

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
BYRON SHER AUDITORIUM, SECOND FLOOR
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APPEARANCES

BOARD MEMBERS

Ms. Mary Nichols, Chairperson

Ms. Doreene D'Adamo

Mr. Hector De La Torre

Mr. Ronald Loveridge

Mrs. Barbara Riordan

Mr. Ron Roberts

Dr. Daniel Sperling

Mr. Ken Yeager

STAFF

Mr. James Goldstene, Executive Officer

Mr. Tom Cackette, Chief Deputy Executive Officer

Mr. Bob Fletcher, Deputy Executive Officer

Ms. Lynn Terry, Deputy Executive Officer

Ms. Mary Alice Morency, Board Clerk

Dr. Alvaro Alvarado, Manager, Heath and Ecosystems
Assessment Branch, RD

Ms. Jennifer Gress, Legislative Director

Mr. Kirk Oliver, Senior Staff Counsel

Mr. Jim Ryden, Chief, Enforcement Division

Ms. Anna Wong, Air Pollution Specialist, MSCD

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Randy Harvey, GM

Ms. Bonnie Holmes-Gen, American Lung Association

Mr. Rick McVaigh, San Joaquin Valley APCD

Mr. Ken Percival

Mr. John B. Rogers, Jr., Local Motors Inc.

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PROCEEDINGS

1
2 CHAIRPERSON NICHOLS: Good morning, ladies and
3 gentlemen. The November 17th, 2011, public meeting of the
4 Air Resources Board will come to order.

5 I want to apologize in advance for my voice. May
6 be a good thing I'm quiet, but I do have laryngitis. It's
7 the tail end of a cold. Otherwise, I'm feeling fine.

8 This morning, we will begin as we normally do
9 with the Pledge of Allegiance. And I'm going to ask our
10 esteemed Vice Chair to lead, because she has a better
11 voice than I do.

12 BOARD MEMBER RIORDAN: Would you rise and join me
13 in the pledge to our flag.

14 (Thereupon the Pledge of Allegiance was
15 Recited in unison.)

16 CHAIRPERSON NICHOLS: Thank you.

17 Madam Clerk, would you please call the roll?

18 BOARD CLERK MORENCY: Dr. Balmes?

19 Ms. Berg?

20 Ms. D'Adamo?

21 BOARD MEMBER D'ADAMO: Here.

22 BOARD CLERK MORENCY: Mr. De La Torre?

23 BOARD MEMBER DE LA TORRE: Here.

24 BOARD CLERK MORENCY: Mayor Loveridge?

25 BOARD MEMBER LOVERIDGE: Here.

1 BOARD CLERK MORENCY: Mrs. Riordan?

2 BOARD MEMBER RIORDAN: Here.

3 BOARD CLERK MORENCY: Supervisor Roberts?

4 BOARD MEMBER ROBERTS: Here.

5 BOARD CLERK MORENCY: Professor Sperling?

6 BOARD MEMBER SPERLING: Here.

7 BOARD CLERK MORENCY: Supervisor Yeager?

8 BOARD MEMBER YEAGER: Here.

9 BOARD CLERK MORENCY: Chairman Nichols?

10 CHAIRPERSON NICHOLS: Here.

11 BOARD CLERK MORENCY: Madam Chairman, we have a
12 quorum.

13 CHAIRPERSON NICHOLS: Thank you very much.

14 Before we get started this morning, I have a
15 couple of housekeeping items that I want to mention.

16 First of all, as some of you noted at the last
17 meeting, there's been a little bit of confusion about how
18 we formally handle the issue of ex parte communications on
19 rulemaking actions. In the past, following the custom of
20 the Coastal Commission, Board members have verbally
21 disclosed their ex parte communications at each meeting.
22 And we also have kept written records of these
23 communications for each Board member.

24 We have found that these verbal descriptions of
25 the ex parte communications at Board meetings often takes

1 a significant amount of time, because on major rulemaking
2 items, our Board members do seek out and receive a lot of
3 input from members of the public, which is appropriate
4 and, in fact, is encouraged. This can lead to a real
5 consumption of time for no particularly good purpose. So
6 the plan at this point, unless anybody feels strongly to
7 the contrary, is to continue to keep written records for
8 each Board member's ex parte communications on each
9 rulemaking item to make these items public record so that
10 they're available to anyone who wishes to look at them
11 upon request by contacting our clerk of the Board. If any
12 of you feel strongly to the contrary, you can let me know
13 afterwards and we'll consider changing this. But I think
14 it would really be a benefit for all of us.

15 I'm also asked to mention that we have
16 interpretation services available in Spanish today for
17 those who need it for Item 11-9-3. The notice of the
18 meetings always indicates that anyone who wants
19 interpretation service can have it if they ask for it in
20 advance. We do ask people to ask in advance. In this
21 case, because we anticipated that there might be a
22 likelihood that there would be people needing it, we've
23 gone ahead and taken the precaution of getting the
24 headsets and interpreter.

25 I'll now ask the interpreter to interpret my

1 words in Spanish.

2 (Whereupon the announcement was translated into
3 Spanish by the interpreter.)

4 CHAIRPERSON NICHOLS: Thank you very much.

5 Now for the rest of the announcements, anyone who
6 wishes to testify and has not signed up online should fill
7 out a request to speak card available in the lobby outside
8 the auditorium. Please turn it into the clerk of the
9 Board as soon as possible. You have the option to include
10 your name on the speaker card.

11 If you've already taken advantage of the online
12 sign-up feature, you do not need to fill out a request to
13 speak card. However, you need to check in with the clerk
14 of the Board or your name will be removed from the
15 speakers' list. So even if you signed up in advance, you
16 still need to go speak to the clerk.

17 Also, speakers should be aware that the Board
18 will impose a three-minute time limit on all speakers. We
19 ask you to state your name when you come up to the podium
20 and then to put the testimony in your own words, as
21 opposed to reading your written testimony. It's much
22 easier for us to follow and you'll have a more receptive
23 audience if you can go straight to your main points rather
24 than reading the written testimony. But the written
25 testimony will be entered into the record.

1 I'm also required to remind people that, for
2 safety reasons, the emergency exits are in the rear of the
3 room, as well as on both sides of the podium here. And
4 that if we have a fire alarm ring, we're to evacuate the
5 building immediately, go down the stairs, and wait outside
6 the building until we get an all-clear signal. I think
7 that's it for all the pre-announcements.

8 And with that, we can turn to our first item on
9 the agenda, which is a public hearing to consider
10 California certification procedures for light-duty engine
11 packages for use in light-duty specially constructed
12 vehicles for 2012 and subsequent model years.

13 Mr. Goldstene.

14 EXECUTIVE OFFICER GOLDSTENE: Good morning,
15 Board. Thank you, Chairman Nichols.

16 There are thousands of specially constructed
17 vehicles registered in California, with hundreds more
18 being built in garages and shops each year. These
19 vehicles are an integral part of the California car
20 culture and hobbyists put many hours of work and passion
21 into their vehicles.

22 Staff's proposal will for the first time give
23 these hobbyists the option to purchase a certified
24 low-emitting engine for installation into their kit cars.
25 Staff developed a certification procedure that will keep

1 certified engine packages as low emitting as possible,
2 nearly as clean as a new light-duty vehicle, while
3 providing the flexibility to allow these engines to be
4 installed in unique, specially constructed vehicles.

5 This approach will result in a low-emitting
6 engine option for hobbyists and cleaner vehicles for
7 California.

8 Anna Wong of the Mobile Source Control Division
9 will now provide the staff presentation. Anna.

10 (Thereupon an overhead presentation was
11 presented as follows.)

12 AIR POLLUTION SPECIALIST WONG: Thank you, Mr.
13 Goldstene. Good morning, Chairman Nichols and members of
14 the Board.

15 Today, we are here to propose a new certification
16 process for engines intended for use in specially
17 constructed vehicles, also known as kit cars. Engine
18 manufacturers approached staff with the idea of certifying
19 engine packages for kit cars based on the engine from a
20 modern emissions compliant car.

21 Traditionally, ARB has only certified passenger
22 cars on a complete vehicles basis to evaluate all
23 emissions associated with the vehicle. Hence, prior to
24 this proposal, ARB did not have a process to evaluate or
25 certify such an engine.

1 This proposal would create that process, while
2 giving hobbyists the option to use the lower-emitting
3 engines in their kit cars.

4 --o0o--

5 AIR POLLUTION SPECIALIST WONG: This morning, I
6 will review the background and unique issues surrounding
7 specially constructed vehicles, the regulatory development
8 process, which took place throughout this year, the
9 proposed certification procedures, and staff's
10 recommendation.

11 --o0o--

12 AIR POLLUTION SPECIALIST WONG: So what do I mean
13 when I say a specially constructed vehicle, or SPCNS?
14 Specially constructed vehicles are vehicles built for
15 private use, meaning they are not for resale and not
16 constructed by a manufacturer. Some hobbyists build their
17 specially constructed vehicles completely on their own.
18 Others contract out parts of the building process. For
19 example, paying to have the engine installed. California
20 law defines a specially constructed vehicle as those that
21 may be built from a kit or from a combination of new or
22 used parts.

23 Staff's proposal today concerns the engines
24 certified for use in specially constructed vehicles, or
25 kit cars.

1 --o0o--

2 AIR POLLUTION SPECIALIST WONG: Kit cars are an
3 integral part of California's car culture. As one can see
4 at the many car shows held across the state each weekend,
5 hobbyists who build specially constructed vehicles
6 consider the cars they build an art form. There are
7 thousands of these vehicle registered in California, with
8 many more currently being built in garages and shops.

9 --o0o--

10 AIR POLLUTION SPECIALIST WONG: Specially
11 constructed vehicles are unique and do not fit well into
12 California's current registration process. So, how do
13 they currently get registered to drive on California's
14 roads?

15 Well, the Legislature in 2001 put in place a
16 special program for them, called SB 100. The SB 100
17 process allows up to 500 specially constructed vehicles to
18 be registered each year in California and essentially
19 exempted from the smog check requirements.

20 The demand for registering specially constructed
21 vehicles has been great. Since the SB 100 process was put
22 in place, all 500 certificates have been handed out each
23 year, with certificates in some years running out in
24 January. Hobbyists who find themselves unable to get a
25 certificate through the SB 100 process must wait until the

1 following year to apply for registration or find ways to
2 circumvent the registration process all together.

3 Vehicle owners that circumvent the registration
4 process, for example, by improperly registering their
5 vehicle out of state, represent lost revenue in
6 registration fees to California.

7 --o0o--

8 AIR POLLUTION SPECIALIST WONG: Several years
9 ago, the issue of improperly registered specially
10 constructed vehicles came to the attention of the
11 California Attorney General, who estimated there were
12 about 70,000 such improperly titled vehicles in the state.
13 As a result of the AG's investigation, legislation for a
14 special amnesty program to encourage vehicle owners to
15 re-register their vehicles and pay the appropriate fees
16 was enacted and is now in effect through June 30 of next
17 year.

18 Because many hobbyists building specially
19 constructed vehicles desire to replicate older vehicles,
20 some use uncontrolled engines removed from old vehicles.
21 Others use new uncontrolled engines intended to be similar
22 to those from older vehicles.

23 Because their engines lack emissions controls,
24 specially constructed vehicles are high emitters.
25 According to smog check data, on a per mile basis,

1 specially constructed vehicles today emit on average 30
2 times more than a vehicle meeting current vehicle
3 emissions standards.

4 So today, we have high emitting vehicles, 500 of
5 which can be legally registered each year, and unknown
6 numbers that may be getting on the road illegally and no
7 ARB mechanism to certify a cleaner alternative.

8 We believe the proposal we have before you today
9 will help resolve these unique issues related to specially
10 constructed vehicles and give hobbyists an option outside
11 of SB 100 to register their vehicle.

12 --o0o--

13 AIR POLLUTION SPECIALIST WONG: Overall, the
14 purpose of staff's proposal is to allow engine
15 manufacturers to certify emissions-compliant engines for
16 specially constructed vehicles. The proposed regulations
17 and procedures would not impose any new mandated
18 requirements on engine manufacturers or hobbyists.
19 Instead, certifying engine packages via the new process
20 would be optional for engine manufacturers, and hobbyists
21 could choose whether to purchase a certified engine
22 package.

23 Staff is hopeful our new certification process
24 will encourage hobbyists to choose clean engines and
25 encourage fewer vehicle owners to attempt to circumvent

1 the registration process.

2 --o0o--

3 AIR POLLUTION SPECIALIST WONG: Staff begin this
4 rulemaking process in spring of this year. We held two
5 public workshops that were well-attended by engine
6 manufacturers, car enthusiasts, engine installers and
7 other interested parties, such as Specially Equipment
8 Manufacturers Association, or SEMA.

9 After the staff's proposal was released, we also
10 reached out to kit car and hot rod publications with a
11 media advisory. We also sent out letters to dozens of
12 California engine installers known to have installed
13 engine packages in specially constructed vehicles.
14 Throughout the year, we have also coordinated with the
15 Bureau of Automotive Repair, Department of Motor Vehicles,
16 and the California Highway Patrol to ensure our new
17 certification process will work with their existing
18 registration process.

19 In order to fully incorporate ARB's new engine
20 certification process into smog check, BAR will need to do
21 their own rulemaking. BAR staff has advised us that they
22 plan to begin this soon after our process is approved by
23 the Board.

24 Now let me describe staff's proposal.

25 --o0o--

1 AIR POLLUTION SPECIALIST WONG: As I'll discuss
2 further, our proposal would require engine manufacturers
3 pursuing certification to demonstrate their engine package
4 is low emitting and will remain so and to furnish
5 installation instructions. Engine installers and
6 hobbyists will need to install engine packages properly so
7 they remain low emitting. Overall, engine packages
8 certified via the new process will give hobbyists a low
9 emitting option that was not previously available.

10 --o0o--

11 AIR POLLUTION SPECIALIST WONG: Under staff's
12 proposal, engine manufacturers desiring certification
13 would need to build a modern, low-emitting engine that
14 meets current new vehicle exhaust and evaporative
15 standards. The package would include emission controls
16 like a three-way catalyst and evaporative canister. It
17 would also need to have an on-board diagnostic system to
18 detect emissions malfunctions and alert the driver to
19 their presence.

20 Manufacturers would need to provide test data to
21 demonstrate that the engine package is low emitting.
22 Although manufacturers could develop engines specifically
23 for specially constructed vehicles, we expect most will
24 derive engine packages from engines and previously
25 certified vehicles; hence, be able to use existing data.

1 As a part of the engine package, engine manufacturers
2 would also provide detailed installation instructions, as
3 well as a label providing emissions control information.
4 The label would state that the engine in the vehicle is
5 intended only for a specially constructed vehicle, and
6 would be required to be placed in a readily visible
7 location.

8 Finally, the proposed regulation include
9 warrantee and recall provisions for the engine package
10 similar to those for new cars.

11 --o0o--

12 AIR POLLUTION SPECIALIST WONG: I talked about
13 what the engine manufacturers would need to do under
14 staff's proposal. Now let's discuss what engine
15 installers would need to do.

16 Engine installers include anyone who installs a
17 certified engine package in a specially constructed
18 vehicle for compensation. Installers include engine shops
19 and garages, but a hobbyist who puts an engine in their
20 own kit car is not considered an installer.

21 Installers would need to install the engine per
22 the manufacturer's instructions, sign an affidavit stating
23 they did so, and comply with recordkeeping and reporting
24 requirements.

25 Finally, installers would be required to offer a

1 one year, 12,000 mile installation warrantee covering
2 proper installation of the engine package.

