STATE OF CALIFORNIA
AIR RESOURCES BOARD
EXECUTIVE OFFICER HEARING ON THE REGULATION FOR IN-USE
OFF-ROAD DIESEL VEHICLES

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

THURSDAY, MARCH 11, 2010
9:02 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277
APPEARANCES

STAFF
Mr. James Goldstene, Executive Officer
Mr. Tom Cackette, Chief Deputy Executive Officer
Mr. Bob Cross, Division Chief, Mobile Source Control Division
Ms. Kim Heroy-Rogalski, Manager, Off-Road Implementation Section
Mr. Todd Sax, Manager, Regulatory Support Section
Mr. Erik White, Assistant Division Chief, Heavy Duty Diesel In-Use Strategies Branch

ALSO PRESENT
Mr. Brant Ambrose, Downs Equipment
Mr. Frank Barados, Engineered Concrete
Ms. Harlene Barados, Engineered Concrete
Mr. Peter Bransfield, Rypos
Mr. Rasto Brezny, MECA
Mr. Skip Brown, Delta Construction Company
Mr. Mike Buckantz, Associates Environmental
Mr. Charles Bynum, Operating Engineers #3
Mr. Don Chapin, Chapin Co, Inc.
Mr. Jon Cloud, J. Cloud, Inc.
Mr. Bill Davis, SCCA
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Dermot Fallon, Foundation Constructors, Inc.

Mr. Jeff Farano, S.A. Recycling, LLC

Mr. Tom Foss, The Griffith Company

Mr. Randal Friedman, U.S. Navy

Mr. Dave Harrison, Operating Engineers #3

Mr. Robert Hasselbrock, Weatherford

Mr. Mike Herron, Engineering and Utility Contractors Association

Mr. Henry Hogo, South Coast AQMD

Mr. Jim Jacobs, Operating Engineers #3

Mr. John Juette, J&M Land Restoration, Inc.

Mr. Mike Kennedy, General Counsel, AGC of America

Ms. Camille Kustin, Environmental Defense Fund

Mr. Tyler Lebon, Fremont Paving Company

Mr. Richard Lee

Mr. Sam Leeper, B&B Equipment

Mr. Michael Lewis, CIAQC

Mr. Stephen Lewis, Operating Engineers #3

Mr. Jim Lyons, Sierra Research

Mr. Mike Mehawk, Operating Engineers #3
Mr. Ned McKinley, U.S. Marine Corps.

Mr. Rod Michaelson, BAJ Cities Paving and Grading

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Clayton Miller, CIAQC

Mr. Larry Milton, 21 Eagle

Mr. Nick Pfeifer, Granite Construction

Ms. Betty Plowman, California Dump Truck Owners

Mr. Michael Quigley, California Alliance for Jobs

Mr. Charlie Ray, California Construction Industrial Materials Association

Ms. Lynn Reaser

Mr. Mike Shaw, Perry and Shaw

Mr. Armando Sinclair, 21 Eagle

Mr. Michael Steele, AGC

Mr. Ken Stoddard, Waste Management

Mr. Dave Valdez, Penhall Co.

Mr. Keith Wood, Shimmick Construction
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Officer Goldstene</td>
<td>1</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>3</td>
</tr>
<tr>
<td>AGC Presentation</td>
<td>21</td>
</tr>
<tr>
<td>Public Comment</td>
<td></td>
</tr>
<tr>
<td>Mr. Stoddard</td>
<td>79</td>
</tr>
<tr>
<td>Mr. Brezny</td>
<td>81</td>
</tr>
<tr>
<td>Mr. Bransfield</td>
<td>85</td>
</tr>
<tr>
<td>Mr. Chapin</td>
<td>86</td>
</tr>
<tr>
<td>Mr. Michaelson</td>
<td>90</td>
</tr>
<tr>
<td>Mr. Wood</td>
<td>93</td>
</tr>
<tr>
<td>Mr. Harrison</td>
<td>95</td>
</tr>
<tr>
<td>Mr. Mehawk</td>
<td>96</td>
</tr>
<tr>
<td>Mr. Bynum</td>
<td>97</td>
</tr>
<tr>
<td>Mr. Lewis</td>
<td>100</td>
</tr>
<tr>
<td>Mr. Jacobs</td>
<td>101</td>
</tr>
<tr>
<td>Mr. Valdez</td>
<td>105</td>
</tr>
<tr>
<td>Mr. Pfeifer</td>
<td>107</td>
</tr>
<tr>
<td>Mr. Brown</td>
<td>109</td>
</tr>
<tr>
<td>Mr. Fallon</td>
<td>113</td>
</tr>
<tr>
<td>Mr. Leeper</td>
<td>115</td>
</tr>
<tr>
<td>Mr. Juette</td>
<td>119</td>
</tr>
<tr>
<td>Mr. Miller</td>
<td>120</td>
</tr>
<tr>
<td>Mr. Davis</td>
<td>123</td>
</tr>
<tr>
<td>Mr. McKinley</td>
<td>128</td>
</tr>
<tr>
<td>Mr. Milton</td>
<td>131</td>
</tr>
<tr>
<td>Mr. Lee</td>
<td>136</td>
</tr>
<tr>
<td>Mr. Downs</td>
<td>138</td>
</tr>
<tr>
<td>Mr. Ambrose</td>
<td>141</td>
</tr>
</tbody>
</table>
INDEX CONTINUED

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Quigley</td>
<td>175</td>
</tr>
<tr>
<td>Mr. Herron</td>
<td>180</td>
</tr>
<tr>
<td>Mr. Ray</td>
<td>184</td>
</tr>
<tr>
<td>Mr. Sinclair</td>
<td>186</td>
</tr>
<tr>
<td>Adjournment</td>
<td>189</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>190</td>
</tr>
</tbody>
</table>
EXECUTIVE OFFICER GOLDSTENE: Good morning. My names is James Goldstene. I'm the Executive Officer of the California Air Resources Board.

Today, we're here in response to a petition filed on January 11th, 2010, by the Associated General Contractors of America. In that petition, AGC requested, among other things, that ARB adopt an emergency amendment to the off-road regulation to delay the fleet average target dates for two years.

As you may know, one of the primary components of the off-road regulation is to require affected fleets to begin taking actions to reduce emissions from their off-road vehicles by installing exhaust retrofits and/or
replacing older vehicles with those having newer cleaner engines.

AGC's request that ARB delay implementation of the regulation is based on the fact that since the Board's adoption of the regulation in 2007, the recession has affected the financial ability of construction fleets to comply with the regulation's requirements while also resulting in fewer emissions from construction vehicles.

The petition argued that despite the relief already provided to affected fleets since the regulation's original adoption, without immediate additional relief, California construction contractors would have to either downsize or purchase emission control devices to meet the 2010 and 2011 fleet average requirements.

AGC further argued that the current economic conditions in the construction industry will not improve over the next two years and the reduced emissions resulting from the current economy give ARB flexibility to delay the regulation while still meeting the Board's air quality goals and commitments.

While I did not grant the AGC petition to adopt emergency amendments to the off-road regulation, we did issue an enforcement advisory indicating that emission-related requirements of the regulation would not be enforced until further notice.
I also agreed to conduct today's hearing to take testimony and receive other relevant information on the need for further amendments to the regulation.

Today's hearing is somewhat unique in that while it is not a hearing of our Board, it is a formal hearing nonetheless and is being transcribed by a court reporter. All of this information will be posted to our website and also will be summarized and presented to our Board as part of an update that we will be providing at next month's Board meeting in April. That update is part of a comprehensive effort by staff to evaluate the effect of the recession on emissions and rule reductions for the truck and bus rule and off-road regulation and, in light of those findings, determine what adjustments to the truck and bus rule and the off-road regulations should be proposed later this summer to provide relief.

I'll now ask Ms. Kim Heroy-Rogalski, who you've already met, of our Mobile Source Control Division to give a short staff presentation that will provide an overview of the regulation, a summary of the AGC petition, a description of the type of information we are seeking to gather today and provide greater detail on the scope of future changes to the truck and bus rule and the off-road regulation.
Thank you. We're glad you're here.

And Kim, you want to begin your presentation?

(Thereupon an overhead presentation was presented as follows.)

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: Thank you, James. Good morning.

As James said, my name is Kim Heroy-Rogalski. I see many familiar faces here. I've met many of you before. And I manage the Off-Road Implementation Section here at ARB. Thank you very much for coming today.

Today's hearing is to take testimony and gather other relevant information on the need for further amendments to the off-road regulation.

My presentation will be brief so we can quickly move into hearing from you, the interested stakeholders, regarding the regulation.

And we are webcasting today, so we probably have folks watching from home.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: Here's an outline of today's presentation.
First, I'll talk about the purpose of this hearing, and I'll give an agenda of how we think things will flow today.

Then I'll give an overview of the off-road regulation, including a summary of the regulatory relief already provided, just so we're all on the same page regarding what the regulation does now.

And then I'll summarize the recent petition that we received from AGC, along with ARB's response to the petition.

Next, I'll discuss the information that we're requesting from stakeholders today and lay out some questions that we're hoping you guys can help us answer.

And, finally, I'll conclude with ARB's plans to provide additional regulatory relief for not only this regulation, but also the truck and bus rule, while maintaining our clean air commitments.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: Okay. So now I'd like to discuss why we're all here today and what the agenda is going to be.

I'd first like to begin by stating that everyone here at ARB, including James and the members of our Board,
recognize that the economy is in a terrible recession and that this has had an impact on emissions from the industries that use off-road diesel vehicles. We understand that all of California has been affected, and we're here today to hear from you as to what additional relief might be most appropriate. The comments and testimony that we receive today will be used to determine if further modifications to the regulation are necessary.

And as James told you, all testimony that we receive will be summarized and presented at next month's Board hearing so that our Board members will be aware of what you've told us today.

Once my presentation has concluded -- and it should take probably 20 minutes -- AGC and their representatives will have time to speak. And then after a short break, we'll encourage you to speak to us. And I'll go through a list of questions that we are more specifically looking to answer.

And, again, I've said this a couple times, but I'll say it again. If you do want to speak today, want to make sure we give you a turn, so sign up at the table outside in the hallway.
And do note also, please, we have a court reporter here today. So what you say will be recorded. And we do plan to post the transcript of today's meeting on our website when they are available.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So before we start talking about what reg changes might be needed, I first want to give background on the off-road regulation.

The regulation was approved by our Board in July of 2007, and it was intended to reduce emissions from the tens of thousands of in-use off-road diesel vehicles that operate in California. The emission reductions anticipated from the regulation were really important from a public health standpoint. And when the Board initially approved the regulation, we estimated that approximately 4,000 premature deaths statewide would be avoided through the year 2030 by implementing the reg.

And, additionally, the reg would reduce localized exposure to toxic diesel particulate matter and prevent thousands of hospital admissions and asthma and bronchitis cases statewide. So it was a big deal from a public health standpoint.
And the reg is also an integral part of our State Implementation Plan, our SIP, for both the South Coast and San Joaquin Valleys.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So let me go over a little bit briefly what the regulation requires. The regulation requires reporting of all vehicles that were subject to it last year. The initial reporting deadlines for large and medium fleets were in April and June of 2009, and the deadline for small fleets was August 1st last year.

And once owners reported their vehicles to us, we issued unique equipment identification numbers, or EINs, to them, and then fleet owners were required to label their vehicles with their EINs. You can see the red and white one there. And currently over 150,000 off-road vehicles have been reported to us, and there are still more coming in every day.

The regulation also includes a five-minute limit on unnecessary idling and also requirements for disclosure when you sell an affected vehicle. And the idling limit and disclosure requirements became effective in mid-2008.

--o0o--

Page 14
HEROY-ROGALSKI: So those were some of the administrative and operational requirements.

Last spring, on March 1st of 2009, a restriction on adding Tier 0 vehicles, and those are the oldest dirtiest vehicles, took effect.

And then as of March 1st of 2010 this year, that was the first large fleet compliance deadline. So that's when the requirements for actually reducing emissions were scheduled to begin. And again that was only for large fleets, those with more than 5,000 horsepower. And what the reg said is beginning March 1st, 2010, and every year thereafter, large fleets have to either meet the fleet averages or meet the best available control technology, or BACT, retrofit, and turnover requirements.

And so there's two pollutants that we're after:

NOx and diesel PM.

And fleets can meet the NOx BACT requirements by retiring vehicles, repowering vehicles with cleaner engines, designating vehicles as permanent low use, or installing NOx retrofits.

And they can meet the PM BACT requirements by installing retrofits or by retiring Tier 0 vehicles and
thereby shrinking the fleets.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So the reg built in a lot of flexibility, and there were a lot of credits and flexibility provisions within the reg. Some of these include credits for repowers completed before March 1st, 2009. That's even if you took out a Tier 0 engine and put in a Tier 1.

Turnover credit for replacing vehicles between 2006 and 2009.

And then to encourage people to act early, the regulation included double credit for PM retrofits that were installed before January 1st of this year for large fleets. And then that deadline still hasn't come yet for small or medium fleets. So they get double credit for installing PM retrofits as long as they do so by March 1st of 2012. It also includes double credit for NOx retrofits installed before March 1st of 2011.

In addition to these credits, there's also exemptions for vehicles that are low use, so used less than 100 hours per year, and vehicles that already have exhaust retrofits installed.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: As part of the California budget
agreement that was signed in February of last year,
Assembly Bill 82X directed ARB to make several changes to
the off-road regulation. And the intent of this
legislation was to provide economic relief and help
preserve jobs in the construction industry, which as we
know is facing difficult economic times.
So the legislation directed us to amend the
regulation in the following ways: First, we were to give
PM and NOx BACT credit to fleets that have shrunk or
reduced the amount they operate their off-road vehicles in
the past two to three years. And then to allow all fleets
to delay some of their 2011 and 2012 requirements until
2013 in the hopes that by then maybe the economy would
have recovered some.
So under the directives of AB 2X, repeal the
regulation or delay general implementation. The changes
will allow many, if not most, fleets and all fleets that
have been significantly effected by the recession to delay
many of their compliance requirements for the first couple
of years. And these changes were approved by our Board in
July of 2009, and they're now in place.

---oo--

OFF-ROAD IMPLEMENTATION SECTION MANAGER
HEROY-ROGALSKI: And just I do want to talk about this
just a little further just to make sure everyone
understands what AB 8 2X did and everyone understands the
relief that's already been granted. So first I'll go over
a couple examples.

So first, if a fleet's operating hours or fleet
size is down 20 percent or more since 2007, so sort of
since the peak, their credits will completely satisfy the
regulation's March 1st, 2010, requirements. In other
words, that fleet wouldn't be required to do any
retrofitting or any turnover.

So let's say if there was a fleet that was
affected a little more, if their hours or fleet size are
down 32 percent or more, then they're completely off the
hook for 2010 and 2011. Again, that means that fleet
would have to do no retrofitting or no turnover until 2012
at the earliest. And they would be fully in compliance.

Let's consider an example of a large fleet that
was affected by the recession and has off-loaded a bunch
of equipment so they're down in size 50 percent since
three years ago. So that fleet would get horsepower
credit equivalent to 50 percent of its horsepower, and
that credit which would never expire -- they can use it
whenever they want -- would satisfy the fleet's
retrofitting requirements until 2013 and its turnover
requirements until 2016.

And just to make sure that's clear, a fleet in
this situation would be required to do no turnover or
retrofitting even if the off-road regulation is not
modified further. And so we're right now receiving all
the applications for the reduced activity credit, and
large fleets are reporting that to us. So that's good.
--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So this slide shows a time line of the
current compliance requirements for fleets subject to the
regulation. And the requirements in blue are reporting
deadlines. And requirements in red are performance
deadlines; that is, dates that you'd actually have to do
some turnover or retrofitting.

And as shown on this time line, because of AB 8
2X, many fleets won't have to meet any performance
requirements for the next several years. And although
most fleets have not yet claimed their reduced activity
and reduced horsepower credits because they don't have to
until April 1st of this year, based on the current
economic conditions, we expect with the AB 8 2X credits
most fleets won't actually have to install retrofits or do
any turnover until at least March 1st, 2010. Until then,
only the reporting, labeling, idling, and sales disclosure
requirements would be in effect.
And, again, the way the regulation is set up, the medium/small fleets don't have any performance requirements until 2013 and 2015 respectively.

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So as Mr. Goldstene mentioned, in January, AGC filed a petition with us that requested that ARB delay the off-road regulation fleet average target dates for two years. Their petition also requested that ARB ask the United States EPA to postpone consideration of California's request for authorization until such time that we have resolved the issues underlying the petition. And again, U.S. EPA authorization is required before ARB can enforce the performance requirements of the regulation.

AGC's request stated since the Board's adoption of the regulation in 2007, the recession has affected the financial ability of construction fleets to comply. And the petition argued that without immediate relief, California construction contractors would suffer immediate and irreparable harm. In making this claim, AGC was asserting that the relief by AB 82X was insufficient.

AGC further argued that economic conditions will
not improve over the next two years and that the reduced emissions resulting from the current economy give the Board some flexibility to delay the regulation and thereby reduce the financial burdens that were imposed, while still meeting our goals and SIP commitment.

---o0o---

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So our executive office responded to AGC's petition on February 11th in two ways.

First, we issued an enforcement advisory notifying all stakeholders subject to the regulation that we will take no enforcement action regarding compliance with the reg's emission standards or other emission-related requirements until we get authorization from EPA. And this means fleets that didn't meet the March 1st, 2010, BACT or fleet average requirements won't be fined for noncompliance. And in addition, the ban on adding Tier 0 vehicles won't be enforced.

And then second, ARB scheduled today's hearing. And today we hope to hear from you on the need for further amendments to the regulation to address the recession. And as we've already said, this information will be passed to our Board next month.
HEROY-ROGALSKI: So here's just some guidelines on what we're hoping to hear about today to assist us in collecting relevant information.

We'd like to ask you to respond to the questions on this slide and the next. And we're asking folks to testify today as well as submit written comments if they'd like, and you have until the 18th to submit those written comments.

So if you're a large fleet, we're interested in your answers to the following:

So taking into account the AB 8 2X reduced horsepower and reduced activity credits, did your fleets already meet the March 1st, 2010, requirements? And if no, why not? If yes, what cost did you incur for compliance?

And if you didn't, then what additional actions and cost do you think you would have had to do to comply?

And similarly, again taking into account the AB 8 2X credits, do you think your fleet is going to meet the March 1st, 2011, requirements? And if not, why not? If yes, what cost do you think you're going to face to do
And, finally, do you think that AB 8 2X has provided sufficient relief over the next couple years? And if you don't think so, why not?

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: And then from everyone, even if you're not a fleet owner, we'd like to know what further amendments to the regulation you think are necessary to address the economy over the next couple years. And then if you think longer term relief is needed, like beyond 2012, what relief do you think is necessary and why?

And then we'd like to hear if your fleets were able to utilize the AB 8 2X credits and other credits in the regulation. And if so, which types of credits were most useful?

And then we'd also like to solicit comment on what the impact of the recession has been on vehicles subject to regulation.

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So a little housekeeping.
I'd like to note that comments made today or submitted to the clerk of the Board are considered public comments, and so we'll make them available for public viewing. And comments will be again accepted through March 18th. And you can submit comments later online by going to the link shown here to our website.

However, if you want to, it may be that you want to give us confidential information. Like if you want to share financial information on the status of how your business is doing, you don't want that shared with everyone, you can submit confidential information to ARB and we won't make that publicly available.

So if you want to submit confidential comments, please label them clearly as confidential and mail them to us at the address shown on this slide or fax them to the fax number at the bottom of the slide. And all the submittal information and the details are available on the public notice for this hearing, which is also at the link shown here.

--o0o--

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: I'm almost done talking.

ARB staff is currently undertaking a
comprehensive assessment of the emissions from both the
diesel truck and the off-road categories to determine what
the effects of the severe recession have been. And we're
evaluating some new information regarding the off-road
inventory methodology that came to light earlier this
year. And we're assessing where we stand versus our 2014
SIP emission targets both for trucks and for off-road
vehicles. And we'll be updating the Board on both these
topics at next month's meeting.

And we'll also be updating the Board at that time
on the reduced horsepower and the reduced activity credit

that fleets have reported to us. And again that
information is due to us April 1st.
So we'll also discuss possible modifications to
the off-road reg based on the information presented.
And then our plan for the next few months after
that is we're going to hold some public workshops in May
and June. And then we plan to return to the Board later
this summer to propose appropriate changes to not only the
off-road regulation, but the truck and bus rule as well.
So that concludes my presentation. And now I'll
pause briefly to take any questions or clarifying remarks
regarding what I presented.
If you have comments or testimony for our Executive Officer, please hold that until later. And we'll do that after the AGC witnesses have concluded their remarks.

For folks watching on the webcast, we welcome your clarifying questions as well. You can e-mail any such questions to auditorium@calepa.ca.gov. That's auditorium@calepa.ca.gov.

Any questions? I think we have some.

EXECUTIVE OFFICER GOLDSTENE: Please make sure to state your name and affiliation so the court reporter can capture that.

MR. AMBROSE: Okay. Can you hear me?

My name is Brant Ambrose. I'm manager at Downs Equipment Rentals in Bakersfield, California.

I would appreciate if Kim would explain to the audience what the SIP is and how it has created this situation with these diesel rules. I don't think -- most people I talk to don't understand how the two are tied together.

EXECUTIVE OFFICER GOLDSTENE: That's a good question. Thanks for that.

OFF-ROAD IMPLEMENTATION SECTION MANAGER
HEROY-ROGALSKI: So there is a Federal Clean Air Act that sort of lays out the nation's laws for making sure the whole nation cleans up our air. And there is a set of sort of ambient standards for the different pollutants that can harm people. And the federal government lays out certain timelines by which all the different regions of the country have to attain those standards. And so they sort of assign that responsibility to the state.

And the way the state has to show we're on track, we're going to achieve those public health standards on time, is by preparing what we call a State Implementation Plan, or SIP. And a SIP is kind of like a blueprint that contains all the different measures for how we're going to reduce pollution from all the sources in time to achieve the clean air on the timetable laid out in federal law.

So this regulation is one of the regulations that are part of that blueprint. And it's a big one. It's a big and important one.

So part of what was driving how we designed this regulation and pushing emission reductions that we thought we needed was the overall timeline we knew we had to meet and the magnitude of emission reductions we knew we had to get in order to achieve clean air on time.
And I mentioned the South Coast and the San Joaquin Valley. And those are sort of the two parts of the state that face the greatest challenges for achieving clean air. So the needs in those regions drove some of the design of this regulation.

