

MR. PALIWODA: My name is John Paliwoda. I'm

25 Executive Director of the California Motorcycle Dealers'

1 Association, or CMDA as we're commonly referred to.

2           We're the motorcycle trade association for  
3 franchise motorcycle dealers here in California. We still  
4 counted over 200 factory authorized dealers and associated  
5 businesses as CMDA members. However, the current economic  
6 depression that we are in, it's anybody's guess as to  
7 really where this is going to come out. We used to be a  
8 \$3 billion industry. But really no one knows really where  
9 we're standing now. And, of course, our regulations enter  
10 into almost every vehicle, every product that our  
11 motorcycle dealers sell.

12           So you ask yourself, what does this have to do  
13 with the ARB Enforcement workshop? Well, since I began  
14 representing the CMDA 13 years ago, I've often been  
15 engaged with CARB personnel from the Chair, senior  
16 management, to certification and enforcement staff on a  
17 variety of motor vehicle products ranging from on-highway,  
18 off-road motorcycles, on highway motorcycles, all-terrain  
19 vehicles, utility vehicles, aftermarket and performance  
20 parts, enforcement issues, utility gas can sales  
21 restrictions, and personal watercraft emission  
22 regulations, among some others.

23           I found myself often dueling with ARB staff  
24 interpretations of what I would characterize as  
25 underground regulations. That's just the beginning. And,

1 quite frankly, I'm here from a main concern about an  
2 underground regulation, which I won't go into. But never  
3 the less, it's part of what I have experienced in the last  
4 13 years in a number of issues in dealing with the ARB  
5 staff.

6           As I read your Power Point presentation, I would  
7 like to take issue with your explanations on a number of  
8 items. And three of them I'd like to lump together in one  
9 particular category: Achieve a level playing field;  
10 similar penalties for similar violations; and assess  
11 appropriate penalties.

12           Yes, we definitely should site violators.  
13 There's no question about that. However, there's little  
14 consistency for violations of a similar nature. My  
15 members have no written explanation from CARB that  
16 describes the penalty amount for various violations,  
17 either simple or serious, just a veiled reference that any  
18 alleged wrongdoing could cost them \$5,000, for instance.  
19 Arbitrary and subjective analyses are often used when  
20 establishing culpability and their penalty assessments,  
21 unlike the guidelines adopted by other State agencies and  
22 the federal EPA.

23           The second issue is you cannot capture lost  
24 emissions. Maybe they can't be recaptured, but the  
25 penalties must be based on the verifiable environmental

1 cost damage caused by the violation. And we're talking  
2 about motorcycles here and the gamut of vehicles and  
3 products that basically I outlined a little earlier.

4           The next topic is consistent enforcement is the  
5 key to program integrity. Enforcement, I've noticed in at  
6 least one or two instances, is based on a deep pockets  
7 analysis. Larger industries with more resources are  
8 targeted with the expectation by threatening their  
9 dealers, distributors, and even their customers, more  
10 settlement or fine money can be extracted from them. And  
11 that's unfortunate.

12           The next issue is taking financial hardship into  
13 account. ARB enforcement uses the real threat of  
14 referring relatively minor cases to the attorney general  
15 for prosecution and then settles what you folks consider  
16 appropriate settlements under the threat of unsustainable  
17 legal costs, even if the defendant prevails. I don't  
18 really that -- maybe that's a negotiating tactic that  
19 works. It's not right though.

20           Account for harm to human health and the  
21 environment. In a number of cases that I have knowledge  
22 of, rarely, if ever, is the penalty based on the  
23 environmental damage done by the alleged violator. In  
24 fact, that should be the most important element in  
25 determining a citation or an amount of citation or for a

1 violator. I mean, isn't this about clean air?

2           And, lastly, the administrative hearing process.  
3 CARB has only two administrative hearing processes, and  
4 that's for the heavy-duty vehicle inspection program and  
5 fuels. Are all the other industries regulated by CARB  
6 enforcement? Not important as these two industries.

7           And so I would suggest on behalf of our  
8 association members and of the CERT folks, that coalition  
9 that our association belongs to, please abandon the  
10 arbitrary subjective process by which these violators are  
11 identified and their penalties levied. And, instead, give  
12 alleged violators a real opportunity to explain their  
13 actions and to provide CARB the opportunity to respond to  
14 those actions using the appropriate administrative hearing  
15 process.

16           I thank you very much. If you have any  
17 questions. Thank you.

18           Also, if I might add, I didn't use the whole ten  
19 minutes. This gentleman right here has kind of been  
20 waiting and has been out of sync so if you would like  
21 to --