3 --o0o--

4 AIR POLLUTION SPECIALIST WONG: Now let's talk
5 about the end users, the hobbyists who have so much
6 fashion for these cars. A hobbyist who chooses to
7 purchase and install his own certified engine package
8 would need to install it in his vehicle following the
9 manufacturer's instructions. In order to get registered
10 without relying on SB 100 process I described earlier, the
11 hobbyist would then take the vehicle to a referee station
12 for a visual inspection. A referee station is a
13 State-contracted test facility that offers specialized
14 inspection services. The referee would ensure that it is
15 possible to test the vehicle for evaporative leaks, that
16 the vehicle's check engine light is functional, and that
17 the engine has been installed to the manufacturer's
18 specifications. To ensure that their warrantee would be
19 honored, the hobbyist would also need to submit their
20 warrantee card to the engine manufacturer.

21 --o0o--

22 AIR POLLUTION SPECIALIST WONG: We are proposing
23 several changes to the version of the regulation included
24 in the Initial Statement of Reasons. Those changes are
25 described in Attachment C, hard copies of which are

1 available in the back of the room.

2 First, so that the proposed procedures will work
3 in future years, staff would like to incorporate the
4 forthcoming light-duty vehicle emission standards for 1215
5 and subsequent model years, which the Board will consider
6 in January.

7 Second, we are working with BAR on some other
8 minor changes related to warrantee repairs.

9 Finally, we propose to make some minor
10 corrections and clarifying changes. We plan to make all
11 these changes available for the required 15-day comment
12 period.

13 --o0o--

14 AIR POLLUTION SPECIALIST WONG: We believe that
15 the proposed regulation and certification procedures will:
16 Allow manufacturers to certify light-duty engines for
17 specially constructed vehicles, provide hobbyists a
18 certified low-emitting engine option, help allow kit car
19 hobbyists to register their vehicles, and encourage fewer
20 hobbyists to circumvent the registration process.

21 To the extent that hobbyists choose certified
22 engine packages rather than the uncontrolled crate engines
23 they choose today, specially constructed vehicles in the
24 future will have dramatically lower emissions.

25 Overall, staff recommends the Board adopt the

1 proposed regulation and certification procedures and
2 direct staff to propose 15-day changes as described in the
3 previous slide.

4 CHAIRPERSON NICHOLS: Do you have any closing
5 comments, Mr. Goldstene?

6 EXECUTIVE OFFICER GOLDSTENE: We have been
7 working with the kit car hobbyists for many years, and we
8 think that this regulation will allow many of them to do
9 what many of them have wanted to do for a long time, which
10 is to be able to install a clean engine into their car.

11 CHAIRPERSON NICHOLS: Seems like a good step
12 forward.

13 We have only two witnesses who signed up to
14 speak: Randy Harvey from GM, and then John Rogers from
15 Local Motors, Inc.

16 Would you please come forward, Mr. Harvey?

17 Mr. HARVEY: Good morning. My name is Randy
18 Harvey, the Manager of the Compliance and Certification
19 Group at the GM for Milford Proving Grounds in Michigan.
20 And General Motors commends CARB for proposing these
21 unique engine kit regulations that we think will promote
22 the use of clean emission controls technology.

23 We think that the regulations proposed today
24 represent an opportunity for the kit car, or SCV owners to
25 purchase and register emissions compliant engines as an

1 alternative to the SB 100 exemption process. We think
2 it's basically a positive step forward.

3 Back in 2010, late 2010, GM introduced at the
4 SEMA show a new emission control engine called the eRide
5 based on an LS33 Camero package that was touted at that
6 SEMA show. And it's a 6.2 liter engine. It's a
7 Camero-based engine that was equipped for the first time
8 with an emission control system that had the ability to
9 meet the current LEV-II standard. It was basically
10 leveraged off our existing packages.

11 At that time, General Motors discussed
12 certification options with the staff. And at that time,
13 we decided to develop a path that would enable GM to
14 certify emission compliant engines kits that could be
15 legally registered in California. What we did initially,
16 what we were able to do at that time was to use the
17 aftermarket exemption process for engine replacements. So
18 we certified through an ABARS aftermarket group a package
19 for the pre-1995 vehicles, non-OBD-II vehicles would go
20 into production and make available the owners as
21 replacement engines.

22 And at that time though, the staff determined
23 that in spite of our efforts that we would have to -- they
24 would have to draft new regulations to be able to certify
25 new vehicles for kit car owners.

1 And we, of course, support reasonable regulations
2 for streamline emission certification of SCVs. And if the
3 regulations that are proposed today are adopted, our plan
4 is to certify an LS3 package at the 2012 model year engine
5 kit. We're already working with staff to do that. But
6 it's important to recognize that we need these regulations
7 that are adopted to be effectively minimized costs and
8 resources of SCV certification with streamlined
9 information requirements in allowing us to utilize
10 emission and OBD data of existing OEM packages.

11 And in addition, we strongly support flexible
12 registration or registration of our customer vehicles,
13 simple warrantee administration, and easy verification of
14 the specially constructed vehicles in BART stations.

15 I've exceeded my time. Okay. Well, thank you
16 very much.

17 CHAIRPERSON NICHOLS: Thank you. Sorry for the
18 coughing.

19 MR. HARVEY: That's all right.

20 CHAIRPERSON NICHOLS: Does anybody have any
21 questions? Great.

22 Mr. Rogers.

23 MR. ROGERS: Good morning. I'm Jay Rogers, the
24 CEO and co-founder of Local Motors. And joining you today
25 with our customers from Phoenix, Arizona. That's where

1 our business is located, and we have an online community
2 in a business of over 13,000 people around the world.

3 We represent a new American car company that's
4 trying to bring advanced vehicle concepts to market as
5 quickly as possible.

6 In 2007, I left the United States Marine Corps
7 where I had been serving for seven years in order to be
8 able to start this business. It was my belief that the
9 pace of technology development in automobiles was not
10 moving fast enough.

11 One of the largest markets for advanced
12 technology vehicles is the state of California, at least
13 in the United States. And it was our intention to be able
14 to start a vehicle company that could make a difference
15 quickly.

16 As we started, the we developed the first
17 light-weight vehicle with our community, the
18 lightest-weight vehicle the industry has seen and put on
19 the market as part of a specialty constructed vehicle
20 project. We then brought that vehicle to market using the
21 aforementioned system that my colleague from General
22 Motors has brought forward, on the assumption we would be
23 able to bring it to market. There's much more to making
24 an advanced technology vehicle than just the engine
25 itself.

1 And in order to be able to do this, we formed a
2 company. I went out raised the money to make it happen.
3 And we enjoined 13,000 people from around the world to
4 help us do this. It's a concept called crowd sourcing.
5 Crowd sourcing allows us to be able to bring technology
6 and ideas from everyone to be able to put them on the
7 road.

8 We built this vehicle, and we took 140 deposits
9 for it as a specially constructed vehicle around the
10 world, and 40 percent of those are in the state of
11 California. Not one of our customers would actually take
12 their deposit and move it into a purchase until they knew
13 they would actually be able to register the vehicle on the
14 road.

15 Using this GM E-ROD kit, we were unable to ensure
16 that our customers could register under SB 100. The
17 reason is they have to buy the car. They have to build
18 the car. They then have to show up and go through the
19 process, which is onerous. And then they may or may not
20 be able to be available to have a Certificate of Sequence
21 supplied to their purchase, in which case it puts us in a
22 very difficult position as a company of being willing to
23 buy back their car if they don't get this Certificate of
24 Sequence. And all told, what it ends up doing is stops
25 the pace of technology development in these cars.

1 So we engine joined with GM and staff. I have
2 great respect for Annette Hebert's office, Jackie
3 Lourenco, Anna Wong, Kim Heroy-Rogalski, John Gruszecki.
4 They've done a fantastic job in looking at the issues that
5 are there for us to get the advanced technology vehicles
6 on the road. And the legislation that's written is
7 exactly what we need.

8 Thank you for the comments. I'm happy to take
9 any questions.

10 CHAIRPERSON NICHOLS: Thank you for your
11 testimony. I have to say this is a new concept to me.
12 I've not heard about your business before. And it sounds
13 to me as though you're in a unique nitch, which is great.
14 But I have to think at some point you're going to turn
15 into a car company; right? I mean, when you get to a
16 certain size, is that --

17 MR. ROGERS: I think really the way -- Madam
18 Chairman, the way we look at what we do is we want to poke
19 the box of technology. So it's not so much about being a
20 car company as it is if we get these specially constructed
21 vehicles on the road and we show here's a 3,000 pound
22 vehicle in an SUV class size and something that can
23 actually be more efficient and be a lower emitter, then
24 we've really change the pace of technology.

25 I would love to be able to then take that

1 technology and sell it to people who want to buy it. I
2 would love to be able to make people think that is
3 possible in developing nations for when they go forward to
4 develop a vehicle. It's not so much about being a car
5 company as being a technology provider.

6 CHAIRPERSON NICHOLS: Interesting. Do you have
7 your hand up, Ms. D'Adamo?

8 BOARD MEMBER D'ADAMO: Yeah. I actually had more
9 general questions. But while you're up here, I just don't
10 feel that I understand enough about this car culture and
11 the desire of -- hopefully, the desire of those that have
12 vehicles that are not currently registered, the desire to
13 actually register them. So this looks like this proposal
14 is going to help along those lines.

15 But what about those that just aren't interested
16 in registering? And what can we do to get at that
17 problem? I just don't know the extent of that problem.
18 Could you comment on it?

19 MR. ROGERS: I can comment to some agree, having
20 been involved in this culture a good amount. I've been a
21 car enthusiastic all my life, and my grandfather owned the
22 Indian Motorcycle Company, which was a fantastic failure
23 back in the 1950s. It was an amazing company. It had an
24 amazing legacy. It failed.

25 And one of reasons it failed is because they

1 tried to adopt a new square cylinder engine. And they
2 were backed by a whole bunch of people that were really
3 fantastic in thinking about new technology. These are the
4 sort of enthusiasts that are out there. They're the ones
5 that will lionize and tell you about the history of Indian
6 and other things like that.

7 I think what comes about is sometimes people feel
8 like their rights are being stepped on or they can't move
9 forward to get these things in a way that makes sense to
10 them for a multi-various number of reasons that are out
11 there.

12 I think that as I've been through, this does not
13 hurt any of those people under the current legislation if
14 you believe that SB 100 is something they can still apply
15 for. So it's not an impingement. Some of those people
16 I'm sure believe by making a rule like this there will be
17 no more head room to be able to achieve the things they
18 may want to do in the future. And to that, I can't speak.

19 What I can say is this culture is one of great
20 enthusiasm for adoption of new technology, great
21 enthusiasm for the art form of automobiles. And I think
22 that with an option like this -- and GM started it, but
23 there are other engine manufacturers out there. Take
24 Ford, for example. Today, you saw a lot of the hot
25 rodders. You saw a lot of Cobras up on the screen. A lot

1 of hot rodders build Ford historical products, too. And
2 you'll find with some of them, they take umbrage to
3 putting a Chevrolet engine in a Ford historical product.
4 Give Ford the opportunity to be able to create a product
5 that they can put in, and you may find they will join the
6 market, too. Sometimes you find, for them, the desire to
7 want to register and have something -- and you'll hear
8 "sulta vulche" at BAR stations. I tried to register my
9 vehicle, and I was this far off of the specification. If
10 you give them a Ford engine without hurting the SB 100
11 process that allows a large majority of people who want to
12 future a Ford stamp on their 33 Ford, I think you would
13 have a lot of people that would join. At least that's my
14 impression.

15 BOARD MEMBER D'ADAMO: And then in follow up, if
16 staff could comment on the enforcement side of things.
17 Anything more that can be done in order to encourage folks
18 to take this route. For those that are driving around, I
19 guess, with an unregistered vehicle, why aren't they
20 getting caught? I just?

21 MOBILE SOURCE OPERATIONS DIVISION CHIEF HERBERT:
22 As we mentioned, some of them were getting caught, or at
23 least caught registering vehicles not representing what
24 they really were. You know, saying it was a 1960
25 engine -- vehicle, but it had a brand-new engine in it.

1 And that's been the history.

2 As far as enforcement, I mean, we do keep our eye
3 out and we do look for it. But sometimes we'll go to
4 these hobbyists gatherings and keep our eye out. So it's,
5 you know, the enforcement group is looking into it. And
6 hopefully that this whole effort will turn some of that
7 over. If we do catch people, they'll have a clean option
8 engine to switch out and go through the legal registration
9 process.

10 BOARD MEMBER D'ADAMO: I'm just noticing in the
11 staff report here it says an uncontrolled vehicle can emit
12 up to 200 times more emissions. So it -- I suppose
13 especially if this is occurring in a localized area, if
14 they're at getting together, that's quite a bit of
15 exposure.

16 CHAIRPERSON NICHOLS: I think it becomes easier
17 to think about doing some sort of selective, you know,
18 education and then enforcement once we've got a process in
19 place though to make this work in a systematic way.
20 Otherwise, it just looks like you're singling out a group
21 of people, and that could create some problems I think in
22 terms of the community as a whole.

23 So thank you very much. I appreciate your
24 testimony.

25 We have a resolution in front of us. But before

1 I get to that, I do want to close the record, since we
2 have no more witnesses signed up, and indicate the record
3 will be reopened when the 15-day notice is issued for
4 changes that the staff has indicated they're planning to
5 propose for basically technical cleanup.

6 So any comments that are received after this
7 hearing will not be considered, but there will be a public
8 comment period when the 15-day notice comes out.

9 So are there any questions that the Board members
10 have at this point? Have you had a chance to review the
11 Resolution?

12 BOARD MEMBER RIORDAN: Madam Chairman, let me
13 first just congratulate staff and those that worked with
14 the staff, because I think this is an excellent
15 opportunity for some very positive things to happen in the
16 future. And because of people who are interested in new
17 technologies, this is a great opportunity. And with that,
18 I'd like to move the approval of Resolution 11-38.

19 BOARD MEMBER D'ADAMO: Second.

20 CHAIRPERSON NICHOLS: All in favor, please say
21 aye.

22 (Ayes)

23 CHAIRPERSON NICHOLS: Any opposition?

24 All right. Great. Thank you.

25 And now we have a couple of interesting public

1 meeting items, not regulatory in nature. And while the
2 staff is assembling, I can say that the next item which is
3 a report on the ARB's policies and action for
4 environmental justice was put here, as you will recall, at
5 my request, because I realize that we were coming up to
6 the 10th anniversary of our environmental justice policy
7 document. I was not here at the time that the policy was
8 adopted, and neither were quite a few of us.

9 But the fact is that was a pioneering document at
10 the time, and it has had a lasting influence on the Air
11 Resources Board's day to day operations. By and large,
12 the policies have stood up well, even as the concept of
13 environmental justice as well as the recognition of the
14 issue has evolved.

15 Certainly, one of the focuses of environmental
16 justice organizing and activity has been to assure the
17 public processes and decision making are open and
18 inconclusive of all communities. But process alone
19 doesn't necessarily address differential environmental
20 impacts if they occur. The outcome of actions to improve
21 public health and the environment must be monitored from
22 an environmental justice perspective if we are to meet the
23 spirit and the intent of our policies.

24 There is a lot of territory to cover in looking
25 at this whole field over a decade. But I think there is

1 some key themes that emerge as we look at the topic of
2 environmental justice and air pollution. And certainly if
3 you look back over the last ten years at where the Board
4 has spent time and effort, I think the issue of risk
5 reduction in environmental justice communities is one of
6 the themes that really rises to the top.

7 One of the things that is new, of course, since
8 the policy was adopted is the Board's role in implementing
9 California's program to reduce greenhouse gases. Staff
10 has integrated environmental justice considerations into
11 program development as called for by AB 32 as they have in
12 the past in dealing with toxics and criteria air
13 pollutants. But the whole topic of global warming by its
14 very nature raises some new and interesting issues of
15 policy for us.

16 So with that, I'm going to ask Mr. Goldstene to
17 introduce the item and then look forward to some
18 discussion after the staff report.

19 EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman
20 Nichols.

21 In December 2001, the Board approved the policies
22 and actions for environmental justice. The policies were
23 drafted by a work group chaired by former ARB Board member
24 Matt McKinnon that included community representatives, air
25 district, and others. The overarching policy is to

1 integrate environmental justice into all ARB programs.

