

MR. MARTINEZ: Thank you for the opportunity to

8 speak at this workshop.

9           My name is Sierra Martinez, and I'm here  
10 representing the Natural Resources Defense Council.

11           NRDC supports CARB maintaining its status quo  
12 penalty policies, and CARB should not adopt the changes  
13 proposed by industry trade groups today. These policies  
14 are critical in California because of our notorious air  
15 quality problems, especially in places like the South  
16 Coast Air Basin and the San Joaquin Valley.

17           First, on maintaining strict liability, CARB  
18 should not forgo its authority to regulate based on strict  
19 liability through incorporating levels of negligence.

20 Whether or not a violator took reasonable or prudent  
21 precautions does not mitigate the fact that harm did  
22 occur. CARB's use of strict liability is essential for a  
23 full enforcement of the law.

24           The California Legislature granted CARB strict  
25 liability enforcement for a good reason. Watering down

1 CARB's strict liability authority is unnecessary, as CARB  
2 already can take into account mitigating factors.

3           Second, on maintaining the freedom to pursue  
4 judicial enforcement, CARB should not be forced to use the  
5 administrative process to the exclusion of pursuing  
6 judicial enforcement. Limiting CARB's enforcement to the  
7 administrative process would weaken CARB's ability to  
8 fully enforce the law. Further, to limit the enforcement  
9 to the administrative process would draw down CARB's  
10 enforcement resources, because CARB would have to pay for  
11 administrative law judges in the administrative hearings.

12           Such administrative hearings would also consume  
13 more judicial resources than it would save, as violators  
14 could still have the option to appeal to superior court.

15           Third, on maintaining the discretion as to  
16 enforcement with respect to the degree of environmental  
17 impacts. CARB should have the discretion to enforce the  
18 law against a wide range of violators, both large and  
19 small. Limiting discretion is not necessary, as we have  
20 seen CARB can and does take into account mitigating  
21 factors. The deterrent power of the law is weakened if  
22 CARB systematically goes after only large violators.

23           Fourth, on maintaining penalty policy  
24 independence, California is a recognized leader in air  
25 quality enforcement and should retain its independence to

1 pursue such a leading Enforcement Program. Adopting the  
2 U.S. EPA schemes would weaken CARB's enforcement power.  
3 The financial amount of the penalty should not be just a  
4 replica of the U.S. EPA matrixes.

5           In closing, because California's severe air  
6 quality problems and the fact that U.S. EPA penalty  
7 matrixes are weaker than California's, it's critical that  
8 CARB maintain its independence in establishing penalties  
9 for violations of the law.

10           NRDC appreciates this opportunity to make  
11 comments at the workshop. And thank you for your time.