guess.

Dr. Sperling, you looked like you were about to say something. I'll call on you.

BOARD MEMBER SPERLING: I don't have anything of great profoundness to say.

But I do support what you just said that this is going to be an important year for us. And as I looked at that list that James was providing us, it was pretty overwhelming, the amount of actions that we're going to be contemplating. And it is a difficult time.

I've just always been impressed with ARB with the leadership of the staff and Chairman Nichols and the Board.

And I think I would echo what Chairman Nichols said is I think we are all sensitive to what's happening with the state of the economy and the jobs and so on, but at the same time, how important California has been in leadership with a lot of issues in air pollution and climate change now. So it's going to be an interesting year.

CHAIRPERSON NICHOLS: That's for sure.

All right. If no one else feels moved to add, I appreciate that. And we'll just move on to the next item.

Welcome, Dr. Telles.

So the next item is the proposed amendments to
the regulations applicable to portable equipment and
diesel engines used in off-road and on-road vehicles.

Mr. Goldstene.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

The major purpose of today's proposed amendments
is to provide temporary relief for businesses that operate
smaller fleets of portable engines.

Under existing regulations, the oldest and
dirtiest portable engines must be replaced by January 1st,
2010. The proposed amendments provide a one-year
extension for a limited number of portable engines. While
providing some relief for about 90 percent of the
companies that operate older portable engines, the staff
proposal still retains about 70 percent of the first year
benefits.

In addition, staff is proposing to move water
well drilling rigs out of the portable engine ATCM and the
regulation for heavy-duty on-road vehicles and instead
make them subject to the in-use on-road vehicle
regulation, just as was previously done for cranes.

The replacement of the portable engine on these
rigs is extremely difficult and cost prohibitive. This
proposed move would allow owners of the drilling rigs more
flexibility for complying with requirements, while still
achieving the emission reductions for diesel PM and oxides of nitrogen.

The proposed amendments provide a balanced approach that allows businesses to continue to operate while achieving the emission reductions needed to protect public health.

I'd like now to ask Mr. Joseph Gormley of the Stationary Source Division to present the staff's proposal.

Joseph.

(Thereupon an overhead presentation was presented as follows.)

AIR RESOURCES ENGINEER GORMLEY: Thank you, Mr. Goldstene.

Good morning, Chairman Nichols and members of the Board.

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AIR RESOURCES ENGINEER GORMLEY: This slide presents an overview of the topics I will cover in today's presentation.

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AIR RESOURCES ENGINEER GORMLEY: First, I have a brief overview of today's proposed amendments.

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AIR RESOURCES ENGINEER GORMLEY: Today, staff is
proposing amendments that would extend the deadline for replacing some older high-emitting engines by one year. This will provide some economic relief for the owners of smaller fleets.

Staff is also proposing to make water well drilling rigs with two engines subject to the requirements of the regulation for in-use off-road diesel vehicles. This move will also provide relief to owners of water well drilling rigs from the Tier 0 engine replacement requirement.

In addition, staff is proposing some amendments that would provide additional clarity to the regulations and assist with the implementation of the statewide registration program.

The proposed amendments were designed to provide relief for most of the owners of uncertified engines, while retaining about 70 percent of the emission reduction benefits.

This relief is provided in recognition of the fact that there has likely been a reduction in the use of these engines due to the economy.

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AIR RESOURCES ENGINEER GORMLEY: The proposed amendments affect several ARB regulations. The next set of slides briefly describe these regulations and provide
AIR RESOURCES ENGINEER GORMLEY: Portable engines are used to provide power to generators, pumps, compressors, and a variety of other equipment used in industrial and construction activities.

AIR RESOURCES ENGINEER GORMLEY: The portable equipment registration program regulations established a voluntary registration program for portable engines and equipment units. If an owner chooses to register in PERP, they may operate that portable equipment statewide without obtaining a separate permit in each air district. Although the Air Resources Board issues the registration, the local air districts provide the primary enforcement for the program.

The PERP regulation was adopted in March of 1997 and started accepting applications later that same year.

AIR RESOURCES ENGINEER GORMLEY: When the PERP regulation was originally adopted in 1997, it contained a requirement that all Tier 0 engines must be removed or replaced by January 1, 2010, which effectively gave registered businesses a maximum of 13 years to plan for replacement.
At the time, this replacement requirement only affected engines registered in PERP. The PERP regulation also requires that registered Tier 0 spark ignition engines be removed from service by January 1, 2010.

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AIR RESOURCES ENGINEER GORMLEY: The air-borne toxic control measure for portable diesel engines came about as a result of the Diesel Risk Reduction Plan, which the Board adopted in September of 2000. It is designed to achieve particulate matter emission reductions from portable diesel engines through three main mechanisms:

First, it mandates the replacement of older higher-emitting engines by January 1, 2010.

Second, it sets eligibility requirements for newly permitted or registered engines.

And third, it establishes fleet emission standards which take effect later this decade.

These requirements are applicable to all portable diesel engines, whether registered in PERP or permitted by the local air districts. The Board adopted the ATCM in February of 2004, and it became effective in March of 2005.

The portable ATCM differs from the other diesel engine regulations in that it requires the replacement of all older higher emitting engines by a specific date. The
other diesel relations require a phase-out of older engines over several years.

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AIR RESOURCES ENGINEER GORMLEY: The requirement to replace Tier 0 engines is a key component of the Board's strategy to reduce the emissions of toxic particulate matter from portable diesel engines.

Currently, there are about 4400 Tier 0 engines either registered with ARB or permitted by the local air districts that are affected by this requirement. We want people to replace their older Tier 0 engines with newer certified engines, because the newer engines have significantly lower emissions, as shown by the graphs on the next two slides.

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AIR RESOURCES ENGINEER GORMLEY: This graph compares the particulate matter emission rates from uncertified engines to emission standards that certified engines must meet. You can see from this graph the Tier 0 engines have significantly higher emissions than certified engines.

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AIR RESOURCES ENGINEER GORMLEY: This graph similarly compares the emissions of NOx from uncertified engines to the emissions standard for certified engines.
As shown by these two graphs, the overall emission levels from portable engines decrease with each new tier. This is why we structured the regulation for portable engines to require that industry to have the newest tier available when seeking a new permit or registration.

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AIR RESOURCES ENGINEER GORMLEY: The regulations for in-use heavy-duty off-road and on-road diesel-fueled vehicles are the most recent regulations to be adopted as a result of the Diesel Risk Reduction Plan.

The off-road regulation was adopted by the Board in 2007 and was recently amended to include requirements for two-engine cranes.

The on-road regulation was adopted by the Board in December of 2008 and became effective earlier this month.

Our proposed amendments today only affect these two regulations as they apply to two-engine water well drilling rigs.

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AIR RESOURCES ENGINEER GORMLEY: With that background, let's take a closer look at what we are proposing.

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AIR RESOURCES ENGINEER GORMLEY: Several of the owners of smaller fleets indicated that they experienced difficulty with the requirement to replace Tier 0 engines by January 1, 2010. So staff is proposing to provide a limited extension for these engines. The extension will be available to smaller fleets which contain no more than 25 portable engines as of December 31st, 2009.

If an owner of portable engines qualifies for the extension, they must then choose either one engine of any size or up to five engines that do not exceed 500 cumulative brake horsepower. The engines selected for the extension may then operate until the end of 2010.

The extension is not being proposed for fleet owners with more than 25 portable engines. These larger companies generally have access to more resources, and they typically have smaller percentages of uncertified engines in their fleet. Therefore, they are not as severely affected by the Tier 0 replacement deadline.

In an effort to preserve as much of the original emission reductions as possible, ARB staff proposes the extension only for the companies that need it in most.

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AIR RESOURCES ENGINEER GORMLEY: Under this proposal, approximately 2,000 engines may potentially receive the temporary operating extension. The proposed
extension maintains at least 70 percent of the original emission reduction benefits from the Tier 0 engine replacement requirement. The full emission reductions will be achieved once the extension period ends at the end of 2010.

It is important to note that the estimates do not include any adjustments based on changes due to economic conditions. The emission reduction estimate is based on the number of currently permitted or registered portable engines and the requirements of the existing regulations.

AIR RESOURCES ENGINEER GORMLEY: Some of the additional amendments staff are proposing include allowing engines certified to the on-road emission standards to operate after January 2010 if they are used as portable.

The current portable engine ATCM requires these engines to be placed out of service the same way that Tier 0 engines are. It makes sense to allow these engines to continue operating because they are clean certified engines.

As stated previously, the portable engine ATCM does settle eligibility requirements for engines seeking a new permit. Currently, the portable engine ATCM and PERP regulation allow only diesel engines certified to the off-road emission standards to obtain either a permit or
registration. Because engines certified to the on-road or marine standards are sometimes used in portable operations, staff is proposing to allow these engines to be eligible for district permits or registration in PERP. --o0o--

AIR RESOURCES ENGINEER GORMLEY: Staff is also proposing some modifications to the recordkeeping and reporting requirements contained in the PERP regulation. Because certified engines are not subject to any hourly operating restrictions, staff is proposing to remove the requirement for tracking hours of operation and reporting of annual hours of use for these engines.

To improve the enforceability of the requirement that portable equipment not reside at a location for more than 12 consecutive months, staff is proposing that the specific location of all registered engines and equipment units be recorded no less than once a month. Currently, only the county or air district has to be recorded for location.

Staff is also proposing to remove the requirement in the PERP regulation that equipment dealers provide a list to the Air Resources Board of all portable engines sold in California. Because PERP is a voluntary program, staff believes it is not appropriate to have a mandatory notification requirement for equipment that is not yet
registered. And it has not proven to be a useful mechanism to track equipment that may need a permit.

And, finally, we are making some minor wording changes for clarity, which will improve the implementation of the portable engine ATCM and statewide registration program.

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AIR RESOURCES ENGINEER GORMLEY: Finally, I would like to discuss why we are proposing to amend the off-road and on-road diesel vehicle registration.

Currently, water well drilling regs are covered by two regulations: The portable engine ATCM for the deck engine and the on-road vehicle regulations for the truck engine.

The California Groundwater Association has indicated that replacing the portable Tier 0 deck engine on two-engine water well drilling rigs as required by the portable engine ATCM is extremely difficult. Our analysis showed that these rigs face many of the same cost and safety issues with engine replacement as with two-engine cranes. Therefore, staff is proposing to move these two-engine water well drilling rigs into the off-road regulation, just as was done with two-engine cranes in previous amendments.

Under this proposal, both the drive engine and
the portable deck engine will be subject to the
requirements of the off-road regulation and must be
reported into the diesel off-road on-line reporting
system. The deck engines still technically meet the
definition of portable and may be subject to district
permitting requirements. Therefore, under this proposal,
the deck engine will remain eligible for registration in
PERP.

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AIR RESOURCES ENGINEER GORMLEY: Before we move
on to discuss future actions, there is one issue that we
would like to bring to your attention. Currently, the
portable engine ATCM does not allow the permitting or
registration of Tier 1 or Tier 2 portable engines if they
have been found to be operating illegally.

To facilitate enforcement, the local air
districts have requested that we amend the ATCM to allow
the permitting of these engines.

As we have not yet reached an agreement on an
appropriate mechanism or proposed regulatory language, we
would like to continue to work with CAPCOA on this issue
to explore those options and may propose a regulatory
solution as part of a 15-day change, if necessary.

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AIR RESOURCES ENGINEER GORMLEY: If the
amendments are approved today, we will conduct outreach activities to inform people of the new changes, which include dedicating resources to assist the public with questions and applications, updating folks on our website, and sending out informational fliers to members of affected industry that may be subject to the new requirements.

Once the amendments are effective, we will start processing the applications for engines that are affected by the new requirements.

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AIR RESOURCES ENGINEER GORMLEY: Finally, we move on to staff's recommendation.

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AIR RESOURCES ENGINEER GORMLEY: Staff recommends that you adopt the proposed amendments.

Thank you. That concludes my presentation.

CHAIRPERSON NICHOLS: Okay. Thank you very much.

We have a list of ten witnesses here, so I think we'll just begin with those, unless anybody has any comments or questions. Okay.

BOARD MEMBER TELLES: When I read this, it wasn't clear to me what the emissions reduction inventory is for the sector. How big of emissions is this that we're talking about?
AIR RESOURCES ENGINEER GORMLEY: Well, the total population of engines registered in PERP currently is about 30,000 engines, a little less than that. And that's just private sector. The military has about 5,000 more than that.

The only engines that are affected by the Tier 0 engine replacement requirement is just over 5,000. Some of those can be designated as emergency use. So when you really look at it, it's only about 4400 engines that are actually subject to be replaced by the end of last year. That's the total scope of the proposed amendments.

BOARD MEMBER TELLES: That's the number being replaced. What's the actual emissions? How many NOx and PM?

AIR RESOURCES ENGINEER GORMLEY: Oh, we have that.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: The total emissions in 2009 are estimated to be about 115 tons a day of NOx statewide and about somewhere around ten tons a day -- nine to ten tons a day of PM. So it's a pretty significant amount.

To put it in perspective, in the San Joaquin Valley, probably about -- I would guess -- probably 30 to 40 of those tons in the San Joaquin Valley. So this is a big category. Tier 0 represents about 40 percent of those
emissions.

BOARD MEMBER TELLES: Okay. And what's the total cost to the industry as far as doing this 30 percent replacement?

AIR RESOURCES ENGINEER GORMLEY: Well, with the 2,000 engines that would normally have to be replaced that we're giving relief to, the cost delay is about $66 million.

BOARD MEMBER TELLES: All right. And you said there wasn't an estimate of the reduction of emissions based on -- surplus reduction of emissions based on the decrease in economy. Do you have any estimate of that?

AIR RESOURCES ENGINEER GORMLEY: We have not performed that analysis.

BOARD MEMBER TELLES: Have you performed any analysis of how many jobs would be lost if you do this?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well, two comments on that.

The first, if you assume that the construction industry might be a surrogate for these, because many of the engines are used in construction-type industries, that would be a 30 percent or so reduction.

So, for example, on the PM side, instead of 3,000 tons a year, it would be around 2100 tons a year.

So if you consider that the Tier 0 engines
themselves account for 40 percent of the emissions, then
there is sort of a situation where if all of those Tier 0
engines were to operate, then we would probably be about
where we were in 2009. That is, we would see no emission
reductions associated with this measure.

What makes it difficult to estimate is that we're
not sure how many of the Tier 0 engines have already been
replaced. When we estimated the cost to replace those
ingines of 66 million, that assumes that all of those Tier
0s have not already been replaced.

And the way that the Portable Engine Registration
Program is set up, those engines are registered in the
program, but there is no requirement once they're replaced
to notify us they've been replaced. The registration
essentially expires on that date. So we expect that many
of these engines have already been replaced.

On the second question in terms of jobs, the
impact of our proposed change is actually to make many of
these engines in the smaller fleets 25 or less. You can
now operate five or more of those engines. So we would
expect -- we haven't estimated what the job impacts are,
but a thousand -- or roughly 1100 companies of the 1200
companies that still have Tier 0 engines are now eligible
for some relief. And of those, I think 900 companies get
full relief. So it should have a positive impact on jobs.
CHAIRPERSON NICHOLS: Did that respond to your question?

BOARD MEMBER TELLES: Yes.

CHAIRPERSON NICHOLS: Okay. We'll start with our first witness. And I'll give you the next three in order so people can be prepared to come forward. And as I said before, we will be using our three-minute rule.

So starting with Bill Gaines and then Mel Zeldin and Barry Wallerstein.

MR. GAINES: Thank you very much.

My name is Bill Gaines. I am the Chairman and Senior Engineer at Transfer Flow, Incorporated. I have a degree in mechanical engineering from CalPoly and in fluid dynamics. I have been an engineer at General Motors and now own my own manufacturing company.

We've been in the business for 27 years manufacturing fuel systems for the niche market. And we own 160 CARB executive orders. We have basically been involved in developing and providing orders for new vehicle, for aftermarket, and for SORE. So we have a very good relationship with CARB. And when we started reading the portable regulations, we found a lot of areas of concern to us, since we are very familiar with writing these regulations and trying to meet them.

In our opinion, there was no thought of
integration when writing these regulations. In other fields, you basically have a General Motors or Ford or Chrysler that you issue an Executive Order to. They are literally the integrator for the vehicle.

In this particular scenario, the diesel particulate filter manufacture is typically the person or company that is held to the standard of the Executive Order. They do not typically have the familiarity with designing a complete system. Instead, they are very good at building a diesel particulate filter. The controllers that go along with it, the pressure transducers, the thermal couples, et cetera, all have to work as a family. And we don't believe that that's really been looked at.

We do believe -- we are an integrator and have been doing that again for several years. One of the problems that we see -- I just heard the testimony that there are 4400 Tier 0 engines that are in the registered program. Well, in Butte County, 49 percent of the ag portable engines are Tier 0. And so we question that number. And these are registered engines, by the way.

We are finding that the cost of these engines -- these retrofits run from $11,000 to $43,000 to bring up a Tier 0 engine to meet current emissions compliance.

Just retrofitting the Tier 0 by our estimates is going to cost, in essence, $290 million. We don't
CHAIRPERSON NICHOLS: I'm sorry. Three minutes is a very short time.

Have you met with staff and/or participated in the proceedings up until now and conveyed your information to them?

MR. GAINES: No. I have talked to John Lee and talked to some of your Board members, but I have not been -- I've not talked to staff. We got involved in this late after the regulations were made.

CHAIRPERSON NICHOLS: Okay. Well, if you have any written information to provide, I would really appreciate it if you could further it now. And if not, we'll see what we can do.

MR. GAINES: Thank you very much.

CHAIRPERSON NICHOLS: Mel Zeldin and Barry Wallerstein.

MR. ZELDIN: Chairman Nichols, members of the Board, I'm Mel Zeldin, Executive Director for the California Air Pollution Control Officers Association. Good morning.

CAPCOA appreciates this opportunity to express our support for the proposed revisions to the portable diesel engine ATCM and PERP regulations. We share ARB's
goals in reducing exposure to diesel particulate and reducing the emissions of ozone-forming NOx pollution from diesel-fueled engines.

We recognize, too, that the current economic conditions would present difficult implementation issues. We support the flexibility provided by the proposed revisions and appreciate that the flexibility is accomplished without giving up significant emission reductions.

However, there are two yet unresolved issues with which most but not all of CAPCOA members have concerns. First, currently, it is illegal to operate Tier 1 and Tier 2 engines in many districts. If those engines have not been issued a permit or PERP registration, this rule revision does not provide a legal mechanism for operators of previously unpermitted or un-PERPed engines to continue operations after being discovered by district enforcement personnel.

Secondly, the portable engine ATCM does not contain a prohibition of sale provision which we are concerned that illegal Tier 1 and Tier 2 engines will be sold to unsuspecting buyers in California by unscrupulous vendors.

We would request that you direct staff to work with CAPCOA to incorporate these changes in the 15-day
comment period, and we're glad to see staff's willingness
to do so.

In summary, CAPCOA supports the revisions before
you today, and we thank ARB staff for working with us
during this process. Thank you.

CHAIRPERSON NICHOLS: Thank you for your
testimony.

Could I just ask you one question? I'm sorry
maybe I don't understand the issue. But why wouldn't
somebody who was cited and found to have an unpermitted
engine just get a permit?

MR. ZELDIN: As I understand it that they can't
get a permit. They're in violation of the ATCM so --

CHAIRPERSON NICHOLS: They would never get it.

MR. ZELDIN: By state law, if they're in
violation, they can't get a permit.

CHAIRPERSON NICHOLS: Right. Okay. I get it.

BOARD MEMBER BERG: Chairman Nichols, I do have a
follow-up question.

It's my understanding they had an opportunity and
we gave an extension to register those Tier 0 engines. So
now if anybody was found, they would not be able to use
them now.

MR. ZELDIN: As it stands now, there's no relief
other than just --
BOARD MEMBER BERG: Do not use. But that was the intent of the regulation was my understanding.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Let me clarify this a little bit. There's a couple things in play.

One is the extension we're proposing applies to engines that are already in the program.

I think what Mel is talking about has to do with engines that are not registered and are not permitted. So they're currently operating illegally.

BOARD MEMBER BERG: I understand that, but we've had this conversation a couple of times to my memory. And so it sounds to me now that we're considering or we're being asked to consider to allow unregistered --

CHAIRPERSON NICHOLS: Illegal.

BOARD MEMBER BERG: -- illegal engines to come into the program for a third time. We've already done it originally and we gave an extension.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: And that's what we're trying to avoid. As Mr. Gormley said in the presentation, we want to continue the discussion with CAPCOA on this.

Our view is we do not want to provide a fourth amnesty period for engines that have not registered or have not been permitted in the program.
And the issue really has to do with how do you affect an enforcement action against engines that are found to be operating illegally?

And there is a difference of opinion right now in terms of how an abatement order would work. And some of the districts believe an abatement order, the way that they have traditionally done abatement orders, the first thing they do in an abatement order is bring the engine under permit so it can operate. So it's really a very limited --

CHAIRPERSON NICHOLS: Regulatory issues.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Defined issue here that says they can't issue an abatement order and these engines can't operate while they are under an enforcement action unless they're under a permit. And that's why we couldn't come to an agreement on what sort of regulatory language we could introduce that would not be an amnesty period, but would simply address the sort of technical issue of how you issue an abatement order and bring an engine in under permit so that you can then get them to the newer cleaner engine.

BOARD MEMBER BERG: Can I just ask one clarifying question?

From a layman's perspective on what you just said, are we trying to understand how to bring something
under permit so we can tell them that they cannot use it?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: We're bringing them under permit so we give them a short period of time to operate and replace the engine, because the issue really is if they have to replace the engine, that it costs money. If we take their ability to earn income away by shutting down that operation, they have no ability to generate resources to replace the engine to the newer cleaner engine.

BOARD MEMBER BERG: Thank you.

CHAIRPERSON NICHOLS: I understand the issue. This has been going on -- this type of problem has been going on for many, many years. Okay. Thank you.

Barry Wallerstein.

MR. WALLERSTEIN: Good morning, Chairman Nichols, members of the Board.

I'm Barry Wallerstein, the Executive Officer of the South Coast AQMD. I'm before you this morning in support of the staff's modest proposal to grant an additional year to allow folks during this recessionary time to accumulate some additional funds to be able to get the new engines.

I did want to point out that just last week the federal government proposed potentially a new range of ambient air quality standard for ozone. In South Coast,
under our current ozone plan, we have to reduce oxides of nitrogen by about 75 percent. Potentially, under the new federal standard, that could become 90 percent. That means that our agencies have to be working together to look for every possible area of emission reductions as we have in the past.

Regarding Board Member Berg's last question, it really is an issue of how do you grant in this case for this rulemaking temporary relief. The engines not only have to be able to comply with your ATCM if it receives a district permit, it has to meet best available control technology. So Tier 1 or Tier 2 cannot meet BACT. So really the only mechanism to provide this sort of relief is the item that is before you today, and that's why we're supporting it, given the extraordinary economic times that we find ourselves in, and the fact that it is just a brief one-year period and we will then be fully back on track.

Thank you for your time.

CHAIRPERSON NICHOLS: Thank you for that. Michael Graboski, Mary Pitto, and Doug Van Allen.

MR. GRABOSKI: Good morning. I'm Dr. Michael Graboski of the American Rental Association.

ARA has submitted detailed written comments, and we hope that you'll review the totality of what we had to say.
But we're here this morning to just take a neutral position on the regulation. In particular, we don't really see any or very much at all economic relief for our membership in what has been proposed.

We do have a concern about Section 2458 on the reporting requirements. Rental companies have no control over where their rental equipment is located once it leaves the yard. But in the new version of the regulation, we basically are going to be required on a monthly basis to provide an exact location of where our equipment is, like UTM coordinates.

Previously, we were told and we understood that what we had to do is ask our customers where they were going to have the equipment, and we were going to note that down. And in a best effort, we would provide that as part of reporting.

But we now believe that, because as hearsay knowledge and the way this is written in the regulation, that we might leave ourselves open to a serious compliance risk if we can't exactly know where the equipment is.

It's our understanding that the industry has contacted both ARB and CAPCOA regarding this section of the rule. And we would request the Board set aside action on this until those discussions are completed. And we would all feel that we would be more safe with regard to
Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mary Pitto.

Ms. PITTO: Good morning, and thank you for this opportunity to address you.

I'm Mary Pitto with the Regional Council of Rural Counties. I'm here to make one request, an additional amendment for your consideration.

In the fleet rule for public agencies and utilities and with the off-road equipment rule and the new truck and bus regulation, you have exempted dedicated snow removal equipment. We're requesting that for the snow blower machines that have a dual engine, one to propel the vehicle and one to power the snow blowing equipment, that these also be exempt from this regulation, the portable auxiliary ATCM.

The snow blowing equipment is used for public service, a safety service to the general public. They're used only seasonally and part time. So we would appreciate that consideration.

CHAIRPERSON NICHOLS: Thank you.

Doug Van Allen, followed by James Thomas and Karl Lany.

MR. Van ALLEN: Good morning. My name is Doug
Van Allen with BJ Services Company.

BJ supports all the changes that will help relieve extra expenses on California businesses during these hard times.

In 1997, BJ had 123 Tier 0 engines registered in the PERP Program. As of December of '09, we've replaced 84 of the Tier 0 engines. That was 42,800 horsepower at an actual cost of over $25 million to BJ.

On December 31st, '09, BJ still had 39 Tier 0 engines, totaling 22.5 thousand horsepower. Replacement costs for those 39 engines would be $3.9 million according to CARB's estimation of $175 per horsepower. So they're right now out of business.

January '09, we had lay to off 30 percent of our California employees due to the downturn in business. This was our first layoff since 1986 for California employees.

Since '08, we have reduced our on-highway truck fleet by 15 percent.

Since '08, we've reduced our diesel engine powered pumps by 31 percent operating in California, and our sales of our pressure pumping services has decreased around 30 percent as well.

Several of the air districts want to make changes allowing Tier 0 engines to be permitted for future use.
If this recommended change is made, it must be allowed for all businesses, not just small businesses, in order to prevent creating a larger competitive disadvantage than we've already had.

And if this recommended change is made, BJ has 22.5 thousand horsepower engine Tier 0s we'd like to continue to operate in California.

Thank you.

CHAIRPERSON NICHOLS: Okay. Thank you.

James Thomas.

MR. THOMAS: I'm James Thomas with Nabors Well Services.

Our company supports some of the proposals of the amendments today.

We are greatly happy or greatly jubilated with the reducing of the annual reports and the daily recordkeeping. For the past, less than 20 percent of the fleets filed the annual reports with CARB. And with that data going in, no one has ever requested to look at that data. So we're glad to see the red tape leave.

On-highway engines being allowed back into PERP, we support that. But last summer, we received a notification stating that our engines would have to be replaced by the end of the year. In the cost analysis, it talks about federal fleets and that they will be able to
save $510,000. Our company spent that money to replace our five engines that were not going to be allowed. Now, here today, we're talking about Tier 0 engines and allowing them to operate. In this repowering process, we removed two Tier 0 -- two Tier 2 on-road engines, which were very clean. So our suggestion is in the future when you decide to make some changes that you start sooner so all companies can benefit from this proposal. We support the relief for small fleets, but we believe that if you're going to give it to small fleets that you ought to give it to large fleets as well.

The last we'd like to talk about is the competitive disadvantage that PERP regulations has created on complying companies through modification, amnesty, lack of inspection, for allowing companies to opt out of the program and operate. The comments of two of the air districts acknowledged that these people do exist. And for regulations to be fair for companies that are spending large amounts of money, like my company that spent $14.8 million, we must make sure that we create a level playing field for all affected people. And we hope and pray that you will make sure that the companies that do not get -- the engines that don't
get to be extended are inspected and make sure they comply.

Thank you.

CHAIRPERSON NICHOLS: Thank you for your testimony.

Karl Lany, followed by William Davis and Mike Mortensson.

MR. LANY: Good morning. I'm Karl Lany with SCEC Air Quality Specialists. I'm here on behalf of the Caterpillar rental operations in California and neighboring states who have approximately 1700 engines in the PERP program. We've been very committed to this program, have replaced our fleets, have very, very modern fleets.

My comments reflect a lot of the comments you've already heard today, specifically as it relates to recordkeeping and reporting. I want to make sure it's understood that while recordkeeping and reporting may have been streamlined for owner/operator fleets through these amendments, the proposed amendments will make recordkeeping and reporting more onerous for rental fleets. And we think it reflects a disconnect in thinking, maybe something that's less than full awareness of the intricacies of the rental transaction.

Specifically, in 2458(b), the inclusion of a monthly
log-in entry as to the specific location of the engine is
very, very problematic, primarily because it's something
that's enforced upon the owner of the engine and not the
operator of the engine.

As previously stated by the ARA representative,
we don't have that kind of control. We don't have the
ability to validate that kind of data. You may think if
CARB is going to have this type of restriction or
requirement, we need to recognize who is responsible for
which compliance actions, owners versus operators. And we
would ask that that provision be withheld until we can
have more communication with CARB and CAPCOA.

Also, CARB is proposing that certified engines be
removed from annual reporting requirements for
owner-operated fleets. But rental fleets and actual
essential public service fleets do not enjoy that same
luxury, and we would like to see that more evenly applied.

Finally, we do thank CARB for several of the
other provisions that are in the amendments very much so,
one of which is their willingness to provide registration
electronically. It's very important that we get engines
into the field and dispatched as soon as possible. That's
very welcome.

I would like to see additional language that
clarifies that for a limited amount of time we can operate
without the placards and labels, because those are going
to follow through the mail.

CHAIRPERSON NICHOLS: Thank you. Good comments.

William Davis, and then Mike Mortensson and

Arthur Fulton.

MR. DAVIS: Is there a button? We're in

business.

Good morning, Madam Chairman, members of the
Board. I'm William E. Davis, Executive Vice President of
the Southern California Contractors Association and Board
member with the Construction Air Quality Coalition.

But this morning, I'm here to discuss the idea of
William of Ockham, a 14th century --

CHAIRPERSON NICHOLS: Bill, we'll let you
restart. This is a reset.

MR. DAVIS: Thank you.

William Davis with the Southern California

Contractors Association and CIAQC.

This morning I'm here to discuss the ideas of
another William however, William of Ockham, a 14th century
Franciscan friar and logician. The founder of Williams
Order of Saint Francis of the CC is the patron and saint
of the environment and environmentalist. I've actually
thought of bringing you all medallions for Saint Francis
just in case you might need them.
William of Ockham was a leading thinker in the
scholastic movement, which was a very important period in
intellectual life, and made it his life goal to strive for
simplification, a very Franciscan precept, especially when
church bureaucracies debated in those days over topics
such as how many angels can dance on the head of a pin.

When William of Ockham was man of many parts, he
is in our day associated with the principle known as
Ockham's razor, a philosophy he used to cut through
complexity and to get at the heart of the matter before
him.

In the 1330s, William expressed the idea -- and
I'm not going to butcher the Latin, but in the prepared
remarks you have it -- and you, Dr. Balmes, can read it
and several others. Entities must not be multiplied
beyond necessity. The way we say that today is that the
simplest explanation or strategy tends to be the best one.

In the case before you, we believe the staff
proposal unnecessarily complicates the issue of what to do
about Tier 0 portable engines. This staff approach
harkens back to the idea of angels dancing on the heads of
pins.

The simplest thing to do would be to extend the
operation of all registered Tier 0 equipment for a
one-year period. This simple thing would have virtually
no effect on emissions.

And, Dr. Telles, as your staff estimates, there's no more than 4300 of these machines in the state. The construction industry, which owns most of them, has declined so dramatically over the last five years it's essentially operating at about 50 percent of where it was when this regulation was last discussed. So only half of these machines would be operating at best.

Your cost estimates -- and I'm going to take just a second to talk about this. At $66 million, our industry will actually receive far greater cost savings just from the elimination of the recordkeeping requirements that are proposed. We do support that.

We had one company up here a moment ago that had a cost of almost $30 million all on their own. We think the cost estimates on these again are underestimated by a factor of four or five.

Finally, when CAPCOA and CARB get together to discuss their request, our industry would like a place at that table. Since we're the regulated body for most of this, we think we have something to contribute to the discussion.

