MEETING

STATE OF CALIFORNIA
AIR RESOURCES BOARD

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT OFFICE
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Tiffany C. Kraft, CSR, RPR
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APPEARANCES

BOARD MEMBERS
Ms. Mary Nichols, Chairperson
Dr. John R. Balmes
Ms. Sandra Berg
Ms. Lydia Kennard
Mr. Ronald O. Loveridge
Ms. Barbara Riordan
Dr. Daniel Sperling
Dr. John Telles
Mr. Ken Yeager

STAFF
Mr. James Goldstene, Executive Officer
Mr. Tom Cackette, Chief Deputy Executive Officer
Ms. Ellen Peter, Chief Counsel
Mr. Michael Scheible, Deputy Executive Officer
Ms. Lynn Terry, Deputy Executive Officer
Ms. LaRonda Bowen, Ombudsman
Ms. Jeannie Blakeslee, Office of Climate Change
Mr. Jon Costantino, Climate Change Planning Section, OCC
Mr. Harold Holmes, Engineering Evaluation Section, Stationary Source Division
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Joe Aguilar, City of Commerce
Ms. Anna Arriola, East Yard Communities for Environmental Justice
Ms. Barbara Baird, SCAQMD
Mr. Michael Barr, Association of American Railroads
Mr. Brian Bateman, Bay Area AQMD
Ms. Nidia Bautista, Coalition for Clean Air
Ms. Susie Berlin, McCarthy & Berlin, LLP
Ms. Sylvia Betancourt, CCAEJ
Ms. Maria Birrueta, CCAEJ
Ms. Colleen Callahan, American Lung Association
Mr. Frank Caponi, LA County Sanitation District
Mr. Chris Carney, Union of Concerned Scientists
Ms. Sofia Carrillo, Coalition for a Safe Environment
Ms. Maria Chavez, LBACA
Ms. Madeline Clarke, East Yard Communities for Environmental Justice
Mr. Eric Coker, Center for Environmental Health/Ditching Dirty Diesel Collaborative
Ms. Christine Cordero, Center for Environmental Health/Ditching Dirty Diesel Collaborative
Ms. Martha Cota, LBACA
Ms. Allis Druffel
Ms. Daniela Esparza, Pacoima Beautiful

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Robert Eula, East Yard Communities for Environmental Justice
Ms. Teresa Flores, CCAEJ
Mr. Rudi Flores, CCAEJ
Ms. Jalene Forbis, CA Short Line Railroad Association
Mr. Juan Garibay, Coalition for a Safe Environment
Ms. Josie Gaytan, CCAEJ
Ms. Margaret Gordon, West Oakland Environmental Land Project/Ditching Dirty Diesel Collaborative
Mr. Peter Greenwald, SCAQMD
Mr. Bill Haller, Sierra Club California
Mr. John Hansen
Ms. Maria Hernandez, CCAEJ
Ms. Amber Hill, Excel High School
Ms. Chi Ho, OEHS & LAUSD
Mr. Kenneth Hofacker, Progress Rail
Ms. Andrea Hricko, USC
Ms. Erin Huffer, LBACA
Ms. Wendy James
Mr. Robert Kard, San Diego APCD
Mr. Gideon Kracov, East Yard Communities
Mr. Allan Lind, CCEEB
Mr. Angelo Logan, East Yard Communities

APPEARANCES CONTINUED

ALSO PRESENT
Ms. Rachel Lopez, CCAEJ
Mr. Joe Lyou, SCAQMD
Mr. Kirk Marckwald, Association of American Railroads
Mr. Jesse Marquez, Coalition for a Safe Environment
Ms. Adrian Martinez, NRDC
Mr. Nathen Mata, East Yard Communities for Environmental Justice
Ms. DePrima Mayo, West Oakland Environmental Land Project/Ditching Dirty Diesel Collaborative
Mr. Jay McKeeman, COIMA
Ms. Jackie McMillan
Mr. Pat Morris, Mayor, San Bernardino
Ms. Terranisha Nathaniel, Excel High School
Ms. Susana Negrete, CCAEJ
Ms. Patty Newman, CCAEJ
Mr. George Osborn, ACTI
Mr. Norman Pedersen, Southern CA Pacific Power Authority
Ms. Swati Prakash, Pacific Institute/Ditching Dirty Diesel Collaborative
Mr. Todd Priest, CA Business Properties Association
Mr. Alex Pugh, LA Chamber of Commerce
Ms. Isela Ramirez, East Yard Communities
Ms. Catherine Reheis-Boyd, WSPA

