

PUBLIC WORKSHOP TO DISCUSS  
ENFORCEMENT PROGRAM  
STATE OF CALIFORNIA  
AIR RESOURCES BOARD

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

MONDAY, OCTOBER 12, 2009

1:00 P.M.

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

APPEARANCES

STAFF

Mr. James Goldstene, Executive Officer

Mr. Paul Jacobs, Chief, Mobile Source Enforcement Branch

Mr. Kirk Oliver, Senior Staff Counsel

Mr. James Ryder, Chief, Enforcement Division

Mr. Mark Stover, Chief, Stationary Source Enforcement  
Branch

ALSO PRESENT

Ms. Cynthia Babich, Del Amo Action Committee, Los Angeles  
Environmental Justice Network

Mr. Will Barrett, American Lung Association

Mr. Dennis Beck, CEC

Mr. Ray Biasotti, T&D Transport

Mr. Todd Bloomstine, Southern California Contractors  
Association

Ms. Jacquee Castain, Elmhurst Blight Committee

Mr. Stephen Clark, Stevedoring Services of America

Mr. Bill Davis, SCCA

Mr. John Dunlap, American Home Furnishing

Mr. Tovah Ealey, Energy Commission

Mr. Sean Edgar, Clean Fleets Coalition

Mr. Kit Enger, Sand Car Builders Association

Mr. John Fentis, city of Long Beach

Mr. Randal Friedman, U.S. Navy

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Guerry, Californians for Enforcement Reform and Transparency

Mr. Allan Lind, CCEEB

Mr. Charles Marlow, City of Los Angeles

Mr. Sierra Martinez, NRDC

Mr. Jim Mattesich, Greenburg Traurig

Mr. Clayton Miller, CIAQC

Ms. Maxine Oliver-Benson, Elmhurst Blight Committee

Mr. Nick Pheifer, Granite Construction, Inc.

Mr. John Paliwoda, California Motorcycle Dealers Association

Ms. Betty Plowman, California Dump Truck Owners Association

Mr. Matthew Schrap, CTA

Ms. Mitzi Shpak, Action Now

Ms. Robina Suwol, California Safe Schools

Mr. Tim Tutt, SMUD

Mr. Chuck White, Waste Management

Ms. Pamela Williams, California Retailers Association

Mr. Bob Wyman, California Climate Coalition

## INDEX

	PAGE
Introductions	5 8
Staff Presentation	
Mr. Enger	29
Mr. Pheifer	29
Mr. Schrap	31
Mr. Clark	38
Mr. Guerry	40
Mr. Davis	49
Mr. Miller	53
Mr. Fentis	55
Mr. Martinez	62
Webcast e-mails	64
Mr. Beck	71
Ms. Benson	72
Ms. Castain	76
Mr. Marlow	79
Mr. Friedman	82
Mr. Wyman	85
Ms. Williams	89
Mr. Barrett	93
Mr. Edgar	95
Ms. Plowman	106
Webcast questions	108
Mr. Lind	110
Mr. White	113
Mr. Paliwoda	115
Mr. Tutt	119
Mr. Bloomstine	123
Mr. Biasotti	125
Ms. Babich	130
Mr. Enger	136
Mr. Mattesich	141
Ms. Suwol	143
Ms. Shpak	146
Mr. Dunlap	149
Webcast questions	155
Adjournment	158
Reporter's Certificate	160

1 PROCEEDINGS

2 EXECUTIVE OFFICER GOLDSTONE: Good afternoon,  
3 everyone.

4 I'm James Goldstone, the Executive Officer of the  
5 Air Resources Board.

6 We want to welcome you here this afternoon. We  
7 appreciate you taking the time to come and spend the  
8 afternoon with us to talk about our Enforcement Program.

9 I want to quickly introduce staff. We have Kirk  
10 Oliver and Jim Ryden and Paul Jacobs and Mark Stover and  
11 Elizabeth Miller up here who will be running today's  
12 program.

13 And Mary Nichols and I just wanted to say thank  
14 you for coming. We're looking forward to hearing from  
15 you. We're excited about the opportunity to tell you what  
16 we've been doing and how we go about doing what we do and  
17 just improve communication.

18 So with that, so we can get going, I'll introduce  
19 Mary Nichols, our Chairman, and she'll say a few words,  
20 and then we'll give it to Jim.

21 ARB CHAIRPERSON NICHOLS: Thank you.

22 I'm looking forward to actually listening to the  
23 staff presentation and hearing some of your comments as  
24 well.

25 I can't be here for the entire workshop, but I

1 will be here for a little bit of it anyway.

2           I also want to add a welcome to you and thanks  
3 for coming and participating and just share a couple of  
4 thoughts with you about the context in which this meeting  
5 is being held.

6           First of all, this meeting/workshop was scheduled  
7 in response to an initiative from the Board which came at  
8 a Board meeting in San Diego where representatives of  
9 several different organizations came in and suggested that  
10 they thought there was a need for a more formal  
11 enforcement and penalty policy from the Air Resources  
12 Board. And I welcome that outreach on their part and that  
13 initiative, because enforcement is an issue which is very  
14 dear to my heart.

15           I have believed ever since I first got involved  
16 in regulations in the environmental field that without an  
17 enforcement program that parallels the thinking of the  
18 regulators that regulations in and of themselves aren't  
19 worth very much. And while we try to craft regulations  
20 that the affected parties will know about, understand, and  
21 be able to follow logically without undue burden, we also  
22 know that in order for there to be a system of law in  
23 which people have confidence that those who are subject to  
24 regulations have to also know that those who flout the  
25 law -- I guess is the correct word -- who are deliberate

1 violators or who ignore the law will in some way be found,  
2 identified, and receive penalties. That's kind of one of  
3 the fundamental things that you learn in the very  
4 beginning of law school and it I think is applicable  
5 throughout our society, that where we do go to a  
6 regulatory approach or we feel like we have to have  
7 regulations, then there's also a need for the enforcement  
8 program to be very much integral to the regulatory system  
9 itself.

10           So if the regulation and the enforcement are not  
11 developed together or if the regulations aren't enforced  
12 or if those who are subject to the regulations don't feel  
13 that the enforcement is fair and that it is administered  
14 properly, then there is a problem.

15           So it's very much in our interest as a Board to  
16 understand how the program is working and how it's working  
17 from your perspective. And if it's necessary there be  
18 changes or just that there be better communication, then  
19 we need to know about it.

20           We don't start with a presumption that there's  
21 anything fundamentally broken, but we also don't start  
22 with the assumption that everything we're doing is perfect  
23 or that it can't be improved. So that I think is kind of  
24 the basis for what we're doing here.

25           We want to hear from you about what, from your

1 perspective, could be improved. We also want you to hear  
2 from us about what we're doing to try to continually  
3 update our enforcement activities. And I think that's  
4 probably enough from me.

5 EXECUTIVE OFFICER GOLDSTONE: I just want to add  
6 one thing. I forgot to introduce Ellen. I want to  
7 introduce Ellen Peter, our Chief Counsel, if she can stand  
8 up.

9 ARB CHAIRPERSON NICHOLS: This is Ellen Peter,  
10 our Chief Counsel. And the Enforcement Program reports to  
11 her.

12 Thank you.

13 (Applause)

14 SENIOR STAFF COUNSEL OLIVER: Well, thank you,  
15 Mary and James, for kicking off the workshop today.

16 And I am Kirk Oliver. I'm an attorney with our  
17 legal office at the Air Resources Board. And I'm involved  
18 in our Enforcement Program. So I get the privilege of  
19 doing the initial presentation for you here today that  
20 we've put together to hopefully explain in the broad  
21 contours how we do enforcement at ARB. And the rest of  
22 the time, we're going to be listening to the comments that  
23 you give us.

24 We think this is a very propitious time to be  
25 having this workshop, especially given the fact that the

1 Board is enacting constantly more and more regulations for  
2 us to go out in the field and enforce. And that being so,  
3 we need your help in telling us what works and what  
4 doesn't. And so we very much appreciate the time you've  
5 taken out of your schedule to come here today and give us  
6 the benefit of your wisdom on these subjects.

7           We have to be very good at explaining what we do,  
8 because as Mary Nichols said, without it, we don't get the  
9 respect or we don't get the glue that holds the  
10 Enforcement Program, and as a consequence, our regulatory  
11 program together.

12           And we're going to give you some numbers at the  
13 end of our presentation that indicate how we go about  
14 solving problems that arise with our program. When we  
15 find violations, for example, you're going to see the  
16 numbers that indicate that we're extraordinarily  
17 successful in resolving them with the agreement of the  
18 people who we find in violation. And we take a great deal  
19 of pride and we put a great deal of effort into doing  
20 that. We don't litigate a whole lot of our cases on any  
21 type of a percentage basis.

22           So we're going to take you from the beginning and  
23 what our mission statement is through the end and show you  
24 some of the facts and figures about the most recent time  
25 period that we have, the calendar year 2008, which is a

1 fairly typical year for us and the numbers of cases and  
2 the subject matter areas in which they arose. So to get  
3 between there and here, we have a brief slide show for  
4 you.

5           But before I get to that, I have the normal  
6 safety warnings that we are required to give people when  
7 they come to our building. And I need to point out the  
8 emergency exists. They're well-lit throughout the room  
9 here.

10           In the event of a fire alarm -- and we have a  
11 very active fire alarm system in this building that they  
12 try out constantly. And we may be lucky and get one here  
13 today -- or not. But if you do hear one, we're required  
14 to evacuate this room and immediately to go down the  
15 stairs that you came up to get here and assemble in the  
16 park across the street from our building. And you'll have  
17 a lot of company doing that, because everyone else in the  
18 building will join us there.

19           Then when the all-clear signal is given, we can  
20 return to the room, and we'll resume the hearing. So  
21 hopefully we won't be interrupted in that way. But you  
22 never know. And it seems like this time of year, they  
23 like to test that fire alarm system especially.

24           So without further ado, welcome to the  
25 Enforcement Program overview.

1 (Thereupon an overhead presentation was  
2 presented as follows.)

3 --o0o--

4 SENIOR STAFF COUNSEL OLIVER: Mary alluded to the  
5 purpose of the workshop. And we tired to enumerate all  
6 the different areas we look at in evaluating what we do  
7 here. And we hope that you will have comments on each and  
8 every one of these areas.

9 But in particular, we're interested in exploring  
10 ways to achieve higher levels of compliance, because that  
11 is the fundamental interest of the Enforcement Program  
12 here is to obtain compliance with all of the laws and  
13 regulations that our Board and our staff spends so much  
14 time and energy with your input adopting in the open  
15 public process that we adhere to here.

16 Hopefully, we can figure out some ways to  
17 expedite settlements. In our neck of the woods, we would  
18 like them to go faster than they do. But we realize it's  
19 a process that requires the agreement of both sides to  
20 reach the end points. So we're not always able to proceed  
21 as swiftly as we might like to. And if you have ways to  
22 suggest for us to get to that end point quicker, we'd love  
23 to hear about them.

24 How to prioritize the actions. As I mentioned,  
25 we have an ever-growing list of regulations to enforce

1 here. And the regulations that are on the books aren't  
2 going anywhere either. So it's not like we acquire new  
3 ones and other ones drop off the list. The burden grows.  
4 And so we are required to make some decisions about where  
5 to spend our resources and what areas to concentrate on.  
6 So we would like your help in also formulating some ways  
7 to go about doing this.

8           Another thing we seek to do is to eliminate any  
9 economic advantage that anyone might obtain from violating  
10 one of our regulations and recover that in the penalty  
11 that we take. We do that for a lot of different reasons.  
12 It's unjust to allow people to profit from their  
13 violations. But it also hurts the vast majority of the  
14 industries that take the time and go to the expense of  
15 complying with our regulations. And that's the only way  
16 that we feel we can vindicate their rights and create a  
17 level playing field so that our regulations truly aren't  
18 disadvantaging one segment of society and one segment of  
19 industry versus another. So eliminating economic  
20 advantage from violations is very, very important to us.

21           We'd like to ensure consistent enforcement  
22 results. And we try to do that by applying the criteria  
23 that I'll go into with you that the law specifies for us  
24 to consider in setting the penalty. We try to apply those  
25 criteria evenly across the board.

1           And by now, we've been at this business of  
2 enforcing our rules and regulations for quite some time.  
3 And we've developed a history of settlements, and these  
4 are published and available for your review. We have a  
5 compendium that we publish every year that goes into them  
6 in great detail, so people are generally aware of when we  
7 talk to them what similar violations have resulted in  
8 similar circumstances throughout time.

9           So we tell people when we sit down with them in  
10 settlement that we always hear the same two questions on  
11 this issue.

12           Number one is they'd like to know that they're  
13 being treated exactly the same way that other people that  
14 created the same kind of problem were treated. And we're  
15 able to say in each and every case that that's absolutely  
16 true.

17           But then human nature being what it is, the  
18 second question we're faced with is, yes, but can I pay  
19 less? And to continue and guarantee that we have  
20 consistent enforcement results, generally speaking, we're  
21 not able to grant that second request, except in  
22 consideration of some of the factors that I'll go into  
23 later on.

24           We strive to serve the environmental justice  
25 communities in California. And we do targeted enforcement

1 activity out at those communities and report it in that  
2 enforcement report. But I'm sure that we can do more.  
3 And I'm sure that we can do a better job of it. So we  
4 look forward to hearing your suggestions and how we might  
5 go about doing that.

6           Of course, ideally, we would like to not have to  
7 take enforcement action against people. That, indeed,  
8 people would voluntarily comply with our laws. And if  
9 there are ways that we can encourage that, we'd like to  
10 hear from you about those today.

11           Also, it's very important for us to communicate  
12 the goals of our program. Like I said, we publish that  
13 compendium every year. And if you look at the ARB  
14 website, a great many of the press releases that the ARB  
15 issues throughout the year are about the results of  
16 enforcement cases. Our staff of regulation writers is  
17 unsurpassed in the world of going out and engaging the  
18 regulated community and capitalizing on their expertise  
19 and accommodating their interests in adopting our  
20 regulations in an open, public forum.

21           And we don't stop there. After the regulations  
22 have been adopted, we're constantly fine tuning them. And  
23 we step out of the role of being regulation writers and do  
24 outreach to segments of the community and the regulated  
25 community that need that type of outreach.

1           One big part of our operation in the enforcement  
2 division is, as you'll see, a compliance assistance  
3 program. So after the regulations have been written, the  
4 initial public outreach has occurred, the public outreach  
5 from the reg writers then goes to the implementation  
6 phase, and then cases begin to be referred to the  
7 enforcement division. Before that ever happens, we've  
8 developed state-of-the-art courses for people to come to  
9 and take, over the web, or free of charge here, materials,  
10 many of which we have in our booth outside for you to use  
11 because we would like people to have the ability to  
12 voluntarily comply with our regs. So we spend an awful  
13 lot of time and a great deal of resources in providing  
14 them with the knowledge they need to do that.

15           We're also interested in discussing this concept  
16 of strict liability for violations. The things that we  
17 regulate are generally day-to-day business operations.  
18 They're not things that people do with a wicked mind or an  
19 evil heart when they violate our regulations. So our  
20 regulations have a special but a not uncommon aspect to  
21 them that a violation of the regulations can occur without  
22 the showing of any kind of intent or negligence on the  
23 part of the violator. And that goes back to the types of  
24 things that we regulate.

25           Now, that's a violation. That doesn't





1 especially because these air pollution standards are not  
2 some vague ideal that have been developed in the  
3 laboratory here. But they're based instead on reams and  
4 reams of health studies about what happens to people when  
5 they are exposed to different types of air contaminates.  
6 So it's extremely important to get immediate compliance.  
7 People's health's at stake here, and we treat it seriously  
8 as if it were.

9 --o0o--

10 SENIOR STAFF COUNSEL OLIVER: In achieving the  
11 level playing field, again we're trying to vindicate and  
12 create fairness for people who have complied.

13 Consistent enforcement is a key to the integrity  
14 of our program. We seek similar penalties for similar  
15 violations.

16 And we take financial hardship into account. In  
17 setting a penalty case law as well as the Health and  
18 Safety Code allows us to take into account people's  
19 financial condition. And that is one of the ways that  
20 we're able to legitimately diverge from the similar  
21 penalties for similar violations regime that we follow.  
22 If you do have financial hardship, we work very closely  
23 with you to determine its extent. And we have economic  
24 experts on staff who we have available to analyze data  
25 that you provide us and allow us to fine tune the penalty,



1 --o0o--

2 SENIOR STAFF COUNSEL OLIVER: There are a number  
3 of statutes that establish the penalties that we enforce  
4 here and we seek when we find violations. And they  
5 require us, as do the cases that study and resolve issues  
6 regarding civil penalties, they basically require us to  
7 take into account all relevant circumstances, just like  
8 anyone in our position would do. But they enumerate  
9 certain ones, and we've taken the liberty of listing them  
10 here for you:

11 The extent of the harm.  
12 The nature and persistence of the violation.  
13 The length of time the violation extends over.  
14 The frequency of past violations.  
15 Preventative efforts that were taken by the  
16 violator.  
17 The record of maintenance at the facility.  
18 Innovative nature of the equipment involved,  
19 whether it's a proven or unproven technology.  
20 Any mitigation efforts taken on behalf of the  
21 violator.  
22 The violator's cooperation during the  
23 investigation.  
24 And financial hardship; there it is again.  
25 That's one of the enumerated criteria. The Health and



1 the end of the presentation, numbers that are pretty  
2 typical for the last eight, nine, or ten years of our  
3 program, we've gotten fairly adept at coming up with  
4 penalties that people agree to with us and don't litigate  
5 either in a court context or any kind of administrative  
6 context either.

7           We do have limited opportunities for an  
8 administrative hearing process. And one exists for our  
9 fuels penalties, and another one exists for more minor  
10 violations of some of the vehicular penalties.

11           We haven't found much need to resort to those,  
12 just like we haven't found much need to resort to court  
13 litigation in any particular case. We're able to do the  
14 fact-finding in a cooperative way with the violators. It  
15 is labor intensive to do this. It requires us to reach  
16 out to you and to spend a great deal of time with you in  
17 accumulating the data that we need.

18           But it's achieved some wonderful successes. And  
19 we are more than happy to work with you to generate the  
20 data to go through your records, help you find what you  
21 need to persuade us that your violation is not as  
22 egregious as we thought it was when we originally  
23 conducted our investigation.

24           People have records that aren't the greatest  
25 recordkeeping systems. We go to great extremes to help.

1 And we have some people that are very, very good at  
2 reading this kind of data and working with you and  
3 generating the kind of data that we need to make a fair  
4 assessment, because that ultimately is the name of the  
5 game for us, coming up with a fair assessment that  
6 vindicates all of these rights that we're charged with  
7 protecting and is fair to you. So we'll go the extra mile  
8 and do that. And because we do, we haven't found the need  
9 to submit our disputes to a neutral third party, whether  
10 they be a judge or an administrative law judge in a  
11 different context.

12 --o0o--

13 SENIOR STAFF COUNSEL OLIVER: So in the interest  
14 of hearing from you in a more expedited way, we have  
15 certain steps in enforcing our regulations that we take  
16 from adopting the regulations to resolving and developing  
17 the enforcement cases.

18 These slides have been up on the web for several  
19 days, and we hope you've taken the time to review them.  
20 We also have hard copies of them for you at the back of  
21 the room, if you haven't seen it yet.

22 --o0o--

23 SENIOR STAFF COUNSEL OLIVER: We'd like to talk  
24 about the structure of our program. And it's broken down  
25 into the two big subject area matters that we enforce,

1 both mobile and stationary source.

2 Under mobile source, you have heavy-duty diesel  
3 and general mobile course cases.

4 And under stationary source enforcement, we  
5 regulate such things as fuels, consumer products. We're  
6 developing the program to enforce our greenhouse gas  
7 regulations. And we have a specific investigations unit  
8 that also assists air pollution control districts.