Thank you all very much.

CHAIRPERSON NICHOLS: Thank you.
Latin, especially medieval Latin. I started college as a classics major. Appreciate your comments.

Mr. Davis: Point of personal question.

Dr. Balmes is one of the nation's recognized experts on the health effects of ozone. And since the EPA has come out with these new recommendations, I was wondering if it would be possible to contact you about getting some information on that so our industry can formulate a position.

Board Member Balmes: You can contact me.

Mr. Davis: Thank you.

Board Member Balmes: The Board secretary, Ms. Fraizer, always seems to be able to contact Board members.

Mike Mortensson.

Mr. Mortensson: Good morning, Chairman Nichols and members of the Board. I'm Mike Mortensson, the Executive Director of the California Groundwater Association, commonly known as CGA.

CGA represents water well drilling contractors, pump installing contractors and firms throughout the state. The groundwater industry is not large in numbers, but its functions are critical to the state's well-being. And our industry is subject to multiple CARB rules.

We ask that the Board approve the proposed
amendments that will place two-engine water well drilling
rigs similar to the cranes in the off-road rule and to
allow additional compliance time for Tier 0 engines. Your
approval will prevent the loss of what we estimate to be a
third of the state's water well drilling rigs and give our
many small business owners in the industry time to comply
with the regulations in these hard economic times.

We have worked with CARB staff in the last year
on these matters, and we look forward to working with them
in the future to help our members improve air quality
while ensuring the continued reliability of the
groundwater industry to meet the water needs of all
Californians.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER BERG: Chairman Nichols, could I
just ask a question of the staff?

I do have on my list the time frame for bringing
these regs into compliance on the off-road rule, given the
fact that the off-road rule is in effect right now for
large companies and what type of additional time are we
looking at?

AIR RESOURCES ENGINEER GORMLEY: Well, Ms. Berg,
you know, there's three scenarios with the compliance
dates we're expecting for these water well drillings rigs.
The majority of these we're expecting to be small and medium fleets when they enter into DOORS. So their compliance dates are the 2013 and 2015 respectively for medium and small.

Then you have a scenario of large fleets. If one of these existing small to medium fleets becomes large, then the off-road regulations provide them an additional two years from the next compliance date to come into compliance if they increase in size. So those fleets that increase to large will get until March of 2013 as well.

We have the scenario of an existing large fleet that it was already large in the off-road and they add some water well drilling rigs. What will happen is their compliance date will still be March 1st of 2010, but the water well drilling rigs won't be part of that compliance until the next year, which is March 1, 2011.

BOARD MEMBER BERG: And that's for registering for the DOORS?

AIR RESOURCES ENGINEER GORMLEY: Yes, for the off-road compliance.

BOARD MEMBER BERG: Isn't there some requirements on 8 percent NOx and 20 percent PM, if my memory serves me correctly?

AIR RESOURCES ENGINEER GORMLEY: No. The compliance dates I was speaking of was for those
compliance emissions rates, the 8 percent NOx. We actually extended the reporting date for all water well drilling rigs until August 1st of this year. So then, you know, the next year's compliance date would be in effect for the existing large fleets, which is March 1st of 2011.

BOARD MEMBER BERG: So they would, in fact, have a one-year delay and then there isn't a catch up? There isn't a double down, so to speak?

AIR RESOURCES ENGINEER GORMLEY: Right.

BOARD MEMBER BERG: Is that correct?

AIR RESOURCES ENGINEER GORMLEY: For existing large fleets, if they're adding in water well drilling rigs, they get until next year to comply with those.

BOARD MEMBER BERG: Thank you.

CHIEF DEPUTY EXECUTIVE OFFICER CACKETTE: Let me add one other thing. For the larger fleets when they get put in with the off-road rule, there's a longer phase-in for a replacement of engines. So they're able to average things out. So if these are really tough to comply with, you can do other ones first, which buys you more time. There's a lot more flexibility but having it in that bigger pool for the larger fleets.

CHAIRPERSON NICHOLS: All right. Thank you. Is Arthur Fulton here?

MR. FULTON: I'm Arthur Fulton. I'm a well
drilling contractor. I'm the owner of Diamond Well
Drilling Company.

In the beginning of 2008, I employed 30 people.
Right now, I employ 15.
Half of my fleet, four rigs, has been taken out
of service as a result of the portable equipment ATCM and
the compliance date of January 1, 2010.

I'm speaking in support of these amendments.
They'll help me a great deal. And I'd like to explain
why. I'd like to buy new drill rigs. I'd like to buy two
new higher tiered engine drill rigs to replace the drill
rigs that I have that are decommissioned that have Tier 0
ingines. The rigs cost a little bit south of a million
dollars a piece. And I can't do that now. I'm hoping
that when business picks up that I can put these rigs back
into service and make some money and buy the new drill
rigs. If I can't do that, I'll go out of business and the
15 jobs that I lost will be compounded with the 15 jobs
that I still provide. And, therefore, I would encourage
you to pass these amendments.

I do have one question though. And it was said
today by Mr. Gormley, and I am a little bit confused about
where the jurisdiction is. It's my understanding the
off-road rule is administered by the state in general.
But you did mention that the old portable equipment
engines would still be administered and enforced by the local districts.

And I'll take my answer in the seat.

CHAIRPERSON NICHOLS: Thank you. Do you want to add a comment at this point about how the system actually works?

AIR RESOURCES ENGINEER GORMLEY: Sure. I'll expand on that a little bit.

We are proposing to move both engines and water well drilling into the off-road regulation, which means their emission control requirements for those two engines are going to come from off-road reg. They're not going to come from the on-highway truck rule or the portable ATCM any longer.

However, the deck engine still meets the definition of portable. So, therefore, the districts then can still require permit for it. And so to satisfy that permit requirement, they still have the option to come into PERP if they want to or permit with the district. But the emission control requirements will be set by the off-road regulation.

CHAIRPERSON NICHOLS: Thanks.

MR. FULTON: Are you saying we'll have the choice of whether to be in the state or with the local?

AIR RESOURCES ENGINEER GORMLEY: For the permit,
yes.

BOARD MEMBER BERG: And that means you do have to register with a PERP in order to be with the state.

MR. FULTON: Yes, ma'am.

On those two rigs, I'm currently registered with my district, because frankly I missed the deadline. I woke up in 2006 on those two rigs, and I was able to permit with the district, but not with the state. I'd like to be able to permit with the state. Under the new rule, would I be able to do that?

BOARD MEMBER BERG: Staff?

AIR RESOURCES ENGINEER GORMLEY: Yes. Once these amendments become effective, he can apply to register the deck engine with the PERP. And both engines will be registered into DOORS.

BOARD MEMBER BERG: Thank you very much.

CHAIRPERSON NICHOLS: That was interesting and useful clarification.

Michael Lewis.

MR. LEWIS: Good morning, Madam Chairman and members of the Board.

I'm Mike Lewis, Senior Vice President of the Construction Industry Air Quality Coalition. And we are the organization that sponsored the legislation that created the PERP program. You can either thank us or
curse us.

But we foresaw the problem that was pending at the time with local districts with a myriad of rules and requirements and fees and reporting for equipment that was moving around the state in a fashion where a piece of equipment could be in three different districts in three different weeks.

The program has been very successful in minimizing fees and providing an understandable and uniform set of rules for portable equipment in California.

I would like to ask that you consider option two in your staff report which would grant relief to all companies with portable engines, not just small companies. Every company in California, every construction company certainly, is suffering equally in this economy. And most of the equipment in this program is employed in construction-related activities.

And most of you know by now that unemployment and therefore emission reductions in construction industry is pushing about 40 percent and growing still.

Emissions from this equipment is down considerably. And I think granting relief across the board is the appropriate way to deal with the issue that you're trying to accommodate by granting some relief for these Tier 0 engines.
I'd also like to ask that you take a second look at the monthly reporting requirements for the rental companies. The purpose of that report is to get at equipment that stays in one place for 12 months or longer. Having a company that has hundreds of pieces of equipment out on rental, and they have to try to track it, especially some of this equipment is second and third hand rental, is almost impossible. If what you want is the equipment that's going to stay in one place for 12 months or longer, you can eliminate about 85 percent of the reporting by just focusing on contracts that are 12 months long or contracts that get extended to 12 months or longer and then you know where that equipment is.

Finally, I'd like to ask, since you're going to be extending this deadline and you have recently provided some relief on the off-road rule and you're going to be providing some on the on-road rule, and I wouldn't be surprised if we're back here in 12 months doing this again, that you look at the cumulative effect of these rules on the industry.

As we've said before, companies are struggling to comply with just one rule, let alone three. Most construction companies have all three kinds of equipment: Off-road, on-road, and portable. The deadlines for compliance match almost identically for all of them. And
it makes it very difficult for a contractor to decide what
am I going to do when he has to deal with all three pieces
of equipment, rather than some emissions bubble which
might be a more effective way for them to do it by
aggregating their emissions and achieving some percentage
reduction across the board, but let them decide how
they're going to do it with what changes and modifications
to their fleet.

Thank you.

CHAIRPERSON NICHOLS: Thank you, Mr. Lewis.

That's an intriguing idea. I said you were the
last witness, but that was not true. I received two
additional cards. This is the end, however. We're not
going to take any more witnesses on this. So I've got
Fitts Weiss and Scott Watson; one in support, one oppose.

You're Mr. Watson?

MR. WATSON: Yes, I'm Mr. Watson.

I'm here today as simply an individual. I have
been on opposing sides of different regulations, primarily
with the ATCM regulation with formaldehyde and composite
wood products. And I'm here to ask the Board to help us,
the public, police this process. Because currently in the
Scientific Review Panel, it's my understanding that there
are six members of the Scientific Review Panel that are
not properly seated. And I think that it would be
important for us to follow those rules. There are nine
members. There are exhaustive rules on how these people
are appointed.

And the problem that I have is that there are
supposed to be three nominees for each of the nine
positions. And these are your own rules. I can go
through the code if you wanted me to, but I think it's
going to be a long and boring --

CHAIRPERSON NICHOLS: Actually, Mr. Watson your
comments are appropriate, but not on this item. They are
not relevant to the item that we're considering here.

But for your information, we have requested
nominees from the University of California. I'm familiar
with the regulatory system here. And I just received a
letter from the President of the University of California
quite recently. And I think the process is, in fact,
underway that you're hoping for. But we can communicate
with you later on that.

MR. WATSON: Okay. And that's terrific.

I suppose I should just summarize by saying that
as a Board we have to live with the regulations that you
folks pass. We ask you to pass those with the rules that
are already provided. Otherwise, you're holding us to a
higher standard than we can hold you.

CHAIRPERSON NICHOLS: I appreciate your comment.
Thank you.

Mr. Weiss, I hope your comment is on the rule we're considering here.

MR. WEISS: On the proposed amendment, yes. It's in support with one -- basically in support of also including for the one-time compliance agreements that were signed with local air districts and I think the gentleman was referring to in terms of the fourth amnesty. We're not exactly sure, but when the decision was made -- I represent Berkeley Concrete Pumping. And basically similar to the water well rigs that are very extensive large pieces of equipment, when the one-time compliance agreements were made, no one really could foresee the economic crisis that was going to be occurring.

And that was one of the options that was given by the ARB and the air quality local districts. And then to now exempt those one-time compliance agreements from getting into the proposed extension we feel is an unfair singling out of what at the time was considered an equal option to joining the PERP program or getting permitted by these local air districts.

CHAIRPERSON NICHOLS: I think understand the point, but I'm not sure. Why do you feel you're being singled out?

MR. WEISS: We're not sure the -- we've been told
by our local air district that the one-time compliance
agreements will not be included in the extension.

CHAIRPERSON NICHOLS: Oh, I see.

MR. WEISS: And we're not sure exactly why that
is. Because it's not exactly a permit with the local air
districts.

CHAIRPERSON NICHOLS: I'm going to ask Mr.
Fletcher to respond.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: If I
understand, the issue that anybody that came into the
program as a result of the amnesty he's saying would not
be eligible for this extension, that is not our
interpretation. If they are registered in the program
right now through whatever means, they have to decide
what --

CHAIRPERSON NICHOLS: You're not going to single
them out because they came in through this other door,
if you are registered.

STATIONARY SOURCE DIVISION CHIEF FLETCHER:
Right. If you were registered.

MR. WEISS: They're called the compliance
agreements signed with local air districts.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: If
they're under an enforcement action, then it may be a
different situation and we'd have to evaluate it. We'd be
happy to talk to him after.

CHAIRPERSON NICHOLS: Why don't we have this conversation off line if you don't mine.

But as a general rule, if you're registered, you're registered. No matter how. Okay. Thanks.

That does conclude the list of witnesses on this item. I'd like to take it back to staff if you have any further comments at this point.

EXECUTIVE OFFICER GOLDSTENE: We're prepared to do that.

CHAIRPERSON NICHOLS: Okay.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: I just have a few comments that I'll walk through, some common themes that came up.

From the rental industry, the issue of the monthly provision. There are two requirements that apply to rental fleets. One of them is for equipment units and the other one is for engines. And they do have different requirements. And we've modified both of those provisions to essentially relax requirements in both cases.

I think the one issue that came up regarding the fact that they have to do this annual report for engines, even though we exempted other engines, the comment was made that both rental engines and the public utility engines are still subject to the annual report.
There is a case to be made that perhaps that is not necessary, and we did look at that in the context. The reason we didn't make the changes is that rental units are more complicated than typically other business. We did relax the requirement. The original requirement required rental companies to identify the location of every rental. We've struck that requirement and added the once-a-month again to reflect the fact that in some cases the rental industry is renting engines to people that keep them in the same place for long periods of time. So we thought once a month was not an undue burden to just check in periodically that says where is the engine and where is it located.

There was an issue about who is responsible for doing that, because the owners don't really know. And we believe in both for rental units and rental engines that the operators can be brought into being responsible for that as a condition of the contract itself. So they can simply require the operators to report that information to them, particularly for longer term rentals.

So the second issue or one of the issues that came up was on snow blowers. This is a new issue to us, but it certainly is consistent with what we have been doing with other two-engine type units.

The one caveat that we would want to make is to
ensure that it is cost prohibitive to make these changes.
We've done it for street sweepers. We've done it for cranes. We're proposing to do it for water well drilling rigs. There's no reason why we wouldn't extend the same benefit. And we can do that as a 15-day change to this regulation if we find that, in fact, there is a cost-prohibitive element to the replacement of the portable engine on snow machines.

CHAIRPERSON NICHOLS: Board members? Yes, Dr. Balmes, you had a question?

BOARD MEMBER BALMES: This is a question about the reporting data. I took it from the one witness that those data weren't actually even asked for from his company. I mean, I don't think we should be collecting data unless we're making use of it. So could you enlighten me about that?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: I agree. That's why we did drop the annual requirements for many of the certified engines.

We have focused in the last two or three years on bringing engines into the program. And so the districts have been spending a lot of resources and trying to find engines and get them into the program. If you recall, several years ago, we adopted amendments to the regs that set up an amnesty period with a back schedule of fees
associated with it to level that playing field. And over the last three years, we've brought in an average of 800 engines a year.

So I think we're now turning the attention to sort of the compliance with the people that have registered in the program. But I think a lot of the districts' efforts to date have been focused on that. But we are dropping some of that recordkeeping requirements. We have relaxed a lot of the requirements, and in recognition of that, we are not using it. But the reports we were not using. Even though we thought it might be a useful piece of information, we were getting very few of them and not using them.

So I think the question here is whether or not we drop that annual report requirement for rental companies and for the public utilities. That's really the decision that needs to be made here. But in general all of the reporting has been relaxed.

CHAIRPERSON NICHOLS: Ms. Berg.

BOARD MEMBER BERG: I'm not hearing from staff though how they're going to use that information. Is the information important to you? And if so, how for the rental and the utilities on the annual report?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: It's the check-in to ensure that the districts have some
information about where these engines are operating within their districts. That then provides them with a database that they can go out and can check locations. They know where to go. A lot of times we don't know where these engines are being used, so it's really difficult to track in and see. But if we get sort of common patterns on where things are operating, they're in a better position to go out and enforce on site than they would otherwise be.

CHAIRPERSON NICHOLS: Having watched this evolve a little bit, it seems to me the problem here is this is a rule that really was not being enforced at all for a long time. And we're gradually starting to clean it up and make it enforceable. But I guess the staff is trying to figure out what the best tool is to get the information.

BOARD MEMBER BERG: If we're getting back to the monthly reporting, if owners have a responsibility to report the equipment they own on a monthly basis, why would we not include they also would report whatever rental equipment they have? They're already submitting the report.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: It's just the way that the rule is structured that there are requirements for owners or operators of engines and then there's separate sections for owner or operator of rental
equipment. So because rental equipment operations are
different than other types of operations is the equipment
is going out; sometimes it's going out to third party
rentals. Then we felt there was a necessity to have a
little different reporting requirement than what's in
place for normally registered engines.

BOARD MEMBER BERG: Is it true that what we're
trying to get at is long-term placement?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: In
general, yes, that's true for rental equipment.

BOARD MEMBER BERG: Why aren't we having them
report their long-term equipment?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: What
we were concerned about is -- and we can do that. We can
drop that requirement and restructure it in that way.
What we were concerned about is that as sort of a
condition of good business, we thought a check-in
periodically would be useful to ensure that they had an
indication of where that equipment was operating and to
provide service to their customers that if they were
approaching the 12-month limit, they would lose their
ability to be in the portable equipment program and would
need to seek a permit from the district.

BOARD MEMBER BERG: We probably wouldn't need to
do the short-term. Like anything under six months, we
would know that that would not apply. So we could absolutely exempt some sort of time frame to lessen their reporting burden.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: We could work with the districts to restructure something along that line. I'd want to make sure that we got district input on this, because they're the ones that are doing the primary enforcement.

BOARD MEMBER BERG: I do think we do need to put in a 15-day change, however, that we need to come up with some mechanism that lowers the burden of the reporting for things that do not meet the goal.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Okay. We'd be happy to do that.

CHAIRPERSON NICHOLS: We can certainly add that to the list of things to put in the discussion when we get to the actual voting on the regulation.

I wanted to actually ask a slightly different question, which responds to Mike Lewis' comment. And this may not be the time to deal with that. But it is true that for the construction industry they are dealing with different pieces of equipment that are being regulated under different rules, all of which we're in the process of considering. And I find myself being quite attracted to the idea at least that -- and I realize this probably
only works for larger companies that a company which is
using a bunch of these different kinds of equipment could
take on the responsibility for managing the emissions
reduction across the whole company.

So it is a bubble concept, and we've used it
effectively in the past for stationary sources who never
tried to do it for mobile sources and obviously it's hard
to do. But in the case of the construction industry, they
might actually afford a unique opportunity to do something
like this.

I'd like to at least raise the question and see
if at least before we get to the next one of these
deadlines if the staff could take a look at the potential
for doing something like this. I really think it bears
further investigation.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: For
example, the portable engine rule does go into the fleet
average mode in the 2013 time frame --

CHAIRPERSON NICHOLS: But only for the portable
engines.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Only
for the portable engines.

CHAIRPERSON NICHOLS: So we don't allow people to
trade across different types of equipment. I don't know
how advantageous it would be for many people in the
construction industry. But if they wanted to try it to go
under a cap, it would seem like it could. And there's all
the usual questions about reporting and enforcement and
all of that. It would be worth looking at.

EXECUTIVE OFFICER GOLDSTENE: We'll look at it.

CHAIRPERSON NICHOLS: Thank you.

Other comments? Questions?

Supervisor Roberts.

BOARD MEMBER ROBERTS: I wanted to hear the
response to the other part, the exempting all of the
companies but the same rule --

CHAIRPERSON NICHOLS: The size issue.

BOARD MEMBER ROBERTS: They were saying who's
most able to pay. Most able to pay, means you still did
pretty bad.

And, you know, I don't think there's a
fundamental understanding of what's going on in the
construction industry. We're still putting heavy
requirements on and assuming that most able to pay means
they're in good shape. They're not. So I thought that
was a good recommendation. And I'd like to hear what
the implications are.

CHAIRPERSON NICHOLS: Emissions and other
implications, I guess.

STATIONARY SOURCE DIVISION CHIEF FLETHER: Well,
let me start with the issue of why we selected 25 or fewer

to begin with. And that was done basically because as we
were looking at the proposed amendments, we went through a
number of factors as to why we even decided this was
appropriate. And as we were going through it and when we
made the decision that some relief is appropriate, we then
looked at the companies that are in the program and what
they have in the way of engines. And we looked at what
percentage the Tier 0 were in each of those fleets.

And what we found was for engines -- for
companies that had 25 or fewer engines, 65 percent of
their engines were Tier 0. And as you went into larger
fleets, for example, if you went into let's say a medium
size fleet, it went down to 45 percent. And when you got
to larger fleets, it was 25 percent.

So we were then able to look at those 1200
companies that had at least one Tier 0 engine and break
that down in terms of what those companies typically were
doing and how they would be affected. And when we found
that 800 of those 1200 companies would be getting one year
relief completely, that all of their engines -- say, if
they were a tree trimming company, for example, they might
have five engines, all of those engines total would be
less than 500. So 800 out of the 1200 companies we felt
were completely -- we would get one year relief.
When we looked at the larger companies, you were looking at companies that had in some cases hundreds and hundreds of engines. So these were companies like Halliburton and other people in the oil industry that hasn't really seen necessarily that decline. So we felt that the resources were there to be able to replace those engines. And we believe, in fact, that many of those companies probably have already.

So of the 4400 engines that were in the database in 2009, we're providing relief for about 2,000 of those engines. And then the other 100 companies are owning the remainder of the 2400. So we didn't want to -- and if you look at the sort of the emissions impacts associated with that, you know, those 4400 engines represent about -- what did I say earlier -- about 40 percent of the total emissions from portable engines. And so by our actions, we're retaining most of those emission benefits without really affecting the overall emission reduction.

BOARD MEMBER ROBERTS: It sounds very simple, but you kind of jump from one extreme to sort of the biggest exempt one. I guess I'm wondering when I get up -- I don't know how many companies are falling just beyond the reach here.

And these sort of attempts at regulations through
financial management in a sense kind of bother me, because
we're making all sorts of assumptions and drawing the
lines. And I feel like we ought to have one rule, period.
And I would be in favor of extending it just in those
categories in the same way you did at one engine.

You're saying we're going to capture most of them
in what we're doing. But there are going to be some that
are going to fall just outside this boundary, not the
example that you used.

I think most of the ones that are very big, not
only is it not going to make a difference, it's probably
not going to matter whether there is a rule or not.
They're going to start to phase those out. I'm more
concerned about the guys that aren't quite in that
position. And I'm not sure that drawing the line at 25 or
fewer is appropriate.

BOARD MEMBER BERG: The other question I would
have, on the emissions estimate, is that based on
pre-recession or post-recession numbers?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: All
of the emission estimates are pre-recession numbers.

BOARD MEMBER BERG: So we could take the
reduction of business off of this. We wouldn't have 40
percent today because of the downturn in business?

STATIONARY SOURCE DIVISION CHIEF FLETCHER:
That's correct.

BOARD MEMBER BERG: Thank you.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: For some of the industries. For some of the industries, they haven't seen that sort of downturn.

BOARD MEMBER BERG: But we heard two compelling testimony today from large fleets who have spent a great deal of money to bring a large percentage of their fleet in compliance, and yet have also gone through layoffs and reductions in business. And they do have a portion of their equipment remaining. And they would be certainly appreciative also of some consideration.

CHAIRPERSON NICHOLS: I think everyone would appreciate the additional opportunity. I think the level playing field argument is one that sort of works well for me anyway.

Okay. Other Board comment or questions?

Dr. Telles.

BOARD MEMBER TELLES: I'm a little troubled by the cost estimates where CARB estimates 66 million and some of the speakers here say it's 200 million.

In front of me, I have a written comment, Comment 17, where it's estimated to be 290 million. Just kind of using simple arithmetic. And so it seems like this may be much more costly and more onerous to these industries than
what CARB is estimating.

CHAIRPERSON NICHOLS: Could I interrupt there?

Because that was the first commenter, Mr. Gaines, who really made some very strong statements, kind of off there from the perspective of the filter manufacturer. Without interrupting your basic issue about cost, he raised a whole bunch of challenges to this whole rule approach.

BOARD MEMBER TELLES: This is his letter.

CHAIRPERSON NICHOLS: We've got the letter. I'm just asking the question if the staff wanted to give a broader response when they responded to your point.

That's all.

BOARD MEMBER TELLES: Well, is his arithmetic wrong? Simple question if you read his letter. And if you wanted to look at this letter, it's page 3 halfway down. That's one concern.

The other concern is in this letter they addressed the fact that in certain counties, like Butte County, 43 percent of the engines are Tier 0. And they're wondering why you can't retrofit some of these Tier 0 engines at a much cheaper price, which would save this industry about $200 million according to their estimates. I wonder why that's not considered here if this letter is accurate.

EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOU:
Couple responses on that.

On the first thing with respect to the cost, we would estimate the cost to be at 175 per brake horsepower hour, if you go through basically that's looking at what information we received in the registration program and all that. So we think ours is a good number.

The other thing I think you need to take into consideration when looking at cost, the PERP regulation for those registered in it, we told them 13 years ago that you need to do this. These engines are at least 15 years old, these Tier 0 or older. So while they may cost some to replace, you would also assume, as you are a car, that they are deprecating over time.

BOARD MEMBER TELLES: Let me just comment that's the number they used to calculate this is $175.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Dr. Telles, I can answer the question.

The problem is simply with his math. And he did not have the same access to the information, nor did he ask us what information that we had, nor did he apparently read the staff report. Because the estimate that we have for the number of portable engines statewide is 4400.

But what he has done is taken the percentage of Tier 0 engines in Butte County and applied that percentage through the entire PERP database to get 18,000. So he's
overestimated the number of engines by over a factor of four. And that represents really the difference in where those numbers come from.

BOARD MEMBER TELLES: How about the concern about the retrofitting the Tier 0 engines?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: That is the issue that Dan was speaking to. And Dan is correct in that the retrofit of the Tier 0s is these are very old engines. They have very high loading. The vendors have really not looked at trying to address those issues explicitly because of the age of the engines.

As you move to the certified engines and you do as Mr. Gaines was talking about, which is looking at an integrated system where you can reduce the PM and the NOx simultaneously and incorporate a diesel filter as part of that overall system, then you can systematically reduce those emissions.

So to us, it seemed not a good idea to apply a $15,000 piece of equipment to an equipment that may have a value of two to $5,000 at this point. So you can do it, but it does not simply make a lot of mistakes.

And Dan may have some other things to add.

EMISSIONS ASSESSMENT BRANCH CHIEF DONOHUE: The other thing Mr. Gaines is talking about is portable irrigation pumps, and that is actually covered under the
stationary ag engine rule. Since the application is similar, we tried to lump together both stationary ag pumps and portable ag pumps, and they are under the same program.

We have not seen very many verifications at all for the Tier 0 engines for a couple reasons. One, they're very old. They're very high emitters. And the other thing is that we tend to see an awful lot of oil slip with respect to those. And that really has caused a significant challenge to those things. So there are opportunities to qualify those and to use those on stationary engines, but we have seen very few applications of that in the thing.

But the issues -- as far as bringing the ag engines in, how we establish the stationary portable engine program on that, there was a lot of work with the Nisei Farmers League and those things on what would be the best way to handle those. And that regulation is set up particularly along the line of looking at long-term replacement, particularly for the very old engines, as compared to the retrofit, because we just simply did not have many takers in that technology looking at those Tier 0 engines.

CHAIRPERSON NICHOLS: That would seem to make sense. Yeah. Thanks.
I'm going to close the record at this point since we have the staff comments and the testimony and the written comments in the record. We can close this record and begin the discussion about what we want to do with the proposed rule.

The understanding here then is that we would not be receiving any more written or oral comments on this item unless and until we deal with the 15-day comment period; is that correct? Yes. Okay.

This is now -- before we move into actual discussion on the rule, we need to make sure that we've disclosed any ex parte communications that we may have received on this.

I'll start off by saying I didn't receive any. Did anyone receive any?

Supervisor Yeager.

BOARD MEMBER YEAGER: I met with Bill Gaines of Transfer Flow and Glen Toney and Virginia Walker from the Jamison Group talking about this item, this regulation, as well as the next one as well.


We can move on to proposal on the regulation. Should we -- I think the best process is to make a motion and then add any amendments that people want to add to it.
Ms. Berg, did you want to move the resolution?

BOARD MEMBER BERG: I'll so move the resolution.

CHAIRPERSON NICHOLS: Do we have a second?

BOARD MEMBER BALMES: I'll second.

CHAIRPERSON NICHOLS: Okay. Now, let's think about any possible changes we'd like to see.

BOARD MEMBER BERG: Could staff just remind me what 15-day changes you're requesting?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes. We're proposing to add snow blowers, presuming they pass the test for technical feasibility and cost. We're also proposing to work with CAPCOA and the stakeholders to address the issue of how to issue a permit in the context of an enforcement action.

CHAIRPERSON NICHOLS: I'm glad you mentioned that you would work with the stakeholders as well. That's a good idea.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: And then those are the two that we had proposed. And then the open questions had to do with recordkeeping issues for the rental companies and then the issue associated with larger fleets.

BOARD MEMBER BERG: Just so I understand that the non-compliant Tier 0 engine issue would only come into play if there was an enforcement action?
STATIONARY SOURCE DIVISION CHIEF FLETCHER: Yes.

BOARD MEMBER BERG: Thank you.

CHAIRPERSON NICHOLS: Okay. Did you want to make any proposed changes then?

BOARD MEMBER BERG: I would like to add the proposed change for staff to work with the stakeholders regarding the rental equipment and looking at the fact that what we want is to capture data for long-term contracts and at what point that gathering that data makes sense and doesn't overburden the industry.

CHAIRPERSON NICHOLS: I think I can say that I see general head nodding in the direction of trying to further simplify this particular reporting requirement.

BOARD MEMBER BERG: I don't want to be prescriptive, because that isn't my goal.

CHAIRPERSON NICHOLS: Good. So I think that amendment should go in.

The last issue is really the one that was raised by Supervisor Roberts. And that is the question of do we want to try to extend this change to the entire industry as opposed to singling out for the benefit of the smaller companies.

And this is one of those great philosophical dilemmas. I don't think there is a right answer from a technical perspective or even an economic theory
perspective, although it would help to know more about
sort of how this industry works in detail probably,
whether the small companies really compete with the bigger
companies, and thereby would be getting an advantage that
would allow them to take business away versus just the
questions of generic fairness that always is a legitimate
issue.

But I think the staff has stated a good case for
focusing here on smaller businesses as opposed to the fact
that all businesses obviously are affected by the state of
the economy.

I don't know if there's any additional thoughts
or comments on this. I'm sorry.

BOARD MEMBER ROBERTS: I clearly support just
extending this across the board. I think the numbers --
while we're capturing most of the numbers, it's not going
to add a lot of numbers. But I think there are going to
be some businesses that are going to be impacted by this,
and I think the relief would make a big difference in
their operations. For that reason, I would like to extend
the same rule for all.

CHAIRPERSON NICHOLS: Yes, sorry. I was pointing
down to the far end there to the mayor.

BOARD MEMBER LOVERIDGE: Let me agree with the
position but ask what is the argument against the premise
and recommendation? What is staff arguing against?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well, part of the rational was to look at those that had the resources or that were the least likely to be able to comply. And so when we did the breakdown between the small, medium, and large, we felt that we were capturing most of those companies that were in the worst position to be able to comply with the regulation.

BOARD MEMBER LOVERIDGE: This didn't include the pain that everybody is now -- okay.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Right. And we thought the other thing is that in part because of the downturn in the economy that the larger companies had enough engines they would not have to run Tier 0 engines. If they didn't have a choice, they wouldn't run them. They would run more efficient ones anyway.

And we were looking at sort of the competitive advantage/disadvantage issue for those companies that had taken actions. We think that they're positioned to comply with the regulation now and all this would simply do would allow them to bring back in engines that shouldn't be running right now anyway.

EMISSIONS ASSESSMENT BRANCH CHIEF DONOHUE: The other point is the potential health impact and the
emissions associated with Tier 0 engines that have NOx emissions that are three to four times the cleaner engines and PM emissions more than five times.