2 In the last decade, environmental justice
3 considerations have helped inform ARB's priorities and
4 shape its programs, especially the Board's action to
5 reduce the health risk from diesel emissions.

6 In addition, a number of other actions were
7 included with the policies. And after a decade, it's a
8 good time for a retrospective look at the implementation
9 of ARB's policies and how environmental justice thinking
10 went into them.

11 Dr. Alvaro Alvarado of the Research Division is
12 now going to provide the staff presentation.

13 (Thereupon an overhead presentation was
14 presented as follows.)

15 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

16 ALVARADO: Thank you, Mr. Goldstene. Good morning,
17 Chairman Nichols and members of the Board.

18 My presentation on ARB's environmental justice
19 policies and actions will be a ten-year retrospective
20 highlighting key programs activities and accomplishments.

21 --o0o--

22 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

23 ALVARADO: ARB's work on environmental justice began in
24 1999 with the initiation of community assessment work that
25 helped pave the way for development of the Board's

1 policies. The policies were also designed to reflect 1999
2 legislation on environmental justice which directed that
3 environmental justice be made an integral part of
4 environmental programs and policies.

5 In December 2001, the Board adopted the policies
6 and actions for environmental justice, which set out broad
7 goals and recommended a suite of specific actions. Today,
8 we mark the 10th anniversary by reporting on what we've
9 achieved, what we've learned, and where we're headed.

10 --o0o--

11 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

12 ALVARADO: The Board adopted seven key policies. Their
13 purpose is to promote environmental equity and fair
14 treatment of all Californians as ARB carries out our air
15 quality programs. The policies address both how we do our
16 work and our goal of ensuring that public health benefits
17 are achieved in all communities.

18 The first policy sets the overall direction. Our
19 goal is to incorporate environmental justice into all ARB
20 programs. Meeting air quality standards and reducing
21 health risks from toxic air pollutants is central to this
22 goal. Vigorous enforcement, community assessments,
23 engaging local agencies, and research on vulnerable
24 communities are a part of the picture as well.

25 --o0o--

1 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

2 ALVARADO: The Board's policy is for environmental justice
3 to be incorporated into all of ARB's programs. Since
4 2001, each regulation taken to the Board includes an
5 explicit discussion of environmental justice
6 considerations. A majority of the funds for incentive
7 programs and bonds to accelerate clean technologies are
8 now directed to environmental justice communities. Many
9 of our enforcement activities are in response to community
10 complaints. And the Board's Research Screening Committee
11 has an academic member specializing in environmental
12 justice that ensures that our health and exposure research
13 program reflects environmental justice considerations.

14 --o0o--

15 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

16 ALVARADO: In response to the Board's environmental
17 justice policies, we have strengthened our community
18 outreach program through several actions: Evening
19 workshops in environmental justice communities provide
20 opportunities for local stakeholders to participate in the
21 regulatory process. Translation services enable
22 non-English speakers to participate in Board hearings and
23 workshops, and we make fact sheets and compliance
24 assistance available in appropriate languages depending on
25 the program.

1 The joint ARB/California Air Pollution Control
2 Officers Association complaint resolution protocol defines
3 the responsibilities of the ARB and local districts in
4 resolving air pollution complaints.

5 And low-income assistance helps qualifying
6 individuals comply with smog check requirements.

7 --o0o--

8 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

9 ALVARADO: We developed the public participation guide to
10 provide community members with information on how to
11 participate effectively in the decision-making process in
12 California regarding the air pollution and how to file
13 complaints. It gives a short overview of the government
14 agencies responsible for controlling air pollution and
15 their decision-making processes. This guide is available
16 online in both English and Spanish, and copies are
17 distributed to advocate groups and community meetings.

18 --o0o--

19 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

20 ALVARADO: The ARB's effort to reach out to Spanish
21 speakers is worth special mention. A number of fact
22 sheets, reports, and web pages have been made available in
23 Spanish. This includes the public participation guide and
24 compliance information targeted to individuals and small
25 businesses.

1 --o0o--

2 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

3 ALVARADO: The Board's environmental justice policies have
4 had a real influence on both regional air quality and in
5 communities where air pollution impacts have historically
6 been the greatest. Community concerns about sources of
7 air pollution have resulted in substantial public
8 investment in clean technology and affected the scope and
9 design of ARB regulations.

10 I will highlight three programs: ARB's diesel,
11 neighborhood air toxics, and climate change programs to
12 illustrate the full breath of how environmental justice
13 has been incorporated into every aspect of the work we do.

14 --o0o--

15 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

16 ALVARADO: The first program I want to highlight is a
17 program to reduce emissions and health risk from diesel
18 engines.

19 --o0o--

20 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

21 ALVARADO: In 1998, the Board identified diesel
22 particulate matter as a toxic air contaminant and in 2000
23 adopted the Diesel Risk Reduction Plan. The plan
24 identified control measures necessary to reduce health
25 risk associated with diesel engines. The Board made

1 diesel particulate matter a high priority because there
2 are one million diesel engines in California, collectively
3 contributing 70 to 80 percent of the cancer risk from
4 known air toxics in California.

5 The goal of the plan is to achieve an 85 percent
6 reduction in diesel particles by 2020. At the same time,
7 major new reductions in oxides of nitrogen and diesel
8 engines are needed to meet the targets of the State
9 Implementation Plans for ozone and PM2.5. Almost every
10 type of diesel engine will need to be subject to controls
11 to meet these targets.

12 --o0o--

13 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
14 ALVARADO: While reducing diesel particulate matter was a
15 cornerstone of ARB's regulatory actions starting in 2000,
16 environmental justice considerations resulted in a special
17 focus on actions to reduce diesel emissions from goods
18 movement activities, ships, cargo handling equipment,
19 trains, and trucks, the single largest source of air
20 pollution in California.

21 Communities adjacent to the ports and transport
22 corridors were increasingly concerned about the impact of
23 diesel pollution from goods movement activities.

24 Community members and their local elected officials urged
25 air quality agencies to take aggressive action to protect

1 their health.

2 At the same time, cargo volumes were rising
3 quickly and projected to triple by 2020. To meet this
4 demand, the port, rail, and road infrastructure needed to
5 be improved and expanded.

6 Taking into account expected cargo growth,
7 infrastructure needs and community concerns, ARB developed
8 the emissions reduction plan for ports and goods movement
9 in 2005.

10 The goal of the Goods Movement Emission Reduction
11 Plan is to reduce overall diesel PM risk by 85 percent by
12 2020. And while regional reductions in air pollution are
13 expected to benefit every community, the greatest benefits
14 are to communities adjacent to goods movement activities
15 where there are environmental justice concerns.

16 --o0o--

17 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
18 ALVARADO: To incorporate environmental justice into the
19 diesel program, ARB developed a wide range of tools that
20 both public agencies and industry could use to meet diesel
21 reduction targets. From interacting with environmental
22 justice communities through workshops, assessments, and
23 targeted research studies, to regulating drayage trucks
24 and other sources, implementing enforceable agreements
25 with rail roads, port initiatives, and targeted incentives

1 and enforcement. We have made great strides in reducing
2 the risk from diesel emission in the most affected
3 communities.

4 ARB staff has worked in collaboration with the
5 South Coast, Bay Area, San Joaquin Valley, and other air
6 districts on these efforts to reduce health risk from
7 diesel particulate matter.

8 --o0o--

9 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

10 ALVARADO: Over the past decade, ARB prepared a number of
11 risk assessments focused on health risks from diesel
12 emissions at ports and rail yards. These assessments
13 helped to prioritize our diesel rulemaking to achieve the
14 fastest possible risk reduction in environmental justice
15 communities. The next slide shows the scope of actions
16 taken over the past few years.

17 --o0o--

18 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

19 ALVARADO: A comprehensive set of regulations was adopted
20 to reduce emissions from goods movement activities. These
21 include rules on ships, harbor craft, cargo handling
22 equipment, and truck activities at ports, refrigeration
23 units, and idling at distribution centers, and operating
24 procedures at rail yards.

25 --o0o--

1 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

2 ALVARADO: One of the concerns most frequently voiced by
3 community members was the pollution from diesel trucks. A
4 priority for the Board has been to reduce diesel emissions
5 that impact neighborhoods, and the drayage rule and
6 on-road truck rule will do just that.

7 The Board also adopted a measure limiting diesel
8 truck idling and to improve compliance. The ARB stepped
9 up inspections, performing over 6,000 in 2010. A hotline
10 and web page were set up to facilitate public complaints.

11 Other agencies also pitched in. The Bay Area
12 AQMD also monitors trucks. And we are working with the
13 cities of Maywood, Mira Loma, and San Bernardino to be the
14 first to post anti-idling signs.

15 --o0o--

16 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

17 ALVARADO: Enhanced enforcement has played a crucial role
18 in reducing community exposures, including environmental
19 justice strike forces with the U.S. EPA and Cal/EPA and
20 community working groups in environmental justice
21 neighborhoods.

22 As indicated by the number of inspections for
23 2010 shown on this slide, ARB focused most of its
24 enforcement activities on port communities, distribution
25 centers, and rail yards in order to assist the most

1 impacted communities.

2 --o0o--

3 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
4 ALVARADO: California has invested several hundred million
5 dollars on incentive funds to achieve early reductions in
6 diesel emissions. Proposition 1(b) funding has channeled
7 \$460 million into upgrading diesel engines on trucks,
8 locomotive, and ships at berth to reduce emissions as
9 quickly as possible in heavily impacted communities.

10 Also, 50 percent of Carl Moyer Program funding
11 for equipment upgrades and innovative projects is
12 dedicated specifically to environmental justice
13 communities.

14 These investments have helped speed up progress
15 with measurable benefits in communities most exposed to
16 diesel emissions.

17 --o0o--

18 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER
19 ALVARADO: ARB's statewide regulations for trucks, cargo
20 equipment, marine vessels, and fuels set the benchmark for
21 a faster transition to cleaner equipment in California.

22 The Ports of Los Angeles and Long Beach are using
23 their own authority and leverage to make the largest port
24 complex in the United States the greenest, by far.

25 Even the much smaller Port of Oakland has enacted

1 a measure to prevent trucks that don't meet ARB's emission
2 standards from entering the port.

3 The results are tangible. Since just 2005, all
4 of these actions have reduced the toxic diesel soot
5 emissions by more than 50 percent of the state's busiest
6 ports and rail yards. But how well do these emissions
7 reductions translate into better air quality? The next
8 slide illustrates the Harbor Community Monitoring Study
9 designed to track our progress in cleaning up the air.

10 --o0o--

11 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

12 ALVARADO: The multi-year Harbor Communities Monitoring
13 Study in the communities downwind of the Ports of Los
14 Angeles and Long Beach neighborhood allows us to track the
15 progress of diesel controls. As shown on the map on the
16 right, the area went from only having three monitors in
17 2004 --

18 --o0o--

19 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

20 ALVARADO: -- to one of the most instrumented in the
21 country. The residents participated in the study design
22 and even hosted air pollution monitors.

23 Among the key findings so far is the observation
24 of a 50 percent improvement in PM after the drayage truck,
25 low sulfur ship fuel, and cargo handling equipment rules

1 took effect.

2 --o0o--

3 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

4 ALVARADO: While most goods movement measures have already
5 been implemented, a few remain to be implemented in the
6 next two years. These include a rule to prevent dray-offs
7 which is a way of circumventing the rule banning
8 high-emitting diesel trucks from ports, phase-in of PM
9 filters on truck fleets, and expanding clean fuel zone and
10 port power rules to reduce emissions from oceangoing
11 ships, and measures aimed at reducing emissions from rail
12 yards and regional locomotives.

13 --o0o--

14 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

15 ALVARADO: But goods movement is not the only source of
16 diesel pollution, and I would like to remind the Board
17 that we are reducing other important sources of diesel
18 particulate pollution.

19 The Cleaner School Bus Program is reducing
20 children's toxic exposure from uncontrolled school buses.
21 For example, thanks to incentives, thousands of school
22 buses have been retrofit or replaced by newer cleaner
23 ones.

24 Next, we'll examine the impact of incorporating
25 environmental justice into ARB's air toxic program over

1 the last ten years.

2 --o0o--

3 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

4 ALVARADO: While diesel accounts for 70 percent of the
5 known cancer risk from air toxics in California, other
6 substance like Benzene, 1, 3 Butadiene, and hexavalent
7 chromium make up the remaining 30 percent of cancer risk
8 from air toxics in California. These substances often
9 pose special concern in communities that are worried about
10 the cumulative impact of local sources of toxics located
11 in close proximity to homes and schools.

12 We conducted several community assessments,
13 examining a diversity of exposures, and we applied the
14 lessons learned from these assessments to create effective
15 regulations, and worked with local districts on enhanced
16 enforcement that reduce the toxic risk to all communities.

17 Another outcome of our work in communities is
18 ARB's land use guidance document, which has also emerged
19 as an important tool for informing land use decision
20 makers about the importance of avoiding incompatible land
21 uses.

22 --o0o--

23 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

24 ALVARADO: In Barrio Logan, a neighborhood of San Diego,
25 ARB listened to community concerns, conducted monitoring

1 2011, the Sacramento, San Joaquin, and San Diego Air
2 Districts combined inspected 515 auto body shops and 23
3 chrome platers.

4 In the South Coast, 500 auto body shops were
5 inspected in 2011, and each chrome plating facility is
6 inspected four times per year.

7 In the Bay Area in the last five years, nearly
8 half of auto body facility's inspections and one-third of
9 chrome plating inspections were in environmental justice
10 areas.

11 Other districts also target EJ communities.

12 While small facilities can contribute to air
13 toxics load in environmental justice communities, there is
14 another equally important source of local air pollution:
15 Roadway emissions. ARB selected the Boyle Heights
16 community to investigate how roadway emissions can impact
17 the local air quality. This neighborhood is southeast of
18 downtown Los Angeles surrounded by freeways on three
19 sides.

20 The community assessment conducted there found
21 high levels of PM and other mobile source toxics near
22 roadways, falling sharply with distance from the freeway.
23 Confirmed by similar results from research projects, this
24 finding demonstrates that the health effects of traffic
25 pollution are magnified near freeways. Consequently,

1 environmental justice policies, ARB did not have any
2 climate change responsibilities. But with the enactment
3 of Assembly Bill 32, the California Global Warming
4 Solutions Act of 2006, and its 2020 greenhouse gas
5 reduction target, we have applied our environmental
6 justice policies to this new ARB effort.

7 In addition to approaching AB 32 implementation
8 with ARB's environmental policies in mind, the Board also
9 established an Environmental Justice Advisory Committee as
10 required by the bill. ARB provided staffing to support
11 the Committee which was charged with advising the Board on
12 AB 32 Scoping Plan development and other AB 32 related
13 issues. The Advisory Committee met many times as the
14 Board considered discrete early action measures and the
15 Scoping Plan. Committee representatives testified at
16 Board meetings and have provided written comments and
17 recommendations.

18 --o0o--

19 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

20 ALVARADO: We recognize that the consequences of
21 greenhouse gas regulations could impact some communities
22 more than others, and ARB is committed to ensuring
23 progress on environmental justice while meeting its
24 climate change goals.

25 Because the sources of greenhouse gases, criteria

1 pollutants, and air toxic are often the same, regulations
2 to reduce greenhouse gases can impact emissions of other
3 air pollutants. For example, there has been concern that
4 the low-carbon fuel standard may increase localized
5 pollutant emissions by encouraging the construction of new
6 biorefineries. To address this concern, ARB has released
7 draft biorefinery siting guidance to provide information
8 to local communities in which these facilities may be
9 built.

10 There have also been concerns expressed about
11 potential disparate impacts on local communities from the
12 cap and trade regulation. While we think that there will
13 be a net benefit in air quality from the rule, the
14 Adoptive Management Program adopted by the Board last
15 month ensures that we will identify and act on any
16 unexpected adverse impacts of the cap and trade
17 regulation, including criteria pollutant and toxic
18 emissions.