Erik?

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH ASSISTANT DIVISION CHIEF WHITE:

MR. AMBROSE: In regards to that though, if my understanding is correct, 2014 is the date you folks have to hit for the State Implementation Plan. This is supposed to be a 21-year rule on the off-road diesel industry, but we have to make 100 percent of our PM requirement and -- what is it -- 46 percent I think it is of the NOx part of our requirement by 2014. There's the biggest problem with your rule. It needs to be spread out over -- I mean, I'm lecturing now I guess instead of asking questions. Excuse me.

But I mean, that really becomes the issue for the industry is you're delaying this. The State Legislature gave us these delays, but they don't lighten our load before 2014. It's like having a 30-year mortgage that's due in the first three years. That's not a 30-year
mortgage; it's a three-year mortgage. And now this has been rolled up into a two-year mortgage. We were going to end up with 24 months to comply 100 percent on PM and 46 percent on NOx.

EXECUTIVE OFFICER GOLDSTENE: Excuse me.

MR. AMBROSE: That's what I wanted to have addressed in my questions.

EXECUTIVE OFFICER GOLDSTENE: Okay. Thank you.

I think we should move to Mr. Steele's presentation or Dr. Reese, the AGC presentation.

OFF-ROAD IMPLEMENTATION SECTION MANAGER HEROY-ROGALSKI: Just so folks on the webcast know, AGC brought us three presentations today, and those are all now posted on our website. So you should be able to pull those up if you're watching from home.

MR. STEELE: This way everybody can see my face.

I'm ready for my close-up now.

My name is Michael Steel. And I'm outside counsel for the Associated General Contractors. And I want to thank you for the opportunity to be here today on behalf of AGC and its 33,000 members.

We're here really because over 300,000 California families have lost their livelihood in the construction
industry in the last couple of years of this recession.
And it's a very grim picture for those families and we
think it's not really necessary.

We endorse the State's commitment to reach the
State Implementation Plan. We realize that they have
committed to reducing emissions from this sector. But
what we think has happened is, in effect, we have sort of
a windfall unfortunately because of this recession and
emissions are already significantly down. And that gives
the Board the flexibility to give some relief to these
300,00 families and to the construction contractors who
are here today. And what we want is for the Board to look
at that situation and provide that relief.

So I'm just going to briefly introduce the
speakers we're going to have here today, and then I'll
come back around at the end and kind of sum up a couple of
thoughts. We're going to try to keep us to the one-hour
the staff has asked us to commit to.

We see two key issues this morning.
The first one is: Have emissions from the
construction equipment declined sufficiently so there is a
articulated when it adopted the rule? Is there a cushion available?

The second question: Are California's construction contractors suffering irreparable harm in their efforts to comply with this rule?

Those to us are the key questions.

As to the first question, we're very pleased to have here today Dr. Lynn Reeser, who for ten years, from 1999 to 2009, served as the chief economist for Bank of America Investment Strategies Group. She was educated at UCLA. She now serves as the Chief Economist at the Fermanian Business and Economic Institute in San Diego and is President of the National Association of Business Economics.

Dr. Reaser is going to discuss the current economic situation and latest projection for the pace of recovery, which a recovery we all hope is inevitable, is simply a question of time. She's going to focus particularly on the pace of the recovery in the construction sector, which you will hear is different from the rest of the economy.

We'll also hear this morning from Jim Lyons, a senior partner at Sierra Research here in Sacramento.
Before joining Sierra Research, Jim was a Senior Air Pollution Specialist at the Air Resources Board.

Jim is going to describe the results of modeling work he performed using ARB's model. Jim's work shows that using ARB's model and their fleet data that was supplied last year emissions are, in fact, well below what ARB had predicted when it adopted the rule. This means there is a cushion available to ARB so it can provide some relief.

And Mike Kennedy, general counsel of AGC, is going to give some further insights into that data.

We'll also hear from contractors who are making Herculean efforts to comply with this rule. And I want to draw a distinction here that's very important. Some of the introductory slides that you saw talked about the flexibility in the rule and the ability to comply. For example, by cutting your fleet size in half and retiring half your fleet, you can avoid obligation for 2010 and 2011 under the rule. The problem is that, yes, that's a means for compliance. And, in fact, I think many companies are adopting that means for compliance. They're reducing their fleet size. They're scrapping equipment. They're selling it for ten cents on the dollar out of California.

But that's not a solution that makes economic
sense for those companies. It permanently weakens them.
It makes it more difficult to compete to take on new work
when the economy does recover to borrow, to bond. All the
basic principles of business are violated by that kind of
contraction approach.
So we'll also hear to drive home that point from
Mike Shaw of Perry and Shaw and Tom Foss of the Griffith
Company who will give you some perspectives on their real
life experiences here, and also from Mike Buckantz.
So finally, we will hear from some of the workers
whose livelihood is at stake with this rule.
With that, I'm going to turn it over to Dr.
Reaser and ask her to give you her thoughts on the
economic outlook.
(Thereupon an overhead presentation was
presented as follows.)
MS. REASER: Thank you very much, Mr. Goldstene,
members of the staff, and the audience.
My name is Lynn Reaser. I'm Chief Economist at
the Point Loma Nazarene University Fermanian Business and
Economic Institute. A word of exactly who we are. We're
a new economic analysis unit at Point Loma Nazarene
University, which is a small university in San Diego,
California. It's existed for about 100 years. Our
institute was formed within the last several months. We
are not a think tank. We are not an academic unit. We are an applied economic research organization devoted to analyzing economic data, modeling, developing forecasts, and then developing actual conclusions for nonprofit organizations, companies, and government agencies.

I will tell you that our core values are integrity and analysis of the data so that when we take clients, we tell them that we will analyze the data objectively. We will not by any means guarantee that the results will be what they're looking for. So we are very adamant when we come to the table on that issue.

---o0o---

MS. REASER: What I would like to do today is basically focus on some implications and where we've been on the construction industry.

First, describe the last 15 years so you have some perspective where we've been in the economic cycle for construction.

Second, describe to you where we are today in terms of the industry.

Third, indicate to you our projections for the next five years so you have a platform for understanding what emissions might look like and then some concluding remarks.

---o0o---

Page 34
MS. REASER: So first of all, where we've been in the industry.

We had, following the last construction recession, a very healthy expansion in the beginning starting around 1994, which developed as you all know into a literal boom of inflated values, hyperactivity, which then peeked around 2005.

The last four years have been an absolutely devastating downturn in the construction industry. So basically we erased all of those gains that you had seen in 12 years in four.

MS. REASER: The next slide shows you the devastating lose that has taken place.

First you see here the impact in terms of construction spending booming for the first few years and then this huge lose in the last four.

MS. REASER: And the composition of construction also has changed dramatically. Here you can see the housing contribution shrinking dramatically, and you should also know in terms of the implications for the off-road vehicles and emissions is that a good part of...
construction spending today is actually additions and alterations, which does not involve heavy construction.

For instance, in housing, about a third of housing construction spending is now alterations and additions. Non-residential, about 60 percent of that overall spending is alterations and additions.

So just as perspective and background, I think it's important to understand that the changes in the composition of our construction industry -- actually, the intent of users of off-road vehicles would be the road piece of it, which is now at less than 25 percent of the total.

MS. REASER: Here you can see the impact in terms of the overall gross state product that comes from the construction industry. The same picture: Very strong increase up to the mid-1990s and then this huge lose.

MS. REASER: And then in terms of the overall outlook for the current situation.

As Michael indicated, we just have received the latest data on Friday. And as of January, you'll see in the following slide we had a small increase. But we have
now lost 365,000 jobs from the peak of the mid part of the
All segments are now down very sharply of the
overall construction building, even including
infrastructure spending. And at this point, you're
starting to see some fragile signs of an improvement in
housing. But that's basically the only signs of an
increase and is at very depressed levels.
--o0o--
MS. REASER: Here again you can see this huge
drop in jobs where again if you look at the very end,
there is a slight up-tick in January. First uptake we've
seen in a long time, but a huge drop of over 360,000 jobs
from the peak.
--o0o--
MS. REASER: Here you can see that the decline in
construction spending has been very broad-based: Housing,
non-residential, public infrastructure building, all down
very sharply from the levels we saw in the 2002-2006
period.
--o0o--
MS. REASER: Now, what is the outlook?
It's important to understand there are some
And I will start my outlook by telling you that I'm probably more optimistic about the general economy than are most economists. I think the national recession is over. California generally tracks the nation fairly closely, and I think California will be coming out of the recession in 2009. It probably will lag the nation, because particularly the problems in state and local governments, particularly some of the problems in the housing and non-residential sector which continue to range here and problems in the financial system. But we probably will see some recovery.

But construction has its own dynamics. And that's what I would like to focus with you on this morning.

First of all, it does appear that housing is beginning to see some signs of improvement. Inventories are down. We've seen some firming in sales and even prices. But in terms of construction, it's going to be still an area that faces a lot of road blocks.

One is that you've heard this daily in the press, the issue of more foreclosed properties coming onto the market, which is going to hold down an improvement in
sales in terms of new housing as well as prices. And so
that's going to continue to come on the market and prevent
a robust recovery in new construction.

Also, financing remains very tight. It's very
hard for particularly small- and medium-size businesses
who are relying on banks for their credit to get funding
for new construction activity.

The non-residential area remains the biggest
problem of the construction sector. It always lags the
recovery. And this will be no different. You have at the
present time weakness pretty much across the board.
Office space, huge declines in prices and rents.
Industrial space, hotels, retail properties, all under a
lot of pressure. And as a result, you will unlikely see
any improvement in new building until probably 2012. The
overall pricing structure may start to flatten out in
2011.

In terms of new building, it will be hard to get
improvement until 2012. And the financing for commercial
non-residential building is particularly severely
constrained. The commercial mortgage-backed securities
market had virtually shut down and it's only received some
support from the Federal Reserve's activities to prop up
that market.

You have a situation where banks do not want to entertain any kind of discussion of new construction activity in this space. And it's also even difficult to get refinancing. So this is an area that's probably going to be the weakest of the overall economy as well as the construction industry.

Finally, in terms of the public sector, we talk a lot about infrastructure building. The stimulus package from last year had focused on this as its primary effort to help the economy. But again, that's a small piece of the total. And what you have is the overriding problems, the ongoing federal budget deficit, which is now ten percent of our GDP. The federal debt is expected to rise to $24 trillion within the next ten years. So we have nationally a very large budget and debt problem, which means that construction spending is going to be constrained.

At the same time, you all are knowing very well the problems in our state government, which also is going to have an impact on funding of these infrastructure problems.

So as an economist, people in the public, we
essentially know the importance of infrastructure building. We talk about it. But in terms of the funding of it, it's going to be a very constrained element.

So the bottom lines in term of our construction outlook --

MS. REASER: You can see here we are looking for some improvement in the construction value of spending. These are in real dollars. So we do believe we've hit the low point. But the issue is that because of these constraints I talked about, by the year 2015, you're still going to be at a level that's just two-thirds of the level you saw in 2002, 2006 which was when a lot of the regulations implemented in 2007 was based on. That's the picture: Two-thirds of that level of 2002, 2006.

MS. REASER: If we look at the individual pieces of it, here you can see again kind of a fairly sort of V shape recovery in housing that we all talk about. But again, because of these constraints of financing and the foreclosed homes, way below what we saw in the early 2000 period.

Nonresidential construction, as I indicated,
probably not showing some improvement until 2012 and again
way below its previous levels. And public construction I
would say pretty flat. A little bit of an increase over
the next five years because of its budget constraints, a
strained increase.

--o0o--

MS. REASER: So as we look at the picture for the
overall activity in the next five years, we would expect
to see really a constrained rise also in gross state
product that's related to construction spending.

And then in terms of the impact on jobs, which is
I think what we're all really concerned with ultimately,
you can see here we do expect to see some improvement in
employment. But even when you get to 2015, you're still

0

going to be looking at a level of construction jobs in the
state of California that is about a quarter million,
250,000, jobs fewer than we had at the peak of the upturn.

--o0o--

MS. REASER: So in terms of the recap here, we've
been through a very severe cycle of a huge swing up in
construction activity in the last 15 years, the first 12
years, and then followed by a very rapid downturn.

We probably have hit bottom in terms of the
overall economy and even in the construction spending.
But it's likely to be really quite a constrained recovery so that again when you get to 2015, we're still looking at a level of activity which is very much lower than what you saw in the 2002, 2006 base period.

MS. REASER: So in terms of the conclusions, what we would see at this point, we would believe that you're looking at a situation where again activity is quite constrained. And if you look at as Kim pointed out the overall impact of the recession has been to a really depressed level of activity.

I would start by saying in my concluding remarks what we're trying to do here is think is: One, have as healthy of an economic recovery as you can and not compromise your objectives of a clean environment. So we're really trying to achieve two goals. And I think they can be done.

As Kim indicated, the side-effects of the great recession has been not just in the U.S. and California, but worldwide is a significant reduction in pollution. And this is across the board: Air, sea, et cetera. Particularly in California, you have seen again the level
of degradation of air quality significantly reduced because of recession. And it's not just because of fewer hours worked in the industry. It's also because the older equipment has been sold. It's been sold out of the state, and it's been sold off-shore.

So the question is: If we have a recovery, what does that mean? Will that equipment be brought back online so that you have a new pollution problem. I think the answer is no, because it's been sold out of state and even more often off shore to China, to the middle east, and to Mexico. So it is gone. It will not be brought back.

So we would expect to see, as you see a recovery, purchase of new more efficient cleaner equipment. But the problem in terms of that taking place is three-fold. You have particularly on the part of smaller and medium-size equipment owners some major constraints.

One: Their finances have been severely hampered by the recession in terms of the revenues. So they're incurring losses.

Second, their balance sheets have been severely weakened because of capital losses. When they sold this older equipment, its residual value has been declining
drastically in part because of your rules that have reduced its value.

And then third, it's very difficult to get again financing in this environment. The bank regulators -- the banks are going to be under a lot of duress. So there is a lot of pressure on the one hand to make more loans, but even more importantly not incur losses. So credit is going to be very tight. And I don't think it's going to be loosening up for small and medium businesses in a meaningful way for the near term.

So in terms of our recommendations, I think the optimal solution to, one, achieve an economic recovery that has sustainability and also not compromise the important air regulation standards that we'd like to achieve would be actually to defer the regulatory rules until 2015. That would, one, still with this depressed level of economic activity not compromise the air quality standard, but, A, give companies some breathing room so they can get back on their feet, restore their balance sheets, get back to an economic healthy situation and give

the banks time to shore up their balance sheets so they're ready to lend so that by 2015 you're in a situation where these companies are able and need to invest in new
equipment to expanded activity, which also is a time that
the equipment makers will have a new generation of
technology with equipment then that's ready to really be
able to meet the most productive and efficient standards
for the industry.

So I think that's our basic conclusion: Waiting
until 2015 puts us in a very optimal position probably
would be the best economic outcome that I think you'd want
to achieve.

So with that, please let me answer any questions
that you might have.

EXECUTIVE OFFICER GOLDSTENE: We should just move
to the next presentation. Thank you very much for that.
MR. STEELE: Thank you, Dr. Reaser.
And so Jim Lyons. James Lyons.
MR. KENNEDY: Thank you for having me here today.
My name is Mike Kennedy. I'm the General Counsel for AGC
of America.

Before I get started, I want to thank all the
people in the audience for being here today. You all lead
busy lives, and taking the time to be here is much
appreciated.
many of its members, but many of its partners and organized labor. We value that relationship and we thank you for your help and support. I want to thank all of you for the opportunity to testify and to be here today.

And I'd like to begin by emphasizing what we are not here to discuss. AGC does not seek a broad or even a narrow reassessment of the emission goals that the Board has established for the construction industry. AGC is well aware of the Board's legal if not moral responsibilities to the citizens of California. And we recognize that the construction industry can and should participate in the larger effort to improve the state's air quality.

What AGC does question is whether the current rule is necessary to meet the Board's goals. AGC believes that a candid and transparent reassessment of the emissions from the off-road equipment in the construction industry based on the best information now available to the Board will reveal that the Board has the latitude to relieve the tremendous pressure that it has put on this industry and still protect the environment and public health.

The starting point for the rule was a forecast that NOx emissions from the regulated fleets of off-road
equipment would drop each and every year in a total of 68.2 percent between 2009 and 2025. The Board similarly forecast that PM emissions would drop 76 percent over this 17-year period. For reasons that we have already heard, the Board made the policy judgment that even these dramatic declines in emissions from the regulated fleets were not enough to enhance California's air quality and protect the public health.

The Board, therefore, set annual goals below the baseline levels that its off-road model had forecast in the absence of any rule of any kind. Over the same period, the Board sought to drop NOx emissions another 5.9 percent. And it sought to drop PM emissions another 16.4 percent.

Now I'll be candid. If reasonable people of equally good will could debate the environmental and public health benefits of such marginal changes in the emissions from the regulated fleets, AGC does not seek, however, to invigorate such a debate. Rather, it proceeds from at least the assumption that the Board exercised its best judgment and most importantly that the rulemaking record provided at least reasonable support for the Board's finding that these changes would have a significant impact on California's air quality.

Once again, what AGC does raise is a different
question. And that is whether this rule as currently written and the timetables written into that rule are needed to achieve the Board's original objectives.

At the outset, AGC hoped to engage the Board in a concurrent if not joint effort to answer that question.

In December of 2008, when the association filed its first and still pending petition to amend the off-road rule, the association made it clear that it did not object to the reporting requirements imbedded in the rule. AGC also agreed to suspend the deadline for the staff to respond to the association's petition, giving both AGC and the staff time to study the new data that those requirements would yield.

AGC also welcomed the remarks that Chair Mary Nichols delivered in January of 2009 when she directed the staff to work with AGC and to report back to the Board during the fall of 2009. While AGC suspected that the new data would paint a new and very different picture of emissions from the regulated fleets, AGC was and remains prepared to follow the data to its most logical conclusions. AGC subsequently engaged one of California's most respected consultants to analyze the new data. And in May and June, AGC met directly with the staff to prepare for the work that lay ahead.

Among other things, AGC requested and received a
copy of the off-road model that the staff had used to
develop its original emissions inventory, and AGC worked
with its consultant to master that model.

On September 26th of 2009, the staff finally
provided AGC with its first batch of new data on the
regulated fleets, whether large, medium, or small. And
AGC then ran the data through the Board's off-road model.
The association's consultant updated the inputs that he
could derive directly from the new data, such as the
population of each type of vehicle, but he made no changes
to the model itself. While tedious, it was a relatively
straightforward process that did not take long to
complete.

I will not today dwell on the results. They are
the subject of a lengthy and detailed report that AGC
delivered to the staff on December 3 of 2009. AGC
attached a copy of that report to the petition that is the
subject of today's hearing, and it is already a matter of
record.

Suffice it to note the following: The model's
new forecast for emissions from the regulated fleets were
quite different from the earlier forecasts that had formed
the foundation for the off-road rule. The model forecasts
significantly lower emissions of both NOx and PM in each
and every year from 2009 to 2025.
The model forecast that the regulated fleets would exceed the Board's annual goals for NOx emissions in 14 of the 17 years between 2009 and 2025, including the first eleven of those years. The model forecasts that the regulated fleets would exceed CARB's annual goals for PM emissions in both 2010 and 2011 and that additional reductions needed to meet the goals in subsequent years would be less than two-thirds of what CARB had expected.

As we sit here today, I'm pleased to report that the staff has yet to take exception to any of these forecasts. Quite to the contrary, the staff has been complementary of the work AGC has provided. One month ago, when AGC last met with CARB, Chair Mary Nichols was also complementary of the approach AGC had taken.

I am, however, disappointed to add that the staff has been slow to undertake its own analysis of the same data. In early December, when it met with the staff and presented its results, AGC expected the staff to have some of its own results to present. The staff, however, had nothing to share. The staff took a great interest in AGC's results but had nothing to add to them.

The staff then missed the Chair's deadline for a report back to the Board on the recession's effects on
emissions from the off-road fleets. The Chair had requested such a report by the end of 2009. The Board put the off-road rule on the agenda for the December meeting. The staff, however, had nothing to report. Indeed, in stunning disregard of the March 1 deadline for compliance with the first of the rule's fleet average requirements, the staff insisted that it would need much more time to make any meaningful analysis of the new data. The work that AGC had easily completed in a matter of weeks, the staff had apparently yet to begin and could not replicate for at least seven months.

Never mind that long ago AGC provided the staff with all of the data files that formed the foundation for AGC's conclusions. Only when pressed did the staff agree that it could have something to report by April of 2010.

Then in February of 2010 when AGC and CARB held their last meeting, AGC learned that the staff had accumulated but neglected to share a significant amount of new data on the regulated fleets as new information had continued to trickle in. AGC is now in the process of analyzing that new data, and very shortly AGC expects to have the results available to report.

As my colleague Jim Lyons will address in just a
moment, AGC is still revising the equipment populations and other inputs to the model. AGC is also making adjustments for the number of vehicles reported to be low use.

In recent weeks, AGC has also confirmed public reports of a serious flaw in the model itself. And it is also in the process of quantifying and correcting for that flaw.

At the February meeting, both the Chair and the staff confirmed that they were aware of the same problem and that they were also working on it. But curiously, AGC has yet to see any reports on the approach the staff is taking. Hopefully, the work that AGC is now in the process of completing will cut the time that the staff requires to reach its own conclusions. Once AGC completes its work, the association will share its new data files and methodologies with both the Board and the public, as AGC remains committed to the transparency that the public has every right to expect.

In the interim, we are pleased to share with the Board or the staff the outlines of the approach that we are currently taking. And for that, I will now turn to Jim Lyons, a senior partner at Sierra Research.
(Thereupon an overhead presentation was presented as follows.)

MR. LYONS: Thank you, Mike.

As Mike indicated, I'm Jim Lyons with Sierra Research. Sierra Research is an independent consulting company that specializes in air quality issues. And my goal today is just to provide a little bit of detail with respect to what Mike has outlined in his comments.

--o0o--

MR. LYONS: I'm going to start by giving you an overview of the research that AGC is sponsoring us to do. As Mike indicated, what we've already done, as indicated in the first bullet, is we've taken DOORS data from CARB and used that to replace the data in the CARB's off-road model which is based on surveys. The data that we have available from DOORS deals with equipment populations by type. We have engine power ratings again by equipment type. And then we can also deal with the age distributions of the equipment that were based on survey data in the off-road model.

The results of that initial work which was based on a September 2009 set of DOORS data were presented to the Board in December, and they are available in the
What we're currently doing is to update that previous work using another more recent set of DOORS data that we have received from CARB staff in the middle of February of this year.