CHAIRPERSON NICHOLS: So we're trying to strike a balance here between continuing progress on cleaning up the air and allowing for a recognition of the fact that there is particular hardships being experienced by this sector of the industry as a whole that are at least distinct from the whole industry. All right. I think we better -- sorry.

BOARD MEMBER TELLES: In that last comment, you mentioned that a company might run their Tier 0s instead of their Tier 1s. Is this any economic reason why they would do that?

If you look at the modern size businesses, you're talking about 45, 50 percent of those companies have Tier 0 engines. Why would they deferentially run Tier 0s instead of 1, 2, and 3s?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: They would only do it if it was a matter of convenience. A lot of the larger companies have engines scattered at over the state, whether they're supporting cell towers or whatever.

BOARD MEMBER TELLES: It's my understanding that the newer engines are not only less emissions but more fuel efficient. It seems like they would want to use
there Tier 1, 2, and 3, I mean, newer motors rather than
the older motors. And the argument is not too strong.
And I would kind of support the idea of the whole industry
wide.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: You
would think so, but I think it's a location convenience
issue. If they have a Tier 0 that's available and they
don't have to move a Tier 1 as far to get to a location,
then the economic benefit of running a Tier 1 over Tier 0
is lost.

CHAIRPERSON NICHOLS: It's an anecdotal
observation. I don't think there's any scientific data
one way or the other on this point. All right.
Well, I think we have a motion and a second for
an amendment to extend the rule to the industry as a
whole. And I think the best thing to do is to just call
for a vote on the amendment before we take up the main
motion, unless there's any reason not to do it.

CHIEF COUNSEL PETER: Just if we do either a roll
call or hand vote so both the clerk and the court reporter
knows exactly what the vote was.

CHAIRPERSON NICHOLS: I was going to ask for
actually a roll call vote on this item.
And -- I thought it was you. You didn't
formally, but I was assuming that you were seconding the
motion. Taking it for granted. Okay.

We're not on the main motion or the rule. We're just on the amendment that would extend the rule from small businesses to all businesses that are covered by this rule.

Okay. Clerk will please call the roll.

A yes vote means you want to extend the rule -- open up the benefits of the extension to all firms that are covered, as opposed to as the staff has made the case for why it should be limited to small businesses.

BOARD CLERK ANDREONI: Dr. Balmes?

BOARD MEMBER BALMES: Yes.

BOARD CLERK ANDREONI: Ms. Berg?

BOARD MEMBER BERG: Yes

BOARD CLERK ANDREONI: Ms. D'Adamo?

BOARD MEMBER D'ADAMO: No.

BOARD CLERK ANDREONI: Ms. Kennard?

Mayor Loveridge?

BOARD MEMBER LOVERIDGE: Aye.

BOARD CLERK ANDREONI: Supervisor Roberts?

BOARD MEMBER ROBERTS: Yes.

BOARD CLERK ANDREONI: Professor Sperling?

BOARD MEMBER SPERLING: Yes.

BOARD CLERK ANDREONI: Dr. Telles?

BOARD MEMBER TELLES: Yes.
BOARD CLERK ANDREONI: Supervisor Yeager?

BOARD MEMBER YEAGER: Yes.

BOARD CLERK ANDREONI: Chairman Nichols?

CHAIRPERSON NICHOLS: No.

BOARD CLERK ANDREONI: Yes vote wins. Motion passes seven to two without Kennard.

CHAIRPERSON NICHOLS: I think we can probably adopt the Resolution on a voice vote then. So all in favor please say aye.

(Aye)

CHAIRPERSON NICHOLS: Any opposed?

All right. Thank you.

(Thereupon a recess was taken.)

CHAIRPERSON NICHOLS: The other Board members who are not sitting with me are in the back room where we have a sound system available to them, in case anybody is wondering.

Coming up next on the agenda are staff's proposed amendments to the diesel emission control strategy verification procedure. Since diesel particulate matter was first identified as a toxic air contaminant back in 1998 and with subsequent approval of the Diesel Risk Reduction Plan in 2000, this Board has had as one of its primary goals the reduction of emissions of diesel particulate matter from the existing fleet.
Meeting these emissions reduction goals had not only required the Board to put in place emission standards for new diesel engines, but also numerous regulations specifically targeting emission reductions from existing diesel engines because these engines are so long lived and work so hard out there in our state.

To effectively support ARB's in-use diesel engine regulations, in 2002, the Board approved a procedure for verifying that diesel retrofits are effective and durable. The verification procedure lays out the requirements that retrofit manufacturers must follow if they wish to participate in the California market.

Since it was originally approved, the verification procedure has been subsequently amended by the Board several times to improve its effectiveness and strengthen the health benefits it provides. The procedure was last amended in January 2008. Since that time, the staff has identified a number of elements that could be improved or clarified in order to improve our ability to evaluate these retrofits while providing improved performance for the end users.

To address this issue, staff is going to be proposing several amendments. And Mr. Goldstene will begin the staff presentation.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
The verification procedure is used by staff to verify that diesel retrofits achieve real and durable reductions in emissions of particulate matter and oxides of nitrogen.

The verification procedure supports numerous in-use diesel emission control regulations by ensuring the performance of emission control technologies to be installed on in-use diesel engines. To date, staff has verified over 150 diesel retrofits, including subsequent extensions to existing verifications that can reduce emissions of diesel PM and, in some cases, provide NOx reductions as well.

Over the last two years, staff has worked with industry to identify a number of improvements to the procedure that will assist both manufacturers and end users. These proposed amendments are intended to further the objectives of the verification program while strengthening protections for system purchasers.

The proposed amendments will improve the process of matching retrofits with appropriate vehicles, strengthen ARB's ability to quickly and effectively address high warranty claim rates, and provide additional information to fleets on the maintenance of the retrofits.
manufacturers to demonstrate compliance with state
industrial safety requirements, provide better information
to staff regarding durability performance, and clarify
that a retrofit may only be sold if all the conditions of
the governing Executive Order and the procedures are met.

I'll now ask Paul Henderick of the Mobile Source
Control Division to provide the staff presentation. Paul.

(Thereupon an overhead presentation was
presented as follows.)

AIR POLLUTION SPECIALIST HENDERICK: Good
morning, Chairman Nichols and member of the Board.

Today, staff will propose a number of amendments
to the diesel retrofit verification procedure. These
amendments will improve the performance of diesel
retrofits in the field, provide better information to
staff during the verification process, and better support
the in-use diesel fleet rules.

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AIR POLLUTION SPECIALIST HENDERICK: First, I
will provide some background on the verification
procedure.

Next, I will discuss the proposed amendments,
followed by staff's assessment of economic and
environmental impacts.

My presentation will conclude with a
recommendation to the Board.

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AIR POLLUTION SPECIALIST HENDERICK: I will now provide background information on the procedure as well a status update on retrofits that are currently verified.

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AIR POLLUTION SPECIALIST HENDERICK: The verification procedure was approved by the Board in May of 2002 to support the Diesel Risk Reduction Plan and its associated fleet rules. It is critical to ensure that the diesel retrofits used by fleets to comply with these rules achieve real reductions in emissions of diesel PM and NOx. The verification procedure fills this need. It is used by staff to verify the performance of retrofits for a broad range of diesel engines, including heavy-duty on-road trucks, off-road vehicles and equipment, stationary engines, and marine vessels. In addition to performance, verification also ensures that retrofits are durable and gives end users substantial warrantee protection.

ARB verification is not the only verification program that evaluates diesel retrofits. Existing programs run by U.S. EPA and VERT in Switzerland perform similar functions, and ARB staff communicate regularly with staff in these other programs. While neither of these programs meets all of the needs of ARB's fleet
rules, they nevertheless have provided useful input and experience over the years.

I will now give a brief overview of the verification process to give you a better sense for how our program works.

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AIR POLLUTION SPECIALIST HENDERICK: If a retrofit manufacturer wishes to sell its product as a compliance option in California, it must first obtain verification from ARB. In order to do so, an applicant must submit a complete application, including an appropriate test plan. ARB staff then reviews this information and approves the test plan. The applicant is responsible for conducting all appropriate testing and submitting the test data. ARB reviews all information and issues an Executive Order if everything is complete and supports the verification.

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AIR POLLUTION SPECIALIST HENDERICK: Many diesel retrofits have gone through this process, and over 50 are currently verified for a variety of applications. On-road and off-road diesel engines each have over 20 systems verified. Ten systems are verified for stationary engines. And there is even one retrofit verified for marine vessels. Two-thirds of these retrofits are diesel
particulate filters that achieve a PM reduction of over 85 percent.

AIR POLLUTION SPECIALIST HENDERICK: I will now discuss staff's proposed amendments. Since the start of the program, staff has continued to gain valuable experience and stakeholder feedback that point out ways in which the program can be improved. Today's amendments reflect this input.

AIR POLLUTION SPECIALIST HENDERICK: To summarize, staff's proposed amendments will improve the matching of retrofits to vehicles, improve end-user protections, improve design and data requirement, and increase program flexibility.

AIR POLLUTION SPECIALIST HENDERICK: To provide background on the first of our proposed amendments, I will discuss the importance of properly matching a retrofit to a vehicle, which is a key factor in the retrofit's success.

Each retrofit has certain conditions as listed in the Executive Order, which must be met for it to function properly. A poor match may occur if these conditions are not met, resulting in a retrofit malfunction. A
malfunctioning retrofit may require additional maintenance and potentially impair operation of the engine and vehicle. Also, such a malfunction may not be covered by the warrantee. Thus, the cost of a vehicle retrofit mismatch is potentially high.

Currently, the verification procedure does not address how a given vehicle must be evaluated prior to installation of a retrofit. As a result, different manufacturers and installers employ different methods.

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AIR POLLUTION SPECIALIST HENDERICK: Given the ramifications of having a mismatched vehicle and retrofit combination and the fact that the verification procedure does not currently provide direction on how to assess a candidate vehicle, staff is proposing to amend the procedure to address this.

For retrofits with a temperature criterion, such as passive DPFs and SCR systems, staff proposes that every candidate engine must be assessed prior to retrofit. If the retrofit reduces PM alone, staff's proposal allows for an alternative approach which employs a representative sampling scheme to reduce the number of similar vehicles that need to be assessed.

Staff is also proposing that the installer must ensure that the engine is well maintained prior to
retrofit. In particular, the installer must determine if the engine is consuming excessive amounts of oil, which can adversely impact retrofit performance. Finally, engine assessment records must be maintained by the installer.

This proposed amendment underscores the importance of pre-installation assessment and will serve to reduce problems in the field by establishing minimum requirements.

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AIR POLLUTION SPECIALIST HENDERICK: Staff is also proposing several amendments that will strengthen end-user protections and provide better assurance for successful retrofits.

First, staff proposes that retrofit manufacturers be required to provide end users with sufficient maintenance information to enable them to properly maintain the retrofits themselves. This will give end users more choices when it comes to deciding how to fulfill their maintenance needs.

Staff is also proposing that when retrofit manufacturers perform durability testing on their devices, they demonstrate that they can fulfill all OSHA industrial safety requirements for off-road vehicles.

Lastly, staff is proposing several clarifications
regarding the scope and coverage of the procedure's warranty protections.

First, staff is proposing to clarify that all ARB verified retrofits must come with the same warranty protections, regardless of where they are sold. This will ensure that out-of-state fleets get the same warranty protections that California fleets receive.

Staff also proposes to clarify that the installation warrantee covers any swapped components, such as spare filter bodies that are used by fleets to reduce vehicle downtime when filters are removed for cleaning.

And, finally, staff is proposing to clarify the potential remedial actions available to ARB in the event a retrofit has excessive warrantee claims. These actions could include modifying, revoking, or suspending a verification.

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AIR POLLUTION SPECIALIST HENDERICK: To obtain better information on the performance of retrofit systems, staff is proposing several changes to retrofit design and data collection requirements in the procedure.

First, staff is proposing that retrofits with an exhaust temperature criterion must be able to measure and record in-use exhaust temperature and back pressure data as well as any error codes that occur. These additional
requirements will help to ensure that diagnostic data are available to help in troubleshooting retrofit performance and in the warrantee resolution process. Most retrofit manufacturers already voluntarily incorporate this functionality into their systems.

Staff also proposes to require that date, time, and engine speed data be collected during demonstrations and submitted as part of verification. Staff will use this information to form a more complete picture of how a retrofit performs when used in the field. This proposed change is a small additional burden to applicants but provides valuable information to ARB in its evaluation of their products.

The final amendments I will discuss serve to increase the flexibility of how retrofits are used in the field.

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AIR POLLUTION SPECIALIST HENDERICK: Currently, the procedure only allows component swapping within the same common ownership fleet. Said another way, a fleet may not share spare retrofit components with another fleet. Staff proposes to remove this restriction by allowing component swapping of identical retrofit components across different fleets under certain circumstances. This will give end-users more maintenance
options by allowing for the creation of a larger pool of
spare components, likely through a dealer network.

Second, the procedure currently provides no
guidance on how to repower a vehicle which has already
been retrofit. Staff proposes allowing such repowers,
provided the same basic conditions that applied to the
original retrofit are satisfied. This proposal thereby
defines a path for allowing the existing retrofit to stay
on the vehicle.

Staff notes that because of a manufacturer's
warranty and in-use compliance obligations, both of these
practices would require approval from ARB and the
manufacturer.

Finally, staff is proposing to extend a
compliance deadline in the procedure. The procedure
currently requires that all retrofits be designed such
that they can only be installed in one direction as of
January 1, 2010. Retrofits that do not meet this
requirement currently cannot be installed.

Due to lower sales than expected arising from
market instabilities, there is an existing inventory of
retrofits that do not comply with this requirement and so
cannot be sold or installed. Staff therefore proposes a
sell-through period to December 31st, 2010, for this
existing inventory.
Note that this date is a six-month extension from the original date of July 1, 2010, that was noticed in the staff report.

All remaining amendments in staff's proposal are minor clarifications that are described in the staff report.

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AIR POLLUTION SPECIALIST HENDERICK: In developing the proposed amendments, staff held a public workshop last June in El Monte to solicit input from all interested stakeholders. The workshop was well attended by representatives from the emissions control manufacturing industry, among others.

In addition to the workshop, staff also met with the association for this industry, MECA, and its individual member companies. Staff considered comments brought forth by MECA and individual companies alike and incorporated appropriate comments into the proposed amendments.

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AIR POLLUTION SPECIALIST HENDERICK: Since the initial release of the staff report, staff has identified a number of minor 15-day changes.

First, where the performance of a retrofit system will not be impacted, staff proposes to allow a retrofit
manufacturer to request that a system component not have
to comply with the unidirectional design requirement.
This option does not extend to diesel particulate filters.

As previously noted, staff is also proposing to
extend the deadline to sell non-unidirectional retrofits
by six months to December 31st of this year.

Another 15-day change proposed by staff is to
clarify that only routine maintenance information must be
provided to end users. This clarification is based on
comments from retrofit manufacturers and MECA.

Finally, staff does not want to potentially
expose end users to enforcement action if they fail to
keep records for oil consumption. Staff has modified the
proposed amendments to advise end-users to follow good
engine maintenance practices, which includes keeping oil
consumption records. The new language also reminds end
users that failure to keep the engine well maintained may
be grounds for denial of a warranty claim.

A copy of these proposed 15-day changes has been
provided to the Board and is also available on the table
outside the hearing room.

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AIR POLLUTION SPECIALIST HENDERICK: I will now
discuss the impacts of our proposal and then provide
staff's recommendation.
AIR POLLUTION SPECIALIST HENDERICK: Staff does not anticipate any significant impacts from the proposed amendments. There is, however, some potential for end-user cost savings and the creation of new services and businesses. These potential benefits may result from having fewer restrictions on the swapping of retrofit components, better assessment of vehicles prior to retrofit, an alternative to data logging each and every engine, and end-user access to comprehensive maintenance procedures.

AIR POLLUTION SPECIALIST HENDERICK: In conclusion, staff believes that the proposed amendments to the procedure will improve the verification program and enable it to better support the fleet rules. Therefore, staff recommends that this proposal be adopted along with the 15-day changes just described. This concludes my presentation. Thank you.

CHAIRPERSON NICHOLS: Thank you very much. Are there any questions before we go to public comment? If not, let's proceed to the public. We have three witnesses to sign up. If you want to speak and didn't sign up, please see the clerk and fill out a card.

We have in order number one Bill Gaines once
again and then Dr. Rasto Brezny from MECA and Tom Swenson from Cleaire.

MR. GAINES: Thank you, Madam Chairman.

Regarding the verification procedure, it was first written in 2000. Since that time, technology has increased substantially on DPFs, certainly on on-road. One of the issues that we see is in the current regulation is the use of method five testing. That's a test that has been a 15-year-old test, been used to measure particulate matter in industrial power stacks, and we believe that's not necessary anymore.

The cost of method five tests to perform that specific test is over $5,000. We've got two quotes from two labs, certified California labs, to determine that. The cost -- and we got the quote from one particular testing lab to obtain verification procedure was $250,00. We understand that number can go up as high as $1 million. If you notice in your own staff testimony, there are only ten stationary retrofit kits currently available. And there's good reason for that. There are a variety of stationary equipment in the marketplace today. And to spend a quarter of a million dollars up to a million dollars for verifying a system makes the cost of that system significantly more expensive.

Getting real world costs to replace a stationary
engine and DPF is $43,000. City of Chico has quotes on that, and you're welcome to take a look at that. That's a lot more than 175 per horsepower.

Regarding stationary engines, they are a low-use engine. They are used 300 to 400 hours a year. Diesel engines can last several thousand hours before they can be modified. And they are very simple to be modified by the way. If they are oil, you can change out the sleeves, et cetera.

In Butte County, which is where I've got my data, there are 13 different engines, 45 different horsepowers on just stationary equipment. If you do the math, that's a significant amount of different kinds of equipment that are out there.

We do believe you can develop these systems using current technology, for an example like a CMM machine. And we believe if you except the on-road testing data for DPFs, I think that should be acceptable, and in lieu of following the verification for getting your OE.

I applaud the fact they're looking at more data and that they have a diagnostic trouble code. That's exactly what we suggest. Thank you.

CHAIRPERSON NICHOLS: All right. Thank you very much.

Dr. Brezny.
DR. BREZNY: Thank you, Chairman Nichols and members of the Board. Thank you for the opportunity to speak today in support of this proposal.

I'm Rasto Brezny, the Deputy Director for the Manufacturers of Emission Controls Association. MECA is a nonprofit association made up of the leading manufacturers of emission control technologies for motor vehicles, including the majority of the verified PM and PM plus NOx technologies that are available today for in-use, on-road, and off-road vehicles and engines.

I want to start off by thanking ARB's verification staff for their hard work and diligence in putting together this proposal. I think it has a lot of very good improvements.

We've submitted our detailed written comments, and today I just want to highlight a few of our recommendations.

Again, I want to thank staff for including in the 15-day changes the routine maintenance requirements for cleaning these filters. We feel that there's certainly a role for third party and end users to do the maintenance and clean these filters. However, there are situations, for example, where the engine or the device is not maintained properly, in which case a cleaning will require a more in-depth diagnosis by a trained technician in order
to avoid damaging these devices.

Along these lines, request that language be added in the 15-day changes that outlines the responsibility of the cleaning service provider in the event that damage is incurred due to improper handling.

We also would support a filter cleaner registry similar to what's available today for registered installers on the ARB website for on-road and off-road retrofit devices.

In the pre-installation compatibility section of the proposal, installers are required to review specific documents such as oil consumption records and parts replacement records. And our members' experience has been in most cases that the oil consumption records in particular are not available, and that leaves the installer with no choice but to reject the candidate vehicle for retrofit.

We suggest these requirements be made flexible enough to leave the specific assessment strategy to the experience of the installer. So that if the oil records are available, they can use that, but they have other database and information that they have developed over the years to assess the proper operation of the engine.

We also requested some flexibility in in-use pre-installation assessment to allow experience across
fleets to be shared when doing the pre-installation assessment, because primarily in off-road fleets very rarely are there five of the same vehicle and model within a specific fleet. And this reduces the cost for the pre-installation assessment primarily for these fleets.

CHAIRPERSON NICHOLS: Thank you. Those sound like renewable suggestions that the staff would entertain during the 15-day process then. Thank you.

Okay. Mr. Swenson, and then we have one more witness also. Randal Friedman has signed up.

MR. SWENSON: Thank you. Tom Swenson, Cleaire Advanced Emission Controls.

We provided written comments. I wanted to just cover two.

Rasto did a wonderful summary on the maintenance, providing the maintenance practices. We have no issue with providing those maintenance practices. But consistent with the MECA comments, we would expect if somebody breaks it that they would be responsible for the cost and it wouldn't fall then back on our warranty.

The other is around the preinstallation. We're being required under this proposal to check oil consumption. In addition to that though is to be required to review the specific maintenance records on each engine to see if they were consistent with the manufacturer
requirements. That will be very burdensome, and we'll have to go to the fleets and get individual records for individual engines. And, frankly, it feels like we're becoming sort of the maintenance police if you will about whether or not they have maintained their engine properly. And we believe that they should deliver us an engine that is in good maintenance.

We have provided some basic checks that you can do and, in fact, we are doing now to know whether or not there are gross issues with the engines, such as visual smokes and oil residue in the pipe, those sorts of things. And we would encourage staff to review those and potentially adopt them.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Friedman.

MR. FRIEDMAN: Madam Chairman, Board members, Randal Friedman on behalf of the U.S. Navy.

As I'm sure you're aware from past appearances here at the department, the Navy is one of the larger users of biodiesel in the state. And, in fact, our new Secretary of the Navy has issued a solid challenge to significantly increase the use of biofuels. Along those lines, the Department of Defense is one of the leading funders of next generation research of biofuels from
cellulosic feedstocks to deal with non-food.

Where does this fit into this? We continue to have a longstanding concern that we will be able to use current biodiesel and future biofuels in our vehicles that have retrofits. We've had longstanding concerns about regulatory issues, warranty issues. I know this has been dealt with before, but I guess I'm seeking some continued assurance that this is still on your staff's radar and that as you consider amendments to your verification process that, in fact, those of us including cities, universities, and others that are using biodiesel in their fleets can continue to do future retrofits and not worry about consistency and warrantee issues and the like.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Goldstene is nodding his head vigorously that it's on his radar screen and it will continue to be on his radar screen; correct?

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF WHITE: Madam Chair, yes.

I would add we already have an existing program in place to allow biodiesel to be used with a number of different retrofits that are verified today. And we will continue to do so in the future.

CHAIRPERSON NICHOLS: All right. That's helpful
to know.

That concludes the public testimony. And so I believe we can close the record on this item. It would be reopened again when the 15-day notice is issued. And at that point, people can comment on what's in the 15-day notice. But this will close the record as far as this proceeding is concerned.

And I guess I should ask for ex partes at this point. Are there any ex partes on this item?

I believe Supervisor Yeager previously disclosed his meetings.

No others. Okay.

Than let's proceed to the discussion. So this issue about who bears the burden of making sure the engine is in decent shape before a retrofit is put on it is obviously an important question. And I wonder maybe, Eric, if you can respond to that.

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH CHIEF WHITE: Yes.

You know, certainly the goal here is to make sure that it's a good candidate, the engine is a good candidate to be retrofit. And one of the things we found as we've started to see more and more retrofits be introduced into the fleet is oil consumption can cause issues down the line if it's excessive. So we're looking for a way in
which to try to identify that up front.

And I think the commenters, both today as well as the comment letters, have provided some good suggestions of alternatives we can go back and look at. So we are committed to go back and during the 15-day process look at some of those and look to incorporate some of those as well into the regulation.

CHAIRPERSON NICHOLS: And in terms of the test procedure itself, again Mr. Gaines is looking for something simpler, cheaper, faster, I guess, understandably so.

I guess my view on that would be that the staff has certainly tried hard to fix the procedures so that they're in not a bottleneck towards getting this program done. But I think we as a Board have a long history of being very, very careful about creating a market for devices that will later on cause problems as well as potentially not do the job they were certified to do. So I think the balance really should be in favor of making it as rigorous as possible for the benefit of the consumer.

With that, I guess I'll ask for the motion on the resolution then.

BOARD MEMBER D'ADAMO: So moved.

CHAIRPERSON NICHOLS: Is there a second?

BOARD MEMBER BERG: Second.
CHAIRPERSON NICHOLS: Any further discussion on the part of the Board?

If not, will all in favor please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposed?

Very good. Thank you very much.

Our next item is a fairly lengthy one I believe and it's about noon time. So I'm going to declare it lunch break time, and we'll resume at 1:00. Thanks, everybody.

(Thereupon a lunch recess was taken at 11:48 a.m.)
CHAIRPERSON NICHOLS: All right, ladies and gentlemen, we are ready to resume our meeting.

This is the seventh in a series of semi-annual updates to the Board. And I think in the past the Board has heard much of the evidence that climate change poses risk to public health as well the economy and the environment. California's ability to cope with climate impacts depends in part on the pace and magnitude of the global climate changes, as well on the success of global mitigation efforts.

However, because we are already facing risks associated with climate variability and because further impacts are, we are now told, unavoidable, adaptation is also needed to compliment mitigation.

For this presentation, we invited Tony Brunello to share an overview of the 2009 California Climate Adaptation Strategy with us.

Mr. Brunello serves as the Deputy Secretary for Climate Change and Energy for the California Natural Resources Agency, formerly known as the Resources Agency. And the Natural Resources Agency has taken the lead in developing the 2009 California Climate Adaptation Strategy discussion report working with the Climate Action Team, of
which ARB is also a member. The Climate Action Team is
the administration-wide program that was created by the
Governor and which is chaired by our Cal/EPA Secretary
Linda Adams.

Mr. Goldstene, would you please introduce this
item?

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
Nichols.

Today's Climate Change Adaptation presentation
discusses statewide efforts to respond to the actual and
expected impacts of climate change. The development of
California's first comprehensive climate change adaptation
strategy was directed by Governor Schwarzenegger in an
Executive Order and spearheaded by the State's Natural
Resources Agency.

Tony Brunello, as Mary just mentioned, leads all
climate change and energy activity at the California
Natural Resources Agency. Prior to his current position,
he worked extensively on climate and energy-related issues
developing greenhouse gas mitigation projects and
conducting analysis around the world for public and
private sector clients.

I'm very happy to introduce Mr. Brunello. Tony.

(Thereupon an overhead presentation was
presented as follows.)
Chairman Nichols and honorable Board members, I really appreciate the opportunity today to speak to you a little bit about the topic of climate adaptation. I'm not sure how much you have been familiar with it. I know that many of the reports you have frequently talk about the issue of climate impacts. And I've been on panels, et cetera, with a number of you. So again I really appreciate to talk a little bit more about this. I hope to keep my presentation as tight and precise as possible to answer any questions you guys might have.

A key thing about why I was excited to come today is to highlight the fact of how important you all and your staff are to the topic of climate adaptation. Whether you know it or not, most of the actions you're pushing and promoting are linked directly with climate adaptation. Reducing water use, promoting renewable energy, all of these things are climate adaptation strategies.

In a nutshell, what I'm going to talk about today is a little bit on some of the climate impacts. I think you guys have been flooded enough with that I'm sure with plenty of presentations. But just to give a context of where we got to where we are to talk a little bit about the process for developing strategies to adapt to those
impacts and then what we're doing next and where I think is the best place for ARB engaged.

Next slide.

DEPUTY SECRETARY BRUNELLO: One of the things that really helped drive the adaptation strategy from the beginning was the fact we are already seeing climate impacts. This is a graph you've probably seen frequently, but it's showing in San Francisco we've already seen seven inches of sea level rise there. We've seen an increase in temperatures in certain parts of the state, changes in precipitation, et cetera. But really the driver is to show in the past we've already seen climate impacts. What's more troubling is looking out to some of the projections that we're seeing in the future where sea level rise, just using one example, could be up to almost 55 inches by the end of the century. As you can see, that's probably about almost ten times what we've already seen. It's a similar issue -- next slide.

DEPUTY SECRETARY BRUNELLO: This is now looking out to projections for the future. This was put together by -- funded by the California PEER Program, also in cooperation with some of your researchers here at ARB. But the PEER Program has been funding analyses over the
last ten years on climate change research. And what they've been able to do is to fund a number of universities across the state who have taken a lot of the global climate impact models and downscaled it to California. Probably just five years ago, if we had looked at a map of California and how projections were these climate models, essentially California would have looked like four big boxes. And they try to predict how the climate would shift in those boxes.

Today, I can say some of the models have we actually downscaled to about a seven-by-seven square kilometer radius, and I think we have some of the best information anywhere in the world of climate impacts to a specific geographic location.

So what this is showing here is that you can see historical temperatures. And in the middle graph, they've given us a range. But it basically says the projected increase is around two to five degrees in the next 40 years. And then about four to nine degree change in temperature on the average over the next century.

So temperature is what most of the science and the scientists can agree on that it will increase. There will be a range. But most of the adaptation measures that we've developed have been based on these scenarios that we've driven. And the temperature is the one that we
DEPUTY SECRETARY BRUNELLO: This is also just to show one that has been very close to the administration's minds and all of our minds as a lot of these projections as we've projected on to actual impact shows that over the next 50 years we could have about 40 percent less snow pack and over the next century about almost 20 percent remaining, losing 80 percent of our snow pack. Obviously, as we look at a major restructuring of our water supply system, the Governor has been very involved in that as the Legislature and many of you I'm sure as well your counties.

But this is something that was very much a driver in looking at how we need to restructure our water supply system. So as we look at these impacts, there's been a lot of work on adaptation measures over the last decade. But really what happened in looking at the water supply system was that we realized there were three or four different scenarios that were moving and looking at the topic of sea level rise. And really that's a global number. So we realized that we had to try to coordinate among state agencies to ensure they were using similar numbers, because some were using much higher numbers than
others. So we wanted to try to make sure if we were going
to have a policy on adapting, that we're using the same
numbers. And so we did an Executive Order with the
Governor in 2008 that directed the Resources Agency in
cooperation with multiple government agencies to look at
the science that we had right now.

Next, which I think is most important, is to
identify a portfolio of options on how to reduce the risk
from these climate change impacts.

And then finally, which is why this report has
caught much more attention, which I think most of the
states across the U.S. need to do much more of is to
actually move this to action so there are actual things
that we can guide State agencies to do.

And so what we worked on over the last year and a
half is we had seven different working groups -- and I
forgot all of them as I try to state them -- but basically
was forestry, agriculture, water, public health --
transportation, energy, and biodiversity, and habitat.

And I'm probably missing one.

Each of these were led by different State
agencies. The Air Resources Board was fundamental in
helping Department of Public Health in developing their
air quality recommendations. So what we did is we asked
each of the different working groups in working with the
Climate Action Team and Cal/EPA to go through that effort that we highlighted the science and figure out what were the options available and then to identify what specific strategies they would do. So what we came up with was a report that we released -- next slide.

DEPUTY SECRETARY BRUNELLO: Governor Schwarzenegger was able to release the report, and we released the final report after we had significant public comment. We had over 80 different inputs to the final report, the draft that we had out. We also had multiple public meetings within the working groups and for the overall report that we released.

But December 2nd, we did release our final report in San Francisco. We also had the 23 members of the newly announced Climate Adaptation Advisory Board, which Board Member Dan Sperling sits on. We had Eric Schmidt, who's the person in the orange tie, from Google. I'll get to the point why it was very important to have both of those figures there for this announcement.

I'm not sure if anything was provided to you, but it's like the Scoping Plan. It's a difficult read. And we have multiple strategies within that. And overall I think there were probably about 60 or 70 that came out of all the different working groups.
And then what we did though is we highlighted 12 in our executive summary, which I briefly want to go through. I think you can read the report, but it will give you a flavor for the types of recommendations we pulled out and I wanted to relate specifically to the Air Resources Board.

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DEPUTY SECRETARY BRUNELLO: So the first, which I think is fundamental, is to get more people to be talking about this just beyond state government. We did focus on state government. What was established was a Climate Adaptation Advisory Board from representatives from NGOs, private business, government, and a very wide group that even includes former Governor Pete Wilson and a number of other luminaries. What we're asking that group is to really build upon our strategies and come up with a report this summer that will step outside the box and see what else needs to be done.