19 In addition, the state's 56 largest industrial
20 facilities are currently identifying greenhouse gas
21 reduction options for achieving on-site emission
22 decreases. ARB staff plans to bring a proposed rule to
23 the Board next year intended to achieve emissions
24 reductions in these large facilities.

1 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

2 ALVARADO: With every climate change rulemaking, we will
3 seek opportunities to reduce greenhouse gas, criteria
4 pollutants, and air toxic emissions.

5 We are committed to strict enforcement of all
6 regulations with environmental justice considerations in
7 mind. We will monitor and address community impacts of
8 the cap and trade regulation, and we will continue to seek
9 new and more effective ways to seek input on all aspects
10 of our climate change program from environmental justice
11 advocates.

12 --o0o--

13 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

14 ALVARADO: Despite the successes of the past decades,
15 there are still many challenges ahead of us to maintain
16 and accelerate progress on EJ issues.

17 I will end the presentation with our ongoing
18 research projects to improve our technical capabilities.

19 --o0o--

20 HEALTH AND ECOSYSTEMS ASSESSMENT SECTION MANAGER

21 ALVARADO: Community assessments are difficult and
22 expensive, so we are investing in tools to improve our
23 capabilities. We completed a major contract with
24 environmental justice academics to develop a screening
25 method that takes into account air pollution exposure and

1 regional benefits of reducing air pollution. As we
2 subsequently recognized, not everyone is harmed equally by
3 air pollution. Rather, people living in economically
4 disadvantaged communities often suffer a disproportionate
5 share of exposure. Our emphasis on environmental justice
6 evolved into ensuring that all Californians benefit
7 equally from improved air quality.

8 We look forward to today's discussion and any new
9 direction from the Board. Thank you.

10 CHAIRPERSON NICHOLS: Thank you.

11 We have a couple of people who have indicated
12 they'd like to speak to the Board on this item. So
13 without objection, I think we can call on them first.
14 This is the overall issue of the Board's environmental
15 justice policy. So if you wish to speak on that issue,
16 that's the topic at hand.

17 And I'm looking for my list. The first person
18 who signed up is Ken Percival.

19 And you do have three minutes, Mr. Percival. We
20 do have, by the way, a written statement.

21 MR. PERCIVAL: You may have attended a school
22 Board meeting I might have gone to.

23 I'll try to be as brief as possible.

24 The first thing I'd be remiss without my first
25 time here without thanking the Air Resources Board and

1 those Boards of the past that have managed to do things to
2 make sure the air of California has been clean and
3 pristine as possible. And in that, we share the same
4 goals.

5 I will submit, however, some problems do exist,
6 and that's what I'm here to talk about.

7 About a month ago, I called up this group and
8 asked a question. Simple question of science. And Mr.
9 Croes, we had a nice long conversation, upon which he did
10 everything possible to duck my question in every way he
11 possibly could. As of yet, I still remain unanswered.

12 The question is in what I offered to you folks.
13 Please read it. I asked for only communication, exchange
14 of views.

15 This similar thing happened about five years ago
16 when I was presented with a view of rising carbon dioxide
17 rising up from my car, my home, my place of business going
18 up to great greenhouse gas cloud in the sky that
19 apparently was blocking energy. I seemed confused. It
20 seems contrary to what I believe is science.

21 So I proceeded to take five minutes in the World
22 Book Encyclopedia. Read for five minutes. Called up the
23 Air Resources Board and asked them to explain to me how,
24 when they told me about the greenhouse gases two miles in
25 the sky lying in a layer, you know, blocking long wave

1 radiation heating up our atmosphere.

2 I asked them a very simple question: If they
3 were aware of the weight of carbon dioxide, the weight of
4 sulfur hexafluoride, and were they aware of gravity.

5 At that time, that was the last we heard of that
6 scientific theory. In the period of about eight,
7 nine months, I then chose to ask again your climate change
8 guru. That's when Mr. Alvarado announced to me that
9 carbon dioxide stores energy. Well, yes it does. So does
10 everything else on the planet. And I began to look at
11 things a different way.

12 I recognize in the act of combustion, burning,
13 any use of energy, it is actually an act of oxidation.
14 And in that process, there is only a prescribed amount of
15 oxygen available in that oxidation. And it can attach
16 itself either to sulfers, nitrogens, to carbon as a
17 monoxide or turn out as an ozone. I would submit that any
18 oxide we get to attach itself as a dioxide to carbon
19 becomes a useful gas that is present in our environment.
20 As a useful gas, it becomes part of photosynthesis and is
21 returned to us as usable oxygen.

22 By allowing the carbon dioxide levels to rise --
23 could you turn that to where I can see it? I have no
24 idea -- to allow that to exist by carbon dioxide, that
25 allows you to reduce the levels of the other oxides.

1 I'm not green. I'm teal. And I only wish that
2 someone would have perhaps a chance to communicate with
3 me. I just have a question. That's all.

4 So any questions. If not, I'll happily go on my
5 merry way and see you next month.

6 CHAIRPERSON NICHOLS: Thank you.

7 Our next witness is Rick McVaigh from the San
8 Joaquin Valley Air Pollution Control District. Welcome.

9 MR. MC VAIGH: Thank you. I'm Rick McVaigh, the
10 Deputy Air Pollution Control Officer for the San Joaquin
11 Valley Air Pollution Control District.

12 Our Executive Director Seyed Sadredin wanted to
13 come today. He was unable to attend. He asked me to sit
14 in on your environmental justice presentation.

15 One of Seyed's prime objectives when he became
16 Air Pollution Control Officer was to establish an
17 Environmental Justice Advisory Group for the Valley to
18 help incorporate environmental justice into our core
19 activities at the district. We now have a 13 member
20 Environmental Justice Advisory Group. The members are
21 from a wide variety of communities throughout the valley.
22 And they're appointed by the members of our Governing
23 Board. They advise the Air Pollution Control Officer, the
24 Citizens Advisory Committee, and the Governing Board on
25 environmental justice issues, many of which you mentioned

1 in your presentation.

2 Wanted to talk about a few of the things our
3 Environmental Justice Advisory Group has done in the
4 Valley. We've completed a number of key projects. One is
5 we've helped developed environmental justice maps of the
6 San Joaquin Valley. So you can go to our website, and
7 we've identified the environmental justice areas. And our
8 Environmental Justice Advisory Group helped provide input
9 on that.

10 They also provided that input to the High Speed
11 Rail Authority to help them with their outreach to
12 environmental justice areas along the nation's first
13 high-speed railroad, which is from Fresno to Bakersfield.
14 One of the other things they've done is reviewed a lot of
15 our outreach materials that we have at the district to
16 ensure that they're culturally sensitive, appropriate, and
17 effective both in English and Spanish.

18 One of the things we've challenged our
19 Environmental Justice Advisory Group to do for this year
20 is to go ahead and identify at least ten million dollars
21 more in emission reduction incentive projects that would
22 benefit environmental justice communities within the
23 Valley. So that's one of the big things they're working
24 on right now.

25 One of the areas of interest -- and it came up in

1 your presentation -- of our Environmental Justice Advisory
2 Group was the relationship between environmental justice
3 and climate change initiatives. And last summer, Nancy
4 McKeever of your staff actually provided a detailed
5 presentation on your climate change initiatives and was
6 able to answer a number of questions of our group. That
7 was very helpful and much appreciated.

8 So in summary, I just want to go ahead and
9 applaud your efforts. We've been involved in a number of
10 the ones that were mentioned in your presentation. We
11 want to go ahead and thank you for your continued support
12 of our Environmental Justice Advisory Group and our
13 strategy and also say we look forward to working with you
14 on future environmental justice initiatives.

15 CHAIRPERSON NICHOLS: Thank you. I want to
16 commend you also for your efforts. I think it's important
17 to recognize that local air districts are the
18 organizations that deal most directly with the sources
19 that are those that have historically been the most
20 focused for environmental justice communities, that is
21 stationary sources. So this is not something that we
22 could possibly do without strong partnerships with the
23 districts.

24 I think it's also interesting to see that at the
25 local district level an Advisory Committee process can

1 often function more effectively I think just because it's
2 closer to where most of the people live and work. So it's
3 more possible for them to really actively participate. So
4 I appreciate the fact that the district has really taken a
5 strong role in this area. I think it's very good.

6 One of the things that I'm curious about, maybe
7 you or our staff can answer this question, is whether
8 within the CAPCOA process -- that is a group where all the
9 districts get together -- is there a Committee or a focus
10 on sharing best practices and initiatives in this area?
11 Or is that something that you think might be valuable?

12 MR. MC VAIGH: I don't believe there is a
13 specific committee. The CAPCOA does have an environmental
14 group of advisers that advise CAPCOA on environmental
15 issues.

16 CHAIRPERSON NICHOLS: I was speaking really for
17 the Air Pollution Officers themselves, when they get
18 together, would it be smart for them to share some of
19 their accomplishments and issues and concerns?

20 MR. MC VAIGH: It certainly would, yes.

21 CHAIRPERSON NICHOLS: Okay. Maybe that's
22 something we can bring up then. Thank you very much.

23 MR. MC VAIGH: Thank you.

24 CHAIRPERSON NICHOLS: Bonnie Holmes-Gen.

25 MS. HOLMES-GEN: Thank you, Chair Nichols and

1 Board members.

2 Bonnie Holmes-Gen with the American Lung
3 Association of California. And I want to thank you for
4 this comprehensive overview of environmental justice
5 activities over the past decade. And I want to make sure
6 that you know that the American Lung Association in
7 California is very activity engaged in this whole effort
8 and trying to better understand and address the public and
9 pollution and health disparities in low income and ethnic
10 communities.

11 The American Lung Association recently published
12 an analysis focused on the burden of asthma on Hispanic
13 populations as part of a series that we have on
14 disparities in lung health. And this is a science-based
15 analysis of some of the problems that are faced by
16 different communities. And in this year's report, which
17 was called the Chondel Report Del Ira (phonetic), which
18 again is a focus on hispanic communities and the social
19 environmental economic disadvantaged that make it harder
20 to manage asthma, for example, in these communities. For
21 example, when you look across the country, Hispanic
22 populations are 165 more likely to live in areas with
23 unhealthy levels of particle pollution. And we know these
24 things intuitively, but it's helpful to have this
25 science-based report to just point out the special issues

1 that are faced.

2 And, of course, we think that the efforts that
3 the Air Board is doing in terms of diesel pollution
4 reduction is critical to addressing these issues. We
5 appreciate the progress that's been made that you've
6 outlined here. And just wanted to make a few points going
7 forward in terms of environmental justice and diesel
8 pollution reductions specifically.

9 One thing is that the community assessments that
10 you've done have been very important and effective in
11 better identifying and addressing these localized risks.
12 And we hope that you can do more of these and we would
13 like to work with you on this effort.

14 As I mentioned, the diesel pollution component is
15 extremely important. As you pointed out and are so very
16 well aware, the Carl Moyer funds and the Prop. 1(b) funds,
17 all these funding sources that get early reductions have
18 been so important. And we need to work together very
19 closely, and we have a big lift here to make sure that we
20 re authorize these funding sources so we have this
21 continued funding stream to ratchet down more on emissions
22 from trucks, buses, and goods movement sources. And we
23 need to work closely together on that.

24 We're very much looking forward to the audit of
25 large industrial sources and again think that that's a

1 very important next step in looking at how we can address
2 the community risk from those sources.

3 And then finally, we hope you'll have continued
4 updates on environmental justice, including updates from
5 the air districts on their activities. I'm glad that you
6 raised that. We think it's extremely important that there
7 is a continued discussion at the Board level as to how
8 we're addressing environmental justice and what specific
9 achievements that we're making and how we can continue to
10 make progress.

11 CHAIRPERSON NICHOLS: Thank you very much.

12 That concludes the list of audience members who
13 had indicated they wanted to speak on this topic. So
14 let's get back to the Board now and we'll start down at
15 with Supervisor Yeager.

16 BOARD MEMBER YEAGER: Yes, thank you. And thank
17 you, staff, for a very good report.

18 And I can tell this is an issue that you're
19 taking very seriously and want to address in any number of
20 ways. And really came clear in the last slides when you
21 talked about it isn't just the whole state that we're
22 trying to improve the air quality, but that there's
23 certain impacted communities that we need to spend more
24 time because they are the ones that are most directly
25 impacted. So it was a very positive report.

1 But I was wondering if staff could talk a little
2 bit about the areas where we still need to improve or
3 areas where we're still being criticized. And I say that
4 because we had an occupy Bay Area Air Quality Management
5 District protest yesterday at our air district and it was
6 not easy to put Bay Area Air Quality Management District
7 on a placard. But so we know there is still lot of
8 concerns. And these are not easy issues to address.
9 Obviously, they're long standing. But they're still out
10 there.

11 And I know that one of the list of demands that
12 this group had was wanting the air district to address the
13 cumulative impact of new and existing mobile and
14 stationary sources of air pollution, particularly in
15 disproportionately impacted communities by exploring and
16 implementing new tools and methods to evaluate and reduce
17 cumulative health impacts. And certainly, you talked
18 about the cumulative health impacts. But, you know, it's
19 just heartwrenching to listen to some of these community
20 members talk about the really high rates of asthma,
21 cancer, lung disease, and the very understandable request
22 that we do as much as we can as fast as we can, that
23 children are really -- their health is really being
24 impacted.

25 And so again, we can look at the report you gave

1 and all of the programs. But there still, of course, is
2 always that little bit of a disconnect where it's, that's
3 fine, but we need you to do more and we need you to do it
4 faster.

5 So I was wondering how we address that issue.
6 And when people come before us, how we sort of directly
7 address what they are talking about, rather than maybe
8 some of the list of programs that are already being
9 implemented.

10 EXECUTIVE OFFICER GOLDSTONE: That's an excellent
11 question. And I think what we're trying to say here is
12 that particularly over the past ten years, we've gotten
13 better and better at making sure we take those sort of
14 considerations.

15 Take the idea of making sure our rules account
16 for disproportionate impacts with the goal of reducing
17 them, identifying them, and reducing them as much as
18 possible.

19 Part of your question is how do you go about
20 identifying them. And that is an ongoing research
21 challenge, which we're very much involved with. And maybe
22 Bart or his staff can talk about some of the work we're
23 doing in that area. I think that is key.

24 But even though we don't have the perfect
25 information all the time, we certainly know that we want

1 to make sure that we don't cause harm and that in
2 everything we do we get reductions, particularly for
3 localized pollutants.

4 Bart, do you want to add any?

5 RESEARCH DIVISION CHIEF CROES: Bart Croes.

6 Very good points. In terms of the issue you
7 brought up about rates of asthma and heart disease, yes,
8 we're very concerned about that. Heart outcomes like
9 heart attacks and premature deaths from heart disease
10 seems to be related to PM2.5. So I think the things we're
11 doing -- especially on diesel are going to yield a lot of
12 benefits in that area. Of course, there's other factors,
13 like diet and smoking that we don't have any control over.

14 We did put -- we have tried to do an emphasis on
15 what we can do about high asthma rates. We are very aware
16 of the disparities. We've tried to study the role of air
17 pollution in both causing new cases of asthma as well as
18 asthma attacks. And a study that the Board identified
19 last September, we'll see if we can directly affect how
20 people respond to or how to mitigate the effect of air
21 pollution on asthma by looking at the effectiveness of
22 high filtration. And we will do a concentration on EJ
23 communities for that study.

24 In terms of cumulative impacts of multiple
25 sources of air pollution as well as other environmental

1 factors, that's a pretty difficult problem to tackle.
2 There's been some promising work coming out of OEHHA and
3 U.C. Davis that we're following closely. And certainly
4 the work that we're doing with our air pollution screening
5 tool with researchers at Berkeley and USC, the work that
6 we showed for Southern California and the Bay Area, we're
7 trying to extend to the entire state. So hopefully those
8 tools will be available in the next year or two.