We're also working to properly account for low-use equipment. In our initial work, we treated low-use equipment like any other piece of equipment and therefore it was assigned default operating rates by the off-road model. So the rules got a limitation on what low-use equipment is, so we're investigating the sensitivity of that aspect.

And then finally, and probably most importantly where I'll spend most of my time today, we're currently updating the off-road model to adjust for the results of a fuel use based evaluation of the model. What that really means is that the model in addition to predicting emissions also predicts estimates of fuel consumption. And you can go to fuel sales records and have an independent verification of the model's projections for fuel consumption and give you an idea that's independent of the model about whether or not the results are reasonable.
MR. LYONS: Before I get there, I think I need to provide just a little bit of background about the off-road model. It was used by CARB staff to estimate the baseline inventory for the rule that we're talking about here today, and it was also used to estimate the emissions inventory with the rule in place. And the difference between those two estimates are the emission benefits associated with the rule.

The model itself is based on survey data, some of it relatively old national survey data dating from the mid-90s for equipment populations, engine powers, equipment lifetimes, and annual hours of operation by equipment type. It also uses assumptions regarding the average load of engines during operation. For example, if you're looking at a bulldozer, it may estimate that the engine is operating on average at 60 percent of the engine's rated power, that kind of assumption.

The final bullet indicates that CARB has never compared these off-road model results to the fuel-based records, as I indicated that we're trying to do now.
MR. LYONS: There's really two ways to do the fuel-based characterization. There are emission factors in the literature that relate emissions to fuel use, and you can do the direct relation of fuel consumption data that I mentioned earlier. We're looking at it both ways.

---o0o---

MR. LYONS: I'd like to take credit for this basic approach in inventing it, but I can't. It's been around for quite a while and well known in the literature. The first application to non-road equipment was performed in a paper published in 2000. The authors on that paper included former CARB Chair Robert Sawyer along with Andrew Kean, who I believe is a graduate student, and Robert Harley, who's a Professor at Berkeley. They did their comparison relative to an EPA version of this model known as non-road, which has subsequently been updated several times.

Moving forward in time, I found a 2004 report that was prepared for CARB that sponsored part of the research that Dr. Harley recommended such a fuel-based assessment of the off-road model results be conducted. This was obviously well in advance of the 2007 rulemaking.

As I indicated, I have no kind of record that
assessment was ever done. Dr. Harley apparently along
with his co-worker Milstein decided they would do it
themselves. And they did it specifically for the
construction industry. This paper was published in 2009
in Atmospheric Environment, which is a well-known and
respected peer review journal.

The finding which is quoted directly from the
document is off-road model estimates -- these were for the
2005 calendar year -- were four-and-a-half and 31.1 times
greater for NOx and PM than the fuel-based estimates that
Harley and his co-worker developed. They focused on
southern California and again on the construction
industry. And this table, while perhaps a little bit
busy, shows the ratio of the off-road results to the
fuel-based method that they published. And you can see --
take L.A. County and the off-road estimate they compared
to their method was 6.3 times higher for NOx emissions in
2005 than they got using fuel-based approaches and about
four times for PM. And you can look across the different
counties there and see it varies from county to county as
a result of their methodology.

As Mike Kennedy pointed out --
MR. LYONS: -- we're doing work in this area. We're doing it for 2009 in conjunction with our use of the DOORS data. And so far, although we're still working on it, our preliminary results bear out these kinds of differences in the fuel-based inventory compared to what's coming out of the off-road model.

What are the implications of our research and Harley's research?

First, the paper that's published in 2009 shows that if you use a fuel-based method, the off-road 2007 baseline inventory for 2005 is grossly overestimated. Because that baseline was used to estimate the benefits of the rule, it also follows that the benefits of the rule are similarly overstated.

The cost effectiveness ratio for the rule, which is how much money you spend per ton of pollution eliminated, is as a result probably much higher. And that translates into the rule providing a much smaller air quality benefit per dollar spent by the affected industry than CARB staff estimated in 2007.

As Mike pointed out, we will be continuing our work. We will be sharing it with CARB staff and presenting it publicly as we complete it going forward.
MR. LYONS: My final slide just presents the references that I've cited in my presentation. JAWMA is the Journal of the Air and Waste Management Association, another peer review journal. And the reference in the middle is a report prepared for CARB that I located on the CARB website. I think if you search by the contract number, you should be able to find it fairly quickly or by Harley's name.

That ends my presentation. I'm going to turn it back over to Mike Kennedy.

MR. KENNEDY: Thank you, Jim.

In closing, I want to make two quick points.

First, I want to make it clear to the Board staff, Board members, including members who are here today, the public, that the data will continue to drive AGC's position on the off-road rule. In that context, we will continue to be transparent, and we are committed to going wherever the data objectively leads us.

And second, as I say that, I do remain confident that the Board still has the cushion that it requires to extend the deadlines for compliance with the rule's core requirements. It is simply wrong to suggest that the
Board has to choose between environmental protection and economic growth. This is one of those rare situations where you can, in fact, have it both ways. Thank you.

MR. STEELE: Thanks, Mike.

I think we'll turn now to hear from some of our real people, the contractors. So Mike.

MR. SHAW: I suppose that was a compliment.

My name is Mike Shaw. I'm a contractor from San Diego County. Our company is generally a heavy earth moving company. Ninety-five percent of our revenue is generated with self-performed work. All of that revenue is generated by the use of the heavy equipment. We have the large bulldozers and scrapers and loaders and rock trucks. So this rule is particularly onerous on our operation, because we self-perform with that equipment.

I just want to make a couple of quick comments on some stuff I've just learned. I've always taken this as being a very serious discussion. I've been engaged in this for a long time. This became much more serious when I listened to the economist here predict that if I fight in this business environment for five more years, we'll be back to the levels we had two years ago, which was just crap. So that's a very sobering realization, for me.
anyway, and I imagine some other people in this room.

The second thing is that looking at the comments and the analysis suggesting that maybe this regulation is based on information that may have overstated what our industry does becomes very serious when I look back and look at what I've done in anticipation of complying with this regulation and whether or not it was necessary.

A little bit more about little background of what we've done and who we are. In 2006, we had a fleet that included 110 pieces of this equipment, 56,000 horsepower. Today, we have about 45 pieces of this equipment, 28,000 horsepower. We reduced the fleet in anticipation of compliance with this regulation. In normal circumstances, we would probably would have just parked it and waited for businesses to come back. At least in our aspect of the business, that's sort of how you do it.

In terms of real life stuff you can touch, in 2006 -- we're a union contractor. Our reported operating engineer hours in 2006 were 168,000 man hours. In 2009, we reported 29,000 man hours. So that's a pretty good dip.

Our sales are off 87 percent from 2006 levels.
most of it's not running. Most of it's not generating revenue. We're like everybody else in this room. We're in survival mode. I'm surprised people even take the time to come here, because isn't top of the radar screen anymore. All anybody is trying to do is make payroll on Friday, period.

So I want to make a real important point here. We talk about the credits that we've received. We've received credits sufficient to get us into 2014, which sounds like a really good thing. And I'm happy about that aspect of it.

The problem is what I've had to do to get those credits. We've had -- of course, reduced activity credit, that works for us somewhat. But the big deal is we've had to shrink our fleet by 50 percent. We've taken 60 seats -- 60 operating engineers seats and thrown them away. If we were running our equipment, we've reduced our ability to earn by at least 50 percent or perhaps a little greater than 50 percent. We do not have the ability to earn that we used to have. We're not going to have it again for a long, long time.

If this business comes back as it's been projected as slowly as it does with the kind of capital investment it takes just to buy one of these machines,
we're not going to be increasing our fleet size at all. So to suggest there's going to be some boom come down the road, we're all going to go buy a bunch of million-dollar scrapers, I don't think it's going to happen. I know I can't do it.

And you look at this and you think, well, you have three or four years of credits of benefit in front of you. And it will get you by. Everything is fine for now. That's not necessarily the case. One of the really big deals about this is that when we get to the other side of going through our credits, I call it a balloon payment. This PM threshold, this NOx threshold continues to ratchet up every year, even though you're not coming after me for it. And then at the end of my utilization of these credits, I'm in a position where there's only one out for my company, and that's to start diminishing the fleet 20 percent a year.

We have a fleet that's fairly contemporary. We've repowered five-and-a-half million dollars worth of engines in the Moyer program starting in 2002, 44 engines. We've got 37/38 percent Tier 3 on the high horsepower stuff, which is a big deal. So we've done a lot of good stuff.

Interestingly enough, a bunch of the early repowers that we paid for, the State paid for under the
Moyer program, Tier 1s, which are now getting pushed out.

So, you know, we've done a lot of stuff. But the way this thing ratchets up on the PM side is destructive.

So what I have to look forward to, what I have to plan for is 20 percent reduction starting when my credits ran out. And the problem with the way I do my business -- and everybody has a different way they do their business -- but the problem I have with that is I have to look down the road. We started the repowering in 2001, 2002 because we were looking down the road. We started selling equipment in 2006 because we were looking down the road at what this stuff is.

So to think that three to four years from now that my credits carried me to then and everything is good is not how I look at my business. I have to plan my business today. These are huge capital investments. I have plan my business three, four, five, ten years down the road. So this credit stuff, it's fine as far as it goes. But it doesn't solve the problem for me right now.

And the problem is that I have to plan. I know what I'm going to have to do. I'm not going to have any money. And I'm going to have to just continue to shrink my fleet and put operating engineers out of work to comply with this thing. And I don't know why I really want to do that. I mean, it's not a very -- it's nothing to look
forward to in terms of any kind of an intelligent business plan.

And another reason -- and I think this is very core to me in terms of why you have to push this regulation back is because this regulation hanging over my head is a big deal. Okay. And it is with me every day that I'm in business. And it's hard to explain what that means. It's like having an elephant on your back. It's just there. It's diminishing, and it makes it very difficult to get excited about trying to do business. So that's an important point.

Any questions?

EXECUTIVE OFFICER GOLDSTENE: Thank you for your candor and your comments.

MR. STEELE: Next we'll hear from Tom Foss.

MR. FOSS: Mr. Goldstene and the staff, thank you very much for taking my testimony this morning.

My name is Tom Foss, F-o-s-s. I'm President and CEO of Griffith Company. We are a general engineering contractor operating in southern California. We build all types of transportation infrastructure: Roads, bridges, airports, ports, anything in that area.

I'm a native Californian. I have lived almost all of my life in L.A. or Orange County. And I can
remember as a kid in the early '60s coming home in the evening after playing hard all day and not being able to breathe well as I settled down to sleep because my lungs would burn.

We don't have that problem anymore. And I think that the Air Board had something to do with that. I think the use of technology in gasoline and auto engines and regulation on the auto industry really significantly cleaned up our air.

Griffith Company and myself, I'm committed to clean air. I was frustrated there for a while, and I thought I would say I'm in favor of dirty air, but I thought that was probably not the right place to go.

But I am committed to clean air. In fact, Griffith Company has transitioned our auto fleet to today we have about somewhere between 80 and 90 percent of our auto fleet is hybrid autos.

Today, I think that's where Mary Nichols is. She's down on one of my job sites in the port of Los Angeles. We're demonstrating a hybrid excavator. She's down there taking a look at that. It's a Tier 3 engine in it. So still a little bit short of the ultimate goal. But the hybrid piece gives almost a 30 percent fuel
savings, which is a huge savings as far as the PM and NOx emission piece.
I met yesterday with another equipment manufacturer. They've introduced their hybrid dozer. All this stuff is still -- it's new. It's experimental. And my point that I'm trying to make here is that with time and technology -- we've seen it with the autos -- the industry is going to clean itself up. That is going to happen.

The current economic slow-down has really hurt our industry. Since the peak in construction activity, I measure that since January of '07, and nationally there's 1.7 million construction jobs that have been lost. And in the last year, that's accelerated, because the spending in construction constricted in 2009 by $100 billion. Our industry is impacted. Our current unemployment in construction is 24.7 percent. In California, since the peak, our drop in employment has dropped 37 percent. These are down to levels that were about 1998 numbers. Our industry is almost in a depression, not just a recession.

In California, the collapse of the housing and commercial markets has led to an increase in the number of
contractors competing in the public sector where I do most
of my work. A few years ago, Caltrans averaged between
three and four bidders on their projects. Today, that
number is somewhere between nine and ten contractors at an
average. We've all seen projects bid with well over 20

In the current bidding climate, it's very
difficult to be low bidder. And it's even more difficult
to make a profit.

AGC has demonstrated that this slowdown has
brought the industry into compliance on a lot of the goals
that the CARB staff and Board set as far as the PM and NOx
go. And likely in the next several years it's not going
to have much of a rebound.

When I met yesterday with the equipment
manufacturer, I told him I had no plans to buy any new
equipment this year because of the uncertainty in the
economy and the uncertainty in the construction industry.
Griffith Company is conserving our cash right now. So
we're not doing any capital investment. We're really
trying to sit tight.

Griffith Company has, like Mike has, budgeted out
what the CARB regulation will do to us. We have about 85
pieces of equipment. We have already liquidated all of our Tier 0 equipment. Some of it we replaced. Some of it was just old. We got rid of it. We got some credits for that.

But we've looked at our fleet, and in the next two years -- all these costs for us take place in the early years of the regulation. Over the next two years,

Griffith Company is budgeted to spend about a million-and-a-half dollars in filters, repowers, to try to get in compliance.

In this economy, and since the slowdown has brought the industry relatively into compliance for the next several years and causes companies like Griffith Company to spend the cash that we need to hold onto maintain our operation on these aftermarket filters, my request to you is to -- I know AGC has asked for a two-year delay. I'm asking for a five-year delay. What I'd like to see -- unless if the economy rebounds. I would say that if the economy rebounds, I would say we have to have a reopener and have a discussion on what happens -- what has happened to the pollutants. But with some of the forecasts we see now, I don't see that happening. I think, like Mike has said, there is that...
cushion that's there that you can work with.

And the reason why I would ask for five years is that five years allows the technology to catch up. So that as I just normally replace my equipment based on the service life replacement, the number of hours you run it, the economic life you get out of it, you replace your equipment with minimal expense. I can save the million-and-a-half dollars cost of my company. And with just a minimal investment in some filters in the period between now and 2015, I can get to that date and then begin my normal replacement of equipment and stay in compliance, not effecting, not causing me to dig into my working capital and my company wealth to put in a temporary filter.

So I would just ask that you would consider in the postponement based on the economic condition an extension. I would ask for 2015. That would help a company like mine and a lot of companies like mine.

Thank you very much.

(Applause)

MR. STEELE: Thank you, Tom.

We will now hear from Mike Buckantz of Associates Environmental, who spends much of his time working with
AR79.txt

15 folks like you helping them figure out how to comply.
16 MR. BUCKANTZ: Thanks. And I've put together
17 just a very small number of slides that will hopefully
18 paint some pictures of what our clients are experiencing.
19 Their stories are very similar to Mike's and to Tom's, and
20 their concerns are the same.
21 (Thereupon an overhead presentation was
22 presented as follows.)
23 MR. BUCKANTZ: Here are the few fleets that we
24 put together. Today, we're going to call them Fleets A
25 through G. And I won't read all that for you. But I

1 wanted to show you that though we tried to select a
2 handful of different industries, not cherry-picked one
3 type of operation or another, I wanted you to see what the
4 impacts good, bad, and otherwise have been on several
5 different types of companies here.

--o0o--

7 MR. BUCKANTZ: And I basically just took their
8 information, some of them have provided us, and we've been
9 working with them long enough to have their information
10 back all the way to 2006. Some we only have for the last
11 couple years, 2009 here going into 2010. You can see that
12 most of the fleets -- this is total horsepower per fleet.
Most of the fleets have seen a dramatic drop in their total fleet horsepower. Please B, in particular, has taken on the strategy that Mike put together for his company, which was to sell a lot of equipment to try to generate credit early on and to maintain during the first few years of the regulation.

--o0o--

MR. BUCKANTZ: Number of vehicles in the fleets. A couple of the things that our clients say to us all the time is we're doing what we can just to survive, just to hang onto the people and maintain the few jobs that we have for the few projects that we're working on. And each one of these reductions in the number of vehicles typically represents a job that goes along with it. If there's an increase, that's somebody that's working.

One of my contractors -- I think they're probably all smarter than me -- said to me, "I don't understand why if I just keep my equipment and park it and it's not emitting a single pound of pollution I can be out of compliance with this regulation, when somebody that runs equipment, Tier 2, Tier 3 if they just ran circles around their parking lot with it for year after year could be deemed to be in compliance." That's a very mysterious
As a result mainly of dropping equipment, you can see that by and large some of the NOx fleet averages, the NOx fleet averages have improved.

MR. BUCKANTZ: Same story with particulate. The folks that are shedding equipment, parking equipment, if we looked at the impact of the equipment that was parked, we would see an even more dramatic decline in emissions.

MR. BUCKANTZ: I put up some numbers with respect to average horsepower and average age to see for myself whether or not the fleets that we were doing a lot of work for were trying to change the type of business that they were in, to switch from a type of work where they were using a larger piece of equipment, higher horsepower to try to do more or different or to perform the same functions with smaller horsepower equipment. And the next couple slides really show that is not the case.

MR. BUCKANTZ: Average engine age kind of waves around. And there's not a lot of consistency between the fleets. But over time, as they're getting rid of their
older equipment, the general trend in average engine age, average vehicle age, you know, is down. And when it goes up, it's typically a function of guys just hanging onto the same equipment and it becoming older. It's not a function of these guys running out and saying, "Man, I'd like to own some older equipment."

--o0o--

MR. BUCKANTZ: Number of vehicles purchased. Over the years, you can see a steep decline with probably one exception there in Fleet E. By and large, people are not buying stuff.

--o0o--

MR. BUCKANTZ: Vehicles retired, on the other hand, you can see a pretty dramatic impact of the number of vehicles retired and therefore the number of jobs that go with it. Each of these pieces of equipment have a person that takes care of it, have a person that operates it and wages that get paid and benefits to the economy that result through the use of the equipment.

--o0o--

MR. BUCKANTZ: This last slide is just a fleet summary. Horsepower reductions on the left, some dramatic, some not. Equipment count, reductions on the
One of the things that I can tell you that our clients find a little bit frustrating especially when they see an example that says, hey, if you've lost 50 percent of your equipment, you're probably good for a few years. The concept that somehow that makes you good for a few years is pretty distasteful to them to begin with.

That aside, nobody ever talks about the barriers to getting the 50 percent credit. There is a mound of paperwork that goes along with it. The barrier for 20 percent is okay. But unlike a lot of regulations where we're saying, hey, have the records there if we come to visit you. This regulation is saying, yeah, the carrot of that 50 percent credit is out there, but we want to approve it for you. And a couple of our contractors have asked us how long is it going to take to know whether our application for credit has been approved or not? Are we going to be dealing with a long period of time of uncertainty where we think that we're in compliance based on our credits, only to have ARB come back a few years later, a few months later, some period of time later that is passed the compliance deadline and say, "You know what? We checked your math. We checked your records. We don't
agree. You're out of compliance." When does that happen?

There's nothing that I can see in the regulation that
makes it incumbent upon the Air Resources Board to get
back and approve these credits within a particular period
of time if you've asked for more than just your garden
variety 20 percent.

And lastly, just the other concern that we
hear -- there are lots and lots of small contractors who
have fleets that are large fleets under the regulation.
It doesn't take a lot of equipment to get to 5,000
horsepower. Most of these guys don't have time to come to
a meeting like this. They don't have the money to hire a
consulting firm like Associates Environment or some of the
other qualified firms that are out there. They're in
there punching numbers, putting their fleets into DOORS by
themselves. They look at the CARB calculator. They look
at the DOORS numbers. And they look at their own
interpretation of the regulation. And DOORS is telling
them something different from how the regulation is
interpreted. And they're a little concerned that, for
example, in some cases, we've seen fleets that have

apparently enough credit to get them through several
years. When they enter into DOORS, as DOORS projects
their fleet out, it's deducting credit in years when they've met a fleet average target, for example. I won't spend a lot of time going into details like that.

I will thank Mr. Goldstene for the opportunity to speak and for AGC to give me the opportunity. And we'll move onto the next segment. Thank you.

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: Sorry to jump in.

Could I please ask for the fleets A to G here -- first of all, thank you for sharing this data with us. But for these fleets, did you have records on how much their activity is down and how much their horsepower is down?

MR. BUCKANTZ: Yeah. And activity in number of hours and in fuel, it varies between the fleets. E and F, their activity has decreased somewhat, although they probably won't seek credits. The rest of the fleets, their activity on fuel, on hours is down in a range of 50 to 80 percent.

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: So they're covered for the first two years.

MR. BUCKANTZ: That's what you say. If they were
trying to respond, I'm not sure you would get a real polite response to that.

OFF-ROAD IMPLEMENTATION SECTION MANAGER
HEROY-ROGALSKI: I just want to clarify one thing, too. We are requiring documentation of the reduced activity. And that paperwork is coming now. And my staff is responding absolutely as quickly as we can.

For fleets that have experienced a loss in horsepower, there is no special submittal of paperwork they need to provide to us. So just to clarify that, because I think that was incorrect.

EXECUTIVE OFFICER GOLDSTENE: So Mr. Steel, there are a couple of people that want to speak?

MR. STEELE: We just have a couple more real people --

EXECUTIVE OFFICER GOLDSTENE: And then we can take a break.

MR. STEELE: And then we can take a break.

EXECUTIVE OFFICER GOLDSTENE: I know we've been going --

EXECUTIVE OFFICER GOLDSTENE: We have a couple of fellows here from the Operating Engineers who wanted to have a chance to talk. You guys want to come up now? You want to wait until public comment. That's fine.

MR. STEELE: So then let me just wrap up then.
This should take a minute here.

So I guess this morning we've heard the answers to the two questions that we posed at the beginning of the morning.

The first question was: Is the off-road diesel rule needed to achieve the reductions in emissions from construction equipment that the state has promised under its clean air plan? As you know, this rule was developed back in 2006 when our economy was booming and construction activity was at very high levels. The rule therefore assumed a continuing increasing construction work and the emissions that go along with that high level of work on out into the future.

To bring these emissions down, the Board adopted the off-road rule's strict requirements for replacing, retrofitting, or reducing the size of California's construction fleets.