Another fundamental issue, which is really important in all the work that all of you do, is land use. That was the biggest thing coming out of this is we need to think differently about how we plan and how we develop. So one of the issues that came up within CEQA that a lot of the recommendations and comment letters that we had really wanted us to re-write our CEQA laws to move around
climate adaptation. We thought it was still a little early to have anything too in-depth, but what we did identify was within CEQA you're already required to look at impacts from the natural environment project. It's typically thought of in terms of earthquakes. But our lawyers also determined it's also directly relevant for floods from sea level rise and other impacts. That's something that came out new.

On the six recommendations here, another key one is really important for a lot of the public health work that you do, that one of the things that we're going to be developing is working with our California Emergency Management Agency to try and look much more in depth at the local hazard mitigation plans, a lot of the plans the counties are already required to develop, so we can help them identify where some of the climate impacts are in their communities and try to help develop different tools to do that.

In particular, there's been a lot of concern about the most vulnerable communities. Hunters Point is the one always brought up, again sea level rise is the one most people have latched onto. But that area is one of the first that could go under, and there's been predictions of numerous people that could lose their homes in low-income communities.
DEPUTY SECRETARY BRUNELLO: On this slide, I wanted to highlight again we're looking at the Department of Public Health and the Air Resources Board for as temperatures increase -- as Board Member Balmes, I know we've sat on working groups and can speak to this much better than I -- but that as temperatures increase in communities that we really see the diseases and things that will already be there will be that much worse. So we really need to work with those communities that we're already identifying as areas that will be in areas where the temperatures will go up much faster than other areas. And the last one I just wanted to hit on was the aspect on research. I think the work that the Air Resources Board has done on looking at climate impacts and looking at the research, specifically focusing on public health, is something that we really wanted to try to incorporate and link with as much as possible. I'm sitting next to Bart Croes there, and they've done an excellent job of coordinating with the Energy Commission and across State government to really make the research not only improve some of these adaptation strategies, but also in working to get it out to the public so they can actually change some of the planning they're doing right
Another key aspect is less about doing more research, more about getting information out to people on what these impacts are and letting them make their own decisions on looking at the science and incorporating that in their own planning processes. So that was a reason why -- next slide.

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DEPUTY SECRETARY BRUNELLO: This is a horrible graph, but this is on our website, the climatechange.ca.gov website. This linked with having Eric Schmidt at our announcement with Governor Schwarzenegger. What this was to release a beta version of what we call Cal Adapt. And this is a tool that we really hope that we can partner with ARB to utilize much more that uses the Google Earth platform. And what we've done is we've actually put the climate science that we have established -- and again this is a beta version that we'll be building and finalizing by the end of the year.

But what's important, as I mentioned before, the aspect when you try to look at the climate impact and climate science information, previously you would see four boxes and you would try to understand how that might impact your region.
What we've done is once we had the climate projections for the studies that I had mentioned, what we then did is worked with Google to then put it into their Google Earth platform so you can see each of the boxes. Right now, you can go and click on and find out more what the impacts are for what we projected to your region.

So somebody living in Tulare County, for example, they're developing their general plan and need to know more about information. They hear about this crazy topic of climate change adaptation and they know they have to look at some of the different measures for how to adapt general plans. So what they can do is go specifically onto this and realize quickly I don't have to worry about sea level rise, but they may want to worry about precipitation and others, and they may have their own science they want to use.

But what the goal is with Google is to allow anyone to go and link and find out specifically the information and the science for their region. If you click on these boxes, it goes down to another level that reaches a seven-by-seven square kilometer radius.

This is really an area that we need much more work on is the outreach side; making sure that people and individuals get their own information to make their own decisions. Because I know there is a lot of discussion
with what science to use. And instead of having us cram it down people's throats is to give them the opportunity to use this and see what they can do.

Next slide.

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DEPUTY SECRETARY BRUNELLO: So just to end, I just wanted to bring back some of the areas that I really hope that you in your powerful positions at the ARB can help us with.

And one that we're working on very closely with all of our climate action teams is to figure out what are the links with mitigation. And, for example, the renewable energy standard that you're developing is an excellent example, where right now we in Resources Agency and many folks across the state are figuring out where to site large renewable energy projects in many in your districts. And one area that we've known is an issue is mitigation, natural habitat mitigation.

Climate change and some of the temperature increases into these regions will significantly impact the range of different species. And that could impact and result in some of the large projects that are trying to be sited right now. So it's something that we really have to incorporate at this point in time.

Also in the 375, same thing. You can develop the
best community plan looking at how to reduce greenhouse
gas emissions. But if it's an area that we know might be
flooded in the next 20, 30, 40 years, it's something that
should be considered in those plans.

Second, I've already mentioned a little bit, but
there's so many resources here at the Air Resources Board
and so many invaluable tools that I really hope that there
is a way that we can try to link better since you're
focusing on adaptation with a lot of the mitigation
measures that you've been doing.

And third, the same thing, in looking at outreach
programs that you've been developing of how we can more
closely connect with all the great work that you've been
doing. I know we've been focused on the Google tool and
figuring out how we might use that more, but I do hope we
can find more ways to cooperate on that.

Thank you very much for the time and I look
forward to any questions.

CHAIRPERSON NICHOLS: Thank you for coming over
and for being such a good partner through the development
of this program. It's been a process that's taken place
over a period of almost a year. And the product that was
finally put forth is really a good one.

I've said to the point of being boring at CAT
team meetings that I believe that mitigation and
adaptation can't be neatly divided from each other and
that we need to focus on things that are actually part of
both. I mean, obviously there are some areas where we're
just looking to the future and planning for what the world
is going to be like under the range of likely scenarios
and then figuring out how to adapt to it.

But even there, the things we might do as
adaptation, if we are actually working on them now, also
become part of our mitigation strategies. And it's how we
talk about this and also how we actually do it, how we
incorporate it is obviously a tricky part.

I don't know if there's something new, different,
or better that we could be doing institutionally on this
front. But I tend to think that one thing that might help
us as at least a next step in terms of outreach would be
to develop some scenarios or some specific examples of
case studies of where climate thinking would potentially
have an impact in how we went about doing something in
California and a project to identify those things and then
to kind of look at what the range of options would be.

I'm sure there are people thinking about these
issues, you know, in other places, including the
universities. It's not something that's unique to state
government. But as government officials, we do have so
many opportunities on a day-to-day basis to affect how
things are going to be in the future that it seems like we should be able to come up with some better tools than we have right now.

And I think that finding a way to get beyond this mitigation versus adaptation dichotomy would help in that regard, because then it's just, you know, dealing with climate. It's just the fact that climate is out there and it's a problem and an issue that we're dealing with. And it's got to be one more of those strands we factor into our work. That's been the major thing that keeps coming back to me as I look at the presentation as I've had an opportunity to experience before.

I'm sure other members of the Board will have thoughts, starting with you, Dr. Sperling.

BOARD MEMBER SPERLING: One thought -- I'm part of that Adaptation Task Force. One of the ideas that's been discussed to illustrate what you're talking about is the use of the SB 375 entities, because they are dealing with land use issues in the different metropolitan areas, and it would be a very logical extension to also be talking about incorporating adaptation issues, whether it's where you put the airports or deal with the airports and roads and so on. So we don't want to -- SB 375 is enough of a challenge already. So I'm not proposing anything specific here. I don't know what the Task Force
will say. But it's just an illustration of what you're saying, Mary, that this is a way and a process to bring it together.

CHAIRPERSON NICHOLS: Good idea.

Any other thoughts at the moment?

If not, this actually segues very nicely into our next presentation. But before we get there, I think it would be good to hear from the one person who did sign up for comment on this report. I'm looking for Matt. There you go. Matt Vander Sluis from the Planning and Conservation League.

MR. VANDER SLUIS: Thanks so much for this opportunity.

I just wanted to thank Tony for doing such a great job on this report and for the Air Resources Board for being engaged in this issue. It's a critical one that affects a lot of the work that you all do, that we all do. Some of the ways specifically that comes to mind as we think about health impact assessment tool, as the Air Resources Board works on developing that, adaptation will be a critical component.

Again, as it was mentioned earlier, SB 375, are we going to make sure that this round of regional transportation plans do include climate impact information? And I'm worried that we won't in this
particular round. So this is an area where the Board and
the staff can be particularly engaged to make sure we do
get some great case studies around the state as we make
those transportation and land use decisions.

And then thinking about the issue that you
wrestle with in terms of air quality from wildfires, so in
2003, San Bernardino County, San Diego County, $2 billion
from the wildfires from those particular years. As we
look at wildfires increasing dramatically, it's an air
quality issue that the State has to grapple with. I
courage you to work on the integration of the two
issues.

And then particularly to make sure there is an
investment in dealing with adaptation issues. I think the
key area where we have that opportunity is to make sure
that as we put a price on greenhouse gas emissions,
allocate some portion of those revenues to wrestling with
these tough adaptation issues, particularly as they affect
natural resources and public health.

Thank you so much.

CHAIRPERSON NICHOLS: Thank you for that comment.

EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
I'd take a moment to thank Tony, not just for his work on
this but also for the work he's been doing on forestry
issues, land use, and the renewable portfolio standards.
He's ever present and sometimes we think he should just get an office over here.

CHAIRPERSON NICHOLS: Some of us have thought for a while we should just annex him, but we haven't figured out how to do that. Part of the territorial expansion of ARB.

We have one other public commenter that we just got the card, and that's Alex Jackson.

MR. JACKSON: Good afternoon. Thank you for accommodating my late request. I just had a few brief points.

Chairman Nichols, I just wanted to echo the point that you were making that really mitigation strategies almost are their own adaptation approach. And I think the more we can be investing now in greenhouse gas emissions reductions, obviously the less we're going to have to deal with adaptation.

Along those lines, I'd just have to recommend the Board later in the day when you talk about the cap and trade design and the use of allowance value and I think there's certainly some places that allowance value can be used to get at some of those investments, some of that preparedness that we can use to really lessen the later more costly adaptation approaches we're going to have to deal with.
That's it. Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

Are there any other members of the audience who wanted to speak on this?

All right. We will move along.

Thank you very much for coming over and doing this with us.

We will now hear from the Climate Champions Program and get an update on the Board's activities in that arena. And coming to the floor are some of the Climate Champions, who I recognize from previous events, as well as one of their handlers or groupies -- or I'm not quite sure what to call them -- the people who are working with the Climate Champions Program from ARB.

Mr. Goldstene, do you have an introduction to this item?

EXECUTIVE OFFICER GOLDSTENE: I do. Thank you, Chairman Nichols.

The Climate Champions Program is part of ARB's growing portfolio of voluntary programs to reduce greenhouse gas emissions, which of course are a critical element of reaching our 2020 goals.

The staff presentation will put the Champions Program into the context of ARB's larger voluntary efforts, provide an update on the accomplishments and
status of the program, and lay out the staff's vision for
the future of the program, including plans for building a
national program based on the California model.

Annalisa Schilla from our Research Division will
make the staff presentation.

(Thereupon an overhead presentation was
presented as follows.)

AIR POLLUTION SPECIALIST SCHILLA: Thank you, Mr.
Goldstene.

Voluntary programs that engage Californians in
greenhouse gas reduction through personal action are
critical to reaching and exceeding the 2020 target defined
in AB 32.

The California Climate Champions Program is one
key component in this voluntary actions portfolio. This
program engages young people as leaders and educators who
demonstrate practical solutions for greenhouse gas
reduction and who help lay the foundation for the very
significant greenhouse gas reductions necessary for
climate stabilization.

I will bring the Board up to speed on the
program's accomplishments to date and staff's vision for
future direction of the program. Staff hope that the
Board will increasingly recognize and utilize the Climate
Champions as a resource as we seek to raise Californian's
awareness of climate change and to engage citizens in climate change solutions.

AIR POLLUTION SPECIALIST SCHILLA: The AB 32 Scoping Plan points out that setting California on track to a low-carbon future beyond 2020 will be a multi-generational challenge and California will not reach its greenhouse gas reduction goals without engaging our citizenry in this critical effort.

The Scoping Plan recognizes that meeting our greenhouse gas reduction goals requires a creative mix of measures including: Regulations, market mechanisms, and voluntary actions.

Within the broad realm of voluntary actions, ARB staff are developing programs and resources to promote greenhouse gas reduction in local governments, small businesses, households, schools, and also programs specifically targeting young people at school and beyond.

AIR POLLUTION SPECIALIST SCHILLA: Just how much greenhouse gas reduction can we expect to get from voluntary programs? Much more research is needed, but conservative estimates suggest that energy efficiency alone could reduce projected energy demand in 2020 by 20 percent and reduce greenhouse gas emissions by more than
26 million metric tons of carbon dioxide equivalent.

Of course, tapping into the greenhouse gas reduction potential of energy efficiency requires more than technology and regulation. It requires the active engagement of Californians in the vision of a low-carbon future.

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AIR POLLUTION SPECIALIST SCHILLA: Young people are critical to our low-carbon future. Youth have been a catalyst for change in several areas, including political campaigns and social movements, such as environmental protection and continues to be influential activists, voters, and spokespeople.

We also have a lot of other good reasons to engage young leaders in our efforts to reduce our collective carbon footprint now and in the future. For instance, research shows that young people who make small choices now to reduce energy consumption are more likely to make more significant low-carbon choices later.

Young people spread information quickly throughout large social networks. The average American teenager spends seven hours a day online or texting versus seven hours in class.

Youth are important influencers over the climate-related behaviors of their families and peers.
And young people's energy and climate change behaviors and attitudes can be strongly influenced by teachers and school programs, reinforcing the need for programs like the California Climate Champions to demonstrate practical climate change solutions in schools.

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AIR POLLUTION SPECIALIST SCHILLA: California has a number of efforts underway to engage young people in our vision for a low-carbon future. And the Climate Champions program is just one effort that seeks to cultivate young leaders. This compliments other programs, such as Cal/EPA's Education and the Environment Initiative, which will provide K through 12 environmental curricula, including some climate change units. The coolcalifornia.org schools toolkit provides resources to help school administrators, teachers, and students to save electricity and reduce their school's carbon footprint. And, of course, the State is actively engaged in efforts to promote green jobs education and training.

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AIR POLLUTION SPECIALIST SCHILLA: Before I go into more detail about the California Climate Champions Program, I would like to provide a little bit of history of the program and explain our partnership with the British Council.
In the 2006, the U.K.'s Environmental Agency, Defra at the time, launched a program called Climate Change Champions aiming to engage young people as Climate Change Ambassadors. Governor Schwarzenegger met some of these young champions on a trip to the U.K. in the summer of 2007, and the Governor agreed that California should have the same kind of program.

The U.K. program was so successful that the British Council, the U.K.'s cultural relations organization, took over for Defra at the end of 2007 and started spreading the Champions Program internationally, at which point the British Council approached ARB to become a partner. And California became the only non-country to have a Champions Program.

Partnership with the British Council has provided the California Champions access to a global network of over 2,000 young people in more than 60 countries all working on climate projects. The California Champions developed a strong appreciation for the international nature of the climate issue and have unparalleled opportunities because of this partnership, including participating in important international climate policy events, such as the COP15 in Copenhagen.

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AIR POLLUTION SPECIALIST SCHILLA: The Champions
projects and activities are all part of our program goal
to promote voluntary action to stabilize the climate by
inspiring students, engaging classrooms and schools, and
helping young people make the connections among personal
action, curriculum, and the school itself.

This program goal strives towards our larger
mission of fostering voluntary behavior change to reduce
greenhouse gas emissions in California and aims to build
the capacity of young people to tackle complex
interdisciplinary problems and to incorporate an acute
environmental awareness into whatever career path they
follow.

We have seen our 25 California Champions make
great strides in their projects. And moving forward, we
plan to expand the program to work more closely with other
ongoing state efforts, such as the Education and the
Environment Initiative, also known as EEI, and to engage
more students and teachers by creating a competition that
provides an incentive for teachers to link champions
climate curriculum with classroom-based projects.

We will continue selecting individual champions
to serve as Climate Change ambassadors and to engage with
the international network of champions through the British
Council.

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AIR POLLUTION SPECIALIST SCHILLA: To fulfill our program goal of linking personal action to curriculum in the school, we have laid out these program objectives. We aim to develop the leaders of the climate generation by training champions from project management, climate change policy, and media interaction to provide an opportunity for youth to be heard on climate issues.

We also strive to instill in youth the need for climate change initiatives by educating them on the science, policy, and solutions to climate change by promoting climate change education in schools through project-based learning that will compliment EEI's ongoing efforts.

And, finally, we intend this program to support local, national, and international climate change initiatives and policies as we continue to provide opportunities for youth leaders to attend high level events where they can provide a youth perspective in keeping with our tradition of sending students to Governor's Global Climate Summits, COP15, as well as air districts, state agencies, and other events.

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AIR POLLUTION SPECIALIST SCHILLA: In order to enable the Champions to be as successful as possible and to fulfill our program objectives, program activities are
designed to support and train these young people.

Champion projects are a central and required component of the program. And I will briefly share some of their work with you in a moment.

Champions are selected as high school students, but some begin college during their year-and-a-half in the program, so many start projects when they start college or bring their high school projects with them.

Champions receive training at an orientation day and at climate camp where they learn about climate change policy, visit climate science laboratories, and receive training on communication, media interaction, and project management.

The champions give climate change presentations and media interviews over the course of their year-and-a-half in office, and several report that introducing themselves as California Climate Champions lends legitimacy to their climate change work.

Champions have spoken at the Governor's Global Climate Summits and at air district and other State agency events and have been featured in a number of newspapers, such as the Contra Costa Times and the San Diego Union Tribune, as well as blogs such as KQUE's Climate Watch and TreeHugger. Champions also have their own blog at climatechamps.org and have a Twitter account and Facebook
In collaboration with the British Council, Champions have exciting international opportunities, such as the COP15 where two California Champions were among 200 British Council youth delegates, and participate in a variety of other high-profile policy and youth events as well as other international climate camps and workshops. Champions are also encouraged to form international project collaborations with champions in other counties.

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AIR POLLUTION SPECIALIST SCHILLA: Champion projects span a wide range of topics from scientific research into new energy technologies and fuels, designing hip clothing or writing plays to raise climate change awareness, regular columns or segment in local news media, promoting water conservation in arid parts of California, connecting school environmental clubs so we can have a bigger impact, and a whole host of projects designed to raise awareness of climate change in schools, including after-school programs, green events, demonstration projects, campaigns, and classroom education.

Two of our Champions, Soraya Okuda and Adam Raudonis, are here today to share their projects and program experience with you. I will yield the floor to them now and wrap up my presentation after their
presentations have concluded. Soraya?

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MS. OKUDA: Thank you, Annalisa. And thank you Board members.

Hello. My name is Soraya Okuda, and I'm from San Francisco.

At first, I geared my project toward composting in a local mall with the hope that people's consuming and waste habits would change over time. As my vision for the project had started implementation, my project as a Climate Champion took a different course. And it has evolved into an education and gardening project with kids.

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MS. OKUDA: After volunteering and tutoring children on my own time, I have realized that I can have a much greater impact on people's behavior by focusing my efforts on teaching children about conservation concepts. Much like the Climate Champions Program puts emphasis on teaching youth and actively encouraging us, I hope my project will instill the same concept of nurturing young kids as well as inspire them to conserve and take an active role.

Over the next few months, I hope to collaborate with a local school by creating lesson plans and educating children in various basic environmental and gardening
aspects.

Last Saturday, I volunteered at San Francisco's Garden for the Environment to get a better understanding of basic gardening as well as ideas for lesson plan.

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MS. OKUDA: With the help of the Climate Champions Program, I have begun to think more about conservation practices even when traveling. I recently went on vacation with my family to Buenos Aires, Argentina. And although I was sightseeing, I couldn't help but think about the various practices I observed. For example, the process of taking out trash was vastly different from those I've seen in San Francisco. As seen in this slide above, rather than having a trash collecting company dump bins into their truck, the trash bags of residents were placed out on the streets every night. And every night I saw people pushing carts, rummaging, and sorting through the trash to find recyclables to exchange for money. While the disparity in wealth was sad for me to see, I learned later on that the city of Buenos Aires had been hiring the knowledgeable cart pushers as part of the recycling and waste management initiative.

With this in mind, I felt hopeful seeing governments working with the local people in adapting
eco-conscious practices and providing proper compensation for their efforts.

While I had a main understanding of climate change prior to joining this program, there wasn't much that I felt I could do. But after being given the opportunities to visit the U.C. San Diego labs, meet with numerous experts in various fields, as well as the work they do every day, and get to know people my age who are working on climate change projects worldwide, the process for slowing climate change has become much more tangible to me.

The Climate Champions Program has not only provided the resources for youth like myself to start our projects, but has inspired us to create them, which as students otherwise might have seemed too daunting to pursue.

I feel incredibly fortunate and thankful to be a part of this Climate Champion Program, not only for the great support it has provided me, but to be among a group of bright students who are striving to make a difference and are a model for others.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. RAUDONIS: Thank you, Board members.

Hi. My name is Adam Raudonis. I'm a senior at
West Lake High School, and I was selected in 2008 as a California Climate Champion. What I thought would just be another opportunity for environmental community service ended up defining my high school experience. It has given me the tools to reach my full potential as a student and achieve what were only dreams just a few years back.

My Climate Champions project, Students for Solar Schools, started with the simple ambition to put solar panels on my high school, yet it has now grown into an international effort that unites students under a common, specific, and achievable goal.

For my high school, I have raised $5,900 in cash and obtained an estimated $45,000 in labor and material donations. If the local inspector permits the site, then we will install a 6.3 kilowatt DC photovoltaic solar array this semester, which will be the world's largest student-led and funded solar installation on a school.

Yet, one project will not impact climate change, but a movement might. What makes Students for Solar Schools unique is its online network of currently over 15 schools that are now sharing knowledge, resources, and making the task of installing solar on schools a whole light easier.

Through the website I created, studentsforsolarschools.org, I'm able to share success
stories, such as fellow California Climate Champion Jason Bade who, behind the scenes, since ninth grade lobbied his district to eventually invest $33 million in a solar and roof upgrade, or Pam Chang, the Oak Park Students for Solar Schools leader, who is now close to installing a 2.8 kilowatt array on her local elementary school's greenhouse. And the whole time, the California Climate Champions Program has been there to support the project by regularly checking in, connecting me with key people, and most importantly, allowing me to expand my audience.

I have had the opportunity to address the Governor's Global Climate Summit both years, attend the Copenhagen Climate Conference, and speak with some of the writers of AB 32. Being so close to the individuals who are actually making the key decisions when it comes to climate change makes me recognize that I can assume that role one day, too, which makes me conclude that what's most important is not the watts of solar installed today, but the leaders of tomorrow that are made.

The impact of the Climate Champions Program is exponential in that it grooms bold leaders who are networked, impassioned, and capable to meet the greatest environmental challenges any generation has ever faced. I do not know of a more solid investment than the very mechanism that inspires and enables future leaders to
tackle climate change. All I can hope is that every
student gets the same opportunity I'm grateful that the
California Climate Champions Program has given me.

CHAIRPERSON NICHOLS: Thank you very much.
(Applause)

AIR POLLUTION SPECIALIST SCHILLA: Moving forward
with the program, staff will continue to foster Champion
projects that focus on energy, transportation, waste, and
education and will strive to encourage youth, teachers,
and school administrators to replicate Champion's projects
in other schools and promote new projects that support
Scoping Plan measures and network projects internationally
with other British council Climate Champions projects.

In order to continue to multiply the impact of
this program, we are working with the British Council to
engage key partners in California, including other state
agencies, air districts, and various NGOs to create the
most effective curriculum and project-based program to
launch in schools this coming fall, which will compliment
the EEI initiative curriculum with projects and additional
incentives for classrooms to engage in climate change
learning.

We aim to increase the program's impact and
participation significantly in the coming years. We are
also working to create a program model that could be
easily replicated at the national level or in other states.

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AIR POLLUTION SPECIALIST SCHILLA: The California Climate Champions Programs brings a new dimension to California's consistent leadership on the issue of climate change and innovation to reduce greenhouse gas emissions. The current and future Champions are working to fulfill ARB's goal of engaging all Californians in our collective effort to reduce greenhouse gas emissions and protect our climate.

We agree with Mary Nichols, who has pointed out that, "We can't regulate our way out of climate change," underscoring the critical importance of a multifaceted approach to greenhouse gas reduction. In this complex effort, the reach of young people is critical to the fulfillment of ARB's mission. And it's critical that we be successful in fostering this emerging generation of climate conscious citizens. The more successful the Champions are, the better the prospects for all of our future.

We look forward to continuing and growing this program as part of the state's larger efforts to engage the emerging climate generation. We hope the Board will increasingly recognize and draw on the Climate Champions
as a resource and engaging Californians in climate change solutions and look forward to many future opportunities for young people to contribute to the climate change dialogue. Thank you.

CHAIRPERSON NICHOLS: Thank you very much for that presentation.

You did mention some of the other voluntary programs that are underway at the moment, but I think it's worth noting that this is in many ways a great program to talk about, because the Climate Champions themselves are very engaging. And generally speaking, people are enthusiastic about young people leading the way on big problems. And we're very grateful to them for having been willing to engage with us in this program as well. It certainly is mutually beneficial. But you might just talk about some of the other voluntary programs. I think you slid over that perhaps a little quickly.

AIR POLLUTION SPECIALIST SCHILLA: In terms of the other Champion projects?

CHAIRPERSON NICHOLS: Well, no. Really about the other programs that your group is working with.

AIR POLLUTION SPECIALIST SCHILLA: So we have our coolcalifornia.org web portal hosts toolkits for local governments, small businesses, households, schools, and young people. Includes tools and resources for all of
those different groups to reduce their greenhouse gas emissions voluntarily. So those are definitely several that we're involved in.

CHAIRPERSON NICHOLS: Okay. Go ahead.

RESEARCH DIVISION MANAGER MORA: So did you want to know about the case studies that we're trying -- the same with the Champions Programs is we're trying to show schools, local governments, and small businesses that greenhouse gas reductions are achievable on a voluntary basis. So we have a whole effort on coolcalifornia.org that show how to lead by the example and the others are doing their part for the climate.

CHAIRPERSON NICHOLS: I think it's just helpful to see that this is just one of a variety of different approaches we're taking. And obviously it's very small, because you can only work with a relatively small number of students at one time. But it's a good showcase for some of the other work as well. Thank you.

Questions? Comments?

Yes, Mayor Loveridge.

BOARD MEMBER LOVERIDGE: It really follows from your question of scale. What Soraya and Adam presented were really powerful and the multiplication of that I think is important. But how many Climate Champions do we have?
AIR POLLUTION SPECIALIST SCHILLA: We currently have 25 Champions. We treat them as Champions for life. So as we continue to select more, many of them remain engaged with the program beyond their minimum commitment.

BOARD MEMBER LOVERIDGE: Each year --

AIR POLLUTION SPECIALIST SCHILLA: We selected 15 in 2008 and 10 in 2009. And we have not selected any for 2010.

BOARD MEMBER LOVERIDGE: These are high school students?

AIR POLLUTION SPECIALIST SCHILLA: Correct. We selected 15 to 19-year-old students.

BOARD MEMBER LOVERIDGE: If I wanted to be a Climate Champion, assuming I was in high school, how would I do it?

AIR POLLUTION SPECIALIST SCHILLA: Our application basically is a simple proposal of what you would work on as a Climate Champion to reduce emissions and raise awareness of climate change and also requires some demonstration of basic understanding of climate change and the importance of tackling this problem. We select the best applicants that we get electronically and we interview them in person.

CHAIRPERSON NICHOLS: And the British Council as a partner has done I think most of the legwork in terms of
outreach to get people to apply. And they, I know, have
put up some funding for travel for the students and so on.

AIR POLLUTION SPECIALIST SCHILLA: All the
international travel is through the partnership with the
British Council.

BOARD MEMBER LOVERIDGE: Seems the number and
attention should be increased.

But could I ask Soraya and Adam, how did you
happen to hear about the program and apply?

MS. OKUDA: I heard about the program through my
high school environmental science teacher. She made a
brief announcement in class, and I thought it seemed like
an exciting opportunity, so I went for it.

MR. RAUDONIS: I heard about it from a friend
through a friend, who heard it from a teacher.

BOARD MEMBER LOVERIDGE: You know the science
project which really, I mean, sort of mobilize many
people. And it seems to me it would be helpful. This was
not simply a small number of Champions, but somehow we can
figure out how we can multiply the number.

AIR POLLUTION SPECIALIST SCHILLA: That's one of
our program goals moving forward is to really develop a
component of the program that incentivizes classrooms to
take on projects as a group so that more students can be
involved and the teachers are participating as well just
to really help spread the word and engage more students. And our hope is to continue selecting individual Champions who can participate in this international network and other opportunities but to really have this program touch and influence a lot more climate change learning through schools.

CHAIRPERSON NICHOLS: Any other comments?
If not, I think you got a round of applause, we'll give you another one.
(Applause)
CHAIRPERSON NICHOLS: Great work. Thank you.
Okay.

We are going to hear now from some of the ARB staff who have been valiantly wrestling with the issues related to creating a greenhouse Cap and Trade Program. Board members undoubtedly have been hearing a lot about this issue from your friends and neighbors in the press. And I think we all know that the very term has become kind of loaded in some ways. And hopefully Kevin Kennedy, who's the head of our Office of Climate Change, will be able to give us some context and update us on the work that's been going on at the staff level. This is kind of a preview of coming attractions in terms of what the Board is going to be dealing with this year.

Do you want to introduce this?
The purpose of this item is to brief the Board on the progress in developing a Cap and Trade Program consistent with your direction at the time you adopted the AB 32 Scoping Plan in December 2008. We want to keep the Board fully briefed as we continue to move this program towards reality.

Under AB 32, the Global Warming Solutions Act of 2006, California must reduce greenhouse gas emissions to 1990 levels by 2020. The Scoping Plan calls for a California Cap and Trade Program that links with other regional partner jurisdictions in the Western Climate Initiative to create a regional market system. A Cap and Trade Program is one of the key measures that California will employ to reduce the state's overall greenhouse gas emissions. As adopted in the Scoping Plan, the Cap and Trade Program would establish a cap covering about 85 percent of the state's greenhouse gas emissions. The program provides incentives for industry to seek the most cost-effective emissions reductions. The cap and trade regulation will set up the framework and requirements for participation in the program.

Today's overview is the first in a series of briefings we'll provide the Board over the course of this
year on different aspects of the program. At your February meeting, staff will present a brief overview of how offsets would work in a Cap and Trade Program. Offsets are emission reductions that entities in a Cap and Trade Program would be able to use to help meet the regulatory compliance obligations. At the March Board meeting, staff will present its report on the economic analysis update for the Scoping Plan, and the March meeting will also include a presentation by members of the Economic and Allocation Advisory Committee who will report their recommendations for allocating allowances and distributing allowance value from a Cap and Trade Program. They will also comment on the revised Scoping Plan economic analysis. We hope these presentations are helpful for your consideration as we move towards October and the regulations comes before you.

Ms. Lucille Van Ommering, the Manager of the Program Development Section and our Office of Climate Change, will now present today's item. Lucille.

(Thereupon an overhead presentation was presented as follows.)

PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Thank you, Mr. Goldstene. Good morning, Chairman Nichols and Board members.

Six months ago, staff briefed you on the Scoping
Plan's greenhouse gas cap and trade measure. Since then, we have made significant progress on developing a broad-based program that addresses the state's contribution to climate change.

This is the first in a series of updates to you on the cap and trade proposal that will culminate in a proposed regulation we'll ask you to consider in October. Today, I'll be updating you on staff's preliminary draft regulatory proposal, which includes staff's current thinking on the design elements of the regulation. I will also describe how program development is being supported through the advice and review of a Blue Ribbon Committee of outside experts, the Economic and Allocation Advisory Committee.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

The Scoping Plan you adopted in December 2008 called for the creation of a broad-based Cap and Trade Program that provides a fixed limit on GHG emissions in California. Its design is geared to drive innovation and use market forces to find least cost solutions to reducing greenhouse gas emissions.

