MEETING

BEFORE THE

CALIFORNIA AIR RESOURCES BOARD

HEARING ROOM

CALIFORNIA AIR RESOURCES BOARD

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ORIGINAL

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Joseph Calhoun
M. Patricia Hilligoss
John Lagarias
Jack C. Parnell
Barbara Riordan
Ron Roberts
James W. Silva
Doug Vagim

Staff:

Jim Boyd, Executive Officer
Tom Cackette, Chief Deputy Executive Officer
Mike Scheible, Deputy Executive Officer
Mike Kenny, Chief Counsel

Terry McGuire, Chief, Technical Support Division
Linda Murchison, Chief, Stationary Source Emission Inventory Branch, TSD
Richard Bode, Manager, Emission Inventory Methods Section
Carolyn Lozo, Staff, TSD
George Alexeeff, Ph.D., OEHHA
Melanie Marty, OEHHA
Judith Tracy, Staff Counsel

John Holmes, Ph.D., Chief Research Division
Bob Barham, Assistant Chief, Research Division
Manjit Ahuja, Mgr., Emissions Control Technology Research Section, RD
Harold Cota, Ph.D., P.E., Research Screening Committee
Anthony Fucaloro, Ph.D., Research Screening Committee
James Higdon, Ph.D., Research Screening Committee
S. Kent Hoekman, Ph.D., Research Screening Committee
James Ortner, Ph.D., Research Screening Committee

Lynn Terry, Assistant Executive Officer
Gayle Sweigert, Staff, Office of Air Quality and Transportation Planning

Patricia Hutchens, Board Secretary
Wendy Grandchamp, Secretary
Bill Valdez, Administrative Services Division

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SUPERVISOR ROBERTS: Here.

MS. HUTCHENS: Silva?

SUPERVISOR SILVA: Here.

MS. HUTCHENS: Vagim?

SUPERVISOR VAGIM: Here.

MS. HUTCHENS: Chairman Dunlap.

CHAIRMAN DUNLAP: Here. Thank you.

We will hop right into our agenda, but I wanted to share with my Board member colleagues and the audience, we have some recognition that'll take place today, in that two very important members of the ARB team will be moving on and leaving us. And at the proper time in the agenda, we'll be covering that.

So, I don't want anyone to think we weren't going to take care of that business.

So, what I'd like to do at this juncture is lead off with the first item, Agenda Item 96-6-1. And I'd like to remind those in the audience who wish to present testimony to the Board on any of today's agenda items to please see the Board Secretary to left, and provide her with 20 copies of any written testimony, or to sign up so that we might recognize you and give you an opportunity to speak.

The first item is a public hearing to consider the adoption and amendment to the emission criteria and guidelines report adopted pursuant to the Air Toxics Hot

Spots Information and Assessment Act.

This item is the proposed amendment to further streamline the emissions inventory criteria and guidelines for this air toxics hot spots effort. The Hot Spots Act, which was enacted in 1987, requires California industries to inventory their toxic air contaminants -- or emissions, excuse me -- to notify the public of potentially significant health risks, and to reduce the significant risk from emissions.

The law required the ARB to adopt criteria and guidelines specifying which California facilities were to submit these inventory plans and reports, and how those plans and reports were to be prepared.

The Board has amended these guidelines five times since they were originally adopted in 1989 -- most recently last May, as part of the Governor's regulatory improvement initiative.

When the Board adopted the 95-96 fee regulations for the hot spots program this past January, it agreed to pursue a Phase 2 effort to further streamline these requirements that the affected facilities must follow to comply with the Act.

The proposal for us today considers changes to the inventory guidelines, now that the program is coming to fruition, to focus the update reporting requirements on only

the facilities and substances that are responsible for the greatest risks and to exempt the facilities posing low risks from further reporting.

The proposed amendments would also allow greater flexibility for the local air districts and facilities in meeting the reporting requirements, including integrating hot spots reporting with other reporting programs whenever possible to track facilities updates.

So, at this point, I'd like to ask Mr. Boyd to introduce this item and begin the staff's presentation.

MR. BOYD: Thank you, and good morning, Board members and staff, and to the members of the audience.

We're at a point in this program where we can look back and realize that much has been accomplished since we began this program several years ago. In doing this evaluation, we looked at the program's requirements, reevaluated where we should focus our efforts, and looked at where additional opportunities exist to streamline the requirements and reduce the burdens on California's regulated community.

Today's focus is on streamlining the emission inventory reporting and update requirements that are provided under the hot spots program.

The current emission inventory criteria and guidelines specified the types of facilities that must

report and update their emissions, or they are to specify the types of emissions data to submit, specify appropriate methods for quantifying the emissions, and include the list of substances that are to be reported.

Today's proposed amendments by staff to these reporting requirements represent the second phase of what is a two-phased streamlining effort to reduce the program's costs to the affected facilities.

As you know, last January, your Board approved the hot spots fee regulations for fiscal year 95-96, reducing the fees to be paid by many facilities and eliminating fees entirely for many lower risk facilities.

Today's efforts included the proposed amendments to the emissions inventory criteria and guidelines which you have before you. Additional amendments to the fee regulation for fiscal year 96-97 are scheduled to come before you later this fall.

In developing this proposal, we focused on streamlining the program to the greatest extent possible, while still maintaining its public health benefits. We have worked very closely with interested members of the public, the regulated community, various health and environmental organizations, local air districts, the California Air Pollution Control Officers Association, CAPCOA, and with our sister agency, the Office of Environmental Health Hazard

Assessment in developing these amendments to the reporting requirements.

And I would note that Mr. George Alexeeff of the Office of Environmental Health Hazard Assessment is seated at the staff table today to answer any questions that may arise that are appropriately addressed to OEHHA.

With that brief introduction, I'd now like to ask Ms. Carolyn Lozo of the Technical Support Division to present to you our proposed amendments to the emission inventory criteria and guidelines. Ms. Lozo?

MS. LOZO: Thank you, Mr. Boyd.

Mr. Chairman and members of the Board, my presentation today will discuss the staff's proposal that the Board amend and further streamline the emission inventory criteria and guidelines regulation and report for the air toxic hot spots program.

I will begin my presentation with a short overview of today's proposal, then I'll describe the amendments proposed in the staff report. I'll conclude with a description of modifications we are proposing today.

The hot spots program has benefited both the California public and California businesses. It has resulted in one of the most comprehensive databases of toxic air emissions anywhere in the country. This information has increased our understanding of the types of sources of

greatest concern, and it has helped us to set priorities for reducing risks and protecting public health.

In large part due to this program and the information it has made available, many California businesses have voluntarily reduced their emissions of toxic substances.

We are aware of voluntary reductions of at least two million pounds from California businesses during the past several years. Specifically, the Air Toxics Hot Spots Information and Assessment Act of 1987 and its subsequent amendments establish a program to quantify the routine emissions of air toxics from California businesses and industrial facilities.

The Act requires the ARB to adopt criteria and guidelines which specify which California facilities must submit air toxics emission inventory plans, reports, and updates to the plans.

They also specify how reports are to be prepared and who is to submit updates.

The emission inventory criteria and guidelines regulations, which contains these procedures, was first adopted by the Board in 1989. The regulation has been amended five times, mostly recently this past May as part of the Governor's regulatory improvement initiative.

At that time, the Board amended the guidelines to

move them out of the Code of Regulations and into a report incorporated by reference into the Code of Regulations. No substantive changes were made to the guidelines as a result of this restructuring.

Today's proposed amendments are the second phase of a two-phase effort to streamline the hot spots program. The first phase culminated in last January with the Board's approval of the fee regulation for fiscal year 95-96, which reduced the State's costs, reduced the fees paid by facilities, and exempted some facilities from fees all together.

Today's proposal, which implements part of the second phase of the effort, further streamlines the emission reporting requirements. The rest of the second phase will be amendments to the fee regulation for fiscal year 96-97, which we will bring before the Board in September.

I'll now briefly outline the goals in developing today's proposal. The goals of today's proposed amendments to the emission inventory criteria and guidelines are to maintain the program's ability to protect the public health while further streamlining the program.

The proposal would focus the reporting requirements on facilities and substances which pose the greatest health risks, while it would exempt lower risk facilities from further reporting.

It would allow greater flexibility for local districts and facilities to meet the reporting requirements, and it would move the program toward a baseline or maintenance resource level.

At this time, I'd like to summarize current emission inventory criteria and guidelines and the amendments to it, which are proposed in the staff report.

Briefly, the current emission inventory criteria and guidelines regulation and report does the following: It specifies the types of facilities that must report and update their air toxics emissions. It specifies the types of emission data that must be reported. It is establishes a schedule for reporting. It specifics methods for measuring and estimating emissions, and it lists the substances which must be reported.

The current regulation divides the list of substances into two groups for reporting purposes -- one group for which emissions must be quantified and a second group of substances of lesser concern for which only use or production must be reported.

Turning now to the amendments to the criteria and guidelines which are proposed in the staff report. The proposed amendments were developed with extensive input from the public, industry, environmental and health groups, local air pollution control and air quality management districts,

the California Air Pollution Control Officers Association, CAPCOA, and the Office of Environmental Health Hazard Assessment, OEHHA.

The staff held nine public consultation meetings throughout the State and numerous meetings and teleconferences with a district working group and an industry and environmental working group.

I will now discuss what the amendments proposed in the staff report would do. The proposed amendments include revisions to exempt from update reporting those facilities which pose little or no risk, to integrate 2588 updates with other district programs, to remove certain substances from reporting, as well as add a few new ones; to reinstate exempted facilities which undergo significant changes, and several other revisions which I'll discuss in a moment.

The proposed amendments would streamline the reporting requirements by defining categories of facilities that are exempt from further reporting; that must continue to submit full update emissions reports; and that must submit only minimal status updates for tracking purposes.

It would allow flexibility by permitting integration of this program with other reporting programs, where possible, to minimize duplicating reporting requirements.

We believe that the proposed amendments to the

reporting requirements will exempt 40 to 50 percent of the core facilities from the program; that is, approximately 2100 facilities would no longer have to report toxic emission inventory data.

These exemptions, plus our proposal to integrate this program with other reporting programs, will save California facilities in excess of one-half million dollars. This is in addition to the $15 million saved due to the streamlined amendments adopted by this Board in 1993, when the requirements for reporting were last addressed.

The proposal will divide facilities currently in the program into three levels based on the health risk. Working with the districts and OEHHA, we developed cut points based on risk to create these three levels using values consistent with those used by most districts and recognized by other environmental health entities.