9 CHAIRPERSON NICHOLS: Could I just jump in for a
10 second here? Because I want to sort of emphasize the
11 distinction what can be done between science and research
12 and what can be done with action, because sometimes
13 they're not exactly the same. I think about this
14 particularly with respect to community concerns about
15 things like asthma rates or cancer clusters, because I've
16 seen so many times over the years money spent on trying to
17 establish whether the existence of some horrible toxic
18 source in a community could be linked to the cancer rates
19 in the community. And time after time, what happens is
20 that the study is unable to detect a cause and affect
21 relationship just because of how weak the tools of
22 epidemiology are.

23 I wish John Balms were here to defend himself on
24 epidemiology. But on his behalf, I would say they've
25 gotten better in certain respects. But whenever people

1 demand, as they do from time to time, successfully that,
2 you know, the State may come in and answer their questions
3 about why they're experiencing these very bad health
4 impacts, it seems as though we're not able to satisfy them
5 with our science.

6 And yet at the same time, if we are able to
7 actually using the legal tools that we have get somebody
8 to clean up anyway, we may have accomplished at least a
9 good piece of what was wanted. And I don't want to be
10 cynical about this, but it does seem to me there is an
11 element here of just responding to community concern,
12 which shouldn't be confused with whether you can prove to
13 everybody scientific satisfaction that something is
14 actually the problem.

15 BOARD MEMBER YEAGER: And I think that's a very
16 good point.

17 And I guess what I was partly asking as well is
18 making sure that staff understood the criticism that is
19 still out there and the reasons for it. So when we have
20 community meetings or people wanting to address that, we
21 really are understanding what their question is and giving
22 them the answer, rather than perhaps, you know, an X
23 amount of pages in a report saying look at all the things
24 we're doing for you. How come you're not happy enough?

25 And I think those of us in public office are used

1 to this all the time, where we think we're passing the
2 laws and policies and we understand the issue. And lo and
3 behold, you know, it's an occupy Bay Area Air Quality
4 Management District, and you go, wait a minute. What's
5 wrong? There are a lot of different issues they're
6 talking about, a lot of different factors. People want us
7 to move faster than we can. We have a lot of policies in
8 place, but they don't always address the cumulative
9 effect.

10 I'm urging staff -- not that you haven't already,
11 but I haven't really heard you say there's still issues
12 out there and we just need to figure out the right way to
13 address them.

14 EXECUTIVE OFFICER GOLDSTONE: Those are all very
15 good points, Supervisor Yeager. And of course, the
16 partnerships we have with the air districts are very key.
17 And we understand that ultimately, for example, in the
18 Barrio Logan area, you're on the front line, whether it's
19 Bay Area or San Diego. And we want to continue that
20 partnership and continue -- one of the reasons we brought
21 this to you today was to say that we are continuing this
22 work. And we're looking forward to continuing the
23 discussion in every policy that we bring to you for
24 consideration.

25 CHAIRPERSON NICHOLS: But I think the staff is

1 also open to some new thinking or direction on how to do a
2 better job on this topic, too. So don't be shocked.
3 Thanks.

4 Ms. D'Adamo.

5 BOARD MEMBER D'ADAMO: Slide 19 and 20, the
6 Harbor Communities Monitoring Study, just curious what all
7 went into this. How much did it cost? It would be nice
8 to see more of these.

9 Because I just think if we look at the statewide,
10 there's been tremendous progress statewide. But a lot of
11 folks in these impacted communities just say, "I'm not
12 feeling it." And so those statewide figures don't
13 translate to their specific situation. But perhaps in
14 this study area it does translate to improvement. So just
15 curious about how much it costs. Has this study been used
16 as a community outreach tool? Has it been helpful? What
17 can be done to do more of these?

18 RESEARCH DIVISION CHIEF CROES: Bart Croes again.

19 The study collectively cost about a million
20 dollars. We had major contractors from USC and University
21 of Nevada that participated.

22 In addition, the district, the local South Coast
23 district, and the ports have also made substantial
24 commitments to monitor air pollution.

25 We did have an extensive year-long program

1 working with the community. And the community brought a
2 lot of complaints about idling trucks or other specific
3 sources. So we did actually use community members to host
4 monitoring sites, which seemed to be pretty successful.
5 And we've brought back the results to the community and
6 seemed to be well received.

7 We've made a multi-year commitment to this
8 community to track the progress as the rules are
9 implemented. So we have seen about a 50 percent
10 improvement so far in air quality. And we're going to
11 follow as further controls get implemented to make sure
12 that they're working in that area.

13 So it does seem to be appreciated by the
14 community and maybe Cynthia Marvin can add, because she's
15 more directly dealing with them right now.

16 ASSISTANT DIVISION CHIEF MARVIN: Cynthia Marvin
17 with the Stationary Source Division.

18 I just wanted to address the second part of your
19 question, which was: When you do a study like this, what
20 do those results mean and how do they get used?

21 Bart mentioned some of the community outreach.
22 What I wanted to talk about was how powerful these sorts
23 of results have been in prompting, for example, the Ports
24 of Los Angeles and Long Beach to take their R&D clean air
25 action plan from 2006. They took the results of this

1 monitoring, the monitoring done by the ports, by ARB, and
2 others, and really stepped it up and set a whole new
3 benchmark in terms of air quality goals for the port and
4 all of its customers' activities. And that is driving
5 together with ARB's regulations the progress that we
6 continue to see down there from the shippers, the terminal
7 operators, to the truckers. And hopefully that will be
8 extending even further into the railroads' operations as
9 well. So those sorts of studies and those sort of results
10 are very powerful in terms of driving other local
11 agencies, driving the industry action, and then really
12 giving us feedback about what's working on our programs
13 and giving us the direction to go forward and say where
14 else do we need to do that.

15 EMISSIONS ASSESSMENT BRANCH CHIEF DONOHOUE: This
16 is Dan Donohue, Stationary Source Division.

17 The other thing I wanted to comment on is one of
18 the real interesting parts of this study is it does
19 correlate well with what we predicted from modeling. It's
20 a lot easier, quicker, cheaper than to do modeling.
21 Oftentimes, people will say, can you validate the
22 modeling? And the original work we did on the risk
23 assessment of the ports of L.A. in 2004, what we thought
24 would happen with respect to the regulations coming in are
25 actually being shown here. So a lot of times -- if we can

1 get a little bit better belief in what the modeling can do
2 based on things like this, I think that allows us to use
3 this in other areas, particularly use our modeling
4 capabilities to tell the story, to convince people what
5 needs to be done, where it needs to be done, and really
6 tailor some of the activities to those pockets within
7 those communities that are more effective.

8 And we've seen that in the health risk
9 assessments on the rail yards. There are certain actual
10 areas of the facility that make more -- it makes more
11 sense to try to do something in that area compared to
12 another area because of the localized impacts.

13 CHAIRPERSON NICHOLS: Isn't it fair to say that
14 this study also really arose out of work that was done by
15 USC and the local community and that they brought to us
16 the idea for doing the study or at least some of the
17 suggestion for creating the study?

18 Did we create this ourselves? Or this was
19 invented by the Air Resources Board? I just want to be
20 clear, because these things take on a life of their own.
21 I'm interested in figuring out how we do a better job and
22 doing more of these kinds of things.

23 RESEARCH DIVISION CHIEF CROES: The origin of the
24 study was to validate the modeling approaches Dan Donohoue
25 was describing. Since we've done the study, USC has gone

1 in and worked with the local districts to compliment the
2 work that we started.

3 CHAIRPERSON NICHOLS: Okay. So our funding was
4 directed to doing our monitoring work and not to research
5 that was being done at the community level already?

6 RESEARCH DIVISION CHIEF CROES: Right. We did
7 actually fund USC to do some of the work. But again to
8 help complement --

9 CHAIRPERSON NICHOLS: I'm not trying to decide
10 who should get the credit here. I'm trying to figure out
11 what the most effective way is to generate this kind of
12 work, as Dee Dee was suggesting that given the impact that
13 it had, would it be something that would make sense to try
14 to replicate or do in a different way in other areas where
15 we know we have environmental justice concerns.

16 RESEARCH DIVISION CHIEF CROES: Well, I mean,
17 that's the intent of some of the tools. We tested a
18 variety of tools in this community, some which were low
19 cost, didn't use electricity. And those seem to be pretty
20 effective, as well as the electric vehicle that's
21 instrumented. We actually have gone into other
22 communities, like Boyle Heights to do measurements. And
23 it just gives USC the credit they deserve.

24 The dimension that's missing from our study is
25 we've demonstrated that the emission controls are working

1 and reducing exposure. But they're adding the dimension
2 of what's the health improvement in your community. So
3 they're trying to get a fund --

4 CHAIRPERSON NICHOLS: It's obviously a real
5 collaboration and involves a number of different groups.

6 I think when we finish having a discussion here,
7 I'd like to make some suggestions of things that the Board
8 can direct the staff to do going forward. I think
9 something along this line is what we need to be getting
10 at.

11 BOARD MEMBER D'ADAMO: Absolutely. I'm just
12 thinking creative solutions so that the next study doesn't
13 have to cost a million dollars.

14 And I'd like Dan, which you were talking about
15 with respect to modeling, maybe those models and the study
16 that's already been done can be used to encourage
17 communities that their area can be studied, but it
18 wouldn't cost a million dollars.

19 CHAIRPERSON NICHOLS: I think I saw Mayor
20 Loveridge's hand up next.

21 BOARD MEMBER LOVERIDGE: I'm not entirely sure
22 where I'm going with these comments. But it is very clear
23 I think that the progress that's taken place over the past
24 ten years, difference in approach. But I'd like to look
25 at kind of prospective questions, because there's 482

1 cities and 58 counties that are making daily -- not
2 daily -- weekly or monthly land use choices. And I was
3 looking now at slide 28, which is land use guidance to
4 reduce near-source impacts. Sort of pondering what
5 those -- what that guidance is and what form it takes and
6 how visible it is and what kind of information electives
7 have to try to make this kind of sort between economic
8 growth and jobs and so forth.

9 I'm not sure that the land use guidance is
10 particularly good, speaking personally in terms of its
11 place on the agenda of our city or cities I know anything
12 about.

13 And there are a couple of other kind of related
14 thoughts. I know when you're approving some project
15 having to do with endangered species, you always have
16 mitigating measures. You have to do something.

17 But in cities, there's really kind of a real
18 emergence of interest and healthy lifestyles and choices.
19 Some of it's walking, biking, food. We, in Riverside,
20 call it being fit, fresh, and fun. That's our mantra that
21 we're trying to push as a city. It's more than simply a
22 physical side. It's lifestyle and quality of life.

23 So I'm not quite sure where I'm going with this,
24 except to say the land use guidance, we may have it on the
25 books, but I'm not sure how instructive or helpful it is

1 for elected officials are trying to sort out you qualify
2 with the next bullet the one consideration among housing
3 and transportation needs. And I recognize this composite
4 decisions. But I think we can do better for providing
5 information about near-source impacts.

6 BOARD MEMBER RIORDAN: Madam Chair, I --

7 CHAIRPERSON NICHOLS: I was going to ask Lynn
8 Terry to respond to that quickly. If you wanted to add
9 something on that, please.

10 BOARD MEMBER RIORDAN: It was.

11 CHAIRPERSON NICHOLS: Go ahead.

12 BOARD MEMBER RIORDAN: One of the things, Mayor
13 Loveridge, that I said to the staff -- and I hope we can
14 go back and look at it -- was that the guidance document
15 is an excellent document and worked on over a period of
16 time by Lynn Terry and Cynthia and a whole lot of other
17 people.

18 The problem is that when it's issued and when we
19 took it to the League of California Cities and to others,
20 that's great, except everybody changes. Almost every
21 two years, there is a change in the leadership in counties
22 and cities. So we have to go back and re-educate. And I
23 think that was one of my strong points at the time that we
24 went over this document, which I still believe is a
25 wonderful document. We just have to re-educate people,

1 because people change every two to four years in a city or
2 a county. And the leadership changes, even planning
3 departments change.

4 And so -- and now I'll turn it back to Lynn.

5 CHAIRPERSON NICHOLS: I have another hand from
6 Supervisor Roberts. Let's get all the comments out and
7 then Lynn can speak.

8 BOARD MEMBER ROBERTS: Well, let me just make a
9 couple comments.

10 It's funny, because I didn't know that that
11 handbook existed. I've already requested a box of them
12 from James.

13 We have ongoing -- when you are planning a new
14 community, it's relatively simple to say you're here and
15 you're there. But in some of the older areas, Barrio
16 Logan was used as an example, which was a long strenuous
17 controversial cleanup of a preexisting industrial area
18 that had been built up with housing not only around it, I
19 mean like on top of it. And there were several chrome
20 platers, not one. One that was the final one was
21 acknowledged. And that was closed down quite a while ago.
22 But the lessons were learned. I mean, those things were
23 done in ignorance. And we know a lot more today about
24 those relationships.

25 In San Diego, that doesn't mean we are not facing

1 those kinds of things. In fact, we have a very
2 controversial issue right now that has to do with one of
3 our major manufacturers and one of our enterprising
4 developers who wants to build a condo project -- excuse
5 me -- residential project right across the street and well
6 within the danger zone, which poses all sorts of major
7 risks for the continuation of those industrial processes.

8 And the industrial processes themselves are okay
9 until you move residential uses in right next to them. I
10 don't know what's in that handbook. I'm thinking I can
11 use that to enlighten some of the decision makers as to
12 the possible consequences of a land use decision that
13 could affect a major employer in our region. Not could.
14 Would absolutely effect them, because there's no way
15 they're going to continue to make investment in that plant
16 that could be closed down virtually overnight if something
17 were built there.

18 So I see a need for these things. I'm in
19 agreement. Education is not a static thing. You need to
20 keep going.

21 We have had very little change on our Board of
22 Supervisors. In fact, we've been together over 16 years.
23 And it's still a process of educating in terms of what is
24 and what is going on, what do we have to do as the air
25 district, since we're the air district along with being

1 the Board. And I think things like this could be helpful.

2 I'm anxious to see it. I don't know why I didn't
3 know it existed. But I've got a feeling you're going to
4 see those in widespread use.

5 CHAIRPERSON NICHOLS: I think Lynn is going to
6 hold one up.

7 Would you like to say a word about how this
8 document is being used nowadays?

9 DEPUTY EXECUTIVE OFFICER TERRY: Sure. And it
10 actually has been almost six years. And at the time,
11 Supervisor Riordan was very active in helping us go
12 through a very difficult process of adopting that document
13 because of the challenge of the land use decision making.
14 And so the document was intended to really highlight the
15 value of avoiding new incompatible land use, as the
16 example you just gave.

17 So we have a number of examples from chrome
18 platers to other large industrial sources where we had
19 done some modeling and so we came up with advise about a
20 minimal distance where we could, from an exposure
21 standpoint, reduce the exposure by about 80 percent. So
22 it was not a risk assessment. But it was sort of a
23 practical guide to you could substantially reduce the
24 exposure with distance.

25 BOARD MEMBER ROBERTS: Maybe you need to put a

1 new cover on it and say new and improved.

2 CHAIRPERSON NICHOLS: Every two years change the
3 color of the cover.

4 DEPUTY EXECUTIVE OFFICER TERRY: But I did want
5 to also add there is a very pertinent new issue with
6 respect to this document and SB 375. We did recognize
7 even in 2005 there could be an inherent conflict between
8 our advise not to site new homes, schools, sensitive
9 receptors near freeways. And our recommendation was 500
10 feet. And that was where we saw the exposure reduced by
11 80 percent.

12 Obviously, you heard an earlier report about the
13 progress we made of reducing diesel exposure. So the risk
14 has been reduced substantially. None the less, the risk
15 from being near roadways is going to be with us for a long
16 time.