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Jennifer Renteria, East Yard Communities for Environmental Justice
Ms. Elena Rodriguez, LBACA
Mr. John Rozsa, Stonebridge Associates, Inc.
Mr. Seyed Sadredin, San Joaquin Valley Air Pollution Control District
Ms. Kristina Santana
Mr. Martin Schlageter, Coalition for Clean Air
Mr. Scott Sommer, California Chamber of Commerce
Ms. Delphine Smith, Contra Costa Asthma Coalition/Ditching Dirty Diesel Collaborative
Mr. Mark Stehly, BNSF Railroad
Mr. Jim Steward, Sierra Club California
Ms. Pamela Topia, Excel High School
Ms. Lupe Valdez, Union Pacific Railroad
Mr. Jose Valesco, CCAEJ
Ms. Sarah Weldon, R.J. Corman Railpower
Ms. Joy Williams, Environmental Health Coalition
Ms. Lexus Wilson, Excel High School
Ms. Jill Whynot, SCAQMD
Ms. Rosa Zambrano, EYCEY

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CHAIRPERSON NICHOLS: Good morning, ladies and gentlemen. We're ready to begin this morning's program.
The September 25th public meeting will come to order.

And before we begin the meeting, I think I'll do the safety announcement, which is that there are emergency exits marked around the edges of this auditorium and that we recommend that people take the southeast exit, because it goes right to the parking lot. If I knew where southeast was, that would be better. But I'm assuming it's over here. Anyway, there is an emergency assembly area in the parking lot and you are not allowed to come back into the building until you get an all-clear signal.

So having given that mandatory warning, we will begin our meeting with the Pledge of Allegiance.

Everybody please stand.

(Thereupon the Pledge of Allegiance was recited in unison.)

CHAIRPERSON NICHOLS: Thank you.

The Clerk will please call the roll.

BOARD CLERK VEJAR: Dr. Balmes?

Ms. Berg?

BOARD MEMBER BERG: Here.

BOARD CLERK VEJAR: Ms. D'Adamo?

Ms. Kennard?
BOARD CLERK VEJAR: Mayor Loveridge?
Ms. Riordan?
BOARD MEMBER RIORDAN: Here
BOARD CLERK VEJAR: Supervisor Roberts?
Professor Sperling?
BOARD MEMBER SPERLING: Here.
BOARD CLERK VEJAR: Dr. Telles?
BOARD MEMBER TELLES: Here.
BOARD CLERK VEJAR: Supervisor Yeager?
BOARD MEMBER YEAGER: Here.
BOARD CLERK VEJAR: Chairman Nichols?
CHAIRPERSON NICHOLS: Here.
BOARD CLERK VEJAR: Madam Chair, we have a quorum.
CHAIRPERSON NICHOLS: Thank you.
The first item on our agenda this morning is a continuation of the proposed AB 32 cost of implementation fee regulation and a proposed amendment to the mandatory reporting regulation.
This item was first heard in June. Since then, staff has met with various stakeholders, held another workshop, and developed the revised proposal that will be presented today. Establishing a fee to cover the costs of implementing AB 32 is an important task. And so I think
it was worth it that we took the extra time to listen more
and think more about the structure of the rule.

And I will now ask Mr. Goldstene to introduce
this item.

EXECUTIVE OFFICER GOLDSTENE: Good morning.

Thank you, Chairman Nichols.

As you know, the implementation of AB 32 requires
a stable and continuing source of funding, which ARB is
pursuing with this regulation.

At the June Board hearing, the Board asked staff
to take another look at issues associated with the
electricity sector. Since the June Board hearing, staff
held an additional workshop and continued to meet with
stakeholders from various sectors affected by the proposed
regulation.

We've crafted a proposal that responds to the
Board's concerns and still recovers fees from 85 percent
of the State's greenhouse gas emissions while minimizing
the administrative burden on both the State and the fee
payers.

I'd like now to introduce Jeannie Blakeslee who
will make the staff presentation which describes the
proposal. Jeannie.