For facilities that have completed their initial reporting requirements, the proposal would base the categorization on a risk assessment result, if a health risk assessment had been done, or on the facility's prioritization score if a risk assessment was not done.

Prioritization scores would be established by a district following the procedures such as those described in CAPCOA facility prioritization guidelines.

We propose two cut points to categorize facilities

into the three levels. The proposed update categories are described in the new two slides.

A facility would be a low level facility and, therefore, exempt from further reporting if either of the following were true: One, if a health risk assessment was not required and the facility's prioritization score is less than 1 for both cancer and noncancer health effects; or, two, the district and OEHHA approved health risk assessment for the facility shows a total potential cancer risk of less than one case per one million persons, and a total hazard index of less than .1 for both chronic and acute effects.

Although the facilities that will be exempted will represent many different types of facilities, those that fall out in the greatest numbers are facilities that are categorized in groups, such as fabricated metal products, electronic and other electrical equipment; electric, gas, and sanitary services, and chemical and allied products.

A facility would be a high level facility if its prioritization score is 10 or greater, and a health risk assessment was not done, or if the approved health risk assessment shows a total potential cancer risk of 10 or greater, or if the total hazard index is 1 or greater. Any one of these would categorize the facility as high level.

We are also proposing a special condition for facilities that emit specified quantities of the federally

designated hazardous air pollutants, or HAPs. We're proposing that any facility that emits five tons or more per year of any individual HAP, or 12.5 tons per year combined total of HAPs would not be exempted as a low level facility even if it scores in risk for low level.

Such facilities would instead be tracked through the minimal effort of the intermediate level. This provisions helps ensure that facilities that emit large volumes of toxics, which may affect many people, wouldn't be exempted, but rather would continue to be tracked.

A facility would be an intermediate level facility if it is neither low level nor high level. Intermediate level facilities would be required to continue a minimal reporting effort, because they have the potential to become high level sources.

Now, I'll describe the current and proposed reporting requirements associated with the three levels.

Currently, high level facilities prepare complete hot spots updates every four years. We are proposing that they could continue to do these updates or, as an option, they could substitute an emission update that the facility is doing for a risk reduction audit and plan if one was required for the facility under other provisions of the program.

For intermediate level, we are proposing that they

could continue to do the two-page form or, as an option, districts could track the activity through other programs, such as the combined criteria pollutant and toxics emission inventory program or through permit evaluation for new and modified sources.

This would avoid duplication of reporting by allowing the integration of hot spots reporting requirements with other district reporting programs if specified criteria are met.

Low level facilities which must currently complete an abbreviated summary form would be exempted form further update reporting. Examples of facilities that will benefit from the proposed streamlining are an electric motor manufacturing facility in Colton which changed its coating processes to lower its emissions of metals, resulting in a prioritization score of .3, and also a large bag manufacturing/commercial printing facility in Chino, which changed to waterbased inks in its printing processes to lower its prioritization score to .2.

The proposal includes other special conditions for exemption. One of these would use the de minimis throughput levels for several classes of facilities that are established -- that were established by the Board this past January to exempt facilities from paying fees under the hot spots fee regulation for 95-96.

We are proposing to allow de minimis facilities to be deemed as low level and exempt them from reporting requirements as well. The five categories for which de minimis levels were approved last January are facilities whose primary activities are defined as print shops, wastewater treatment plants, crematoria, boat or ship building or repair, and hospital or veterinary clinics with an ethylene oxide sterilizer.

Screening risk assessments are another option. We propose that a district or a facility with district concurrence may conduct a conservative risk assessment using screening air dispersion modeling and other health protective inputs that satisfy provisions in a new Appendix F of the guidelines.

If the results show potential -- total potential cancer risk at the point of maximum impact of less than one case per million persons and a total hazard index of less than .1, the facility could be designated as low level and be exempted from further update reporting.

The proposed amendments also include provisions for increasing the level of a facility's category if significant changes occur that warrant concern to public health.

There are certain conditions that would trigger a facility's reinstatement or entry back into the program.

These includes changes regarding new substances, new health effects values, closer receptors, and improved estimated methods.

The proposed amendments would also allow districts and facilities the option to evaluate and track changes in facilities' activity levels, as part of the permit process for new and modified sources, to determine whether there is any need for reinstatement of previously exempted facilities.

Finally, criteria are proposed for districts to deny an exemption if they determine there are factors that warrant concern to public health.

The hot spots statute mandates the Air Resources Board to include substances from a list -- from a number of other lists onto the hot spots list. Previously, the guidelines grouped the substances into two groups for reporting purposes.

Appendix A-1 includes the substances of most concern for which emissions must be quantified. Appendix A-2 includes the substances of less concern for which facilities must report only use or production.

Today's proposal would amend the list of substances to further streamline the list and focus reporting on the more important substances by moving over a hundred substances that are not expected to be of concern as

airborne emissions from the existing list to a new Appendix A-3 for which reporting would not be required unless a facility manufactures the substances.

We are proposing to remove acetone all together from the hot spots list, because it was removed from the toxic air contaminant list by the Board this past June.

We are also proposing to add new substances to the list as shown on the next slide.

Twelve new substances have been added to other lists, which the hot spots statute mandates be added to this list, since the last time the guidelines were updated.

In addition, 20 specific species are proposed to be added, because they are included in the ARB's source test methods. These substances have been reported for several years and are included in the sources, yet they were not -- yet they were not added to the substance list in the past.

The proposed amendments would revise the format of the report to make it easier to use. The report format that the Board adopted at the May 30, 1996 hearing allows greater flexibility now that the guidelines are a report incorporated by reference to the Code.

The proposal would order the sections into logical chapters and include a how-to-locate table and other explanatory material. We propose to make the report

available on the Internet for convenience to users as well.

Criteria are proposed which would allow districts and facilities the option to evaluate new facilities through the permit process for new source review. The amendments would consolidate the Appendix E-1 and E-2 classes of smaller facilities -- those emitting less than 10 tons per year of criteria pollutants.

We propose to eliminate many of the former E-2 classes and set a lower threshold for all classes which remain in Appendix E. This threshold would improve the program's efficiency by ensuring that new facilities which pose low risk will be excluded before getting into the program.

The proposal would also provide a mechanism for districts to require reporting for specific facilities, which have emissions or release characteristics that may pose concern for public health, without requiring all facilities of that class to report.

Several other minor revisions are also proposed to clarify and improve the regulation. We propose to revise the values for the degree of accuracy for reporting each substance, which are listed in Appendix A-1, to be consistent with the relative toxicity of each substance.

We propose to allow facilities to use a number of emission factors derived from hot spots source tests, which

the ARB has compiled and developed through a research effort into a database, instead of costly source testing by the facilities if certain criteria are met.

We propose to clarify the provisions regarding designating confidential and trade secret data. We propose to update the definition section to reflect new terms used in the guidelines report and to update the reference to a San Joaquin Valley rule used to define the facility boundaries.

We propose to streamline the reporting formats by simplifying simple -- by specifying simple generic formats for acceptable data submittal.

Also, as I mentioned earlier, we propose to include a new Appendix F, which contains criteria related to screening risk assessments used to designate exemption thresholds.

This completes the summary of the proposed amendments in the staff report.

Now, I will turn to a few additional revisions that the staff is recommending be made to the proposal, as presented in the staff, based on the need for clarification, for corrections, or a few comments we have heard.

The staff is recommending that the Board approve several additional modifications beyond those in the published staff report. The staff's proposed additional

modifications are shown in today's handout packet that was given to Board members, and is available on the table outside of this room.

These are mostly clarifications and corrections without substantive effect. Originally, the staff recommended that Appendix B-2 and Appendix C be contained under separate cover.

However, now the staff recommends that they be consolidated back into the report. We are making the proposed change because of public comments expressed to the Board at the May 30th hearing on the regulatory improvement initiative item to make the guidelines report as easily accessible and simple to obtain as possible.

Also, in response to public comment, we are proposing that one additional substance, saccharin, be moved to the Appendix A-3 list of substances which are not of airborne concern and need not be reported.

Several other updates, corrections, and clarifications are also proposed to the report. For example, we propose to add an entry for the Mojave Desert Air Basin within the South Coast District for Riverside County to reflect the recent Board-approved boundary changes.

We propose to update the references of several reports to reflect the current versions of analysis methods.

Also relevant to today's proposal is pending legislation that, if enacted, would amend the air toxic hot spots statute. Assembly Bill 564, authored by Assemblyman Cannella, has been passed by the Assembly and is moving through the Senate.

If enacted, it would amend the hot spots statute and would provide many of the same types of streamlining provisions as those proposed by the staff for the emission inventory criteria and guidelines report.

In its current form, the proposed legislation is quite similar in concept to the proposed amendments to the criteria and guidelines report before you today.

But there are differences in the specific language of provisions in several areas. AB 564 would exempt some facilities from the program using prioritization scores only. The staff's proposal today would exempt some facilities from update reporting using threshold criteria based on scores, risk assessments, and other de minimis provisions, under the authority provided by the statute for the Board to specify the procedures for emission inventory reporting updates.

If AB 564 were enacted, as currently constituted, some adjustments to today's proposal would be needed to specifically exempt some additional facilities from the program and make other conforming changes.

Such changes would include allowing exemptions for facilities emitting HAPs if exempted under AB 564.

The proposed legislation contains criteria for reinstating exempted facilities if changes occur. The concepts are very similar, but the particular language differs somewhat from the criteria in the proposed guidelines report and may necessitate changes for conformity.

Similarly, the proposed legislation contains criteria for utilizing the district permit process as an alternative evaluation mechanism to hot spots requirements as does the staff's proposed report. Again, the concepts are very similar, but the particular language differs somewhat and may necessitate changes for conformity.

This completes the summary of the staff's proposed revisions to the original staff report proposal.

I will now summarize the comments received during the public comment period. We received nine letters concerning the staff's proposal.

We received a written comment regarding the proposal from Brithinee Electric, a small firm in Colton, California. The letter supports the staff's efforts to streamline the program.

We received a letter from William Walker, Director and Health Officer of Contra Costa County Health Services

Department. Mr. Walker supports the staff's proposal and specifically states he supports the staff's proposal to allow districts to bring in unique facilities and to include major HAPs facilities.

We received a letter from the Western States Petroleum Association, WSPA, stating that they appreciated t he staff's efforts in addressing concerns over the development of the regulation, and that they generally support the staff's proposal.