The Scoping Plan also calls for the California Program to link with those of our partners in the Western Climate Initiative. The Western Climate Initiative, or
WCI, is comprised of seven western states and four Canadian provinces.

California has been actively engaged for the past two years with our WCI partners in establishing a regional program. The goal of a regional Cap and Trade Program is to collectively reduce greenhouse gas emissions. Similar to the California target, the regional program would cover sources that encompass about 90 percent of the region's emissions, and when fully implemented, would nearly double the reductions of a California-only program.

Our collaboration with the WCI has contributed to development of our thinking on the California cap and trade proposal. In turn, ARB's development of a draft rule is progress for all of WCI as the program moves forward. We expect a subset of WCI partners to start in 2010 as we ourselves are proposing. Others will join as they are ready.

The diverse views of the WCI partners are resulting in a program with broad appeal that we expect others will join. In fact, WCI is also in discussions with representatives of the Midwest Governor's Initiative and the Regional Greenhouse Gas Initiative in the northeast about possible linkage to create an even broader market.

California's Cap and Trade Program will be
designed to complement health-based air quality programs and environmental justice policies. As with all of ARB's regulations, staff will consider the effects of the program on the California economy and public health.

To assist ARB in developing a Cap and Trade Program, Cal/EPA Secretary Adams and Chairman Nichols created a 16-member panel of economic, financial, and policy experts to evaluate various cap and trade allocation strategies and to review staff's economic analysis update on the AB 32 Scoping Plan. The Economic and Allocation Advisory Committee, or EAAC, started work in May of last year by carefully considering various options for freely distributing or auctioning allowances, and if auctioned, for distributing auction revenues.

Their allocation recommendations were released earlier this month. You will hear more about those recommendations at your March meeting.

Broadly speaking, the Committee recognized the need to use the allocation system to address possible effects on the competitiveness of California's industries. It also recognized the need to help address the potential for increased pollution and to protect low-income communities from adverse economic effects.

The Committee also recommended that the bulk of allowances be auctioned with revenues being returned
directly to Californians and invested in ways that help meet the overall objectives of AB 32. EAAC has been working closely with staff on the economic analysis update of the Scoping Plan and plans on holding a workshop on ARB's economic analysis in February.

In March, EAAC will release an appendix to staff's economic report to the Board for further public discussion.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

This table, which is a simplified version of one in the Scoping Plan, shows that the Cap and Trade Program works in conjunction with many complementary policies that also achieve reductions from the cap sectors.

The Scoping Plan calls for measures to reduce emissions from sectors in the Cap and Trade Program by more than 245 million metric tons, 110 of those would come from complementary measures, and the remaining 35 would come from additional reductions from the Cap and Trade Program itself.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

The public has been an integral part of rule development since day one, and we will continue to consult with all affected stakeholders throughout the process.
In 2009 alone, staff held 21 public meetings and received hundreds of comments on program concepts and proposed design elements. ARB carefully considered both written and verbal comments as we developed our initial proposal, in which we sought to strike the right balance between environmental effectiveness and the need to avoid economic disruption as the program is implemented. Staff worked with WCI partner jurisdictions to coordinate our work with regional efforts.

Needless to say, the California Legislature has also shown a keen interest in ARB's climate change programs. Over the past year, Chairman Nichols and our Executive Officers have participated in seven legislative hearings on AB 32 and the cap and trade proposal.

In November 2009, staff released a preliminary draft regulation holding a workshop on the draft in December. This early look at the Cap and Trade Program reflects many of the comments received by stakeholders over the past year. It also reflects an emerging consensus by WCI partners over what key elements of the program should look like.

Since our December workshop and as of today, staff has received 127 comment letters. Additional comments continue to come in. We are also continuing to meet with several stakeholder groups on their comments.
The EAAC has also had an active schedule over the
last year holding nine open business meetings in which the
public comment was invited and considered.

The EAAC's report on allocation strategies was
released earlier this month. As I mentioned, they will
present their recommendations to you in March.

Also, EAAC Committee members are reviewing
staff's economic analysis update for the Scoping Plan and
will hold a workshop on their review next month prior to
staff's presentation to the Board in March.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Staff will encourage continued opportunities for public
involvement through the remainder of the rule development
process.

Throughout the course of this year, we will
continue to solicit public input on a variety of proposed
rule elements and technical analyses. This will include
discussions on how the cap would be set, how to minimize
the potential of emissions increases from unregulated
imports that compete with California covered sources, the
proposed allocation strategies under the cap, and likely
compliance strategies available to covered sources.

We also plan to hold public meetings on the
public health analysis and the economic analysis update to
discuss how these evaluations will be used in program
design.

Finally, we expect to hold workshops on revisions
to ARB's mandatory reporting requirements. These will be
needed to harmonize the existing requirements with the cap
and trade regulations.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

From now until October, staff will also be bringing
progress updates to the Board.

In February, we will provide an overview of the
creation issuance of and use of offsets in a cap and trade
program.

In March, the Board will hear from EAAC on their
recommendations for allocation distribution and the use of
auction revenues.

Also in March, staff will present an updated
economic analysis of the Scoping Plan.

In June, staff will brief the Board on setting
the emissions cap and proposed allowance allocation
strategies.

Finally, before you consider the rulemaking
package in October, we'll brief you again in September on
our rulemaking progress and stakeholder comments received
to date.
With each general update, staff will also keep you apprised on ongoing work to establish a regional Cap and Trade Program through the Western Climate Initiative.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Staff released our preliminary draft regulation, or PDR, in November 2009. This was nearly a full year before we'll ask you to consider a proposed rule in October of this year.

We did this to maximize the opportunity for public comment and to advance the public dialog on the proposed structure and content of a key Scoping Plan measure.

The PDR includes preliminary regulatory language, narrative text, and placeholders. Proposed regulatory language details the administrative process and regulatory structure of the program. Narrative text describes concepts for discussion for regulatory provisions that staff are still considering.

Placeholders are also inserted where language is still under development or awaits staff consideration of other work in progress, such as EAAC recommendations and the public health analysis.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
The next several slides provide a general overview of the Cap and Trade Program structure as reflected in the preliminary draft regulation.

Cap and trade is a regulatory mechanism that establishes a cap or upper limit on an amount of greenhouse gas emissions allowed to be released into the environment. The cap, which is also called an allowance cap or allowance budget, is the total number of California greenhouse gas allowances that ARB would issue over a given period of time. The cap would be divided into annual budgets, which specify the number of allowances ARB would allocate each year from 2012 through 2020 and beyond.

A covered source is an entity that would be regulated under the Cap and Trade Program, such as a cement plant or a distributor of natural gas. It is important to note that the cap applies to the total number of allowed greenhouse gas emissions that can be emitted in the aggregate by covered sources in any one compliance period. It is not a cap on individual emitting sources. Instead, covered entities would be required to hold sufficient allowances and offsets to cover their emissions for each compliance period.

Annual allowance budgets will be contained in the final proposed rule that is released for public review in
late September 2010 and will reflect the latest 2009 emissions reporting data. Our intent is to establish the cap in 2012 at our best estimate of what emissions would be that year, so that relatively few reductions would be needed in the early years of the program. We believe that this type of phase-in is an important element of avoiding unacceptable near term economic costs.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
The staff is proposing to include the following sectors in the Cap and Trade Program:

Large sources that are industrial sources that emit 25,000 metric tons of CO2 equivalent per year or greater;

Electricity delivered to the California grid including imported electricity;

Natural gas and propane distributors and providers and transportation fuels providers.

The November 2009 draft regulation leaves open whether to bring all sectors into the program in 2012 or stagger these sectors in over two compliance periods with transportation and other fuel providers phased in in 2015. CO2E or equivalent emissions include the six greenhouse gases identified in the Kyoto Protocol as well as nine nitrogen trifluoridine which is identified in
Senate Bill 104, which was sponsored by Senator Oropeza.

Nitrogen trifluridine is a greenhouse gas used in the semiconductor industry with a global warming potential many thousands of times that of CO2.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Allowances are finite tradable permits that ARB would establish at the beginning of the program. Each year, ARB would issue an aggregate number of allowances for a one-time right to emit these gasses. At defined periods, such as every year or every three years, ARB would require covered entities to turn in allowances equal to their greenhouse gas emissions. And sometimes you'll hear me talk about turn in. Other times, I'll use the term surrender. They're both the same.

Covered entities would also be permitted to use a limited number of high quality offset credits for a small part of this obligation, and we'll describe the concept of offsets shortly.

Under a regional Cap and Trade Program, such as the WCI, allowances issued by regional partners would also be tradable among all sources covered under the regional link, including covered entities in California.

While the WCI is the most likely opportunity for linking to other jurisdictions, California is also engaged
in preliminary discussions with northeastern states who
have an active regional cap and trade program in place
today, that's the Regional Greenhouse Gas Initiative, or
RGGI, or states in the midwest who are seriously
contemplating such a move through a Midwestern Regional
Greenhouse Gas Reduction Accord.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
This graph illustrates what the allowance cap would look
like if we were to phase covered sectors into the program.
This is illustrative only. However, as you can see, the
cap does not set an emissions limit over any specific
sources. Rather, it sets an overall cap on the number of
allowances or permits to emit.
ARB would decrease the total number of allowances
each year and, thus, lower the emissions cap. Covered
entities could either reduce their emissions or compete
for increasingly scarce allowances.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
How would allowances be distributed in the California
program? ARB could either freely distribute allowances to
covered entities or auction them.
The Scoping Plan calls for a minimum of 10
percent of the total allowances to be auctioned in the
first year of the program, in 2012, when the program starts and a minimum of 25 percent auction by 2020.

However, one of the EAAC's key recommendations is to primarily rely on auctions for allowance distribution. The EAAC also recommends that the program address leakage possibly by distributing a portion of allowances for free to some covered entities.

In the cap and trade context, emissions leakage is a shift of greenhouse gas emissions from capped sources to higher emitting sources not subject to one jurisdiction's climate policies. This can occur when climate policies in one jurisdiction result in companies relocating to other jurisdictions without a climate policy to take advantage of the economic benefits.

If public demand for the goods that are produced remains the same, global greenhouse gas emissions could actually increase while hurting the California economy.

Staff is considering the recommendations contained in the EAAC report to minimize leakage. We're also evaluating whether the EU's trading system and the Australian proposal's way of addressing leakage would be adaptable to a California model.

What are offsets?
An offset is a credit that represents a reduction, avoidance, or sequestration of carbon dioxide or other GHG emissions that result from an activity not covered by the cap and that can be measured, quantified, and verified. This credit can then be sold and used by a covered entity to meet a portion of its compliance obligation under the Cap and Trade Program. Ensuring the environmental integrity of offset credits is a major issue associated with including them in cap and trade.

To ensure to the public and covered entities that offset credits provide high environmental quality, the broader Cap and Trade Program would establish offset rules and quantification methodologies or protocols that projects must meet in order to qualify for a credit. These regulatory criteria and protocols must ensure that emissions reductions, avoidance, and greenhouse gas sequestration from such projects are real, additional, quantifiable, permanent, verifiable, and enforceable.

A few examples of activities that could potentially generate offsets include planting trees on land not previously forested or capturing and making use of methane from livestock operations.

This Board has approved protocols for voluntary offsets from such project types. While Board approved, these voluntary protocols may need to go through an
additional review before they meet criteria under the regulatory Cap and Trade Program.

Once the criteria are met, these credits could be used by covered entities to fulfill a portion of their compliance obligation in addition to the use of offsets.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

What role would offsets play in a Cap and Trade Program?

Offsets can help to reduce the compliance costs of cap and trade by offering an additional supply of compliance instruments that may cost less than allowances.

In addition to increasing the cost effectiveness of the program, a California offsets program can benefit Cap and Trade Program goals by stimulating emission reduction opportunities and technology innovation in sectors outside of the capped sectors. It can encourage early emission reduction activities, while providing a transition period for industry to develop and deploy low-carbon technology.

It can promote technology and knowledge transfer between developed and developing countries, such as helping to preserve rain forests in danger of deforestation. And it can provide environmental, social, and economic benefits, such as reduced air or water pollution, through improved land management practices and
1 wildlife habitat. Staff will brief the Board on offsets
2 in more detail in February.
3
4 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
5 Not only can a covered entity hold and surrender both
6 allowances and offsets for its own compliance, it can also
7 trade these two instruments to other entities in the
8 system.
9 Likewise, once linked to other programs, such as
10 in the WCI, allowances and offsets issued in the other
11 jurisdictions would also be interchangeable.
12
13 PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:
14 Under staff's current thinking, various entities could
15 participate in the purchase and trading of allowances
16 subject to limits on the amount any individual entity
17 could hold. Clearly, we expect the vast majority of
18 traders will be covered entities.
19 Offset providers could also supply credits
20 resulting from projects that ARB has approved for use in
21 the California program. We are also proposing to allow
22 even private individuals or groups not covered under the
23 cap to purchase allowances that could either be traded or
24 retired, provided they register with the cap and trade
25 tracking system.
In order to provide safeguards against market manipulation, staff is developing rule provisions that will limit the number of allowances that any individual or firm can hold, as well as trade data publication rules to maximize transparency of these trades to the public.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

For trades to occur, staff is proposing that all traders first register in the cap and trade tracking system. Persons trading on exchanges, such as the New York Mercantile Exchange, would also be required to register in ARB's system before they could hold allowances for trading. The regulations would also include rules to ensure transparency in the markets and help prevent market manipulation.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

So how would the integrity of the cap be maintained? Covered entities will be required to report and verify their emissions annually under ARB's mandatory reporting requirements.

ARB is also proposing to establish a registration and tracking system that would closely monitor trading activities and establish a chain of custody for allowances and offset credits that could be used in the program.
Under the registration and tracking system, ARB would open accounts for each market participants or other eligible registrants. Those accounts would include a holding account that would hold allowances and offsets until they are ready to be traded or used and a compliance account in which allowances and offsets would be surrendered for compliance or voluntarily retired without trading it to a covered entity for use.

A covered entity's surrounded allowances and offsets would than be compared to its reported emissions to verify compliance. A quantitative limit on the use of offset credits would also maintain the integrity of the cap. As discussed in the next slide, the draft regulation includes a limit on offsets set at four percent of a facility's emissions. This was proposed to ensure that a majority of reduction in the program come from covered sources.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Why limit the use of offsets?

Since staff's first public meeting on a cap and trade proposal, the most contentious issue for stakeholders was whether or not to limit the use of offsets. Those who favor no limits argue that offsets would reduce the cost of compliance to California
industries with savings passed along to California consumers. These commenters also argue that since climate change is a global problem, offsets would also result in more effective emission reductions, especially in the developing world where widespread reductions could be achieved at a much lower cost than in California.

Others argue against the use of any offsets. These stakeholders believe that offsets would allow covered entities to emit at their facilities. And, therefore, residents in already impacted communities would see fewer co-pollutant benefits. Also these stakeholders fear that most offset projects would occur outside California and deprive the state from potential co-benefits. Additionally, these stakeholders argue that complimentary measures do not go far enough in achieving greenhouse gas reductions and that more can be and should be done.

Staff considered both positions in the context of the Scoping Plan and concluded that a quantitative limit on the use of offsets would help to provide the balance needed between the need to achieve meaningful emission reductions from covered entities with the need to provide entities within capped sectors the opportunity for low cost reduction that offsets can provide.
ARB is proposing to apply a limit on offsets that is 49 percent of the emissions reductions expected from capped sectors from 2012 to 2020. Since each individual facility does not have a specific reduction goal under cap and trade, this quantitative use refers to the total reductions resulting for all uncovered sources between 2012 and 2020.

In the preliminary draft regulation, staff translated the limit from 49 percent of the aggregate emission reductions into something that could be applied to each covered entity in the program, an individual limited of four percent of a facility's emission.

We have heard that there is some confusion on this point, so let me be clear about this: We did not reduce the limit on offsets from 49 percent to 4 percent. Rather, we translated the policy goal of no more than 49 percent of reductions coming from the offsets in the aggregate to a proposal that no more than 4 percent of a covered entity's emission could be covered through the use of offsets. We can provide more information on how we calculated the limit on emissions if the Board is interested at the conclusion of this presentation.

In the draft regulation, we have proposed to apply this limit on offsets equally across compliance
periods. Because fewer reductions are required in the early years of the program, applying the limit uniformly over time allows room for limited emissions growth in the initial years of the program, providing additional flexibility for companies concerned about how to comply as the program starts in 2012.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

So what do all these parts mean for someone who would be covered under the cap?

Once in the Cap and Trade Program, a covered entity would need to do the following:

- Register with ARB to create accounts that could hold and surrender allowances and offsets;
- Report its emissions each year and have its emission verified by a third party;
- Acquire and surrender sufficient allowances and offsets equal to the amount of emissions over the span of the compliance period;
- Comply with recordkeeping, trading rules, verification, and other requirements in the regulation.

Even before the system is ready the launch, we will need to have enforcement mechanisms in place to ensure the program's integrity and to prevent market manipulation.
PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

The PDR contains a general description of enforcement provisions that are contained in the California Health and Safety Code which impose penalties. In the next regulatory draft to be released this spring, staff will provide more specific enforcement provisions that would remove any financial incentive for noncompliance. We will also include specific provisions that define what constitutes a violation.

Finally, enforcement provisions will include methods for calculating the number of violations.

PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

A robust enforcement program will play a vital role by helping to discourage gaming of the system and deter and punish fraudulent activities.

ARB staff has been consulting with legal and enforcement staffs from state and federal agencies to gain insights in this area. These agencies include the California Attorney General's Office, the California Energy Commission and the PUC, the Department of Water Resources, Cal/EPA, as well as with academics including U.C. Berkeley's Center for Law, Energy, and the Environment.
We've also held regular interagency meetings of legal and enforcement staff to discuss enforcement challenges relating to the market-based program such as cap and trade and coordination of state and federal enforcement efforts.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Now that I've described the basic structure of the staff's proposal, I want to talk a little bit about the work staff has underway to complete our regulatory development of cap and trade. Staff is carefully considering the comments that have been submitted on the preliminary draft rule. These comments covered every aspect of the proposed rule and rarely did we see consensus among stakeholders.

As I mentioned earlier, everyone had strong opinions on limiting the use of offset credits. Commenters also weighed in strongly on the portion of allowances that should be auctioned, with most environmental organizations favoring full auction, while several covered entities argued for a greater portion of allowances to be freely distributed to address emissions leakage.

The utilities strongly favored an approach that would allow them to redistribute allowance value to their rate payers. The electricity sector and environmental
organizations favored bringing all sectors into the program in 2012, while transportation and natural gas providers advocated delaying their participation in the program until 2015.

Some commenters questioned the rational for incorporating transportation fuels into the cap, arguing that adding the price for allowances on top of complementary policies would not result in additional reductions and would unnecessarily increase costs to trucking, goods movement, and agriculture.

Public health and environmental advocates emphasized the importance of addressing the potential co-pollutant impacts within the program design, while all stakeholders wanted to actively participate in a process of establishing the cap and ensuring that staff's methodology for setting the cap is transparent.

Environmental organizations want the cap set at 2012 emissions, while some covered entities felt that setting a strict cap at 2012 emissions might reflect recessionary levels and not allow room for a return to economic growth. So you can see, it really spans the whole spectrum and see some interesting collaborations depending upon what the issue happened to be.

In April, we'll be releasing a second draft that considers these comments and fills in most of the gaps
that exist in the current draft.

With regard to allowance distribution strategies, staff will be considering the EAAC recommendations and stakeholder input along with any direction or considerations you wish staff to take into account.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

Also underway are technical analyses that will inform our regulatory development up until we're ready to release the final draft rulemaking package for the 45-day public comment period in late summer. These analyses will include an economic and fiscal analysis of the Cap and Trade Program, a public health analysis, along with an evaluation for the potential for localized emission impacts and an environmental analysis.

We will continue to work with other State and federal agencies on developing a robust enforcement program as I described above.

Staff is also performing an analysis of the compliance path options for different industries to lower their greenhouse gas emissions and to work with them on different compliance options.

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PROGRAM DEVELOPMENT SECTION MANAGER VAN OMMERING:

As the world's eighth largest economy, California is at
the forefront of real and submitted climate action and
working with other states in the U.S. and abroad to create
partnerships to fight global warming.

2010 will be a busy year culminating in your
consideration of probably the single most important
measure of this decade. We'll be coming back to you
frequently so you can observe and direct us at several
critical points in the process.

As mentioned earlier, EAAC will be holding a
workshop next month on their evaluation of the staff's
economic analysis to the Scoping Plan that will also be
released next month. EAAC will also present their
recommendations to you in March on cap and trade
allocation strategies.

In spring of this year, staff will release a
second draft tap and trade regulation for public comment.
In September, we expect to release the final
proposed draft and take the proposal to you in October for
consideration and adoption.

Thank you. That concludes my presentation.

CHAIRPERSON NICHOLS: Thank you very much for a
concise overview of a very complicated topic. Take a
breath or a drink of water.

As you might have expected, this topic has
attracted a good number of commenters. And I see they
span the gamut of views on this topic, which is actually helpful I think in terms of the preliminary process of getting all of us up to speed on what's going on.

I just want to make a couple comments, because this is the first occasion I've had to meet with the Board since returning from Copenhagen. And I think it's important to set the context a little bit for what we're doing here.

First of all, if you can remember back to 2008 when we adopted the Scoping Plan, there was a considerable amount of controversy about whether we should include any Cap and Trade Program in it at all. And if so, how big it ought to be with generally speaking environmental interests in favor of no cap and trade or very limited cap and trade and businesses wanting it to cover much more of the emissions reductions that were needed.

At this point, I think it's fair to say things have shifted a little bit. If anything, there's more comfort level on the part of the environmental community with the concept that if you're going to find a way to send a message through prices that carbon is something we need to be budgeting very carefully that a cap and trade system could work with caveats about offsets and so forth. And businesses expressing a lot more concerns about whether this program could work, whether it's too
complicated, too difficult, et cetera. So there's some evolution clearly going on.

I think I can't overemphasize the amount of interest that there is around the world in what California is doing as well as the interest on the part of some countries and certainly other states in participating with us, not just with the Western Climate Initiative, but the European Union, which has its own Cap and Trade Program and after 2012 will be interested in linking up with other entities that are involved in similar kinds of programs as well as the eastern states.

So it's with the recognition that an international treaty done through the U.N. is probably not going to be the way forward, at least for the next few years, towards tackling this problem, at the same time, there's much greater recognition I thought from around the world that this is a problem we have to tackle. But people are struggling to find what the best and most effective method is going to be.

We have been asked many times whether California would launch a program that was only for the state of California and do this all by ourselves. And I think I have been careful in saying that we believe that the bulk of the emissions reductions that California will take responsibility for our share are going to come from
the specific measures that were in the plan, things like
the Pavley emissions limits on vehicles or the low-carbon
fuel standard. But that the Cap and Trade Program was
something that we would want to see done at a minimum with
other partners before we actually began handing out
allowances and enforcing limits and so forth. We'll hear
more I'm sure from staff as we go along about progress in
that endeavor.

But I think it just is worth remembering that the
reason why we started down this path in the first place
was that there is a very widespread belief that you can't
get to the myriad of different sources and the ways in
which carbon is so imbedded in everything we do in our
economy, unless you could find some method for allowing
those who get to make decisions about whether to invest in
new technologies or invent new technologies to see there
would be a market out there. And that the way to make
that happen, to incentivize that kind of a market, would
be through a cap and trade system.

The major alternative that people put forward is
a tax system. And I think we all know that there's a lot
of issues about doing any kind of a carbon tax as well.
Maybe it begins to look more attractive to people when
they see the complexities of cap and trade. But on the
other hand, I think both politically and from a shear
efficiency perspective, we know taxes have problems, too.

So anyway, there is a lot of work going on here in California, not only on the part of our staff and volunteers like the wonderful people from the EAAC Committee who helped us with their report, but also all the stakeholders who are investing so much time and effort in this program.

And I think that even when we hear sometimes how contentious a lot of the details of the program design are, it's just worth remembering that it's hard because we're tackling something that's really hard. And we are doing it for the first time literally anywhere. But the thinking that we do is clearly having an influence on thinking elsewhere in the world as well, because as we saw with the Waxman Markey legislation, many of the details in that bill that has now passed the House of Representatives were based on what we doing here in California. And we get calls all the time from people in other jurisdictions and people in Congress and the administration to try to make sure that we're all in sync.

So it's a big responsibility this Board is going to be facing, and I think it's great we have an opportunity now to at least get somewhat of a taste of where the thinking is today.

If there are questions of the staff before we
hear from the witnesses, feel free.

Yes, first Ms. D'Adamo and then Dr. Telles.

BOARD MEMBER D'ADAMO: I'm going to jump in here, because I wish I could stay, but I have to leave right at 3:00. So I have to make a couple comments and I do have questions.

First of all, just a general comment on the need for us to rely on outside experts and have very thorough and robust review before we launch. And I'm pleased to see the report with the EAAC coming back. I've always been kind of confused about auction distribution for free and just where we ought to land. And it's very useful to be able to rely on a Committee of that stature. So I'm pleased with that.

And also looking forward to the economic analysis that I guess is due out in April. I'd like to see the Committee maybe do a little bit more and in the field of offsets. That's an area that I think a number of us commented on that we were a little uncomfortable with the 49 percent offset. I don't remember at what hearing it was, but several months back. And I was of the impression that staff was going to do a more thorough analysis of that, and now I see coming back it's still 49 percent. So I would feel much more comfortable if we could have a more thorough review of that offset.
I think it ought to be lower. I don't really know how much lower, and I'm not an expert. So it would be useful to have information from others.

I do note that I received some letters on this, and one of the environmental organizations did point out -- I was aware that there was a piece of legislation that the Governor vetoed providing a limit of offsets to ten percent that in the Governor's veto announcement indicated the EAAC Committee was going to be reviewing this. And so it sounds like there might be interest across the street for further review well.

The other thing that I wanted to just raise is the issue of protocols in relation to the offsets. When we have the forestry protocol before us, I was concerned about the allowances for some clearcutting and at that time it was made very clear that this was just -- these were just standards for voluntary measures and that we were free to adopt a higher standard, sort of a gold standard so to speak, with regard to offsets. And from what I can tell, it looks like we're not doing that.

So I don't know if there's going to be further analysis on this or not if staff's already committed, but we'd like to ask that question. And if you're not planning on doing further analysis and looking at a gold standard for the various sectors that we have these
protocols for, I would highly encourage it. Those are my comments.

CHAIRPERSON NICHOLS: Thank you. I think offsets is such an important issue that staff is planning a whole special briefing just on that topic. But maybe you'd like to respond now on an update on what you're working on.

EXECUTIVE OFFICER GOLDSTENE: First thing we'd like to give you an update on is what the EAAC is looking at in terms of the offset issue. Maybe Kevin or Steve.

PROGRAM EVALUATION BRANCH CHIEF KENNEDY: One of the key issues to understand about the use of offsets is what is the economic effect, because the argument in favor of using offsets is that it provides a lower cost and reduces the cost of the program overall. So that actually is one of the things that we're specifically looking at in the context of the economic analysis. Staff will be putting out a draft of the analysis next month. The Advisory Committee is actually helping us think through that analysis overall. So they are helping us take a look at that aspect of the program.

And as Mr. Goldstene indicated, we are intending to come back with a much more thorough discussion of the offset program piece of the Cap and Trade Program next month. We are having very serious discussions about the relationship of the voluntary protocols that have already
been adopted by this Board and whether those are good
enough and how do we structure the compliance offset
program so that we are sure that we are only allowing in
gold standards. So we'll have more opportunity to talk
about that next month.

CHAIRPERSON NICHOLS: Any other preliminary
comments? I think -- I'm sorry. Dr. Telles had his hand
up first and then Supervisor Yeager.

BOARD MEMBER TELLES: I was listening to Chairman
Nichols' comments about how important it is to have
partners. And the Western Climate Initiative is our
partners in this. And you mentioned that a certain subset
is prepared to go on board in 2012. And who are they and
how far along are they? And do they have a whole robust
cap and trade plan like this?

PROGRAM EVALUATION BRANCH CHIEF KENNEDY: We
actually had a meeting of the Western Climate Initiative
partners last week and where the partnership as a whole is
we're in the process of working on what we're calling
essential elements, which are similar to a model rule for
the overall Cap and Trade Program that the partners
collectively are working on to implement -- or to publish
by June. So there could be common understanding of what
the broader program would look like.

The different partners are at different stages in
terms of legal authority and sort of where they are in
terms of being able to get the pieces together in order to
start the program in 2012. I would say that the partners
that are furthest ahead and most likely to be able to
start right in 2012 would be California British Columbia,
Ontario, Quebec. But the other partners are participating
very much and are looking to start it as soon as possible.

BOARD MEMBER TELLES: I just have one follow-up
question. I understand that California's emissions per
capita, there's probably some of the lowest in the
country. It's somewhere around -- I don't remember the
numbers exactly, but somewhere around 12 to 10 tons per
capita versus the rest of the United States is somewhere
around 22 tons per capita. And in the Western Climate
Initiative, is that kind of disparity between California
and the other states?

Because the problem I'm having in dealing with
the cap and trade thing is if there's that much disparity,
it seems like the low-hanging fruit has been picked in
California. And all the offsets and allowances is going
to be purchased cheaper outside of California. That means
money from California leaving California going someplace
else versus the other way around.

Do we have anything allowance wise or offset wise
that would be something that one of our Western Climate
Initiative partners would be willing to buy because of the expense?

PROGRAM EVALUATION BRANCH CHIEF KENNEDY: I don't actually have any of those numbers offhand. I would have to go and take a look.

But I would agree in general terms California is much more energy efficient and generally our greenhouse gas emissions per capita do tend to be lower than a lot of other jurisdictions.

A lot of the idea of the Cap and Trade Program is to allow sources to be able to seek out the lowest cost emission reductions so you are able to get the environmental benefit, which is a global environmental benefit, at the least cost.

We are in the process -- one of the analyses we're looking at is taking a look at what real opportunities are in California for emission reductions with this the particular programs.

As Chairman Nichols mentioned earlier, a lot of the actual reductions we would expect to see from the covered sources are things that would be driven by things like the Pavley auto standards, energy efficiency programs and standards, the LCFS, and other complementary measures.

So we think there is a lot of opportunity for reductions happening in California. We think getting this program,
even if it's linked to WCI, will provide incentives for
people to invest in California in a way that will help
reduce their emissions either through developing new
technologies or becoming more efficient. So it is an
issue, but we do think this is still sending a signal in
the right direction.

CHAIRPERSON NICHOLS: And I think big picture
assessing whether this project is good for California or
not is kind of at the core of the overall economic
assessment that we're asking the Committee to do. If we
can't demonstrate to our satisfaction and that of the
Legislature and the public this is something that's
beneficial to us, I don't think we would be able to go
forward with the program.

So you know, at this point, we hear a lot of
allegations or assertions or fears or hopes, but either
way, it's still unknown, you know. What might actually
happen has to still be fleshed out. And I think when we
hear the report from the EAAC Committee on the modeling
that they're doing and how they're doing it, that will at
least help to put some boundaries around some of these
concerns about whether what California is doing might be
doing really makes sense.

EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,
maybe another way of looking at the context I think Dr.
Telles is getting at is that with regard to WCI, that California is about 50 percent of the emissions within WCI. So we're half.

CHAIRPERSON NICHOLS: Okay. Let's turn to those -- oh, sorry.

BOARD MEMBER YEAGER: Speaking of the unknown, is there a scenario where there would be action taken by the federal government that would supercede or trump anything we are either trying to do or at some point once we put something into effect they take some sort of other action?

EXECUTIVE OFFICER GOLDSTENE: Yes. That's certainly possible.

Congress was getting ready to act at the end of last year again and, you know, yesterday the President was encouraging action again.

The ideal scenario is to have the market as big and as robust as possible. So a national program would be better than even a regional program, which is one of the reasons why we're talking about linking the two other big markets linked together as possible in the future.

But that being said, one of the important things that we've been advocating for is to make sure that we still maintain the rights as a state to go further if we needed to. And this is an important issue that we're saying close attention to.
BOARD MEMBER YEAGER: As I remember, some of the earlier discussion about the carbon tax and whether that we as a nation went forward with rather than cap and trade and trying to track all of that what's happening in Washington and our actions now and keeping it all in perspective.