As Dr. Reaser pointed out, the economic collapse of 2007 and '08 hit the construction industry especially hard. It dramatically reduced construction work in California. Experts from the State Treasurer's Office, leading industry forecasters, and the University of California, along with Dr. Reaser, report that construction is down about 50 percent from 2006 and that any recovery is likely to be very slow and painful.
Although it's hardly what you call a silver lining, this decrease in construction activity does mean that there has been a decrease in emissions from this equipment.

And that's where we find the answer to our first question: Is the rule really needed to meet the State's emission reduction targets? Or are we even meeting those emission reduction targets without the rule?

This question is critical, because no one wants us to fail to meet the air quality goals that we believe are needed to protect public health. And we're not asking that such a compromise be made. All we're saying is that there is room to provide relief to contractors because emissions are already below the levels you predicted when you adopted the rule and contractors should be given a break.

Or as one member of the Board itself put it, "If there's an air emissions cushion available, the benefit of the cushion should be given to contractors." We believe that there is, indeed, a substantial emissions cushion available and that there is plenty of room for the Board to provide relief to California's contractors.

Jim Lyons and Mike Kennedy described the results of their work in running the ARB's computer model. As you know, when ARB adopted this model, it used estimates of the size and the nature of the existing construction fleet.
to predict emissions out into the future. The model assumed that the industry would continue to grow and the equipment would be operated for long hours.

There was considerable uncertainty in these predictions, and these issues were pointed out to the ARB staff in a report prepared under contract to ARB during the rule adoption process. That report by Rick Baker of Eastern Research Group found ARB's model significantly overestimated fleet size, hours of operation, and horsepower. That doesn't seem to have been taken into account, but the reality is that Baker has been proven right by the test of time.

You've also heard a little bit this morning about the fuel-based analysis and how that might affect the over-prediction. And we'll be back to you when we finish that analysis. I think you all have seen Professor Harley's research, and it does raise some very serious questions.

Now to the second question this morning: Is the rule as currently drafted causing irreparable harm to contractors?

Let's start with the undisputed facts. Dr. Reaser has explained that the economy is the worst that most contractors have ever seen. Tom Foss mentioned the
the significant under bidding. I just read an article recently about the BART airport extension from the Oakland coliseum to the Oakland airport. BART's engineers estimated that that project would cost $552 million. They put it out to bid, and the bid came in at 492 million. That's 60 million below the engineer's estimates.

And that's not unusual for what we're seeing. It's not that the estimates were grossly overstated. It's that the bids are coming in at extraordinary low levels due to competition and the fierce desire to survive a natural human instinct.

Despite the overwhelming burden of the rule, contractors are, in fact, struggling to comply. Mike Shaw and Mike Buckantz both explained to you the efforts that people are going through. Many are doing it by reducing their fleet size and horsepower. But the problem with this approach is it leaves contractors weaker and less able to recover when the economy does come around. Once fleets are smaller and jobs are down, it will be very difficult and a very long battle to grow back in size.

You know, a word about employment. When these skilled work jobs go away, those people don't stay in
California. Those are those homes you see being foreclosed. They're leaving California. And to get them to come back and have that skilled labor force available is a major challenge and a major consequence I don't think anyone thought about in the context of this rule.

So in closing -- I think that actually pretty well summarizes our position. Just in closing, again we're not asking that air pollution be increased. We're not disputing the goals that were set by the state. We are respectful of the need to meet the SIP obligations. We think that can be done. We think that Dr. Reaser's explanation of the economic forecast that shows that this is not a blip on the screen but a very serious problem that's going to take time to recover from.

Thank you all for your attention this morning.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much for your presentation. Nicely put together and we appreciate the effort that went into it.

I think we should take a break until 11:00 and then we'll start taking public testimony.

(Thereupon a recess was taken.)

EXECUTIVE OFFICER GOLDSTENE: I'd like to get started. We have about 45 people that have signed up to
speak, and I'd like to give everybody a chance to be heard. If we can begin, that would be great. Give everybody a chance to take their seat.

Again, thank you for being here. Before we start taking testimony from the individuals who've signed up to speak, I'd like to ask Erik White, our Assistant Division Chief, to give a quick summary of what we've heard so far this morning.

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH

ASSISTANT DIVISION CHIEF WHITE: Thank you, Mr. Goldstene.

I'd like to echo the earlier comments this morning and welcome everybody and say thank you for coming. I think this is a very important endeavor on behalf of the ARB staff to continue to better understand this industry and the impacts the recession has had on this industry.

Certainly want to thank AGC and their associates for presenting a lot of good information to us this morning.

What I'd like to do is just maybe touch on a couple of things that we heard and just to provide some additional information about how ARB staff are continuing to look at that. And I think fundamentally one of the
first things we heard about was the ongoing work relative to the emission inventory and how ARB is taking into account changes to what has been going on because of the recession and what we've learned since the original approval of the rule.

And I would say that, you know, emission inventories that we use at the Air Resources Board, whether they're for trucks, whether they're for automobiles are always a work in progress. They're always being improved upon. We take new information that we gather and learn and fold that in, and we're able to revise our estimates in time. We've been working on emission inventories ever since the Air Resources Board was created as we started to understand what was being emitted into the air.

And so the information that AGC has gathered, the information that many of you in this room and on the webcast have provided to us through your reporting is being incorporated and used to look at the emission inventory for off-road construction.

And I think one of the important things that we are going to have moving forward, as Ms. Heroy-Rogalski indicated, as fleets begin to report how the recession has
impacted them through either reduced activity or vehicle retirements is going to be folded in. So the amount of time that ARB is using and taking advantage of is intended to provide to our Board this year a much more comprehensive look at where construction emissions are today and where we think they may be going in the near term.

I think the numbers that we saw from Ms. Reaser in terms of potential growth in the industry are not inconsistent with numbers we've been looking at for other source categories, for instance, such as trucks and buses. So I think we all recognize that the recovery has been devastating, that the growth that we expect is going to be slow, and we are certainly prepared and intend to incorporate that into the analysis that we do.

Why it's important I think to be very careful and take time in terms of looking at this is that in this morning's presentation we heard, for instance, from Ms. Reaser that the old equipment is being sold off to Asia and Mexico and other areas. And I think we expect -- and as we look at this information, that might in fact be the case. When you look at a smaller set of vehicles, the set of fleets that Mr. Buckantz identified, we didn't
So I think it's very important to take the time and fully understand how all of this integrates together in a way that there is going to be a high level of confidence in where emissions are. And so that was an important thing that I want to just simply explain a little more and reiterate that the information that we have gathered from you all, the information that we're getting from AGC and from others is, in fact, going to be fully folded into all of the work that we do. And we certainly intend to share that work with the public as we move forward I think as you heard towards some changes to the regulation and our truck and bus regulation later this summer.

The other thing I wanted to make an offer of -- and I would essentially make this offer. The first two fleets that were kind enough to step up this morning and talk about the impact of the recession and the rule on their fleets is to sit down and work with you. Sit down and help understand, help us understand what the regulation is going to mean, what the credits that we've already built into the regulation provide, the relief they provide.
And then looking beyond that as I think we've heard that those will be exhausted and there's going to need to be actions that occur after these are exhausted. What these action are going to be. I think as we do that, we want to make sure we're fully folding in all of the available options to fleets. That includes the use of retrofits, and I know there are many in the industry who view those as not a long-term solution. But I think if you look at the opportunities the use of retrofits provide, there are an important compliance aspect that need to be looked at.

I would make that offer to the two fleets we've heard from this morning and any other fleets that come up.

My staff is here ready to talk with you if you would like about where you are and where the rule would have you go moving forward and again fold in whatever additional information we can.

So I just wanted to hit on those two topics before we get into the testimony this morning. So thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Erik.

OFF-ROAD IMPLEMENTATION SECTION MANAGER HEROY-ROGALSKI: Just to add one thing. So a couple weeks
ago, we held a special training for large fleets to kind
of go over and make sure they understood what the
requirements were for March 1st and make sure they
understand how the paperwork associated with reduced
activity, and we are going to be repeating that training
on March 18th.

And we're also, as Erik mentioned, very willing
to sit down individually with any large fleets that are
working on that reduced activity paperwork or if they have
any questions about how the reg works and how it works
with the current enforcement delay, please do let me or
one of my staff know. We would be happy to sit down with
you individually.

EXECUTIVE OFFICER GOLDSTENE: Thanks, Kim. Thank
you.

We have about 50 people who have signed up to
testify today. I think what we'll try to do is to the
extent that you can limit your testimony to approximately
three minutes or less, that would be appreciated by
everybody else who's behind you waiting to testify.

If there are additional information that you want
to provide to us in writing by March 18th, we would very
much appreciate that as well. So if you can summarize
your remarks and try to respond directly to the questions that were in the notice and in Kim's presentation earlier today this morning about the type of information we're seeking about compliance and the challenges that you may be having, we want to hear that, and we want to get any other detailed information that you're willing to share with us so we can make the best decisions about how we make any adjustments going forward or proposals for adjustments to the Board.

With that, I think we'll begin. Ken Stoddard is at the top of the list from Waste Management.

MR. STODDARD: I'm Ken Stoddard of behalf of Waste Management. I'll try to make my comments very brief and be responsive to the questions.

Just by way of background, Waste Management has 550 vehicles that are subject to the rule at 65 different locations within California. Let me back up. Of those 550, we did achieve compliance on March 1st, and that was through the retirement of 144 vehicles, 38 new vehicle purchases, 36 retrofits, and five repowers. The cost was $9 million.

We did not rely on AB 8 or other activity credits to achieve compliance in the first round. And we will
also comply on March 2011 with the requirements. And at this point, we would assume without any activity credits. I think our situation is a little different from much of what you heard today. Our industry, the solid waste industry and our company, was certainly hit hard by the recession. Volumes at our landfills are down 20 percent. So there is some pain out there. However, I would say it's not the same level that the construction industry is experiencing. We provide services to that industry, and it's basically gone away. You won't find roll-off containers there at construction sites because the activity is so minuscule at this point.

Despite the financial pain, we're staying the course with the original schedule that the Board proposed. And I think really two reasons is we're really well down the path. But second, the corporation has its own emission reduction targets, and we're serious about achieving those. We perfectly understand the environmental benefits associated with this rule, so we're pushing on.

Regarding the recommendations for further amendments, we really only have one today. And it really is for those fleets that are staying the course that are
going to meet this original schedule, we would really urge
the Board to try to better harmonize the NOx and the PM
compliance schedules. As we look at the capital
investments that we need to make, it gets tough because of
the big discrepancy between those two different schedules.
So if those could be better harmonized, we believe our
money is so much better spent buying new equipment than it
is retrofitting and repowering older equipment that really
the highest and best use of our capital and I think
ultimately the highest and best use -- the best
performance in terms of emission reductions is going to
come through the purchase of new equipment. So we will
also provide written comments relative to that one
specific recommendation.
EXECUTIVE OFFICER GOLDSTENE: Thank you. That's
a great recommendation. We're looking at it. Thank you
very much.
Rasto Brezny is next. And after Rasto is Peter
Bransfield.
MR. BREZNY: Thank you, Mr. Goldstene and staff.
I'm Rasto Brezny with the Manufacturers of

Emission Controls Association.

Our members have worked with your staff to verify
most of the devices that are on ARB's verified device list
today. I believe the last time I checked, that includes
12 Level 3 DPF devices, six of which are passive filters
for off-road vehicles.

To get where we are today has taken at least ten
and in some cases 20 years of technology development,
investment, in order to commercialize these retrofits, and
ensure their durability.

Continued investment relies on some level of
regulatory stability. We certainly understand the strain
that today's economy has put on businesses of all sizes,
including our members are certainly not immune to this
economic environment. And that's why we've supported
ARB's efforts to increase the availability of more
incentive funds, grants, and loan programs to help end
users pay for retrofits.

MECA has also supported ARB's relief amendments
that the Board adopted in 2009. And if after reviewing
the data there's presented here today ARB decides that
more relief is necessary, we believe that rather than an
abrupt delay of the regulation, a phased-in approach to
full compliance should be used in order to maintain some
demand for retrofits and allow manufacturers to continue
to invest in this technology.

A phased-in approach is valuable for two reasons. First of all, the retrofit industry does create jobs, and regulatory stability ensures that these devices are available when they're needed.

With regard to jobs, one independent economic analysis suggests that a full-time job is created for every three to seven retrofits that are installed. So another way to look at this is if you use some of the estimates of retrofit demand that staff presented several years ago, you would estimate that the first three years of implementation of the off-road rule would create somewhere in the range of 11- to 26,000 jobs. And these jobs include sales, manufacturing, installation, as well as maintenance. And many of these jobs are in California.

So before I close, I just want to say that the performance and durability of retrofit devices has been proven time and time again. In fact, there's over 50,000 off-road retrofits around the world that have been operating for years.

A recent study published in 2003 by SAE, the Society of Automotive Engineers, tracked nearly 4,000 construction retrofits for a period of several years and found that the failure rate was only on the order of one to two percent. And most of these failures were
associated with the performance of the engine and
maintenance of the engine rather than the functionality of
the device itself.

And finally I just want to thank you and your
staff for holding this open forum and getting us the
opportunity to speak. And MECA will continue to work with
ARB and all the stakeholders to achieve the goals of this
regulation. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

Peter Bransfield and Don Chapin and Ron
Michaelson.

MR. BRANSFIELD: Good morning, Mr. Goldstene and
staff.

My name is Peter Bransfield. I'm the CEO of a
small business named Rypos. We're a retrofit
manufacturer. We're a clean tech enterprise that develops
and manufacturers diesel emission control devices for
stationary, off-road, and refrigerated transport
applications.

In the last year, we've retrofitted more than
3200 engines in California with control devices removing
more than 30 tons of particulate.

In the last six months, we've noticed several
trends that merit your attention as you consider further
action. The ARB diesel emission regulations are helping
to push California into a sustainable green economy by retaining and creating jobs associated with the diesel exhaust emission control technology industry. These are technologies that we and others have developed, verified for their performance and durability, and are now installing, servicing, and supporting in California and elsewhere in north America.

We and our industry partners continue to spend significant resources in developing and verifying these low-cost diesel retrofit technologies with a whole range of in-use diesel engines currently operating in California. The stability of the regulations and the predictability of their enforcement are significant considerations in determining whether to invest further in these clean air technologies that will make it possible to cost effectively meet the increasingly stringent regulations that were put in place to clean the air.

It takes us approximately three-and-a-half years from concept to field to bring one of these devices to market. Postponing or diluting the regulations or enforcement discourages further development of these new technologies essential to cleaning up the air we breathe and creating additional clean tech jobs here in California.

The California regulations have resulted in the
growth of clean tech jobs nationwide. At my company,
we've created 40 new jobs in the last 18 months, more than
half of which are in manufacturing as a direct result of
the compliance requirements here in California.

Our supplier base has reported preservation or
growth or a similar number of positions due to inactivity.
Our dealership network of over 35 small businesses here in
California have prospered in these tough economic times,
creating and preserving jobs in all corners of the state,
but in particular along the highway 99 corridor.

In summary, I urge you to uphold the current
regulation and to support the new industry it has
successfully created. The air quality in California will
continue to be impaired by older diesel engines, unless
these new technologies are allowed to come to market.
Proven technology exists to remove these harmful
emissions, but stable regulation is required to accelerate
its adoption. The technologies and the people that
install and support these reside in California. With an
increased demand, we will continue this pattern of job
creation. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you very
much, Mr. Bransfield.
MR. CHAPIN: Good morning, Director Goldstene.

Thank you very much.

My name is Doug Chapin. I'm the President and CEO of Don Chapin Company located in Salinas, California. I started my business in 1978, and I'm here this morning because in my 32 years of businesses I've never experienced conditions in times like we have today. No work. No money. Facing huge issues.

My company currently operates 143 pieces of off-road equipment. Total horsepower just under 21,000.

Since 2006, knowing that the subject regulation was on its way, we began a comprehensive program to bring our fleet into compliance. At the time, we were fairly confident we could make it happen. Business was good. Our revenue projections were appropriate for the time.

Since 2006, we've sold or disposed of 35 pieces of Tier 0 equipment. We purchased 24 new machines, none of which by the way will be in compliance with your regulation in just a few years without further modification.

We spent millions of dollars in our efforts to
comply with this regulation. And we still can't make it.

As of today, our NOx average is 6.9. Our PM average is .51. We have a long way to go, and we have no means to get there.

In 2006, I employed 260 people just in our construction business. Today, that number is 185. Most of the 185 are part time.

Most pieces of our equipment are being operated for less than 500 hours per year. Some larger pieces are being operated less than 200 hours per year.

Our fuel use compared to 2007 is down 32 percent March 9 to February 10.

Since 2006, our construction revenues have decreased by 38 percent. Our profitability has plummeted three years in a row. The outlook for the future is bleak at best.

I'm going to leave you today. I'm going to hand you my company's last three year financial statements. They're for your confidential review. And this will be evidence that our company is where it is and where it's going.

I live in Monterey County, 2.4 million acres of land. I just checked the records for 2009 for building
 permits that were issued. In 2009, 191 new building
permits in all of Monterey county. Residential new
permits, 66.

I'm going to as well provide to you today a
letter from my bank. Simply stated: We can't borrow any
more money.

I'm going to provide you a letter from my bonding
company. Simply stated: Provide capital, reduce
expenses, improve profitability, and be prepared for
reduced limits.

I'm going to provide you some other articles, a
surety market report. And I'm going to provide you an
industry forecast from McGraw-Hill. I hope that you'll
understand, study all this material, and make some reviews
based on your own reading.

I understand your job, and I understand that good
air is in all of our best interest. I consider our
company very cutting knowledge and progressive.

We've approached compliance with your regulations
with determination to do the right thing. I have,
however, performed with very little reward. I get no
credit for early retirement of older equipment. I get no
bonus credits for buying new equipment early. I got no
leg up after spending millions on new equipment. I did all of this with no help from anybody that's enforcing this regulation.

And now the economy chimes in. Except for low use and giving my fleet away, I can't make this requirement. We can't do it this year; we won't do it next year. Unfortunately, low use is not producing enough revenue to sustain our company, not even close. 2010 looks much worse than 2009. Unless the economy picks up, I have few choices, none of which are positive. And I'm concerned standing here today that you don't get it. I can promise you after two more years of low use, we're done.

Can you please consider re-looking at the reg? Can you consider the fact that my fleet's operating at less than a third of the hours we operated in '06? Can you consider that without some other sources of funding, replacing and retrofitting our equipment is just not possible? And can you consider in light of the current economic situation suspending the implementation of the reg while folks like me deal with larger issues in our business, that of keeping our employees employed and our doors open, we need at least two to five years if not
16 more?
17 I appreciate the opportunity. And I will
18 dedicate myself and my staff to work with you and your
19 staff to find a solution that works for all of us in
20 California. Thank you.
21 EXECUTIVE OFFICER GOLDSTENE: Thanks, Mr. Chapin.
22 Rod Michaelson and then Keith Wood and then
23 Harlene Barados.
24 Mr. Michaelson.
25 MR. MICHAELSON: Hi, James.

Rod Michaelson, I'm a member of the Off-Road
Advisory Group since the beginning representing large
fleets. I'm also the equipment manager for Bay Cities
Paving and Grading. We did a little over $100 million
last year. We have 104 pieces of equipment, about 14,500
horsepower. Breaks up: Eight percent Tier 0; 34 percent
Tier 1, with 20 percent of those having DPFs; Tier 2, 45
percent of our fleet, 20 percent having DPFs; 9 percent
Tier 3; and four percent Tier 4I. Our fleet average is
seven years old.

So of that 104, I did nine retrofits on my
machines at the price out of our pocket of $209,000. That
gave me 1960 horsepower. I did it for the double
horsepower credit, because unfortunately we weren't doing terribly. I'm conservative politically and economically. And even through the good times, I saw the bubble was going to bust. The boss wanted to buy new equipment, I said, no, let's rent, and keep our equipment where we could.

So DPFs, I'm against them and this is why. Out of the 104 pieces, I have 24 pieces that are high frequency violation paving equipment. They can't handle DPFs. I have 47 pieces that I keep less than six years. I'm not going to put a DPF on something I'm going to keep six years.

I have nine machines I've done the DPFs on. I have six machines that are Tier 0, not using much, but I can't go out and buy a million-dollar machine to replace that $100,000 machine, so I keep it. But I only have six of them.

Five machines are motor graders I would rather put a Tier 3 engine on than a DPF on because the engines are getting older, but that doesn't give me DPF credit. I have six smaller dozers that are worth less than $50,000, and I'm not going to put a $20,000 filter on. That leaves me seven machines I can put DPFs on, or
My truck fleet is 12 years old on the average. I'd buy newer trucks, but I can't buy a new truck, but these regulations don't say get rid of that 1988 and get a 2004 and that's better. So I don't buy anything. I could make my fleet younger, but I don't know what to do.

Of those 28 trucks that I have on my fleet -- I called Emissions Retrofit Group yesterday out of Sacramento, sent them my list of trucks and asked them what I can do. Their answer, two. In the way that we use our trucks, water trucks on jobs, mechanic trucks with PTOs, I can do two.

One of our competitors might be in this room. We lost a $91 million Caltrans estimated job by $60,000. The bid went for $61 million. It's a four-year job. I'm glad I'm not their equipment manager. So the reports are that 4I engine from the major manufacturer is going to cost me 12 percent more to get a 4I engine, the latest and greatest. I've heard from one of my friends that the true 4 is going to be 50 percent more. That's going to be tough.

Now I know that CARB has a $1.2 billion yearly
budget. That's a lot of money. And you're giving a lot
of DPF money out to people to put DPFs on older trucks.
Well, like I explained to the Senate when I testified a
couple weeks ago, I listen to my music on this. What
you're doing is retrofitting really expensive cassette
players. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr.
Michaelson.

Keith Wood and then Harlene Barados and Frank
Barados.

MR. WOOD: Thank you.

Keith Wood, equipment superintendent, Shimmick
Construction Company.
First thing I'd like to do is say thank you to
the president of our company, Mr. Paul Cackotas, who
advised us in our equipment division to not act too

aggressively to CARB's threats and to get too excited
about DPFs and retrofit our equipment until you have a
waiver. This proved to be very good advice last month.
We have 100 pieces of equipment in the off-road
rule. We're also a member of South Coast's showcase
program. We tried very hard to get in there and become a
big part of this program.
Out of our 100 pieces of equipment, we could only come up with four pieces that we could retrofit through their program that was either economically viable to us or to them or that would even work on.

Now we have out of all this older Tier 0 equipment we have, it's no longer worth pennies on the dollar. We sell it by the ton for scrap metal. If you've got large old excavators, the poor guys out here that have scrapers, they're not worth anything. Tractors we had that were worth $250,000 in 2005 are now worth $150 a ton.