(Thereupon an overhead presentation
was presented as follows.)
MS. BLAKESLEE: Thank you, Mr. Goldstene.

Good morning, Chairman Nichols and members of the Board.

Today's proposal consists of two related regulatory items: Adoption of the fee regulation to support California's AB 32 program, and an amendment to the existing mandatory reporting regulation.

As you know, this item was continued from the June Board hearing to address the Board's concerns about how the regulation handled imported electricity.

After meeting with the stakeholders and considering input from the public workshop, we have made modifications to address the Board's concern while retaining the basic approach of the regulation. My presentation today will focus primarily on the changes made since June.

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MS. BLAKESLEE: Adopted in 2006, AB 32 put California in the forefront of the efforts to address climate change, setting the first comprehensive economy-wide emission reduction goals. Climate change is a major new program area for ARB and the State, but the program was launched without a stable funding source. AB 32 recognized the need for such funding and provides authority to ARB to establish this fee. The idea of this
fee was discussed in the first public draft of the Scoping Plan in June 2008.

A stable funding source for continued implementation of the program is needed. The first years of this program have been funded with loans from special funds. The Legislature has explicitly directed that ARB establish a fee to cover ongoing costs, repay these loans with interest, and even established a defined payback period. These other special fund accounts can no longer support the AB 32 program.

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MS. BLAKESLEE: Because this regulation would support a major new program, we have taken great efforts to ensure it has a strong technical foundation and a large outreach component.

When the Board continued the item, the public comment period was extended. We conducted a fourth workshop in August to present conceptual modifications and worked closely with stakeholders to ensure that the proposed regulations does not present interstate commerce issues, is equitable, and that the cost can be passed on to everyone.

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MS. BLAKESLEE: Now we'll discuss staff's proposal.

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MS. BLAKESLEE: As a review, the proposal consists of two related but distinct regulatory proposals. The primary proposal is the fee regulation itself. But associated with it is a very specific amendment to the mandatory reporting regulation previously adopted by the Board in December 2007.

I'm going to focus on the proposed fee regulation. The proposed modifications to the mandatory reporting regulation have not changed since June.

I should also note that ARB will need to revisit both of these regulations as the State's climate change program matures, and especially as a cap and trade program is implemented.

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MS. BLAKESLEE: ARB is taking the same basic approach in developing the fee regulation that we presented in June to the Board.

This proposal remains based on the premise that the fee should be applied to the greatest extent possible
upstream in the California economy. Our approach is broad-based and economy-wide, capturing 85 percent of the statewide greenhouse gas emissions. Applying the fee upstream allows us to limit the number of fee payers to only about 350 affected entities.

The regulation relies on existing data and approved State budgets. This allows ARB to administer the program with minimal additional resources. --o0o--

MS. BLAKESLEE: This slide shows the main categories subject to the fee. The only change since June is how electricity is handled, which I will discuss in the next section. --o0o--

MS. BLAKESLEE: Since the June Board hearing, staff have worked closely with stakeholders to modify the proposed fee regulation in response to the Board's concern about the electricity sector. We have also proposed -- excuse me. We have also proposed two administrative changes due to the delay in adoption. The proposed changes since June fall into three areas: We propose a shift to the first deliverer approach for the electricity
sector. We propose to bill in fall instead of spring, and
we propose to begin fee collection in fiscal year 2010-11
instead of 2009-10.

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MS. BLAKESLEE: In June, the Board was concerned
that the proposed regulation did not treat in-state and
out-of-state electricity the same. In order to treat all
electricity deliverers equally, we have shifted our
approach to a first deliverer concept.

Our proposed first deliverer approach would
require that in-state deliveries from
electricity-generating facilities would be charged a fee
per megawatt hour, the same as electricity importers. In
both cases, the fee is charged where the electricity first
reaches the California grid. The fee would be charged on
all delivered electricity, except for electricity for
co-generation plants, which produce both electricity and
heat.

For co-generation facilities, fees would be based
on the quantities and types of fuels they use. Fees would
be charged on the fuels or fuel emissions from coal,
natural gas, coke, and refinery gas where the fuels are
used for co-generation or any use other than electricity generation.