EXECUTIVE OFFICER GOLDSTENE: That might be something we should also consider presenting to the Board in the near future is having Brian Turner come out and give the Board an update on the activities in Washington, particularly if things start up again as they had begun. If things start getting active again, we can give an update on what's going on.

BOARD MEMBER YEAGER: I appreciated what Lucille mentioned where the groups were taking different positions. And I don't know whether she's going to write up some of that, but that would maybe help to have a matrix just to see what issues all the various interests have.

EXECUTIVE OFFICER GOLDSTENE: We are working on developing a matrix or a high level summary of the comments. We got lots of comments. And we will distribute that to the Board.

BOARD MEMBER LOVERIDGE: Are we going to follow up with suggestion of having the D.C. person?
CHAIRPERSON NICHOLS: Yes. Duly noted. I think it's a really good idea. We'll figure out if we can get him out here for the next meeting. The February meeting would be a perfectly appropriately.

BOARD MEMBER TELLES: And in regards to the federal plan, if it ever gets launched, has there been any questioning of the federal government if California launches this three, four, five years before the federal government does? Will there be some credit for surplus emissions before they start their program?

EXECUTIVE OFFICER GOLDSTENE: This is an issue that's discussed quite a bit and we refer to it -- the easiest way we refer to it is how we transition a program that's already operating at the state level into a national program. So there is discussion about that and there is a great awareness about having to pay attention to that. So if a national program does come in effect after state or regional programs started, that transition is critical.

CHAIRPERSON NICHOLS: I guess in fairness, you know, California is the first state to be as far along as we are in looking at an economy-wide cap. But the northeastern states, 13 of them, are partners in a Cap and Trade Program that deals with the electric utilities sector, the RGGI program, which has been operational for
several years now. And they are also very anxious about
making sure they don't get penalized if and when a federal
program comes into effect.

This isn't just an issue for us. It is an issue
of these states that have been more progressive on some of
these energy issues versus those that have not and how you
achieve some level of fairness or equity, a topic we'll be
talking about today and will be talking about much more.

Dr. Sperling, do you have your hand up?

BOARD MEMBER SPERLING: Yes.

One thought I had and one concern I have is over
the next year there's going to be a lot of attention given
to cap and trade. It's the lightning rod of a lot of the
concerns about environmental regulation generally and
climate policy more generally.

And as I thought about it, you know, all these
presentations we get and the way we -- many of us think
about it, including myself, is kind of a top-down approach
in the sense of what's the theory. What's the overall.

And then we take that to the overall structure and even
take that to what are the overall economic impacts.

But, in fact, what's likely to be happening over
the next year is a lot of businesses, a lot of regions are
going to look at it in terms of what's the impact on us.

And a lot of the presentation talks about details
to be worked out. And I'm a little concerned that if we keep being too vague, it allows a lot of different groups or organizations to craft the most catastrophic scenario. And just an example of that would be there's a lot of concern with LADWP has a lot of coal-based electricity. So you do a simple analysis, the rates are going to go up in Los Angeles by 30 or 50 percent as they have been saying.

And so my suggestion and as this moves forward is generally thinking about this a little bit and what will really be the impact on different business groups, on different regions. And I'm not often an advocate of getting into all the details. Being a professor, I like the big picture. But I think in this case, you know, we ought to be thinking along those lines much more than we might otherwise do.

CHAIRPERSON NICHOLS: Interesting. We have a brochure I'm sure we'll hear about later. I was looking at it called "Climate for Success" from the Union of Concerned Scientists, which is certainly one of our most dedicated and active groups working on these issues. And, you know, they have broken it down by the additional cost of a bill for a meal on a particular restaurant under a climate regime. We may not be able to get to that point, but that's a really helpful kind of analysis.
BOARD MEMBER SPERLING: Well, that's one way. But another is a lot of the details, for instance, on how you treat the equity between different regions. You know, there is the continuing discussion about this massive wealth transfer from south to north. And that discussion can go on, because there's no detail to counter that.

And so there are a few of these major issues that I think that are out there already. And I think we can try to -- you know, part of the question is I don't know how far the staff proposal is actually go into detail. But to the extent that it is and we can answer some of those key issues that we know are already in the public arena I think is all for the better in the coming months.

EXECUTIVE OFFICER GOLDSTENE: There is quite a bit of detail in the draft that we released late last fall. And we'll be narrowing that down based on the public input we've just received for a spring release of a more tightened up package where we're really narrowing in on what the final rule will look like. And also the economic analysis that we've been doing and that's being reviewed by the EAAC, I think we'll get at least some if not all what they're asking for.

I don't know if Steve or Kevin want to add to that.

CHAIRPERSON NICHOLS: Dr. Balmes.
BOARD MEMBER BALMES: Well, I was just going to sort of chime in after Professor Sperling. Dr. Telles and I were talking at lunch, we were asking each other how many of our patients will be able to say what AB 32 was. And we didn't think very many. And how many of our patients could talk about climate change in the sense does California have a climate change plan. And I think I'm even going beyond what Professor Sperling was suggesting. I really think we have to have a communications plan to try to get the average person in California to understand what we are all about -- and I know the staff has been trying -- on top of having to craft the whole thing in the first place. But I think especially in the current economic climate and the fact that this is going to be a difficult political year just because of the complexity of everything that's going on that we need to be as clear as possible about what we're about.

BOARD MEMBER LOVERIDGE: Two very quick things. One is the importance of the general educational focus is that you do all these -- people take poles and they say does California support or doesn't. And those pole interpretations become important. And the question is how do we influence what people think in terms of generally.
But let me go back to Dan Sperling's comment. It seems to me if -- we need to hear from the people who are here to speak. But if there is a number of sectors, a number of sections, a number of groups which are angry and upset and don't like it and take the message in opposition, it may not make a difference what happens when it comes to our end. There is a possibility of discrediting this process by people marshaling their opposition. So I think the point he makes is really an important point strategically as we proceed.

CHAIRPERSON NICHOLS: All right. Now we are at the maximum point of everybody being worried. So we have nowhere to go but forward from there I think.

Thank you very much.

We will start hearing from the assembled individuals. And we'll start with Gary Liss from Local Government Commission, followed by Brenda Coleman and Julian Canete. These are three-minute thoughts, three-minute rule.

MR. LISS: Madam Chair, members of the Board, my name is Gary Liss. I'm mayor of the town of Loomas, and I'm here representing the Local Government Commission.

I'd like to say we're here to help you, want to be your local partners. There is a reason for the slogan, "Think globally, act locally," because things get done at
the local level. That's where the rubber hits the road. And we've demonstrated that investing in improved local planning will not only result in reduced greenhouse gas emissions, it will also save money. The Sacramento Region Smart Growth Plan is projected to save $9 billion through the year 2050 with the result of reduced infrastructure and consumer-driving costs.

As a result, we're here to ask you to support the EAAC recommendation to include land use planning and implementation of SB 375 and the investment options. We ask that you set aside of the portion of the revenue to be allocated for specific plans and zoning code updates to help local governments meet the state targets through smart growth, to create communities that are more compact, walkable, and transit friendly.

Research has shown that smart growth and land use plans can reduce vehicle miles traveled and the associated greenhouse gas emissions from 20 to 50 percent.

We're pleased the Scoping Plan and SB 375 Regional Targets Advisory Committee saw that local governments should be an essential partner in achieving reductions in greenhouse gases. But local governments are under the gun. The State keeps taking more and more of our revenue. In order for us to take on a new responsibility like this, we need your help to have this
be part of your program.

Local governments zoning ordinances make it difficult to get approval to build sustainable smart growth development at a time when improved land use planning is required to implement AB 32 and SB 375. Local government are reducing their planning due to budget constraints. Without funding, they will not be able to undertake the necessary updates of their codes to make them consistent with the State's climate air quality and energy conservation goals.

So the Local Government Commission encourages the Board to adopt the EAAC Committee's recommendation to invest cap and trade funds in the preparation of specific plans and zoning code updates for small and large communities. Dedicating a meaningful portion of allowance value to smart growth planning would be a cost effective investment that will reduce economy-wide greenhouse gas mitigation costs. This will improve our communities, keep money in the local economy, and reach the state's emission reduction goals.

This is based on testimony that was submitted earlier on January 26th, signed by 37 people, mostly elected officials.

Thank you for the opportunity to present here today.
CHAIRPERSON NICHOLS: Thank you. I did receive that. Thanks very much.

Brenda Coleman and then Julian.

MS. COLEMAN: Good afternoon, Madam Chair, members of the Board. Thank you for the opportunity to comment today.

My name is Brenda Coleman. I'm the Policy Advocate on climate change and energy for the California Chamber of Commerce, the California Chamber of Commerce participants as co-chair on the AB 32 Implementation Group on whose behalf I'm speaking today.

You have our written comments that we submitted on the proposed draft regulation for the Cap and Trade Program, which notes our concern about the absence of a sound economic analysis, the multi-billion dollar auction tax that could cripple large industry here and cause more leakage of jobs and economic activity and insufficient evaluation of the economic impact of offsets as proposed.

We are also concerned that you are moving forward on this rulemaking without having adequate information on the low-carbon fuel standard program.

The staff report on the LCFS has been removed from your agenda yet again. This means your cap and trade discussion is occurring without the critical context of how elements of the LCFS will affect not only emission
reductions but fuel costs and suppliers.

We are particularly worried that regulation of transportation fuels under the cap, if adopted in addition to the ambitious LCFS requirements, will result in billions of dollars and duplicate costs that will place California companies at an even greater competitive disadvantage with out-of-state providers.

Considering the fact that California-only policies for LCFS and cap and trade while costing billions of dollars will have absolutely no impact on global warming, this process becomes even more questionable.

The AB 32 Implementation Group urges you to take a more deliberative approach to cap and trade and the LCFS not only in relationship to each other within California, but in the context of federal and global approaches to climate change policy. Thank you.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER LOVERIDGE: Could I just ask --


BOARD MEMBER LOVERIDGE: Just quick comment on the group you're representing, you're part of it. But tell us about the group you're representing.

MS. COLEMAN: The AB 32 Implementation Group is a group that has been working with the California Air Resources Board in the implementation of AB 32. Our
primary mission of the IG is to seek cost effective
technologically feasible mechanisms of advancing AB 32,
keeping in mind its primary goals of reducing greenhouse
gas emissions.

BOARD MEMBER LOVERIDGE: Can you give an example
of some of the groups? Who's a part of this group?

MS. COLEMAN: The California Chamber, as I said,
which I'm a Policy Advocate on behalf of the Chamber. We
are co-chairs of the organization.

Are you asking other -- to list other groups that
are --

BOARD MEMBER LOVERIDGE: What's the letter --
besides the Chamber --

MS. COLEMAN: We have as well as our other
co-chairs is the California Manufacturers Technology
Association. So CMTS.

CHAIRPERSON NICHOLS: It's an association of
associations as I understand it.

MS. COLEMAN: Yes. There's several business
organizations that the IG is comprised of.

Thank you very much.

BOARD MEMBER SPERLING: Is WSPA a member of that?

MS. COLEMAN: Yes, they are.

CHAIRPERSON NICHOLS: Good afternoon.

MR. CANETE: Good afternoon, Madam Chair, Board
members.

Thank you for the opportunity for allowing us to address the Cap and Trade Program.

My name is Julian Canete, and I'm director of operations at the California Hispanic Chambers of Commerce. The State Hispanic Chamber is the largest hispanic business organization in the nation representing over 720 hispanic-owned businesses through our network of over 65 hispanic chambers and business associations.

We're here today to urge you to pay close attention to the warnings of your Economic and Allocation Advisory Council with respect to allocating emissions, allowances under the California's Cap and Trade Program. They are predicting significant job losses and higher energy costs that will have a devastating and regressive impact on low-income households throughout California.

With unemployment among hispanics higher than any other group in the state, this is obviously of great concern to us as well.

We are also concerned that the low-carbon fuel standard has once again been taken off the agenda. Gasoline diesel fuels will be among the most heavily regulated impacted sector under Cap and Trade and the LCFS with higher prices at the pump a result of that.

We sincerely hope that you will not make any
binding decisions on the Cap and Trade Program without
first answering the critical, technical, and economic
questions about the LCFS. Otherwise, you will run the
risk of doubling the financial burden of higher fuel costs
at a time when even moderate increases will inflict
serious harm on those least able to afford.

The State Hispanic Chamber of Commerce continues
to support the goals of AB 32. But piecemeal rulemaking
without thorough and objective cost benefit analysis is no
way to get there. Thank you.

CHAIRPERSON NICHOLS: Okay. I'm not sure which
warnings of our Economic Advisory Committee you're
referring to. Staff, are you --

EXECUTIVE OFFICER GOLDSTENE: I'm not sure.
CHAIRPERSON NICHOLS: -- aware of citation for
that?

EXECUTIVE OFFICER GOLDSTENE: Maybe he can be
more specific.

CHAIRPERSON NICHOLS: He's left the podium. I
don't want to -- you know, people can come here and say
anything they want to, I guess. But it's always helpful
if they have something specific to back it up.

Erin Rogers, Union of Concerned Scientists; and
Bill Magavern, Sierra Club; Bonnie Holmes-Gen from the
American Lung Association.
And if you're not on the list and you wanted to speak, I hope you'll give your information to the clerk because we've got a long list here.

MS. ROGERS: Hi. Thank you. I'm Erin Rogers from the Union of Concerned Scientists. I brought some show and tell today.

I wanted to start off just mentioning the study that Chairman Nichols mentioned. I wanted to make sure you were all aware of it. There's been a lot of controversy that's been stirred up in part by the AB 23 Implementation Group about how AB 32 may affect small businesses. And we commissioned a report by a group of independent economists. The report was peer reviewed and it was done by the Braddle group that looks specifically at how AB 32 may affect small businesses. And the results were that even in sort of worst-case most expensive scenario, the impacts would be marginal.

And as Chairman Nichols mentioned, we looked at a case study, a restaurant in Los Angeles, and looked at if they wanted to keep their profit margins the same throughout 2020, what would they have to do to their prices because of AB 32 to stay with the same profit margins. And they would only have to raise the price of a meal three cents in 2020, a $20 meal. We think that's pretty manageable and pretty worth it for the dramatic
impacts we're going to get from AB 32.

I wanted to segue into the second topic I wanted to address which is many businesses are calling for more offsets in our program, because they think that the offsets will help contain the costs of the program. We think -- we disagree, first of all, that the costs will be too hard to handle. We also think that the very large amount of offsets that have been proposed in the PDR put the integrity of the program in jeopardy. So, you know, the use of offsets is controversial for many reasons, including the loss of co-benefit effects that we get here in California; cleaner air, more jobs.

And I wanted to -- I think you have a letter up there that was passed out that was signed by 70 organizations and businesses, including 20 of the legislators -- state legislators who work on the bill that passed last session calling for the offset limit to be strengthened. And I hope you can take a look at that later.

One of the reasons that we are all concerned is that we think that because so many offsets will be allowed into the program, the Cap and Trade Program itself will not actually achieve any emission reductions beyond those that we're going to get from Pavley and the RES and energy efficiency measures.
I brought this chart, because a lot of people are confused about how we're thinking about this. But the yellow bars here are the amount of offsets allowed into the system. And these come straight from the PDR, CARB's own numbers and the spreadsheet that was sent along with the PDR. The green bars are how much reductions we expect to get from cap and trade itself. And as you can see, there are more offsets in the program than cap and trade reductions all the way until the very end of the program.

CHAIRPERSON NICHOLS: If you can leave your chart, I'm sure we would all welcome taking a look at it. I think we understand the point though. Thank you.

Bill Magavern.

MR. MAGAVERN: Good afternoon. I'm Bill Magavern, the Director of Sierra Club California.

And I want to say first that I thought the staff presentation was both accurate and clear on a difficult topic.

And secondly that I completely agree with the comments of the Board members on the importance of being able to really communicate the essence of this program to the public, you know, which will take even more skill than delivering the presentation today, which was to a more informed audience.

But the global warming deniers and big polluters
and ideologues are spreading a lot of disinformation about this program. So it's going to be important to really convey the actual facts of what goes on here.

From the beginning of the implementation of the Global Warming Solutions Act -- I sometimes use its name instead of its number -- our position has been that we could support a well-designed cap and auction system. And it's very important that the design be sound in order to avoid some of the mistakes that have been made with other emissions trading programs. And we think that really the best way to avoid those mistakes and have a well-designed program is to take the recommendation of the EAAC and auction off the allowances from the start, make the polluters pay for their emissions. It's a fair and transparent way to set up the system. The auction would determine the value. And if the polluters have to pay, then they will be really looking at ways they can decrease their emissions and will also create revenues which, of course, can go back to consumers and/or be used for investments in a number of important clean energy programs. So auctioning is I think what's most important.

We also need to make sure that we don't over allocate the allowances, a mistake that was made in some jurisdictions. So setting a tight cap from the start and have that cap declining.
And then making sure that we don't have major loopholes in the system. And so we do think there should be stricter limitations on offsets. We agree with the comments of UCS. And Michael Endicott later will be making more specific comments for Sierra Club on the topic of offsets.

And enforcement is crucial. I know you've been talking with the attorney general's office, and I think they have a lot of important lessons learned from the electricity crisis and ways to avoid the gaming and manipulation of the market. We think penalties need to be strong and sufficient and include disgorgement of any illgotten gains that are made through violations of the system as well as surrendering of allowances in the next compliance period to make sure that there are no excess emissions.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Bonnie Holmes-Gen, followed by Sabrina Means and Marisa Rimland.

MS. HOLMES-GEN: Thank you, Chairman Nichols and Board members. I'm Bonnie Holmes-Gen with the America Lung Association of California.

And we did earlier this month submit a letter from 25 total public health organizations, state and
local. And I wanted to emphasize a few key points that are in this letter that we've been communicating to staff about the Cap and Trade Program.

The first key point is that the Cap and Trade Program will have direct impacts, of course, on public health. And the Board is entering into a process that's very important to evaluate those public health impacts, including the potential for impacts to disadvantaged communities, communities that are already overburdened with multiple pollution sources.

And this process is called a health impact assessment, and it's been referred to in your staff slides. But I want to emphasize the importance of this to better understand how to design this program in a way that's going to lessen inequities and promote options that are the best from a public health perspective.

And as we're talking about this tension between how much detail to put out in the street versus how much we need to continue to analyze and develop the program, this is a case where I think we do need to make sure that we complete the public health analysis before we get all the details of this program worked out.

The health impact assessment will be specifically looking at the auctioning -- the benefits, how public health benefits the auctioning of allowances, the impact
of offsets both inside and outside of the state, placing quantitative limits on offsets, and what the impacts would be of different limits, in trading restrictions of the potential impact of trading restrictions for allowances and for offsets, and of course, investment options for allowance value. So these are all very key parameters of the program. And I'm just concerned that we don't get locked in on the design until we get some of this input. And we would hope that — we're very concerned that the information from this analysis needs to be integrated into the development of the regulation.

And we believe it's especially important for the Board to have an update specifically on this HIA process and to hear not only from your staff, but from your partner in this process, the Department of Public Health. And we think that should happen before the next draft comes out in the spring that you've been talking about. While we're watching this HIA and participating and doing our best to help make this successful, we're also urging the Board in the mean time to move toward 100 percent auction at the start of the program, to move toward quantitative limits on offsets and to recommend specific investment of allowance value in both mitigation and adaptation, including specific investments in public health preparedness and the public health infrastructure
that's vitally important to address our needs in California. This would include assisting with the emergency preparedness, identifying, prioritizing vulnerable communities, disease surveillance systems, and a number of other public health needs.

CHAIRPERSON NICHOLS: Thank you.

Sabrina Means and then Marisa Rimland and Andy Katz.

MS. MEANS: Good afternoon, Madam Chair and Board members.

I'm Sabrina Means here on behalf of the California Transit Association, which represents over 80 transit agencies in the state as well as approximately 19 transit suppliers. Thank you for the opportunity to provide comments on this item.

Our transit members have been following the cap and trade regulation development process. And thus far, we're supportive of a cap and trade system that allows for some revenues from the system to be reinvested into furthering the goals of AB 32, specifically by reducing greenhouse gases from the transportation sector.

Transit is one of the avenues by which reducing greenhouse gases in the state can be achieved. Therefore, we ask the Board to recommend that transit investment be built into the final cap and trade regulation having to do
with allowance allocations.

The Economic and Allocation Advisory Committee, which has adopted its recommendations on allocating allowances for the cap and trade system specifically, includes public transportation as a consideration for investment of allowances or allowance revenues.

Transit currently faces significant market barriers. An example is that fares that transit agencies charge, which are kept at a certain level to maintain affordability to riders, are drastically insufficient in comparison to what the overall cost is to transport people from here to there.

Most importantly, due to recent state budgets, the most recent being a proposal which completely eliminates transit funding from the state, transit operators have been forced to make devastating service cuts and raise fares beyond affordability for riders, both those that depend on transit and choice riders. The State has diverted billions of dollars that should have gone to transit agencies in the last several years.

Transit systems are in absolute dyer need of investment by the State. And since transit is a key way to reduce transportation emissions, as it takes people out of their cars, investing in transit from the cap and trade system is realistically the logical way to go.
The Regional Targets Advisory Committee which recommended factors and methodologies for setting regional greenhouse gas targets as part of SB 375 also recommended in their report that the State must find a way to increase funding for transit in the state. Therefore, they acknowledge that transit is a key way for regions to reduce their greenhouse gas emissions.

Including transit as a recipient of allocation investments as part of the regulation will help achieve the goals of AB 32 and the goals of the cap and trade system. We also ask that fuels be included as part of the cap and trade system. This will potentially provide revenue for transit as transit has historically funded through taxes on fuels. Thus, new any costs at the pump as a result of cap and trade could go toward furthering greenhouse gas reduction goals through transit investment.

Thank you. And we look forward to working with you and staff as this process continues.

CHAIRPERSON NICHOLS: Thank you very much.

Marisa Rimland and then Andy Katz.

MS. RIMLAND: Good afternoon Madam Chair, members of the Board.

My name is Marisa Rimland representing the Public Health Institute. Thank you for the opportunity to comment today.
The first topic I'd like to address is offsets. We believe that the current proposed offset limit of 49 percent of reductions is too large. We urge CARB to re-examine this and lower it to a more appropriate level. PHI believes a lower allowance of offsets is necessary to maximize health co-benefits resulting from improved air quality and to verify that greenhouse gas emissions are being reduced per AB 32 requirements. Offsets, with their well known additionality, verification, and monitoring issues, will not sufficiently accomplish this. Greenhouse gas emissions reductions are especially important in the first stage of the program when the cap is only slightly below business as usual emissions and every ton of carbon reduced is crucial. PHI also urges CARB to create geographic restrictions on a percentage of offsets and to incentivize the location of offset projects within disadvantaged and disproportionately impacted communities. This can be done by weighing offsets based on their geographic location using a policy design tool such as a multiplier or by discounting offsets located outside of California. Incorporating such protective measures into the regulatory design will benefit these communities by simultaneously improving their health and creating jobs.

The next topic I'd like to address is allocation.
PHI believes that 100 percent of emissions allowances should be auctioned off. One of the primary benefits of creating a market for carbon is the expectation that a well-designed mechanism will set a price for greenhouse gas emissions that accurately reflects the marginal cost of abatement. This price signal determines the decisions made by producers and consumers about the types of energy and services they provide or use.

If emissions allowances are given away rather than auctioned off, the pricing will be diluted and investment in lower-emitting technologies or renewable energy diminished, resulting in fewer co-benefits from improved air quality as well as decreased opportunity to reduce greenhouse gas emissions.

Auctioning all allowances will maximize the revenue available to California to use in its work both mitigating and preparing for climate change, as well as helping to offset higher energy prices for low-income families who are negatively impacted by price increases.

We ask that a significant percentage of allowance value be invested in public health adaptation as well. It is especially important that such investments be targeted towards increasing preparedness and resilience in our most vulnerable communities. In order to accomplish this, we also request that a community benefits fund be created to
target effort within those communities once they've been identified by CARB.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Andy Katz and then Alex Jackson.

MR. KATZ: Hi. Good afternoon, Chair Nichols and Board members.

I'm Andy Katz representing Breathe California. And I want to support and agree with the comments of my environmental and health colleagues from the American Lung Association, Sierra Club, and Union of Concerned Scientists and Public Health Institute.

We have also signed onto the Public Health Organization's letter and want to encourage the Board to take care when approving and considering this cap and trade regulation. It is important for the Board to move forward on implementing AB 32. The cap and trade regulation is included in the Scoping Plan and is responsible for a large amount of the greenhouse gas reductions, although not by any means the majority.

But it is important that in pursuing this that the Board take care and maximize the public health benefits. There is tremendous opportunity to either move forward in a way that does not maximize these health co-benefits or in a way that doesn't. So it's important
that many of these options be studied.

Right now, the California Department of Public Health and the Air Resources Board have convened a public health working group that I've been participating in. And it does seem like many of these options are to be studied in a health impact assessment. I think it's important that this study be thorough and that this study accurately convey to the Board the choices that you'll have about what are the effects of reducing offsets from 49 percent to a more appropriate level and a level that may provide health benefits to communities that would otherwise see those benefits outsourced outside the state of California.

That's a serious health concern that while the greenhouse gas emissions around the world may go down, communities won't actually see the toxic air contaminants that they're exposed to on a daily basis in the neighborhoods. They won't actually see those reductions in their neighborhoods. So it's important that the health impact assessment be real and be informative to the Board.

I'm very concerned that in the short time line that we have within a month that that study will even be done in as thorough enough a state to inform your discussion, your workshop at the February Board meeting on offsets.

So I do hope that the Board will ask your staff:
Will this report be ready for the Board's consideration?
And if not, perhaps you should have either a second
offsets workshop or postpone that offsets workshop.
Either way, please do not make a final decision on offsets
before you have the full and accurate information on
health impacts. That's a critical piece.

Similar concerns exist for the way allowances are
given out. That makes a big difference in whether these
reductions are real, how these reductions happen
throughout the state, and what the associated health
impacts or benefits might be. So we also agree with the
EAAC in terms of full auction, 100 percent auction, as
well as strong consideration for geographic restrictions
and trading.

For more reference, please look at those written
comments and please insist on a strong health impact
assessment before you make these decisions.

CHAIRPERSON NICHOLS: Thank you.

Alex Jackson and then Brian Nowicki and Josh
Gruen

MR. JACKSON: Good afternoon, members of the
Board. I'm representing the Natural Resources Defense
Council.

First, Chairman Nichols, I'd like to appreciate
your injection of a little bit of context and perspective
into this program and also for the Climate Champions who have since departed to remind us about why we're all dealing with this.

That said, I'm going to be wading into the weeds on four issues.

The first is on the cap level. I'd like to echo some of the points made earlier about the need for a strong declining cap. I think there's two reasons for that.

The first is really to send a strong market signal early that it's going to be cost effective to be making the investments we're going to need to get at these greenhouse gas reductions. You know, setting a tight cap in the initial period will really facilitate that price discovery and make the price of the allowances meaningful enough where people will be looking at ways to reduce and not simply purchase allowances.

And the second is that getting to the end point is not a whole ball game for cap and trade. The earlier we can make reductions, the less warming we're going to see and the less we're going to have to spend on adaptation and all the impacts associated with that.

Second point I'd like to talk about briefly is allowance value, which has come up several times before. But, again, I'd like to add my voice to the chorus to pay...
attention to the EAAC's report. They really put a lot of efforts and careful analysis into their recommendations. And we particularly support their views on 100 percent auction and their general views on distribution of allowance value.

The only point I think I'd like to raise where we might differ is their breakdown on how to allocate between giving back to consumers in some way and investment, which is right now roughly 75 and 25 percent. And they do appreciate in the report that maybe a little bit more might need to go towards investment in the initial years. And we think that is true. And perhaps a little bit more than 25 percent is appropriate in the initial years of the program where the market will not really be able to get at some of these cost effective investments because of some the barriers that the transit agencies, the local government representatives have been talking about. So there is a real need in these initial years to be making those investments with the public wealth that generates from cap and trade.

And, finally, I'd like to touch on enforcement briefly. I can't really stress enough how important enforcement will be to maintaining the integrity of the cap. And I think at this point any attention that staff and the Board can devote to really crafting the regulatory
scheme now will really pay dividends later in terms of all
the enforcement that's going to be needed.

So finding some simple approaches like a
multiplier we've been discussing and we submitted in our
comments that really send a clear signal willful
non-compliance will never be in the capped entity's
economic interest, and it is risky to wait until the end
of a compliance period to make those reductions.

Thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

Brian Nowicki.

MR. NOWICKI: Thank you, Madam Chair and members
of the Board.

I'm Brian Nowicki with the Center for Biological
Diversity, a nonprofit environmental organization here out
of Sacramento.

I support previous comments and letters submitted
by -- previous comments by Sierra Club and Union of
concerned Scientists and have signed onto those letters.

I'm not going to recap those here, because what I would
say would not be as concise or articulate as what's
already been said and put forward in those letters.

So I'd like to take my time here to focus on just
the offsets portion with the two main points.

One is that aside from the need for the strong
reducing cap on offsets, there is also the need for
recognition that not all offsets are created equal. And
that's with regard to both within sectors as well between
sectors.

And in particular, I've been working on forest
offsets and using in a situation where there are very
loose restrictions/limitations on the number of offsets
flowing as we see in the current draft as well as no
restrictions on the geographic origin of those offsets, we
are in a position where we could see much lesser offsets
brought into the program than we could generate here in
California under California's laws. And it would be an
improvement in our own state forests.

In particular, talking about the forest offsets,
I would like to point out that you last saw me come before
you on this issue in the September meeting of the Board
where I brought comments, brought opposition to the
adoption of the forest project protocols that were the
methodology by which carbon credits would be assigned in
the forest sector.

At that time, I raised a number of questions
about clear cutting projects being included under the
forest sector as offsets -- as carbon credits and
eventually as offsets. At that time, there was discussion
among the Board and questions to the staff of ARB of
whether they would have another chance -- whether the
Board would have another chance to address the concerns
around clear cutting and other concerns about forestry
before those methodologies were adopted into the
compliance mechanism of the cap and trade regulation.
They were assured by Executive Officer Terry they would
have another chance. And, yet, in the preliminary draft
rag, we saw language that said they intended to roll the
voluntary action methodologies directly into the
compliance mechanisms.

I would like the Board to pay particular
attention to that methodology, especially given the
discussion and the attention you've are already given.

CHAIRPERSON NICHOLS: Thank you.
Josh Gruen and Patty Senecal and Alan Osofsky.

MR. GRUEN: Good afternoon, Madam Board and
Commission and staff. Thanks for the opportunity in
letting me speak.

I'm Josh Gruen, the Director of Operations for
CMI. We have a family of companies, 800 owner/operators
and contractors that work with our trucking groups in the
state of California.

We're opposed to the transportation related goods
movement and placed under a declining cap. Goods movement
sector cannot survive a complication of increased utility
rates, spikes, and higher California diesel prices, as well as new trailer efficiency requirements. Placing transportation under the cap and adopting a low-carbon fuel standard and requiring utilities to use renewable energy cost increases all of our costs.

We ask that you not consider placing transportation under this cap and that you return to the public process of the low-carbon fuel standard into a process that includes the end users.

I have spoken now at three public workshops. This is my fourth. Not only have our questions not been answered, but the study due in 2007 to show if CARB diesel is any cleaner than national fuel has yet -- the study is more than two years old and it's overdue. And as yet the fuel has been -- yet a new fuel now is being adopted without testing, without proving the recipe. As we've said in previous, the fuels in the past weren't tested on diesel. We'll have a colleague, Allen, with Rogers Trucking, our group, we'd love to test some of these projects for you and see how they effect the diesels.

As you guys know, the trucking and the compliance of the new trucks have completely changed. We now have a whole group of liquid natural gas trucks. We've purchased 300 of them and are utilizing them. We have new diesels we don't know how this will affect. We have also 1100
transportation professionals signed -- are sent to you
that are opposed to this regulation.

Appreciate your time today. Thank you.

CHAIRPERSON NICHOLS: You've kind of thrown a
whole bunch of stuff here, and it's mixed up in my mind.