They did, however, request two additional changes. WSPA representatives are here today and plan to testify, so I will not try to paraphrase the letter.

We received a letter from New United Motor Manufacturers, NUMMI, who recommend that the provision to include major HAPs facilities be removed, because it is counter to the intent to base the program on health risk assessments.

The staff believes that these sources retained under the HAPs provision are large volume emitters of toxic pollutants, whose emissions are spread over large geographic areas and consequently expose large numbers of people.

Although the calculation of the risk at the closest receptor is low, large numbers of people may be exposed.

In addition, we are attempting to encourage the

U.S. EPA to recognize that California has a comprehensive toxic air pollution control program, of which the hot spots program is an important element.

We are also working with the U.S. EPA to encourage them as they develop the mandated residual risk program to recognize that the hot spots program is an acceptable alternative, thus avoiding the imposition of additional federal requirements.

We believe that our efforts will be enhanced by demonstrating that we have a robust program.

We received a letter from the California Mining Association, CMA. While they support much of the proposal to streamline the program, they have strong concerns about the section to allow -- to allow districts to bring in unique facilities that pose concern to public health.

CMA is here to testify today, so again, I will not paraphrase their comments.

We received a letter from the Environmental Health Coalition in San Diego. They raise concerns about whether the program, as defined by the staff's proposal, will still meet the intent of the Act to identify hot spots, whether low level facilities could pose risk, either cumulatively or individually, whether the sections to bring in unique facilities or to reinstate facilities are strong enough, and whether the integrity of the toxic program would be lost.

They also raise concerns about environmental justice, stating that air toxic emissions disproportionately impact low income communities.

Although we understand and appreciate their concerns, we believe the staff proposal provides a good balance between public protection and providing regulatory relief to California facilities that are not posing high risks.

Through this program, we have developed a comprehensive database that now allows us to make sound decisions as to which facilities are of greatest concern. In addition, the data has been used to prioritize and identify significant risk facilities.

There are procedures in the Act that require the significant risk facilities to notify the public. Our recommended changes today are to the update requirements and address who should continue to update.

Low level facilities would be exempt from update reporting because the data indicates they do not pose a risk.

In addition, we have provided flexibility in the proposal for a district to deny an exemption or reinstate an exempted facility specifically to allow for those situations where a facility either changes its conditions or if the district believes that in culmination -- in cumulation with

other facilities, it poses significant risk.

Rather than deny exemptions to all facilities, the staff's proposal allows the districts who are most familiar with their industries to identify those unique facilities using specified factors that may be of concern.

Concerning the environmental justice issue, the letter implies that low level facilities in low income communities would be exempt. The proposal to exempt facilities is based on prioritization scores or risks regardless of the location of the facility.

Risk assessments take into account proximity to the nearest receptor. If a facility poses a high risk at the nearest reception, it is not exempted under this proposal.

We received a letter this morning from Aerojet. They support the intent of the amendments to streamline the reporting requirements. However, they are concerned about language to incorporate by reference the CAPCOA prioritization guidelines in the risk assessment guidelines.

Aerojet is here today to testify; so, again, I will not paraphrase their comments.

We received a comment from the Environmental Defense Center. While they support the need to streamline reporting, they are opposed to the staff's proposal to exempt low level facilities from reporting. They believe

low level facilities should continue to report, and that ARB should continue to collect data to support a comprehensive emission inventory.

We believe that after having collected information for several years, we now have a comprehensive inventory. That has allowed us to identify where to best focus our efforts and resources.

We believe we can best protect the public by concentrating and collecting additional data on facilities that pose the greatest concern. In addition, as explained previously, we have provisions for bringing unique facilities -- bringing in unique facilities and for denying exemptions.

We received a letter from the California Trade and Commerce Agency this morning. Most of their comments seem to concern procedures on how the proposal is presented. The comments address the following concerns:

Proposed regulatory tests -- proposed regulation text references to Section 17 CCR 93300.5 needs to be added. Changes from the previous regulatory text need to be clearly indicated. Addition of substances to Appendix A needs to clearly indicated. Incorporation by reference of appendices needs to be clarified.

We will make changes, as necessary and appropriate, in proposal language to address these comments

as part of the 15-day notice procedures.

Some changes indicated in these comments have been included in staff's suggested changes proposed here today.

This concludes the discussion of the proposed amendments to the emission inventory criteria and guidelines report.

CHAIRMAN DUNLAP: Very well. Thank you. Mr. Boyd, do you have anything else to add?

MR. BOYD: Not at this time, Mr. Chairman.

CHAIRMAN DUNLAP: Okay. We have five witnesses that have signed up to testify before the Board. Before we hear from them, do any of the Board members have any questions of staff?

Yes, Dr. Boston.

DR. BOSTON: Could you describe the process to me whereby a low level emitter that may be in close proximity to other low level emitters may have a cumulative effect? Who is to monitor that? And if there's no reporting from those low level emitters, how are you going to track it?

MS. MURCHISON: I'll try to answer that a little bit. Maybe, Richard, you can help.

My name is Linda Murchison. There are a couple provisions in the regulation that are in there specifically to address that point.

First of all, once we've identified who the low

level emitters are, the district does have the option to deny an exemption if they feel that there are reasons to do that. And there may be any of a number of reasons, one of which might be that facility, in combination with other facilities, poses a cumulative risk.

That was put in there specifically for that purpose.

Another provision that we have is what we call the unique facilities provision. And that was a provision that, if a facility does not trigger any of the other criteria in the regulation to come in, the district may, if they have reason and justification to do so, bring in individually unique facilities to consider them for analysis, such as cumulative risk.

It's really the responsibility of the district to identify those. Many of those facilities are tracked through other programs, perhaps permit programs -- a program such as the criteria pollutant program. So, they have information on those facilities from other sources.

It is ultimately the responsibility of the district. There are other situations where, if a facility undergoes changes, the facility has some responsibility to notify the district. But primarily, the district would bring those in for that purpose.

DR. BOSTON: It seems like that requires awfully

close observation by a district inspector, or whoever, to watch those facilities and know if they're changing their habits or their production.

Do they have that ability to do that?

MR. MC GUIRE: Dr. Boston, there is another -- I'm Terry McGuire. There is another factor that we think provides a good cushion.

As you recall, we're worried mostly about the high risk facilities whose risks are above 10 in a million. But we still require facilities that go down to one in a million to give us regular updates at least to clearly notify the district whenever they make a change that would substantively increase their risk.

So, in effect, what we have is reporting from facilities whose risks are one or greater. And we believe that if you had even two or three of those sources, your likelihood of still kicking the combined risk up over a risk of 10 is not likely, unless it was something so conspicuous that we think a district should be able to pick up.

If you had four or five sources located together, certainly we think that the district would be able to pick that up without being notified from the source.

DR. BOSTON: Okay. May I ask a question of Dr. Alexeeff. I see him there.

CHAIRMAN DUNLAP: Sure.

DR. BOSTON: I'll put him on the hot spot a little bit.

If these toxic emissions have been downclassified by air pollution control people, how do you track those substances to see that they're not possibly a groundwater contaminant or maybe affect some other branch of your responsibility?

Do you do that?

DR. ALEXEEFF: My name is George Alexeeff from the Office of Environmental Health Hazard Assessment.

Well, in the risk assessment process that facilities have undergone, there are provisions to look at the risk from the emissions of the facility and how those emissions could impact other pathways of exposure. And those are taken into account in the risk assessment process.

For the circumstance where someone may be moving emissions -- I don't have a specific example, but it sounds like your hypothetical situation -- air emissions to water emissions.

DR. BOSTON: Right.

DR. ALEXEEFF: Okay. There are, of course, other programs, such as water and hazardous waste. One of the issues that we are internally working on in our strategic plan in our office is to try to come up with a more comprehensive approach so that all the programs will be

looking at how their activities affect other activities, so that we won't have a situation where someone is maybe not emitting things in the air but is now putting it in the water until they're caught in the water, and then they're putting it in the waste.

And we're trying to let someone look at what is the best way to deal with their emissions in the most health protective way.

So, that is something -- that kind of comprehensive approach hasn't been developed yet in the nation. But I think that's the kind of thing that most people are trying to think -- what's the best use of existing resources for a facility so that they can be, you know, most responsible.

And from a public health point, what's the best way so we don't overcontrol them in one way and actually force them to do something that's not publicly health protective.

DR. BOSTON: So, when our rules are passed, they are inspected by your department and passed on as probably not contaminating the groundwater or. . .

DR. ALEXEEFF: Yeah. Well, when we review the risk assessment, we do review the issues that have been raised with regards to contaminating other pathways, such as water or other, you know, soil, whatever there might be that

could be of concern. We do review that as the risk assessment.

DR. BOSTON: Okay. Thank you.

CHAIRMAN DUNLAP: Mr. Lagarias.

MR. LAGARIAS: Under the list of 12 new substances that you propose to add, am I correct in understanding you also wish to add additional substances that have been monitored in our air quality monitoring network?

MR. BODE: My name is Richard Bode, and what we are adding are compounds that have already been -- actually, they've been monitored through the source tests, the emission source tests that have been conducted by facilities.

And the source test methods themselves always required those new substances -- basically PAHs, dioxins, furans -- to be reported through the source test program. They weren't on our original list of substances, though. So, all we're doing here is adding those substances to our list so they can be -- data's already available and can be added to our databases.

MR. LAGARIAS: Are those substances ones that have been identified as hazardous air pollutants, or have any health risks associated with them?

MR. BODE: For the dioxins and furans, they have. Actually, about, I think, eight of those dioxin/furans are

actually just subtotals. They're actually totals of the different dioxin/furans isomers themselves. But they have been identified as toxic air contaminants.

And the PAHs themselves were added on to there. They always have health effects. That's the reason they were added on. They've all been added on to the A-1 list.

MR. LAGARIAS: I notice these new substances are sort of exotic. And I just wonder what they are or where they're coming from. Something like 2,3-Dibromo-1-propanol, iron pentacarbonyl. That's more than a mouthful. Is that something you find in the atmosphere?

MR. BODE: Yes, it is. And actually, when we reviewed the list of substances -- and, as you are aware, the substances we added come from a variety of about seven different lists of substances. And through our review, initial review, we found that there were actually more than a hundred new substances that might have come on that we actually might have added.

But through that review, we found out that only a handful actually had either health data or had evidence that it was an airborne problem or emitted into the air in California.

And so, those 12 actually were added to the A-1 list specifically because they were airborne and had health values.