9 And as I mentioned before, as just as large a  
10 part of our organization is our training and compliance  
11 assistance group.

12 --o0o--

13 SENIOR STAFF COUNSEL OLIVER: Mobile and heavy  
14 duty -- mobile source, heavy duty in general --

15 --o0o--

16 SENIOR STAFF COUNSEL OLIVER: No need.

17 --o0o--

18 SENIOR STAFF COUNSEL OLIVER: The fuels  
19 enforcement from the every gallon of gasoline that's  
20 refined at California refineries has to meet our  
21 standards, we have an active sampling program to determine  
22 if they do or not. And we also have a mobile fuels  
23 laboratory, a big bus that's been outfitted and goes from  
24 the refineries, can take samples and analyze them on the  
25 road.

1 --o0o--

2 SENIOR STAFF COUNSEL OLIVER: Consumer products;  
3 we regulate a great number of different things that you  
4 use and we all use in our personal lives from household  
5 cleaning products, personal care, automotive chemicals,  
6 household pesticides, aerosol coatings, and portable fuel  
7 containers, and we're --

8 --o0o--

9 SENIOR STAFF COUNSEL OLIVER: -- developing the  
10 greenhouse gas program.

11 --o0o--

12 SENIOR STAFF COUNSEL OLIVER: Special  
13 investigations pretty much speaks for themselves, but this  
14 is where our environmental justice activities also come up  
15 within this part of our organization.

16 --o0o--

17 SENIOR STAFF COUNSEL OLIVER: And the compliance  
18 and assistance.

19 --o0o--

20 SENIOR STAFF COUNSEL OLIVER: We publish and take  
21 a great deal of time publishing the results of these  
22 enforcement actions so people are aware of what we do and  
23 are aware of the consequences of the violations that we  
24 find, to inform the public at large that we're out here  
25 doing our job, to inform the regulated community of that

1 too, and to inform potential violators.

2 --o0o--

3 SENIOR STAFF COUNSEL OLIVER: So to sum up,  
4 here's a typical year for us at ARB enforcement.

5 From the calendar year 2008, we resolved  
6 approximately 2500 cases or citations.

7 We obtained approximately \$12 million in  
8 penalties. There were two large stationary source cases  
9 that comprised about \$6 million of those penalties.

10 \$2.6 million of the penalties we collected went  
11 to providing funding for diesel technology education,  
12 financing diesel retrofits, and other environmental  
13 improvement projects.

14 We resolved approximately 150 diesel fleet  
15 exhaust retrofit cases. About 10,000 vehicle inspections  
16 were conducted in environmental justice areas; thirty-six  
17 cargo tank cases; thirty-five consumer products cases,  
18 which tend to be the larger cases here that were listed;  
19 and 32 locomotive violations were resolved.

20 So that's a pretty typical year from us. And to  
21 compare it against other years, this information is all  
22 available on the Enforcement Division website.

23 --o0o--

24 SENIOR STAFF COUNSEL OLIVER: So it's very  
25 important for us to hear from you both today and



1           And with that, I would like to start calling  
2 people down for testimony. Thank you.

3           If you haven't already, if you'd like to make  
4 comments to us today, we have cards for you to fill out  
5 and bring to us so that we will be able to call you down  
6 here when your turn arrives. And those cards are  
7 available downstairs at the greeting table. And I believe  
8 they brought some up to the enforcement booth in the back.  
9 And Elizabeth has a few.

10           So anyhow --

11           MS. MILLER: Hi. I'm Elizabeth Miller. I'll  
12 take it from here.

13           I have a list of all the speakers that have  
14 signed up. And I'm going to take you five at a time. I'm  
15 going to read five names and have you be ready.

16           What I'd like you to do is please come up to this  
17 podium, and I'll make sure the mike is on. Please state  
18 your name and the association that you're representing so  
19 that our court reporter can accurately get that  
20 information.

21           We're asking you to please try to keep your  
22 presentation to under ten minutes. I think that we'll be  
23 able to accommodate everybody that's requested to speak  
24 and still get out of here on time.

25           After the first ten speakers, we're going to take

1 questions from the webcast. After the second ten  
2 speakers, we'll take any questions that have come in from  
3 the webcast at that point.

4           At this point, we have 33 speakers signed up. So  
5 I'm going to announce the first five. If you'd be ready  
6 to come, I'll call you one at a time after the one before  
7 you has finished.

8           First, Kit Enger, Nick Pheifer, Mara Wile, Matt  
9 Schrap, and Stephen Clark.

10           So Kit Enger.

11           MR. ENGER: I'd like to defer my time to our  
12 association -- I'd like to defer my time to the same time  
13 or after our association speaks first.

14           MS. MILLER: Who would that be?

15           MR. ENGER: CERT.

16           MS. MILLER: Mr. Enger has requested he defer his  
17 time to CERT, which is Californians for Enforcement Reform  
18 and Transparency. So noted. Thank you.

19           Next speaker is Nick Pheifer.

20           MR. PFEIFER: I'm Nick Pheifer. I work with  
21 Granite Construction, Incorporated, out of Watsonville,  
22 California. We're a large heavy civil contractor. And we  
23 fall under a handful of CARB rules, most notably the  
24 recently accepted off-road and on-road diesel rules. Have  
25 a large heavy diesel fleet of off-road equipment as well

1 as a lot of heavy diesel trucks.

2           And I would just like to start off by saying that  
3 I completely agree with the need for fair, consistent, and  
4 comprehensive enforcement. It's absolutely critical in  
5 the environment that we operate in, in the heavy civil  
6 construction environment, which is low bid driven, that  
7 there be a level playing field. And I'm absolutely  
8 100 percent behind, you know, fair, equitable, aggressive  
9 enforcement, because that's -- you need that to create  
10 opportunity for the companies who are going to comply and  
11 play by the rules.

12           What I would like to reiterate is a request I've  
13 made previously at a CARB Board hearing. And it was in  
14 relation to a complimentary inspection program by CARB.  
15 Where it would be similar to Cal/OSHA or CHP where a  
16 company can invite CARB inspectors out to their facility  
17 or to their office or to wherever their records are kept  
18 and open their books up, open their facilities up to CARB  
19 inspection on a voluntary basis and be given not absolute,  
20 you know, amnesty, but some reasonable period of time for  
21 anything that would be uncovered to be prepared before  
22 CARB would come back for a follow-up inspection.

23           I see this as being a win-win. It's going to  
24 open up industry to CARB. You're going to get in front of  
25 the companies who are trying to be proactive, who are

1 making an honest effort to comply with the rules. And  
2 you'll be able to give those companies an opportunity to  
3 comply with the somewhat complicated aspects of these  
4 rules. All the rules have fairly extensive administrative  
5 requirements. And it would allow companies to have a  
6 chance to ensure that they're doing the right thing on the  
7 administrative end so that they can avoid some of the  
8 penalties for more the paperwork end of it.

9           Appreciate the opportunity to talk. I'll let the  
10 next person get going here.

11           MS. MILLER: Next person on the list is Mara  
12 Wile. Is Mara here?

13           Okay. Matt Schrap.

14           MR. SCHRAP: Thank you very much for the  
15 opportunity. Really appreciate this workshop.

16           One question though. Actually, I have more  
17 questions than any type of commentary or testimony.

18           First of all, I can appreciate this workshop set  
19 up the way it is.

20           My name is Matt Schrap with California Trucking  
21 Association -- sorry -- for the purposes of the  
22 recordkeeping here.

23           Will all future workshops be handled in this way  
24 where we have a formal presentation and there is a court  
25 reporter, or is this kind of just a one-off workshop?

1 SENIOR STAFF COUNSEL OLIVER: We have no definite  
2 plans on how to proceed from here, except that we will be  
3 reporting the results of the workshop to our management  
4 and evaluating all the comments that we get.

5 So if you have a preference for something for  
6 another type of --

7 MR. SCHRAP: Well, throughout the development on  
8 the port truck reg, on-road reg, greenhouse gas SmartWay  
9 efficiency upgrade regulation, there was many comments  
10 made about some type of formal recordkeeping being held  
11 for all the questions and comments that was directed  
12 toward staff during the regulatory development. And I was  
13 thinking maybe this was a step in that direction or if it  
14 was a one time. So we're supportive of some sort of  
15 formal recordkeeping in any workshop scenario where  
16 stakeholders who have a very valuable perspective  
17 obviously will be heard and potentially recognized later  
18 on those issues.

19 I heard a lot of things that were mentioned  
20 during the workshops that were -- I won't say glossed  
21 over -- but were definitely not paid as much attention to  
22 as some would have hoped for.

23 But, again, appreciate the opportunity to come  
24 up. And, you know, from our perspective, fair,  
25 consistent, and sustainable enforcement or our three

1 favorite words or two favorite words are level playing  
2 field here in California. Especially in the trucking  
3 industry, we're competing on a national basis with many  
4 fleets from out of state doing here business here. It's  
5 very important that all actors are consistently enforced.  
6 And we, as California Trucking Association, are more than  
7 willing to assist enforcement staff in getting out the  
8 word.

9           A couple more questions, and I hadn't heard it  
10 alluded to. I know the AB 233, some of the revenue that  
11 was supposed to be generated from that fine increase, was  
12 going to be used to hire more inspectors. I was curious  
13 on the number of in-field inspectors we have out there.  
14 And if anyone could maybe address that, just for my own  
15 edification and our members. A lot of them are asking me,  
16 and I'd like to give them the right answer.

17           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
18 Thank you, Matt.

19           Paul Jacobs, Chief of Mobile Source Enforcement.  
20           Enforcement Division wide, we have roughly about  
21 125 staff, of which in the Mobile Source Enforcement side  
22 about 60 full-time staff and a handful of students.

23           And in terms of those that are deployed to the  
24 field at any given time, any of the enforcement division  
25 staff full-time that are can be employed to the field.

1           In terms of specific ones assigned to diesel,  
2 it's near about 50 enforcement staff.

3           MR. SCHRAP: Great. Thank you, Paul. I  
4 appreciate that.

5           Also, another question. I know that you guys  
6 have a partnership with the California Highway Patrol. Is  
7 there -- I know a contract was going to be renewed for  
8 inspections. And are they very willing and able to  
9 participate? We've been hearing mixed messages also on  
10 their level of involvement.

11           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
12 In terms of our long-standing interagency agreement with  
13 the Highway Patrol, that's been in effect since roughly  
14 1990. And that is currently in effect and is renewed on  
15 an annual basis.

16           And they're fully supportive and required under  
17 statute to actually be present in the field. They're the  
18 ones that have the authority to pull vehicles over under  
19 2813 of the vehicle code.

20           MR. SCHRAP: Within the enforcement reports, is  
21 there going to be in the future a delineation between CHP  
22 violations and ARB staff-issued violations?

23           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
24 No. They track their own statistics. They do have  
25 express authority under statute to write tickets for

1 various violations, be it tampering or smoke and the like.  
2 And they report those in their own enforcement reporting.

3 MR. SCHRAP: Great. I appreciate that and also  
4 appreciate your candor.

5 Moving forward here and kind of to echo what the  
6 gentleman who was previous to me about these courtesy  
7 inspections, I think this would go a long way with  
8 stakeholders and trying to help facilitate additional  
9 enforcement, especially for some of those bad actors that  
10 are out there. Is it a thought maybe within Air Resources  
11 Board staff to maybe start certifying a third party to go  
12 through and do some of the training and outreach and  
13 potentially as we do for biennial inspection in terminals,  
14 we'll go through everyone's -- their entire fleet to make  
15 sure that when the CHP does come on site that they're  
16 ready to go. Is this something that potentially  
17 enforcement or outreach maybe might be looking to get  
18 involved in later?

19 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

20 We currently have our in-house training program that  
21 recently expanded to cover the mobile sources in the past  
22 year. And we have a series of new courses, including the  
23 512 course, which is an overview of all the new diesel  
24 regulations.

25 Companion to that is our community college

1 training program, longstanding California Council on  
2 Diesel Education and Technology that's been in effect  
3 since 1992. And we're expanding the scope of that  
4 curriculum as well.

5           But in terms of, you know, having some  
6 third-party certification, we haven't broached that yet.

7           But I encourage you and your members, as you  
8 effectively do, to work with the Program staff and our  
9 Compliance Assistance staff on these training issues, like  
10 those of you in the construction industry and the program  
11 staff, our the Mobile Source Control staff and Stationary  
12 Source Control Division staff with the port truck rule is  
13 there to help you with compliance as we are.

14           When it comes down to the actual enforcement,  
15 that's where we have to come in. And we want to keep a  
16 line there, a bright line, to know when this line is  
17 crossed. We're going to take swift and effective  
18 enforcement action.

19           MR. SCHRAP: I appreciate that again, and I won't  
20 belabor this much longer.

21           I think that one point that you made especially  
22 with the TRAC, the recent Truck Rule Advisory Committee, I  
23 think it would be -- behoove staff to be involved in that,  
24 someone from the Enforcement staff to be directly involved  
25 with TRAC. I think it's important to hear some of the

1 issues that will be popping up. And especially the  
2 enforcement of these on-road regulations is going to be  
3 interesting, to say the least.

4           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
5 We do have staff assigned to that. And I do sit on those  
6 meetings to the extent I'm available. But I do have staff  
7 assigned to that.

8           MR. SCHRAP: When I had mentioned that last time,  
9 they were sort of chasing each other's tails and saying,  
10 "Well, that's Enforcement's problem. They do their own  
11 thing. We're our" -- so what have you.

12           And then also just we've been hearing a lot from  
13 a lot of the border operators. I know you guys do a lot  
14 of inspections down there. But especially on the Mexican  
15 side, a lot of the operators are really thinking that  
16 these regulations are not going to touch them at all  
17 whatsoever. So I would encourage Enforcement staff to  
18 make this known to them. We'd like to see a continuing of  
19 the flow of goods. And it seems they might be a little  
20 out of the loop as of late.

21           With that, that's all I have. Thank you for your  
22 time.

23           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
24 Just real quick on the Mexican trucking issue, we do have  
25 ongoing meetings with the Mexican Trucking Association.

1 And we host with the California Highway Patrol in the  
2 border region these industry compliance days. And we  
3 fully plan to continue those. And we'll continue our very  
4 aggressive outreach efforts with our friends south of the  
5 border.

6 MR. MILLER: Thank you.

7 Next up is Stephen Clark.

8 Next five after that will be: Bill Guerry, Bill  
9 Davis, Clayton Miller, John Fentis, and Sierra Martinez.

10 Next up is Stephen Clark.

11 MR. CLARK: Hello. My name is Stephen Clark. I  
12 work for Stevedoring Services of America. That's in the  
13 port of Long Beach, Oakland, and Seattle.

14 We're probably one of -- I feel one of the most  
15 regulated industries out there. We've got the CAP, the  
16 WRAP, the ILSI, the cargo handling rule. These rules have  
17 been given to us, which we are complying with 100 percent.  
18 But you don't have EPA waivers on the LSI or the cargo  
19 handling rule. So I have to tell my management we need to  
20 spend millions of dollars in an economy that's down 30  
21 percent or wait until you get the EPA waiver, which means  
22 I've got 30 days. So which foot do I shoot myself in?

23 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

24 In terms of enforcement and the EPA waivers, for the  
25 on-road program, we do have the waivers in effect. And

1 those just carry over as we add additional sources.

2           For the off-road sources, there has been court  
3 challenges, like the PSMA case and the like. And we are  
4 anticipating EPA to approve all the pending waivers in the  
5 near term. There is a process to challenge the process if  
6 we started to enforce without the waiver. But, again, the  
7 current administration is issuing the waivers and we fully  
8 expect to have them --

9           MR. CLARK: Isn't that kind of putting the cart  
10 before the horse and then giving us 30 days to comply?

11           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
12 Well, we give you a little more than 30 days. We adopt  
13 these rules through the public process and provide more  
14 than adequate lead time for compliance, and we have to go  
15 out and enforce them so we have an equitable level playing  
16 field.

17           And if you would like to talk about the waiver  
18 issues more, maybe we can have a sidebar and go into it in  
19 more detail, because we have a lot of other speakers.  
20 But, again, we fully anticipate to have all these waivers  
21 in hand.

22           MR. CLARK: Thank you.

23           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
24 Thank you.

25           MS. MILLER: Next up, Bill Guerry. And Mr. Enger

1 has seeded his time to you, so you have up to 20 minutes.

2           MR. GUERRY: Good morning. My name is Bill  
3 Guerry. I'm with the Washington D.C. law firm of Kelley  
4 Drye. I'm a Clean Air Act lawyer.

5           I'm here today speaking on behalf of a new  
6 coalition, Californians for Enforcement Reform and  
7 Transparency, or CERT. I've put out in the table in the  
8 back there materials including a press release we just  
9 issued and a detailed position table, which is now a  
10 seven-page position paper with 28 questions that we  
11 developed largely so that all of us could be better  
12 informed, not just at this particular workshop, but moving  
13 forward as part of a constructive dialogue.

14           And we appreciate the time and effort that Ellen  
15 Peter and the CARB Enforcement staff have put into this  
16 presentation.

17           And I was delighted in terms of the remarks this  
18 morning from Kirk and Chairwoman Nichols that we all I  
19 believe agree on the fundamental goals that the CERT  
20 Coalition is trying to achieve that we believe all the  
21 stakeholders, including the environmental groups, should  
22 all want to achieve. And those core elements are  
23 evaluating through a consensus process whether  
24 improvements can be made in the way we go about  
25 consistently and transparently as a matter of good

1 government having the best focus in our Enforcement  
2 Program so that limited resources are spent addressing the  
3 greatest compliance problems. And if there is an  
4 efficient process that is consistently applied and that  
5 there is a distinguishing between administrative paperwork  
6 violations from air quality violations.

7           We believe as a matter of good government, the  
8 manner in which CARB assesses penalties, and equally as  
9 important, the way in which those penalty funds are spent  
10 and allocated should all be part of some oversight and  
11 control that there should be clear policies that the  
12 regulated community and the environmental community and  
13 elected officials can all look to and make sure that the  
14 program is being implemented in a way to achieve these  
15 goals.

16           If I could quickly go through the position  
17 paper -- which by the way, these materials for those of  
18 you on the webcast available on the following website:  
19 [www.kelleydrye.com](http://www.kelleydrye.com).

20           We have put together this position paper largely  
21 in response to Ellen Peter's request on behalf of the 12  
22 associations. This reflects the experience as well of my  
23 colleague John Dunlap and I, the prior CARB Chairman, who  
24 have together worked on 30 or 40 EPA and CARB enforcement  
25 matters.

1           And what I've done here -- and I want to just hit  
2 the one point. It is CERT's desire to strengthen, not to  
3 weaken, CARB's Enforcement Program and policies. And  
4 specifically, we would like to strengthen and preserve and  
5 enhance CARB's credibility and integrity through the  
6 adoption and implementation of consistent, fair, and  
7 transparent penalty policies, which support the commitment  
8 made by Chairman Nichols at the July 23rd Board hearing.

9           If I can go next -- next page. I just want to  
10 hit on some of the elements that we think should be  
11 included in a written penalty policy.

12           First, the proper incentives to promote  
13 compliance, one of our core missions, is to do everything  
14 we can to make sure that companies in these challenging  
15 economic times spend the extra money and time to take the  
16 reasonable prudent precautions to avoid compliance  
17 problems. To that end, we think that the CARB position  
18 papers -- the CARB policies on penalties should be  
19 tempering strict liability to recognize that where  
20 companies have taken all reasonable and prudent  
21 precautions to achieve compliance and to avoid problems.  
22 And if there are glitches, there should be some  
23 recognition and incentivization so that companies spend the  
24 extra time, money, and effort to avoid those problems.

25           And our first policy question relates to that

1 issue in making sure the system is incentivizing companies  
2 to spend the extra time and effort to achieve full  
3 compliance.