17 So as we have looked at SB 375 implementation and
18 encouraging in-fill, mixed use development, transit
19 oriented development, it's become a very live issue. And
20 we have actually a State agency working group struggling
21 with this as we speak. And I think that the SCAG
22 sustainable communities strategy will bring this to light.
23 And staff are working closely with SCAG on GIS mapping to
24 look at the transportation system and as kind of a case
25 study to see how we can maximize the SB 375 goals, but

1 also look in a realistic fashion at this guidance and what
2 it might mean.

3 And where we stand with the State agency work
4 group is the question has been posed: What is the impact
5 on our guidance on the ability to meet SB 375 goals? Are
6 they incompatible goals? We want to make the answer to
7 that be no, they're not incompatible. But it's going to
8 be a challenge to work through.

9 CHAIRPERSON NICHOLS: Thank you.

10 Mr. De La Torre.

11 BOARD MEMBER DE LA TORRE: Thank you, Chairman --
12 Chairwoman.

13 CHAIRPERSON NICHOLS: Whatever. Mary is fine.

14 BOARD MEMBER DE LA TORRE: As I was looking
15 through the presentation and on some other issues that I
16 know have already been discussed and are going to continue
17 to be discussed, it seemed to me that a place -- piece of
18 information is missing, which is where are we talking
19 about? What is an environmental justice community? Where
20 do you have a combination of effects such that you have a
21 community that is disproportionately effected, compared to
22 everybody else? Is there a map of California that has
23 these locations?

24 And I understand the repercussions of it, of
25 being on that map. But it would be very important for

1 this discussion and for all of the other discussions in
2 terms of mitigation that we know where we're mitigating.
3 And I think it's -- I understand where it would be
4 problematic. But I think it's absolutely vital if you're
5 going to put resources into these communities to mitigate
6 this disproportionate effect that we know which
7 communities we're talking about.

8 DEPUTY EXECUTIVE OFFICER TERRY: The staff
9 presentation talked a little bit about the environmental
10 justice screening tool that we supported with our funding.
11 And Manual Pastor is the academic who was leading that
12 team. It has been completed for South Coast air basin and
13 Bay Area, and we're working on completing it for the San
14 Joaquin Valley.

15 And what that does is combine data layers on
16 socio-economic status, a variety of air pollution exposure
17 data from ozone, particulate matter, the toxic release
18 information, and really combining all of those different
19 data sets to say what is the overlay and where are the
20 communities where we see the most social vulnerability
21 combined with the highest potential emissions.

22 In some cases, we don't have the full set of
23 emissions data. We have exposure data that's monitored.
24 But this tool addresses a concern of the communities,
25 which is proximity to air pollution sources, multiple

1 sources, in particular. And even if we don't have the
2 emissions data for every source mapped, at least as a
3 screening indicator which we find a lot of sources
4 concentrated in a community, that is an indicator of
5 potential disproportionate impacts.

6 So there is a big challenge that I see going
7 forward moving from a screening tool to something that is
8 a more complete assessment. And that would really involve
9 understanding the actual emissions from these multiple
10 sources. And for that, we really need to be working with
11 the districts who possess that data and find out how we
12 can do a better job of geographically identifying the
13 actual emissions.

14 BOARD MEMBER DE LA TORRE: Thank you.

15 I think everything that's come in the past plus
16 now AB 32 you cannot move forward without having this.

17 And I made the comment earlier about I understand
18 the negative implications. I live -- I know there's no
19 doubt in my mind that I live in one of these communities
20 that's going to be on this chart. And so I'm still going
21 to live there. I'm not moving away. Just like most of
22 the people in any of these communities are not going to
23 move away. So we need to look at it very clear eyed so we
24 can put those resources where they belong.

25 CHAIRPERSON NICHOLS: Thank you for that comment.

1 I think there's been a lot of concern in the past
2 about the negative impacts of the communities' sense of
3 well being, maybe property values or whatever about
4 putting labels on a map.

5 But we are also now talking about focusing
6 significant resources on communities that are EJ
7 communities. And ironically, there have been a couple of
8 occasions where we've had disputes. I'm worse impacted
9 than you are, people coming in to complain about they not
10 being given adequate recognition for how bad their air is.

11 I think you're absolutely correct that we have
12 got to find some way to do this that indicates that our
13 position is perfect. And then particularly when it comes
14 to boundary lines, we may not be able to judge them
15 adequately, but that we're still going to have to do our
16 best anyway to put lines on a map and put those color
17 codes in there. You're absolutely right about that.

18 Other comments? Dr. Sperling?

19 I'd like to throw out a couple of things that
20 this conversation has lead me to want to suggest and see
21 if I can get the Board to endorse this approach.

22 So first of all, we've got to do a better job of
23 outreach on the documents we've already got and remind
24 people this land use guidance exists. And that if it
25 needs to be updated, then to update it.

1 Secondly, with respect to tools that are being
2 worked on, for example, the cumulative impact tool that
3 you spoke about, I know this is a very high priority.
4 It's not one we're doing ourselves. As I understand it,
5 it's being done by OEHHA. But we need to do what we can
6 to try to get that into some kind of shape that it can be
7 better made available to the public. And if it has to be
8 done in some sort of a rudimentary form or simpler form, I
9 think that discussion should be had.

10 I think we need to find a process for
11 prioritizing community assessments. We have these tools
12 and we have resources as, for example, with this electric
13 monitoring van that can be deployed where we can go out
14 into an area. Now, we don't want to step on the toes of
15 local districts, understood. It has to be part of the
16 consideration.

17 But I think we should have a plan on an annual
18 basis with some room in it for responding to crisis that
19 may come up.

20 But basically, how are we going to affirmatively
21 come out and start doing community assessments and making
22 that information available to people. I think that would
23 go a long way towards helping to create a sense that we
24 really are there doing something of interest and also that
25 it will give us, as Mr. Donohoue indicated earlier, the

1 ability to utilize the information to validate our models
2 and otherwise update our work.

3 And then last, but not least, even though no one
4 came here today to criticize us for this, you asked the
5 question where are we being criticized. And I think it's
6 important to recognize that everybody on the Board knows
7 that we were sued over our AB 32 Scoping Plan by a
8 coalition of environmental justice organizations and
9 individuals, some of whom were members of our own
10 Environmental Justice Advisory Committee, not all of them,
11 but a number of them were. And it's clear that at least
12 for those individuals and groups, there was a sense that
13 the Board did not give adequate consideration to the
14 recommendations that that Committee came up with in the
15 course of the development of the Scoping Plan.

16 Now, I could spend quite a bit of time -- I came
17 in in the middle of all this, so I only know a part of it.
18 But I think I have a pretty good sense of where we went
19 awry in that process. And a lot of it had to do with
20 expectations at the beginning and how ARB staffed or
21 didn't staffed their Committee or what they were able to
22 do on their own. And it really was an illustration I
23 think of some of the things that can happen with an
24 Advisory Committee if you don't recognize at the outset
25 what their objectives are and find a way to work with them

1 on those objectives.

2 So we're in a fortunate position at the moment
3 that we seem to be in a period of some calm with respect
4 to litigation, which is great. It's a good thing. But it
5 doesn't mean that we shouldn't think about how to
6 reformulate and re-activate or re-create an Environmental
7 Justice Advisory Committee for ARB. And that, to me, even
8 though AB 32 specifically required the creation of an
9 EJAC, that doesn't mean that it should be limited to only
10 advising by AB 32. I think that was actually part of the
11 problem to begin with was the attempt to take concerns
12 that the community had about sources in their communities
13 and boost stuff onto AB 32, rather than sort of taking a
14 fresh look at the overall health concerns and community
15 concerns. And then where AB 32 is the right tool or part
16 of the tool, use it. But not try to create, re-create a
17 system that wasn't working as well as people wanted it to
18 in the first place.

19 So on my list of things that I'd like to see
20 going forward would be an indication from the Board that
21 we do want to have an advisory group and direct the staff
22 to come back with some suggestions about how best to do
23 that.

24 BOARD MEMBER RIORDAN: I think that's a good
25 idea, Madam Chair. And I'll tell you why.

1 Communication works both ways. We need to hear
2 from our communities as well as they need to hear from us.
3 I think we have a good story to tell. And part of maybe
4 what happened to the Bay Area was they were uninformed,
5 misinformed, whatever. I think we really need to tout
6 some of the good work as well as listen to communities to
7 know where our next steps need to be. And so I'm very
8 supportive of bringing back an Advisory Committee and
9 hoping to do some good outreach. As I say, both ways.

10 CHAIRPERSON NICHOLS: Any other -- I see heads
11 nodding. Nobody has said absolutely not.

12 BOARD MEMBER D'ADAMO: I would just say in
13 conjunction with the local air districts, how to --

14 CHAIRPERSON NICHOLS: Utilize the districts of
15 the communities they already have, so we don't duplicate
16 the wheel, so to speak.

17 Okay. Are those points acceptable and clear?

18 EXECUTIVE OFFICER GOLDSTONE: Acceptable and
19 clear.

20 CHAIRPERSON NICHOLS: Okay. Thank you. Very
21 good. Okay. Then I think this will conclude this item.
22 And we will move on to our legislative update. Thank the
23 staff. I know this was tough to pull together to go back
24 and document or try to document what we've done over a
25 decade and what we've done. There are probably some

1 pieces missing. But there is a lot of here. And this was
2 my real interest in the beginning is just to see whatever
3 happened to this thing.

4 Thank you very much, Dr. Alvarado, and others.

5 While she's coming up, I'm going to introduce our
6 Legislative Director, who was not here last year. So
7 she's maybe new to some of you, Jennifer Gress. And I
8 feel like the guys from Click and Clack, the Tappet
9 Brothers. Even though Mark DeSaulnier would scream when
10 he heard me say this, we did steal her from the Senate
11 Transportation Committee where she appears to have been a
12 very valuable staff member, because every time I go over
13 there, I get harassing from people who are mad at us. But
14 they haven't done anything to lash out yet. So hopefully
15 we still have good relationships on both sides.

16 And we asked Jennifer to come and present an
17 overview of the last year in the Legislature just to give
18 the Board a flavor for what she's been up to and how the
19 ARB fairs in the Legislature.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 LEGISLATIVE DIRECTOR GRESS: Good morning. I'm
23 pleased to be here today to present the 2011 legislative
24 summary.

25 I started at ARB just a few months ago in mid

1 June. As Mary mentioned prior to coming to ARB, I served
2 as a consultant with the Senate Transportation and Housing
3 Committee for six years. In that capacity, I worked on
4 legislation related to air quality, goods movement,
5 Proposition 1(b), public/private partnerships, toll
6 facilities, sundry issues related to rules of the road,
7 driver licensing, and most exciting, billboards.

8 I came to the Legislature in 2004 from gradual
9 school at the University of California Irvine where I
10 earned a doctorate in social ecology. As part of the
11 Senate Fellows Program, I first worked for then Senator
12 Tom Torlakson before joining the Committee in 2005.

13 --o0o--

14 LEGISLATIVE DIRECTOR GRESS: So what occurred
15 this year in the Legislature with regard to ARB?

16 Nearly 2400 bills were introduced and about 37
17 percent of those made it to the Governor's desk. The
18 Governor signed 756 bills, which was about 86 percent of
19 the bills that came before him, and he vetoed 128.

20 Concerns about the economy permeated the
21 atmosphere of the Legislature, and job creation and
22 improving the business climate in California were
23 consistent themes in the legislative debate among both
24 Democrats and Republicans.

25 --o0o--

1 LEGISLATIVE DIRECTOR GRESS: With regard to ARB's
2 legislative activity, over the past year, ARB tracked 235
3 bills related to air quality and climate change and
4 participated in five special hearings.

5 By comparison, last year ARB tracked 280 bills
6 and participated in 13 hearings.

7 --o0o--

8 LEGISLATIVE DIRECTOR GRESS: This slide
9 illustrates the number of bills by subject area that we
10 tracked. As you can see, the majority of bills were
11 related to climate change and energy. But a significant
12 area of activity for us occurred in the admin category.
13 This category includes bills that related to Board
14 structure, Board operations, penalties and enforcement,
15 and regulatory reform.

16 I've been asked how the legislative climate this
17 year is different for ARB from last year. Last year was a
18 very active year with efforts to roll back the on-road and
19 off-road diesel rules. We did not see any serious efforts
20 this year to undo ARB regulation. Where we did see
21 significant activity that could affect ARB rulemaking is
22 in the category of regulatory reform. We tracked 30 bills
23 that affected the rule making process, which is about 13
24 percent of all bills that we tracked and a very high
25 number when compared to previous years.

1 --o0o--

2 LEGISLATIVE DIRECTOR GRESS: This chart
3 demonstrates the change in the number of regulatory reform
4 bills that ARB has tracked over the past 12 years, which
5 is the time period for which we have readily available
6 information on bill tracking.

7 The premise underlying these bills is that
8 regulation hampers economic activity and job creation,
9 which were pervasive themes across the legislative
10 spectrum given the sluggish economy.

11 Bills in this category generally sought to do one
12 of three things:

13 One: Increase the amount of time, in some cases
14 over a year, before the regulation may be implemented
15 following adoption by the Office of Administrative Law.

16 Two: Require assessments of the economic impact
17 of a regulation on business, with an emphasis on small
18 business.

19 And three: Require periodic reviews of the
20 impact of regulation subsequent to their implementation.

21 --o0o--

22 LEGISLATIVE DIRECTOR GRESS: This year, the
23 Legislature passed and the Governor signed one such bill,
24 SB 617. This bill requires the Department of Finance to
25 adopt a methodology for preparing economic analyses, and

1 it requires agencies to prepare these analyses when
2 considering regulation and submit them to Finance for
3 review and comment.

4 This bill requires some additional analysis, but
5 ARB already conducts comprehensive economic analyses of
6 its regulations, so it will have less impact on ARB than
7 it will have on other agencies.

8 Anxiety about ARB regulations was also expressed
9 through AB 1095, which requires ARB to establish a hearing
10 Board to hear disputes and requests for variances related
11 to the AB 32 programs on a facility-by-facility basis.

12 The Senate Environmental Quality Committee is
13 currently convening stakeholder meetings to better
14 understand the problem the sponsor and authors seek to
15 address.

16 --o0o--

17 LEGISLATIVE DIRECTOR GRESS: Two bills sought to
18 change the structure of the Board, both of which repeated
19 past efforts to achieve the same goal.

20 AB 135 required at least one Board member to have
21 been a small business owner within the past five years.
22 At least three of you have experience as a small business
23 owner, which the Governor noted in his veto message.

24 The second bill, AB 146, originally added two
25 members to the Board, one who has climate change expertise

1 and one who represents an air district in the Sacramento
2 non-attainment area for ozone. To reduce the costs
3 associated with increasing the number of Board members,
4 the Senate Appropriations Committee amended the bill to
5 delete the addition of two members and to require instead
6 that the seat that currently rotates among different air
7 districts alternate between the air district in the
8 Sacramento area and any other district.

9 Upon passage, the author placed the bill on the
10 inactive file while he sought other avenues to ensure that
11 the Sacramento region is represented on the Board.

12 --o0o--

13 LEGISLATIVE DIRECTOR GRESS: The next area where
14 there was significant bill activity relates to AB 32
15 programs. While we tracked 84 bills in this area, two
16 stand out.

17 The first is AB 341, which among other things
18 requires certain businesses and multi-family dwellings to
19 arrange for recycling services by July 1 of next year. As
20 you may recall, ARB staff has been working with CalRecycle
21 to develop a regulation to require commercial recycling.
22 Because this bill contains many of the same provisions as
23 ARB's proposed regulation and it provides CalRecycle clear
24 authority over the program, ARB is not moving forward with
25 its regulation.

1 A bill you may recognize is SB 535. This bill is
2 a reintroduction of AB 1405, which the Governor vetoed
3 last year. SB 535 sets aside ten percent of AB 32
4 revenues to fund projects that reduce greenhouse gas
5 emissions, mitigate the direct health impacts of climate
6 change, and provide training for green collar jobs.

7 ARB is tasked with identifying the most impacted
8 disadvantaged communities and developing a funding plan
9 that includes specific projects every three years.