MR. LAGARIAS: Thank you.

CHAIRMAN DUNLAP: Now that Mr. Lagarias is leaving, Mr. Parnell, you're going to have to ask those types of questions.

(Laughter.)

CHAIRMAN DUNLAP: We're looking to you, Jack.

SUPERVISOR RIORDAN: You better study, Mr. Parnell.

CHAIRMAN DUNLAP: Supervisor Roberts.

SUPERVISOR ROBERTS: Thank you, Mr. Chairman. If I could go back to the question that Dr. Boston was asking, with respect to perhaps an area that has a number of facilities in it, none of which are required to have reports.

As I understand it, then, the district can choose not to exempt based on -- is there specific criteria?

MS. MURCHISON: Yeah. We actually do list a number of things that a district may take into account -- available health data, changes in operation. A clustering of facilities is the one that people tend to focus on. That is, if you have a number of low risk facilities all sitting on the same street corner, one on each corner, then in cumulation, perhaps they pose a significant risk to the public; whereas, individually, they may not be.

There may be a good example where a district

chooses to bring in those low level facilities specifically for examining that type of risk.

We did it that way, because we felt that rather than bring in all low level facilities statewide, that we wanted to allow the districts to custom design, if you will, the program where we exempted below a level, they were comfortable. But if there were specific conditions that they were aware of, they could go in and pull in those individual ones and examine those clusters on an individual basis rather than force all those low level facilities statewide to come into the program.

SUPERVISOR ROBERTS: And I don't have any disagreement with putting everybody through the ringer, so to speak. But, I guess, two questions.

If something like that were to come into being, where is the district going to actually get the information that they have that situation existing?

What's being described, it sounds like there's kind of a loose, not organized, pieces of information floating around, and somehow a district has got to put it all together to understand --

MS. MURCHISON: Okay. Maybe --

SUPERVISOR ROBERTS: -- that they actually have that occurring in a particular area.

And I'm not thinking of the four gas stations on

four separate corners, but I'm thinking of -- I can think of one specific example in San Diego, where we've got a lot of chemical and industrial facilities within -- right in the middle of a residential community.

And it's not clear to me how a district's going to pick up and know what they've got with respect to what's being used there, and in the fact that that presents some type of a unique situation which they wouldn't want to have exempted.

MS. MURCHISON: Well, one good example -- let me just back up a little bit. Under the current language of the Act, all facilities that are greater than 10 tons of a criteria pollutant must come in and report at least once in this program.

And the Board itself has identified classes of less than 10 ton facilities that must come in. So, for the core facilities in this program, everybody will go through a plan report once.

What we're addressing today are update requirements; that is, who must continue to update that information. So, the district will have information from the original, if not a couple, submittals from these facilities. And with that information, they'll be judging whether or not they're high level, intermediate, or low level. So, they will have some information on the facility.

Let's say, for example, they identify of facilities as low level and are trying to make a decision as to whether or not to exempt them under that basis. They may want to take into account other circumstances before granting that exemption.

So, they do have some information from the original plan -- the plan and report submittals.

Plus, as I mentioned, I think, a little bit earlier, there are other programs that these facilities report under as well.

SUPERVISOR ROBERTS: And these facilities will be required to file a report covering any change?

MS. MURCHISON: That's right. That's one of the things that triggers the reinstatement. If a facility changes its operations, adds a process, has a additional substances that they had not reported on, those are all criteria that a district may choose to reinstate the facility back into the program.

SUPERVISOR ROBERTS: An what option is there if a district decided to maintain an exemption, but a community didn't feel very comfortable with that? What options do they have then?

MS. MURCHISON: You mean if they allow the exemption initially? They still have an option to bring that facility in later if they find additional information

that would cause concern.

SUPERVISOR ROBERTS: But there's no appeal to this Board or anywhere else on behalf of a community if they felt the district perhaps wasn't listening?

MS. MURCHISON: I don't believe we've really written in kind of an appeal process. Mike, can -- maybe you can address that. No, not really.

CHAIRMAN DUNLAP: I have a question, if I may interject?

SUPERVISOR ROBERTS: Go ahead, Mr. Chairman.

CHAIRMAN DUNLAP: Would new facilities coming in under the cumulative scenario, would they have to file the paper work? In other words, how would the new ones be captured?

Let's say you had two service stations or something, use that example. And two more came in over a period of years. Would they then be required to file some paper work as it relates to this program?

I know they'd be regulated under other programs that the local district would have.

MS. MURCHISON: Right. Yeah. The new facilities would be subject to the original requirements of the Act.

CHAIRMAN DUNLAP: Okay.

MS. MURCHISON: In other words, if they were --

CHAIRMAN DUNLAP: So, they have to --

MS. MURCHISON: -- greater than 10 tons, they would come in.

CHAIRMAN DUNLAP: Right.

MS. MURCHISON: If they were less than 10 tons, if they were on the Appendix C, then they would come in.

CHAIRMAN DUNLAP: All right.

Mr. Kenny?

MR. KENNY: In response to Supervisor Roberts' question, we do not have an appeal procedure, but I'm going to refer to Judy Tracy, who has worked on this extensively, and I think she can provide a little more information than I can.

MS. TRACY: I'm Judy Tracy with the Legal Office. The factors are specified in the proposal about how the district would make a determination about whether it was appropriate to either deny an exemption for the facilities or to get further information in the cases of changes in the facilities.

And those factors are things like proximity to receptors, and emissions, and the toxicity of the emissions, natural substances, and the like.

SUPERVISOR ROBERTS: I understand that. And I guess I was taking it one step further and posing the question, if there was disagreement after those factors were looked at, what options are there. And I guess what I'm

hearing is that there aren't any.

MR. SCHEIBLE: Well, Supervisor, I don't believe there are any in the regulation. If a citizen brought that to our attention, then we'd have to go and talk to the district to make the information available and deal with them through that process.

But there's not a formal legal process where we could come and receive an appeal as far as I know.

MR. KENNY: That's correct. There isn't.

CHAIRMAN DUNLAP: Supervisor, just generally, would you suggest that that be something that ought to be considered?

SUPERVISOR ROBERTS: It's something that I think would give me a little bit more comfort.

CHAIRMAN DUNLAP: One of the things -- I mean just on the surface -- that we've tried to do is push down some of that responsibility to local districts, while providing a working framework.

And I have quite a bit of confidence in the local districts. I mean, for example, in your board, I know that you chair that board, and you're going to make people listen. So, I'm not as concerned about that, about the accountability at the local level. I think it's there.

What concerns me a bit is that well-meaning folks would come up to Sacramento to try to get us to take some

kind of action -- that we're not really equipped and the law doesn't provide for -- to require locals to do something.

And there might be extreme examples where that might be proper. But I can't think of any offhand. But maybe I'm missing something here.

MR. BOYD: Supervisor Roberts, the long history of California air pollution control law is that the locus of responsibility for things like this was placed at the local level.

The Board has general oversight responsibility. Traditionally, if citizens complain about an issue or someone complains about an issue that's being handled at the local level, as referenced earlier, it's been the practice of the Board staff for years to try to work the issue out with the local district to try to have them address the issue.

And I guess the people's redress is just to appeal it to, again, to perhaps the local board -- using, as they have often and always, the power of the Press to bring attention to the issue.

But the law has been -- and California has been very jealous of where the responsibility lies and has, in these instances, been very careful in seeing that the responsibility is vested at the local level with only persuasive power of the Air Resources Board, but not a

statutory responsibility to hear appeals.

SUPERVISOR ROBERTS: Yeah. I guess I would have taken more comfort in something a little stronger than that, Mr. Boyd, even being in a position to chair one of those local boards.

And it isn't something that I'm assuming that it's going to be used frequently. But, as we're making these changes, as we're streamlining, as we're opting out a lot of things out of this program, I have some concerns.

CHAIRMAN DUNLAP: On that point, what might be a benefit - I think we've visited this issue, revisions to this program, some half a dozen times in the last six or so years. So, it's not unusual for us to take this up yet again.

I'd like to, if it's okay with my Board member colleagues, assign Mr. Kenny and the team to work on perhaps scenario planning on how, given a situation outlined by Supervisor Roberts, how it could be dealt with most effectively currently, relative to having an appeal process to us, whether or not we have the legal authority, Mike, to deal with this through our interpretation of the statute. And then come back to us, would you, with your assessment on how best to provide for coverage of this issue?

MR. KENNY: We can look into the issue and provide scenarios that Supervisor Roberts has raised --

CHAIRMAN DUNLAP: Okay.

MR. KENNY: -- and see if there is a way to legally address it.

CHAIRMAN DUNLAP: Okay. Now, the only caution, Ron, that I would have is just that I would hate to have us become some kind of an appeals board and have all the local districts -- perhaps some people felt they'd been alienated or not heard, and they would --

SUPERVISOR ROBERTS: Yeah.

CHAIRMAN DUNLAP: -- all be brought up here.

SUPERVISOR ROBERTS: I don't want to see every case that comes before a local board.

CHAIRMAN DUNLAP: Right.

SUPERVISOR ROBERTS: But somehow I'd feel more comfortable --

CHAIRMAN DUNLAP: Okay.

SUPERVISOR ROBERTS: -- if there's something stronger than us calling and saying, "How's everything going down there?"

CHAIRMAN DUNLAP: Okay. All right.

SUPERVISOR ROBERTS: A public relations approach to it.

SUPERVISOR RIORDAN: Mr. Chairman, I want to underscore what you just said, because I have a little different view, I think, than Supervisor Roberts. I really

feel very strongly that it should be handled at the local level.

First of all, it seems to me they do understand best what is occurring in that particular area. I have always felt local boards to be very, very, very responsive, because they are somewhat on the line politically for those decisions that are made by the staffs at the local district.

And so, my, I guess, historic perspective is that they are perhaps even more moved by local concerns than we at the Air Resources Board, as we overlook some broader issues, that most local districts -- and I would have to be shown one that wasn't as responsive as I think you're thinking about, because they usually are very responsive.

MR. BOYD: One last comment to maybe give some comfort to Supervisor Roberts. I don't think history has shown that the Air Resources Board staff, while, you know, walking softly, does carry a big stick and haven't been pansies about bringing the issues forward. We've succeed, I think historically, in handling it in a quality way. But I think the world knows that we do walk into the arena; that there is some horsepower there that can be brought to bear.

And, as Supervisor Riordan's pointed out, history has shown a high level of desire to cooperate on the part of local government. So, we really rarely have had a

confrontation to even draw you individually into most of the issues.