4           Bullet two here deals with formal penalty  
5 policies. Right now, to my knowledge, we have not been  
6 able to see any written policy that explains how CARB goes  
7 about distinguishing between different types of violations  
8 in terms of air quality impacts, in terms of avoided  
9 compliance costs, in terms of culpability. I understand  
10 there is a strict liability statutory framework, but  
11 clearly strict liability should be tempered and should be  
12 not blindly applied. And we should look at the critical  
13 factors. And we believe the most important critical  
14 factor is air quality and the impact on air quality.

15           In that regard, we believe that the U.S. EPA has  
16 adopted a 50-page penalty policy matrix. This was done  
17 over a several year period. It was developed by George  
18 Lawrence, who was head of the EPA Mobile Source Division.

19           There is a note on the table and on the website I  
20 gave you earlier prepared by George Lawrence which  
21 explains the benefits of the EPA penalty policy. And that  
22 policy was developed in large part with the risk of  
23 grossly noncompliant product coming in from off-shore from  
24 mostly new market entrance that were deliberately  
25 uncertified and high emitting and trying to figure out how

1 to develop a policy that hit those grossly noncompliant  
2 products with the maximum penalties and distinguish those  
3 from paperwork glitches.

4           Unfortunately, George couldn't tie in today. I  
5 do have some slides he would have liked to have presented.  
6 But the questions if you see at the bottom as you go  
7 through questions one through four all relate to why we  
8 think that the EPA penalty policy would provide a much  
9 more efficient process, reach settlements sooner, ensure  
10 consistency, and you would ensure greater credibility and  
11 integrity in the process and system.

12           Some of the issues that come up in those  
13 questions, like question number three, raise questions I  
14 think should be answered and looked at in this forum. And  
15 that includes, is it fair and right to have duplicative  
16 penalties where, say, a manufacturer is hit with a penalty  
17 and a California retailer is hit with the exact same  
18 penalty for the same violation; is this a double and  
19 unfair scenario?

20           Should we be trying to ensure that the penalties  
21 fit the crime and punishment and their culpability issues?  
22 And if folks like retailers have taken all reasonable  
23 prudent precaution, should they be hit with the same  
24 amount?

25           Question four deals with the repeat violator

1 policy.

2           And question five, I just want to note that, in  
3 California, most of the air quality management districts,  
4 including the South Coast, have for a long time had very  
5 effective penalty policies to address stationary sources  
6 that have worked very well in promoting fair, consistent,  
7 and transparent penalty policies. So I think those South  
8 Coast Air Quality District penalty policies would be also  
9 a great model for us to look at.

10           Next, bullet C, I just want to briefly go through  
11 administrative hearing process. I heard Kirk's earlier  
12 statement, and I respect the fact that CARB's Enforcement  
13 has been effective in reaching a lot of settlements.  
14 Having said that though, we believe most all other  
15 California agencies have in place a formal administrative  
16 hearing process. We do believe that is a process that  
17 U.S. EPA has had success with. We think that would  
18 provide an efficient forum to resolve settlements much  
19 more efficiently than judicial actions. And right now,  
20 more options would be better, and we site to the fact that  
21 the Governor has repeatedly urged agencies to create  
22 administrative hearing processes with ALJ judges to  
23 provide another forum to settle matters in lieu of a  
24 judicial action.

25           I'm now hitting on heading number three,

1 transparent and open government. There's page three of  
2 our position paper. And in this discussion, we believe  
3 there should be a full evaluation of the public of how  
4 money is spent that is associated with penalties. It's my  
5 understanding that when CARB settles current matters, it  
6 retains all the funds that it receives from a settlement.  
7 And that's unusual for an agency.

8           And I think that has the perception in the public  
9 of creating the impression that the agency that's keeping  
10 the money is more concerned about making money and  
11 retaining it and using it than achieving its pure core  
12 mission, which should be air quality. We believe there  
13 should be an evaluation as to whether or not CARB's  
14 integrity and credibility would be further enhanced if all  
15 penalty settlements were going to the State or going  
16 through some other public process that had a lot of input,  
17 in particular from environmental groups, so those of us in  
18 the environmental community can be carefully ensuring that  
19 the settlement funds went to air quality and did not go to  
20 projects or handled in a way that a public doesn't have a  
21 voice in, particularly at a time where the budget  
22 obviously is under enormous strain here in California. We  
23 think every public dollar that comes in either from the  
24 taxpayer or from a settlement should be closely  
25 scrutinized and we should all make sure it's going to its

1 best use.

2           And then I guess, in closing, I have a heading  
3 four, which is enhancing full compliance. And in this  
4 section, we believe that one way to achieve full  
5 compliance, which is one of CERT's core goals, is to make  
6 sure that CARB's administrative rulemaking procedures are  
7 always being fully complied and that enforcement actions  
8 are tied within the four square zones of what has been  
9 approved in a regulation and does not include either  
10 prematurely pulling ahead and applying proposed  
11 regulations or relying on test procedures that have not  
12 been part of a regulatory package.

13           Lead time, clarity, consistency, all of these  
14 principles are best served when you have an agency that  
15 follows the administrative procedures and makes sure that  
16 there is a closure and a regulatory process that has to go  
17 through the Office of Administrative Law and there's a  
18 defined effective date. There's defined regulations, and  
19 everyone receives equal, clear, and consistent notice in  
20 advance of any regulatory changes.

21           You're going to hear from several CERT members  
22 that have specific concerns where they believe that CARB  
23 is currently applying interpretations outside the scope of  
24 the clear regulations. And I know that is an issue that  
25 CARB and the AG -- and we're delighted the AG is here

1 today -- that the attorney general's office obviously  
2 wants to make sure that all agencies are fully following  
3 those important procedures.

4           So with that, I very much appreciate your  
5 comments. I look forward to working with all of you. And  
6 I'll be here if there are any questions. Thank you.

7           MS. MILLER: Thank you.

8           Next up we have Bill Davis, followed by Clayton  
9 Miller.

10           SENIOR STAFF COUNSEL OLIVER: While witnesses  
11 approach the lectern, a point of clarification.

12           The Health and Safety Code is very specific about  
13 where our penalties end up. And they end up in a special  
14 legislative fund called the Air Pollution Control Fund  
15 that the Legislature then appropriates to whatever clean  
16 air activity it sees fit to appropriate it to. Sometimes  
17 some of those moneys do come back to the ARB, but they go  
18 directly into that fund first. And we don't have control  
19 over where they end up.

20           We also have a policy that allows the diversion  
21 of up to 25 percent of any penalty into a supplemental  
22 environmental project. This is a good works environmental  
23 project that meets a certain rigid set of criteria that  
24 appear in this supplemental environmental project policy.  
25 It's something that has to be agreed upon between the

1 enforcement agency and the violator. So when you see the  
2 figures on our enforcement criteria there that specify  
3 that some of these penalty moneys went to diesel retrofits  
4 or to education programs or to other environmentally  
5 beneficial programs, that refers to that 25 percent that  
6 this penalty policy that was adopted by Cal/EPA and by all  
7 the Cal/EPA boards and departments allows for that  
8 diversion. Otherwise, the remaining money and the vast  
9 majority of the moneys that we take in through penalties  
10 goes to this special fund that the Legislature has control  
11 over; we don't.

12           MR. DAVIS: Hi. My name is Bill Davis. I'm with  
13 the Southern California Contractors Association. And I'm  
14 also a member of the Construction Industry Air Quality  
15 Coalition of the Off-Road Implementation Advisory Group  
16 for the ARB and support the CERT program activities that  
17 have brought this workshop together. And I have to tell  
18 you, I've been to dozens of workshops, and this is the  
19 most formal one I've ever attended.

20           Paul Jacobs has been an invited speaker at our  
21 association at our meeting in February. I promised him  
22 the Pope mobile, but I was ill with the flu and wasn't  
23 able to drive it over to the meeting. But Paul told me  
24 that our guys were -- they weren't nearly as tough as some  
25 of the other groups he's talked to, particularly truckers.

1 Are you guys bad?

2           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: I  
3 think I said the opposite.

4           MR. DAVIS: That's not what you told me the first  
5 time.

6           The other thing that I really came up to talk  
7 about on the enforcement level -- and it's something that  
8 I brought up on numerous occasions. I have appeared  
9 before the Air Resources Board on more than a dozen times  
10 now and many of those times during the off-road  
11 implementation effort -- was the necessity for a new  
12 enforcement approach on particularly off-road and on-road  
13 rules, because they are so big compared to all the other  
14 activities that you guys have engaged in in the past. And  
15 the necessity is to develop an early, fast-acting, and  
16 effective Enforcement Program that works in all other  
17 kinds of enforcement activities. That's fix-it tickets.  
18 It's an approach, Paul, that you might appreciate, because  
19 you don't have to be so courteous as a courtesy inspection  
20 might have it. There could be some minor cost attached to  
21 a fix-it ticket.

22           But the main benefit of it would be an  
23 opportunity for you guys to achieve the goals of your  
24 regulations and to do something that the Air Resources  
25 Board historically has not done a very good job on, and

1 that's outreach.

2           Now, I know that in the case of the off-road rule  
3 they have really tried and they are continuing to try to  
4 reach out to the construction industry. But there are  
5 316,000 contractors' licenses in the state of California,  
6 and only 5200 firms have signed up under the DOORS program  
7 so far. ARB estimated 180,000 pieces of construction  
8 equipment in the state. Industry thought they were a  
9 little light. And roughly 130,000 of those have been  
10 signed up in the off-road program. Tells us that, once  
11 again, there is an outreach problem. And a real good  
12 solution for that is a fix-it ticket.

13           When you guys start hitting the streets and  
14 banging on people's door or going to their job sites and  
15 you find them out of compliance for some reason, one of  
16 the reasons is going to be they didn't know. Now I know  
17 that's not supposed to be an excuse, but a fix-it ticket  
18 gives you an opportunity to inform them of their  
19 responsibilities and requirements; at the same time, gives  
20 them an opportunity to come into compliance a lot  
21 quicker.

22           And another part of the problem, of course, is  
23 our industry, at least the construction industry, is under  
24 six different regulations right now. We've got the  
25 off-road rule. We've got the on-road rule. We've got the

1 LSI rule. We have the cargo rule. We have the stationary  
2 rule, because if you leave a piece of construction  
3 equipment on a job site for a year, it's stationary. And  
4 we know we're going to get under the greenhouse gas  
5 regulations.

6           These regulations are more than just things  
7 written in the dusty code of California law. These  
8 regulations cost some real money. A Cal State Sacramento  
9 study pegged the cost of regulatory compliance in state of  
10 California -- the study was released just a month ago --  
11 at \$493 billion a year. And that does not include the  
12 off-road rule, the on-road rule, or the greenhouse gas  
13 rules. That was based on 2007 numbers.

14           So we hope that through use of a fix-it ticket  
15 approach you can effectively enforce the regulations,  
16 level the playing field -- and those are certainly things  
17 that we all have been asking for -- and give our people in  
18 our industry who are really, really hammered right now --  
19 the industry is down roughly 50 percent of where it was in  
20 2005 when we started this process of developing these  
21 rules -- give them an opportunity to come into compliance.

22           Any questions?

23           Thank you.

24           MS. MILLER: Thank you.

25           Next up we have Clayton Miller.

1 MR. MILLER: Thank you.

2 Clayton Miller with the Construction Industry Air  
3 Quality coalition.

4 Bill Davis' group, the Southern California  
5 Contractors' Association, is a founding member of CIAQC.  
6 I think Bill did a good job of sharing the extent to which  
7 the construction industry is I guess exposed or need to  
8 comply with CARB regulations just by the numbers of  
9 vehicles and number of contractors in the state.

10 And, you know, our concern moving forward is that  
11 with all these fleets, there's a lot that contractors need  
12 to comply with. You mentioned six. The off-road  
13 regulation, of course, is going to be something that is  
14 going to have a huge effect on contractors. It's already  
15 something that folks need to comply with now in terms of  
16 registering the fleets through the DOORS program. That's  
17 an on-line program to, for the first time ever, share with  
18 CARB the equipment the contractors own.

19 Idling limitations are in place. There's sales  
20 notifications that whenever somebody sells a piece of  
21 equipment 25-horsepower or greater, they need to let the  
22 buyer know that CARB has a regulation that affects that  
23 equipment.

24 There's the prohibition of adding equipment now  
25 to fleets that -- no longer can anybody in California buy

1 a Tier 0 piece of equipment. They add it to their fleet;  
2 and also identification numbers. Those are things that  
3 people are becoming familiar with now.

4           Next year, 2010, large fleets will have for the  
5 first time the fleet averages emission levels that they  
6 need to comply with. Medium fleets later and then small  
7 fleets.

8           But I guess the point I'm trying to make is there  
9 is a lot of places where -- a lot of things the  
10 contractors are going to need to do to comply. And we at  
11 CIAQC and our members want to make sure that the policies  
12 that CARB follows in this Enforcement Program and how  
13 these various penalties get determined it's a fair,  
14 transparent method. That's why we've joined and are  
15 working with CERT.

16           And we think the administrative hearing process  
17 is something that works well and would like to see that  
18 possibly expanded to include these things as moving  
19 forward.

20           Contractors also own on-road trucks. CARB  
21 estimated one-fifth of all the affected vehicles could be  
22 in construction. So that's pretty significant. There's  
23 the portable equipment air toxic control measure that  
24 contractors need to comply with as well. So there's just  
25 a whole host of things, and we want to just encourage

1 moving forward in a positive way that benefits both air  
2 quality and benefit to those in the regulated community.

3 Thanks.

4 MS. MILLER: Thank you, Mr. Miller.

5 Next up is John Fentis, followed by Sierra  
6 Martinez.

7 After these two speakers, we'll take a break for  
8 our court reporter to have a little respite. And when we  
9 come back, we'll address questions from the webcast.

10 MR. FENTIS: Thank you. Good afternoon. Thank  
11 you for allowing me the opportunity to address you.

12 My name is John Fentis, and my current job is I'm  
13 the Environmental Project Director for the California  
14 District Attorneys' Association.

15 I want to make it clear like most lawyers will  
16 start out with a disclaimer. I'm not speaking for CDAA  
17 today, but I'm speaking as a former prosecutor for the  
18 City of Long Beach with 25 years of prosecutorial  
19 experience, 15 of which were spent enforcing environmental  
20 regulations in the state of California. Not an easy thing  
21 to do.

22 And let me start out by saying I really  
23 appreciate the work that CARB has done in not only  
24 designing an effective Enforcement Program, but doing it  
25 in a time when resources are dwindling. And during these

1 kinds of times, it's always the most difficult  
2 conversation to have in terms of enforcement and  
3 continuing to try and execute the objectives of your  
4 Enforcement Program in times when you don't have money to  
5 do it.

6           Most of my comments today I want to talk about  
7 are really in conjunction with the term "environmental  
8 justice." And I appreciate the fact that CARB has made a  
9 commitment to embrace the concept of environmental  
10 justice.

11           Environmental justice is an easy thing to  
12 describe. But unless you've actually visited the  
13 communities that are impacted in this way, it's a very,  
14 very difficult thing to visualize.

15           Let me make one suggestion to CARB, and this  
16 comes from former Police Chief William Bratton from the  
17 city of Los Angeles. During the time he was police chief  
18 for the city of Los Angeles, he developed the concept of  
19 predictive policing. And basically what that means is  
20 taking the resources that you have and focusing them upon  
21 those areas that demonstrate the highest level of  
22 noncompliance. In short, to borrow a phrase, it's like  
23 going into the belly of the beast. And that's where  
24 really the hard job of enforcement is done.

25           And I'm sure that in your database of statistics

1 you have areas that can be easily identified as having  
2 demonstrated high levels of noncompliance. Just to name a  
3 few, we can start with ports of Los Angeles and Long  
4 Beach, port of Oakland, the I-710 corridor, and most  
5 recently where I visited were the cities around Colton,  
6 San Bernardino, Mira Loma, and in those areas where the  
7 movement of goods is such that the Clean Truck Program  
8 that's implemented by the port of Long Beach, it's a very  
9 easy stretch to see the truckers take the old equipment  
10 and use those trucks to transport goods to those other  
11 areas, such as San Bernardino and Colton, where the cancer  
12 rates have been demonstrated to be 3200 in a million. And  
13 it's a very disheartening thing to see children under the  
14 age of five years old carrying around their own breathing  
15 apparatus.

16           So we might start with that concept of predictive  
17 policing. And I would encourage CARB to go ahead and  
18 explore that concept and see if it can better apply to  
19 those areas of enforcement that you work in.

20           Let's talk about repeat violators for a second.  
21 The biggest complaint I have heard as a former prosecutor  
22 is the prosecutors simply do not get enough cases from the  
23 Air Resources Board and the local air quality management  
24 districts. Not an unfamiliar complaint. And I think it's  
25 important that some system be developed.

1 I can give you one example from the vehicle code.  
2 We have a system of points. If you get so many points  
3 within three years, you lose your license.

4 Well, I suggest some sort of model can be  
5 developed to address this issue for repeat violators in  
6 the area of perhaps fix-it tickets, the previous speakers  
7 to be mentioned.

8 It's important for prosecutors to be very  
9 involved in this process, because there are a myriad of  
10 other remedies available that a prosecutor's office can  
11 use that are not available to CARB. Unfair businesses  
12 practices is one. And I think it's important that we  
13 honor those businesses that do comply with the law and  
14 severely punish the ones that don't.

15 We work in an arena of negligence, and we can  
16 take time on the first bite of the apple to explain the  
17 negligent conduct, but when it continues to happen, it's  
18 no longer negligence. And that's something that should be  
19 addressed.

20 The next thing I want to talk about are SEPs.

21 And, Kirk, thank you very much for explaining the  
22 SEP process.

23 I'm fully aware of it. And as a prosecutor, I  
24 engaged in many of those kinds of resolutions of very,  
25 very tough cases.

1           But one of the complaints I have heard and one of  
2 the complaints that I constantly ran into, especially from  
3 some of the environmental justice activists in the  
4 communities that I visited, is there is simply not enough  
5 money getting back to the members of the community which  
6 has been most severely impacted by the alleged violations.  
7 And while 25 percent is not a figure to be scoffed at, I  
8 think in my opinion you should explore ways of perhaps  
9 increasing this figure.

10           And while I'm very mindful and respectful of the  
11 Legislature infrastructure which has been developed to  
12 address how penalties get distributed or disbursed, there  
13 are a lot of other creative ways -- environmental trust  
14 funds are one -- whereby through a judicial settlement the  
15 money can be disbursed in such a manner so that it  
16 actually gets back and impacts the lives of the people who  
17 have suffered from the environmental harm. And I think  
18 some consideration should be given to that.

19           You should also consider developing more specific  
20 types of SEPs that are designed to alleviate environmental  
21 harm. One of the consistent complaints I've heard of  
22 around school areas that some of the diesel particulate  
23 matter that affects the schools can be addressed simply by  
24 planting more trees, which are designed to act as filters  
25 so to reduce diesel particulate matter that is available

1 in these areas.

2           The last thing I want to talk about is how do you  
3 go ahead and affect a resolution of a problem as large as  
4 the unclean air that many communities breathe? And I  
5 think it's a conversation that has to involve everyone.  
6 And the way you do that is by entering into collaborative  
7 efforts, not only with non-governmental entities, but also  
8 businesses themselves that are located within these  
9 communities so that they can form task forces designed to  
10 identify the specific harms their communities face. And  
11 working together everybody can solve the problem.

12           A great example of this is up in east Oakland.  
13 One of the activities up there, the organizations, is the  
14 Elmhurst Avenue Blight Committee. I recently attended one  
15 of their task force meetings and there were actually three  
16 businesses that were present during the meeting actively  
17 working with the concerned citizens to address the  
18 problems that their community faces.