And I was talking to Rod earlier. I read in Diesel Progress CAT published that their new gen-sets will be 25 to 50 percent more expensive when they start adding Tier 4 finals in them.

And you guys need to be careful, because what you're going to do is kill the local state fleets. You're going to kill these good old California companies and give serious advantage to out-of-state fleets that can rotate in fresh brand-new equipment. And they're just going to rotate it in and out, and we will be gone. And I really, really hope that you pay attention to what the AGC said today, because they have some great statistics.

Thank you.
EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr. Wood.

Can we hold our applause? We are just trying to get the testimony here.

Baratos, Harlene and Frank, are you here, from Engineered Concrete? Okay.

The next group which is presenting as a group is William Pursel, Mike Mehawk, Charles Bynum, Stephen Lewis, Jim Jacobs, Dave Harrison. You're all with the Local Union Operating Engineers 3.

MR. HARRISON: Mr. Goldstene, staff, my name is Dave Harrison, Director of Safety for the Operating Engineers Local 3. We are the largest construction union in the country, and so we thought it only fitting that we come up as a group.

I'm going to start out -- we're going to take some testimony from some of our members, and I'm going to finish with some final statements and requests.

MR. PURSEL: Good afternoon. My name is William Pursel. I'm a 30-year member of the Operating Engineers.

I've worked in the trade for 30 years.

I think the trades came a long ways with our engines and our equipment. I've seen it. I don't know if
you've seen it. I know you have your statistics and what
the diesel pollutants are, and I'm for clean air. But I
think, you know, we need to look back at where we're going
and how we're approaching this situation. Are we just
putting another nail in the coffin? I mean, pretty soon
are you going to have anybody here in the state to govern?
Or are you driving all the industries out? Like has been
stated earlier, I'm for clean air, but let's look at where
we're going.

We've heard about producing jobs, making these
retrofit systems on older equipment. Our equipment is
getting older. I'm a good old tool, but pretty soon you
got to put me away, too. But the new stuff has came a
long ways. But at this present economy, we're not going
out and buying a whole new fleet. So think about that.

As was stated earlier about when somebody is
driving an old car down the road, we're not on them that
bad to get rid of that. But now we're getting on the
industries that make money that produce jobs in the state
and pay our taxes. So just think about that.

Thank you for your time.

EXECUTIVE OFFICER GOLDSTENE: Mike Mehawk.

MR. MEHAWK: My name is Mike Mehawk. I'm an
operator with the Operating Engineers Local 3. And being here today, I was fortunate enough to come into this industry just three years ago. So dealing with this and the complexity and the gravity and thank you for the opportunity, Mr. Goldstene, and your staff. The complexity and the gravity of the decisions you have to make are beyond my pay scale. It's just that simple.

And you talk about a rock and a hard place. What I'm getting from this and listening to you -- I climbed in the Himalayas in '91. Walking out in Kathmandu as a young man, I realized what the EPA does. Because I didn't need a finely tuned instrument to understand what I was breathing in. So I understand what you're doing.

But sitting in my seat -- and I appreciate Mr. Shaw and his share and everybody today because those seats -- the company I worked with last year, they had a job out of state. They took their equipment there and they left it. When Mr. Shaw said that, when that seat leaves, there's my job. So all I can do is really I don't have any numbers or analysis for you, just a face and a heart. That seat that leaves, that's me.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much. Where are you from? What area of the state are you --
MR. MEHAWK: Dixon.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

Are you Charles?

MR. BYNUM: Thank you, Mr. Goldstene and staff, for letting us come here.

Most of us all for the clean air. We've been hearing it over and over. We are seeing what's happening with the environment and everything else. But at the same time, it comes at a time when the economy is so bad. I mean, I don't know any of you have been around during when the 80s hit, the recession, that was a small recession at the time. It took a little while for that to peak out.

Well, this is worse. So it's going to take these contractors a lot more time to start getting things back up to par. And all we're asking -- we can see they're really trying -- that you give a little bit of leeway.

I hear Kim is still talking about training for March, instead of saying maybe we can try to work on that. Maybe extend to some training distance date. Give these guys a break, because it gives us a break. We need to work.

The banks don't care. They want to repossess this building, they'll tell you to move out. They don't have a heart.

But the construction workers is the one that
built this place, that give you a place to work at. Just like give the contractors some jobs to do, it gives us work to do.

So without the contractors, without any machinery, and without any help on your end to help them out, you know, you're going to have all this retrofit work that's going down the tubes. You've got a lot of freeways that need to be worked on, a lot of bridges. You're going to have another scenario like what happened in '89 when the Bay Bridge collapse, the Cypress went down, because of maintenance. We need that work.

Right now, a lot of construction guys that help build this place put this building up so you can have a job. I know you probably say get out of the business. Get white collar work. We chose what we want to do because I like what I do. Because when I see a building goes up, it employs people like you. Simple as that. So I like what I do.

But if I can't -- the bank tells me, "Well, what do you do for a living?" "I do construction." "Well, get out and do something else." Because we need that payment for their house. So what do you tell them? Just like the contractors, the guy just said, the bank wants to know, what do you have for collateral? What do you have to keep things going? If you don't, then
you're out of business. I'm out of my house. But I'm the same person that helped build your houses and your roads. So that's just something to think about.

EXECUTIVE OFFICER GOLDSTENE: Thank you. Where are you from?

MR. BYNUM: Sacramento.

EXECUTIVE OFFICER GOLDSTENE: You're all local?

Okay. Just curious. Thank you very much.

Mr. Lewis.

MR. LEWIS: Good morning. My name is Steve Lewis. I'm from Fairfield. I've been with Operating Engineers for 20 years. I'm one of the 364,000 that are out of work right now. Not saying that these rules are what put me there at this moment, but I'm sure it helps a little bit.

I'm here in support of the contractors and the AGC and all the employees that go along with it.

And on another issue of the safety of these retrofits, I've actually worked on some of the equipment with the retrofits done to them. And there are some safety issues. You know, the vision, it just takes away a lot of vision for an operator. There are some blind spots due to the heavy bulky equipment that's been installed on some of this equipment.

And also I personally own a couple pieces of
equipment myself. And I know when it comes time for me to retrofit, I'm selling. I can't afford to keep the equipment at that point. I'm just small time, you know, not a lot of equipment. But what I do have, I can't afford to retrofit.

And if I could, the price of that's just going to get passed on to the consumer anyway. That's how it's done.

Anyway, I thank you for the opportunity of speaking here and having you listen.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much for coming this morning.

Mr. Jacobs.

MR. JACOBS: Jim Jacobs, a 20-year member of the Operating Engineers and a business representative for the Operating Engineers.

So how are you doing, Erik?

I know I worked with you all through the crane regs. I'm a fifth generation Californian. And it's getting harder to be proud of that. I don't want to leave this state. I don't want any of the contractors or employers in this room to leave the state. And I don't want out-of-state contractors taking the work of these men.
get for our members now.

I represent the four that just spoke and the other 10,000 that are out of work right now. It's daily. Daily, I'm getting phone calls from our members that are losing homes, losing their entire livelihood, or leaving the state because there's no work.

Now, I realize you guys didn't create that storm. But you certainly can help make it go away with pushing these regs off. And I really hope you guys are listening to everybody in the room today. There was some great stuff said this morning. It's terrifying at best. So please give everybody a break. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much, Mr. Jacobs.

Mr. Harrison, you're going to close?

MR. HARRISON: In closing, you've heard the testimony today and we've heard from our contractor from industry about economics of the situation. It's not the only issue at hand.

I'm here today to talk about the current regulations and how they're effecting our members directly and the companies that employ them.

First, I'd like to say that from 2006 until
now -- and I reported this at the last Board meeting --
Operating Engineers, the largest construction unit in the
country, our hours are down almost 40 percent, a direct
relation to the industry, way above the state's
unemployment rate. With our hours down, our employers are
forced to reduce the size of their fleets to comply.

We've got contractors working out of state that
never did before, because they're able to. They're able
to actually use the equipment they have. We have
contractors that are working out of state and choosing to
not bring that equipment back once it leaves. It's not
economically feasible for them.

Unless we reduce the size of our workforce, this
only means higher unemployment. For every seat we lose,
that's one less job for the operating engineers. You go
up to Capitol Hill and go down the road to the State
Capitol, you hear jobs, jobs, jobs. You hear health care,
some other issues, but jobs, jobs, jobs. That's the theme
of today because unemployment is so bad. And this
regulation isn't helping that.

We're forcing our employers to choose between a
filter and an employee. Can't afford both.
The other issue I'd like to talk about is safety.
You've heard that. I've heard a lot of economic arguments today. There's also a safety issue. There is this retrofit. You heard from the filter manufacturers today, and I'd like to send a request to them when I'm done with this. These filters create a huge safety hazard. There's fire burn and obstruction of vision. They're extremely expensive. And they may have to be installed as many as three times in some cases working through some of the exemption and the different methodologies. I'm not sure who's going to pay for that.

Our members are in the seats and on the ground in closet proximity to this equipment. My worry is that when the choice comes to work in an unsafe condition or put food on the table for their families, they're going to take the low road.

Then comes incomes the kicker. Ball all this up into a big pile of garbage, and you can't even legally implement the entire reg, because you don't have your waiver from the feds yet. You put the cart before the horse at the expense of Californians in our opinion.

We've suggested that the answer to the safety issue is research and development. I'm also a member of the Off-Road Group, and we've suggested that from the
beginning. We heard the filter manufacturers testify today that they've been working for ten and sometimes 20 years. We need to give it a couple more years. Do more research and development, because one-size-fits-all does not work. And we've learned that. If it did work, we wouldn't be where we're at with the safety issues. Design a filter that's safe.

Our suggestion for the economic impact of the regulation is to give us more time. The AGC studies show that acceptable air quality projections even if we add they say two -- I ask for more. I've heard five. I'll split the difference and ask for three. Add three years to all compliance dates. This will allow for R&D on the filters and allow for the economy to rebound from our great recession. Please allow more time. All we ask is three years.

EXECUTIVE OFFICER GOLDSTENE: Dave Valdez, Nick Pfeifer and Skip Brown.

MR. VALDEZ: Good morning. My name is Dave Valdez. I'm the equipment manager for the Penhall Company.

I guess this morning I'm just going to reiterate and reinforce what everybody has told you this morning.
I'll give you information on our California fleet only, as I have 38 locations around the country.

So let's talk about the labor first. 2009 was a very tough year as a contractor for the Penhall Company. We had our very first mass reduction in force. We lost 22 percent of our California employees, which was 61 percent of the total reduction in force.

We are going to make our off-highway through 2013 we think through the DOORS program. That's due to reduction in fleet. We're able to take a 17,000 horsepower credit which eliminated 20 operating engineers' positions in one division.

We subsequently closed three California divisions over the past 12 months, eliminating both some operating engineers positions as well as labor positions. Revenues for California from 2006-2009 are off 40 percent. The margins are nonexistent.

Something that hasn't been addressed today -- and I don't know if you want to hear -- was the on-highway affects us greatly as well. We've got in the California fleet there's 92 on-highway trucks under the regulation that are 1994 and older. So the feasibility of retrofitting or repowering these vehicles is not there.
The majority of them, 60 percent, are HD 3500 GM product with 6.5 diesel, which wasn't worth buying in the first place. But another story.

We're looking at approximately 8- to $10.3 million in replacement of those 92 trucks. Just first round on our DOORS and on-highway combined.

Our Tier 0 excavators is four to six million in replacement that will be necessary. This is today's dollars, not 2013 dollars when we actually have to get going, I guess.

Our backhoes are 1.8 million. Bobcats, another million. Our compressors, which is in the PERP program,

today is 325,000. I had to take 29 out of service in December. Because of the reduced workload, I haven't had to replace any yet.

In our saws, which make most of our money, is another $450,000. So in total, our first round replacement, we're looking anywhere from 15.5 million to 17 million. If we do this at 25 percent rather than at 20 percent turnover, it's about $4.3 million our first turn.

And looking at the economic recovery, we don't have the money today. It's not looking like we'll have it in 2013.

We have been -- anything that we do purchase
since this is upon nationwide we do buy 4I. We won't
buy -- or the latest technology in the case of Tier 3
being the most -- the highest available. We are
repowering specialty equipment with 4I or Tier 3 as well
as we can afford it financially.

And I appreciate where we're going. Thank you
for listening to me today.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr.
Valdes.

Nick Pfeifer, Skip Brown, Dermot Fallen.

MR. PFEIFER: My name is Nick Pfeifer. I work
for Granite Construction Company.

I'm testifying today with mixed feelings on
what's going on. On one hand, Granite is feeling the same

1 economic pain that every other company that's testified
today is talking about. Our revenues are way down. Our
California equipment utilization is off more than
50 percent. And we've experienced significant cost
reductions and layoffs in our California operations. So I
think there's something that needs to be done on the
economic relief end of things.

On the other side, it's extremely frustrating as
a proactive fleet who took actions ahead of the compliance
dates and would have been in compliance that there is no enforcement to hold other fleets accountable.

There's hypothetically a situation today where a company like Granite or some other company that's incurred costs -- in Granites' case, of over $2 million for the original compliance dates -- that an out-of-state company can bring an entirely Tier 0 fleet into the state and underbid us on a project in California. This creates a distinct competitive disadvantage for any fleet that has invested money in compliance.

I'd like to think of myself as a solution-oriented person. So I have a couple of thoughts about the situation. The first is that any relief needs to be in the form of a sliding of time frames. Compressing of time frames -- I know we're up against the 2014 SIP deadlines, but compressing of time frames creates logistical nightmares for companies. You plan on the regulation as it's originally written, and then you start compressing things and capital budget cycles, things like that get completely thrown out of whack.

The second is to give adequate time between any amendments and the regulatory deadlines that they affect so that companies can adjust their strategies. Just a
time frame to throw out there is that would be reasonable is one year. That's an appropriate amount of time for companies to adjust their capital budgets and to account for equipment lead times.

And lastly, there needs to be recognition of and credit given to actions taken before original compliance dates so that companies who took a proactive approach can be rewarded rather than noncompliant companies or out-of-state companies being allowed to underbid for work.

Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thanks.

Skip, Dermot, and then Sam Leeper and John Juette.

MR. BROWN: Skip Brown, Delta Construction Company, family business in California 67 years and counting.

I got a kick out of Nick's comment, adjust your capital budget. I haven't taken a salary in 18 months so I can keep my people. That's what the economy is doing to us.

You've heard enough about the economy, so I'm not going to talk about that.

You heard about how companies are going to
survive this. If they do survive this, they're going to
do it by attrition. We're going to cancel seats and get
rid of equipment.

I want to thank you for the science symposium
that you had here a week or so ago. I think that was
extremely valuable. I think it showed that there is a
serious need for an independent study to be had to really
review the science.

And I would like to know when will the posting be
available for public comments on the science symposium? I
sent something in a couple weeks ago and they said, "No,
you can't post it yet."

And I said, "Well, wait a minute. We're having a
symposium on the science, and I want to post some comments
about that. And I think it's important before the science
symposium."

And they said, "We'll have a posting site up
after we determine our position."

Why are we having public comments if you're going
to come up with a position without taking into

But anyway, when will that posting site happen?

Do you know that yet?
EXECUTIVE OFFICER GOLDSTENE: Let me find out where that is. I'll try to get an answer by the end of the day.

MR. BROWN: I'll move on.

What I want to do is bring up a couple potential solutions for you. Instead of whining about this, let's talk about solutions. Solution one is will be to pay the cost for the upgrade for these people that are being charged the upgrade. So I was told by staff after giving financial statements that I need to raise my prices.

If I was a utility company and I was supplying water to everybody and I had this increase in cost, I would say every household is going to pay $10 more a month because I have a monopolistic situation here. But we have a free market out here in the world that we live in, and we have to be low bidder to get the job. I can't put down at the bottom of the page that I would have been low but CARB said I had to raise my prices so you need to award the project to me.

How would you pay the cost for the upgrade? The beneficiaries should pay the cost. That's the population of the state. That would be the same thing as passing along the cost, which we're all talking about doing.
Well, so how would the beneficiaries pay the cost? According to your study of March 26th of 2006, for every one dollar of regulation, you get a four to $26 return on investment. That's how much health savings you're having.

If that's true, let's put an initiative out, a bond out to the voters and let's say, you know, we're going to save all this in your health costs. And so if the bond passes, then fine, you have the money, provided of course California can sell us bonds, which I'm not too sure about that. But then you bring the money up from the bond and you pay the cost to the owners of the few folks that have the pay for entire cost of this program.

Now if that doesn't work, I say declare victory and go home. We met your targets. Unless you can come up with something that shows that AGC's report and their study is invalid, we've met your targets. Don't move the goal post on us. We've met your target, at least until 2015.

I'm not saying quit monitoring the air. CARB has done a wonderful job of cleaning up the air in California. They've done it on new equipment. This is the first time you've ever taken the equipment that's already owned, already purchased, and thrown an ex post facto law, have taken away the use and the ability to sell that equipment.
That's illegal. That's against Amendment 5 of the U.S. Constitution. At some point in time, someone is going to sue you under Amendment 5, and the state of California is going to lose that suit under the takings clause. That's going to cost everybody here a horrendous amount of money, because once one suit is won, there will be tens of thousands of suits that are won.

So I think that you need to take one of the two solutions: Either declare victory and go home, and then if you can't make it in 2015, I think we need to talk to the fed EPA about the SIP plan and the viability of possibility meeting that SIP plan.

Thank you very much.

(Appause)

EXECUTIVE OFFICER GOLDSTENE: Dermont, Sam Leeper, and John Juette.

MR. FALLON: I'd like to thank you for this opportunity.

My name is Dermot Fallon. I'm a project executive with Foundation Constructors. I'm here with my equipment manager, Ken Beverage.

We consider ourselves the premier pile driving and specialty foundation contractor on the west coast. Since 2007, we've seen our revenues drop by 40 percent. And we see further declines for 2010.
As a large fleet contractor, we have equipment capacities to perform 25 projects on a daily basis. Today, March 11th, we don't have a single piling driving crew working. We anticipate project starting early next week, but that doesn't help this week's revenue. We currently have 25 of our core employees, pile drivers and operators, sitting at home unable to find work. These are very highly skilled specialized craft.

Our fleet consists of 25,000 horsepower between northern California and southern California. Again today, none of that equipment is working.

We have 30 cranes between the years of 1969 and 1996 with a majority in the '70s. New cranes are not conducive to pile driving. However, being proactive for these, we have retrofitted eleven of these cranes, installed VDEX, and we have spent approximately $5 million in these efforts.

Seven of our forklifts have been brought up to compliance for the 2010 requirements. To meet the 2011 requirements, we are looking at spending another 500 to a million dollars. For us to comply with the 2011, 2013 requirements could put us out of business.

We have a mechanics staff of eight mechanics in northern California/southern California. Three of those today are working on retrofits of equipment. Again, we
don't have any pile driving crews to create revenue working today.

It's been difficult to get funding from the banks to support this equipment endeavors and equipment retrofits. This money is all coming from our bottom line, our cash flow, and the stockholders' equity.

In today's construction competitive bidding environment, projects have been scarce, resulting in contractors taking projects with ridiculously low prices with no intention of making profit but just keeping the doors open.

The majority of our equipment is specialized and some of the equipment only gets used on one or two projects a year. This is what keeps us as a specialty foundation contractor.

We can't afford to give this equipment up or ship it overseas or to other states. This equipment came from years of research and development of our own company to come up with this equipment. Foundation is in agreement with AGC's recommendations and with Tom Foss' recommendations to extend the deadlines by five years.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

Sam Leeper and John Juette and then Clayton Miller.
My name is Sam Leeper, B&B Equipment Rental.

We're one of the largest heavy equipment rental companies in southern California.

I've been in this industry for almost 40 years, and this is the worst economy I have seen that I can remember. Not a lot of work out there. Not a lot of money.

And one of the things that happened to B&B, B&B is -- or should I say used to be a family-owned company. We were forced because of the economy and the regulations to sell the company out. We cannot survive the economy and CARB and keep the company and its employees in business without help.

We were forced into selling the company to a large out-of-state corporation to survive. This was not something that B&B wanted to do, but it was necessary to keep us in business and keep the loyal employees that have put many years into B&B making it the company that it is today. The owners of B&B equipment are very, very employee-oriented people, and they would do whatever it takes to keep the employees on the payroll.

The construction industry asked for CARB
two years ago to push back the compliance dates, and we
were basically told, no, we're not going to do it. A year
ago, the same thing was brought up. Can we possibly push
these back to a later date because of the economy? We
were basically told at that same time we don't see it
happening.

Now, shortly before the compliance dates came up,
we're going to push them back. B&B has been working for
many years towards making these compliance dates
financially and selling off machines, buying some new ones
when we could afford to do this, and it hasn't been easy
to do. So to make these dates, the company was sold and
we got financial help from a large corporation. Not going
to mention their names at this time. And they're an
out-of-state corporation. So a lot of the revenues are
not staying in California now.

If we would have got these compliance dates
pushed back, it would have been a lot different situation
for B&B. We would have been able to make smarter
decisions on what direction for B&B to go into, but we
mainly did it to keep our company in business and to keep
our employees employed. We have had a few small layoffs,
but it hasn't been what a lot of the companies out here
have done just because of what we've done to keep ourselves in business. It's hard to do it that way.

One thing I would like to ask if you're going to push the compliance dates back, we need to keep the requirements of 2010 back. If it starts at 2012, that's where we need to have the requirements -- the PM and the NOx requirements start again. Because if you say, no, we're going to push it to 2012 and suddenly, bang, we have to meet the 2012 requirements, we haven't gained a thing. We're still going to have to sell off equipment. We're still going to have to buy equipment. In this economy, it's going to be very, very tough to do.

I think everybody in this room right now is -- I'm not going to give statistics, because I think the statistics I've heard right now are scaring everybody, but they're true statistics.

This industry is on the definite downturn. And I know for a fact there has been a lot of contractors that have went out of business because they can't make the requirements or they're not going to try to make the requirements, and a lot of contractors have moved out of state to do business other places. This is not helping the state of California at all.
So if something is not done, the construction industry in California is going to be dead. And it's going to take a long time for this industry to come back. And it's probably not going to be while I'm still working, and it's not going to be while a lot of these guys are going to be working. It's going to be the younger guys coming up fighting this battle, and it is going to be a tremendous battle.