SUPERVISOR ROBERTS: Mr. Chairman, I didn't, in any way, shape, or form, mean to suggest that this Board has been -- behaved as pansies.

(Laughter.)

SUPERVISOR ROBERTS: What I would simply suggest--

CHAIRMAN DUNLAP: Process?

SUPERVISOR ROBERTS: I was speaking of process. I have some particular concerns. I have some concerns about special interests and how they operate at a local level that I think sometimes transcend the issues and the solutions. And I'd feel better if that unofficial big stick somehow was maybe acknowledged as a part of this.

And I think your direction to Mr. Kenny would be a good one.

CHAIRMAN DUNLAP: Thank you for that, Ron. We'll ask Mike to put together some scenarios for us to look at it. As a Board, I don't think we need an item. And we can then, after we get a chance to talk to you, Mike, about it, can decide whether it's a Board agenda item.

With that, Mr. Lagarias has been patient and has a question. Jack?

MR. LAGARIAS: I don't know if it's a question or a comment. But since this is my last Board meeting, I think

it's appropriate that I be a little philosophical about this particular issue.

When the Hot Spots Act was first passed, we had -- really had no knowledge about whether or not there were hot spots in the State, or how hot they were, or where they were. So, this was really a survey program.

And after a number of years, we got a report. And we were fortunate enough to find out that there weren't very many hot spots in the State, and that by forcing industries to look at their operations they did a lot of corrective actions to get out from under this requirement.

And there were about, as the staff reported, about two million pounds reductions in emissions as a result. But, as we continue, we have established a bureaucracy, and it goes on. We're not looking at hot spots now. Maybe we should call it the "warm spots" and "tepid spots" act as well. Because this is what we're looking at. We're downgrading it.

But we have accomplished the main purpose, which is, are there any hot, dangerous areas in the State that need attention.

We have looked at them and I think this program has been very successful. But we ought to take a good look at how much further we want to go with this type of operation.

CHAIRMAN DUNLAP: Good point.

MR. PARNELL: I'd like to second his remarks.

CHAIRMAN DUNLAP: Thank you, Mr. Lagarias and Mr. Parnell.

What I'd like to do then, if there are no other pressing questions, is call the witness list forward. And if you'd come up as I call your name and have the others kind of queue up behind you -- Jeff Sickenger from WSPA, who has no written testimony; followed by two representatives from the California Mining Association, Denise Jones and James Good; and then John Bobis from Aerojet, then Bill McConaghie from the National Paint and Coatings Association.

And if the folks from the Mining Association would like to come up together, that's fine with me.

Good morning.

MR. SICKENGER: Good morning, Mr. Chairman, members of the Board.

My name is Jeff Sickenger, and I represent the Western States Petroleum Association.

And I think, as staff mentioned, WSPA generally views the proposed emission inventory regulation as a positive step in the ongoing effort to streamline the 2588 program. And we certainly appreciate staff's efforts to address our concerns throughout the process.

There are two issues that we wanted to bring to

the attention of the Board this morning. The first one is that we wanted to, again, express our appreciation for the additional clarification that staff has provided in Section 5 of the regulation, relative to the intended use of the summary update form.

It's our understanding that the intent is for districts to require a summary form in lieu of full inventory plans and reports, unless there's new information that becomes available in the intervening years that could affect a facility's calculated risk -- for instance, if a new health value is established for a relevant substance where one hadn't previously existed.

And we also understand that staff will include additional clarification language and district guidance letters that will follow adoption of this regulation.

The second issue that we wanted to raise is that we have outstanding concerns with a number of references and requirements in the -- both in the staff report and the regulation dealing with sources of hazardous air pollutants and other references to the federal air toxics program.

We feel that there's a need for further discussion of the potential implications of those provisions, both in terms of ongoing efforts to integrate the federal program with existing State and local programs, and also in terms of future efforts to streamline the 2588 program.

We intend to pursue those issues in the context of this newly formed Title 3 working group, in which ARB and EPA Region IX, CAPCOA, and other stakeholders participate. And depending upon the outcome of those discussions, we may ask the Board to revisit this issue.

And I want to make sure that everyone understands, notwithstanding those concerns, we support the Board's adoption of the proposed regulation as it stands now. And, of course, as always, we look forward to participating in future efforts to streamline the program.

I appreciate Mr. Lagarias' comments about keeping in mind the goals of the evolution of the program as we move forward here. And we certainly hope that future efforts will continue to emphasize the ongoing identification and removal of sources that are not significant risk sources. And, at the same time, those sources that remain in the program, of course, there needs to be some mechanism to continue to minimize the administrative burdens and the indirect costs that are imposed on those facilities.

Again, we appreciate the opportunity to address the Board on this issue.

CHAIRMAN DUNLAP: Thank you. We appreciate that progressive perspective on WSPA's behalf. Thank you for that.

Any questions? You want to grill the witness? We

have WSPA up here.

(Laughter.)

CHAIRMAN DUNLAP: All right, Jeff. You can take your seat. Thank you.

MR. SICKENGER: Thank you.

CHAIRMAN DUNLAP: Thank you very much.

Ms. Jones and Mr. Good, come forward, please.

MS. JONES: Mr. Chairman, members, my name is Denise Jones. I'm the Executive Director of the California Mining Association. I'm going to provide you with just a little bit of background, and then turn it over to Mr. Good to give you our specific details.

I think it's important for this Board to understand that California ranks third in all States in mineral production. In 1995, we produced $2.7 billion worth of precious nonfuel and industrial minerals. That represents 7 percent of the United States' total production.

In addition, California topped all other States in the output of boron, Portland cement, diatomaceous earth, calcines, gypsum, construction sand and gravel, rare earth concentrates, natural sodium sulfate, and tungsten. And I'm sure you all know what all those are used for.

Eight thousand people are directly employed in California's mining industry and our workers earn the highest average annual wage of any industry in the United

States.

We also produce ripple effects into the economy, including nearly 140,000 Californians employed from sectors generated by California's mining industry. We're extremely regulated by environmental laws, not only what other industry is regulated by, but also California Surface Mining & Reclamation Act, which requires annual inspections of all our operations, but also Title 23, Chapter 15, Article 7 of the Porter-Cologne Water Quality Act, which ensures that we do not have hazardous discharges into California's waterways.

California Mining Association represents a very diverse community of mining and mining-related companies. We include both small and large operations. And we are responsible for most of the minerals mined in the State of California.

As landowners, miners, and employers whose livelihood depends on compliance with issues like hot spots, we are extremely concerned about the impact that these regulations will have, especially on small and innovative companies in California.

California has several commodities that are produced no other place in the world or in very few places in the world. These include things such as block pumice, rare earth elements, borates, and hectorite clays.

In addition, the California mining industry leads the nation in the development of new technologies for extraction and processing.

These new developments are risky and they require extensive capital investment.

Based on these two factors, we're extremely concerned about the unique facilities provisions which are included in your regulations. By their very nature, many of our mining operations are considered unique because they are located only in the State of California, and because they use very innovative technologies.

We hope that you can look at this issue very closely to ensure that just by the nature of our business we aren't included in a program that we shouldn't be.

And I'll let you grill my counsel, Mr. Good.

(Laughter.)

CHAIRMAN DUNLAP: Hi, Jim. Good morning.

MR. GOOD: Hi. Good morning. I'm Jim Good. I'm the General Counsel of the California Mining Association. Actually, I'm a lawyer from San Bernardino.

And the reason I'm speaking to is because our points on the so-called "unique" facilities category are primarily legal and policy-like, so you get the thrill of seeing another lawyer in front of you.

I should start by saying that we have submitted a

letter that we submitted to the Board clerk yesterday by noon.

CHAIRMAN DUNLAP: Right. Yes, I have it. We have it in here.

MR. GOOD: Okay. I'll just try to kind of hit the high points of that letter.

I want to first of all say we support the streamlining. We're not against that. That's a good idea. Our problem is we think that the proposal regarding unique facilities is really kind of a step backwards from that philosophy and approach.

And our only concern in speaking to you here is with respect to the 10 tons and under criteria category. We're not talking about the bigger operations. And within that category, the staff now proposes to add a category called unique facilities as it's described in the staff report.

And we're not aware, at least I'm not aware, that this particular category has been discussed in any public meeting. At least we've received no public notices of an intent to discuss this in the various consultation meetings that have been referred to by the staff.

So, it's kind of --

CHAIRMAN DUNLAP: Have you guys been to those, Jim?

MR. GOOD: No. We've seen the way these meetings have been billed. We got the general gist of it. We thought it looked good, streamlining. We're all for it.

CHAIRMAN DUNLAP: Okay.

MR. GOOD: The unique facilities category, as far as we know, popped up for the first time in the --

CHAIRMAN DUNLAP: Okay.

MR. GOOD: -- in the May report.

CHAIRMAN DUNLAP: May I preempt you just for a moment, Jim --

MR. GOOD: Sure.

CHAIRMAN DUNLAP: -- and ask staff, is there an effort in some way to loop in the mining interests in our State, specifically, did we miss the mark in some of the workshop and consultative meetings?

Or are they just paranoid?

MS. MURCHISON: I don't think I can answer that. We had about nine workshops and numerous phone calls where we specifically invited industry groups to participate in the discussion of development of this proposal.

That section for the unique facilities has been in there probably since January time frame?

MR. BODE: It was originally discussed, I believe, back in February, the February workshop.

CHAIRMAN DUNLAP: But it emerged over time, right?

MS. MURCHISON: Right

CHAIRMAN DUNLAP: Okay.

MR. GOOD: Okay. Well, we picked up on it in the May report that was issued I think June 7th. That's when we first saw it. And that's why we're here.

CHAIRMAN DUNLAP: Okay. But what I guess I'm getting at, is there motivation to loop them in? I know we have some threshold criteria. I mean, what are we dealing with here?

MS. MURCHISON: You mean is there motivation to loop in specifically these small facilities?

CHAIRMAN DUNLAP: Right. Unique mining operations.

MS. MURCHISON: Not necessarily unique mining operations. The purpose of the unique facilities clause was to give the district the flexibility to bring in any kind of unique facility. And maybe unique wasn't the best term here.

But it is a type of facility that might otherwise be exempted --

CHAIRMAN DUNLAP: Okay.

MS. MURCHISON: -- but for some reason, the district believes it could pose public health risk.

CHAIRMAN DUNLAP: Okay. So, Jim, what we've got here is a discretionary element that the locals can invoke

to get at you.