10 --o0o--

11 LEGISLATIVE DIRECTOR GRESS: Energy was an active
12 area for the legislative office this year, comprising
13 about 30 percent of the bills that we tracked.

14 Two important issues were the re-authorization of
15 the public goods charge and the renewables portfolio
16 standard. The PGC is a utility surcharge paid by
17 customers, raising about \$356 million annually to fund
18 public benefit programs focusing on renewable energy,
19 energy efficiency, and research and development. It
20 sunsets at the end of this year, and eight bills were
21 introduced to reauthorize it and re-cast each of these
22 three program areas.

23 At the end of session, two bills supported by the
24 administration emerged as the primary vehicles the Senate
25 and Assembly would use to re-authorize the PGC. AB 724

1 standard. Senator Simitian re-introduced his legislation
2 in 2010. But on the last night of session, the
3 Legislature failed to take action on the measure.

4 The Board then adopted the RES regulation on
5 September 23rd, 2010. Those who claim that the third
6 time's a charm might be right in this case, as this year
7 SB 2X was able to secure passage and win the Governor's
8 signature. At that point, you may recall ARB choose not
9 to pursue the RES.

10 This process has left some unresolved issues,
11 with some issues the subject of cleanup legislation
12 embodied in SB 23. Of relevance to ARB, the author added
13 a provision to the bill prohibiting ARB from adopting a
14 procurement standard for the electricity sector. This
15 bill was held on the assembly floor, but it could move
16 forward next year.

17 The other RPS bill of interest to ARB is AB 1391.
18 This measure, sponsored by the Los Angeles Department of
19 Water and Power and support by ARB, was an effort to
20 consolidate RPS enforcement over the publicly-owned
21 utilities within the Energy Commission, thereby
22 eliminating the bifurcated and inefficient enforcement
23 role shared between the Energy Commission and ARB under SB
24 2X. This bill failed passage on the Senate floor.

1 LEGISLATIVE DIRECTOR GRESS: On a more positive
2 note, a popular subject for legislation continues to be
3 the Lower Emission School Bus Program. The Governor
4 signed three bills that provide funding to ensure the
5 cleanup of school buses. AB 462 allows an existing two
6 dollar motor vehicle registration surcharge to be used to
7 fund the replacement of CNG fuel tanks and fueling
8 infrastructure in order to extend the life of CNG buses.
9 And AB 470 allowed the same two dollar fee to be used to
10 retrofit diesel school buses.

11 Finally, SB 570 allows the San Joaquin Valley to
12 use interest revenue from the traffic congestion relief
13 program to fund school bus retrofits and replacements.

14 --o0o--

15 LEGISLATIVE DIRECTOR GRESS: Continuing on the
16 themes of job creation and regulatory reform, two bills
17 that received significant attention in the final days of
18 session involved efforts to streamline the CEQA process
19 for major projects.

20 SB 292 provides expedited judicial review of any
21 CEQA challenges that arise for a specific stadium project
22 in Los Angeles. The bill maintains the basic requirements
23 of CEQA, but it provides that lawsuits head directly to
24 the court of appeal and limits the number of days the
25 court of appeal and the Supreme Court may take in deciding

1 Planning and Research to develop guidelines for this
2 process.

3 As I prepared my first legislative summary for
4 ARB, one question that I had was: How is ARB's
5 legislative activity this year similar to or different
6 from previous years? To answer this, we looked at bill
7 trends dating back twelve years to 1999 for which we have
8 readily accessible data.

9 --o0o--

10 LEGISLATIVE DIRECTOR GRESS: We looked at many
11 trends in different issue areas, but four seem worth
12 noting here.

13 Keep in mind that the data are presented for each
14 two-year session. But because 2001 is the first year of
15 the two-year session, the bars representing 2011 skew the
16 picture somewhat.

17 This chart simply shows the volume of bills that
18 the Legislative office has tracked each session. As you
19 can see, the number of bills that ARB has tracked has more
20 than doubled from 164 in the 1999-2000 session to 340 in
21 the 2009-10 session.

22 --o0o--

23 LEGISLATIVE DIRECTOR GRESS: This chart makes
24 clear where much of that growth is occurring. The number
25 of climate change bills that ARB tracks increased

1 dramatically after the passage of AB 32 in 2006.

2 --o0o--

3 LEGISLATIVE DIRECTOR GRESS: In the energy
4 sector, ARB's tracking of energy legislation aligns with
5 the enactment of AB 32 and parallels California's interest
6 in climate change and energy independence.

7 In the early 2000s, ARB tracked about 20 to 30
8 bills for air quality impacts associated with power plant
9 siting, distributed generation, and the first RPS. This
10 level of tracking continued until the enactment of AB 32
11 when climate change was added to ARB's portfolio. Since
12 that time, our tracking of energy has more than doubled to
13 about 70 to 80 bills in the last two sessions, and 70 in
14 2011 alone.

15 --o0o--

16 LEGISLATIVE DIRECTOR GRESS: The last chart I
17 will show documents the change in the number of goods
18 movement related bills that the Legislative office has
19 tracked. Goods movement is generally a small area of
20 activity for us, so the scale on this chart is different
21 than on previous charts in order to highlight the change
22 over time more clearly. I find this chart to be most
23 compelling of all that I looked at.

24 Goods movement activity is a direct reflection of
25 economic activity. As the economy and goods movement

1 see the enactment of SB 617, however, as a tool to ward
2 off further legislative activity in this area. If that,
3 indeed, turns out to be the case, we will not see many of
4 these two-year bills gain much traction next year.

5 Energy will continue to be a popular area for
6 legislative action, and we will see bills regarding the
7 PGC, RPS, and distributed generation, among other topics.

8 --o0o--

9 LEGISLATIVE DIRECTOR GRESS: One of the things I
10 have appreciated about ARB is the collaborative,
11 team-oriented culture of the organization. The staff that
12 make up the legislative office exemplify those principles.
13 Every piece of work that this office puts out is a product
14 of team work. And I want to acknowledge their outstanding
15 work. Bruce Oulrey, our Chief of Staff; Ollie Awolowo,
16 Ken Arnold, Jake Henshaw, Nicole Sotak, and Steve Trumbly.
17 We also had help from Joe Calavita, Matt Plummer, who was
18 ARB's Executive Fellow, and Candace Vahlsing. They, too,
19 made important contributions to the legislative office
20 this year.

21 --o0o--

22 LEGISLATIVE DIRECTOR GRESS: A copy of the
23 legislative report is included in your packets, and extra
24 copies are available on the table outside the auditorium
25 and via ARB's website.

1 --o0o--

2 LEGISLATIVE DIRECTOR GRESS: I'd be happy to
3 answer any questions. Thank you.

4 CHAIRPERSON NICHOLS: Thank you, Jennifer. That
5 it was a Really comprehensive report.

6 Any questions? Mayor Loveridge?

7 BOARD MEMBER LOVERIDGE: Thank you. This is a
8 more a prospective question. I mean, I understand the
9 importance of your office in terms of monitoring being a
10 resource, occasionally playing defense.

11 And maybe this is out of order. But what is our
12 offensive game for 2012? That is, not watching what the
13 Legislature does, but do we have an offensive game?

14 LEGISLATIVE DIRECTOR GRESS: Well, I think cap
15 and trade is obviously a huge area right now within ARB.
16 We just adopted a final regulatory package, and the
17 Legislature is now grappling with what exactly is cap and
18 trade.

19 So one area where we have been and will continue
20 to exert a lot of effort is in educating members and staff
21 in the Legislature about what the Cap and Trade Program is
22 about. So in terms of an offensive approach, I would just
23 say it's more along education about what the program is.

24 CHAIRPERSON NICHOLS: I think though the question
25 may regard any bills that we might be sponsoring or trying

1 to generate and how that process works. Is that your
2 question?

3 LEGISLATIVE DIRECTOR GRESS: Oh, okay.

4 Well, we are considering a couple of different
5 legislative proposals. And those are going through the
6 Governor's -- through the normal process of determining
7 legislation and determining what the Governor wants to
8 endorse this year. And --

9 BOARD MEMBER LOVERIDGE: It's okay. So if we
10 don't have offensive legislative --

11 CHAIRPERSON NICHOLS: I think it's fair to say
12 ARB is not putting forth any major policy initiatives,
13 that the bills we're proposing are what we think are
14 important fixes of a technical nature to the way we do our
15 business, which is pretty consistent with where we are in
16 the legislative process right now.

17 But we have been asked by the Governor's office
18 to participate in a couple of his areas of priority,
19 helping to develop what he's going to be putting forward
20 in January. And that is not just about revenue flow, but
21 also some of his energy initiatives.

22 I think what Jennifer said that I really want to
23 underscore is that when I came back to the Air Resources
24 Board in 2007, there had been a sea change in terms of
25 ARB's role within the administration. It was always

1 recognized as an important and potentially difficult
2 agency because of the political importance of air
3 pollution in the state. But we are now officially an
4 energy agency because of AB 32. And, therefore, we are
5 seen as being one of the handful of agencies that actually
6 have to be involved in setting energy policies in the
7 state of California, whether we looked or not. And mostly
8 we do.

9 But it still has been an area where we've had to
10 really up our game in a lot of areas related to fuels,
11 thanks to the low carbon fuel standard and others and
12 beyond transportation on electricity policy as well. So
13 it's been an interesting change. Okay.

14 BOARD MEMBER SPERLING: One particular item I was
15 curious about, is the Legislature getting involved in
16 offsets. What is that about?

17 LEGISLATIVE DIRECTOR GRESS: Well, right now, the
18 legislative office is receiving a lot of questions about
19 offsets: What are they? What are the protocols? And
20 that's sort of an indication that offices are starting to
21 think -- this is the time of year when they're developing
22 legislation for next year. So this kind of is a harbinger
23 of things to come potentially.

24 But in addition, we have three bills outstanding
25 that in some way deal with offsets. Either they set

1 standards for offsets or they sort of advance a new kind
2 of protocol. So those are kind of the areas that we're
3 seeing.

4 BOARD MEMBER SPERLING: It seems like this is a
5 case of where we want to be in control because this should
6 be a fairly technical process developing the criteria,
7 creating the framework, not -- nothing you said and
8 nothing I can imagine lends itself to a legislative
9 process.

10 So may be that suggests that we should be a
11 little more activist on this in creating some kind of
12 stronger broad framework and principles or whatever. I
13 know we're doing that. But if they're thinking that they
14 need to intervene, maybe we need to up the ante a little
15 bit there.

16 CHAIRPERSON NICHOLS: That's good advise.

17 LEGISLATIVE DIRECTOR GRESS: Thank you.

18 CHAIRPERSON NICHOLS: Other -- yes.

19 BOARD MEMBER YEAGER: Do you have a sense that
20 with the defeat of Prop. 23 and with the election of our
21 Governor and growing support for policies dealing with
22 climate change that that is showing up in the type of
23 legislation that's being proposed and rather now rather
24 than -- which might explain why there's fewer climate
25 bills and more regulatory bills?

1 LEGISLATIVE DIRECTOR GRESS: I don't know that we
2 can say there are fewer climate bills right now. The
3 chart you saw only had one year of data for a two-year
4 session. But we certainly didn't see any bills serious
5 bills that sought to roll back anything.

6 I think the defeat of Prop. 23 gave a lot of
7 ARB's allies in the Legislature a clear argument they can
8 use against threats to AB 32. So I do think it was very
9 helpful.

10 BOARD MEMBER YEAGER: Also could you talk about
11 the job creation bills and whether those are sort of large
12 in scope or what sort of the general nature there as we
13 try to work on green jobs and to try to sort of infuse the
14 economy as well.

15 LEGISLATIVE DIRECTOR GRESS: I'm not clear
16 exactly what the status of the job creation bills are. I
17 know a lot of them were focused on the clean energy area,
18 the PGC. And, you know, those didn't move forward last
19 year. So what the Governor is thinking for the coming
20 year, I'm not sure.

21 EXECUTIVE OFFICER GOLDSTENE: And also the bills
22 to expedite permitting, like SB 900. That was part of
23 that kind of thing. Anything that could be done to speed
24 up permitting process would fall under that category.

25 BOARD MEMBER YEAGER: Thank you.

1 CHAIRPERSON NICHOLS: Okay. Thank you. Seeing
2 no more questions, really appreciate the report. And we
3 will look forward to next year's.

4 We have one last report. It's a quick one. I
5 think it's important. We want to talk about the fact that
6 ARB has been working for some time now to try to both
7 improve and market if you will or explain our compliance
8 policies that make the whole program of the enforcement
9 more transparent.

10 The Enforcement Division staff held a workshop in
11 October of 2009, which led to the publication of a penalty
12 matrix and written guidance on several aspects of ARB's
13 enforcement process. The staff, as some of you will
14 recall, reported on their progress at the January 28th,
15 2010, Board meeting. And that time, they committed to
16 developing a written penalty policy. Later that year, the
17 California Legislature enacted SB 1402, which also
18 requires the publication of an ARB penalty policy.

19 After extensive outreach efforts, the policy that
20 is being presented today was finalized. The policy has
21 now been published and has been discussed I know the
22 author's office and others, but thought it was important
23 that there be an opportunity for the Board to hear a brief
24 presentation about how it is that we believe this will
25 strengthen and add transparency to ARB's enforcement

1 program, as well as improve the overall levels of
2 compliance leading to cleaner air for all Californians.

3 I think it's also important to note that at the
4 same time the penalty policy was being developed, ARB's
5 Enforcement Division undertook a management review that
6 has resulted in some management changes to overall improve
7 the allocation of resources, manage resources within the
8 division. And also that this division has been partnering
9 very successfully with local air districts to maximize the
10 deployment of our air quality enforcement assets
11 statewide. And although that's not part of the policy,
12 we've asked the staff to comment briefly on those issues
13 as well.

14 Would you like to introduce this item?

15 EXECUTIVE OFFICER GOLDSTONE: Sure. Thank you,
16 Chairman Nichols.

17 As you've noted, we've undertaken extensive
18 outreach efforts in developing the penalty policy,
19 including having many public workshops and face-to-face
20 meetings with stakeholders.

21 The penalty policy has increased the transparency
22 of our enforcement program, and we're happy to present it
23 to you today.

24 In addition to describing the penalty policy,
25 staff will briefly discuss the success of an internal

1 division review, which led to some organizational changes
2 that should produce efficiencies in how we manage the
3 enforcement program at ARB. Staff will also provide
4 perspectives on the successful ongoing enforcement
5 partnerships we forged with the local air districts.

6 Kirk Oliver, Senior Staff Counsel, will give an
7 overview. Jim Ryden, Chief of our Division, will brief
8 you on the management review, and then we'll be available
9 to answer any questions. Kirk.

10 (Whereupon a slide show presentation was
11 presented as follows)

12 SENIOR STAFF COUNSEL OLIVER: Thank you, Mr.
13 Goldstene.

14 It's a pleasure to be here today and to brief you
15 all on ARB's penalty policy.

16 --o0o--

17 SENIOR STAFF COUNSEL OLIVER: The penalty policy
18 concerns a group that is seldom seen at ARB Board
19 hearings, the ARB Enforcement Division. The Division is
20 quite successful, but the penalty policy doesn't quite
21 tell its full story. I'll take a moment to share some of
22 that story with you before I brief you on the policy.

23 Who are the people of the ARB Enforcement
24 Division? Well, first and foremost, they're air quality
25 professionals, scientists, engineers, automotive

1 specialists, people from law enforcement, students and
2 managers, all of whom have dedicated their careers to
3 achieving ARB's mission out in the real world. What do
4 they do?

5 At the direction of our Executive Officer, Mr.
6 Goldstene; our Chief Counsel, Ms. Peter; our Division
7 Chief, Mr. Ryden, and our division managers, they walk the
8 line at truck fleets. They open the hoods on diesel
9 trucks. They climb up smoke stacks and down into storage
10 tanks. They board ships at the ports. They review reams
11 of documents and hard drives full of digital information.
12 And they teach the community how to comply with the laws
13 that you adopt here.