19           It's not an easy thing to set out with the idea  
20 that we're going to solve all of the problems. But I  
21 would encourage the development of the system whereby all  
22 groups are brought to the table to engage in a  
23 conversation designed to achieve your enforcement  
24 objectives without necessarily hitting people over the  
25 head with a two-by-four. I'm very sensitive to some of

1 the comments that have been made here on behalf of  
2 industry, and conversations should not be ceased. It  
3 should be constantly engaged in with a view towards  
4 everybody working together to solve the environmental  
5 problems.

6 Thank you very much.

7 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: I  
8 would just like to just briefly, John, address the term  
9 you used here, "predictive policing issue."

10 And I just wanted to share with you and the  
11 audience, I know there is a lot of folks that are very  
12 interested in environmental justice, something that we're  
13 very concerned with here at the Air Resources Board. Just  
14 share some statistics what we've done in calendar year and  
15 historically on the environmental justice program.

16 This year, we've had 131 days of enforcement in  
17 environmental justice communities, which are the areas you  
18 mentioned, the port of Long Beach, Los Angeles, port of  
19 Oakland, Colton, and the other areas indicated. And  
20 roughly 6,000 inspections with about 800 violations.  
21 That's about a 14 percent noncompliance rate. That's  
22 where we do focus resources, as we do at the Mexico  
23 border, the previous speaker's covered. And program  
24 today, we have had roughly 50,000 inspections in  
25 environmental justice areas with over 6,000 violations.

1 So it is a critical part of our program. And we  
2 appreciate you pointing that out about the policing  
3 practices. Thank you.

4 MR. FENTIS: Thank you, Paul.

5 MS. MILLER: Thank you.

6 Next up is Sierra Martinez.

7 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.

12           MS. MILLER: Thank you.

13           Okay. We've had a little change in plans. We're  
14 not going to take a break at this point. We will address  
15 some of the questions that have come in from the webcast  
16 viewers. And I'm going to let Paul Jacobs and Mark Stover  
17 take over.

18           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
19 We've had quite an active response from the webcast. Mark  
20 and I are going to go through these and just briefly  
21 summarize them. We are not going to read the complete  
22 e-mail into the record in the interest of time.

23           The first one is from the Regional Center of  
24 Orange County and People First and Mr. Michael Bailey.  
25 And his concerns are basically making sure that we are out

1 enforcing the regulations to protect sensitive  
2 populations, and specifically disabled persons. And he  
3 again is a representative of that particular group.

4           The second comment for is Ernesto Nevarez. And  
5 he has issues and questions regarding Proposition 1B  
6 funding for port trucks, drayage trucks. And what we're  
7 going to do for Mr. Nevarez is to have the staff that  
8 administers the Proposition 1B program respond to him  
9 directly.

10           The third comment for is Andrea Wendt Olson. And  
11 she wants to know how can we report violators of one of  
12 our particular regulations dealing with composite wood.  
13 And there is a number of ways to do this. With any of our  
14 programs, as you observed in the presentation that Mr.  
15 Oliver gave, you can report violations through our web  
16 page, [www.arb.ca.gov](http://www.arb.ca.gov) or [calepa.ca.gov](http://calepa.ca.gov). You can do that  
17 anonymously or you can sign them.

18           You also use our 1-800 hotlines, 1-800-end-smog.  
19 Again, 1-800-end-smog. And for diesel violations 1-800 --  
20 1-866-6DIESEL. 1-866-6DIESEL.

21           And we also have a number of training programs  
22 that these folks can take to learn how to comply, because  
23 the second question is how do plans learn how to comply  
24 with our programs.

25           We also encourage industry to sign up for our

1 list serves to continue a dialogue with the CARB program,  
2 the Program staff, and Enforcement staff. And to talk  
3 directly to the section manager for enforcement and the  
4 staff if they want to report violations. And on the  
5 compliance side, report to the Program staff.

6 STATIONARY SOURCE ENFORCEMENT BRANCH CHIEF

7 STOVER: We have Steve Coven. He would like to know more  
8 about our Enforcement Program and how it will encourage  
9 and enforce people to comply with the VOC regulations.

10 Now we also have e-mail from Gina Grey of WSPA.

11 The question they have is when staff is planning on  
12 developing recommendations on revisions to the current  
13 program and providing them to the Board. And I'm not  
14 certain that we have a final time line for that, but I  
15 would expect it would be somewhere near the end of the  
16 year.

17 Another question Ms. Andrea Wendt Olson, from  
18 JELD-WEN, and she wants to know how we can report  
19 violations on the formaldehyde ATCM. And I think Paul  
20 just covered the methods that we have on our web pages and  
21 the complaint hotlines and also giving a call to the  
22 manager of the respective programs.

23 And another composite wood formaldehyde question  
24 wanting to know if CARB is planning enforcement visits to  
25 fabricators located in China. And a question concerning

1 the strict liability.

2           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: I  
3 have a group of them. I'm trying to group them here in  
4 the interest of time. These are all about environmental  
5 justice.

6           The first is from Ana Yun Lee, Master of Science,  
7 staff researcher scientist for Communities for a Better  
8 Environment in Oakland. And basically she wants to know  
9 what we can do to improve our enforcement activities with  
10 local agencies, local law enforcement, air districts, and  
11 the like. We do have a program where we've gone out and  
12 trained air districts on specific diesel air toxic control  
13 measures, such as idling. We've entered into an agreement  
14 with the San Joaquin Valley Air District to help us  
15 enforce. And we also have agreements with other air  
16 districts in the Bay Area pending and also at South Coast  
17 to help us with diesel enforcement overall and  
18 specifically idling, more broad-based in terms of diesel  
19 in the bay area.

20           And again, she wants to know how folks that do  
21 not have access to the Internet can inform us of  
22 violations.

23           First thing we would recommend is that if you do  
24 not have access to the Internet in their homes, go to a  
25 public library where they can obtain access to the

1 Internet and utilize library computers or to use those 800  
2 numbers that I had mentioned. Again, 1-800-end-smog or  
3 1-866-6DIESEL. Or they can also report violations to the  
4 local air district for the stationary sources and for  
5 smoking vehicles and the like.

6           The next one on the EJ commenters is John  
7 Schweizer, professional engineer from Berkeley,  
8 California. And he indicates the incidences of cancer in  
9 the east bay west Oakland is one cancer per 1,000  
10 exposures. And what are we doing to address this issue,  
11 and will our regulations get this under control?

12           Our Board adopted in the year 2000 a Diesel Risk  
13 Reduction Plan that required we reduce the public's  
14 exposure to diesel exhaust 75 percent by 2010 and 85  
15 percent by 2020. And we are on that path on that progress  
16 line to meet those goals. And with the  
17 implementation/enforcement of all the regulations that are  
18 covered under our Diesel Risk Reduction Program, we  
19 believe the exposure will be at acceptable levels.

20           But we do have considerable work to do in this  
21 area, and we again invite the communities to partner with  
22 us and helping us enforce those rules. The more of you in  
23 these communities that engage in enforcement by reporting  
24 violators -- you'll notice my e-mails are stamped "help us  
25 clean up the environment by reporting violations." It's

1 something we take very seriously. We need to know that.  
2 So those of you that are community members or those of you  
3 that are industry, let us know. And I will give the  
4 construction industry the gold star.

5           They get the gold metal for reporting violations  
6 within their industry. I thought the truck industry was  
7 number one in my 25 years of doing this; the construction  
8 industry is much more readily on top of reporting.  
9 They're in for competition. It's just amazing how many  
10 e-mails I get on that front, with the waste haulers a  
11 pretty close second.

12           The next commenter is Ms. Jessica Peters, Master  
13 of Public Health, Program Associate. And the name of  
14 organization is Regional Asthma Management and Prevention,  
15 Statewide Coordinator for Community Action to Fight  
16 Asthma. And she's from Oakland, California.

17           And a very lengthy e-mail pointing out the risk  
18 that Californians have in terms of 99 percent of  
19 Californians live in areas that fail to meet the state's  
20 health-based ozone and particulate matter standards. She  
21 goes on to say that one in seven Californians have been  
22 diagnosed with cancer. She goes on to say the children  
23 are the most vulnerable populations affected by air  
24 pollution and diesel exhaust is uniquely devastating in  
25 that their lungs are still developing.

1           And her comment is while the ARB is doing a good  
2 job working towards the emission statement of the  
3 enforcement program in addressing diesel emissions, more  
4 can be done. In particular, more can be done to address  
5 violations within environmental justice communities. So,  
6 again, we're going to continue to focus our efforts in the  
7 environmental justice communities.

8           The next commenter -- this is on rail and port  
9 diesel truck enforcement. And this comes from Dennis  
10 McClintock from American Pacific. And he wants to  
11 understand our claim to a level playing field and walk him  
12 through the enforcement process, such as how frequently do  
13 we conduct inspections? How are they reported to us? And  
14 how often do we report them publicly through reports and  
15 the like? What are the penalties per violation? What do  
16 we do with repeat offenders and the like?

17           Well, first of all, we publish an annual  
18 enforcement report that was addressed by Mr. Oliver in his  
19 presentation. There are copies available at our booth in  
20 the foyer. And when we do receive a complaint, we try to  
21 respond immediately, given our resources, but typically  
22 within a two-week to 30-day period. And the penalties are  
23 prescribed, as Mr. Oliver stated in his presentation, in  
24 the statute primarily and also may be adopted under our  
25 regulations. And if we do have repeat offenders, we

1 definitely assess maximum penalties and take those cases  
2 and extract penalties to the maximum extent we can as  
3 afforded under the applicable statute of regulations.

4 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
5 Do we want to continue or go to a break?

6 MS. MILLER: At this point, we're going to come  
7 back to the speakers in the house. And we'll take more  
8 webcast viewer questions and comments after the next ten  
9 speakers.

10 I'll read the names of the next ten -- or a few  
11 have dropped out. I'll read the next bunch that I've got.  
12 And we'll take you one by one.

13 First up is Debbie Watts followed by Robert  
14 Kinsella -- Tovah Ealey has withdrawn her comment card --  
15 Ms. Jacquee Castain, followed by Dennis Beck, Maxine  
16 Oliver-Benson, Charles Marlow, Randal Friedman, Bob Wyman,  
17 and finally Pamela Williams.

18 Start with Debbie Watts. Is Debbie here? Is  
19 Debbie not here? Okay.

20 Next is Robert Kinsella. Is Robert here? No.

21 Ms. Jacquee Castain?

22 This is going fast.

23 Dennis Beck. Is Dennis Beck here? Thank you,  
24 Dennis.

25 MR. BECK: Thank you. My name is Dennis Beck.

1 I'm Senior Staff Counsel with the California Energy  
2 Commission. And appreciate your having this enforcement  
3 workshop.

4           The Energy Commission has just in the last couple  
5 of years decided to get more serious about enforcement on  
6 the appliance regulations. And as you know, appliance  
7 efficiency goes a long way towards reducing greenhouse gas  
8 emissions. We unfortunately don't have the statutory and  
9 thus regulatory authority that CARB does. And for  
10 example, we don't have the ability to assess penalties or  
11 fines.

12           But as we explore our enforcement options, we're  
13 going to look to our sister agencies with the longer and  
14 stronger history of enforcement for models, lessons  
15 learned, and so forth. So we appreciate the opportunity  
16 to come here and see what works, see what doesn't, see  
17 what you guys are doing. And we'll probably be in touch  
18 with you in the next few months and years as we again  
19 explore our options and try to make our enforcement more  
20 vigorous.

21           Thank you.

22           MS. MILLER: Thank you.

23           Next up, Maxine Oliver-Benson. Thank you,  
24 Maxine.

25           MS. BENSON: Good afternoon. How are you?

1           My name is Maxine Oliver-Benson. I'm here from  
2 the Oakland Elmhurst Blight Committee. I'm here -- first  
3 of all, because this is my first time speaking with you.  
4 I've never been here to this Committee, and I've been in  
5 the district in which I live in now 16 years.

6           I've been working with Jacquee Castain ever since  
7 I've been in that community. And I've never seen anybody  
8 from this Committee, and I've never been invited to come  
9 to this Committee. You said you came to west Oakland.  
10 And I live in east Oakland, which is blocks and blocks  
11 away from west Oakland. And we are in an environmental  
12 justice community.

13           I can start my day with 18-wheelers for 24 blocks  
14 double-parked, idling. That's the air I still breathe  
15 first thing in the morning.

16           I have a recycle center two blocks from me which  
17 at one time was spewing out blood water -- that's what I  
18 call it, because that's what it looked like.

19           Up the street from me, I had a cryogenic lab.

20           So you can tell I live in a wonderful community.  
21 And I had no one from the city or EPA coming to help me to  
22 fight any of that, until I joined the Elmhurst Blight  
23 Committee. We, the community, got together and said we  
24 are either going to live here and be safe and breathe  
25 clean air or they're going to kill us here.

1           We are homeowners. We pay our taxes. And we are  
2 here because we feel we need the money to come to our  
3 community to help us to continue to fight, to help us to  
4 continue to survive, to help us to continue to live in a  
5 safe, clean community with some sort of clean air.

6           EPA San Francisco knows me, because every time I  
7 feel the level of air gets to where I can't stand the  
8 smell or I can't go outside, I dial them. And it's, "Oh,  
9 no, Ms. Benson. Not you again." "Yes, it's me again."  
10 You know, this is the only way I'm going to get some help.  
11 This is the only way I'm going to try to survive in my  
12 community.

13           We are here because we want to see the money come  
14 to help us and not just survive but, to live. To live.  
15 And you know, I mean, I would like to see -- you can put  
16 us on your committee, and we can come and help put the new  
17 laws in the community so we can get the money to help us  
18 live and survive in our community. We just want access  
19 and the support that we need and the money to help us to  
20 live.

21           Thank you.

22           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
23 Ms. Benson, I'd like to quickly respond.

24           Thank you for your wonderful comments. We do  
25 have staff assigned to the EJ project. As a matter of

1 fact, Ms. Shulz is here, and she'd be happy to talk to you  
2 in the back of the room or in the foyer.

3           We are involved in the toxic tours with the  
4 Department of Toxic Substances Control. I personally have  
5 met with Jacquee. I was down there for a workshop that  
6 was held on a Saturday back in May, and Michelle and  
7 others were actually on the tour. So we're very aware of  
8 the issues. We're working with your community to address  
9 these concerns.

10           And what we would like for you to do is to bring  
11 the message back to your community to please report these  
12 violations to those hotlines that I provided. And  
13 Michelle can provide additional information. And we will  
14 continue to look into these issues and take swift and  
15 corrective enforcement action, because these vehicles  
16 cannot idle more than five minutes under state law. And  
17 if there is some issues with some of these stationary  
18 sources that you point out, we'll work closely with the  
19 air district there and have those folks address those  
20 concerns.

21           But thank you for coming and providing the  
22 comments .

23           MS. BENSON: Okay.

24           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
25 And Ms. Shulz is back here. If you can raise your hand,

1 Michelle. She would be more than happy to tell you in  
2 great detail the work she's been doing. She's very  
3 dedicated to this activity. Thank you.

4 MS. BENSON: Yes, we met her. I don't remember  
5 seeing you, because I was on the tour as well as the  
6 Senator. Yes, we met her. And she is the reason that  
7 there are no longer idling, because she got on it and took  
8 care of it. But it took us getting with her and with DTSC  
9 and a couple of other people from DTSC, which had been  
10 taking us years to do.

11 So, yes, I applaud her, because she did -- she  
12 took care of it. Every once in a while now I see one or  
13 two. But she did her job.

14 And that's what we want. We want the money to  
15 come to help us to live in that community. Not just  
16 survive, but live. Thank you.

17 MS. MILLER: I understand Ms. Castain has come  
18 back into the room. Jacquee, are you prepared to speak?

19 MS. CASTAIN: Yes, I am. Thank you. Thank you  
20 for allowing us.

21 We didn't think we were going to make it, because  
22 we have to get back to Oakland before there's traffic.

23 But we came today because we have created -- at  
24 least I have to say the Department of Toxic Substance  
25 Control has been good enough to create a partnership with

1 our community. We have had Committee -- our Blight  
2 Committee has actually been in operation for 15 years  
3 since 1994 trying to clean up all the toxins in our  
4 community.

5           And I'm saying we used to have just a single  
6 redevelopment area in our neighborhood for about 30  
7 blocks. But in 19 -- I think '90 or '92 the city of  
8 Oakland came to us and asked us if we would allow them to  
9 expand the redevelopment area so that it would go all the  
10 way to the port of Oakland and the airport, because we're  
11 the closest to the airport. Unfortunately, when that  
12 happened and we did that, I cannot tell you the pollution.  
13 We found out from the environmental impact report that  
14 there were 100 toxic Brownsfield sites in our community,  
15 and you can imagine how that impacted us.

16           We learned during that time how many families had  
17 cancer and were around toxic sites that needed to be  
18 cleaned up. The largest one was a 60-and-a-half acre  
19 turban plant. It had been closed in 1985. When we  
20 learned that it had been closed that long, it was 1995.  
21 Families that live behind the plant honestly had so much  
22 cancer, everybody on that block. And I'm saying we found  
23 out there were all kinds of cancers.

24           We found out that there wasn't really anything we  
25 could do. We went to EPA in San Francisco, and

1 fortunately they did help us. But it took from 1995 to  
2 1997 to get that cleanup to start.

3 I'm saying now it is totally revitalized, and it  
4 is a green site. Thank God.

5 But I'm saying the other plants that we've had, I  
6 cannot tell you how many we're still working on. But at  
7 least we've gotten four cleaned up that we have done in  
8 the community. And I'm saying we've gotten some EPA help.

9 The city has done some things through public works.

10 But the biggest problems we have are the air  
11 quality issues. And that's where you need to come in.

12 And Michelle was there at our meeting in  
13 September when we had the 100-day meeting. We need to  
14 have more of that. The air quality right now, one of the  
15 issues that we're working on is on International

16 Boulevard. We have 30 blocks where there used to be  
17 service stations every block. And where there was a  
18 service station, there are now two and three auto repair  
19 shops. They are there illegally.

20 The fumes -- there are so many people in my block  
21 alone -- we have a service station on International  
22 Boulevard and 84th. There are three repair shops on that  
23 one corner where there was one 76 station. I have had  
24 four neighbors in a block-and-a-half on that street die --  
25 cancer, heart trouble. It shouldn't be. We shouldn't

1 have to live in that. We're paying taxes to live there.

2           Something needs to be done. And I'm really  
3 grateful to the Department of Toxic Substance Control for  
4 working and us. And I'll hope you'll do the same thing.  
5 We need it. Thank you.

6           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
7 Thank you, Ms. Castain.

8           Again Paul Jacobs, Chief of Mobile Source  
9 Enforcement.

10           Ms. Shulz is on the Air Resources Board staff,  
11 and we're partnering with DTSC, Department of Toxic  
12 Substances Control, on this issue. So we are very  
13 committed to these issues. And Michelle will continue to  
14 work diligently with these communities groups statewide to  
15 address the concerns.

16           MS. MILLER: Next up we have Charles Marlow,  
17 followed by Randal Friedman.

18           MR. MARLOW: Hello. My name is Charles Marlow  
19 from the city of Los Angeles.

20           The city has been 100 percent in compliance. But  
21 there are some questions that we just have not had answers  
22 for. I have a couple of them here. I don't know if you  
23 guys can answer them.

24           One is the records policy, you went to a workshop  
25 in Montebello, and it was said then there was going to be

1 some kind of policy to maintain records -- DPF records and  
2 they were going to be public.

3 I'm just going to call four questions, and then  
4 I'll sit down and take your questions when I'm in a seat.

5 P-trap cleaning machine certification, that also  
6 came up at the Montebello workshop, and I haven't seen  
7 anything about that on your website.

8 The third one is p-trap swapping within a fleet.  
9 There is a partial answer to that. It is up to the  
10 manufacturer that has to be approved by CARB, but what if  
11 the trap is not warrantee? The manufacturer doesn't care  
12 at that point. So what is CARB's role at that point?