MR. GOOD: That's right.

CHAIRMAN DUNLAP: That troubles you, right?

MR. GOOD: Yeah. We're paranoid over that.

CHAIRMAN DUNLAP: All right.

(Laughter.)

CHAIRMAN DUNLAP: As long as we're clear. Okay.

MR. GOOD: Our problem is that it's highly subjective, and this is not a cheap program. This is an expensive program once you're into it.

And I'm talking for the small mine operators. I don't know. I may be talking for other small industries as well. But we're thinking in terms of the smaller operators who would be brought into this program on what appears to be-- to us, to be a set of somewhat subjective factors. no clear criteria as such to guide the local districts in making those decisions. And we just think it's poor policy.

We have some legal objections, but we think, as a policy matter, it's not a good idea.

CHAIRMAN DUNLAP: Can I -- and I apologize for having a dialogue back and forth --

MR. GOOD: Sure.

CHAIRMAN DUNLAP: -- because I know there's some things you want to say. But I noticed in your letter that you'd indicated that your legal read is different than Mr.

Kenny and his team's read.

Could you highlight that for me just to --

MR. GOOD: I wasn't aware that I had a difference of opinion. I was hoping Mr. Kenny would totally agree with me.

CHAIRMAN DUNLAP: I see.

(Laughter.)

CHAIRMAN DUNLAP: So, you think it's a stretch for us to be able to loop in these unique facilities under the statute, right?

MR. GOOD: I think it's a stretch.

CHAIRMAN DUNLAP: Okay.

MR. GOOD: I think the Legislature intended in the statute to have a first look, as they did in the report that was made to the Legislature back in I think '90 or '91, a to what types of facilities would be brought into the program in the 10 tons and under category.

CHAIRMAN DUNLAP: Okay. Mike, what about this? Are you trying to push the limits of the statutory authority for this Board here, or are we just paranoid?

MR. KENNY: No. I think basically we have a reasonable reading here. And, again, I'm actually going to refer to the expert on this matter, which is Judy Tracy.

CHAIRMAN DUNLAP: Okay.

MS. TRACY: The Health and Safety Code requires

the Board, as has been noted, to identify classes of facilities that emit less than 10 tons per year of criteria pollutants, and to identify those classes of facilities that should be included in the hot spots program.

CHAIRMAN DUNLAP: Okay.

MS. TRACY: That's the entire direction that the Health and Safety Code gives us as to what should constitute these classes.

CHAIRMAN DUNLAP: So, the 10 tons is the trigger, but we have provided some discretionary authority for the locals to be able to draw upon if they wish to loop in a facility based upon the cumulative example that you cited earlier. Okay.

MR. GOOD: Okay. We'd say that, yes, generally there's a lot of discretion given to the local authorities, but that the statute restricted it to 10 tons; another says, the Legislature's got to see what you have in mind first. And they did give that look.

We think this is something new and something added on.

And specifically, what we're asking for is that the section -- and I think it's in the amended report -- it would be Section E(3) -- it'd be E(3). And it's on page 92 or your book there, your agenda book. We think that there's been very little rationale produced for that proposal.

The total rationale that we see is on page 23 in the staff report. It's one paragraph. It just says we think it would be a good idea to do this. And we're suggesting we don't think it's a good idea to do this without some more specific criteria. We think, if anything, it should be deleted.

But if it's not deleted, we think it deserves more in-depth analysis, more deliberation, perhaps some workshops, or something that would give us a chance to really see if we could possibly develop some guideline criteria.

CHAIRMAN DUNLAP: Okay.

MR. GOOD: In our view, it puts the districts -- and we trust our local districts, of course, but -- but it does put them in a position to make rather ad hoc, you know, determinations without really any guidance.

CHAIRMAN DUNLAP: Okay.

MR. GOOD: Then we just pointed out a couple more things, Mr. Chairman.

CHAIRMAN DUNLAP: Sure.

MR. GOOD: Basically, we just think it's -- you know, it provides an unfair criterion for the small facilities, because it says in the proposal that in the judgment of the district, there is a reasonable basis for determining that the facility may individually or in

combination with other facilities pose a potential threat to public health.

And that's a standard that has not been applied so far to any other facilities, larger class facilities. As far as we know, it's always been on a facility-by-facility basis.

CHAIRMAN DUNLAP: Jim, could I put you or Denise on the spot for a moment?

MR. GOOD: Sure.

CHAIRMAN DUNLAP: Can you assess for me what the economic impact would be for a unique facility not equipped, generally speaking, to be able to deal with a regulatory program of this type to be looped in?

MR. GOOD: See, that's just the point. We don't know. We really don't know who's being brought in under this proposal. It's not been really, I don't think, aired out to the point of that kind of analysis. But if we could see what the criteria are, who is likely to be brought in, we probably could come up with a better analysis.

Our own, at this point, subjective reaction is that there are going to be a number of small mining operators that are potentially going to be brought into this program based on the factors that are set forth in the proposed regulation, which are extremely subjective.

CHAIRMAN DUNLAP: Mr. McGuire?

MR. MC GUIRE: Mr. Chairman, I'd like to add a little perspective that I think would help.

Mr. Good suggested that this is a provision to bring new facilities under the regulation of this program, and it's not. What it is -- the proposal before you today is to exclude over 2,000 sources that are covered by the program today. And in excluding all of those 2,000 sources, the staff has gone on to say, a close look at some of those sources may suggest that there is reason to retain them in the program. And that's what unique facilities are intended to do.

It's not an intent to bring anybody into the program that's not in it now. It is just an intent to provide a little bit more limitation on who is excused under the streamlining that's proposed.

The implications of being brought in under this unique facility exemption are that the facility would be required to submit a couple page report on the status of their facility and their emissions--they would be tracked--unless there was indication that that facility did indeed constitute a risk.

But right away, the assumption is, to begin with, this only affects people whose risk is less than one in a million already.

CHAIRMAN DUNLAP: Jim, if I may, on that point. I

think -- let me perhaps give staff a bit of a perspective.

There are some that have said that, if you give the locals more flexibility -- particularly in what's been going on overall in the regulatory reform environment -- that they might try to grow a program. They might try to loop some more in.

Some people have asserted there might be some motivation relative to fees or some other requirements. And I've not seen examples lately where that's been the case. But that is a fear.

And so, I think in the case of the mining industry, their concerned about inadvertently being brought into a program because they are different, and because there isn't a high level awareness of their function, and they're concerned about that.

So, what I would propose, if my Board member colleagues would indulge me on this point, would be, Terry, for you to have a special meeting with the Mining Association -- and, Jim, I'd look for you to bring the relevant folks, a representative sample -- to sit down and to outline and provide some attention to their concern.

And if it's warranted, if you believe it's warranted, I'd like to have this issue revisited here at the Board if we're going to consider -- don't forget, Mr. Kenny's going to do the scenario planning to Supervisor

Roberts' concern.

If there's a critical mass of issues that need to be revisited, I would entertain this coming back. But I do think you would send a couple signals to the California mining industry. One, you'd be educating the membership; secondly, there'd be a record.

As you know, the locals always track how our deliberations go on these matters. And if they would see that we have extended a hand to the Mining Association and have tried to deal with them in an upfront manner and answer their questions. . . so, I think, staff, we need a little bit more process with the Mining Association. And I would like to direct you to do that.

SUPERVISOR RIORDAN: And then, Mr. Chairman, is the idea then to come back to the Board if there seems to be still --

CHAIRMAN DUNLAP: Correct.

SUPERVISOR RIORDAN: -- some --

CHAIRMAN DUNLAP: Questions.

SUPERVISOR RIORDAN: -- questions.

MR. GOOD: Does that mean, as we requested, that this particular section is tabled until that's done?

CHAIRMAN DUNLAP: Well, I want to hear from the other witnesses. I'm not there yet, Jim.

MR. GOOD: Okay.

CHAIRMAN DUNLAP: You've got me on the hook for some more process. If my colleagues go along with that, we'll give you the process. But I'm not looking to hang up the staff proposal just yet.

I want to hear from the other two witnesses, and then I have some questions for staff.

MR. GOOD: Okay.

CHAIRMAN DUNLAP: Mike Scheible, Jim? Are you okay with that perspective?

(Thereupon, no disagreement was expressed.)

CHAIRMAN DUNLAP: Okay. Very good. Mr. Good, thank you.

Mike Kenny, did you have a point? Okay. Very good.

John Bobis from Aerojet, Mr. McConaghie from the National Paint and Coating Association.

MR. BOBIS: Mr. Chairman, members of the Board, my name is John Bobis. I'm Director of Regulatory Affairs for Aerojet.

CHAIRMAN DUNLAP: Here in Sacramento or are you down in Azusa as well?

MR. BOBIS: Yes, Sacramento.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: And let me briefly tell some of those folks who don't know about Aerojet. We used to be a large

aerospace contractor; however, with recent developments, we have downsized considerably, although we still maintain two facilities in California -- one in Sacramento and the other one, as you said, Mr. Dunlap, in Azusa.

Aerojet's Sacramento operation is a wholly owned subsidiary of GenCorp out of Fairlawn, Ohio. GenCorp is a multi-State operation company. We maintain our facilities in various States, and we concentrate in the areas of automotive polymers and aerospace.

Aerojet itself at Sacramento is an aerospace and defense contractor in the business of building liquid rocket engines and solid rocket motors, along with aerospace, defense, and defense-related conversion work at the Sacramento facilities.

I'd also like to emphasize that Aerojet is concerned and is committed to ensure the safety of its employees, neighbors, and the environment as well. We also supported the Governor's Executive Order issued last year, which ordered the repeal or revise of burdensome laws and regulations in an attempt to improve the business climate in California.

We have proactively participated in that review. We have submitted a 26-page recommendation to Cal-EPA. Likewise, we submitted considerable comments to the California Occupational Safety and Health Standards Board.

We testified at those proceedings.

And also, we were invited to participate in the California Regulatory Review Roundtable discussion held by Lee Grissom of the Governor's Office of Planning and Research. I'm sure you're aware of all that.

CHAIRMAN DUNLAP: Right. Been involved in tracking all those efforts. So, you guys have been busy and active.

MR. BOBIS: Yes, we have.

CHAIRMAN DUNLAP: Okay. Good.

MR. BOBIS: One of my responsibilities is to try to proactively assist agencies in promulgating reasonable regulations.