Staff's original regulatory language detailed a calculation methodology only for imported electricity. While in-state providers were covered through their fuel use, the current proposal treats them the same. Electricity wheeled through California and simultaneous exchanges of imports for exports would not be subject to the fee.

Changes to the electricity sector caused us to change the proposed regulation so that double counting of natural gas emissions is addressed. To avoid double counting, gas delivered to electricity-generating facilities would no longer directly be subject to the fee.

Fees would not be charged on electricity from facilities that either emit less than 2,500 metric tons of carbon dioxide equivalent during the reporting year or are rated at less than one megawatt of capacity. These small facilities are not subject to mandatory reporting and would also be exempt from fee payment under staff's proposal.
shift the annual collection period from spring to fall. This shift would provide revenue from the fee earlier in the State agency fiscal year. As soon as the budget is passed each summer, ARB would send invoices with payment due in the fall.

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MS. BLAKESLEE: We are also proposing to shift initial collection of the fee to fiscal year 2010-11. Due to the delay of adoption of the regulation, collection of the fees in fiscal year 2009-10 is not possible. Therefore, ARB will use the $35 million beverage container recycling fund loan currently budgeted to pay for ARB and Cal/EPA's AB 32 programs in this fiscal year.

Under the budget language, the beverage container recycling fund must be paid back no later than June 30th, 2014. This change would affect the estimated revenue required.

The estimate in the initial statement of reasons did not include the use of the 2009-10 beverage container recycling fund loan. ARB will still need to collect additional funds during the first four years of the fee.
regulation to pay back this loan and the additional accrued interest.

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MS. BLAKESLEE: Over the last few months, in addition to addressing the electricity issue, stakeholders also presented staff with a number of additional requests for modifications to the proposed regulation. These requests fall into three general areas: The point of regulation for transportation fuel; using a forward-projecting fuel rate or prospective billing for transportation fuel; and net electrical imports.

At the June Board meeting, representatives from the Western States Petroleum Association recommended moving the point of regulation from the refinery to the terminal distribution rack, commonly known as the rack.

WSPA noted in their comments that the Board of Equalization already collects excise taxes at the rack and claimed it would be more efficient to assess this fee at the rack as well.

We disagree. After meeting with WSPA, fuel providers, and other stakeholders, and evaluating this proposal, staff does not believe the collection at the rack would be more efficient. Refineries are already
subject to the regulation for their facility emissions. Applying the fee at the rack for transportation fuel that refineries produce could simply bring more fee payers into the system and require ARB to create an additional bill system at the rack. In addition, many of the new fee payers this approach would bring into the system are small businesses, raising equity and competitive issues.

WSPA has also recommended using a forward-looking fee rate on transportation fuels. The current proposal relies on two sets of data: The approved State budget and data reported to ARB from every affected entity. For ARB to bill prospectively in a way that ensures sufficient fee collection, we would have to annually predict future sales of gasoline and diesel fuel.

To minimize the chances of under collection, ARB would need to establish a margin of safety, potentially resulting in higher fees. In addition, for equity reasons, ARB would have to apply this prospective method to the other sectors subject to the regulation. Doing so would require information -- I'm sorry. Doing so would require the projection of all of the data necessary to calculate the common carbon costs, including such diverse
information as state-wide electricity and natural gas usage, aggregate cement production, and other greenhouse gas emissions. This effort would increase administrative costs, reduce transparency, and subject the regulation to further challenge.

The final request deals with the issue of net imported power. Many electricity stakeholders have requested that ARB allow them to net out the amount of power they generate in California and subsequently export against the total amount of electricity they import on a yearly basis.

However, AB 32 requires all in-state greenhouse gas emissions as well as the emissions from imported power to be counted as California emissions. In addition, the amount of electricity that would be netted out each year is small, about five percent of the total deliveries, while the implementation of netting out provisions would be very complex to avoid gaming of the fee.

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MS. BLAKESLEE: The changes we described will have an affect on the estimated fee, which is described in the next few slides.
MS. BLAKESLEE: This slide shows the sources of revenue used during the first years of the program, including the loan amount for fiscal year 2009-10. For 2009-10, ARB and Cal/EPA will use the 35 million loan from the beverage container recycling fund.