13 And p-trap -- stocking p-traps for replacement.  
14 There is a four- to six-week wait for a replacement  
15 p-trap. And if we can stock p-traps, we can get our  
16 vehicles back on the road much sooner. We are having a  
17 lot of failures from our early p-traps.

18 And that's all.

19 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
20 Thank you.

21 I'll just briefly respond to these. And what I'd  
22 like to do is get your business card, and I'll have the  
23 staff with the Mobile Source Control Division that  
24 oversees this program, Ms. Shawn Daley and her team,  
25 respond in greater detail. But this is something I'm

1 responsible for enforcing and have pretty good working  
2 knowledge of it.

3           In terms of the cleaning process and maintaining  
4 records, there are some requirements for the maintenance  
5 to make sure that they are cleaned timely and maintained  
6 within factory specifications to retain the verification  
7 status and warrantee status of that particular particulate  
8 filter. There are specific requirements for the cleaning  
9 process and disposal of the ash that you remove is a toxic  
10 substance that cannot just be thrown in the trash. It has  
11 to be disposed of like waste oil and other hazardous  
12 substance.

13           In terms of swapping out filters within the  
14 fleet, we can talk about that in great detail. There are  
15 some general allowances to do that. There is a lot of  
16 caveats. We'll need to talk about that with the Mobile  
17 Source Control Division off line.

18           But really the critical issue there, it has to be  
19 the exact same device, the same exact substraight and same  
20 model number. You know, same level -- if it's catalyzed,  
21 same level of loading and the like.

22           And, likewise, in terms of the replacement and  
23 the back order issue, four to six weeks, we should talk  
24 about that, because I don't think that's the case that  
25 spans all the different manufacturers. You may have a

1 specific issue with one or two manufacturers, but we can  
2 talk about that.

3           So if you would kindly leave your card with  
4 Elizabeth and we will get back to you in great detail.  
5 Thank you.

6           MS. MILLER: Thank you, Paul.

7           Next up is Randal Friedman, followed by Bob  
8 Wyman, followed by Pamela Williams.

9           MR. FRIEDMAN: Good afternoon. Randal Friedman  
10 representing United States Navy.

11           I don't believe we've had the privilege of having  
12 ARB enforcement action against us yet. Okay, I'm told  
13 that we have.

14           But I think one of the things we all need to  
15 recognize -- and it's been pointed out about proliferation  
16 of new regulations that are coming on. And whereas most  
17 of our time has been spent with individual air districts,  
18 down the road we're going to be spending a great deal of  
19 time subject to your regulations.

20           We're certainly in the process now of hundreds of  
21 millions of dollars of expenditures for new diesel  
22 equipment, diesel retrofits throughout California. And  
23 it's a massive undertaking for an agency the size of ours.

24           We also need to recognize that our installations  
25 really are small cities spread throughout California.

1 Every day, we have hundreds of contractors that come onto  
2 the bases to do our work. That is only increasing now  
3 with the stimulus package with a great deal -- almost a  
4 billion dollars just from this last stimulus package --  
5 coming to military installations in California, all that  
6 work being done by contractors.

7           Our concern is -- and I must say that we I think  
8 just initially, largely agree with what we've heard here  
9 today and what we've seen in the proposals -- that in your  
10 enforcement actions -- and I'm certainly not going to in  
11 any way excuse violations. I mean, our goal from  
12 Washington is certainly to be 100 percent in compliance.  
13 And when there is a violation, Congress has waived  
14 sovereign immunity for air laws on military bases. We are  
15 liable for that.

16           But I would like to think like so much of what  
17 you do as an agency in terms of openness and transparency  
18 that that would also apply to your penalty and enforcement  
19 and that you would take into account all the factors that  
20 have been done that have been discussed today, and not a  
21 situation where a paperwork violation results in a  
22 proposal for a half million dollar settlement because we  
23 have a deep pocket or because of some people that have  
24 deep pockets or perceptions of that.

25           So I think -- again, this is not speaking from

1 experience. This is not speaking from past issues. It's  
2 looking forward in the great deal of work that we are  
3 going to be doing with ARB through these diesel  
4 regulations and all the other ones, as well as I think  
5 some concerns for potential liability from contractors who  
6 come on base to do our work.

7           And I know that has been a problem in the past  
8 with other regulatory agencies that have more prescriptive  
9 enforcement policies. I think there is some concern that  
10 as open as this enforcement policy is, that there could be  
11 some issues there down the road with what our contractors  
12 do or do not do.

13           So we would certainly like to work with you. We  
14 certainly strive for 100 percent compliance. But I think  
15 we all understand -- we have thousands of pieces of diesel  
16 equipment in the state. We have armies of contractors  
17 rebuilding a lot of our 60 or 70-year-old bases that are  
18 in desperate need of it. A lot of that, as I said, with  
19 stimulus funding that we receive.

20           And I would like to think that we can work with  
21 you down the road to make sure that whatever enforcement  
22 actions do occur are based on an open and transparent  
23 process that is equal to everyone. And thank you.

24           MS. MILLER: Next, we have Bob Wyman followed by  
25 Pamela Williams.

1 MR. WYMAN: Thank you very much.

2 I'm Bob Wyman with the law firm of Latham and  
3 Watkins, and I'm speaking today on behalf of the  
4 California Climate Coalition.

5 I think my personal first exposure to the Air  
6 Resources Board enforcement process goes back to 1981,  
7 which was actually a litigation matter. So it was sort of  
8 an extreme experience to start things out. And with  
9 perhaps that exception over the last 30 years I'd have to  
10 say that I think the ARB enforcement staff has done a  
11 pretty darn good job of exercising discretion in  
12 individual cases.

13 But I also think that over the last few years --  
14 and this will be true to an increasing degree -- that the  
15 number and complexity of regulations is getting to the  
16 point where a fresh look is definitely warranted. So I do  
17 want to applaud you all for doing this. I think it's  
18 really an exercise whose time has come.

19 The California Climate Coalition as part of the  
20 Scoping Plan testimony last year recommended that the  
21 Board direct staff to undertake a troubleshooting exercise  
22 to anticipate the types of noncompliant problems that are  
23 likely to occur as AB 32 and its complementary measures  
24 like the low carbon fuel standard and renewable portfolio  
25 standard start taking effect, because it's our belief that

1 due entirely to circumstances beyond the control of many  
2 of the regulated entities in this hybrid program that  
3 there will be a lot of noncompliance as some anticipated  
4 in the early years. So some of it will be confusion and a  
5 lack of education. Some of it will be that compliance  
6 assumes and depends on events which are outside the  
7 regulated entity's control.

8           I mean, the obvious illustrations that have been  
9 discussed are the absence of a transmission line for  
10 renewable power to meet the renewable portfolio standard.  
11 And you can think of any number of permitting conditions  
12 or permitting requirements that have to occur for folks to  
13 achieve their tonnage obligations under the AB 32 program.  
14 And surely the low-carbon fuel standard -- there is a huge  
15 assumption about the ability to site low-carbon  
16 alternative fuel supply facilities here in the state. So  
17 there are probably dozens of circumstances that are novel,  
18 unanticipated that will stymie even the best intended of  
19 those who are subject to these programs.

20           So I guess the first recommendation that we have  
21 made to your Board that we would make to you is that you  
22 start now anticipating what's likely to happen over the  
23 next few years and brainstorm what some of these  
24 situations might be through some kind of simulation. It  
25 won't be that hard. I think you have a lot of expertise

1 in the audience and on the web of people who are going to  
2 have to comply with these regulations and who have in the  
3 last few years complied with a whole new wave of  
4 regulations that have been complex that you've  
5 acknowledged.

6 I think as a result of that in a year or so as a  
7 lot of these regulations start to take effect, you'll  
8 probably identify a handful of the most likely scenarios  
9 which you can do an anticipatory strategy, perhaps address  
10 head on. So that's our first recommendation.

11 Our second recommendation is that even the best  
12 intentions are likely not to succeed fully. So we do  
13 think it's appropriate for you to consider a process you  
14 haven't had in the past, except in isolated cases, and  
15 that's something like a variance process or some kind of  
16 administrative hearing. I know you've had that in some  
17 limited circumstances, but I think the scope of that  
18 probably needs to be expanded.

19 And there is I think -- although evidence is  
20 mixed -- certainly there are lots of good examples in this  
21 state of where that process has enabled the administrative  
22 agency in a publicly transparent way to adjudicate  
23 disputes of fact to avoid what could otherwise fester and  
24 be a longer-term problem. It can be done efficiently.  
25 You can have class variances if there is a problem that's

1 common to a number of regulated entities. But I think  
2 it's appropriate.

3           And I would encourage you to do some  
4 brainstorming on that front as well, because no matter how  
5 well intended the regulatory design is, there will be  
6 unanticipated problems. And rather than start with some  
7 kind of polarizing enforcement debate, even if it leads to  
8 a wise and prudent exercise of your discretion, I think it  
9 would be better, given this unique period of time we have,  
10 at least during a transition and possibly thereafter to  
11 have a fairly robust variance process.

12           On the third issue, the last point I'll comment  
13 on, you know, at this point I do think it would be helpful  
14 to have more in writing than you have. Obviously, there  
15 are lots of cases one can envision where one would want  
16 you to have the discretion not to be tied to a penalty  
17 policy, because not every circumstance is a cookie cutter,  
18 and we recognize that.

19           On the other hand, I do think there are a lot of  
20 folks out there who have a lot at stake who are investing  
21 in this state and really want to know what the rules of  
22 the game will be. So somewhere in the middle, some  
23 additional written advise that defines and describes your  
24 penalty policy probably would be appropriate. And we  
25 certainly commit as a coalition over the next few weeks to

1 think about what that balance is. But we recognize that  
2 you have many times in the past exercised your discretion  
3 in a way that might have been difficult if you had a  
4 policy that defined all possible permutations. So some  
5 balance is probably appropriate here. But at least at  
6 this hearing, we err slightly on the side of more than  
7 what you currently have.

8           So we appreciate the opportunity to testify  
9 today. We look forward to participating in some  
10 trouble-shooting exercises with you. And thank you for  
11 the opportunity to speak.

12           MS. MILLER: Thank you very much.

13           Next up, we have Pamela Williams. And we'll take  
14 three speakers after that: Will Barrett, Sean Edgar, and  
15 Betty Plowman. And after Betty, we'll do a few more  
16 webcast questions.

17           So now we have Pamela Williams.

18           MS. WILLIAMS: I represent the California  
19 Retailers Association, which is a statewide trade  
20 association consisting of a broad array of mostly retail  
21 companies from department stores to major grocery chains,  
22 chain drug stores, and then what we call specialty retail,  
23 which are the mass merchandisers, the book stores, the  
24 jewelry stores, the auto stores, and the home improvements  
25 stores.

1           And a lot of the testimony today was from a  
2 number of different or organization that I think have one  
3 or two sets of regulations that they're subject to. And I  
4 know the Trucking Association said they had a couple, and  
5 Bill Davis said he had a couple.

6           I think we win the day at nine sets of  
7 regulations that the retail industry is required to deal  
8 with, just CARB. And there are not very many major retail  
9 companies that are headquartered in California anymore for  
10 a number of reasons. But for those that are operating  
11 nationally and internationally, one of the key factors  
12 that's important for them is certainty. They totally get  
13 that California does have different laws and different  
14 requirements. They're not trying to say they want a  
15 national solution for everything. But they do say, tell  
16 us what we need to do. Tell us how to do it. Tell us  
17 what our liability or exposure is in terms of any levels  
18 of violation.

19           So taking that into consideration, there's two  
20 areas that we'd like to urge you to make some changes.

21           And the first one is on the issue of certainty.  
22 There are some policies that we think are being enforced  
23 rather than the actual text of the regulations. And our  
24 example on this one is the composite wood ATCM. The regs  
25 itself that require retailers take reasonably prudent

1 precautions to ensure compliance. At the webinar and in  
2 subsequent e-mail conversations from my members where  
3 they've said, "Could you give us what does 'reasonably  
4 prudent precautions' mean? We want to be sure we're doing  
5 whatever it is you think we should be doing."

6           They were told to comply with the Cal/EPA due  
7 diligence policy dated October 2003 on the Cal/EPA  
8 website. And we did say, well, that requires all sorts of  
9 activities. There's six different points in that EPA  
10 compliance that businesses have to do -- we're recommended  
11 to do. And their response was -- these are my favorite  
12 two sentences in the row here -- "In answer to your  
13 concern about due diligence, the due diligence policy are  
14 recommendations only and are not required by law."

15           Fair enough.

16           "Should a violation occur, we will consider your  
17 efforts in these areas to determine culpability and the  
18 amount of financial penalty we will pursue."

19           Doesn't sound terribly consistent.

20           So we are concerned that that might be considered  
21 an underground regulation or in some way a policy that's  
22 being enforced rather than the actual language of the ATCM  
23 itself.

24           And secondarily, we would urge you to perhaps  
25 tier or rank some of the criteria on the initial

1 presentation -- staff presentation. There's the list of  
2 criteria that you take into effect when you're considering  
3 a penalty, and all of which are very good and very viable  
4 criteria by which to judge culpability. But we would  
5 suggest that they be ranked in terms of priority based on  
6 your goals which are emissions.

7           So in other words, if you have a paperwork  
8 violation and it's the first time, that's considered a  
9 less egregious penalty than somebody who's a repeat  
10 violator with enormous amounts of emissions that may be  
11 consistently being improperly released. There should be  
12 some balance we think in those criteria. And while we  
13 support the use of all of those criteria, they should be  
14 ranked in terms of importance. And we have not seen  
15 evidence that those have been considered. They are  
16 considered by your staff. I believe it's equally as  
17 important rather than the emissions factor should be the  
18 most important.

19           And, lastly, we would echo some of the other  
20 issues that were raised by the CERT coalition from  
21 previous testimony.

22           Thank you.

23           MS. MILLER: Thank you.

24           Next up we have Will Barrett, followed by Sean  
25 Edgar, followed by Betty Plowman.

1 MR. BARRETT: Good afternoon. My name is Will  
2 Barrett with America Lung Association of California.

3 We really appreciate the opportunity to provide  
4 comments today and appreciate the outreach efforts that  
5 have brought everyone here today. We feel that's  
6 important.

7 Just have five quick points I'd like to share.

8 We feel strong enforcement is the key to  
9 achieving the public health and improvements promised by  
10 CARB regulations. California has the worst air quality in  
11 the county. And dirty air causes public health  
12 emergencies every day. Robust consistent enforcement  
13 process is critical to promote immediate compliance and,  
14 where there are violations, to bring violators into  
15 compliance as quickly as possible. Reducing premature  
16 deaths, illnesses, and hospitalizations all depends on  
17 this strong procedure.

18 We're concerned about the strong enforcement  
19 through all the program areas, but we've been particularly  
20 concerned about the need to strengthen the Enforcement  
21 Program to ensure that the recently adopted diesel  
22 regulations are complied with. And we feel strong  
23 enforcement presence at the ports is really important due  
24 to the high levels of air toxics in the ports.

25 We feel that strong enforcement in environmental

1 justice areas should be a key goal of CARB's Enforcement  
2 Program. And we believe it's CARB's duty to protect  
3 public health. Particularly concerned about vulnerable  
4 communities already overburdened by smog and other air  
5 toxics.

6           The American Lung Association and other public  
7 health organizations strongly support CARB's efforts to  
8 maintain the fullest possible enforcement authority in  
9 discretion in order to deter violations, and we would  
10 oppose any weakening or changes to the program.

11           CARB currently considers many factors in  
12 enforcing the law, including the type of violations and  
13 the local harm, among other factors. But CARB's authority  
14 should not be watered down by requiring enforcement based  
15 on a level of violations. We're concerned this type of  
16 requirement leads to less monitoring and enforcement of  
17 certain categories of smaller violations that still have  
18 very real health and air quality impacts.

19           Finally, the administrative requirements issue,  
20 we believe that these can have very real impacts on  
21 pollution control efforts and cannot generally be  
22 considered minor. Administrative violations must not be  
23 overlooked based on the lack of environmental impact.

24           Following the administrative requirement is part  
25 of the program. And failure to comply with the

1 administrative requirements will make detection of  
2 emission violations much more difficult.

3           We plan on providing further written comments,  
4 but really appreciate the efforts for bringing us here  
5 today and taking our comments. Thank you.

6           MS. MILLER: Next up we have Sean Edgar, followed  
7 by Betty Plowman.

8           MR. EDGAR: Sean Edgar on behalf of the Clean  
9 Fleets Coalition, and I'll offer a few brief remarks.

10           I feel like a old-timer with my friend Chuck  
11 White over there, and he and I are sharing a few gray  
12 locks now-a-days.

13           I had the good fortunate to be on one of the  
14 first private carrier fleet rules, the solid waste  
15 collector vehicle rule that was passed by the Board in  
16 2003, so the flavor of my comments will be more from an  
17 implementation standpoint.

18           And really if I have punch line, it's we have  
19 tens of thousands of rules. We're in that range of rules  
20 that are currently under fleet rules. If the process is  
21 lacking on tens of thousands of vehicles, we're going to  
22 add on over a million vehicles, we want to make sure that  
23 we get it right. And so I'll offer a few constructive  
24 comments along the way.

25           The multiple associations that I work for -- have

1 had the privilege of working for the CRRC, the State Trash  
2 Haulers Association for a lot of years, and now I do a lot  
3 of work with the dump truckers and Moving and Storage  
4 Association and a lot of those vocational truck segments  
5 that are heading into new fleet rules.

6           And along the way, a lot of the green companies  
7 that have a lot of good heart intentions have  
8 unfortunately through a combination of factors not met all  
9 of the ARB's requirements. So some of those companies  
10 have taken lumps along the way and learned in the process  
11 doing that.

12           But one of the big items that I've noted and one  
13 of the larger roles that I've had over the last several  
14 years now is really getting quality information out to the  
15 regulated community as to what the requirements are. And  
16 so the Board had an item about three or four months ago  
17 relating to beyond the press releases. What we hear is we  
18 get a press release, "ARB passes new landmark rule," and  
19 then a few years later, unless we do a good job, we get  
20 another press release that industry segment X, company XYZ  
21 didn't unfortunately fully implement the rules.

22           So beyond the press release, I think the number  
23 one item that I'll address -- I have a few process  
24 recommendations and a few content recommendations -- but I  
25 guess my overarching comment when I go out and speak to

1 groups that are this size or larger -- and find myself in  
2 front of one of those groups probably every few weeks -- I  
3 get to go to exotic locations like Bakersfield as an  
4 example where I recently spoke to 35 small companies down  
5 there from the oil field operations, small trucking  
6 companies, some ag-related businesses. And I asked them  
7 well, gee, how many of you do you hear this about from the  
8 California Trucking Association or from Farm Bureau  
9 Federation? And guess what? Not a one out of 35  
10 companies belong to a statewide trade association.

11           My takeaway from that is trade associations have  
12 a role. Those of us that work for trade associations I  
13 think do a good job about trying to get out information  
14 about ARB's rule. But I think if I had to have a single  
15 weakest link in the current program, folks hear a lot  
16 about it, but they hear that there is a plan for -- as an  
17 example, diesel engines, but they may not get all the  
18 components, as Mr. Pfeifer was pointing out.

19           You got multiple -- even large companies, you  
20 have multiple rules, four, five, six. Some companies, you  
21 know, that level of rules and the information that's out  
22 there is just not adequate to help them. I know ARB has a  
23 website and the 866-DIESEL. I'll credit the Board on  
24 setting that up, and I think that's had some merit to it,  
25 although my recent experience where I e-mailed over a

1 question for one of my clients and was informed within a  
2 day or two by staff that, well, my question wasn't really  
3 legitimate because the clients has to ask their own  
4 question, or it was some process-related tripwire that  
5 didn't have anything to do with getting the information  
6 that was needed.

