

JOHN DUNLAP'S TESTIMONY
NOVEMBER 19TH CARB BOARD MEETING

Our new coalition, Californians for Enforcement-Reform and Transparency (CERT), requests the Board to strengthen (not weaken) CARB's enforcement program through specific improvements that will help industry achieve full compliance and help CARB more efficiently and effectively meet its overriding objectives—protecting public health and the environment by reducing air pollution.

Today, you will hear from six representatives of organizations that belong to Californians for Enforcement Reform and Transparency (CERT). Additional information on our CERT coalition is available at www.certreform.org, including the testimony from CERT members from today's hearing.

As you'll hear in today's testimony, it is becoming increasingly apparent that as more time passes without any meaningful action, compliance problems continue to get worse. As this happens, CARB's integrity and credibility is being significantly damaged and innocent businesses that are trying to do the right thing and trying to comply are being unfairly targeted for enforcement.

A month ago, CERT submitted, to Ellen Peter, several specific Recommendations. (Enclosed in my materials). These Recommendations echo the sentiments at the July 23rd Board Hearing, expressed by the Chairwoman who strongly supported "regularizing and formalizing (CARB's) penalty structures and procedures." While we appreciate CARB's October 12th enforcement workshop – we are concerned that four months have passed and we are making no meaningful progress on implementing the Chairwoman's directions.

CARB's process for calculating penalties is unknown and without any clear basis. It is unclear what factors CARB uses to adjust penalties, and as a result, penalties appear to be arbitrary, inconsistent, and disproportionate to the violation.

A formal penalty policy (based on EPA's well-established policy) will maximize CARB's limited resources by distinguishing between serious emissions violations, which deserve serious penalties, from paperwork-type violations with no attendant environmental harm, for which reduced penalties are appropriate.

An open, transparent, and consistent enforcement and penalty process will enhance compliance, level the playing field, achieve settlements more efficiently, and preserve credibility and integrity in the enforcement program.

A formal penalty policy, similar to U.S. EPA's, should account for, among other factors, the level of harm to the environment from the violation and the economic benefit gained from the violation, steps taken to mitigate the violation, and cooperation during the investigation.

As part of improving the credibility of its enforcement program, CARB should commit to publishing an annual or bi-annual report detailing precisely how it assesses penalties under the

Air Pollution Control funds and how it allocates and spends those penalties – consistent with proper oversight and authority.

There should be an evaluation of whether settlement funds should ultimately go to the State, rather than being retained by CARB - in order to achieve CARB's core mission (protecting air quality) and to protect CARB's integrity and credibility.

The Board has a critical and short window right now to exert its needed leadership on these important matters. If you don't step in and take action now, as a Board, CARB will in effect be delegating (or handing over) these issues to other forums and elected officials who will exert the leadership to make the needed reforms (*i.e.*, the state legislature).