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MS. BLAKESLEE: The revised total revenue requirement is the fee to be collected and is based on annual program costs. Debt repayment and any annual adjustment for fiscal year 2010-11, the preliminary total revenue requirement of $63.1 million is based on the estimated program cost of $36.2 million. This covers ARB, Cal/EPA, and a number of other State agencies and the repayment of a portion of the loans, plus interest, which in 2010-11 is $26.9 million. Actual program costs for fiscal year 2010-11 will depend on the approved State budget.

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MS. BLAKESLEE: We have updated this slide from June to show the revised sector-specific fee estimates based on the additional loan and accrued interest.

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MS. BLAKESLEE: At the consumer level, the impact of the fee is still estimated to be very small, as seen on this slide. The common carbon cost is calculated to be 15 and a half cents per metric ton of carbon dioxide.

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MS. BLAKESLEE: Again, here is an updated slide that we first shared in June. This slide shows the cost increase per year to a family restaurant, a 100-year person office, and full service grocery store, as well as the effects on the average household's natural gas and electricity and vehicle use.

CHAIRPERSON NICHOLS: Just to be clear, but those numbers are estimates based on their additional cost for energy and other items? It's not a bill that's going to be sent to the households?

MS. BLAKESLEE: Correct.

CHAIRPERSON NICHOLS: Just let's be clear.

Thanks.

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MS. BLAKESLEE: Thank you for asking that.

Here is one more administrative slide to show the milestones needed in order to send invoices to fee payers in the fall of 2010. Please note that this regulation will go through a 15-day notice process subsequent to Board action. And ARB anticipates adding documentation to
the rulemaking record through the 15-day notice procedure in order to address the concerns of commenters claiming that not enough documentation has been provided.

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MS. BLAKESLEE: This concludes my presentation.

Staff understands the myriad of issues surrounding this regulation. However, to continue the support of AB 32 implementation, staff recommends that the Board approves the staff proposal with the suggested regulatory changes. Staff would be pleased to answer any questions you may have. Thank you.

CHAIRPERSON NICHOLS: All right. We do have a number of witnesses that have signed up. I'll read the list. And we're going to invoke our three-minute rule. I've forgotten how the timer system here works, but I'm assuming somebody else activates it. Great.

So our first witnesses are Frank Caponi, followed by Catherine Reheis-Boyd and Allis Druffel. If you would come forward and sit up here, it will save us all time. Thanks.

MR. CAPONI: Good morning, Madam Chair.

Frank Caponi with L.A. County Sanitation Districts.

The industry had brought a concern to staff regarding renewable sources or biogas facilities which
produce renewable energy. Staff, I think, assured us that these facilities -- these biogenic sources would not be included in the fee structure. We appreciate the clarification on that.

However, two things have slipped through the crack. Number one, it's not recognized here that in delivering our renewable energy -- our biogas to energy facilities, specifically landfill gas energy, many times we need natural gas for stabilization of the BTU values of that gas. It enables to burn landfill gas. Without that natural gas in many cases we'd have to shut down and just flare our gas.

The way I read this rule right now is that that could potentially be subject to a fee. So we not only have to pay for the natural gas to deliver our renewable sources, but we have to pay a fee on top of that.

The second issue, which I think has slipped through the crack, we also operate MSW incineration facilities. There's three in the state of California. While those facilities largely produce biogenic emissions, there's a portion of solid waste plastics, textiles, for example -- while there is an effort to take those out of the waste stream, they're still there. And they produce anthropogenic emissions, and they would be considered I believe under this a fossil fuel. And that would cause us
to once again have to pay a fee on that, which would be an extreme burden in terms of reporting and all that. And once again, this is a renewable stream of MSW and really should not be caught up in this rule.

I recommend that language simply be put in there that facilities that primarily burn biogas be excluded and facilities that burn MSW be excluded from the fee rule.

And just with my 50 seconds left, I'm always complimentary of the staff here. They always do a wonderful job and they continue to do that. In the fervor of getting AB 32 implemented -- and this unfortunately is an example of that, I think staff has really -- the dialogue of staff has broken down with the central public services of waste treatment plants, waste disposable plants, and deliveries of wastewater treatment. As we move into cap and trade and very significant issues there that we're trying to resolve with staff, dialogue has completely broken down.