I get it you don't want to be under the cap and
trade rule. I got it you've got a beef with CARB diesel
and you want it tested.

MR. GRUEN: Yes, ma'am.

CHAIRPERSON NICHOLS: So what's the deal on that?

MR. GRUEN: Meaning that --

CHAIRPERSON NICHOLS: No, I'm not asking you. I
was speaking to staff.

MR. GRUEN: Sorry.

CHAIRPERSON NICHOLS: That's okay.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: A
number of years ago, there was a Calderon bill that
authorized the testing of California diesel fuel versus
federal diesel fuel, but there was no appropriation of
money until fairly recently. So once we got the
authorization, we did start. We have done a considerable
amount of work already. There's been several public
workshops on that issue.

CHAIRPERSON NICHOLS: Have you been attending
these public workshops on the issue? So you're aware
testing is going on in response to your desire to see that
happen?

MR. GRUEN: We've been aware testing has gone on
for a long time. We haven't seen the completed studies
and haven't seen the ability to do it in a timely manner
before we start taking on additional processes.

CHAIRPERSON NICHOLS: I understand your attempt
to make the linkage here. I'm just trying to find out
what the facts are.

MR. GRUEN: Trying to help.

CHAIRPERSON NICHOLS: So what are we expecting in
terms of getting this study done?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: I'd
have to check and see what the final timing is on it.

I think we're pretty close to wrapping up the
testing. We have put out preliminary results so far that
do indicate that the California fuel is cleaner than
federal fuel. But we do need to wrap the study up. I'll
let you know.

CHAIRPERSON NICHOLS: Sounds like we've got an
eager audience out there awaiting it. So thank you.
Patty.

MS. SENECAL: Thank you. Represent the
International Warehouse Logistics Association, which are
three PLs distribution centers, Harbor Truckers for
Sustainable Future from L.A. Long Beach, and I'm also part of the Western States Goods Movement Alliance.

We are opposed to having transportation with trade-sensitive transportation put under a declining cap. Putting transportation under a cap and mandating a low-carbon fuel along with that is a double count for that in the emission reductions and the goods movement sector.

In addition, the complications in the piling on a lot of rules where the utilities and the refineries are going to have additional cost upstream will trickle down to its end users. End users meaning transportation, trucking, warehousing distribution, et cetera. And we are in a very trade-sensitive environment now and we're very concerned about the piling on of the effect of all of this cost to us.

Low-carbon fuel is a big cost factor for us. And there is a white paper by the American Trucking Association, a study about biofuels. And be happy to give staff a copy of that, that is looking at biofuels being an additional dollar per gallon with extended federal excise tax; and without it, two dollars a gallon. Be happy to share that with staff.

We would like to recommend expanding offsets to 25 percent from the four percent so that investment is made in distributed energy within California and then, of
course, our nation to help lower cost.

I think Professor Sperling brought up a great point, what really will impacts be. And again that is the question that as end users having to work through these regulations, what will the cost of our fuels be? Will it be on-road tested? What is the reliability of the supply and vehicle performance? Are we actually going to get more emissions/less emission reductions and the per gallon -- we know with diesel particulate filters our fuel economy actually went down. So again reliability of our engines, et cetera. And so these are really the questions we're asking as end users about the impacts.

And again we're opposed to having transportation for trade-sensitive transportation put under declining cap.

Also for the record, we did submit comments submitted on the 11th.

CHAIRPERSON NICHOLS: Alan Osofsky and Derek Walker and Michael Endicott.

MR. OSOFSKY: Thank you very much for letting me speak.

My name is Alan Osofsky, safety and compliance manager for Rogers Trucking in San Leandro, California. We have 150 employees, teamster drivers. We've dumped a lot of money in the local economy; employee taxes, we buy
tires, so on, so forth. But our future is questionable.

The previous two speakers stole my thunder, but I'll reiterate it anyway. We are opposed to placing transportation and goods movement under the CARB cap and trade rule. Again, we believe it's double counting and double cost and causes leakage out of the state of distribution centers, which we service.

I'd like to comment on the low-carbon fuel standard. I'd hate to see that we'd be coming under both regulations. We have personal experience with the reformulation of a fuel back in 1994. Twelve of our trucks went down when the diesel fuel pumps went bad. The State was generous in helping us replace those, and we appreciate that. Based on the Bill AB 3290 reimbursed diesel owners. I have a copy of that here. But it didn't compensate us for the down time.

But my point here is on the low-carbon fuel standard, we'd like formal testing to be done. I've offered our fleet as a test fleet at three different meetings that I've attended between 2008 and 2009 and that still stands.

Again, I'll summarize. We request that you not place transportation under the cap and also allow offsets of up to 25 percent, and hopefully that will include more people and businesses in the program and bring the cost
down for everybody.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Derek Walker from EDF.

By the way, my machine was buzzing up here, because there was a news alert from Washington that the United States through Todd Stern, our climate negotiator, has made a commitment at the U.N. that the U.S. is going to reduce its greenhouse gas emissions about 17 percent below 2005 levels in the next decade. So by 2020, a 17 percent reduction below 2005.

So just a point I think. I guess the President is following up on his commitments and as of what he said last night, but also just a reminder that there is a context here that we're all working in. Thank you.

MR. WALKER: And this is Derek Walker, Director of Climate Program and EDF, and certainly a reminder California's leadership has stimulated a lot of aggressive action and collaboration among countries and other states.

Cap and trade is the most effective tool that we have for climate policy to generate quick reductions at the lowest cost. And so EDF strongly supports CARB's inclusion of the Cap and Trade Program as a core element within AB 32 implementation.

We certainly appreciate the comments not only
earlier but just now by Chair Nichols about the context here. The risk of California going off track right now, especially when in D.C. things are not looking so positively, California is -- the light is shining on us and our actions carry tremendous weight. So this Board's support for CARB staff and the process is very vital. And we thank you for that.

I want to mention a couple of specific things about why the Cap and Trade Program and the other policies that ARB is working on are so vital.

You know, climate policies like the Cap and Trade Program and the renewable energy standard are really the backbone of innovation, promoting innovation, and also helping with our economic recovery. And I know that you, the Board, has seen a lot of materials that outline those positive economic impacts. So I don't need to really go over much of that right now.

In terms of the specific good ideas in the PDR, expanding the program to include transportation fuels and natural gas in the first part of the program is an extremely positive development. We do urge the Board to keep that in there. This makes the market larger. This lowers the cost strain on other regulated entities. But it also drives down an important part of the emissions portfolio of California.
We also -- EDF strongly supports the inclusion of offsets in the program. We do not have concerns about the levels that CARB is proposing. We believe that there are many examples of offsets promoting innovation in things like sustainable agricultural and forestry projects, waste, and other sectors.

And just to kind of address some of the comments that we've heard earlier, this is a conversation about cap and trade, but cap and trade is but one of the package of policies that ARB is demonstrating leadership on. So there are going to be lots and lots of benefits from ARB's AB 32 implementation on a range of issues from criteria pollution to energy sector innovation and investment. And I would just urge everyone to keep that in mind and not focus so much on cap and trade as if it's the only thing ARB is doing.

Thanks a lot.

CHAIRPERSON NICHOLS: Thank you, Mr. Walker. Michael Endicott and then Edwin Lombard. And those are the last names on my list. So if you were planning to speak and your name hasn't been called, please make sure you turn in a card. Thank you.

MR. ENDICOTT: Good afternoon. My name is Michael Endicott, Resource Sustainability Advocate for Sierra California.
I'm going to go to one level below what Mr. Magavern talked about, which was the overall design of this program and look at the offsets component.

Only the laws of nature are immutable. Gravity will do what gravity does all the time. If we don't put a cap on our greenhouse gas emissions, we will get to the tipping point. And the laws of man, which we're trying to construct here, are often more a statement of intent. Just because you put up a speed limit sign, it can effect behavior, can get people to slow down, but doesn't mean they'll actually drive 65 or 55 or 20.

So it's important that you pay attention to the big details, but also the small components of your program, include the offset program.

And to steal Mr. Nowak’s phrase, not all offsets are created equal. Within even offset programs, there are some that will get you actual certain reductions, and those should be prioritized and launched first.

Secondly, you could have the kinds of offsets that might actually give money to disproportionately impacted communities to purchase energy-efficient refrigerators or air conditioners. Would also help reduce emissions, because you wouldn't need to have that increased power demand.
On the lowest of the totem pole, you get to carbon sequestration. That one has the most presumptions, the most modeling, the most assumptions built into it. So in that, not all of them are created equal either. Some of them will have some co-benefits. So that if we don't get as much carbon reduction as we had planned, at least we're getting something good. Some have bigger risks by the practices, by encouraging those kinds of business practices, say, that operate on the edges of regulatory scheme that also push the boundaries of nature's carrying capacity.

Within that, one particular one concerns us very much. Mr. Nowicki referred to that. We do not think you can clear-cut your way out of climate change and we ask the Board not to try to do that at least in the first two cycles of your role out of this program. We need to take time to revisit that protocol.

So going back up and to finish this to give you a little extra time as you close up, remember, please, that all offsets are not created equal. And we really shouldn't try to clear-cut our way out of climate change.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Edwin Lombard.

MR. LOMBARD: Thank you, Madam Chair and Board
members and staff.

I'm here today representing the California Black Chamber of Commerce. Over the last year-and-a-half, I've made public comments in front of the Board here a number of times about the fact that we're alarmed by the projected billions of dollars in costs of the implementation of AB 32.

We're here today because we're even more alarmed since the release of EAAC's recommendations relating to the cap and trade proposal. The proposal projects higher prices in electricity, natural gas, gasoline, and recommends billions of taxes and compensation for job loss and higher energy costs related to AB 32 seemingly before factoring in the cost of the LCFS, which was not discussed today. Cap and trade and LCFS are programs with cost implications that will overwhelm all Californians, but will disproportionately affect minority small businesses.

One cannot be considered without examining the other and its impacts. We have seen cap and trade is frightening, but even more frightening when you haven't seen the cost of LCFS.

The rest of the nation and the world are taking a more fiscally responsible approach to climate change and carbon reduction. California could drastically reduce its carbon and greenhouse gas emissions and still not put a
dent into world global warming.

Unemployment among African Americas in California is over 15 percent higher than any other state group. Before driving figures higher, we strongly encourage that you get all the facts of the cost of implementing cap and trade and the low-carbon fuel standards and make sure that we're aware of the cost that we're going to be facing in order to make this accomplished.

CHAIRPERSON NICHOLS: Excuse me. I just want to -- you made a reference to some other country that you think is doing a more fiscally responsible job.

MR. LOMBARD: I said the rest of the United States and the world are taking a more fiscal approach in implementing reduction of greenhouse gases. I mean, you just told us that the President is going to take a 17 percent reduction based on 2005.


MR. LOMBARD: Right. To me, that's a more fiscal approach than what we're trying to get done.

CHAIRPERSON NICHOLS: I see. I didn't understand what you meant. Thank you.

All right. Are there other witnesses on this item?

I think one thing we've learned, if nothing else,
is the price of leadership is a lot of concern, if not
dissension on the part of people that need to come along
and be a part of this program.

Clearly, a number of groups are here today primed
to talk about low-carbon fuel standard, and we're unhappy
that we didn't get to talk about the low-carbon fuel
standard today. But that was not on the agenda. And it
will be on the agenda at some point in the future. But in
the mean time, we're expecting an update on that from the
staff. So maybe we can hear from you about what you're
planning to do with that.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: We
intend to give you and the rest of the Board members a
memo on the status of where we are in the low-carbon fuel
standard. We expect to have that in the next two to three
weeks. That memo will be made public and will summarize
the status of all the direction that the Board has given
us where we're at.

We then intend to come back in the June/July time
frame with an update as well as any recommendations that
we have for regulatory changes to the LCFS. And, of
course, we'll be back at the end of the year for another
update.

CHAIRPERSON NICHOLS: Okay. So the Board when we
adopted the rule obviously set in motion a lot of
activity. But as of yet, decisions on many points really are awaiting further work. And so we've got to take a look at this report and see where we are.

STATIONARY SOURCE DIVISION CHIEF FLETCHER:
Correct.

CHAIRPERSON NICHOLS: Yes, please.

BOARD MEMBER TELLES: I wonder if you can maybe research and give us some information on what other jurisdictions have done with their allocations in the public health sector and how successful they've been, if Europe has done anything, if the east coast plan has done anything. Because I think that's important, but it's rather nebulous. And if there is any practical things that have been done out there and some of the areas that have already started cap and trade.

CHAIRPERSON NICHOLS: I think that's in the public health analysis, isn't it? Or no? Are they reviewing that as part of the analysis?

PROGRAM EVALUATION BRANCH CHIEF KENNEDY: I'm not certain whether that was actually part of the plan for the analysis already. But I do think that it is a good idea to take a look at that if we weren't already -- if that's not already in progress, I think we can do that.

CHAIRPERSON NICHOLS: If you could get a report back to Dr. Telles. And I think all the Board members
would be interested to know what evidence there is out there of any examples of this kind of an approach.

Mayor Loveridge.

BOARD MEMBER LOVERIDGE: Just three comments sort of from 40,000 feet.

At the local level, one of our mantras is KISS, keep it simple, stupid. This is the other end of the continuum in terms of complexity and being comprehensive.

I think as we approach this the problem is that it's seen as zero sum. People see themselves as losing rather than winning in this effort. And I think for effective presentation, we have to translate what we're doing to the benefits for the economy, the benefits for quality of life, for why this will enhance California's economy, will enhance what happens to individuals.

Third comment, this is now as mayor of the city of Riverside, a city which sees 30 percent increase according to our public utility director, really representing five million people in southern California from SCPPA is 30 percent increase in its utility rates is not something that five million people will except.

CHAIRPERSON NICHOLS: Well, I think from the 40,000 foot level, you can say global climate change is real. And most people understand that, as science has been telling us for quite a long time now.
On the other hand, it's not as present in their minds as other things they're more worried about. And most of the changes, if not all of the changes, that we see coming as a result of having an effective implementation of AB 32 or any other Global Solutions Act -- I think is better to call it by its name, I agree with that -- are things that most people recognize are going to happen and need to happen anyway. The transition to cleaner fuels, the transition to a more energy-efficient lifestyle, the transition to cleaner electricity, these are things that we know we need to do for lots of reasons. People have been talking about it for years, for the economy, for energy independence, for national security, and for the environment, of course.

So global warming is just kind of one more reason to do a lot of things that many people I think their consensus is need to do anyway. I don't think there's anybody who's advocating that we burn more gasoline or we drive more miles or that we use energy less efficiently.

The issue is the transition and how fast it's going to be and how we're going to pay for it, how we generate the money to pay for it.

I think the irony of the cap and trade discussion is that the people who invented this concept were looking for a way to generate money to help with the transition.
The idea was instead of regulating people and saying use less, burn less, whatever, the idea was that by putting a cap on the bad stuff, which is the carbon, and then selling the allowances by auction or whatever, that you would generate resources that would then allow you to do investments in good stuff that everybody wants.

But when people we actually start to look at the fact that they might be the one who has to buy the allowances or potentially at least initially deal with the cost, then the fear factor takes over. And the natural -- in a democracy, we all want to be winners and don't want to be the ones to have to pay the cost.

So this is going to be a tough balance. It really is.

I think the one thing we don't have the luxury of doing is nothing. We could change the program. We could fix it in various ways. We can do something different, if we don't want to do cap and trade. Although every time I've met with a group of business people and asked them, you know, to work through what the options are and is there something else they would rather see happen than cap and trade, there's not a program that people really like a whole lot better. But they do want to be -- they want to make sure that somehow it doesn't cause too much disruption right away. And I think we have to take that
into account. There's no question about it. We have to be mindful of that.

Yes, sir.

BOARD MEMBER ROBERTS: If I dare make a comment, but just sitting here listening, when we started out, it was we were going to look at those businesses or agencies that were emitting these greenhouse gases. And the whole idea was instead of them reducing was to be able and find the lowest cost ways to remove or to supplement, to trade, in effect.

We've come a long way from there, and we're creating a very complex model now. And I think people are having trouble understanding it. And I think the implications I think we're getting into -- we're already starting to see the line up of people. We heard that cities need the money to do their planning and that other groups need it because they're going to be unfairly impacted.

This thing is going in a direction that at least wasn't clear when we started and sounded much simpler.

And I remember the discussion maybe having a carbon tax instead. So it's all starting to sound very simple in comparison to the issues that are being raised. And I have some pretty strong concerns, because this is not how high most people's radar scopes. It's
well behind the concerns over the economy and jobs. And I think, you know, we live this every day, but there is a world of people out there that are faced with issues that are very different.

CHAIRPERSON NICHOLS: Oh, absolutely.

BOARD MEMBER ROBERTS: And, you know, I will sit and listen, but I have some concerns from the 40,000 foot level where this is going and the costs and the complexities and perhaps the backlash.

CHAIRPERSON NICHOLS: Well, I think there really needs to be a better way of describing what some of the differences are and the assumptions that people are making.

On the other hand, you see something that says a three cents increase in the cost of a $20 meal in 2020. And that doesn't take into account any of the possible things that that business might do that would actually benefit them, like putting in LED lights on their exit signs or, you know, buying a more efficient refrigerator or something, with help from their local utility.

And then, on the other hand, you hear about impossibility of people operating their businesses. There's something fundamental in the way these programs would work that people are disagreeing about, and we need to have a better way of at least articulating why one view
is the one that ought to prevail over the other before we
make a decision. And that is something that I think we
have not really seen. That's not what the economists do.
This is a much more down-to-earth kind of discussion that
we really need to be able to have.
So I share your concerns about the level of
discord that's out there right now.
Okay. I think we have no action to take. This
was intended to be educational. It has been educational.
Very much appreciate all the people who have come and
taken the time to help educate us.
STATIONARY SOURCE DIVISION CHIEF FLETCHER: This
is me.
CHAIRPERSON NICHOLS: Yes, you.
STATIONARY SOURCE DIVISION CHIEF FLETCHER: I
just want to close a loop here. The AB 679 report on the
federal testing versus the California testing on the
fuels, we expect to get the final report in May. We still
have some testing to do, but that's in May. There is a
work group meeting actually on February 4th. So I just
wanted to mention that increase the gentleman would like
to --
CHAIRPERSON NICHOLS: I think the gentleman who
was asking about that left right after he testified, but
maybe you can get the information to him. Thank you.
We'll take a five-minute stretch break and resume our final action, which is a report and update on the Board's enforcement program.

(Thereupon a recess was taken.)

CHAIRPERSON NICHOLS: We're getting ready to take up our last item of the day on ARB's enforcement program.

I'm going to give Mayor Loveridge credit for something that he said to me after the meeting broke up.

It's just a good reminder for all of us. And I would like to have staff imprint this on your palm or your forehead or something which is that what Obama said last night what -- the President said last night about the country that figures out this energy game is the country that's going to be a winner is exactly what we're talking about in California. It's why the Legislature passed the Global Warming Solutions Act in the first place. It's the success we've already had so far with our energy programs and our environmental programs that have made the state able to grow and retain its natural resources and environmental quality at the same time.

And we're doing what we should be doing to build on that success, and we believe that it's to our advantage economically to be doing it. The Legislature would have never have passed AB 32 in the first place if we weren't convinced by being ahead of the game we were going to be
attracting investment here. It's already proven to be true. But we cannot ever even talk about this topic without mentioning those facts and the benefits that we see in AB 32.

We're living in a time of bad budgets. We know that the job picture is bad. We know the economy is bad. We are the bright spot in all of that. We are the solution, not the problem. Just need to remember that.

So thank you, Mayor Loveridge, for reminding me when we were taking our break.

The next item is an update on ARB's Enforcement Program. As I mentioned at the July Board meeting when we were in San Diego, the Air Resources Board's then relatively new Chief Counsel had already started working with our Enforcement Division on a review of our Enforcement Program, because it was one of the things I had asked her to do when she came on board.

With a multitude of new regulations that have been passed on a whole range of various subject areas, the Air Resources Board needs to be sure that those we regulate know about the requirements, that the requirements are enforced fairly, and that the enforcement process is transparent.

And, indeed, in terms of public understanding and support for programs, one of the things that I've learned
over the years of working in this area is that enforcement is key to how the public perceives the program. They need to know that it's happening. They also need to know that it's being done fairly.

In open comment periods at recent Board meetings, a new industry coalition emerged and is voicing concerns about the Board's Enforcement Program. So that was a good opportunity for direction to staff to formally begin a process to review these concerns and to invite the public in as well.

The Air Resources Board reached out through an open forum to solicit ideas about how to improve our Enforcement Program. And I stepped into a small portion of the meeting that took place here in Sacramento, and I was very pleased at the diversity of organizations that had taken the time. And we really do appreciate all of those who gave us their views as part of this process.

So I'm now going to turn to Mr. Goldstene to present the results of the process so far.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

As you noted, we've undertaken extensive outreach efforts, and we're going to present our preliminary efforts today.

There are a number of ideas that we've received,
including the recommendation to develop penalty guidance and other measures to increase the transparency of our Enforcement Program.

Interested parties are encouraged to provide their comments today in response to what we present to you today. We look at this as an iterative process and would like to continue to capitalize on the valuable dialogue that this process has inspired so far. Staff will continue to evaluate new comments as they come in, and we plan on holding another public workshop and report back to the Board in the next few months.

I do want to make one specific observation. All though most commenters address the issue of how to enhance and improve our Enforcement Program, few commenters have been rather persistent in using this process as a platform to resolve their own current pending violations. Our view, of course, is that this approach is counterproductive, and we hope that that effort will stop because we really want to focus on the general policies. This is not the forum to handle individual violations that are under investigation.

Jim Ryden, Chief of ARB's Enforcement Division, will brief the Board on the status of our efforts to date. We were guided in our review by the attorney general's office staff, and today Deputy Attorney General Will
Brieger is here and he'll make some brief comments after
Mr. Ryden concludes.

Jim will start by responding to the comments from
the -- he'll give an overview of where we are and respond
to other comments that have been made in Board open
sessions over the last few Board meetings. And then we'll
be available to answer any questions you have.

CHAIRPERSON NICHOLS: Okay. Thank you. So this
is a policy review. We're not talking about getting into
the specifics of individual enforcement cases.

EXECUTIVE OFFICER GOLDSTENE: That's right.

CHAIRPERSON NICHOLS: Okay. Good. Because I
really don't think this is the place to be doing that.
Okay. Thank you.

Let's begin.

(Thereupon an overhead presentation was
presented as follows.)

ENFORCEMENT DIVISION CHIEF RYDEN: Thank you.

And good afternoon, Chairman Nichols, Board members.

I'm Jim Ryden, Chief of ARB's Enforcement
Division.

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ENFORCEMENT DIVISION CHIEF RYDEN: We've worked
closely with the attorney general's office to review the
way we conduct enforcement at the ARB to ensure that it
complies with all legal requirements.

With that input as well as suggestions from the regulated community and the public, we are implementing some of the changes and continuing to look at issues.

First, I'd like to address the main comments you heard from the new industry coalition by summarizing them and providing our current thinking on them.

CHAIRPERSON NICHOLS: Is this the group that's called CEERT?

ENFORCEMENT DIVISION CHIEF RYDEN: Yes.

CHAIRPERSON NICHOLS: Okay. Sounds like another new organization.

ENFORCEMENT DIVISION CHIEF RYDEN: We're talking about CEERT that's headed by Mr. Dunlap.

We are implementing several of the suggestions we heard from this group, including a model penalty guidance, looking at our administrative hearing process, and augmenting our ability to take enforcement action against illegal uncertified products imported into the United States.

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ENFORCEMENT DIVISION CHIEF RYDEN: The first comment you heard from this coalition was that the ARB should loosen existing laws for strict liability for violations of air quality requirements. Strict liability
for violations is established in statutes and regulations we enforce. It is the typical standard in environmental laws across the country, because environmental violations involve ongoing business activity and are not usually committed intentionally or even negligently.

Under strict liability, a violator's intent helps determine the amount of penalty. The coalition commenters urged ARB to adopt a system in which violators could avoid strict liability. This would put the ARB out of step with most environmental laws and leave many violations unpunished.

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ENFORCEMENT DIVISION CHIEF RYDEN: The next comment you heard from the new coalition urged ARB to require mandatory administrative hearings, instead of following the current ARB practice of working with violators to reach mutually agreeable settlement based on the facts and the law of each case. Allowing violators to invoke mandatory administrative hearings instead of working with us to settle cases would increase both settlement costs and the time it takes to reach settlements. Both would result in fewer violations being addressed.

In addition to being long and costly, after an administrative hearing, both ARB and the violator have the
option to challenge it all over again in court, adding to
the expense and burden of the process.

Instead, the ARB handles case settlements the way
most other agencies do. Our settlements are a product of
mutual agreement between the ARB and violators, and
neither side is able to dictate the terms to the other.
In fact, we settle 99 percent of our cases, so we do not
have much of a need for holding administrative hearings.
If we can't settle a case on those rare
occasions, ARB shoulders the burden and expense of proving
the violations in court. Litigation is seldom a winning
proposition for us, even if we technically win the
lawsuit, because litigation puts a huge strain on our
staff and resources.

Penalties must be deposited in the Air Pollution
Control Fund for appropriation by the Legislature, not in
our operating budget to compensate us for our litigation
expense. These are the realities of the situation.
That being said, we are looking at the
administrative hearing regulations that the ARB currently
has on the books.

ENFORCEMENT DIVISION CHIEF RYDEN: The next
commend that you heard from the new coalition is that the
ARB should adopt a complicated U.S. EPA policy for
determining penalties in mobile source cases that is based
on federal law and is barely a year old.

The U.S. EPA mobile source penalty policy is not
a good fit for the ARB Enforcement Program, mainly because
California and federal mobile source penalty statutes are
entirely different.

Moreover, when implementing the U.S. EPA mobile
source penalty policy, the federal staff also uses its
discretion in applying certain factors, such as evaluating
the violator's intent.

The bottom line is, instead of adopting U.S.
EPA's penalty policy as suggested, ARB will continue to
evaluate the facts of individual cases and apply the
California statutory factors.

The 99 percent settlement rate reflects how well
ARB's existing process works. However, we believe that
there is merit to adopting a penalty guidance that is
consistent with California law and increases the
transparency of our Enforcement Program. Later in my
presentation, I will discuss the action we are taking in
more detail.

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ENFORCEMENT DIVISION CHIEF RYDEN: You also heard
comments from the new coalition that ARB should
concentrate on prosecuting emissions violations and either
ignore other violations or impose nominal penalties.

We do concentrate on emissions violations, but we also prosecute other violations as well. Some coalition commenters argue that the violations of ARB's engine emission certification requirements are simply paperwork violations. We disagree. ARB considers selling vehicles that are not certified to ARB emission standards to be emissions violations. The emissions that come out of uncertified vehicles are illegal. They should not occur at all.

The only way to protect our certification programs, the emission standards they implement, and the many law-abiding companies that spend their time and resources to comply with ARB's certification requirements is to impose substantial penalties for certification violations. Since the Health and Safety Code provides these substantial penalties for violations, the ARB is merely reflecting the Legislature's decision.

These commenters also urged us to augment enforcement against illegal uncertified products being imported into the United States. We agree and have been seeking to do this for several years, but we have made less progress than we would like in discussions with federal customs officials and others. We are working with the coalition commenters to help obtain the necessary
authority to inspect products at the port.

ENFORCEMENT DIVISION CHIEF RYDEN: You were also told that the ARB should stop enforcing alleged underground regulations, one of the coalition commenters claimed had not been adopted through the Administrative Procedures Act.

ARB does not enforce underground regulations. We have our hands full enforcing the regulations this Board adopts. The Office of Administrative Law recently declined to rule on the underground regulation petitions that these commenters, the California Motorcycle Dealers Association and the Sand Car Association, brought to your attention at open sessions of recent Board hearing.

CHAIRPERSON NICHOLS: Could I just -- I want to clarify this, because I think this term "underground regulations" sounds like something nefarious, and it probably is. Basically, the idea is an agency would attempt to enforce something that had never actually been adopted as a regulation, is that --

ENFORCEMENT DIVISION CHIEF RYDEN: Or should have been adopted.

CHAIRPERSON NICHOLS: It should have been adopted through a formal process, but they didn't do it, but they're still trying to go after people for violating it.
And to do that would be illegal and it would be a defense if we were to try to bring a case --

ENFORCEMENT DIVISION CHIEF RYDEN: It would be an absolute defense.

CHAIRPERSON NICHOLS: Then the defendant in that case could say I'm not responsible, because they did not adopt this regulation, and they would win.

ENFORCEMENT DIVISION CHIEF RYDEN: That's correct.

CHAIRPERSON NICHOLS: Okay. Thank you.

ENFORCEMENT DIVISION CHIEF RYDEN: Finally, you were told the compliance assistance and training activities currently housed in the Enforcement Division should be transferred away; people are allegedly reluctant to interact with ARB enforcement staff.

Over the years, we have trained thousands of people from industry, academia, government agencies, other organizations, and members of the public and have never heard this concern expressed. In fact, our training is the model for other states and nations and other countries. Enrollment is, in fact, growing.

For example, in 2008, we trained about 4,000 people. In 2009, we trained almost 9,000 people.

Also, clients appreciate getting information from
the enforcement perspective. The ARB has other compliance assistance programs that it's conducted by, for example, the Ombudsman, other ARB staff through toll-free hotlines, websites, problem resolution, program implementation, and financial incentives.

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ENFORCEMENT DIVISION CHIEF RYDEN: ARB brought an action against individuals selling sand cars. Sand cars are essentially off-road dune buggies with extremely large engines that were not certified to ARB emission standards.

After the sand car settlement was entered, an individual complained to the Board. In response, we opened an investigation into the allegations you heard. This investigation is ongoing. But to date, the allegations have not been substantiated.

Contrary to what you heard, we do give people detailed explanations of how their penalties are calculated. We issue citations, notices of violations, and penalty evaluations based on the penalty amounts and factors established in law, such as harm the violation caused, how long it lasted, what the violator did to correct, and the financial burden the penalty would place on the violator.

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ENFORCEMENT DIVISION CHIEF RYDEN: In summary,
right now I'd like to summarize the other comments we received and ways we are addressing them.

We always seek to improve the Enforcement Program and these proposals came out of outreach efforts recently taken in your direction. These outreach efforts have been quite productive, thanks to the high level public participation.

We'd like to think that the public's outstanding response was due to ARB's outreach abilities, but there is something bigger in play here. ARB's Enforcement Program is receiving a great deal of interest lately because of the ambitious regulations this Board has adopted. These regulations will now impact industries and individuals who have never before been subject to ARB compliance obligations.

Based on these comments we received, now is an excellent time to increase our transparency of what we do, provide additional compliance assistance, especially to the new regulated companies and individuals, and to augment our efforts in environmental justice communities. We look forward to continuing this dialogue.

Before I present the specific actions we are taking, I would like to briefly summarize our outreach activities.

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ENFORCEMENT DIVISION CHIEF RYDEN: We reached out to all the parties interested in ARB's Enforcement Program in various ways. Toward that end, staff held a public workshop on October 12th, 2009. The workshop notice was distributed widely by the largest e-mail broadcast in ARB history and reached approximately 350,000 people, businesses, and other organizations.

Enforcement Division staff followed up with hundreds of direct calls to parties across a wide spectrum of people interested in the ARB Enforcement Program. Our efforts paid off. The workshop was attended by over 200 attendees in person, another 150 people online, and 30 parties testified in person, and many more submitted written comments.

Since then, staff has followed up on meetings with stakeholders.

Now I would like to summarize the comments we received and the action we are taking to address them.

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ENFORCEMENT DIVISION CHIEF RYDEN: Many comments suggested ways to increase the transparency of what we do, requested that we provide additional compliance assistance activities, and sought our increased presence in environmental justice communities.

A number of comments requested that we stay the
course and, if anything, seek to strengthen our programs and laws we enforce.

Some comments included many of the comments you have heard in the open comment period at recent Board hearings, and sought changes that we believe would have the effect of weakening both our program and these laws.

These comments were not widely supported, however, and they relate to issues some of the speakers have raised in ongoing enforcement litigation with us. I've already summarized these comments for you and our thoughts on them, so I'll not repeat them here.