So, you know, I want to thank the Board for listening to us. I know you're probably going to be listening to the same scenario the whole time. But this is the truism. This is exactly what the industry is doing out here right now. And everybody is just not painting gloom and doom because we don't want to do this. Everybody here wants to make this a good state to live in for our kids and our grandkids. But right now, it's just not financially feasible to do it. Thank you for your time.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much.

John Juette and Clayton Miller and Bill Davis.

MR. JUETTE: Good morning.

I'm John Juette, J&M Land Restoration. I'm out
of Bakersfield, California, one of the worst air quality places in the nation.

I have one daughter that has asthma, so I'm sensitive to what you're trying to do. Yet, our company has gone from 35 employees -- 30 to 35 employees last year to three. We have our hydro seeders and straw blowers now we're bidding out-of-state work because of compliance issues here. We will not make your year 2011 compliance. There's no way. We don't have the income to buy the filters, to retrofit new engines, or put new engines in the machines is just not practical at this point in time. There's not enough work out there.

And then I find out that the county of Kern will not allow us to use any engines on their work that are not Tier 2 or better. Well, that shoots me down for even my own backyard of working. So currently, we're working -- or bidding jobs in Nevada and Arizona and New Mexico where we can put our machines to work.

If any possibility if you could see your way to move this back to give us more time with the economy the way it is, it would greatly help us. We could buy new equipment, new engines, retrofit what we have. But the filters are expensive. The new engines are expensive.
And we just don't have the income to do it right now.

It's just not there.

EXECUTIVE OFFICER GOLDSTENE: Thank you very much.

Clayton Miller and Bill Davis and then -- lunch after Bill? I was thinking we go to 12:30. And then Ed McKinley.

MR. MILLER: Good afternoon.

My name is Clayton Miller. I'm representing the Construction Industry Air Quality Coalition. And one of the missions of CIAQC is to communicate with our members and the industry as a whole to the best we can to keep everyone updated about what's going on.

In an effort leading up to this public workshop today, we asked anyone that wished that we could share some of their story with you that were not able to attend because of various reasons. So I'm going to do that as quickly and briefly as I can. There's seven fleets that I wanted to highlight.

The first is a large fleet that indicated that between 2006 and 2009 it has reduced the size of its fleet horsepower by 29 percent. The company also is experiencing a 94 percent reduction in annual fuel usage,
and the company's revenue over the same period is down 93 percent. This unfortunately has led to the letting go of employees. They had to let 73 percent of their employees go, resulting in the loss of 24 jobs.

The second is a company that was founded by someone who started in the construction business in 1946. The company has sold ten pieces of equipment since 2006, causing the company to shrink from a medium sized to a small fleet and had to reduce the number of its employees by 80 percent, resulting in directly 32 jobs.

This company believes that to comply with the future regulations it will need to replace 80 percent of its existing equipment. I guess it has one bit of optimist, it thinks the economy may turn around in the next two years.

The next example is a fleet that's owned -- a large fleet by a company in southern California that operates throughout the state indicates that between 2007 and 2009 its diesel fuel purchases have been reduced by more than half.

Another company that got in contact with us wanted to express the difficulty with compliance for three CARB regulations. We're not only talking about the
off-road regulation here today, but also it owns on-road
tucks and also has to comply with the portable
regulation. So it stressed the cumulative impact.

But on that, this same company is a large fleet,
and it indicates that over half of its fleet right now is
parked and that the equipment that are on the job sites
that hours are down dramatically. So it's not emitting.

Due to the slowdown of the economy, this company has had
to lay off two-thirds of its mechanics. And since '06, it
has reduced its overall employment by 72 percent,
representing 400 jobs. When asked how it will comply with
the future regulation moving forward, the answer they
really can only see is that we're going to have to
continue to -- sell equipment. The cost to buy new is
just -- and retrofit is too expensive to do anything
otherwise at this point in its view.

EXECUTIVE OFFICER GOLDSTENE: Is there any chance
this could be put together and submitted to us in writing?

MR. MILLER: I still have four more examples, but
I think what they all do is point to what's important here
is that it further illustrates that emissions from the
construction industry are down right now. The
construction industry has been dramatically impacted by
the economy and the future recovery timeframe looks uncertain at best.

So CIAQC would recommend an immediate action.

CARB should delay implementation of the regulation for at least two years. This will give the Air Board time to reanalyze the data that supports the regulation and also provide some relief for contractors struggling to find a way to stay in business and preserve jobs.

EXECUTIVE OFFICER GOLDSTENE: Appreciate it.

Thank you.

Bill Davis and Ned McKinley and then Larry Milton.

MR. DAVIS: My name is Bill Davis. I’m with the Southern California Contractors Association, SCCS, and I promise not to say that 115 times.

We’re here today with much the same information that you’ve already gathered. In fact, I quite honestly believe that you guys believe the construction industry is in deep, deep doo-doo. And we could use your help in that regard.

However, I also believe that you’ve got other issues, other problems. And among of the things I admire about Mary Nichols is her remarkable candor. At the
January 28th meeting of the Board, Ms. Nichols said that, "The regulations we have on diesel are based on air quality standards that we're required to meet. So even if there is zero mortality" -- no death as caused by emissions from diesel equipment -- "even if there is zero mortality, there is an air quality standard based on any public health issue we still have to come up with regulations to meet it."

So we're in a position of you regulating us because EPA is regulating you. That's the SIP mystery. As luck would have it, on February 4th, I was here in Sacramento attending an EPA hearing because they're getting ready to ratchet down the ozone requirements for the second time in two years. And I asked them the question and the deputy administrator -- I'm sorry I can't remember her name, I'll go to the transcript and look it up for you -- deputy administrator from EPA, I asked her the question about the SIP. I said, "We have a SIP held over us all the time that we're going to lose all our highway funds and bad things are going to happen and cats and dogs are going to fall out of the sky if we don't meet the SIP requirements." And she said, "No, no. We would never withhold highway funds from a state that had an
approved plan." Well, California has an approved plan.

And we think that one of the things that should come out of this -- I'll get the transcript for you guys. I mean, I'm not kidding.

One of the things that could come out of this is if we go together and ask for a slip on the SIP, we could justify the subsequent changes that you could make on this regulation.

Second point, I despise economic models.

Sorry, Todd.

They are constructed with best of intent to try to reconstruct reality. And instead of that, I kind of like reality. And, in fact, AGC's analysis of your data and the real word of the DOOR's program provided some remarkable insight. And by the way, our association supports AGC's position on this regulation 100 percent.

If you could actually know how many construction companies in California, would that be helpful in determining how your models function? Because I can provide you with a remarkable source for that data.

REGULATORY SUPPORT SECTION MANAGER SAX: What is your source?

MR. DAVIS: Do you remember the Miracle on 34th
REGULATORY SUPPORT SECTION MANAGER SAX: Nope.

Too young.

MR. DAVIS: I have some comments about too young also.

So some people here are old enough to remember the movie. And there's this remarkable scene where the hero lawyer defends Santa Clause by pointing out that the U.S. Postal Service is delivering the mail to him. And the judge says, "If it's good enough for a branch of the U.S. government, it's good enough for us."

The United States Census Bureau every five years conducts an economic census of the construction industry. The latest one was conducted in 2007, and remarkably the same year that this rule was put together and your emissions model is based on. It said there were 72,047 construction establishments in the state of California and it breaks them down by category. Because of that 72,000 firms, a great many of them are guys with paint brushes and pipe wrenches, and they don't have any diesel equipment. But there's some segments like -- I don't know -- heavy civil engineering, site preparation companies, water and sewer companies, and oil and gas
pipeline companies that have a lot. And if you could
have -- I'm sorry, guys.
If you could have real information, would it
improve your model?
REGULATORY SUPPORT SECTION MANAGER SAX: Well, I
think the answer, yes of course.
MR. DAVIS: Then I will send you the link to the
census data.
REGULATORY SUPPORT SECTION MANAGER SAX: That
would be great. Thanks.
MR. DAVIS: I still hate models, except for the
ones on the swimsuit issue.
Finally, and this -- I've been engaged with you
all since 2003. None of you were at the table when we
first had these conversations. And some of this is so
repetitive I'm sure you guys are going oh, God, I've heard
that before. But here's one that's got to be brought back
up. That is, in your world, our people have to deal with
on-road rule, off-road rule, cargo handling rule, LSI
rule -- oh, and smoke testing because some of our members
got dinged last week with the smoke testing program.
Then they have to deal with State Water Resources
Control Board, the Department of Industrial Regulation,
the Caltrans regulations, the OSHA regulations, CHP
regulations, and then the federal and the tax guys and
then the fed starts with a whole series of rules they have to deal with, too.

We have to find some way to package your rules at least in a way that it's cohesive, because these companies most of them are not Granite Construction. I admire the people at Granite. They're tremendous. I actually understand what they're saying about, hey, we spent $2 million on this rule and now you're telling us we wasted that money? You've got to find a solution for that too.

So it brings us to this point. Can we find points of agreement? Can we identify them? Can we use them to craft rules that work for both your agency and the public health of the people of California and the construction industry's desperate need to find some relief and that is effective and survivable?

Thank you very much.

EXECUTIVE OFFICER GOLDSTENE: Thanks, Bill.

Ned McKinley, and then Larry Milton, and then

we'll break for lunch for an hour.

Mr. MC KINLEY: Good afternoon. My name is Ned McKinley and I'm here on behalf of Major General Anthony Jackson, the commanding general of Marine Corps Installations West. Marine Corps Installation West includes six bases here in California, and we have a total of about 44,000 horsepower subject to the off-road rule.
Now in our case as a federal agency, we have not felt the pain of the recession as the private sector has as you've heard about today. But still the rule presents some real serious challenges to us. And we really appreciate the opportunity to come and discuss that with you.

Now, I just will run through quickly the questions posed to us by you and in the presentation today in terms of the rule. The first couple of questions about the March 2010 and March 2011 deadline. And we will have very serious challenges in terms of meeting the deadlines.

We recently submitted a letter to you in conjunction with the rest of the military, the other services, and we anticipate being in full compliance by 2014. In that letter, we explained a number of reasons why we will have that challenge. They include just first of all our need to have conducted an inventory and figure out how we will get to compliance, federal contracting requirements which have their own delays, and the single biggest one in terms of the federal budgeting process, how long it takes for us to program the funds to obtain the funds. We'll explain that, and we're happy to talk through all that with you with your staff.

There is a question about cost. This is a pretty serious cost to us. We have a baseline historical amount
of about $4 million a year for this kind of equipment for
maintenance and replacement. We're about two and a half
times that amount, ten million, a year to comply with ARB
regulations into the next several years.

Question about AB 82X credits. These don't
apply to us. In our case, Congress has directed us to
grow with multiple overseas conflicts and all the burdens
upon the marine corps, we have grown by about 3,000
marines. In the process of that especially in southern
California, our off-road fleets have actually grown.

You do ask what kind of credits would be useful
to us. Would other kinds of credits. I would be happy to
go into this in more detail.

I'll mention one right now that I think would be
applicable to us. We have a number of vehicles that did
qualify for the low-use credit. We have a very large
number that are over the 100-hour thresholds but still in
a very low threshold, 200, 250 hours. If there is any way
that we could capture that of an exemption still 2014 or
something along those lines, that can go at least some of
the ways toward helping us with compliance.

We have other recommendations along those lines.
Like, we use biodiesel in our fleets, if that could count
for some of the credit.
And then in terms of we were able to use some retirement credits for Tier 0 vehicles. As I said, the low-use credits, double credits for early retrofits.

EXECUTIVE OFFICER GOLDSTENE: All these ideas are in your letter to us?

MR. MC KINLEY: Some are not. We'll follow up with you, definitely.

And then just in closing, I just want to say we are here in California for long term. We have a national defense mission that the people of the nation expect of us. And California is absolutely essential for us to accomplish that mission. We have about 40 percent of the marine corp's combat power here, about 90 percent of marines come through the southwest to train before they go overseas. So what that means is we are absolutely committed to a good working relationship, a good partnership with the state of California. We are absolutely committed to full compliance. We need to figure out how we're going to get there, but we're committed to full compliance.

We appreciate the opportunity to come talk to you today, and we appreciate the staff and their willingness to work with us. Thank you.
EXECUTIVE OFFICER GOLDSTENE: Thank you very much.

Larry Milton.

MR. MILTON: Good afternoon, sir, Mr. Goldstene and staff.

My name is Larry Milton, and I just recently came back to California. I used to live here, of course. I moved out of the area. But I want to give you a quick background here. Twenty-seven retired Air Force. I came for guys like this marine right over here, because we have a problem there. These guys are dying because of what is happening over there, not reliable equipment. That's one of the thing we can address.

I come to let you know and inform you that we have the technology to meet 2015 emission standards. Okay. So all of you guys that's looking for where you're looking for the relief from CARB, we can level the playing field here. CARB can increase their enforcement simply because you are enforced by EPA. I'm very much aware of that I went to Washington, D.C. to present this. Okay.

Also, with the people here, you can keep your equipment. We have just teamed up with one of the major universities here and the state of California. I'm
21 looking to move back. In fact, I'm looking to move the
22 company back here as well.
23 This is aerospace technology. And I'll give you
25 This technology here would also take each and

1 every company -- I am guaranteeing you this -- each and
2 every company will have a cost savings in hundreds of
3 thousands to millions of dollars to billions and within
4 their budgetary constraints.
5 The old equipment that you have, you don't have
6 to get rid of it now. The technology we have, it comes in
7 the form of catalytic technology that was overlooked.
8 It's no one's fault. It's just the way we run.
9 Another one comes in the form of a lubrication,
10 unknown. It's only one company that carries it. And
11 that's our company.
12 I'm sorry. I apologize to you guys, because I
13 love California. And I can say this here. I'm just one
14 man. We're doing testing right now. And you will see
15 some of the information on the website where I am. I'm
16 only here for today. I got to leave after this hearing.
17 But you will be able to reach me from the website. Also
18 my number, I'll give you that 318-730-2857.
What we have here -- and I want to make it brief but to the point. We're looking at not only dealing with the military and cutting their cost in half. Now that's a small number -- I'm going to give that you much -- in any of the organizations that you guys have.

We also with this technology is now effecting -- and we have the EPA numbers for the testing to show we're not only going to cut down NOx and PMs, we're going to put down CO, CO2, PMs, hydrocarbons, NOx, and SOX. Your equipment is going to last 50 percent longer. Those are small numbers. We already have a fleet we're testing since 2006 and sometimes the testing take this long. But you can't -- you just can't fool the process here.

EXECUTIVE OFFICER GOLDSTENE: Mr. Milton, thank you very much. I think people will follow up with you if they want to.

We're getting ready for lunch here. Thank you. I think Mr. White wants to stay something before we break.

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH

ASSISTANT DIVISION CHIEF WHITE: Yes, I do. Mr. Milton, if you could give me one of your cards. Just so that you understand, we have here in California -- I know that U.S. EPA has a similar
program -- where we look to verify technologies that will
reduce emissions from existing diesel engines. And so
before fleets can use this technology to be in compliance
with any of our in-use diesel regulations, whether it's
off-road or portable engines, gen-sets, whatever it may
be, it needs to go through this program. So I would like
to get this information into my staff so they can
potentially follow up with you.

But before fleets are able to use this, it will

have to go through our verification to evaluate its
effectiveness and durability in the long time.

MR. MILTON: I'd like to say, too, the reason in
coming in with the verification, I would like to ask CARB
to expedite it. We're already in the process of doing
that. I'm also in the process of doing transformation of
technology for DEO and also emerging technology for the
EPA.

EXECUTIVE OFFICER GOLDSTENE: Thank you. That's
great. Thank you.

Back at 1:30, everybody. Thank you very much.

(Thereupon a lunch recess was taken
at 12:30 p.m.)
15
16
17
18
19
20
21
22
23
24
25

136
1
2
3
4
5
6
7
8
9
10
11

AFTERNOON SESSION

1:32 p.m.

EXECUTIVE OFFICER GOLDSTENE: We're going to start.
Let's see who's here.
Welcome back from lunch.
Tara Lynn Gray, Armando Sinclair, Richard Lee.
Mr. Lee. And then after Mr. Lee, we have Gordon Downs, Brant Ambrose, and Henry Hogo. Thank you for being here.

MR. LEE: Is this working here? Thank you.
My name is Richard Lee. I'm a business consultant to a trucking company. I'm from Menlo Park, California. And I'm very pleased to learn that the enforcement of regulations will be postponed for the off-road construction equipment. It's a good first step, but really shouldn't stop there.

Focusing only on the construction industry's off-road equipment, clearly, all on-road trucks used in the construction industry at the same time should be exempted from compliance with the on-road truck and bus rule. Those trucks are commonly referred to as vocational vehicles, such as concrete mixers and concrete pumps, cranes, dump trucks, logging trucks, lumber trucks, roll-offs, water trucks, and numerous specialized service and utilities vehicles.

With the implementation of the truck and bus rule, it's clear that not all trucks should be painted with the same brush of regulation. In fact, there are a number of specific reasons vocational vehicles must be granted exemption from the truck and bus rule, regardless of the current economic downturn.

First, they typically operate at a much slower start-and-stop pace than the constant velocity of the...
on-road long-haul trucks. As such, the best available control technology currently prescribed by CARB for vocational vehicles is simply not workable. It's too expensive. It's unsafe and really has yet to be proven and we'll say a battle hardened conditions.

Also, vocational vehicles do not operate year round. The seasonality of the construction industry limits the activities and makes the cost of compliance especially hard for their owners to amortize.

As you proceed with your review of the on-road -- or excuse me -- of the off-road rule, please consider revising the on-road rule as well. As I think you may well already be moving in that direction certainly as it pertains to the vocational vehicles. In all fairness, they deserve being treated the same as off-road equipment for all the same reasons that off-road construction equipment is now being exempted. Your forbearance will greatly relieve the unfair economic burden placed on the owners of those vocational vehicles and help maintain jobs during this severe economic downturn.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr. Lee. And we are planning on doing that. That's what we're going to be doing in April.
Gordon Downs.

MR. DOWNS: Thank you for the opportunity to speak. My name is Gordon downs.

And I'm probably going to sound like a broken record here. I apologize for that. A lot of similar stories. I own Downs Equipment Rentals in Bakersfield, San Maria, and Selma.

I started the business in 1977 with one motor grader. Over the years, we grew as the economy grew and the demand for earth-moving equipment increased. By the year 2005, we had grown to 60 heavy earth moving machines and 50 employees and revenues to match.

2005 was our peak year for employees and business measured by revenue, number of fleet vehicles, and diesel consumption. We have about 44,00 horsepower, about similar to the Marine Corps in the state of California.

And I notice they were complaining about a shortage of funds to comply with the regulations. There's the reason I'm here. We both have the same problem.

From 2006 to March of 2010, due to the recession, our revenue has declined 75 percent. The number of employees has been reduced to 30, 40 percent reduction.

Diesel fuel consumption has fallen 60 percent. Our people
have not had a pay raise in two years. No bonuses have been paid, and overtime has been eliminated in order to prevent laying people off.

It was the choice of our employees to freeze their pay and keep the most people working. And I just heard this morning on the news driving up this morning that the unemployment rate in Kern County is now 17.1 percent.

Compliance over the past two years, our company has upgraded five failed Tier 0 engines with Tier 2 replacements. We have received no Carl Moyer funding. We have purchased four Tier 2 used machines. We've sold five Tier 0 machines, because 75 percent of our fleet is sitting idle.

We have not installed a single diesel particulate filter. As we have reported in the past, we are a rental company. A renter will not rent a machine if there is a choice that has an active diesel particulate filter installed. The renter will tell you that he will not rent a machine, that: Number one, increases his chance of damage to an expensive machine; number two, that may cause unnecessary downtime during a work shift; number three, creates the possibility of added labor cost to regenerate
the DPF after the work shift is over.

So you can see that just the sound the word DPF causes chills to go up and down our spines because we can't rent them at this point. We can't rent a machine with an active diesel particulate filter installed.

The only diesel particulate filter suitable for our company would be 100 percent passive. To date, we are not convinced that such a thing exists for our type of equipment and for our use.

The added problem is that diesel particulate filters cost 25,000 to $50,000 a machine, not the 6- to $7,000 per machine we were originally told at a CARB meeting. Our company does not have money to spend on DPF or replacement. If our company were required at this time to spend money for compliance, our response would be to sell equipment, reduce the workforce, and deal with the stress and anxiety of what the economy and CARB is going to do to us next, because we are just simply out there blowing in the breeze.

So I thank you for listening.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr. Downs.
Brant. Mr. Ambrose, you're with Downs as well?

MR. AMBROSE: Im Brant Ambrose, Manager at Downs Equipment Rentals. I think Gordon summed it up pretty well.

I was going to I guess just go over some of the questions that you had because you are specifically wanting answers to these I guess.

And to the first question is, no, we would not make the 2010 compliance date. If it weren't for the legislative action, we would sell off 20 percent of our fleet to comply with your rule this year. But we would have already had to have done it. That's the only answer we have is to reduce the amount of equipment each year in order to comply.

The military's estimated cost is ten million a year. Ours isn't that high. You've seen our numbers. You all went through them as you were developing your rule. Back then, it would have been around a $1.2 million a year cost to us for the first three or four years of the rule. That's actually gone up, because with these credits that we're going to get in the first two years, all of our compliance is going to be required in the next two years. Logistically, we can't do it. You can't even do it in our showcase. How would a little company like ours do it? We
have fleet the size of the military and a staff the size
of the people in this room. It's not economically
feasible. It's not logistically feasible.
We wouldn't be meet 2011 deadline either.
No, the AB 8 have not been sufficient credits.
They're not credits. They're delays. That's not the same
thing. I mean, I know it is in your vernacular. But for
the rest of us, we're still required to do 100 percent of
what you're requesting within a short period of time
thereafter.
If this was a 21-year rule with a 21-year
requirement, sure, that would be a possibility. I mean,
that would be conceivably achievable. I mean, not that we
would love to do it, but we could do it. But we can't do
it the way you front-loaded this rule.
And so, you know, I would recommend that you
really look at, as AGC has said, delaying implementation
to 2015 or delaying the requirements to 2015 is fine. But
in 2015, you're still going to have to look to some kind
of reasonable time frame for the BACT requirements that
allows fleets to spread this cost over more time. It's
too front-loaded.
You testified in '07 that 50 percent of the cost
came in the first 36 months of the rule. I remember you
saying it. Well, that's true. That has to change
somehow.

And I mean, I know you've got emissions goals you want to reach. But our fleet, as Gordon said, is being utilized less than 50 percent in terms of horsepower hours than it was back in '06 and '07. In fact, in '07 -- '06 was even higher than that. '07 we were already seeing a downturn in the economy. We talked about that, but it wasn't apparent to everybody. But it was to the construction industry, because we're at the leading edge of that downturn.