7           So as I move into process recommendations, I'll  
8 recommend that -- first thing is the 866 information,  
9 helpful. But I think anybody who asks a legitimate  
10 question should be treated the same and get quality  
11 information, regardless of whether it's an engineer for  
12 the city or the consultant for the city or whether it's a  
13 stakeholder as those who e-mail questions in from Oakland  
14 today. Everybody should be treated with the same type of  
15 information. Staff should be freely giving that out and  
16 references to the rule and here's the link to find it,  
17 because I think that that will be another way to dispel or  
18 make -- I should say -- ARB information services relevant  
19 as possible.

20           Second, on a process level, I've noticed that  
21 when I go out and people ask a lot of questions of me  
22 about enforcement. As often as I go out talking to folks  
23 about enforcement, because I've had over the last six  
24 years aggressively implementing fleet rules, I often tell  
25 them, who's going to enforce? Is it the air district? Is

1 it the air - I said, well -- my punch line usually is I  
2 tell them I don't know if it's the ARB or the CHP or the  
3 KGB or whoever else is going to go out and enforce rules.  
4 The point is you want to do your best to step up to meet  
5 the rule requirements.

6           And I bring that up, because going back to the  
7 process of once getting good information and outreach is  
8 key. And I talk about what the Board can do better. And  
9 I think associations do a fairly good job of -- once  
10 again, not a lot of people belong to the associations.

11           But one thing I notice in the way of just  
12 mechanically trying to get a fleet out of a mode where  
13 they're in citation mode, citations are extremely  
14 difficult to clear. And part of that is a paperwork  
15 thing. So staff will ask for a variety of paperwork  
16 items.

17           But it seems like there is -- oftentimes it's  
18 difficult to satisfy, and I think it burns Board staff  
19 resources and it burns industry resources. And what would  
20 be really helpful would be a check list of minimum  
21 requirements that need to be set into clear citation,  
22 because that's not something that's apparent. I think it  
23 depends on who you talk to.

24           Board staff and along the lines of moving into a  
25 couple content recommendations I have, there are

1 oftentimes things that are put out as Board policy and  
2 there are preferences and not necessarily consistent with  
3 the statute. One of that is the C-DAG requirement for  
4 step idle. So there's been some conversation recently  
5 about what is a matter of the statute and what's a matter  
6 of Board preference. I think we need to do a better job  
7 of distinguishing exactly which is which.

8           So getting back to clear citations, I know that  
9 Board staff has a preference. I think the stakeholders  
10 should have a laundry list/checklist when you want to  
11 clear a citation, here's two, three, five, things you  
12 need.

13           At the statewide truck and bus hearing in this  
14 auditorium at the end of last year, one of things that  
15 I'll reference Mr. Pfeifer again on the issue of the  
16 compliance audit if you will or compliance information  
17 comprehensive or courtesy -- I think it was called  
18 courtesy inspection. So I haven't yet seen a description  
19 of that. And I know Board members directed staff to come  
20 out with that, and so I would be very interested to  
21 participate and help form that, because I think -- I don't  
22 know if fix-it ticket. Mr. Davis was here talking about  
23 fix-it ticket. I don't know what Mr. Pfeifer's intent  
24 was. But there's definitely a need out there before a  
25 business I think that has an intent to want to do good

1 things gets really far down the road on multiple  
2 violations with multiple rules, I think there needs to be  
3 some sort of mechanism for those folks to have courtesy  
4 inspection as I think your Board intended.

5           And I'll just wrap up my content-related  
6 discussion by saying on compliance tools -- just going  
7 into kind of content where I think things could be  
8 improved -- under existing rules, we have a variety of,  
9 I'll say, stylistic or Board staff preferences once again  
10 just like a checklist for items to clear citation.

11           One other item I noticed is that staff on a  
12 regular basis changes what's the preferred format of  
13 records under any of the existing fleet rules. And I  
14 bring that to your attention because oftentimes the  
15 compliance spreadsheet templates that are provided on the  
16 web are either out of date or they require a magic  
17 password. They're protected somehow because staff sets  
18 them up to roll information from one sheet to the other.  
19 And it's not just an easy thing to be able to calculate or  
20 put records in and make calculations for compliance  
21 estimates. It's oftentimes a more difficult task.

22           So from a content standpoint, the Board staff do  
23 a job to rectify and make sure templates are current and  
24 make sure templates are more accessible and available.

25           So with that, I realize there are probably a few

1 items that we can collaborate on and possibly a little bit  
2 more apart from this format, more in the legislative  
3 format -- so as an example, snap idle. I don't know why  
4 snap idle wouldn't apply to every truck in the state. And  
5 I don't know why snap idle wouldn't be a thing.

6           I had the wonderful experience recently. My car  
7 tags -- I didn't get a renewal from the DMV. So I got  
8 a -- I managed to solicit a second renewal notice and I  
9 got that and paid the tags. I paid the penalty and sucked  
10 it up. And then I just got the tags couple weeks late.

11           But what I noticed is that the DMV, their process  
12 and now links with ARB's process is unfortunately a little  
13 bit broken. So as an example, we've got a provision now  
14 that allows -- with some good reasons and had some  
15 industry support for DMV to have registration hold  
16 authority over outstanding ARB violations, and that's  
17 okay. But for the process to lift that is not really  
18 apparent with ARB. So despite the number of people that I  
19 would try to contact either independent of ARB or with ARB  
20 staff to try to get the DMV to clear out citation, allow  
21 somebody to renew registration, that's not working right  
22 now. So that's something that we probably would want to  
23 fix.

24           And then relative to -- I'll just close out on a  
25 local playing field saying some of the items like I

1 mentioned possibility of -- I think it would require a  
2 change of statute. But every truck every year I don't  
3 know any reason why owner/operators would be exempted from  
4 a snap idle requirement. So that's something I think you  
5 would find support from industry just as across the board  
6 everybody having to do it.

7           And, of course, the outreach we talked about, but  
8 really there's got to be a better way. And what triggered  
9 my DMV renewal story is I've been seeing that nice message  
10 in there for the last 25 years why the DUI level keeps  
11 dropping and how many drinks can your body weight hold and  
12 all that stuff.

13           One thing I've never noticed is I don't know why  
14 it would be too difficult if contractors in the state of  
15 California at the beginning of the process -- like 279,000  
16 contractors got a note about three, four years ago that  
17 there was going to be off-road rule, but I don't know that  
18 same inventory -- Mr. Davis had some numbers about  
19 hundreds of thousands of contractors. I don't know in the  
20 same context of Contractors State Licensing Board why they  
21 couldn't be required as part of their renewal to send out  
22 now current information that there is a rule done and here  
23 are all the references. I don't know that they're doing  
24 that.

25           Same way with DMV. I don't know why any diesel

1 truck that's registered in the state of California  
2 wouldn't get a whole laundry list of things included in  
3 their little -- and I don't know that it's a huge cost  
4 item to do that. If they managed to put the DUI thing in  
5 there for the last 25 years, I think they can figure out  
6 how to put the biggest emissions rules ever known to  
7 mankind I think we could probably slip some of that  
8 information in an envelope in one or two or more  
9 languages.

10           And I guess, lastly, over the last six years of  
11 trying to implement one of the absolute -- and  
12 representing industry, we've come in and want  
13 accommodations. And Board staff oftentimes takes some of  
14 our accommodations and other times may not. And  
15 ultimately the Board members debate it out. But really  
16 the time and resources to comply is going to be the  
17 biggest single missing link if we're going to have success  
18 on this million truck program.

19           So I challenge everybody there's got to be some  
20 way beyond just kind of a command and control where we're  
21 going. And I appreciate the dialogue today and staff  
22 being attentive and listening to our gripes. But there's  
23 got to be really a way to get resources to the end users.  
24 The fleet owners are expected to pull off this extremely  
25 aggressive time line the Board has set out. Because if

1 you look at the dates, port drayage truck rules, truck and  
2 bus rule, off-road equipment rule all really getting  
3 launched in the next six to twelve months and they're  
4 going through 2020 and 2023. So just huge level of  
5 effort.

6           So I hope my comments -- having the experience of  
7 dealing of several tens of thousands of trucks want to  
8 continue to try to see what we can do to get as much done  
9 on getting this out there and certainly appreciate staff  
10 time. And I'll be around and participate in the process  
11 and answer any question you may have. Thank you.

12           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
13 Just briefly, Mr. Edgar, and all of you that have spoken  
14 today and all of those on the webcast, we are offering to  
15 have one-on-one meetings with industry groups. And you've  
16 raised some good issues here. And we would welcome all of  
17 you to ask for those meetings.

18           And just a quick point of information on the DMV  
19 contacts, we have for many years published in the DMV  
20 commercial drivers handbook and commercial owners handbook  
21 a section on ARB regulations and how to comply and the  
22 contact information. So that level of outreach is  
23 happening. But we encourage you to come in and meet with  
24 us and we could explore these other ideas. Thank you

25           MS. MILLER: Next up is Betty Plowman.

1 MS. PLOWMAN: My name is Betty Plowman. I'm with  
2 the California Dump Truck Owners Association.

3 Those of you who have been hit hard by pollution,  
4 let me tell you, diesel pollution we're doing our best to  
5 eliminate as probably 40 percent of the construction  
6 trucks are no longer in business within the last year. So  
7 you'll have better air out there.

8 Paul, thanks for everything. It's always been  
9 great to work with you.

10 I have been certified by the State of California  
11 to inspect diesel trucks. I've probably done over a  
12 thousand of them. One thing that has always bothered me  
13 was the fact that this was not tied into DMV registration,  
14 because I wrote down the words "expedite settlements." By  
15 the time you expedite a settlement, you've already failed,  
16 because you've had a failure within the system. And, to  
17 me, the periodic smoke inspection program should have  
18 never been a failure. It should have been tied into DMV  
19 from the beginning if you'd ever intended it to work.  
20 I don't even know if we'd be going through this on-road  
21 rule if that had been implemented. We would have gotten  
22 the dirtiest trucks off the road, or they wouldn't have  
23 gotten their registration.

24 Where this program has failed is its basically  
25 word-of-mouth. Now, we've had Paul and staff to our

1 meetings. But if there is not a way to enforce this, it's  
2 just not going to happen.

3           I paid my registration for my car last week and  
4 they said, "You need a smog check. You're not going to  
5 get your registration until you get your smog check."

6           Do you think I would have gone and done that just  
7 because I'm a nice person? No. They had something over  
8 my head, so I complied.

9           But instead of that, we go and fine these  
10 companies -- good companies, who, by the way, every one of  
11 their trucks has exceeded any limit, but they're fined  
12 thousands and thousands of dollars, some that Paul has  
13 even worked with are now bankrupt. And I would say a  
14 large part of that has been due to the excessive fines by  
15 this staff. So -- not this staff. I'm sorry. We have  
16 the rules. They're enforced. Bad enforcement policies.  
17 We could have done better. We didn't have to go that far.

18           And I say this, because California is supposed to  
19 be the leader. We're looked at as the leader in the  
20 nation with air quality. And yet we have states with a  
21 quarter of our population that require their trucks to be  
22 tested. Tied directly into registration. Why can these  
23 states do this and the state of California can't?

24           As I look at the citations and the penalties --  
25 and I know that's a great source of advertisement for why

1 you've got to do this, because look what's going to happen  
2 to you? And I see cities out there -- cities. Cities  
3 have legal counsel. They have a full staff telling them  
4 what the rule is, and they can't figure this out. You're  
5 fining cities; we know they're not in good shape now. If  
6 a city can't do it, how does Joe blow contractor figure it  
7 out? That's just being honest.

8           So I guess that's my spiel here. I think the  
9 outreach program -- I don't know about outreach. It just  
10 could have been made easy. It could have been simple. If  
11 we do it for 13 million cars, we can certainly do it for  
12 under a million trucks.

13           Thank you.

14           MS. MILLER: Thank you.

15           Next we're going to take questions that have come  
16 in via e-mail from the webcast viewers.

17           Following the webcast questions the first three  
18 people up will be Allan Lind, Chuck White, and John  
19 Paliwoda.

20           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
21 The first one we have from the Internet is from a Mie-Ling  
22 Shek. And what does ARB do to ensure that local  
23 governments understand the rules and assist ARB in  
24 spotting and deterring violators?

25           We have public hearings and meetings such as

1 this. We have the association meetings that we speak at  
2 routinely for these local entities, like the Association  
3 of California Cities and Counties, California Transit  
4 Association. And we have our training program that we've  
5 addressed in detail this afternoon.

6           And if there are specific issues related to how  
7 we do outreach for the public fleets, we would love to  
8 hear more on that front what we can improve on.

9           The next commenter is from Rick Grove at  
10 [paymentrecycling.com](http://paymentrecycling.com). He has questions and concerns about  
11 the off-road rule, the diesel rule, and the level playing  
12 field as stated by others this morning. He's saying  
13 they're seeing out-of-state contractors bring in  
14 noncompliant equipment and the like.

15           Again, we need to have those of you in the  
16 industries that are -- experience an unfair competition  
17 report these folks to us. We don't have adequate  
18 resources to police everyone, as the local police  
19 departments and highway patrol do not have adequate  
20 resources to go out and enforce everything as well. So we  
21 need the help of the industry and the community groups to  
22 help us police noncompliance. Report it to us and we will  
23 follow up.

24           What we're going to do is hold off on the web  
25 comments and have those of you that are present continue

1 to provide testimony, and then we'll cover these at the  
2 end.

3 MS. MILLER: Okay. Is Mr. Allan Lind in the  
4 audience? Allan Lind, followed by Chuck White. John  
5 Fooks has withdrawn his name. After Chuck, it will be  
6 John Paliwoda and then Tim Tutt.

7 MR. LIND: Thank you. I'm Allan Lind. I'm here  
8 on behalf of the California Council for Environmental and  
9 Economic Balance, or CCEEB.

10 I think some of you may know CCEEB is a nonprofit  
11 association of business and labor and public officials  
12 that seeks to achieve the state's environmental goals in a  
13 manner consistent with a sound economy.

14 I just had a couple of questions for you, perhaps  
15 a couple of suggestions.

16 The first question I have -- maybe you can tell  
17 me -- there was supposed to be an AB 233 report by January  
18 1st of 2009. And that report, for those of you in the  
19 audience, was referred to as the strategic plan for  
20 emission reductions due to diesel regulations. And I  
21 understand that there is a lot of priorities that the  
22 Board has to deal with, but maybe you can help us put it  
23 in context. The Board had the opportunity to review the  
24 plan twice, and both times they postponed it. And now  
25 it's October of 2009, and that strategic plan still hasn't

1 seemed to surface yet, as far as I can tell. Maybe I'm  
2 wrong.

3           And then I wanted to mention we have had a chance  
4 to review your annual enforcement report. And I think  
5 that is an excellent report for what it's intended to do.  
6 But I think we'd like to think that there's more that can  
7 be done with a document like that or another kind of a  
8 document, a strategic plan for enforcement. The annual  
9 report is very informative, but it's really all about  
10 statistics and it's statistics on gotchas. How many cases  
11 have been filed. How many citations have been issued.  
12 How much penalty assessment has been achieved. It doesn't  
13 get to the core mission of the Air Resources Board, which  
14 is how much emission reductions have you achieved.

15           So I'm curious whether or not a strategic  
16 enforcement plan could be cast in a way that takes -- that  
17 its goal is to try to figure out what's the best way to  
18 reduce emissions through our Enforcement Program, not just  
19 catch people with paper cuts and create violations in that  
20 manner.

21           It would be I think pretty interesting if we  
22 could measure achievements in terms of compliance, for  
23 example. There's really not a lot to be said in the  
24 enforcement report about how effective ARB has been in  
25 assisting parties who are subject to the regulations and

1 complying with it. I would consider that to be a really  
2 high standard of achievement for the Board is how  
3 effective the compliance programs are. And I'm sure  
4 they're probably effective, but it's not described or  
5 handled in the enforcement report very well.

6           And then, frankly, I'll get back to the earlier  
7 point, the notion that enforcement should be measured just  
8 possibly in terms of the cost effectiveness of your  
9 emission reduction efforts or the results from on  
10 enforcement. We can talk statistically about the  
11 thousands of cases that you filed. It's not really clear  
12 how much -- what emission reduction effectiveness is of  
13 that enforcement. So we don't know how it compares to the  
14 Carl Moyer program. I mean, gosh, if you're getting a ton  
15 for \$16,000 of enforcement activity, maybe that's a good  
16 thing. But there's no way of measuring that in your  
17 report.

18           And ultimately, I think fair and balanced  
19 enforcement really means the penalties are proportionate  
20 to the violations. It's difficult to find that in your  
21 overall enforcement report. And I think that would be  
22 very helpful to the public to get a sense that these  
23 penalties are, indeed, proportionate to the violation  
24 whenever they are issued.

25           I think the last point that I'd like to leave you

1 with is I think you've heard a lot of excellent comments  
2 from the audience here today. I think there's plenty of  
3 room for improvement for our increased transparency. And  
4 I think that supports the notion of having an ongoing  
5 effort here.

6           And I know that your opening remarks you  
7 suggested that we're not sure if there will be something  
8 that goes beyond that. We would encourage you to give  
9 serious consideration to establishing an ongoing working  
10 group or advisory group to think through how to improve  
11 the transparency of the process.

12           So that's I think the extent of our comments and  
13 be happy to answer any questions if you had any.

14           Thank you.

15           MS. MILLER: Thank you.

16           Next up we have Chuck White.

17           MR. WHITE: Thank you very much. I'm Chuck White  
18 with Waste Management.

19           I really don't have any formally prepared  
20 comments, but I just wanted to come and mention one area  
21 that we think would be helpful, and we think it would be  
22 good for you to move towards a strategic enforcement  
23 policy that's in written form. A key component would be  
24 with respect to the incentives for voluntary disclosure or  
25 self-reporting of violated conditions.

1 Cal/EPA has a recommended guidance for incentives  
2 for voluntary disclosure, but as some previous speaker  
3 mentioned, is not binding on ARB. And it's unclear from  
4 any of the documents you have or your website whether or  
5 not you give credence to this Cal/EPA policy. So it would  
6 be helpful if you would.

7 And I would -- this is, like, an old document.  
8 It's about six years old, October of 2003. Several other  
9 states, state of Washington, state of Oregon, U.S. EPA all  
10 have similar policies. In fact, U.S. EPA just recently  
11 amended their policy with respect to acquisitions. The  
12 waste industry is constantly going through divestiture and  
13 acquisitions.

14 And one of the issues with the U.S. EPA policy,  
15 as is true with Cal/EPA's policy, you have a 21-day window  
16 to report after discovery a violated condition in order  
17 for that policy to take effect.

18 With respect to acquisitions, the EPA recently  
19 amended their policy to allow a 45-day window. Even  
20 though we do due diligence every time we purchase a new  
21 site or acquisition or fleet, invariably we do find  
22 problems -- not all the time, but many times. So a little  
23 more flexibility for us to understand what the previous  
24 owner was doing with respect to their operation and be  
25 able to then disclose the violated conditions and

1 hopefully have some level of consideration under a  
2 self-reporting, self-disclosure policy which we would  
3 certainly encourage you to develop.

4           So the only other comment is proportionate to  
5 harm to air quality. I would certainly encourage some  
6 kind of policy that's proportionate to harm. Paperwork  
7 violations sometimes seem to have greater penalties  
8 associated with them, even though there may not be any  
9 direct harm. But if there is direct harm, certainly that  
10 is a different matter.

11           So, in summary, I encourage you to have a written  
12 policy as many other states have done, as Cal/EPA has  
13 done, as U.S. EPA has done, and particularly with respect  
14 to the issue of voluntary disclosure and self-reporting  
15 that I think that is key to encourage people to continue  
16 to operate and complete compliance. Waste Management does  
17 try to reach 100 percent compliance, although we know  
18 that's more of a goal than an actual fact. But we're  
19 working hard to achieve that goal.