Once again, I respect staff. I hate to have to come here and say that. But this is another example where staff does not understand our business or how we operate. And as we get into AB 32, which is a brand-new world of
greenhouse gases, it's very important that we have a
dialogue and continue an ongoing dialogue with staff.
Thank you.

CHAIRPERSON NICHOLS: Thank you.
Does the staff want to comment at this point on
the specific items that were mentioned, or are you going
to later? Or how do you want to handle this?

MR. COSTANTINO: Biogas is not one of the
specified fuels that we would assess the fee on. So we
think the regulation covers it already as written.
The natural gas portion of the fuel, if you are a
mandatory reporter, that natural gas would get covered.
And we think it's appropriate to cover the natural gas
portion of the fuel.

As far as the municipal solid waste, that is also
not one of the covered fuels. And if something did slip
through the cracks, we would be happy to work with them to
address that issue.

CHAIRPERSON NICHOLS: As I read the rule, it
specifies what the fuels are that are covered. So there
would be no reason to assume that some other fuel that
isn't mentioned specifically is covered. Would that be
correct?
MR. COSTANTINO: Yes.

CHAIRPERSON NICHOLS: It may be there needs to be some further conversation obviously. The sanitation district feels they have not had sufficient dialogue with our staff, so we should encourage that to occur.

I want to specifically underscore how the process in this auditorium works. When I call your name, there are two podiums here. And I'd like people to be lined up, one at each podium, so you're ready to go. That will save us all a lot of time.

So Catherine Reheis-Boyd and Allis Druffel are next. Thanks.

MS. REHEIS-BOYD: Good morning, Chairman Nichols and members of the Board.


And WSPA does not oppose a properly constructed legally sustainable fee on all greenhouse gas sources to pay for the direct administrative costs of this program. I want to make that clear up front. Unfortunately, we have not done that today.

We've submitted four sets of comments on this
I want to focus my comments on the collection mechanism for the transportation fuels side of the equation. I've invested a lot of my personal time with Mr. Goldstene and staff on this, and there is a fundamental difference on assessing fees on stationary sources and transportation fuels. You obviously catch us as a stationary source in the proposal that staff talked about. But on transportation fuels, CARB wants to impose fees on an outbound refinery gate and all imports. This approach will have considerable problems, which our tax experts have articulated on numerous occasions to the staff.

There will be potential federal court challenges on issues because you're assessing fees on fuels going to other states, Nevada, Arizona -- Nevada gets 100 percent of its fuels from California; Arizona gets a large majority; of course, some from Texas. It won't substantially address a lot of the import requirements on fuels. Forty percent of all the fees for this program are going to be levied on transportation fuels. We have got to get this right. We encourage much more conversation with the staff on this issue.
Measuring the quantity of fuel removed from the terminal rack with California delivery destinations is the fairest, least complicated method. You collect it on a prospective basis, on a rate per gallon. You know how much fuel. You know where it's going. You set it. You collect it. You remit it.

We have submitted a very easy proposal to the staff and steps identified on how to do this. In the context of efficient government, what you have is an existing system in place with the Board of Equalization who collects fees for transportation fuels for a long time, diesel and gasoline, excise fees. Cal/EPA collects fees on underground storage tanks in this same manner. Childhood lead fees, oil spill fees, they're all collected in using this system. It is a long established body of law to administer the fee. It is the way to do it. It would avoid duplication for you, for us. It is the highest level of transparency. And it ensures a price signal to the regulated community and the consumer.

We are very frustrated and disappointed with the outcome. We urge this Board to adopt an at-the-rack point of measurement on the fees for transportation fuels.
I cannot believe that we are fighting about how to most efficiently provide you 40 percent of the finances that you claim to need to administer this program. And I urge you to revisit this recommendation, to keep the dialogue open with us on this, much like you did on the last item. We'd love the staff to continue to try to get an understanding how this system works.

CHAIRPERSON NICHOLS: Thank you.

Allis Druffel, and next will be Scott Sommer.

MS. DRUFFEL: Good morning. My name is Allis Druffel. And I'm the Southern California Outreach Director of California Interfaith Power and Light.

And I'd like to take a big view picture today of this issue. We work with 500 congregations in California representing some 200,000 people of all faiths. And we work on energy reduction, energy efficiency, and sustainable energy measures.

We're one state affiliate with National Interfaith and Light Movement, now working in 30 states on climate change and energy issues.