I want to emphasize, also, as the previous speaker said, we support the intent of the amendments of the program to streamline reporting requirements in California. The problem areas that we have identified in our written comment to you dated July 22, 1996, is the proposed adoption by reference of several documents -- more specifically, Document No. 4 and Document No. 5. Both relate to the toxic hot spots program assessment guidelines prepared by CAPCOA.

CHAIRMAN DUNLAP: We've gone through -- I don't mean to preempt you, but we've gone through this issue, remember, Mr. Kenny, a month or two ago about incorporating guidelines by reference.

You want it in the reg?

MR. BOBIS: I don't have a problem with incorporating documents by reference; however, anything that is adopted by reference, it must also comply with the Administrative Procedures Act.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: That's the concern that we have.

CHAIRMAN DUNLAP: We would agree. Do you think that we're headed for disaster, in that it will not be approved as being in compliance with the administrative processes?

MR. BOBIS: With all due respect, I don't believe that it does comply. We believe that the CAPCOA guidelines were developed in-house. It has not been subjected to the 45-day advance notice. The public has not participated. We also believe that the guidelines contain unreasonable and other criteria which has not been based on sound science.

CHAIRMAN DUNLAP: Okay. May I interrupt you and pose a question to staff?

MR. BOBIS: Sure.

CHAIRMAN DUNLAP: Mr. Boyd and Mr. Kenny take very seriously the administrative requirements, the legal requirements as we bring forward any regulatory effort.

Is there something new or different here, Jim or Mike, in this proposal before us than in past proposals?

What's at issue in the administrative process?

MR. BOYD: Well, I'm going to defer almost entirely to Mr. Kenny. But to the best of my recollection, there's nothing new in the fact that we are using -- that the CAPCOA risk guidelines are referenced and have been utilized as one of the major building blocks of the process.

CHAIRMAN DUNLAP: Okay.

MR. BOYD: Staff could probably elaborate better than I on how that document was prepared and the large number of years that were put into providing that document. But I'd ask Mr. Kenny to address any legal issues.

As you indicated, we're pretty careful and judicious in bringing forward anything to you ---

CHAIRMAN DUNLAP: Right.

MR. BOYD: -- that would be subject to any kind of challenge.

CHAIRMAN DUNLAP: Well, Mike, what say you on this point?

MR. KENNY: Mr. Boyd's correct. There really is no change in the procedures that we have traditionally used at this Board for the last two dozen years.

The guidelines that the witness is referencing were part of the 45-day comment period to the extent that they were part of this package, and this package was put out for notice for comment.

CHAIRMAN DUNLAP: Okay. Mr. Bobis, the legal team says we're in the right on this one.

MR. BOBIS: I'm glad they said that.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: Because the Administrative Procedures Act clearly requires that the informative digest identify specifically each and every item; that the reference document is proposed to be adopted; also, the initial s statement of reasons must identify each and every of those items -- why they're necessary, how they -- et cetera, et cetera. There's about six criteria.

CHAIRMAN DUNLAP: Okay. Is that the primary concern that you have, sir, is in the administrative law area?

MR. BOBIS: That would be one. And I believe that the public should have an opportunity to comment specifically on that document.

CHAIRMAN DUNLAP: We would agree. So, what I'd like to do -- again with the indulgence of my board member colleagues -- is, Mr. Kenny, say to you, go through the administrative OAL requirements and others; make sure that we're in complete compliance. I don't want any chances taken with this program, because it's too important.

And if you see any legal vulnerability, please take the necessary time to overcome that.

Mr. Bobis, does that provide you some comfort?

MR. BOBIS: Yes. I have one more issue I'd like to bring.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: And that's identified on page 2 of our comment. Basically, what I think we're saying is that -- let me summarize -- that in addition to those reference documents, we believe that other documents should be referenced; for example, the federal EPA health risk assessment document should be one of the alternatives.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: And additionally, also by legislation, as you may recall, in 1992, the Governor signed AB 1731, which really directs the Office of Environmental Health Hazard Assessment to come up with criteria similar -- exactly similar to criteria that's in the CAPCOA.

CHAIRMAN DUNLAP: Okay.

MR. BOBIS: And I believe that the staff has considerable work already accomplished in that area.

CHAIRMAN DUNLAP: Okay. Very good. Thank you for taking the time to point that out. It is important for us to hear where we may be vulnerable and where we may set ourselves up for some problems later.

I appreciate your time.

MR. BOBIS: Thank you.

CHAIRMAN DUNLAP: Thank you.

Mr. McConaghie. I'm butchering your name, sir. I apologize. National Paint and Coating Association. Good morning.

MR. McCONAGHIE: Good morning, John. You did very well on my name.

CHAIRMAN DUNLAP: All right.

MR. McCONAGHIE: It probably goes back to when we used to discuss things down in South Coast.

CHAIRMAN DUNLAP: That's right. That's right.

MR. McCONAGHIE: Good morning. I'm Bill McConaghie of the National Paint and Coatings Association. I'm here today because there's a great deal of inconsistency, I might even say a great deal of confusion as to how individual air management districts see the position of auto body paint shops in this program, especially when it comes to assessing fees.

It's become quite critical now, because in at least one district, we have body shops receiving annual fee demands of over $800, which represents probably one and a half, close to two percent of the net profit of that establishment. So, that's a significant factor.

By that, you should now realize that auto body shops are probably the best possible example of small businessmen you could find in the country.

CHAIRMAN DUNLAP: Right.

MR. McCONAGHIE: So, my first question is: Is it your opinion that auto body shops which report emissions of less than 10 tons per year are included in the general exclusions discussed in Appendix E, and also on page 1 of the summary? Namely, would they be exempt from the program and exempt from paying any fees at all?

CHAIRMAN DUNLAP: Staff, can we -- Mr. McGuire, do you want to take a stab at that?

MR. BODE: I'll take a -- actually, the auto body shops --

CHAIRMAN DUNLAP: Please identify yourself for the court reporter.

MR. BODE: I'm Richard Bode. And the auto body shops are included on our Appendix E list, and those are less than 10 ton facilities that must report emissions inventory plan and report. So, they are not excluded.

What they are is, under our proposed language, if the district has information that they can estimate the emissions and the consequences, the risk from those facilities, then they can get out under that general exclusion.

CHAIRMAN DUNLAP: But it's a local decision, correct, a local air district decision?

MR. BODE: It's a local -- yeah, a local decision

based on information from those facilities.

CHAIRMAN DUNLAP: Okay.

MR. BODE: Now, most of those facilities also are included in what we call the industrywide category.

CHAIRMAN DUNLAP: Right.

MR. BODE: Which means all the emissions inventory and risk assessment activity is done by the local districts themselves.

CHAIRMAN DUNLAP: Okay. Understood. But don't forget, this gentleman, if I may be so bold to suggest what he represents, is an association here. And you're basically saying that the association is -- and he might say they're at the mercy of 34 local air districts doing different -- perhaps doing some different things.

And there's a consistency issue there, right, Terry?

MR. BODE: Actually, this might be a case where there is a very good deal of consistency, because with this type of category, the Air Resources Board -- and actually CAPCOA -- are the authors of the industrywide risk assessment guidelines for these.

CHAIRMAN DUNLAP: So, those would likely be applied, and that's where the uniformity would come in. Terry, is that correct?

MR. MC GUIRE: The uniformity -- first, of course,

we're coming back to discuss fees in September. And we will deal with this question directly then. The proposal that we have of -- at least tentatively, we're discussing now at workshops for September -- Richard, you may have to help me on this if I misspeak.

But for this year, we intend to continue to recognize small facilities, such as auto body shops, just as we did last year. And the fee program will go on to provide that those which are ultimately found to be very low risk -- that is, less than one -- I believe would be excluded from the program once the appropriate risk evaluations have been done.

CHAIRMAN DUNLAP: Okay.

MR. McCONAGHIE: Yes. I've learned some things listening this morning, also from studying this gigantic document I got in the mail.

But it would appear to me that if a district is looking for money -- and let's be blunt about it, some districts are very loathe to give up sources of income -- they can say to an individual body shop, You're required to perform a risk assessment."

I would just point out that the cost of a risk assessment is far beyond the capabilities of a small body shop. In this case, I would suggest that if the shop is reporting its VOC emissions and has a permitted spray booth,

and something I feel strongly about -- certification from the paint supplier that the coatings are completely free of heavy metals -- that would suffice for a risk assessment.

Do you have any opinion on that?

MR. BODE: Yeah. Actually, the risk assessment process is going to be done by the districts themselves. So, facility operators will not have to pay for that actual risk assessment that's done.

And we've actually been working quite closely with CAPCOA and the districts, and actually representatives for quite a few of the paints and coatings manufacturers to give us the emissions inventory data and actually the formulation data, so that we get accurate emissions inventories and accurate risk assessments.

So, hopefully, we've -- through that process, we've got consistent guidelines and we've spared auto body shops the costs of emission inventory and risk assessments.

MR. McCONAGHIE: Okay.

CHAIRMAN DUNLAP: Does that provide some comfort?

MR. McCONAGHIE: Not really, because in the handout I gave you, these fees are due the 15th of next month, and that's why people have asked me to come here today. People have got bills for $820, $840.

But let me just ask one more question, please.

CHAIRMAN DUNLAP: Sure.

MR. McCONAGHIE: It appears that districts have the authority to decide whether body shops are in or out of the program. But my question is, how much leeway does an individual district have in assessing the fees a shop has to pay? Bearing in mind that these shops are already paying VOC emission fees.

I have spoken to different districts and got different answers. That's why I'm confused, too.

I'm not paranoid like some people have been up here today, but I can assure you that many of these body shop owners are getting paranoid. Let me just say two things I've been told, and ask you which one you think applies in this case or may apply.

I've been told that body shops can be classed as industrywide facilities and are liable for annual fees of anything from $15 to $125. I've also been told that they are considered small business and subject to the $300 cap mentioned in these documents.

$300 is still a lot of money, but it's a lot less than $820, $840 to a small businessman.

Does this Board have any control over the fees districts can charge?

MR. BODE: Well, there are two types of fees that are incurred. There are fees for the State costs. As Mr. McGuire said, that cost is $15. And that's going to stay

through next year.

There are district costs. And, as I understand, most of the district costs are again $15 to $125 costs. Some districts don't choose -- don't require fee to the auto body shops at all.

Then there is the district cost themselves. Those costs are decided on by the local boards. And the auto body shops, actually, when they go through their hot spots budget, should probably attend the local board meetings on their hot spots budgets for those years.