20           Thank you very much.

21           MS. MILLER: Thank you.

22           Next up is John Paliwoda, followed by Tim Tutt,  
23 followed by Melissa Cohen.

24           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 --

22           MS. MILLER: He's on the list.

23           Next up is Tim Tutt.

24           MR. TUTT: Good afternoon. Thank you for the  
25 opportunity to speak.

1 I'm Tim Tutt. I represent the Sacramento  
2 Municipal Utility District. And I'm here to talk about  
3 perspective enforcement of regulations that are coming up  
4 and dealing with global climate change and now the RPS.

5 I would like to start out by saying SMUD is fully  
6 committed to achieving the states's goals in climate  
7 change and the RPS. We have a Board policy of reducing  
8 our GHG emissions to ten percent of our 1990 emissions by  
9 2050. And we are probably going to be one of the few  
10 utilities that meets the 20 percent RPS by 2010 and are  
11 fully committed to 32 percent RPS by 2020.

12 Now, what we would like to note for you is that  
13 GHG and RPS compliance and enforcement are going to be  
14 completely different animals. Greenhouse gases, while  
15 important to control over the long term and SMUD's  
16 committed to those controls, do not have the same  
17 day-to-day public health impacts as criteria pollutants  
18 and toxic air contaminants. For GHG and upcoming RPS  
19 regulations, compliance would likely be on an annual basis  
20 with three years' compliance period and banking  
21 considerations fundamentally different than the criteria  
22 pollutant framework. And, for example, that we contend  
23 that this would imply the daily penalties for violations.  
24 Considering each day of noncompliance as a separate  
25 violation does not make sense with such an annual limit or

1 cap.

2           We'd also like to point out that the forthcoming  
3 RPS and the GHG regulations are complicated and  
4 comprehensive news structures. They're going to require  
5 some initial flexibility for the first and second rounds.  
6 But it's still an evolving set of protocols to establish  
7 efficient long-term penalty and enforcement protocols.  
8 Don't put the enforcement in stone yet. Work on it for a  
9 couple of rounds, because it's going to need some  
10 flexibility.

11           The presentation mentioned the adoption of strict  
12 liability, and SMUD feels that that implies that it's  
13 important for cost reduction to identify and establish up  
14 front circumstances that should not result in a penalty,  
15 even if a violation of a limit occurs and include those  
16 circumstances where appropriate as predefined exemptions.  
17 For example, under the proposed SF-6 regulations, an  
18 exemption for a catastrophic equipment failure should be  
19 included to avoid the cost of enforcement cases when an  
20 entity suffers an unforeseeable release of SF-6 gas.  
21 There could be limits on such exemptions, but the need for  
22 those exemptions is real.

23           Utilities in general regard compliance with  
24 regulations as a must, but circumstances can occur that  
25 result in a technical but unavoidable violation. And CARB

1 should be aware of those and reflect those in their  
2 up-front regulations.

3           In addition, SMUD believes that well-defined  
4 settlement and variance procedures, as has been discussed  
5 many times here today, will greatly assist stakeholders in  
6 making sure compliance remains a most important but yet  
7 cost effective corporate strategy.

8           Another thing that's going to be different is  
9 there is independent verification of GHG emissions. This  
10 establishes perhaps an additional enforcement tool, but  
11 also raises the prospect of minor reporting violations  
12 occurring. So if SMUD believes that ARB should develop a  
13 threshold of, say, three percent of emissions below which  
14 any problem identified would need to be remedied by the  
15 reporter as soon as possible, perhaps as a 90-day period  
16 to remedy with an appeal process for that, and longer lead  
17 hardware changes might require differences in permitting  
18 and other things. But above that, financial penalties  
19 could be assessed if the problem was a result of  
20 negligence or willful disobedience to the rules.

21           Now I want to point out in the GHG sector,  
22 50 percent of the greenhouse gas emissions in the state  
23 are not going to be covered up until 2015. So, to us, it  
24 doesn't make sense to have penalties for small reporting  
25 violations when at least half of the emissions are not

1 even covered at the time.

2           One last thing. When inevitably a violation of  
3 enforcement action drags on and even ends up in court  
4 perhaps, SMUD feels this should not affect compliance by  
5 other entities in the structure. And basically what we  
6 mean by that is that the uncertainty about the -- that  
7 particular entity's emission signature GHG footprint  
8 shouldn't change the cap, shouldn't change what other  
9 entities have to do.

10           And that's all we have to say. Thank you.

11           MS. MILLER: Thank you.

12           Melissa Cohen. Is Melissa here?

13           Take you off the list. Okay. Thank you.

14           Next up we have Norman Plotkin, followed by Rick  
15 Bailer, followed by Todd Bloomstine.

16           Rick Bailer, are you here?

17           Todd Bloomstine?

18           Ray Biasotti. Is Ray here?

19           Todd Bloomstine.

20           MR. BLOOMSTINE: Hi. Todd Bloomstine. I  
21 represent the Southern California Contractors Association.  
22 I work with Bill Davis closely in Sacramento.

23           First, I'd like to thank you for the report that  
24 you prepared. As someone that doesn't do this every day,  
25 I greatly appreciate the alphabet soup of acronyms that

1 you explained. That was most helpful to me as somebody  
2 that doesn't do this every day.

3           And then I have another admission. This only my  
4 second workshop that I've attended. My first one was with  
5 the AB 2X8 bill that was passed earlier this year by the  
6 Legislature that gave some relief to contractors for  
7 reduced activity. I appreciate the Board's efforts in  
8 helping implement and implementing that bill.

9           Actually have kind of a cautionary tail to share  
10 with you. About ten years ago, the Department of  
11 Insurance and the Insurance Commissioner got into a lot of  
12 trouble and caused a scandal down here at the Capitol  
13 dealing with the use of revenue derived from settlement  
14 funds. Some of these funds were being funneled to various  
15 groups and caused a huge eruption at the Capitol, and it  
16 ultimately resulted in the resignation of our Insurance  
17 Commissioner. I think with proper transparency that could  
18 have been completely avoided.

19           So I want to encourage the ARB when you get these  
20 settled funds to be as transparent as possible.

21           As you said, Mr. Oliver, earlier, as regulations  
22 come on, the books get bigger. Regulations aren't  
23 leaving. I think it's a safe assumption that your  
24 penalties within the Air Pollution Control Fund will also  
25 increase. And I think it's helpful to have complete

1 transparency dealing with these funds. That's my point.

2 Want to thank you for your time.

3 CHAIRPERSON NICHOLS: Thank you.

4 Next up, Ray Biasotti.

5 MR. BIASOTTI: Hi. I'm Ray Biasotti,  
6 owner/operator of a small business called T&D Transport  
7 Diesel Smoke Testing. I'm here representing the little  
8 guy. Actually, about 210 of them. I have over 200  
9 clients. And my area of concern with this group is the  
10 periodic smoke inspection program. It is involved. It's  
11 all to do with the trucking industry. I have had a lot of  
12 dealings with the California Trucking Association and some  
13 of the other people have already spoken today. I just  
14 wanted to make a couple of comments and a couple of  
15 recommendations.

16 First, a couple of comments. And that is some  
17 good news. A speaker before me alluded to how important  
18 it was to stress the positive and maybe you to broadcast  
19 how successful the program is in concrete numbers.

20 I can testify here today that in the -- I've done  
21 almost 11,000 smoke tests in my ten years of business.  
22 That's a lot of smoke tests. And when I first started the  
23 business in 1999, about one in ten to 12 vehicles failed  
24 the periodic smoke inspection program. That's a fairly  
25 high failure rate. Luckily, the system is so -- I don't

1 want to say forgiving -- but so lenient it lets people  
2 correct these things and get them corrected and have  
3 re-tests within 45 days. And people get them fixed, and I  
4 go back and test them and they're fine.

5           In the last year, I did a computer little  
6 statistical report a couple days ago. I only fail about  
7 one in 50 to 75 vehicles. That's a significant  
8 improvement in ten years. Mostly due to the fact that a  
9 lot of the old equipment is off the road. Newer equipment  
10 has high tech systems on it that don't let the trucks  
11 smoke. Plus, the fear of God is out there to some extent.  
12 But that's my main concern is the outreach that a lot of  
13 other people have talked about.

14           Betty from the California Dump Truck Drivers  
15 Association mentioned the whole thing about being either  
16 tied to something like the DMV registration or something  
17 that incentivizes the fleet owners to get it done.

18           I still get the comment in some of the cold calls  
19 I make weekly, "Why should I do that? Nobody ever told me  
20 I had to do it." Nobody is going out looking to want to  
21 do something that they think they can get away with not  
22 doing.

23           And I think a greater outreach program in the way  
24 of mail communication, whatever -- like somebody said, we  
25 get that little thing about the drunk driving statistics

1 on your renewing your vehicle license, something that just  
2 goes to fleet owners of two or more trucks, which is what  
3 the law requires to be smoke tested, would be a huge  
4 increase in compliance.

5           In my area of coverage, which is the greater bay  
6 area and a lot of northern California, my somewhat  
7 educated guess is that there is about 60 percent  
8 compliance. That's 40 percent that's not compliant, and  
9 that translates to tens of thousands of trucks that are  
10 out there that have never been tested.

11           And my average client size is between five and 15  
12 vehicles. So they're pretty small. I have big customers  
13 that have 100-plus trucks. I do some really big companies  
14 that I have to have millions of dollars worth of insurance  
15 to do on everything, and they almost are 100 percent  
16 passing all the time.

17           But there are a lot out there who claim they  
18 don't know anything about it, and I'm just saying it's an  
19 information thing. Increase compliance by a whole bunch.

20           Another thing that might be thought about. The  
21 fleet owners here I'm sure are familiar with the biannual  
22 inspection terminals, the BITS program. Right now, most  
23 CHP BITS inspectors claim they don't know -- and I've  
24 gotten this from customers -- too much about the smoke  
25 program, the regulations that are involved in the PSIP, so

1 they go in and do their BITS inspection on safety items.  
2 But when a few of clients have said what about my smoke  
3 test that I paid money to have done, that's not our  
4 concern; that's Air Resources Board. It seems like it  
5 would be fairly simple to tie that in. I know it's two  
6 different bureaucracies and somewhat complicated, but it  
7 wouldn't be that hard for them to do.

8           Let me see if I had just a couple other thing --  
9 oh, there are a couple other things that might help, too.  
10 And that's to close a couple loopholes that have existed  
11 for over ten years now. That was originally in the law  
12 that owner/operators of one vehicle do not have -- they're  
13 exempt from the PSIP program. They're still subject to  
14 the random testing at scales and things like that or  
15 visits from ARB.

16           And the other thing is that there's somebody else  
17 that's exempt -- oh, privately owned diesel vehicles.

18 Somebody mentioned all diesel trucks should be smoke  
19 tested. I totally agree with that. But there's lots and  
20 lots of diesel vehicles, motorhomes, pickup trucks that  
21 you can go out on this street and see guys go by with  
22 those pumped up diesel trucks -- they only have one, but  
23 they love it being this high off the ground and pours out  
24 of a ton of smoke and they take off and it makes a lot of  
25 noise; they don't have to get their truck tested. They

1 don't have to do a smog test. That's a loophole. That  
2 and the owner/operator that I think might help you get a  
3 higher compliance ratio.

4           Oh, I had one specific question: Recordkeeping.  
5 Most of my clients I tell to keep their records for five  
6 years. But when I went to get recertified at the C-DEX  
7 school just recently, they mentioned two years. And I'm  
8 not sure. I guess, Paul, it is two years legally they  
9 have to keep it or --

10           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
11 That is correct. Title 13, Section 2190.

12           MR. BIASOTTI: Thank you so much for letting me  
13 speak.

14           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: I  
15 just wanted to put on the record -- this issue keeps  
16 coming up about why don't we have DMV enforcing this  
17 periodic smoke inspection program? Why isn't it  
18 structured like smog check?

19           First of all, there is a new law going into  
20 effect as of January 1 for 14,000 and smaller -- 14,000  
21 gross vehicle weight and lower they will be subject to the  
22 smog check programs and have to go through and get a  
23 visual inspection. They will not go through SAE test  
24 procedure.

25           The main reason this program is not covered by

1 the DMV, we don't have statutory authority for that. So  
2 it's up to the Legislature to hand us that authority and  
3 we can structure it in that way. And this is a program,  
4 folks, that's been on the books since 1990 and Senate bill  
5 2330, and we've brought those regulations to the Board  
6 when Mr. Dunlap was the Chairman. And those were amended  
7 in 1997 and amended again in 2004 -- sorry -- 2006.

8           So we've gone through a number of iterations.  
9 We've had extensive outreach. Compliance rate today is  
10 well in excess of 95 percent. And we are getting the 22  
11 tons per day of emission reduction, about 95 percent of  
12 that. So it's an effective program. But when we hear  
13 people don't know about it, we are perplexed. It's been  
14 on the books since 1990. We've had extensive, extensive  
15 outreach, more so than with any other program.

16           Thank you.

17           MS. MILLER: Next up, Cynthia Babich, followed by  
18 Kit Enger, followed by Jim Mattesich.

19           MS. BABICH: Good afternoon. My name is Cynthia  
20 Babich. I'm the founder and director of Del Amo Action  
21 Committee. I'm also the Los Angeles Environmental Justice  
22 Network coordinator.

23           My community lies in the unincorporated L.A.  
24 County strip, or the newly named Harbor Gateway in Los  
25 Angeles. We're surrounded by two major freeways, the

1 Exxon Mobil refinery, Dow chemicals plastic manufacturer,  
2 two superfund sites -- one was the World War II synthetic  
3 rubber factory. The other was the west coast's largest  
4 manufacturer of DDT.

5           Our groundwater has pure Benzene floating on top  
6 of it, and as it rises up, it smears in the soil layers  
7 between the aquifers, and we have hundreds of small  
8 permitted facilities.

9           The reason that I'm here -- and my story begins  
10 in 1994 when I moved into my community, which I thought I  
11 chose very carefully, looked for parking and make sure you  
12 could have animals and all those things that are  
13 important, I forgot to look for toxic waste. And  
14 consequently found out I was living on pure DDT 976,000  
15 parts per million, after for many years I was assured by  
16 the California EPA and the U.S. EPA that extensive testing  
17 had been done in my area and, "good news, Ms. Babich,  
18 nothing was found." I persisted as the bloody noses came  
19 and was told again that my area had been tested and good  
20 news, nothing was found. Then the vomiting came and was  
21 again told there was no problem.

22           And it was through activism and getting together  
23 with my neighbors that we pushed the agencies to actually  
24 really come in there and do some state-of-the-art testing,  
25 and that's when they discovered that the DDT manufacturer

1 had just dumped their pure technical grade DDT in my  
2 backyard. That was really a wake-up call to me that  
3 sometimes community people become complacent and think  
4 that because we pay taxes and we follow the laws ourselves  
5 that other people are doing the same and that the agencies  
6 have a good handle on protecting public health. I think  
7 in environmental justice communities we understand that  
8 it's not just a burden that you bear, it's a burden we  
9 also bear.

10           So I really wanted to tell you my story, because  
11 that's why I come here and I'm engaged. I'm not a  
12 lobbyist. I'm not paid to come here.

13           I can't have children now because of the  
14 contamination that I faced. To be honest with you, I  
15 wasn't planning on having them, but it's different when  
16 you have that choice, rather than the choice being taken  
17 from you.

18           So specifically I wanted to talk about -- you  
19 talked about the SEP funds and those things. And you  
20 talked about legislation and the laws not allowing you to  
21 have as much latitude as maybe you'd like to have with  
22 these penalty moneys.

23           And I'd like to say three years ago I spent a  
24 great deal of my time away from my family. I am a  
25 caregiver for my handicapped mother as well. When we

1 leave our families, it has to be something fairly  
2 important.

3           And we pushed very hard for legislation that  
4 would not only set minimum penalties, but would also  
5 ensure that penalties were set high enough to deter  
6 violations and illegal activities impacting public health,  
7 our health. We propose penalties be tripled in  
8 environmental justice areas, similar to the double fines  
9 in construction zones.

10           We pushed for assessed penalties to be shared  
11 with the communities being impacted, especially penalties  
12 given due to harm to human health, our health.

13           Money could be used for nebulizers to reduce  
14 asthma deaths or asthma medications home evaluations and  
15 trigger asthma assessments that can be taught to community  
16 people. This attempt was thwarted by dozens of high-paid  
17 industry lobbyists. This leaves the ball in your hands to  
18 explore other methods that put resources into our  
19 over-burdened communities. Be it increased SEP funds or  
20 some of the things that I think Mr. Fentis was talking  
21 about. He seems to have a wealth of knowledge in that  
22 area on maybe how we can get together and figure out how  
23 some of the communities can be more protected.

24           When I go and do work in my community, you know,  
25 a lot of times people think, oh, community people just

1 want a free ride. They want this and that. My people  
2 come to me and ask me if there is a way that we can get  
3 \$100 so they can have a nebulizer so they don't have to  
4 spend seven hours at the county hospital dealing with  
5 asthma issues as they arise with their children.

6           They don't ask me to get rid of the refinery.  
7 They're just trying to handle a very dramatic situation  
8 the best way they know how. I think \$100 is pretty  
9 reasonable.

10           I heard about some of the training opportunities  
11 that you're offering to a lot of the businesses. We, too,  
12 seek training opportunities from ARB which would allow us  
13 to be better partners and help us achieve our common  
14 environmental justice goals. Trainings could include  
15 smoke school. I attended a partial glimpse of one at AQMD  
16 in South Coast there, and it was fabulous. I was pretty  
17 darn good at it, and the next thing you know, no more  
18 smoke school for us. And the complaint at the time was  
19 you guys are seeing Salton steam come out, and we were  
20 like, show us what the difference is. Sure enough, there  
21 is a big difference between Salton steam and a number five  
22 Ringelmann.

23           So another thing that a lot of us would like to  
24 see is some help with the diesel idling enforcement. We  
25 want to know how to go out and count trucks, too. When a

1 community like Maywood passes an ordinance for truck  
2 idling and they go right across the street to Vernon and  
3 do the same idling, how do we kind of bridge that gap?  
4 You know, how do people that really don't have the  
5 resources actually be able to partner with you to do  
6 something better?

7           We seek real pollution reductions in our  
8 communities. The ways we have gone about regulating air  
9 pollution burdens in our communities are not as effective  
10 as they need to be. We are engaging with the agency's  
11 collaborative efforts to work on focused issues identified  
12 by the communities being impacted themselves.

13           I know you've heard a lot about DTSC's work. As  
14 the L.A. EJ network coordinator, I'm proud to say I like  
15 to lead the community's efforts with the U.S. EPA and  
16 Cal/EPA collaborations which we've asked them to please  
17 use a more coordinated effort in our community. And I'd  
18 like to say they're doing a fabulous job.

19           We would also want to engage with ARB on a deeper  
20 level. We're talking about the partnerships that we're  
21 forming. We do have some of ARB agency members that are  
22 formed there, but we also are forming work groups. I  
23 think the San Bernardino tour that just happened, they  
24 formed a task team, which is probably going to be pretty  
25 fabulous since Penny Newman is involved in that.

1           And again we want to achieve these real  
2 environmental justice measures. And the regulations are  
3 only going to be as good as the enforcement measures.

4           So I'm going to leave my card here. And I really  
5 encourage you guys as you've heard from many people to  
6 really utilize the eyes and ears that are free in our  
7 communities, because this is what we're going to continue  
8 to focus on. And I think that we can go back and forth,  
9 but if you get people into a room together, I think we can  
10 find common ground and really find some solutions, because  
11 we're certainly not going to go away. We're just going to  
12 get more effective.