To the faith community, the need to reduce energy use is not merely a financial or environmental question; it is a morale mandate dictated to us by our beliefs.
In regards to the proposed administrative fee, which we support, I wanted to briefly bring up the issue of equality and fairness.

In terms of energy reduction, many sectors of California's society have taken action.

One, the legislators of California have passed strong energy efficiency standards, which over the last 30 years have resulted in the stable use of energy, despite our rise in population.

Two, many businesses, small and large, have taken practical steps to become more energy efficient.

Three, the faith community has taken and continues to take strong action and energy reduction measures through education of their Congregants and facility retrofitting.

And, fourth, the good people of California are recognizing the need for energy reduction and are taking practical steps toward that end.

It is now past time to make the biggest polluters who are the largest causes of pollution in global warming pay the small fee that ARB is proposing. To those who say that this fee would be unfair to large polluters, let us
recognize the cost that has already been paid in health and health care, lives and livelihoods of California citizens, many of whom are in economically disadvantaged areas, have been paying for decades because of pollution and in the name of large profits.

California Interfaith Power and Light is advocating for an eventual price on carbon, one that would reflect the true price as business as usual in terms of cost to the environment and human health. This fee, which ARB has the authorization to instate, would be a small step in the right direction, a step toward carbon reduction and toward a needed rapid shift to clean energy. It would save money in the long run and is very fair.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Scott Sommer, followed by John Rozsa.

MR. SOMMER: Good morning, Chairperson Nichols and members of the Board.

Our firm represents the eleven associations involved in the Public Record Act litigation. I'm here to request the Board to provide additional supporting information on the direct costs involved in the proposed fee. We ask that the public comment period remain open
until this has occurred and the Board takes a vote.

There are, as is addressed in the written record and other speakers will comment on, very substantial data gaps that remain in the record on substantiation of direct costs. In that litigation, on September 18th, the judge ruled, and I quote, "Respondent Board is already under a legal obligation to make public through the rulemaking proceeding itself all of the facts that support its action."

The court did not order further review, but did state again "viewing this matter in its proper context in regulation to a pending rulemaking proceeding in which respondent Board is already under the legal obligation to reveal the factual support proposed action" -- go on and continue.

The court even commented, "in this case, given the legal standards applicable to fees, any failure by the Board to provide facts in the rulemaking record to support its action presumably would make the regulation vulnerable to a legal challenge."

I want to add that CARB's attorney made the following statements on the record, "Any questions the
associations have, they can ask the staff of ARB during this pending rulemaking proceeding as a matter of law under the government code."

The staff have to respond. If they don't, they do so at their own peril. Without the substantive responses to public comment, the regulation's going to be back in court. And went on to say ARB staff has to respond substantively and help our clients understand what's going on.

I would like to mention part of the APA, Government Code 11347.A and B talks about the obligation on CARB in this process that it shall maintain a file available to the public, which shall include all data and other factual information, empirical studies, reports, if any, on which the agency is relying.

So, accordingly, for policy reasons as well as the legal obligations that are referenced, we are requesting that the Board make publicly available all of the factual materials and documentation that validate the cost of this fee. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

I'm going to ask our legal counsel to respond after all the testimony. A number of legal issues I think
have been raised and will be raised. So we'll try to at least ask the staff to respond before the Board takes any action here today.

MR. SOMMER: If you have any other questions, I'm happy to come back up.

CHAIRPERSON NICHOLS: Thank you.

Mr. Rozsa.

MR. ROZSA: My name is John Rozsa. I'm President of Stonebridge Associates, Incorporated.

My firm was recently retained by the California Business Properties Association, et. al., to examine documents from ARB's production of records in response to the Association's Public Record Act requests.

I was asked to identify whether the records that ARB produced were a complete and appropriate set of records for identifying past AB 32 expenditures and to identify a quantitative assessment of the extent the report supports the figures reported by the staff in the staff report.

Our key findings are as follows.

ARB expenditure data for fiscal years 2007-08 and 2008-09 in tables 3A and 4A of the staff report is not well supported by documents produced by ARB.

The documents produced by ARB supported only 17 and 11 percent of expenditures respectively for the two
fiscal years. Our analysis of the ARB's estimation excise
suggests that ARB may have double counted overhead costs
by removing administrative services PY contribution
without removing their salaries from total personnel
expenditures.