So I would appeal to you to delay the implementation until 2015 and at that time spread it out more evenly. It would not only work better for industry, it might even work better for you folks. Because if you were to make a mandate that was reasonably achievable by industry, you wouldn't have people who are broke standing here complaining about the cost. I mean, we've been decimated by this recession, and yet we're all here because your rule is worse than the recession. Seriously.

Okay. Grandstand here.

EXECUTIVE OFFICER GOLDSTENE: We have details.

We've already worked with your company. You've submitted to us details?

MR. AMBROSE: You guys have tax returns. You had our fleet information. You've got our horsepower.
HEROY-ROGALSKI: If you have some specific suggestions for what you think we should change, because it sounds -- the BACT rates of eight and 20 percent are too high. What do you want us to make them? Why? That would be helpful if you could follow up. Or tell me now.

MR. AMBROSE: Take 100, divide it by 16, and you'll get real close to what the number should be.

You call it a 21-year rule. You sell it as a 21-year rule. Assuming we are in the 21-rule five years, then you have 16 more years to go. And what would be so bad about that? I mean, Bob, I'd ask you, because you're the most probably fervent person in terms of emission reductions on this rule. Why would that be so onerous?

EXECUTIVE OFFICER GOLDSTENE: This is why we are here, because we're trying to get that information.

MR. AMBROSE: From an air quality standpoint.

I'm asking -- so yes --

EXECUTIVE OFFICER GOLDSTENE: We hear you. Is there anything else you want to add?

MR. AMBROSE: Yes.

We argued for this originally, and I would argue for it again. And that's an economic hardship provision in the rule. You folks resisted that idea to begin with.
Here we are. If it would have been incorporated in the
original rule, we might not even have to be here right
now, because we are all experiencing economic hardship.

This rule is going to reduce employment. You can
avoid that by spreading the rule out over a larger period
of time. Even the fleet average requirements should be
laxed a little bit. They drop off so precipitously it's
like chasing an avalanche down a mountainside. You can't
keep up with it.

EXECUTIVE OFFICER GOLDSTENE: These are good
ideas. What else is on your list?

MR. AMBROSE: The other thing on my list -- and I
would have you consider it is that you have a provision in
the rule that allows for a fleet to incorporate their
hours of use, horsepower hours. But it's punitive. As
you know, it's punitive. Take away the penalty for that.
I mean, if you're using a 500 horsepower machine 200 hours
in a year and you're using another 500 horsepower a
thousand hours in a year, those things aren't equal from
an emissions standpoint. Why would they be equal from the
rules standpoint?

And you can argue it was because it was difficult
to give the accounting for hours. Well, we're all doing

Page 161
that, because we have to survive. So we apparently know how to do that or we can figure it out. So give us credit. If we have an older machine that's parked that we

use on a small amount -- and I know you got the 100 hours, but I'm saying on a continuum, if it's a 200-hour machine, that's all the fuel it burns, that's all the emissions it put out.

EXECUTIVE OFFICER GOLDSTENE: These are all good ideas. Are there others that you have or -- there's 25 more people that want to come to the microphone.

MR. AMBROSE: I'll finish. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thanks, Brant.

Appreciate it. Thank you.

Henry Hogo, Randal Friedman, and Jeremy Smith.

MR. HOGO: Good afternoon, Mr. Goldstene and members of staff.

For the record, Henry Hogo with the South Coast Air Quality Management District.

We have reviewed the petitioner's request, and we will provide more specific written comments based on our economic analysis of the economy today. We have been looking at the economy as a whole, because we have other regulations. We have other sources that are facing the
situating same situation as the construction industry. We believe that the changes that have been made in the regulation today will be sufficient for the next couple years. We actually don't believe that further amendments should be made at this time, but get closer to 2014 and maybe 2012 and take a look at what the economic forecasts would be at that time, because the economic forecast is going to change dramatically over the next couple years, over the next couple days, next couple months.

I do want to talk a little bit about our surplus off-road opt-in for NOx SOON Program in the South Coast. We have been working with about over 100 fleets actually on ways in which they can participate in the SOON Program. We met with over 70 fleets face to face. And in our first meetings with them, they saw the regulation as we got turnover pieces, and they didn't know how many pieces or how to go through that process. We were able to walk through them and identify the pieces of equipment that was most economical for them to replace or repower. And we actually identified over -- a lot of fleets have identified what type of equipment that they can replace and actually participate in the SOON Program.
Since we implemented SOON Programs from May of 2008 to today, we have about 48 fleets that participated in the program. Only 16 of those fleets are required to participate. That means the other 24 -- sorry -- 22 have been -- 32 have been participating on a voluntary basis. And this is during the recession. And these fleets are actually smaller than the 20,000 horsepower. So we have fleets coming in looking to participate at this time.

And our most recent solicitation, we had 18 fleets apply for funding for $13.2 million worth of funding to do about 100 engines. Only eight of those fleets are over 20,000 horsepower. In our workshops, we have small and medium fleets coming out looking at our program. So we know that there are fleets that are still able to participate in the program, and we look forward to having them participate. We actually have a solicitation out for up to $60 million that we'll close in May, and we hope to have more fleets participating.

My point is that I think even this recessionary time we've seen fleets meet the statewide requirements through the amendments that you have made so far. And we believe fleets can still participate in the funding programs and despite the fact that their capital is low.
So we want to see ways in which they can further participate. We'll provide further comments before the March 18th deadline.

EXECUTIVE OFFICER GOLDSTENE: Thank you. We appreciate it. Thank you.

Randy Friedman and then Jeremy Smith and Jeff Farano.

MR. FRIEDMAN: Mr. Goldstene, ARB staff, Randal Friedman on behalf of Navy Region Southwest.

We provided written comments on behalf of all the military services, so I will provide some highlights relative to the Navy. Before starting, I testified at the last Board meeting when you received an update on the activities of the federal government related to climate change. During that time, I spoke of the military's wide spectrum of efforts, including energy efficiency, alternative energy development leadership, including biofuels, and new weapons systems.

I bring this up for overall context beyond our foundational missions of national security and humanitarian relief efforts across the globe.

Relative to the in-use off-road rule, let me start with our clear statement that our goal is
Out of an initial inventory for 589 vehicles, the Navy has retired 54 and completed four retrofits. Despite these efforts, we remain unable to meet current requirement for a large fleet.

Our difficulties start from the nature of our fleet and the requirement that our fleet be aggregated on a statewide level. Given the diverse nature of our installations and the complexity of individual installations, our span of control is not as simple as one might think. Having completed the statewide inventory, we then face substantial funding challenges.

Our letter provides some depth discussion on these funding challenges given how our federal budgeting process works and the fact that retrofit of vehicles must compete with emission needs around the globe at a time when operational tempo has been increasing.

We also discuss the time delays and the submittal and consideration of budget requests through the appropriations process. Beyond this, our letter discusses the issues we have been trying to procure specialized items like retrofit through a federal acquisition process. As a result, even when we have been successful in reprogramming some small amounts of money, we find...
ourselves having difficulty securing contracts. We believe that both of our missions would best be served through a cooperative road ahead that balances your fundamental needs, such as the coming SIP, with our unique issues. We continue to believe that through our working together the military can continue to be an environmental leader in California. We ask that you recognize these issues we have presented and bring our extension request before the Board.

To answer the questions you posed today, we are asking for an extension through 2014. We are not able to meet the upcoming large fleet requirements. Our cost of compliance for the off-road rule we estimate through 2014 to be $25 million approximately. And again, to emphasize that our goal is compliance, we are presently working on an open contract for retrofits that each installation and others within the Navy could feed into. And again, this is because there isn't really one Navy in California in terms of funding appropriations. There are a number of Navies that each have their funding authority. And they would contribute to this.

That contract I'm told is still at least six months away if everything goes well. And once that
contract is in place and people -- individual entities put in their money, we can start working on that. So we are working very hard on it. We just have some unique federal hurdles to go.

And here is our copy of a letter. Thank you.

I'm available for questions.

EXECUTIVE OFFICER GOLDSTENE: Thanks, Randal.

Appreciate it.

Jeremy Smith and then Jeff Farano and Robert Hasselbrock.

Anybody? Okay.

Camille Kustin.

MR. FARANO: I'm Jeff Farano.

EXECUTIVE OFFICER GOLDSTENE: Okay. Good.

MR. FARANO: My name is Jeff Farano. I'm general counsel for S.A. Recycling. Little bit different here what you've been hearing from the rest of the folks here. We're not a contractor.

But first of all, let me thank you to take this opportunity to speak you.

S.A. Recycling is a large steel recycling firm, one of the largest on the west coast with four large shredders and 38 collection facilities located around
California. We employ over 1200 employees. And currently we operate 51,000 horsepower fleet, about 311 pieces of equipment. That's been reduced down from 426 pieces of equipment and 68,000 horsepower.

The steel recycling industry, we're already doing our part based on what we do and the innovation we've been making in recycling. We basically reduce California's carbon footprint by recycling end-of-life automobiles, appliances, industrial business equipment. Basically on an average, when you recycle steel, 90 percent of greenhouse gases are left and 90 percent of the greenhouse gases produced when you do iron ore. So it's a pretty big effort that we provide.

The scrap metal industry is already contributing to its share of environmental regulatory burden through numerous regulations, such as AQMD, CARB, and stormwater protections. We get impacted by quite a bit more than just what we're dealing with you in our off-road.

And recycling and the importance of recycling in California is extremely important, but it's having difficulty times and difficult times. As an example, e-waste recycling program is dying due to regulatory administrative burdens. CRV program is basically almost
bankrupt and faltering. Plastic, paper, and glass recycling, a lot of stuff is not being done because of the economics ending up in landfills possibly. And then scrap metal, we are dealing with the competitive nature of out of state and out of country where they're not required to follow environmental protection issues. So the tighter we get here -- and we are in agreement with what you're doing here -- but the tighter it gets here, the better it is for them to do this stuff in another state or in another country. We do not deny the need for environmental protection to provide a healthy and safe environment. Who can provide the beneficial changes we've seen in California dating back to the smog alert days in the 1970s and 1960s, and we do not dispute that we need to do something to keep on cleaning up our air.

Here are the issues that are basically affecting us and being able to comply with these regulations. In November 2008, our sales inventory virtually stopped with no revenue for two months. We had two ships on the water going to China. And in November 2008, we just fell off the end of the platform, and there were no sales for several months after that.
Since that time, we've had 50 percent of our tonnage been reduced since between June of '08 and 2009. Thirty-one percent of our workforce has been laid off since the fall of 2008. We've had more than 30 percent increase in our unemployment rates. In 2008, we were paying $200 for unemployment, and now we're paying $800,000 for unemployment. We've had increased administrative burden for environmental protection regulations. We've had to hire four full-time people to just manage what we're doing and trying to keep track of this.

As well, outside consultants. In 2009, 2010, we spent $6 million for Southern California AQMD regulations. So we're having to deal with that.

In 2009, 2010, we spent $3 million for stormwater compliance for our facilities. And we are estimating on-road compliance over the next four years will take $10 million to reach compliance with that.

Cargo handling, we're estimating 2010 will be 1.15 million after the DERA grant. And in 2011, we'll have to spend 1.5 million for cargo handling. And then for PERP, we have about $270,000 we are
estimating we're having to spend to replace some of our small equipment.

So it isn't just the off-road we're having to deal with. We're being hit from many angles. And it's really impacting us and having to deal with competition as well.

We have basically complied with the current standard by way of a reduction. I already told you our numbers. We've had reduction of our equipment and inactivity.

We are estimating in 2011/2012, we're to spend $20,000 in retrofits. In 2013, $600,000 in retrofits. And in 2014, $1.8 million in retrofits. So these are the numbers we're going to have to comply with.

By having to deal also with the off-road -- and we estimated over ten years that's going to be a $25 million estimate.

So what's happening is we have reached compliance -- can reach compliance by way of inactivity and taking equipment out of place. But we don't -- the problem is on compression is even though we're a fairly large company, we are operating on our cash right now, because banks aren't loaning any money. We had lots of
credit available. It's no longer available. So
everything we do, we have to be very careful where we
spend our money. So to say in four years will we have
this money available? I don't know what the economy is
going to be like. As we see here, it's a good possibility
we're not going to be able to spend that kind of money.
Will we be able to get the loan? I don't know if it's
going to be available or not. I don't know.

So doing a compression I don't think it's a good
idea. I think everything should be shifted over, because
the economy will over time improve, but it's not going to
come back quick enough I believe for us to be able to
spend the kind of money and keep ahead of our competition.

You know, if it continues to go the way it's
going, we can't keep up with our competition, basically
recycling is going to continue to go out of the state. If
not, it's going to be difficult to happen. We spend a lot
of money on innovation to do the recycling, and that money
is going to be taken away in order to comply with this and
on an expedited fashion.

EXECUTIVE OFFICER GOLDSTENE: Thank you.
MR. FARANO: We agree spread out would be much
better.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

Appreciate it.
Robert Hasselbrock, are you here?
Camille Kustin and Betty Plowman.
MR. HASSELBROCK: Thank you.
I'm Robert Hasselbrock with Weatherford. In our main part of the business, we got hammered in the PERP same issues.
Our equipment here, mainly this applied with the off-road. For the predominant part, it's port service, stuff that doesn't generate revenue for us. I'm here because this is still a huge cost for our business.
Instead of using my comments I prepared, I'll go over your questions you had.
And can we comply? Compliance isn't an issue. I mean, it's not something imperative. We have to. We'll find ways. It's going to being through combined efforts of attrition, removing equipment, sending it out of state, and buying new and doing without, which means we'll be downsizing as we have to to make that happen.
Cost basis, we're looking at approximately 640k for this portion of the diesel regs we still have. We got clobbered on the PERP, and we have the on-road stuff to be dealing with. So it's the culmination of diesel regs that are the issues at hand here.
The AB 8 relief, I think that's just too little.
One to two years is simply not enough from the aspect of
capital planning and market basis for our equipment use
and return on investment. One to two years is really not
sufficient for the things we're doing. And to say we're
going to downsize and make it work isn't really what we're
trying -- we heard enough comments today. I don't want to
echo those comments. It's not a good business plan. Put
it that way.

So what else is needed? You had some of the
questions there. I think the five years is a great plan.
We have a windfall given to us from emissions reduction on
the recession. It is the great recession. Great phrase
somebody had. It's a windfall that can be used to stop
back and take a look and say let's review the data that
was shown this morning and let the data take us where it
should. That was a great concept. Let the data take us
where it should. We have some time for that to happen. I
you think we should use that time.

Something else to think about. In all the fleets
rules, we have this ramping up of regs. You know, we have
the initial implementation and then we have within a few
years you have to keep moving, turning the fleet over, et
cetera. And what we've done strategically, we waited to
make our purchase and then we jump in only to tell our
people in Houston -- we talk about going to the bank.
We're part of a large organization. We go to the
corporate office in Switzerland and then the local base. And we ask them for money and they say we get a rate of return in former Soviet Union that's much better than California.

They think pot is legal out here in California, that we're all smoking it. They think we're nuts. Because return on investment on what we asking for capital acquisition just does not pan out to what would be a highly profitable organization. When you look at transparency international, the countries where corruption is going crazy and scoring much worse than the U.S., they can get better returns on investment than we can in California. Why is that?

It's a bad place to do business in a lot of ways. This is one of the things: Workers comp, industrial issues, there's a lot of things going on. But these fuels rules, if we can get a five-year slide. And then we need to look at the fleet averaging rules and slide those further. The economy is giving you room to make that happen. I think we ought to take advantage of that.

EXECUTIVE OFFICER GOLDSTENE: Thank you. Did you have more? Go ahead.

MR. HASSELBROCK: Let me summarize what I have written down here.
The emission factor -- I wanted to make a point.

I saw the fuel-based inventory versus the other. We've been saying for years -- I've been involved with portable equipment since '96 I believe it was when we started getting involved with the CAPCOA issues and the first rule. Then we came with the PERP rule. And we've always said that to allocate anything more than about a 40 percent of fuel-based usage of emissions for default factor is going to build in too much emission for engines.

And, you know, when we design equipment, the maximum we'll ever pull off it is 80 percent, and we'll never run them full throttle. I won't say we never. It's cumulative over a days's work. There's much more low engine demand use than high engine demand use. But all through these regs, we're running 80 percent throughput capacity on the things. Your inventory has to be off. When the economy false off, you're left out there holding the bag and no one believes it's real. I think that's where we're at now. We know it's not right.

And I think the statement of the economist -- I really learned something watching the economist talk. But I'm afraid she's overly optimistic still. AB 32 is coming down the pike. And we're all getting ready for that. And
that's going to have a huge impact on the economy even further. So five years out, are we turning around on this economy? I don't think so. Not unless something is done.

EXECUTIVE OFFICER GOLDSTENE: Thank you. That's great. Thank you.

Camille and then Betty Plowman and then Tyler Lebon.

MS. KUSTIN: Good afternoon. I'm Camille Kustin with Environmental Defense Fund. And I'm speaking on behalf of several environmental and health organizations today that couldn't be here. And we will be submitting public comments by the 18th.

Our main message basically is that we urge you, CARB, to maintain the health protections of the off-road rule. The economic recession has reused emissions from off-road equipment which we acknowledge that, but California's continued to suffer from poor air quality and is still far from reaching federal clean air mandates and the diesel risk reduction plan commitments. Emissions reductions due to reduced activity are also only temporary while investing in cleaner engines and retrofit technology ensure long-term reductions and health benefits for all of Californians.
The research and understanding on how diesel pollution impacts lungs, heart health, and the developing respiratory system in children is abundant and the consensus among the scientific community whether that exposure is short or long term. However, when or how the economy will recover is not certain. And despite the best information available in all these projections, basically no one knows what will happen with the economy or how emissions will change over time. So before any additional modifications are made, CARB needs to fully evaluate the emissions and public health impacts of the existing modifications and credits and allow them to take effect and not rush into anything. Further modifications that would erode statewide and local public health impacts are unacceptable.

Thank you.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Camille. Betty and then Tyler and Jon Cloud.

MS. PLOWMAN: Hi, folks. I'm going to look at my notes and then go on.

Before I start, you guys probably didn't ever think you'd see me at the off-road hearings. But before I became a truck driver, that was only because my operating...
engineer husband said, "I need a driver. Get in that truck."

So I was married to an operating engineer. We started our general engineering company in 1976. All three of my sons are heavy equipment operators. One just went back to work. One has been laid off for one year. And one is lucky enough to work for a municipality in the bay area.

Couldn't have been scripted better. And I sure wish Camille was here, but I think she just left.

Camille, okay. And I didn't mean for this to happen this way.

I want to comment to the Board one thing you've done for me. You've made me very aware we have our four-year anniversary coming up of health and health effects, and you've done that for me. So it was with great interest about a month ago I was reading my local paper that is listing the healthiest and unhealthiest counties in California. My county is Solano, we're number 28. You folks in Sacramento are 32. But what struck me most, of course, number one, Marin County, lots of money. Good for them.

What struck me most was the county that's ranked
dead last: Del Norte. Del Norte, high north. And guess what Del Norte's claim to fame is? Zero particulate matter days and zero ozone days.

But what I want to say to Camille is more than particulate, more than ozone, poverty kills. And that is a fact. Unemployment and poverty is what is killing the people of California.

I continued to search the counties -- and that's another thing you've done; you've made me very thorough in my work now. As I continued to search the counties, I saw that Santa Clara -- Santa Clara right down in the middle of a huge population zone is number four ranked in health -- ranked in health.

And how do you explain this one? They've got three interstate highways going through there: 680, 280, 880. They have US 101 and then they have eight expressways. And according to what I've been told, anybody that's living by a freeway, number one, take your pick, you have a low IQ or you're dying prematurely. And, yet, we have Del Norte with no days of PM.

You have Santa Clara with all these highways and freeways -- by the way, they have 17 days where they're over their PM.
So Camille, it's not our PM that's going to kill you; it's our unemployment. Thank you.

EXECUTIVE OFFICER GOLDSTENE: Tyler and Jon Cloud and Michael Lewis.

MR. LEBON: Thank you guys for letting us come and speak.

EXECUTIVE OFFICER GOLDSTENE: Thanks for coming.

You're with Fremont Paving?

MR. LEBON: Correct.

One thing I'd like to point out to you guys is as construction companies, our assets are made up primarily

of our equipment. We don't have licensing agreements. We don't have patents. We don't have trademarks. It's almost all equipment. This regulation has taken away over 90 percent of that.

Now, the problem isn't that the credit industry has tightened up; it's that we have no more assets left on our books for the banks to look at and say okay. We have nothing. So not only can we not afford to get retrofits done, because a majority of the time the retrofits cost more than the tractors is worth.

We can't go out and buy a new piece of equipment that's going to be compliant in five years. So I really

Page 182
don't understand how CARB can mandate that all tractors
must include something that does not exist.

If you guys really want to take care of the
issue, deal with the people that are producing the
engines. We didn't buy these engines with the intent of
polluting California. We didn't break any laws when we
bought them.

You guys need to get together with the people
that are making the engines and make them more clean. And
that way we will have to buy the cleaner engines. If you
come directly at us, all that's going to do is put people
out of business.

There's really nothing that we can do. You know,

the diesel particulate filters, they're inefficient.

They're not safe. They cost way more than a lot of the
tractors are worth. And that technology is going to be
completely irrelevant in five years. Once you have a Tier
4 engines, no one is going to go out and buy one of those.
So the fact they're dangling 40 jobs coming to this state
in front of you guys is justification for not making
changes is enough to make you sick. I think it's
despicable.

So I really think you guys need to look at
working more with the companies that make these engines and less on the people that have built the state. Thank you.


MR. CLOUD: Hello. My name is Jon Cloud. I'm from J. Cloud, Inc. We're a construction recycling company down in San Diego. I flew up this morning. It's a family-owned business. I have both the pleasure and the pain of doing business with my two brothers and my father. And we are a fleet of approximately 80 to 20 pieces. We are about 94 percent Tier 0. So you guys really love us. And our fleet is basically 4,999 and a half horsepower. So we are -- and the half horsepower comes from our Caterpillar kids skid steer that's 38 and a half horsepower.