MR. McCONAGHIE: That's very nice to say. But, as you probably well know -- I know Jim Dunlap knows --

CHAIRMAN DUNLAP: Right.

MR. McCONAGHIE: -- that body shop owners are not the most sophisticated of people. If they get these documents in the mail, they can't read them. So, really, I'm just looking to see what to tell these people. Should they go ahead and pay the 800-odd dollars by the 15th of August, and then complain about it, or should they say, "We are small business; we're not going to give you more than $300?

What really can they do?

CHAIRMAN DUNLAP: Mr. McGuire, then I'd like to take a stab at this. Go ahead.

MR. MC GUIRE: The fees that are due next month,

you're talking about the South Coast District? Is that correct?

MR. McCONAGHIE: I hesitate to mention names, but, yes.

(Laughter.)

MR. MC GUIRE: Okay. The fees that are due next month are based on a regulation adopted by that district. However, in two months, this Board will be considering adopting their fees for the next fiscal year. So, I'm trying to make the distinction between existing fees that are part of an existing regulation -- and that's done by the district. But in a couple of months, we will be back here again talking about what fees should be applicable to auto body shops in the South Coast District.

CHAIRMAN DUNLAP: Bill, what I would suggest, we have a member of our Board that's from the South Coast, Supervisor Silva.

And he's certainly a balanced individual --

MR. McCONAGHIE: I think I've seen him before.

CHAIRMAN DUNLAP: -- on economic costs. Jim, if you wouldn't mind, would you introduce Mr. McConaghie down to the folks at South Coast and see if you can get some questions answered in that specific case?

SUPERVISOR SILVA: I'd be more than happy to.

CHAIRMAN DUNLAP: My counsel to you, as a friend

and colleague, is pay the fee, grumble about it, try to get some questions answered. But don't get yourself in a bind there.

MR. McCONAGHIE: Okay.

CHAIRMAN DUNLAP: What I would like to do is ask staff to do something similar to what I've suggested for the mining industry with Bill's group here, the association, and any that you would suggest, any others. We'll be happy to have a meeting and answer questions, and also outline for you the plan for our fee work, which is coming forward -- Terry, did I hear you say September?

MR. MC GUIRE: Yes, sir.

CHAIRMAN DUNLAP: And then, you can get ahead of the curve, Bill, and try to anticipate what's likely to come and then talk to staff about your concerns or if you agree, if the fee seems to reasonable, you know, please say so.

I want to just again to reiterate something to staff. When you have small associations like this or members that aren't sophisticated and don't have the ability to track what we do, it's complicated and confusing. $800 does not seem like a lot of money to good-sized companies, but it is to small entrepreneurs. So, we need to make sure they understand. And it's something that the Governor and Secretary Strock has reminded me of many, many times, be sure that people understand the value they get for paying a

fee or complying with the program.

And I think we, as regulators in this case are probably guilty of not clearly outlining the benefits derived and what the responsibilities are.

So, Terry, would you initiate some kind of outreach effort and some meetings?

MR. MC GUIRE: I will.

CHAIRMAN DUNLAP: Okay. Yes, Supervisor Silva.

SUPERVISOR SILVA: Yes. I'd like to offer Nina Hull's services. She'll be out in the hall and we'd like to work with you down at the South Coast.

MR. McCONAGHIE: Thank you very much. And this is not a criticism. But one reason I'm concerned about these fees is that when I was doing Title 5 recently, I found out that South Coast data was four years out of date. And I'm now doing paper work to get people out of title 5 that shouldn't have been included in the first place.

Thank you very much.

SUPERVISOR SILVA: I understand that, and I know that we're always going over fee structures. And it's nice to see people interested, and we are trying to come them back.

MR. McCONAGHIE: Thank you.

CHAIRMAN DUNLAP: Thank you. Any questions or comments from the Board?

Okay. With that, I'll conclude or wrap up the public testimony. Staff has already summarized those written comments that we received. Thank you for that.

Mr. Boyd, do you have anything else to add?

MR. BOYD: Just some closing comments, Mr. Chairman. Once again, I'd just say that staff does indeed recommend the Board adopt the amendments to the inventory criteria and guidelines as they've been proposed to you, with the modifications that have also been brought to your attention today.

A 15-day public notice will be required to allow the public the opportunity to review the modifications. And as the staff explained in the beginning, if pending legislation is enacted, additional changes would be required to today's proposal.

Those changes would not be major based on what we know to date. While the legislation is conceptually similar to our proposal, there are some differences and they'd have to bee reconciled. And as part of that 15-day notice process, the Executive Officer can make those changes which would be necessary to conform the regulations to the current version of the legislation.

If the legislation, however, that ultimate passed required major changes to the proposal, then they would have to be brought back to the Board.

CHAIRMAN DUNLAP: Okay. Which there's a willingness I have sensed to do that if it's warranted.

Okay. So, I'll now close the record on the agenda item. However, the record, as Mr. Boyd outlined, will be reopened when the 15-day notice of public availability is issued.

Written or oral comments received after this hearing date but before the 15-day notice is issued will not be accepted as part of the official record on this agenda item.

When the record is reopened for a 15-day comment period, the public may submit written comments on the proposed changes, which will be considered and responded to in the final statement of reasons for this regulation.

Also, as we all well know, we need to report any ex parte communications on regulatory items. Do we have anything to report on this item?

SUPERVISOR RIORDAN: Mr. Chairman, I would comment that, yes, I've met with Mr. Jim Good, who is the General Counsel to the California Mining Association. And essentially that conversation was not any different than what he presented to you here today.

CHAIRMAN DUNLAP: Okay. Very good. Anything else to report? All right.

We have a resolution before us, 96-41, that we've

had for a few moments.

SUPERVISOR RIORDAN: Mr. Chairman, I do have a question --

CHAIRMAN DUNLAP: Sure.

SUPERVISOR RIORDAN: -- going to the subject raised by the California Mining Association. And help me a little bit.

If the workshop were to take place or is going to take place -- I think there is probably general consensus that it should -- then I'm wondering, the revisions or some better clarification that might come from that workshop, how's that included?

CHAIRMAN DUNLAP: Mr. Kenny, can you talk about the 15-day notice and the other administrative requirements that we have?

MR. KENNY: To the extent that there is at least some modification that's made to the proposal that's before the Board today, any of those modifications need to go back out for public comment. And so, those particular modifications would be put in written form and would be provided to the public so that they would have an opportunity to review them for at least 15 days and provide their comments on them.

That would have to happen within the context of the current notice that is outstanding. So, if we're

talking about changes that are beyond the scope of the current notice, that could not occur.

But at least in terms of the context of the comments that were made by the California Mining Association, that would not be a problem. Their comments were within the scope of the notice.

CHAIRMAN DUNLAP: Okay. Very good.

You used the term "workshop." I was a little fuzzy -- probably intentionally. I would call it "meeting, outreach session."

SUPERVISOR RIORDAN: Get together?

CHAIRMAN DUNLAP: Right. Get together. Now, workshop has some meaning, regulatory meaning.

SUPERVISOR RIORDAN: I didn't intend that.

CHAIRMAN DUNLAP: Okay.

SUPERVISOR RIORDAN: But there has to be an interaction with --

CHAIRMAN DUNLAP: Right. With those two groups.

SUPERVISOR RIORDAN: -- the Mining Association. Right.

MR. LAGARIAS: Mr. Chairman?

CHAIRMAN DUNLAP: Mr. Lagarias.

MR. LAGARIAS: Are we going to get a "unique" definition to the word "unique" as a result of this workshop?

CHAIRMAN DUNLAP: Perhaps? Okay.

MR. CALHOUN: Mr. Chairman?

CHAIRMAN DUNLAP: Yes.

MR. CALHOUN: Would the proposed action on this resolution be premature, then, if we're going to get some additional input from staff?

CHAIRMAN DUNLAP: Well, it's my perspective from what I've heard, that there's a couple areas that we need to do -- and no offense meant to staff, because I know that with nine workshops, you've done a lot of outreach -- but I think there's a couple groups here that have expressed some very real concerns.

And I think much of their questions can be answered through just meeting and some assurance, and sending some signals to the local air distracts. So, I'm comfortable that that can be accomplished. But I also know that if there is something else that emerges -- for example, the definition of "unique" is important to the mining interests, and I think there needs a real focused analysis of that, and whether or not they are just paranoid or some of the local districts are poised to loop them in, perhaps unnecessarily.

So, that needs to be sorted out. The administrative law, OAL requirements, you know, Mike, you've got to examine that and make sure that we're crossing the

"Ts" and dotting the "I's."

But, Mr. Calhoun, I feel comfortable that we can go forward, particularly since I'm told that -- and we've all been told -- that in September, we're going to bring the fee element of this program back to us. And there will be ample opportunity for us then, provided Mr. Kenny says it's legal relative to the notice process, that we could take up any change at that point.

MR. CALHOUN: That's fine.

CHAIRMAN DUNLAP: Okay.

MR. KENNY: Just for a point of clarification, is the idea then to go forward with this resolution and, if there is a change with regard to these -- for example, the "unique" correct definition -- to have that go forward in the regulatory process as a 15-day modification, and have the Executive Officer ultimately adopt that?

CHAIRMAN DUNLAP: Yes.

MR. KENNY: Okay.

CHAIRMAN DUNLAP: That is what I would propose. It's the most efficient and it gets to the core issues, and we're also responsive to those constituent groups if, in fact, their arguments hold water. And I must tell you, I'm inclined to believe that they do.

Okay. With that, the Chair would entertain a motion on the resolution before us.

MR. LAGARIAS: Mr. Chairman?

CHAIRMAN DUNLAP: Yes, Mr. Lagarias.

MR. LAGARIAS: I move adoption of Resolution 96-41, reflecting the comments of the Board members today.

MR. CALHOUN: Second the motion.

CHAIRMAN DUNLAP: Okay. Very good. Thank you, Mr. Calhoun.

We have a motion and a second. Is there any discussion on the motion?

Okay. With that, I think we'll forego calling of the roll, and I'll just ask for a voice vote.

All those in favor, say aye?

(Ayes.)

Any opposed? Very good. Motion carries.

Thank you very much, staff, and for those that participated and provided testimony.

What I would like to do is move into the next item, but before we do that, I would like to take some time out to recognize one of our Board members, Jack Lagarias, who is retiring from the Board. And that should not be a secret to many in the audience, but it might have caught a few of you by surprise.

This will be Jack's last Board meeting. And it is an understatement, as those of you that have sat through today's meeting can attest, to say that Jack will be missed.