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ENFORCEMENT DIVISION CHIEF RYDEN: The main area of consensus among the commenters is to increase the transparency of ARB's Enforcement Program. Again, these concerns are understandable, because the new ARB regulations will affect people who previously were not subject to regulation by ARB and are unfamiliar with the ways we do business. We think many of these comments have merits and are implementing them in several ways. Increasing transparency should speed the resolution of our cases and provide savings to us and the regulated community.

Now I would like to discuss the specific actions.

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ENFORCEMENT DIVISION CHIEF RYDEN: Specifically, we will prepare an enforcement penalty guidance and will place it on the Enforcement Division web page. This guidance document will list the ARB's regulatory programs, the penalties available for violating their requirements, and the factors we take into account in determining proper penalties. The document will clarify that we emphasize emissions violations, but that we seek appropriate penalties for all violations for ARB requirements.

Once it is completed, the guidance document will be available on the Enforcement Division web page. People want to know more about the ARB's statutory penalty authority, how ARB penalty checks are processed, where the penalty funds the ARB collects are deposited, and how supplemental environmental projects are identified and funded.

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ENFORCEMENT DIVISION CHIEF RYDEN: To address these comments, we are placing the following five things on the Enforcement Division web page:

1. A plain language explanation of ARB penalty statutes.
2. Cal/EPA guidance on supplemental environmental projects and self disclosure policies.
3. A plain language explanation of these Cal/EPA
guidance’s.

4. An explanation of where ARB penalty moneys are deposited and how they are processed.

We think it is important to emphasize to the public that the penalties paid in ARB enforcement cases are deposited in the Air Pollution Control Fund and are spent only after appropriation by the Legislature.

5. A list of potential supplemental environmental projects, including instructions for requesting that a project be added to the list.

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ENFORCEMENT DIVISION CHIEF RYDEN: In conclusion, we believe there is much value in this dialogue and we plan to continue in the future. We found it beneficial. We would like to afford people the opportunity to provide written comments on what they heard today.

After we review these comments, we plan to report back to you and will hold an additional workshop.

I would like to emphasize the ARB’s Enforcement Program has three main goals: To foster compliance, deter violations, and create a level playing field for people who have to comply with our regulations.

We do our job well, but believe there is always room for improvement. These actions we are taking will promote all of these goals.
I would like to thank the Board for the opportunity to provide you with an update. I'm available to answer any questions you may have.

CHAIRPERSON NICHOLS: Thank you very much. We don't get to see you often at Board meetings.

ENFORCEMENT DIVISION CHIEF RYDEN: We're the only division that doesn't do regulations.

CHAIRPERSON NICHOLS: That's right. Thank you. That was actually very helpful. I think probably most Board members never hear about enforcement. Or if they do, it's only in the aftermath.

You do. Okay. And what do you hear about enforcement people?

BOARD MEMBER BERG: I actually participate sometimes on the other side of the table running a manufacturing company.

CHAIRPERSON NICHOLS: So you've been subjected to enforcement. And how was the experience?

BOARD MEMBER BERG: Actually, with ARB it was very good. I could give you some DTSC stories, however.

CHAIRPERSON NICHOLS: Well, this is a very sensitive area. I don't mean to put you on the spot too much, but I knew you could take it.

It really is the place where most people probably experience regulation, and that is those who are regulated
by us who need to both see us out there and also see that
they know that somebody is cheating one of their
competitors that they are going to hear from us and that
the laws are going to be enforced. So this is a highly
important area.

BOARD MEMBER TELLES: Just a question of
information.

In the enforcement penalties, I think I asked
this once before, but do you have a list of the penalties,
the size of the penalty for the degree of the violation?
I've looked on like a truck website and things
like that. If a guy drives without a particulate filter,
I don't see any penalties listed.

ENFORCEMENT DIVISION CHIEF RYDEN: The penalties
actually are specifically found in the Health and Safety
Code. That's part of our proposal to put on a
user-friendly list of the particular areas of violations
and the penalties that follow.

On the mobile source side, they're very specific
to certain violations. For example, 43151 prohibits the
sale of uncertified vehicles. 43016 is the fallback
position that covers things like small off-road engines
and gas cans.

And one of the proposals we had, since not
everybody is a lawyer -- and we resolve most of our
enforcement actions without lawyers at the staff level
with individuals. And like I said, what the initial
proposal to do is simplify so that you can find it and
everybody else who's interested in finding it can find it.

BOARD MEMBER TELLES: On the website I saw there
was a recent like $350,000 penalty for something some
entity did. The entity that did that, were they aware
there was going to be a $350,000 penalty for what they
did?

ENFORCEMENT DIVISION CHIEF RYDEN: I believe that
was one of the ones for the periodic smoke inspection
program. That's a program that's been on the books for
well over ten years. We've done extensive outreach in the
area and we conduct regular inspections. They're
notified -- actually in the DMV truck drivers handbook it
explains certain aspects of the requirements of the
periodic smoke inspection program.

That program is essentially like smog check for
trucks. It requires fleets of more than two to regularly
inspect their vehicles that are over four years old.

So what we would have done is conducted a regular
inspection probably of the fleet facility as we do
regularly. And during the audit process, we discovered
that, in fact, they didn't have the appropriate records.

So what we would have done with that is we
acquire the facts. We determine how many vehicles are subject to the periodic smoke inspection program, bring in the alleged violator. We discuss the violation. We show them that, in fact, this is one of the fallback provisions in 4301 -- Health and Safety Code 43016 which provides for a $500 penalty for each vehicle for each year they didn't do the penalty.

So they're fully aware of the basis of the penalty structure. That's probably a lot longer explanation --

EXECUTIVE OFFICER GOLDSTENE: But our goal is to make it easier to find that.

ENFORCEMENT DIVISION CHIEF RYDEN: That's our first goal is to make it user friendly. Right now, I think, oh, it's in the Health and Safety Code. But I've been a lawyer for a quarter of a century. To me, it's like reading a novel unfortunately.

CHAIRPERSON NICHOLS: You need a life.

(Laughter)

ENFORCEMENT DIVISION CHIEF RYDEN: Actually, I do have a life beyond that. I don't spend time reading the Health and Safety Code all day.

CHAIRPERSON NICHOLS: Just checking.

We've been laughing about this a bit, but obviously it is an important topic. And I do particularly
want to call on John Dunlap representing CEERT.

EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols,

Will Brieger from the AG's office was going to say a few words.

CHAIRPERSON NICHOLS: Before you speak, Mr. Dunlap, if we could hear from our colleagues and frequent lawyer in these matters from the Attorney General's Office.

DEPUTY ATTORNEY GENERAL BRIEGER: Good afternoon, Chairman Nichols and Board members. This will be brief. I know it's approaching 5:00.

My name is Will Brieger. I'm a Deputy Attorney General specializing in environmental law enforcement. And my years in law enforcement have included time as a district attorney. I briefly filled in at Cal/EPA as the head of the Enforcement Programs, but most of my career has been in the attorney general's office working on a variety of cases, hazardous waste, water quality, and of course air quality.

But I'm not here to discuss specific cases. We were recently asked to assist in a more general review of enforcement practices. And appropriately so, as you may know, the attorney general has a duty in the constitution to ensure the uniform enforcement of law throughout the state.
And as we proceed through that process, it's clear that the Board's programs have a balance of compliance assistance and a considerable deterrence through enforcement.

There is a well-known enforcement maxim that holds that 20 percent of the population will always comply with any regulation. And then there's five percent that will try to evade it. But the majority, that 75 percent that remains, they'll comply also as long as they know that that five percent is going to get caught and punished.

Your Enforcement Programs know that. The Board's fortunate to have an unusually experienced long tenured group of savvy enforcement folks. And my office has enjoyed a good collaboration with your staff reflecting, I'm sure, a shared commitment to the air quality and in recent years to climate change issues. And that collaboration has gotten stronger since you hired away one of our better lawyers as your Chief Counsel.

But I'm not saying that things can't be improved. Every organization can streamline. Everyone can work a bit smarter. The need is to improve on the ability to educate that majority of people that want to comply with the law and to catch that minority that don't. And that's all in four days a week, most weeks. That can be done.
ARB's strength has always been its use of science, experience, and public input to improve the air. And likewise your enforcement programs draw on those resources. The Enforcement Programs look at science, if you will, in the form of research about what works in enforcement. They draw on their experience and actually experience from other agencies, and of course, public input. The suggestions from the October workshop have obviously resonated and are being listened to.

California sets high goals for itself. And it's heartwarming to see how many businesses and people share in those goals. We all benefit from the effort and the ingenuity and frankly the real dollars that Californians spend to keep our skies and our lungs clear.

Nobody wants those efforts to fail, and nobody wants those investments to be undercut by laggards or cheaters. So the attorney general's office is happy and looks forward to a continued collaboration that's aimed at fair and effective law enforcement.

CHAIRPERSON NICHOLS: Thank you. Thank you very much. So are we your favorite client?

DEPUTY ATTORNEY GENERAL BRIEGER: Absolutely.

CHAIRPERSON NICHOLS: Thank you. I just had to ask anyway.

I appreciate that. And appreciate your coming
over. Obviously, we depend on you not only for your
ability to take cases when we need to take them to court,
but also for the feedback.

And I had an opportunity to take a look at some
of the information that you provided in terms of an
overview, and it was really very helpful. I appreciate
all the work that the attorney general's office has put
into this.

Mr. Dunlap.

MR. DUNLAP: Good afternoon, Madam Chair and
members. It's a pleasure to be with you.

I'm not representing the laggards or the
scofflaws today, I want you to know.

The CEERT Coalition is a 20-trade associations
strong coalition from a diverse group of business sectors.
Some of them as Mr. Ryden pointed out in his remarks are
in tune savvy with being regulated. Others are new, and
some are facing pending compliance dates and the like.

And there is some concern, and that's why you
heard from various members of this coalition -- I think
four times in the last seven months of Board meetings.
This continues to be a priority for them. They're
interested in some reform. They want to see transparency,
predictability. We appreciate the overview that was
provided by Jim and Mr. Brieger. We support the need for
clarity and for consistency and to ensure there's level
playing fields.

One of the things I intended to say -- I had some
prepared remarks. I think I'll stray from them in the
short time I have and speak to perhaps a broader issue
that might bring home why we think this is so important.

The Air Resources Board has enjoyed unprecedented
public support and great cooperation over the past four
decades it's existed by setting tough, fair-minded, but
predictable regulatory goals. And you've noticed
particularly these days -- and we heard Madam Chair in
some of the commentary you offered in response to
industry -- because of the problems in the economy, people
are very sensitive to not only additional cost potential,
but unknowns through regulation.

And in the compliance area, it's important for
you to just pause a moment and reflect on it that it is
important to be perceived as not just fair minded and
consistent, but to provide resources for people to be able
to comply. And if they feel as if they're being rough
handled or the penalties are too high or they're not clear
to them, it is I think a real barrier to enjoying the
support that the Board has long had.

And so we take this seriously. We're delighted
in some of the changes and improvements that have been
promised by the staff. We appreciate that. We want you
to know that the more closely the Board pays attention to
these issues and asks staff to come back and tell them how
it's going, we think it will be strengthened. Your Board
is hands on and engaged and we only benefit from that.

A few things I must object to just briefly.

There was some characterization in how the staff looked at
some of the comments. And I just want you to know we're
not trying to reflect people getting away with things they
shouldn't. But at the same time, there needs to be some
detailed shared relative to the contents --

CHAIRPERSON NICHOLS: I'm going to give you more
time, because you're representing a group.

MR. DUNLAP: And there's a half a dozen
gentleman --

CHAIRPERSON NICHOLS: Rather than have them stand
up, go ahead.

MR. DUNLAP: I won't belabor that point, but I
want to focus on it for a moment, that if you can be as
transparent as possible, if you can provide a framework
that people know what they're facing and that you can
allow the framework to be accessed not just on websites,
but there can be some detail about units, number of units
that violated rules, what the penalties were per unit, the
SEPS, and the SEP being a way to contribute some fine
money for some mutually agreed upon programs, that I think people will go into that process not so much fearing it and being troubled. Nobody wants to go to court. So when your staff says 99 percent of them settle, absolutely, because people are motivated not to have legal entanglements. I don't think that's necessarily the greatest success statistic. It's people are worried about going into the legal process.

So the bottom line is your Board expects quick compliance, cost-effective compliance, fair treatment so people can come out of the experience like Ms. Berg has and her settlement case that she mentioned a moment ago feeling that she was treated fairly.

So I would encourage the Board to keep after your staff a bit. They're tough. Ms. Peter came from the AG's office. They have a role to play there. We think this is perhaps a little bit different role and a different approach most times.

And so please understand our interest and involvement to try to strengthen the program. We're not trying to guide it, not trying to give people that shouldn't be held to the high level of compliance an out. So thanks for listening. We're going to continue to work with your staff.

CHAIRPERSON NICHOLS: Thank you.
MR. DUNLAP: And we appreciate your attention.

CHAIRPERSON NICHOLS: Thank you.

I think the comment that Mr. Brieger made about the need for always to be looking for ways to improve and particularly at any given moment to see what the need is and Mr. Reddens' recognition that we are in the process of regulating people that had previously not had the pleasure of dealing with us before and it isn't always something people look forward to. So, you know, it's like visiting the dentist I suppose.

MR. DUNLAP: But the idea of having the website material and the like will be very helpful. And I think you would want people to be able to represent themselves whenever possible to come in and work with the staff and a lot of them are inexperienced in that area.

CHAIRPERSON NICHOLS: Well, actually, that's one of the reasons -- as I know you're very familiar with our small business Ombudsman because she worked with you at the South Coast District. And the district had a reputation also that was somewhat scary. And I think part of the work that you did and that she did there was to try to help small businesses understand what they needed to do and figure out how to make the process less scary. And that was very important work.

MR. DUNLAP: And I think the idea that somebody
suggested that maybe a program be shifted from one operation to another is more about optics than a failure in people. Nobody is suggesting the program is failing, but there has been some examples from clients I've had and industry groups where they're reluctant to share information perhaps or to participate when they know it's being headed by folks from compliance. No matter how public relations schooled they may be, they're concerned about that.

CHAIRPERSON NICHOLS: I think there is a difference between training, which I think the enforcement does superlative job of from everything I've seen, and this issue of sort of general compliance assistance or counseling. And those are areas which are maybe sometimes a little bit of a gray area. But I agree with you that a different tone is sometimes called for.

MR. DUNLAP: And Mr. Goldstene made a quick call to me and said there are a lot of things that are going to be explained over the next few months and we appreciate that. And we'll be pleased to continue to be as positive as we can in the process.

CHAIRPERSON NICHOLS: Great. Thank you very much. And you set something useful in the motion. It was already -- I'd like to claim credit for having started the process, but you definitely accelerated it and pushed it
up a notch. So thank you.

Do we have anything further on this topic?

EXECUTIVE OFFICER GOLDSTENE: No.

CHAIRPERSON NICHOLS: We do have four people who have discovered the benefits in coming in the open comment period to say whatever they feel like saying, and that's what it's for. So we will close off the Enforcement Program item and take the public comment period now.

We have four people: Skip Brown, Katherine Reheis-Boyd, Joseph Partranski, and Betty Plowman. So we'll start with Mr. Brown.

MR. BROWN: Good afternoon. Thank you for this opportunity.

My name is Skip Brown with Delta Construction Company.

In December, CARB had quite a broad side against its credibility due to the Tran scandal. And I'd like to talk about the fact that you possibly have some other credibility issues. I'd like to bring them up at this time.

The peer reviewers still stood behind the report, but unfortunately six out of the nine peer reviewers have compromised positions with CARB. Some of them were the authors themselves. You know, what's up with that? We're having the authors themselves doing the peer review group.
I don't think that's acceptable.

John Froins, Chair of the SCP, has been an indirect recipient of funds that came from the State of California and the federal EPA. And as Chair of the SRP, who basically was a promoter of this back when it was decided in 1998, 1999 to being a recipient of funds after the fact, I think that -- certainly there's the appearance of impropriety.

Gary Friedman was appointed as the epidemiologist in 1988 and again in 1991, but has not -- there's been no appointment since then. Since what we're doing is talking about epidemiological studies, I would think that the epidemiologist would be the key person to have on board. And quite obvious I guess he's been retained in perpetuity.

The studies used by CARB for doing this are nationwide. There are no California-specific studies. But California shows no premature death on six independent studies, all discounted by CARB. What's up with that?

California is a fourth healthiest state in the nation on age-adjusted death. So I don't understand what's going on there.

No other state or county has declared or county has declared diesel particulate matter to be attacked, but California has that.
Asthma rates are up 75 percent. You're correct about that. Between 1980 and 1996 in the children are up almost 100 percent. But the air quality PM is down -- 2.5 is down 58 percent. In Riverside/L.A., one-hour ozone exceeded 150 days in the 70s, down 25 days currently.

Here's a chart of the asthma going up and the air quality improving by all the particulate matter and everything going down. So we're blaming all this on particulate matter.

CARB issued factoids after the December meeting I guess to help support the premise that the studies are good. Here's a list of their factoids. One of them says each year in California diesel PM contributes up to 24,000 premature deaths. That's up from 3500 on the Tran report. So now we're up to 24,000 premature deaths and thousands of hospital emissions for asthma attacks and other respiratory symptoms.

CHAIRMAN NICHOLS: Your time is up. I'm sorry if you have a written presentation, you can submit it.

MR. BROWN: I didn't have time to do the written presentation. I have very serious business problems trying to survive in today's economy.

CHAIRPERSON NICHOLS: I understand, but you obviously had time to do a lot of analysis. I would invite you to come to our symposium on diesel, which is
being scheduled for a full day in February --

RESEARCH DIVISION CHIEF CROES: February 26th.

CHAIRPERSON NICHOLS: And many of the people
whose work you agree with and as well as those whose work
you do not agree with and who you are here attacking will
be there. So please feel invited to come on February
26th.

MR. BROWN: Thank you very much. Will the
symposium offer a person more than three minutes?

CHAIRPERSON NICHOLS: Yes. For the speakers.

But the speakers are all going to be scientists. But
they're going to be scientists who agree with you as well
as scientists who don't agree with you. It's not just a
group of one-sided people or those who are on the take or
anything else.

MR. BROWN: That's excellent. I would like you
to look up the definition of factoids. I think you'll
find it entertaining. And my Latin offering for the day
is illegitimus non carborundum.

CHAIRPERSON NICHOLS: I agree with you on that
one.

Catherine.

MS. REHEIS-BOYD: Good afternoon, Chairman
Nichols, members of the Board.

I'm Catherine Reheis-Boyd, President of Western

I appreciate being able to talk with you today under public comment on an extremely important regulation, the low-carbon fuel standard. I had hoped to do that under the agenda item. We all know that was pulled.

It's going here under public comment. The staff is writing an update. I'm glad to hear that, because it's important. And it's equally important that the Board begin engaging with the stakeholders like us to hear the concerns that we continue to have.

They are legitimate concerns. They are around compliance, which you are very -- obviously we just got done with a whole discussion on enforcement. But we have concerns that we want to begin that conversation now rather than later. We hope that maybe the next Board meeting we can agendize this and use the staff report as a basis for that beginning conversation like we just did in cap and trade.

We're working every day with your staff on the gaps that still remain, and again they are significant. The questions remaining are significant. We just had a workshop that demonstrated the challenges that are real and they're present and they're today. They're not in May. They're not in June. They're not next year. They're now.
And we believe that obviously there's a lot of implementation details that you'll be interested in. We are happy to continue engaging the staff, but some of those are short term. You have an advisory counsel that's being set up to deal with our long-term concerns and we'll be engaged in that process. Those are around technology and vehicles and delivery systems that aren't invented yet and not widely available. But you have a process for that.

On the short-term issues, especially on the reporting side, they're significant. This is a reporting year. It is a compliance reporting year. We appreciate the release of the CARB's advisory, Mr. Goldstene, Ms. Ellen did a great job in at least getting us some comfort in an advisory, give an extended period of May of July. However, talking to the Board in June and July is not adequate time. We need to engage now. We would like to continue that conversation. We believe we can provide you some ideas to allow some other enforcement protections during this year of continued dialogue on a lot of these implementation issues that are still on the table. So we are looking forward to that.

We are looking forward to the Low Carbon Advisory Committee getting kicked off this year. And we are thankful that the Board sees that as an opportunity to
deal with fuel adequacy in vehicles and technology that has to go around this regulation for the long term.

And then finally, as the hope of the Board obviously is that this technology and availability of non-petroleum liquid-based transportation fuels will come over time, we don't feel it's our company's responsibilities to be held accountable for the vehicles and the combustion fuels technologies that are outside our business control. And that being to make low-carbon intensive fuel. So we'd like to talk about these issues.

Our goal is to ensure we can provide adequate, reliable, affordable fuels while we work with you on your goals to a transition to a different low-carbon economy.

CHAIRPERSON NICHOLS: Thank you for the comment.

In terms of follow up, I realize that what you want is attention from the Board. I mean, that's why you're here. Board time is scarce, as you snow. The members of this Board are hard-working people who have other lives. And they come from distances away, and they tend to want to focus on things that they can take action on. It's really hard to get people to sit and just listen, you know, to a presentation unless there's something that they can actually be engaged in.

And so I think once the report is here, we should talk about what's the most effective way to get you an
open airing that you are seeking perhaps without having to
have an entire Board meeting devoted to that topic.
Perhaps there is a way that we can accomplish your goals.
We've had individual Board members in the past who have
been willing to spend extra time to work on an issue or
even subcommittees on the Board. I've been given some
thought how to work on those issue. I'm not making a
proposal right now but just suggesting we will get back to
you on this.

MS. REHEIS-BOYD: I really appreciate that
consideration. I thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Joseph Partransky from Healthy Ports and Ships.
You've been with us all day, sir.

MR. PARTRANSKY: Yes, I'm Joe Partransky, and I'm
from the bay area. And I wrote a thesis back in '64 on
the politics technology of on-board ship automation. And
I'm concerned with health ports and healthy ships
currently.

Turns out that my understanding is that the
International Maritime Organization in March will be
dealing with a treaty which will have some impact on what
appears to be one of the major causes of Riverside's smog.
And that is ship diesel fuel being burned throughout the
whole world. Currently, the expectation by the year 2020
it will double. If it's not controlled by 2045, it will double again.

Apparently, the diesel fuel burned in the ocean, which is a concern that I think you should have as well as I tried to find out if you had a subcommittee dealing with it or what have you -- all I found so far is Lisa Williams is one of your staff person who deals with harbors community monitoring project, but there is no apparent subcommittee or group that maybe you can direct me to that is involved with the issues of the ships, not only within the 20 miles, but within the 300 miles, within the whole situation, because you are being effected by it. We are being effected by it, not just in the ports.

The other question I have -- if you can provide some help on that, I would appreciate that.

The other one is that in your area of outreach to educational communities, may I suggest that every single one of the district air quality management groups, can they list on a very prominent place your website, that you exist. It's not in the one that we have. And also list the agendas when they're available, so everybody in the state knows that your agenda is available. And they should list besides the agendas that you actually have a www.calspan.org repeat of this meeting so the people can have access to that.
Every single one of the regional groups should act cooperatively, collaboratively, and get information out to the public, rather than us trying to find it, what have you.

From the standpoint of a best practices in the whole area of the California Air Quality Management Act thresholds for significance, which will be done in our area, the so-called measurements from the standpoint of beyond greenhouse gases, we need to have involvement.

Thank you.

CHAIRPERSON NICHOLS: Your time is up, sir. But thank you for coming and thank you for your comments.

Our final open comment period witness, Betty Plowman. We have our letter, so you don't need to read the letter. If you would just summarize it, that'd be great.

MS. PLOWMAN: Yes. Thank you, Chairman Nichols. And I did like your comments several moments ago that the Board wants to take action. And I hope with this letter that I presented they will take action, because that's what we're asking for.

I have presented to each of you copies of letters which were sent to you U.C. president Mark Yudof and U.C. Professor Michael Jerrett requesting the California specific relationship between PM2.5 and premature deaths.
These letters were sent both by regular and electronic mail on January 6th, 2010, as well as numerous telephone calls. And I sadly report today that there has been no response.

There is serious disagreement among the scientific community regarding the relationship between PM 2.5 and premature deaths. Evidence from six independent sources indicate there's no relationship. Three of these sources originate from the 2000, 2009 health effects institute reports that Dr. Jerrett co-authored.

Clarification of the California-specific evidence from these sources would resolve this issue. And Dr. Jerrett is the California scientist in the best position to clarify these results.

A detailed request was made to Dr. Jerrett on July 11, 2008, and this request was repeated and expanded upon in December 10th, 2008, public comment card. Dr. Jerrett has failed to respond to these requests, in spite of the fact that the underlining data used in his research for Health Effects Institute is subject minimally to the disclosure requirements of the federal data access.

Because of the lack of response from Dr. Jerrett, the Hein Tran issue, as well as the catastrophic consequences this rule is having on California businesses, we urge you to assist us in our endeavor to bring


transparency to the science used that enacted this rule.

CHAIRPERSON NICHOLS: Thank you.

MS. PLOWMAN: Can I give the attorney general's
staff a copy also?

CHAIRPERSON NICHOLS: If he's willing to receive
it. I'm sure he would be happy to. Thank you.

Is there anybody prepared to comment at all on
the status of this matter?

RESEARCH DIVISION CHIEF CROES: Good afternoon.

Actually, Michael Jerrett from USC has published
an analysis of Los Angeles which shows a very strong
relationship between PM2.5 exposure and premature death.
That work was published in 2005. It's in the open peer
reviewed literature. And I'll make sure that's provided
to the person giving the testimony.

He does have a project with us to do an analysis
for all of California, not just Los Angeles. That's
ongoing. He's using data from the American Cancer
Society. They're the ones that hold that data, and it's
to protect the individuals that participate in the study.
It's really not available, something Michael Jerrett
cannot give to anyone on the outside. And if people
require that data, they should contact the American Cancer
Society directly.

CHAIRPERSON NICHOLS: My recollection, going way
back to the time when we first set the fine particle standard at EPA in 2007, was there was demands on the part of other groups -- outside groups who wanted American Cancer Society data, that ACS refused to release because of privacy type issues. And at the end of the day, there was some process that was worked out through the Health Effects Institute where they actually did find a way to get some additional people to do some -- try to rerun the studies that had been done. Is that what we're talking about here?

BOARD MEMBER BALMES: If I might interject a bit. The Health Effects Institute actually funded re-analysis of some of the initial studies with regard to PM2.5 and mortality that were done by Harvard investigators. Dr. Jerrett was one of the group that was part of the re-analysis.

So first of all, I wanted to say Michael Jerrett is a colleague of mine at U.C. Berkeley. If that makes me have conflict of interest in these statements, so be it.

But I can state that he's a scientist of great integrity and believes in transparency of data. That's an integral part of the scientist process. But I don't think he believes in giving data without the permission of the American Cancer Society, which I can tell you guards their data very carefully.
On the basis of a publication that Dr. Jerrett had earlier -- actually, in 2009, I wanted to follow up with him and do a secondary analysis and we're still waiting to get approval from the American Cancer Society to do that.

And so I do think the data will eventually be available. But it's the American Cancer Society that has to be approached. And the Health Effects Institute may be able to help convince the American Cancer Society to release the data, but the American Cancer Society is very difficult with regard to other investigators getting access to their data. I'm a case in point in that regard.

CHAIRPERSON NICHOLS: Okay.

BOARD MEMBER TELLES: It's curious to me why the American Cancer Society wouldn't release that. But in your redoing the methodology report, are you not asking for that information? I mean, that seems like it's almost crucial to do what you need to do.

RESEARCH DIVISION CHIEF CROES: For our re-assessment of the relationship between PM 2.5 and health effects, we're relying on already published peer reviewed literature, which in some of those studies do rely on the American Cancer Society data. That data has been re-analyzed by an independent group, the University of Ottawa, I believe. So those studies have been
The raw data that I think the testifier was asking for includes information on individuals, where they live, how old they are, diet, race, and so forth. And that's just not data that the American Cancer Society can share under the guidelines of acquiring the data in the first place.

UNIDENTIFIED SPEAKER: You can wash the pertinent information out.

BOARD MEMBER BALMES: The data could be de-identified and then re-analyzed, I agree.

CHAIRPERSON NICHOLS: And that's what happened.

BOARD MEMBER BALMES: I'm in favor of having the data be made available. I'm just saying that we don't have the power to automatically make it available.

I do think at the February 26th symposium that Dr. Jerrett will be there. And Dr. Enstrom who's been very concerned about getting those data will also be present, and perhaps we can get to some kind of way to move forward at that meeting.

RESEARCH DIVISION CHIEF CROES: Also the Health Effects Institute will be there, which funded the re-analysis, as well as Dan Cruski, who's the Canadian investigator that did the re-analysis, will be there.

BOARD MEMBER TELLES: That data that you are
getting, is it going to be California-specific or is it just including the whole country and using the whole country's data to kind of make a California --

RESEARCH DIVISION CHIEF CROES: What we're relying on primarily is the U.S. EPA integrated science assessment which did look at the whole country. There have been some California-specific studies which show a whole range of results, and those will be discussed at the symposium on the 26th.

BOARD MEMBER TELLES: I'm not trying to be the devil's advocate, but I think it would be important to know if there is a difference because of the different type of particulate matter that's in California versus in New York or Chicago or whatever. I mean, to me it's kind of a scientific question that should be asked.

If the data is out there to get some information in this regard, I think it would be very helpful for not just us but the whole scientific community. Because one of the questions I've always asked since I've been involved in it is, is there a difference between the particles between the different regions of the country. In reviewing the cardiovascular literature, there's quite a bit of difference when they talk about the composition of these particles in Boston versus Los Angeles. A lot of the cardiovascular literature comes out of Boston, which
is high in metals and whatever they do out there versus what you see in the PM composition in Los Angeles.

To me, it's always been kind of a scientific inquiry just kind of an interesting thing. Is there a biological difference in what's actually happening.

RESEARCH DIVISION CHIEF CROES: That's a good question. Certainly the transportation sources that dominate the PM 2.5 are the same, but there are stationary source differences. Coal combustion in the east versus natural gas here.

CHAIRPERSON NICHOLS: Air quality, moisture content of air, I mean, yes. Of course. This is a flashback to 1996 at least as far as I'm concerned.

BOARD MEMBER BALMES: And correct me if I'm wrong, Bart, but the current CARB support for Dr. Jerrett's is to specifically look at the California component of the American Cancer Society data.

RESEARCH DIVISION CHIEF CROES: That's correct.

BOARD MEMBER BALMES: So I think the Dr. Jerrett will be at the February 26th symposium and it's fair game for people to ask him what that analysis shows, so far though. I know it's not completed at this point.

CHAIRPERSON NICHOLS: And I didn't mean my comment to suggest that we shouldn't be pursuing it. I think we should be pursuing it. Absolutely. Okay.
If that is the conclusion -- oh, sorry. Mayor Loveridge.

BOARD MEMBER LOVERIDGE: I mean, obviously public policy in this area has to be based on best science. But I think the issue here is not so much science but the choices we make in the public policy to implement. And so even if we had the best science agreeing, I don't think people whose names are on the list would be there if it wasn't for the kind of impact public policy has on their own business. It's not a scientific controversy as much as a translation of science into public policy.

CHAIRPERSON NICHOLS: Well, yeah. Your comment is relevant in this sense that the people who are attacking the mortality studies may think that if there were no mortality studies or no numbers about mortality that would put an end to the obligation to regulate.

And, unfortunately, as we've discussed a few times, but probably need to remind people, the regulations that we have on diesels are based on air quality standards that are federal air quality standards that we're required to meet. So even if there was zero mortality, if there is an air quality standard based on any public health issue, we still have to come up with regulations to meet it.

So your quest is a perfectly acceptable one, and it's not only within your rights, it's something you feel
strongly about and you should. But it isn't going to --

it's a sort of a diversion in a way from the issue that

you presumably as a business person are the most focused

on. That's a fair point. Thank you.

Hearing nothing more, we will stand adjourned

then. Thank you, everybody. See you next month.

(Thereupon the California Air Resources Board

adjourned at 5:21 p.m.)
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of February, 2010.

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