It's always interesting when I come to these type of meetings, because I don't quite know what I'm going to say. And I had some idea and I heard some information this morning that really kind of changed what I wanted to say. I got to tell you guys, to be honest with you, I was born an eternal optimist. But from this experience...
I'm going through with CARB and part of what I heard this morning about Dr. Harley's report about his actual burn rate versus the state's model and the fact the state's model shows four-and-a-half times the actual burn rate has just pushed me ever closer from being an eternal optimist to being an eternal cynic. The fact that if those numbers are true and we know for a fact that the state's census was off, if the burns rates are off -- I have people in here asking you guys we want a three-year or five-year pushback.

I really don't know why the torches and pitchforks haven't come out and said throw this whole thing in the garage and start over. I mean, from my perspective, you have zero credibility. And you are putting this industry flat out through to Haiti and back for numbers that look to be from my perspective made up. And I don't think it's just my perspective. It's going to be really interesting to see what happens if they go through the burn rate and if your numbers are off as much as they are, it's going to be very interesting to see what happens. We are one of the companies -- I left it up here -- I had an advisory that came out last year. March of last year, I remember you started implementing the no
7 Tier 0. You can't add Tier 0 to your fleet.
8 We are one of the companies that was affected by
9 that. We have a bunch of Tier 0 equipment. We had our
10 fleet done in March. Somewhere around June, we lost the
11 transmission on the 980C loader. My father, who's been
12 doing this for 50 years, decided, hey, we lost that
13 transmission. Instead of rebuilding that transmission,
14 I'm going to upgrade that 980C was his thought, and he
15 makes a deal with somebody and he comes back to the office
16 and he tells me and I said, "You realize that's in our
17 inventory?" He says, "Well, yeah. But I'm going to
18 upgrade it to a three-year newer Tier 0." "Dad, advisory.
19 You can't add any Tier 0." What are we going to do? I
20 think we're in trouble.
21 Well, what happened was his thought was to take
22 that 980C that's worth about $40,000, replace it with a
23 $50,000 piece of equipment that can do everything we can
24 do.
25 The reality is the way your rules are written we

1 would have to now replace that piece of equipment with a
2 Tier 1 for approximately $100,000, but that Tier 1 is
3 going to be noncompliant in three years. So we're not
4 going to go out and replace it with a Tier 1 to clean up

Page 186
our fleet and have it be noncompliant in three years.

And the kicker is if we want to be compliant with something that we can buy and have and use and hold, we would have to buy a Tier 4 piece of equipment that costs about $250,000. That Tier 4 is not going to do one more iota bit of work for what we do it with at our business than a $40,000 Tier 0. But that's the burden we have.

Today, Mike Shaw -- and he left -- he said something that reminded me of something that I heard the first day I had the pleasure of being in a meeting with both Kim and Erik. And that was in San Diego three or four years ago on the meeting on State Street. That meeting on State Street, Erik said something that changed my perspective on this whole thing. We are talking about compliance and the cost of compliance. And I mentioned at that meeting what your cost of compliance is going to do, some of those people in this room cannot afford. Erik looked at the audience straight in the face and said, "Some of you will have to go out of business."

Now, my thought then as it was now was, and do what? Become a state bureaucratic and find another industry to run out of the state?
may not be right and I'm not going to tell you it's the truth, but my perspective from sitting in the meetings that the other three meetings, San Diego and this one, my perspective is when these groups get together we have a clash of cultures. Okay. The clash -- when I say clash of cultures, correct -- me I'm just going to tell you my perspective on it. My perspective is when we say equity, you hear wealth. When we say I have to dig in my pocket and pay for it, I think you hear I'm rich and I can afford it. And if you're not rich and can't afford it, go out of business. Okay. That's my perspective. It may not be right. It may not be the truth. But there are a lot of people in this room who think the same damn way.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

In defense of Erik, I can't imagine that he would have --

DIVISION CHIEF CROSS: I probably said it.

MR. LEWIS: I agree, it would have been Bob Cross.

EXECUTIVE OFFICER GOLDSTENE: This is Michael Lewis and then Alavres Gomez and then Michael Quigley.

MR. LEWIS: Good afternoon. I'm Mike Lewis with the Construction Industry Air Quality Coalition. We're an
association of the ten largest construction organizations in California.

I wanted to comment on a couple of things today. First of all, I wanted to follow up on Henry Hogo's comments about the SOON Program, because I'm not sure that it's fair for the district to say that those contractors under 20,000 horsepower who are applying for SOON funding are really SOON projects. What they are is Moyer projects that are being funded as SOON projects, because they took all the Moyer money and put it into Soon.

One of the reasons they have $60 million to spend is because they didn't have any takers for the $30 million they put up last year and they added it to the 30 million they want to spend this year.

The SOON Program is becoming a program frankly that the construction industry just can't take advantage of. And if you wanted to do something to fix that, you need to deal with the length of the contracts. Seven years is just way too long for somebody to keep a piece of equipment as a Tier 0 in their fleet, which is what you have to do under the SOON Program. And you need to give the contractors some credit for the horsepower they're paying for. Right now, under the Soon Program will pay for 75 percent of the cost of the repower, but they get 100 percent credit for the NOx reduction. The contractor
doesn't get any credit for the horsepower that he has reduced NOx on for the 25 percent contribution he has to give. So if you want to do something and make that program more useful for contractors, then you need to make some of those kinds of changes to it.

Secondly, I wanted to give you an update of our famous chart that you've seen on several occasions. I think the numbers on there reinforce what you've heard today. And I would just point out a couple of things. The operating engineers' hours are down about 40 percent. New equipment sales in the state of California are down 87 percent from the high point of 2006, which is clearly an indication that nobody is buying new equipment in the state.

The red dye diesel, well, the Board of Equalization numbers show it's only down 17 percent. The red dye diesel, the untax diesel also includes agriculture, railroads, and marine. So it's difficult to tease out of that the portion that's construction. But if you look at the tax paid diesel, which the Board of Equalization can tease out the construction portion, that is down 76 percent from the high of 2006.

I would assume that the red dye diesel, the construction portion of it, is somewhere between the operating engineers' reduction, which is 40 percent since
they're the guys that drive the equipment, and that 76 percent that's the taxable diesel. So clearly emissions are down from diesel consumption -- diesel consumption because the use of diesel is down considerably in the construction industry.

I also want to talk a little bit about what we're politely calling a cushion, because I'm not sure it's a cushion. I think you've told you this before. I believe we're talking about phantom emissions we're trying to reduce. That's emissions that never ever existed in the first place. You saw the presentation this morning on your model. We believe that your fuel consumption number is significantly higher than actual. And you need to make that correction.

And there is something wrong with your modeling if your modeling shows that the number that you're using for your fuel consumption is actually being consumed by the fleet. You know what the fleet is. You know what the load factors are. If those load factors are supporting that fuel consumption, by my estimation, the entire fleet in California would have to operate 24 hours a day, seven days a week in order to consume as much fuel as you believe we're consuming. That simply is not the case. We know that the fleet is smaller than you originally projected. You never projected a downturn in the fleet.
You only projected growth.

The current DOORS numbers are 50,000 lower than what you had projected. You're never going to make that up. When you go back to look at the data, I think you need to look very closely at the equipment that's being designated as low use. I think low use in this case is a colloquialism for about to be sold, because people who designate their equipment use are only placing it there so they can maintain the ownership of it but take it out of their fleet average. It's on its way out the door. If you look at the sales data of used equipment in California, more equipment is being sold at auction than was the previous auction, the highest percentages ever. And the majority of it is now leaving the state.

The fleet is shrinking. By every indication, the fleet is shrinking. It's never going to get to the number you thought it was. It's down 25 percent from what you estimated it would be. And I believe when you look at the low use designations, of which nearly 10,000 pieces of equipment in your DOORS data are now low use, when the fleet is finished reporting in March and they have indicated how much more equipment has been designated as low use, I believe you're going to see a significant
an antique that somebody has in front of his building and he wants to show it off to people so he keeps it in his fleet or something else. It's going out the door, he has to get rid of it.

So I guess in summary, the fleet is shrinking. The fuel consumption is not -- your assumption on fuel consumption is not accurate and off by a significant factor. If you were to take an accurate count of your fleet, adjust the load factors appropriately, adjust the fuel consumption, I'm not sure that the rule is necessary at all. It may be in the out years that something needs to be done for PM. But the new equipment, the new Tier 4 equipment that's coming into use in 2015, should be enough to take care of that. You may not need this rule at all.

So while the AGC I know has asked at this point for a two-year delay, and I would support that, I think what you need to do in the two years is go back and fix the model and fix the assumptions and get it right now that you have the data and let's see what it really shows.

EXECUTIVE OFFICER GOLDSTENE: Thanks, Mike.

Alvaro Gomez, Mike Quigley. After Michael
Quigley is Mike Herron and Jim White, and then Charlie Ray.

MR. QUIGLEY: My name is Mike Quigley. I'm the Director of Government Affairs with the California Alliance for Jobs. We represent over 2500 union construction contractors and 80,000 union construction members representing the three basic crafts of flavors, operating engineers, and carpenters.

As you've heard over and over today, our industry is hurting. This is unprecedented times. Certainly, the worst that as I've experienced in my short career and people who have much more experience than me have told me the same.

One contractor described the current economic situation as being punched in the gut and there's not enough air in the room for you to catch your breath.

I think a lot of the people in our industry feel that ARB is contributing to that and that they are struggling and looking for a way to survive this. I think what you've heard today is many people asking for some flexibility in helping them get through this time.

I think that one of the important elements that's contributing to the current economic situation is the lack
of capital in the markets. Back in 2008, when the Wall
Street crisis and the outgoing mortgage problems still
effecting our industry to a great deal, much more so than
other types of industries, because we're both affected by
the capacity for bonding and also even within the state's
public works bonding. This lack of capital is tying the
hands of many of our contractors. They can't get the
capital they need to get through this rough patch.

I think one of the important things to note is to
effectively regulate an industry you have to take into
account the third party external factors that influence
the industry. In this case, when you use these off-road
regulations were developed in 2005, 2006, the landscape
was significantly different than it is today. And I would
say that even in the worst-case scenarios, no one
projected that the construction industry would be facing
30 percent unemployment and that you have so many
contractors on the threat of going out of business.

I want to also say that AGC's presentation today,
they are one of our members. But I can tell you they
spent a great deal of time preparing for this today. They
wanted to present you with the most highly accurate
information they could assemble. And they've been poling
their membership and really trying to present something
that cannot just -- help move this conversation forward
and kind of present a place of saying this is hard facts.
This is representative of today, where I felt a lot of the
previous conversations and previous meetings we've been
arguing over facts and figures that were studied several
years ago. I think AGC's presentation helps bring us more
data there's relevant to the current situation.

And finally one of the last points I want to make
is that over and over again you've heard members of the
construction industry ask for flexibility, not repeal.
And I think that's also very significant, because our
workplace is outside. It is the outside air that our
workers breathe every day. No one is more affected from
particulate diesel exhaust than the operator who's sitting
up in this box. He's the closest to it. The guys on the
job site are the ones who are having potential for the
worst health effects. But as someone very accurately
tested, poverty is much more of an impact on public
health.

So I guess I'm asking that you -- if you are
looking for suggestions, the two that I have are: Please
move forward with AGC's request for a two-year delay. I
think that this regulation has the ability to be done in a way that won't strangle the last bit of air out of the construction industry.

And finally I think that when looking at ways to improve the off-road rule, as someone has suggested several times over, that the emphasis should be on new equipment and the manufacturers over time, just as what was done with automobiles, and cleaned up the air greatly in California. The new equipment that's coming into the state can be held to a higher standard. But asking

 contractors who are low capital, frankly, they're just not going to be able to get the money to comply. And you're putting them between a rock and a hard place. But asking manufacturers to bring new equipment in that's meeting an increasingly higher are standard is something that will over time bring everyone up and also level the playing field and prevent the problem of out-of-state contractors just bringing in their best equipment. If everyone has to operate off the same level of filtration, then you have a much more even market and allow a lot of our local guys to survive.

DIVISION CHIEF CROSS: One of the things I think that we as regulators have been concerned about as we've
ARB79.txt

gone through this process with you guys was what happens if the economy turns around faster? I think that's what's really been driving -- no. That's what's been driving the fact that we've been keeping the duration of these things short.

And I guess the question I would ask or pose is: Is there some way that we can work to put an insurance policy if you will that said, okay, if the economy turned around tomorrow -- I know it won't. But just hypothetically if it did, what would we be able to do to adjust it back on course? Whether it be schedule a Board meeting, like someone said or whatever. Because I think

MR. QUIGLEY: I would say that two years is a minimum to start with. And two years from now, it's unlikely that the industry will be anywhere near where it was two years ago from today.

But what I'm saying is that it's not wrong to want to go back and continue to check this as time goes forward. But if you want to raise -- if you're willing to as the economy increases and you're willing to look at
raising the bar as the economy diseases, you also must
build the flexibility to lower the bar. It has to be a
give and take.

EXECUTIVE OFFICER GOLDSTENE: All right. Thanks
Mr. Quigley.

Mike Herron, Jim White, Charlie Ray.

MR. HERRON: Mr. Goldstene, members of staff,
thank you for giving us this opportunity to speak to you
today.

My name is Mike Herron. I represent the
Engineering and Utility Contractors Association. We
represent 250 general engineering and heavy civil
contractors in primarily northern California.

On behalf of the EUCA, we wholly support the

recommendations in the AGC report of a two-year delay and
a chance to go back and re-visit the numbers and the
modeling.

What I would like to share with you today is
three examples. I would like to address two of the
questions that you sent out that we received I think three
days ago. The impact of the recession on emissions and
whether or not the contractor can comply. And I have
three examples, a large and medium and small fleet.
The first is the large fleet is between 2006 and 2010, he's seen a reduction in his employment workforce of 20 percent. During that same amount of time, he's had a 33 percent reduction in his fuel consumption and a 15 percent reduction in his fleet size. When I asked him, "Will you be able to comply? Will you be able to meet your compliance hurdles?" His answer was, "Yes, I will, but it will be at significant cost." And this is in a time when he's seen a 30 percent reduction in revenues.

So you've heard today kind of stories about how competitive it is out there. Just yesterday if you came in on the Antioch Bridge -- I know some people here did -- the upgrades to the Antioch Bridge bid yesterday. The engineer's estimate was $93 million. The winning bid it was $37 million. If you think that was an accident, go back and look at bids number two and three which are within $10 million of that $37 million job. That's how competitive and cutthroat it is out there. So any thought that they can build the cost of compliance into their bid is just ludicrous.

The second example is the medium fleet contractor. During the same time period, 2006 to 2010, he's seen a reduction in his workforce of 60 percent.
He's seen a reduction in revenues of 50 percent and a reduction in his fuel consumption of 50 percent.

I asked him, "Will you be able to meet your compliance hurdles?" He says maybe. He has two options: Shrink his fleet further and his fleet has already shrunk and already taken 30 percent shrinkage in his fleet. Shrink his fleet as we've heard today means fewer seats, fewer jobs. So shrink his workforce.

And his second option is just shutting down. It's just shutting down his business and saying in this market I can't compete and comply at the same time. It just isn't there.

So the last contractor I want to give is a small fleet. Been in business 50 years. Gentleman bought the business from his dad. Dad started it. He was three years away from giving it over to his son. He's reduced his fuel consumption by 100 percent. He reduced his employees by 100 percent. And he's going to comply because he doesn't have a fleet anymore. He's out of business. Over the last three months of last year, he bid 67 jobs. He bid them at cost. He build -- there was no management cost, no profit margins built into those bids.
nothing. He got zero call backs on 67 bids. Zero out of 67. And he's gone.

So to reiterate, we wholly support AGC's recommendation. We ask that you take another look. Delay for two years. Take another look.

And in answer to your question to Mr. Quigley about what happens if things turn around, we open it back up. It's fair play. Things are bad, and we're asking you to take another look. Things get better, we open it back up.

EXECUTIVE OFFICER GOLDSTENE: Thank you.

OFF-ROAD IMPLEMENTATION SECTION MANAGER HEROY-ROGALSKI: Can I ask a quick follow up?

So you talked about the large fleet. And he was telling you, "I really don't think I can comply." He's talking about the 2012 requirements?

MR. HERRON: No. The large fleet said he could, but it's going to be at significant expense to him at a time when revenues and profit --

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: But he's looking forward two years; right? Because his credits will bring him well through 2010. He's looking two years out and saying I don't know
how I'm going to comply.

And same with the medium guy. The medium guy, his first date is 2013. I don't think things are going to get better in the next three years.

MR. HERRON: It's got to pencil out for him. It doesn't pencil out for him.

OFF-ROAD IMPLEMENTATION SECTION MANAGER

HEROY-ROGALSKI: Thanks.

DIVISION CHIEF CROSS: Do you know whether or not one that bids --

EXECUTIVE OFFICER GOLDSTENE: Let's finish the testimony and then we can ask questions

MR. HERRON: That's all I had. I just want to reiterate we support the two-year delay and revisit the numbers.

EXECUTIVE OFFICER GOLDSTENE: Jim White and Charlie Ray.

Is there anybody who wishes to speak who didn't get a chance to sign up?

I have to say I do want to thank staff over the years in developing the rules and working through some implementation issues. Appreciate that.

Having said that, as you know, the economy is definitely an issue. And just from our perspective, the production of aggregates and concrete and so on really probably hit their peak about 2004, 2005. So from that period 2004, 2005 to 2008, the production was off about 40 percent. And then last year it was off another 20 to 30 percent. So really got hit a lot lately.

The challenge for everyone in complying with the rule is that you're well aware is the SIP date and kind of the fact that a lot has to happen fairly soon. The relief of a couple of years so far is helpful, but still kind of makes for a bigger hurdle as we get closer to 2014.

You asked for some ideas on ways to make some improvements or consider changes. In a lot of ways, probably everything has to be looked at and considered in these times. You know, maybe a few ideas are, you know, expanding the threshold for the low mileage provisions, maybe changing some of the baselines like for the reduction in used credit. Currently, it's comparing 2007 to 2009. Maybe going back further, 2006, 2005 provide some help.
And then I think just finally as was presented this morning with the construction sector not really experiencing any real comeback even through 2015, it looks like, yeah, expanding the dates or pushing them back would be something that has to be looked at or considered. And I just think if that does happen, that, you know, kind of everything needs to slide back as someone commented earlier on that.

That's all I have.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Charlie.

You were the last speaker to sign up.

So anybody else who wants to speak who hasn't had a chance to speak? Okay. I think -- oh, are you coming up? Oh, okay.

MR. SINCLAIR: Hi. My name is Armando Sinclair. I'm a Vice President of Maximizer Products domestic sales.

EXECUTIVE OFFICER GOLDSTENE: We already heard from Maximizer.

Is there anyone else from the construction industry that wants to speak?

You can certainly submit a letter, and we asked your colleague to contact us about how to get your product certified.

MR. SINCLAIR: Thank you very much.

EXECUTIVE OFFICER GOLDSTENE: I think what I'll
do is ask Erik White to summarize what we've heard this afternoon and then talk about next steps.

HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH

ASSISTANT DIVISION CHIEF WHITE: Thank you, James.

And I want to thank everyone for coming out this morning and today.

Just let everybody know that I know we have been listening very intently today. I appreciate everyone taking the time to come and share your perspectives of what the rule means to you, how the changes that have been incorporated in the rule since its initial adoption have helped, but in many cases, as you've looked at your own fleets, have not helped enough.

And want to thank AGC and their stakeholders for what I thought was a very good presentation, really focusing on and directing us to really go back and look at the inventory, which we are going to do. And we will do that certainly with AGC as we move forward on that, and to go back and look where, you know, additional relief can be provided. We certainly recognize that there is strong support out there for a two-year delay of the requirements. But we also heard from other stakeholders as well that whatever relief we do provide we need to make sure that we are, in fact, maintaining the health benefits -- substantial health benefits that the
regulation does provide. And so I think as we move forward on opportunities for additional relief, we will keep both issues in mind, the need for regulatory relief and economic relief to fleets while maintaining the health benefits that -- the important health benefits that this regulation provides.

Our next steps as I think as you have heard a couple times will be compiling the comments. We'll be releasing the transcript of today's proceedings on our web page once that's available. We will go ahead and will summarize what we heard today, transmit to our Board so that they know what we heard and we can begin the process of re-looking at not only this rule, but our truck rule as to where additional relief can be provided while working within the emission reductions that we need to meet our SIP obligations and clean air obligations and protect public health as we go forward.

So with that, I think I'll turn it back over to James for some closing remarks.

UNIDENTIFIED SPEAKER: You're going to release the transcript of today, but we only have until 18th to submit any written proposal. So how soon are we going to get the transcript from today versus the drop dead date of the 18th?

EXECUTIVE OFFICER GOLDSTENE: I don't think you
need the transcript to submit your comments.

UNIDENTIFIED SPEAKER: Well, you don't know that.

EXECUTIVE OFFICER GOLDSTENE: Well --

UNIDENTIFIED SPEAKER: I'm just saying, you don't

know that.

EXECUTIVE OFFICER GOLDSTENE: If your comments

come in -- we're trying to get ready for the April Board

meeting to take as much information as we can get to

present to our Board in April. So the sooner you get your

comments to us, the more helpful it will be.

MOBILE SOURCE CONTROL DIVISION CHIEF CROSS:

We're looking for additional -- if you have additional

ideas essentially that weren't discussed today, because we

certainly are trying to summarize the data as well as we

can.

EXECUTIVE OFFICER GOLDSTENE: The gentleman in

the middle back has a question.

Just to reiterate, if you missed the 18th, please

still submit your thoughts and ideas.

MR. DOWNS: I have a question. In the mind of

CARB, which is most important: The unemployment figures

in the state of California or the implementation of your

rule?
EXECUTIVE OFFICER GOLDSTENE: Well, I mean, I think what we're trying to do here is gather the
information and use the data to drive the decision-making which we'll present to the Board in April. And I think all of the things we've been talking about -- not just the two items that you mentioned has to be considered and balanced off each other.

MR. DOWNS: Throughout the day, it seems to me that I what heard was that in most cases our only options are to, as equipment owners, business operators, in order to comply with this regulation, we are going to have to shrink in size, most of us -- there are a few rare exceptions out there that are going to be able to --

EXECUTIVE OFFICER GOLDSTENE: That is what we heard, exactly.

MR. DOWNS: And so I'm just going to throw out there why don't we meet again? Why don't we put all this off and then meet again once the unemployment rate in the state of California drops down to five percent?

EXECUTIVE OFFICER GOLDSTENE: Thank you for your idea.

Okay. So thank you all for being here this afternoon. We're up here for a few minutes if you have
any questions that you want to discuss with us one on one.

Thank you.

(Thereupon the Executive Officer hearing adjourned at 2:51 p.m.)