14 They work with every division at the ARB, and
15 with every air district in California, as well as with the
16 national air quality regulators. They do what it takes to
17 make sure that the things that get accomplished in this
18 hearing room get accomplished in practice.

19 Are they good at what they do? The record speaks
20 for itself. The numbers of violations they correct, the
21 penalties they collect, and the impact they have on
22 overall compliance and air quality make ARB's Enforcement
23 Division one of the most effective environmental groups
24 going.

25 ARB enforcement is known throughout the state,

1 the nation, and the world, and for good reason. And the
2 Enforcement Division never stops trying to do better.
3 That's what brings Mr. Ryden and me here today to talk to
4 you about the penalty policy and the other initiatives the
5 division has undertaken to improve itself.

6 --o0o--

7 SENIOR STAFF COUNSEL OLIVER: The take away
8 message we'd like you to have regarding the penalty policy
9 is four-fold.

10 First of all, the policy increases the
11 transparency of ARB's enforcement program and will elevate
12 overall compliance.

13 Second of all, ARB's enforcement program is
14 designed to obtain immediate compliance, ensure a level
15 playing field, and stop future violations. Coincidentally
16 with adopting the policy, the ARB Enforcement Program is
17 effective, fair, and well regarded and SB 1402
18 memorialized ARB practices and added some other
19 requirements to what we do.

20 --o0o--

21 SENIOR STAFF COUNSEL OLIVER: Now, there are
22 general policy principles that we follow that are laid out
23 in the policy.

24 First of all is deterrence. We want only to
25 deter the individual violator from continuing to violate

1 the law, but other potential violators as well. And we
2 also when we craft a penalty is seek to deprive the
3 violator of any economic benefit they might have enjoyed
4 through their violation.

5 The second policy principle is fairness. And
6 that requires us to be consistent in our results and as
7 well to be flexible in the results that we craft in
8 recognition of differing individual circumstances that
9 apply in different violations.

10 And then third, swift resolution of both
11 environmental problems and pending cases. This limits
12 environmental harm, promotes good environmental practice,
13 and enhances deterred effects. We undertook a rigorous
14 public outreach process to develop the policy. And
15 starting in 2009, we initiated that process primarily by
16 holding a workshop, a public workshop, to solicit comments
17 on how we might do our job better.

18 In 2010, in January, we reported back to the
19 Board and committed to preparing a penalty policy for you.
20 And that commitment was memorialized in Senate Bill 1402.
21 In 2011, we released the penalty policy for public comment
22 in two rounds, February and July. We held public
23 workshops and multiple face-to-face meetings with
24 stakeholders in this time period as well. And then
25 released the policy as final in September of 2011.

1 --o0o--

2 SENIOR STAFF COUNSEL OLIVER: An overview of the
3 policy shows that it has three main components.

4 First, following the general policy principles I
5 outlined, ARB's Enforcement Program is designed to obtain
6 immediate compliance, ensuring a level playing field, and
7 stop future violations.

8 Secondly, penalties are based on an evaluation of
9 the facts of the case, the applicable statutes, which
10 establish the maximum penalties, court decisions, other
11 case settlements, enforcement goals, and relevant policies
12 both ARB and at the Cal/EPA level.

13 Finally, in addition to publishing the penalty
14 policy, Senate Bill 1402 requires ARB to provide certain
15 penalty information in Notices of Violation and settlement
16 agreements and published the settlement agreements on
17 ARB's web page.

18 --o0o--

19 SENIOR STAFF COUNSEL OLIVER: In conjunction with
20 the penalty policy and this additional information that is
21 now available on our web page, it adds another dynamic of
22 transparency to our enforcement program, which we think
23 will strengthen it and add to the overall compliance rate.

24 I'd like to introduce Mr. Jim Ryden, the Chief of
25 the Enforcement Division, to take you through the program

1 review that the division has conducted and to address the
2 initiative underway with -- the initiatives underway with
3 the local districts.

4 ENFORCEMENT DIVISION CHIEF RYDEN: Good morning,
5 Board members.

6 About a year ago, Mr. Goldstene came to me and
7 said, you know, it's probably not a bad time to do a
8 program review of the Enforcement Division. And I agreed.
9 I thought it was a really good idea to do it at that time.

10 The Enforcement Division had been organized under
11 a program structure for about ten years. Stationary
12 source functions were all under the stationary source
13 branch. Mobile source functions with all under the mobile
14 source branch. Training and outreach functions were all
15 under the training branch.

16 Subsequent to that time in the last ten years,
17 our responsibilities have increased. The enforcement
18 division now is responsible for 60-plus programs. When I
19 became the Division Chief in 2002, we were doing about
20 1500 enforcement actions a year. We now do about 4,000,
21 which means we resolve about two every hour of every
22 working day.

23 The structure we were currently under was rapidly
24 becoming unworkable. I had two of the largest branches at
25 the Air Resources Board. I had two branches that had 60

1 people reporting to a Branch Chief.

2 So with the concurrence of Mr. Goldstene, we
3 engaged a consultant who came in and worked with us and
4 took a really hard look at what we do and how we do it.
5 And one of the really good reasons that we're doing it is
6 enforcement is a scarce resource. And it's also, given
7 the budget situations that the State is facing, not likely
8 to increase our resources. So we had to find ways to be
9 more effective and more efficient. What we're going to do
10 is propose a reorganization. We're reducing the span of
11 controls of various sections and branches down to the 25
12 to 30 people in branch. That allows the management to
13 effectively manage the case load and the resolution
14 process. We're going to expand to four branches to what
15 we now have is two, plus another branch.

16 Other improvements that we're going to do is
17 expand the duties of the field reps that do more than just
18 smoke inspections, but they can do out there and collect
19 fuel samples, they can inspect cargo tanks, and do a lot
20 of the inspection process that doesn't require an air
21 pollution specialist level of skill.

22 Other improvements we're looking at is we're
23 going to more efficiently and effectively use our
24 laboratory resource. Right now, we have some backlogs
25 especially in the consumer products area. And really with

1 the reorganization and how we acquired samples in that, we
2 can more effectively use that resource so that we don't
3 have these backlogs.

4 One of the big issues that came out in the
5 enforcement review was that we needed expanded, more
6 sophisticated data bases. This is something actually we
7 had done over the years on an ad hoc basis to deal with
8 the various programs that we have. We have to have a more
9 unified system so that we can more effectively manage and
10 track the increased number of cases that we're dealing
11 with.

12 One of the other things that we're going to do
13 too is increase our temporary reporting functions. It
14 will take a while to develop the data bases to the level
15 that we need them to do. So we're going to devise some
16 practices so that, in fact, the Managers, the Branch
17 Chiefs, and I can more effectively monitor what we do. We
18 have a reporting process now. But they are somewhat
19 antiquated.

20 So the other important thing is we're going to
21 implement these recommendations as quickly as possible
22 because we have an important job to do and we have to make
23 sure of the fact we can do it effectively and fairly.

24 The other thing we wanted to talk to you about
25 today was to give you a little update on our relationship

1 not only with the air districts, but with the enforcement
2 folks at Region 9, the federal motor vehicle enforcement
3 folks. We work with all these groups, but I'm going to
4 highlight the CAPCOA relationship.

5 When I became the Division Chief, we actually
6 didn't have a very effective partnership with the air
7 districts. We were able to resolve the issues that we had
8 and the differences. And even though my role is
9 technically overnight, what I have with the districts is a
10 full effective cooperative partnership. We're equal
11 partners in what we do. We all came to the conclusion
12 we're all in this together and we'll work together.

13 How do we do that? One thing we do, we offer
14 training to the air district personnel. We have a
15 comprehensive training program that has hundreds of
16 courses. We regularly train thousands of people.
17 Literally, it's like 8 or 9,000 people a year. That
18 includes not only the air districts, it includes people
19 from other states. It includes a lot of industry.

20 One of the things we've done in these hard
21 economic times is we've waved any of the tuition
22 requirements. We want people to come to the training
23 programs. Training programs for industry is an effective
24 and actually cost effective cheap way to get compliance.
25 I would much rather discuss enforcement issues with

1 someone in the training program than across the table in a
2 settlement conference.

3 The other things we do frequently is we do joint
4 investigations, not only with CAPCOA air districts, but
5 with the Feds, too. And what do we do there? Well,
6 frequently we work together -- really, what we do is
7 supplement what the air districts can do. I have greater
8 resources than most of the air districts. I have greater
9 assets, like surveillance, than the air districts do.
10 Sometimes they just need an additional support to overcome
11 what can be local issues with certain enforcement actions.

12 Other things that we're doing to expand our
13 footprint and actually put more boots on the ground is
14 developed MOUs with some of the air districts so that, in
15 fact, they can do some of the inspections that we need to
16 have done.

17 The first one we had out of the box was with the
18 San Joaquin Valley Air District. And fundamentally what
19 that is they've taken over a lot of our diesel idling
20 inspections. They're somewhat time consuming. They're
21 usually pretty easy to do. The air districts are out in a
22 lot of those areas anyway. So it's very economical and
23 efficient way to deal with things.

24 One of our star programs is with the Bay Area Air
25 Quality Management District. We have a comprehensive MOU

1 with the air district to do joint inspections at the
2 ports. And they are not only doing the simple idling
3 inspections, they're doing drayage truck inspections and
4 enforcement. They're starting oceangoing vessel
5 inspections, sampling fuels and that as required by the
6 oceangoing vessel regulations.

7 We also engage with them regularly on vapor
8 recovery. Vapor recovery once you start is something you
9 can't get away from. In 2009, the Enhanced Vapor Recovery
10 Program compliance dates came into being. What that
11 required the 10,000 gas stations in California to do was
12 upgrade their equipment to make it more effective,
13 durable, and efficient. It was quite a task to do,
14 because at that time, given the economic downturn, there
15 wasn't a lot of money available to finance the upgrades.
16 So we had to come up with the districts with innovative
17 solutions to achieve the compliance without materially
18 harming the mom and pop operations of the gas stations.

19 How do we do this? Well, we came up with legal
20 devices to put them on the road to compliance, like
21 compliance agreements. Some of the districts went via
22 abatement orders, which gave them compliance requirements
23 and compliance dates.

24 And the important part of the program and the
25 districts agreed, so we suspended penalties for a great

1 deal of time to allow 95 percent of the stations to come
2 into compliance. Once we got to the 95 percent, there
3 were some stations that just weren't going to do it. We
4 instituted a penalty so that, in fact, the people who
5 spent the money to comply weren't disadvantaged by the
6 people who frankly didn't do it.

7 We're also in the process of working on
8 greenhouse gas programs with the air districts. One in
9 particular is the refrigeration management enforcement
10 program. Refrigeration management facilities have about
11 40,000 facilities in the state. And honestly, there is no
12 way that this Enforcement Division of the Air Resources
13 Board could visit all those, even if we dedicated
14 everybody to do it every day.

15 But the air districts are frequently out in those
16 locations and in a variety of places like grocery stores
17 and things like that. Places where the air districts do
18 permit inspections anyway. We're in the process of
19 developing the MOU so they can actually assist us in
20 making sure that people are complying with the programs.

21 So with that, I'm going to send it back to Kirk.

22 SENIOR STAFF COUNSEL OLIVER: So in conclusion --

23 --o0o--

24 SENIOR STAFF COUNSEL OLIVER: -- we'd like to
25 reiterate that ARB regulates activities that impact air

1 quality to ensure the health and safety of all
2 Californians.

3 But the penalties we seek are a tool to achieve
4 this and must take into consideration all relevant
5 circumstances, including all the factors that are
6 specified in the Health and Safety Code. And the penalty
7 policy incorporates those concepts and will inform the
8 public of how ARB penalties are determined and practiced.

9 Now, the policy was developed in an open, public
10 process and is available on ARB's website. And we
11 included the link there. ARB's enforcement program review
12 will maximize the use of ARB's scarce enforcement
13 resources. And ARB is partnering with the air districts
14 to leverage enforcement assets statewide through a series
15 of MOUs, refrigerant management, vapor recovery, training,
16 and also very importantly, a deep and close relationship
17 with the California Air Pollution Control Officers
18 Association.

19 So if you have any questions, we'd be more than
20 happy to answer them for you here today.

21 CHAIRPERSON NICHOLS: Are there any questions
22 about the policy? I think it's all pretty straight
23 forward.

24 Obviously, you have not succeeded in making
25 everybody happy according to correspondence we have here

1 today. We have a letter from CCEERT indicating their
2 objections to what you adopted. I looked through it
3 briefly. But I don't have any -- I don't think there is
4 much point in engaging at the moment, other than saying I
5 hope you plan on some sort of a response. I think it's
6 going to be necessary to respond to the letter.

7 SENIOR STAFF COUNSEL OLIVER: Thank you very
8 much.

9 And I did a cursory review of the comment that we
10 received, and it references a prior comment that we
11 actually have a published response to as well as to a host
12 of the other comments that we received in the process.
13 That's also available on our website at the same place
14 where the penalty policy is. But we will make sure that
15 we do a response directed specifically --

16 CHAIRPERSON NICHOLS: Well, since the letter was
17 addressed to the Board members, I think it would be good
18 to also copy the Board on your response.

19 SENIOR STAFF COUNSEL OLIVER: Absolutely. We
20 will prepare a response and copy each and every Board
21 member.

22 CHAIRPERSON NICHOLS: We do have one person who
23 signed up to testify on this item as well, Chris Shimoda
24 from California Trucking Association.

25 MR. SHIMODA: Madam Chair, thanks for the

1 opportunity to speak today and to staff.

2 I apologize for being late to the party, but you
3 guys have been keeping us pretty busy. This is my first
4 opportunity to engine gauge here.

5 Number one, just wanted to offer up the comment
6 that the penalty policy does represent a step forward in
7 transparency in the enforcement process. I just wanted to
8 compliment staff there. There is some information in this
9 penalty policy that we've asked for for some time. That's
10 all included here. So can stop bothering Paul for that
11 information now.

12 The one critical or somewhat critical comment I
13 wanted to offer today was the issue of administrative
14 penalties where no emission impact actually occurs, an
15 example of which would be an easy one. IDNs affixed to a
16 TRU where the TRU may actually be in compliance, but some
17 of the labeling requirements were not met.

18 And I wanted to go back and speak to the eight
19 factor test that Senator Dutton's bill lays out for the
20 Board where the first two speak to the extent of harm and
21 magnitude of excess emissions associated with a violation
22 and just have the Board consider maybe memorializing a
23 process whereby regulated party that doesn't actually
24 increase the emissions of the state, but just have some
25 issue with their administrative process, can get into

1 compliance before a monetary penalty is assessed. I think
2 to some extent that's already occurring with enforcement.
3 But just to memorialize that particular process in the
4 penalty process I think would be a value to the community.

5 That's my comments. Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Any comment or response?

8 SENIOR STAFF COUNSEL OLIVER: That echoes a
9 comment that we received on the penalty policy itself and
10 represents one of the areas in which we did change the
11 penalty policy to make clear that we won't take
12 substantial penalties in cases where there was a true
13 paperwork violation that occurred.

14 However, there are other types of violations that
15 some people might regard as paperwork or inconsequential
16 that would threaten overall compliance with an important
17 regulatory program. And in those instances, we reserve
18 the right as the bill and the factors in the Health and
19 Safety Code entitle us to do to take more than an
20 inconsequential penalty.

21 CHAIRPERSON NICHOLS: I thought you did a really
22 good job of responding to the comments, on making that
23 distinction. I think it's an important one. One person's
24 trivial paperwork violation is another person's flagrant
25 disregard for the entire regulatory program. So sometimes

1 these things really do matter. So I think that's true.

2 Any other questions or comments from the Board?

3 If not, thank you very much for coming and presenting.

4 Appreciate it.

5 And that concludes our business for today. We do

6 not have anybody signed up in the general public comment

7 period. So I think we are ready to adjourn. If anybody

8 objects? We're adjourned. Thank you.

9 (Whereupon the Air Resources Board adjourned.)

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