

MR. DUNLAP: Thank you. Good afternoon. I

25 appreciate very much all the effort that we went into

1 putting on this workshop, and I commend the staff for a
2 good job. It was a good opportunity for people to come
3 before the Program staff.

4 I've been asked by the American Home Furnishings
5 Association, HFA, to bring to this body's attention an
6 ongoing regulatory challenge or struggle, as they call it,
7 that its members are experiencing that illustrates the
8 kind of problems that CARB's compliance program may have
9 without thinking too much about it.

10 CARB recently promulgated the composite wood
11 products air toxic control measure, ATCM, which requires
12 downstream parties to take a variety of reasonable and
13 prudent precautions, which would be due diligence,
14 recordkeeping, labeling, et cetera, related to the chain
15 of custody of finished wood, composite wood products.
16 These down-stream entities must comply with the reasonable
17 prudent precaution measures under the ATCM to ensure that
18 the original manufacturers complied with applicable
19 emission standards. And in this case, formaldehyde
20 emissions as has been mentioned two or three times today.

21 Importantly, the ATCM does not require
22 down-stream entities to do anything other than take this
23 reasonable and prudent precaution and does not set forth
24 any lawful procedure that CARB can apply to conducting
25 deconstructive testing on finished goods.

1 Never the less, over the last several months, the
2 CARB enforcement team has indicated it will conduct
3 deconstructive testing using its own procedure on finished
4 goods at down-stream facilities to demonstrate
5 formaldehyde content, i.e., compliance with the ATCM. And
6 much of this information is in the CERT group's position
7 paper on page 12.

8 However, in so doing, the CARB has essentially
9 injected a new regulatory requirement into the ATCM and
10 where none had existed prior. And CARB's deconstructive
11 test procedures have been imposed without any real advance
12 notice, lead time, or meaningful discussion with the
13 stakeholders. This is precisely the type of underground
14 regulation that the CERT group and others have mentioned
15 today that is a cause for concern.

16 Down stream furniture manufacturers and retailers
17 are being held, they believe, to a more stringent standard
18 that is not delineated in the regulation, while many if
19 not all are complying with the reasonable prudent
20 precautions that are set north in the regulation.

21 I bring this to your attention on behalf of Mr.
22 Perdue and ask you to please look into it and let us know
23 if that's the way you view this matter and what can be
24 done about it.

25 A final word about transparency in other

1 programs. You have as, you've outlined, and I think you
2 gave a very good report -- Mr. Oliver did earlier --
3 outlining the depth and breadth of the compliance program
4 and the challenges you face. I think it's widely
5 recognized that historically CARB has been very devoted to
6 educating sources that you've done a lot of outreach. I
7 notice the material you placed out front about all the
8 compliance workshops and outreach you've done. I know
9 Paul, in particular, you and Jim have prided yourself on
10 doing that. And that's terrific. You need to continue
11 with that.

12 If there are budget challenges that you face
13 where people can speak up on your behalf to make sure you
14 have the appropriate resources to do that, I think you
15 have a lot of people that would be prepared and willing to
16 do that.

17 Having said that, the hallmark of the Air
18 Resources has been transparency and technical
19 decision-making outlining reasons for rulemaking,
20 scientific basis, linking it to public health, et cetera.
21 And it's that type of transparency, that type of
22 commitment that I think has served you very well as you
23 grow your Enforcement Program. And I don't think you
24 should take the commentary at least not from the handful
25 of trade associations I've been working with here today as

1 being overly critical or concerned about your commitment
2 to protecting public health. That's a given.

3 But the program is not perfect and can be
4 improved. And I think if you listen to some of the
5 stakeholder comments, you'll find areas in which you can
6 perhaps redouble your efforts or make your program more
7 plain to people. And if you do that, I think you're enjoy
8 the support that you hope to have and even more effective
9 than you already have been.

10 One final thing. I would suggest that this not
11 be the necessarily the last public forum or opportunity
12 for people to comment. I would offer up there is a few
13 people that because of the constraints today with the
14 meeting -- that is, people couldn't call in or make
15 presentations, like George Lawrence, former EPA official
16 that worked very hard at coming up with a penalty policy
17 and spearheading that effort that I think you might be
18 able to learn a few things from him. I think the audience
19 would like to hear from him perhaps in the future.

20 So I ask that you consider having this be the
21 last forum, to consider having another one. If based on
22 the commentary today you agree there is some things that
23 can be done relative to administrative things that you
24 guys can do to make the policy for enforcing and ensuring
25 compliance more transparent that you come up with some

1 kind of proposal and circulate it with the various
2 stakeholders, perhaps you can have another workshop.

3 I don't think -- at least I didn't hear today
4 anybody was suggesting the compliance program be gutted or
5 that the people running it are not capable of protecting
6 public health or anything along those lines; but
7 transparency, consistency.

8 Kirk made a comment earlier about press releases
9 being issued where people can see what's happened with
10 individual compliance cases. And I think those press
11 releases are issued. And I think it's consistent you try
12 to do that.

13 But the details in trying to deconstruct the
14 data, how many units, what the penalty per unit was,
15 duration of time, potential air quality impacts, those
16 kinds of things are missing and makes it difficult for
17 people to be able to compare. And like it or not, they do
18 compare. If somebody gets hit with a big penalty and
19 you're in the same industry you want to find out why that
20 happened and what the details are behind it.

21 I would encourage you to think about creative
22 ways in which that information would be shared without
23 violating any confidentiality that would be part of
24 protecting trade secrets or the like.

25 So with that, I'll conclude. Thank you.