13           MS. MILLER: Thank you.

14           Before we proceed to the next, Mr. Enger, I'd  
15 like to know if there are any other speakers that plan on  
16 speaking, we're coming to the end of our list. So if  
17 anyone else wants to speak, please get on the list now.

18           MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
19 Looks one that was just handed to me. I'll pass it down  
20 to you.

21           MS. MILLER: Go ahead, Mr. Enger.

22           MR. ENGER: Hi. My name is Kit Enger, and I'm  
23 the president of the Sand Car Builders of California. You  
24 guys might know them as dune buggies.

25           Not a lobbyist. Not a public speaker, as you'll

1 soon learn. I'm not a lawyer or anything else. I just  
2 represent a very small coalition of about 38 businesses  
3 that are family owned.

4 I have a little story to tell you, and then I  
5 have some questions to ask. I don't think the questions  
6 are pertinent without the story.

7 We've already settled with ARB, our little  
8 coalition. And so I'm speaking to you from the other side  
9 of this transaction. Okay.

10 In September of '06, we were approached by ARB  
11 certification folks that we needed to get our industry  
12 compliant. We did that in one year. We were finished by  
13 December '07.

14 In December '07, the nice people at the  
15 certification department, who are very helpful and got us  
16 through that process licitly split and answered ever  
17 question we needed, we were then turned over to the  
18 enforcement department. Working with the enforcement  
19 department was a very different experience than was  
20 working with certification.

21 I kind of took the responsibility for our  
22 association to organize us, put us all together, create  
23 standards, do all the things that a coalition does. And I  
24 kind of rose to the top as being the representative, the  
25 president. Okay.

1 Well, right then and there, as soon as the  
2 certification part was over and was introduced to  
3 enforcement, began one year of threats and intimidation by  
4 ARB staff. One year. I was told that we were liable for  
5 \$3.6 million of fines for building sand car buggies, which  
6 I had no idea that we were out of compliance until they  
7 approached us in the beginning. And they didn't come to  
8 me with any type of worksheet or number system describing  
9 how they came to that \$3.6 million. They just had it out  
10 of the air. Okay.

11 After some time of being goaded and intimidated  
12 with such statements as, "If you guys don't get on with  
13 this settlement, it doesn't matter to us if you go out of  
14 business, change your name, move to another state, or die.  
15 We will find you and attach your assets." Okay. I was  
16 told that twice, not just once. Okay. Where I come from,  
17 we don't call that working with the guy. Okay. We call  
18 that a shake-down.

19 We finally settled at \$600,000. I don't know  
20 where that number came from either, 600 grand for 38  
21 little businesses that had a real pollution impact of your  
22 car going down the street. Okay. Not much more than  
23 that.

24 We jumped at the fact that we were out of  
25 compliance. We became compliant immediately. We did it

1 very quickly according to the people at certification.

2           And so we're at this point where I want to know a  
3 couple of things -- okay -- about the penalties and the  
4 way we were handled.

5           Number one, I want to know why I'm penalized for  
6 something for building an engine that somebody else  
7 installs and they're penalized, too, double. Double the  
8 penalties. I want to know why the playing field still  
9 isn't level. That any customer can go down the street to  
10 the Ford, Chevy, or Chrysler dealer and buy the exact same  
11 product I sell, but I can't sell them to them without  
12 having another 1500, \$2,000 worth of stuff on it. There  
13 isn't a level playing field as far as I'm concerned.

14           And I wonder why the checks that we have to make  
15 out to pay our penalties are made out to the same guy that  
16 shook us down. Okay. And to me, I'm confused. Okay.  
17 I'm a little confused about the system here. And that's  
18 why I just couldn't wait to show up today and talk to you  
19 about our experiences. Okay. To my knowledge, nobody  
20 else has been treated like us.

21           And then I find out from CERT, this little  
22 organization that we're putting together now, that the law  
23 we're being penalized for in 2007 wasn't even a law until  
24 August 15th, 2007. Okay. What's with that? Just want to  
25 know.

1           And during this whole process of getting together  
2 and our little sand car coalition, we went to talk to our  
3 State Senator, Senator Hollingsworth. And he sat there  
4 across the table from us after we got an appointment and  
5 he said -- we told him the story. They wanted 600k from  
6 38 little small family mom and pop businesses. He said,  
7 "Pay them. Pay them, they'll go away." Okay. They have  
8 no legislative oversight. "I can't touch them. We can't  
9 do a damn thing to them. Pay them." Okay.

10           From my side of the aisle, I'm not digging this.  
11 Okay. This is not the way my government is supposed to  
12 operate. This heavy-handed, overreaching, overbearing  
13 type of negotiations. And, believe me, it wasn't  
14 negotiations. There was no worksheet. We went back and  
15 forth and back and forth and back and forth until we  
16 finally -- they just said, "Hey, it's 600 grand. Take it  
17 or leave it. If you leave it, you're going to be  
18 talking with the attorney general and they're going to  
19 shut you down, and that's that." Okay. Many times I was  
20 threatened with the attorney general. What's with that?  
21 I wonder why does my State Senator say he can't influence  
22 what goes on here?

23           I'd like to request that my settlement be  
24 reopened and that we re-discuss what was levied upon us.

25           And I'd also like to make a statement that during

1 this time almost nothing was put in writing by CARB,  
2 almost nothing by the enforcement people.

3           So that's the end of my story. And I appreciate  
4 your time today.

5           MS. MILLER: Thank you.

6           Next up is Jim Mattesich, followed by Robina  
7 Suwol, Mitzi Shpak, and John Dunlap.

8           MR. MATTESICH: Jim Mattesich with the law firm  
9 of Greenberg Traurig.

10           Given the lateness of the hour, I'll try to be  
11 brief.

12           Also because I don't have a blackboard or  
13 something to write on, I'll ask you to use the face of the  
14 clock with me for a second.

15           In our experience of working through these  
16 matters over the years, if you will, if we use 9 to 3 for  
17 an arc of sort of the typical potential cases that you  
18 handle and the opening -- if the 9:00 is when you open  
19 your file and 3:00 is when a case that got referred for  
20 civil litigation actually went to trial, we can talk about  
21 intervening points, but I wanted to make sure I  
22 understood -- and I think we agree with it from Kirk's  
23 comment earlier today -- that it's your preference to try  
24 to resolve these matters with Air Resources Board rather  
25 than them get ultimately referred to the attorney general

1 for litigation. If we use 12 noon as sort of the referral  
2 point, it takes mutual agreement, however, as Kirk pointed  
3 out, to try to resolve it between 9 and noon with you all.  
4 And that sometimes takes longer than you would like and  
5 perhaps even our clients would like. But never the less,  
6 it also means that sometimes settlements don't happen and  
7 you do refer these cases to the attorney general's office.

8           There's a concept in civil litigation that you're  
9 all aware of that rather than having to get all the way to  
10 3:00 and the full trial on the merits in civil litigation,  
11 there is alternative dispute resolution on that side of  
12 the clock face where at perhaps near the end at 2:00 there  
13 would be a mandatory settlement conference where you would  
14 have a sitting judge work with the parties to try to  
15 assess the merits on both sides and figure out with the  
16 parties whether or not something could be resolved without  
17 having to expend the money and the time to fully try the  
18 case.

19           Earlier on than that, the parties could  
20 voluntarily agree to have a mediator, say, at 2:00, try to  
21 resolve the case by listening to both sides, looking at  
22 the law, looking at the facts that each side would  
23 present, but hopefully getting the parties to work  
24 together to resolve it.

25           Parties in that process, whether it's with a

1 sitting judge at a mandatory settlement conference or at a  
2 mediation earlier on oftentimes get from that third party  
3 a better view of the strengths and weaknesses of their  
4 case and come to an understanding and ultimately a  
5 resolution, because there is a third party in the room.

6 I would suggest to you that you should import the  
7 possibility of having a mediator in your process early on  
8 if the case warrants it. And realistically it's going to  
9 be one of the large cases, not a small one, it's probably  
10 going to be one where there is a dispute about the facts  
11 or the law. But each side would benefit, in my view, in  
12 having a third party in the room, mediator, qualified,  
13 retired judge or not, but somebody that each side would  
14 hopefully agree upon, choose, respect, listen to views,  
15 and perhaps via that process, which exists past 12:00,  
16 used before can bring you to an earlier resolution, less  
17 expensive for you, for our clients, and in a way brings  
18 you to the same point that you'd like to much earlier than  
19 you might otherwise.

20 MS. MILLER: Thank you.

21 Next up, Robina Suwol.

22 MS. SUWOL: Hi. Good afternoon. Thank you very  
23 much for this opportunity and for holding this workshop  
24 today and ability to comment. I was very moved by all the  
25 heartfelt stories that have been told today.

1           And just as an introduction of who I am, my name  
2 is Robina Suwol. I'm the founder and executive director  
3 of a children's environmental health organization located  
4 in southern California called California Safe Schools.

5           Sadly, today, as we all know, we live in an  
6 environment where asthma and cancer and neurological  
7 disorders and birth defects are really rampant.

8           Our 14th Amendment promises that everyone is  
9 entitled to equal protection under the law. However, in  
10 spite of really sincere efforts by various agencies and  
11 the public and our government officials and  
12 environmentalists, concerns remain for the health and  
13 safety of all Californians, and especially for children  
14 and families who are the most vulnerable. And those are  
15 individuals who live in communities that are known as  
16 environmental justice communities who consistently suffer  
17 a disproportionate amount of toxins in their environment.

18           In the presentation today earlier, it was stated  
19 that and I quote, "ARB conducts frequent, unannounced  
20 inspections generally." And just for clarification, so  
21 that I understand this, can you share -- obviously not  
22 today -- in the past five years, for example, how many  
23 unannounced inspections took place and their locations and  
24 how many announced inspections took place and their  
25 locations. It would just give some clarification on that

1 statement.

2           And can you also please expand on CARB's  
3 process -- and this is specifically how are decisions made  
4 regarding penalties and what role does the public and the  
5 environmental justice groups play in the process or  
6 discussion?

7           And then my next question is regarding consumer  
8 products. Can you clarify CARB's process and time frame  
9 for re-testing products that have been previously  
10 reviewed? And I mention this because during our current  
11 economic crisis, many companies are manufacturing their  
12 products outside the county. So if you're talking about  
13 household pesticides or air fresheners or cleaning  
14 products, as examples, if they're manufactured in the  
15 United States, they may contain specific ingredients.  
16 Whereas, outside of the United States if they're  
17 manufacture, they may have a completely different  
18 formulation and VOC content.

19           And, finally, I just want to say that I'm  
20 extremely encouraged -- although I know it's been  
21 challenging today to hear all of these concerns that  
22 people have about having this protocol and policy and  
23 understanding how it's implemented, but I'm hopeful -- a  
24 bruised optimist, but hopeful today's dialogue and  
25 comments from industry and public and regulatory agencies

1 and environmentalists will help us all to continue to work  
2 together to create policies and program that are more  
3 protective for everyone, because this is proven. When we  
4 can work together that great things can and do happen.

5           So thank you very much.

6           MS. MILLER: Thank you.

7           Next up, Mitzi Shpak.

8           MS. SHPAK: Hi. My name is Mitzi Shpak. I'm  
9 Executive Director of Action Now, which is also a member  
10 of the Los Angeles Environmental Justice Network. And my  
11 questions have to do with some of your enforcement goals.

12           You said one of your goals -- in fact, your first  
13 goal is to obtain immediate compliance, because as you  
14 stated also, you cannot capture lost emissions. And my  
15 question is, how do you intend to respond to, say, a  
16 complaint of idling diesels in a timely manner so that the  
17 lost emissions aren't lost? What mechanism are you  
18 planning to put in place to respond quickly enough in your  
19 enforcement?

20           I, myself, had an incident. In our area, we have  
21 a lot of movie production companies. And we were in our  
22 backyard, and suddenly there were fumes everywhere. The  
23 lady next door who was home schooling her children outside  
24 had to run inside. And we found that a movie company had  
25 parked a flatbed trailer right on the fence line with two

1 enormous diesel generators. And we're not talking idling  
2 diesel. We're talking full bore. It was a power plant  
3 literally put in our neighborhood one half-block from a  
4 middle school in addition to the many, many trucks that  
5 they bring for their production. And would you be able to  
6 respond to something like that in enough time to keep us  
7 from being exposed to those emissions?

8 Thank you.

9 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

10 Just briefly, Paul Jacobs, Enforcement.

11 Yes. I've said throughout the afternoon we have  
12 these 1-800 hot lines and also on-line reporting for these  
13 violations. And we do have staff stationed statewide so  
14 we can get relatively immediate response. It may not be  
15 right then, but in addition, local police enforcement have  
16 to authority, as do CHP.

17 MS. SHPAK: They don't think they do.

18 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

19 It's clearly stated --

20 MS. SHPAK: The AQMD can't respond. We got a  
21 response from them they couldn't do anything because ARB  
22 has mobile sources.

23 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

24 Well, they do have authority under the idling regulations.  
25 We would happy to talk with you more --

1 MS. SHPAK: It wasn't idling. I mean, seriously,  
2 they have a permit to film. They're not idling. They're  
3 producing power. They are a mobile power plant.

4 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: I  
5 understand about the generators. You had mentioned all  
6 these trucks and idle as well. These are subject to the  
7 rules. And if they have permits on these generators, then  
8 you have to pursue look a nuisance-type claim and meet the  
9 criteria in the Health and Safety Code. We can talk about  
10 that in more detail.

11 MS. SHPAK: Maybe my question is, are they  
12 allowed to put a mobile power plant into a residential  
13 neighborhood next to a school? Is that a permissible  
14 activity?

15 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
16 If they're legal permitted engines, it would be, unless it  
17 creates a nuisance, and we can talk about the nuisance  
18 criteria under the Health and Safety Code.

19 I know it's complicated, but we do have clear  
20 enforcement authority with the idling vehicles, crystal  
21 clear under the statute ATCM authority and in our  
22 regulation.

23 MS. SHPAK: But that's a specific incident.

24 And real question was the more general one about  
25 how immediate is your enforcement response, because these

1 mobile sources move on. Problem is gone. What do you  
2 need as proof that it did exist?

3 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

4 We need the date, time, location, the license plate  
5 number, and the like, and we will go out and investigate  
6 and check the fleet for total compliance for all programs.  
7 And usually it happens within a 24-hour period we can  
8 respond.

9 MS. SHPAK: Within a 24-hour period?

10 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

11 Yeah, but I encourage you and your community members to  
12 report these violations. It's critical that they're  
13 reported through the 800 numbers and our web page so we  
14 have a record of them. That's how allocate resources. We  
15 do need a running count, and we do tens of thousands of  
16 unannounced inspections in these communities yearly. And  
17 I've covered those numbers earlier. I know the previous  
18 speaker had those questions. So something we're very  
19 actively enforcing and will continue. And we've trained  
20 air districts to enforce these idling regulations and a  
21 lot of local law enforcement and are working with CHP to  
22 do the same.

23 MR. MILLER: Last is John Dunlap.

24 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.

1 MS. MILLER: At this point, we have a few more  
2 webcast viewer questions. I'll turn the program back over  
3 to Paul and Mark.

4 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:  
5 The next commenter over the web is Mr. Thomas Chavez. I  
6 did speak with Mr. Chavez about these issues the other  
7 day. Has to do with our large spark ignition regulations  
8 applicable to forklifts and incentive funding, like the  
9 Carl Moyer program. So I'm going to have staff from our  
10 Mobile Source Control Division ask those folks to follow  
11 up with him.

12 The next one is Nidia Bautista, and she is with  
13 Coalition for Clean Air in Sacramento. And can you share  
14 what, if any, coordination exists between CARB and local  
15 air districts, other State agencies, and local cities  
16 counties relating to enforcement?

17 And I think I've covered that a number of times  
18 this afternoon. We do have, again, contracts with a  
19 number of air districts. We've trained a number of air  
20 districts to engage in enforcement of a number of these  
21 ATCMs, idling and the like. And likewise, we've trained  
22 the different police departments -- the number of police  
23 departments statewide.

24 And the next question: Can you share some  
25 insight into the current funding for enforcement, how many

1 officers, cases, and the like?

2           And we have covered that. Again, just to  
3 reiterate, roughly will 2500 cases per year are closed.  
4 And we roughly have about 120-plus staff in enforcement.

5           The next commenter Nasser Bekheet, senior quality  
6 engineer with Candle Lite. And the question has to do  
7 with Proposition 65 and consumer products and how items  
8 are recalled by the Consumer Product Safety Commission.  
9 So this would best be handled by the federal government  
10 and the Consumer Product safety Commission.

11           The next commenter is: [becarbcompliance@cox.net](mailto:becarbcompliance@cox.net).  
12 It's Lisa Grote at that e-mail address. And she asked  
13 about owner/operators and outreach for the trucking  
14 program and the like. And again, as I stated earlier  
15 today, we have all these training opportunities that they  
16 can learn how to comply with the regulations. We have the  
17 joint industry days with highway patrol. We have the  
18 notification in the DMV handbook about CARB compliance and  
19 many other media outlets for compliance assistance and the  
20 like.

21           The next commenter is Michael Torrez. And looks  
22 like BP Carson Refinery. And they have questions about  
23 diesel particular filters and maintenance in keeping  
24 records for them. And we had a previous commenter that  
25 came up and testified that had questions of this nature,

1 which I responded to. But we do have recordkeeping  
2 requirements, and I will ask my colleagues in the Mobile  
3 Source Control Division to work with Mr. Torrez on those  
4 specific issues.

5           The next one is a Mr. Tim Rhodes at  
6 [yalechase.com](http://yalechase.com). This is just a commentary that Nevada is  
7 openly inviting our businesses to relocate. Please take  
8 into consideration a fix-it ticket and things of that  
9 nature. So that's that particular comment.

10           And Mr. Michael Torrez at [bp.com](http://bp.com). "I was  
11 wondering if CARB has articulated what the response is to  
12 companies using contractors that are not in compliance  
13 while their own fleet is in compliance."

14           Well, we will go after the noncompliant  
15 contractor, but we do encourage businesses that hire  
16 contractors to make certain they are compliant with our  
17 regulations to help us in our quest for compliance with  
18 our regulations.

19           STATIONARY SOURCE ENFORCEMENT BRANCH CHIEF  
20 STOVER: Last one here is from Rick Grove at Pavement  
21 Recycling. And his question concerning Caltrans and the  
22 construction contracts that they let out for road  
23 improvements in the state of California. He states that  
24 the contracts that Caltrans puts out requires that  
25 contractors be in full compliance with all CARB

1 regulations. Taking that further, all local and municipal  
2 county public works agencies should have similar  
3 requirements. Can CARB reach out to these agencies and  
4 encourage them to include this language in their special  
5 provisions?

6           And then he also has a question on the portable  
7 equipment registration program. It's not an enforcement  
8 issue but a compliance one. If mobile equipment is  
9 properly registered with CARB, are there any instances  
10 where additional registration is required with the local  
11 air quality district if the machine regularly moves in and  
12 out of that district?

13           What if the mobile equipment is based or spent a  
14 great majority of time in that district, does it then need  
15 to be registered locally and with CARB?

16           I'm going to refer this to our portable equipment  
17 registration program staff.

18           SENIOR STAFF COUNSEL OLIVER: That being all the  
19 witnesses and questions and comments we received over the  
20 internet today, I want to thank you all for taking the  
21 time to come down here and talk with us. We're available  
22 for follow up meetings, if you so desire.

23           And with that, I would adjourn the workshop and  
24 wish you well on your way home.

25           Thank you very much, everybody, one and all.



1 (Thereupon the California Air Resources Board  
2 Enforcement workshop adjourned at 4:47 p.m.)  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 26th day of October, 2009.

15

16

17

18

19

20

21

22 TIFFANY C. KRAFT, CSR, RPR  
23 Certified Shorthand Reporter  
24 License No. 12277

25

ARB 10-12-09.txt