There are also significant expenditures for
operating costs, equipment, and administrative overhead,
totaling $17 1/2 million for which no supporting data are
provided.

The ARB uses the CalSTAR system for all its
accounting and reporting. The only way the data in tables
3A and 4A and supporting spreadsheets can be determined to
be accurate is through the examination of complete
accounting records from ARB's CalSTARS accounting system.

I've made a copy of our report available for your
review.

CHAIRPERSON NICHOLS: Thank you, Mr. Rozsa.
Susie Berlin and Seyed Sadredin are next.
MS. BERLIN: Good morning, Madam Chair, Board.

Thank you very much for this opportunity to address you on
the fee issue.

My name is Susie Berlin. I represent the
Northern California Power Agency. And CPA is a joint
powers agency that is comprised of publicly-owned electric
utilities and one natural gas utility.
I want to start off with -- and I'm repeating what others have said. I'm very appreciative of staff's involvement with stakeholders and responsiveness to both e-mails and telephone calls and having face-to-face meetings. We appreciate this Board's responsiveness to the concerns raised by NCPA and others back in June when this issue was first brought up regarding the electricity sector impacts.

We support many of the changes that have been made, particularly the acknowledgement that fees should not be assessed on power wheeled through California. But we believe that the regs should be revised to exclude imposition of the fee on the electricity imports.

Staff correctly notes that AB 32 does talk about all statewide greenhouse gas emissions, and NCPA and its members acknowledge both the compliance and reporting obligations associated with that obligation. But that obligation is distinguished from imposition of the fee and they should not be read together.

NCPA supports the netting provisions for several reasons. First, seasonal exchange agreements and multi-power purchase agreements with entities from out of state are very useful and they maximize the efficient use of the entire regional electricity system. They can
control costs. They reduce emissions associated with excess generation at various times of the year. They maximize overall efficiencies and ensure reliability.

Second, the fact that the amount at issue is only five percent is irrelevant, nor does it address the impact of the fee on an individual compliance entity or recognize the fact that there is no cap on the fee amount. Accordingly, the actual obligation can be and likely will increase from year to year and will be higher than the current obligation.

Finally, the estimated impact on individuals is irrelevant, because it does not address the impact of the fee on the entity that needs to pay the fee. So we urge the Board to reconsider of the netting of electricity imports.

We believe the administrative burden can be easily addressed and urge you to review the comments filed by the Southern California Public Power Authority earlier this week that address ways in which that can be handled through the reporting regulation.

And also if there is going to be at look at the fee, we would ask that something specific be placed in there regarding enforcement to allow for a review of the
fee obligation before penalties are assessed if there is a discrepancy.

Thank you very much for your time.

CHAIRPERSON NICHOLS: Thank you.
Mr. Sadredin followed by John Hansen.

MR. SADREDIN: Madam Chair, members of the Board,
good morning. Thank you for the opportunity to present testimony on this matter.

I'd like to say it's a pleasure to be before you. Unfortunately, I can't, because I come here with great reservation to oppose your staff recommendation as it relates to the mandatory reporting provision of this rule.

We often work together as partners and get things done right. But in this case, I think that staff recommendation really misses the mark. It will cost businesses a great deal of unnecessary expense and having to deal with a duplicate redundant system, it essentially will codify inefficiency and bad government in my view.

As you know, for decades the local air districts have been collecting emissions data both for criteria pollutant and toxic pollutants from businesses, and that information has been relied upon and acted upon by your agency, by EPA,
and all of us and all the difficult work that we have to do.

Unfortunately, this recommendation now will require businesses to do two different systems: Report emissions to the local districts in a different format and to the ARB really for no good reason. My colleagues from CAPCOA had provided additional information on that.

But I'd like to point to two other -- bring up two other thoughts that you may want to consider in your deliberations today. One is EPA will soon require their own mandatory reporting beginning next year. And will we have three different systems now that the businesses will have to use and report the same information to the three agencies? Will ARB be able to fight against that if you adopt the staff recommendation which says there is only one way to do the reporting and do it redundantly.

The other thing I ask you to consider is to stay true to the resolution that you adopted when you implemented or the adopted the AB 32 Scoping Plan. In that resolution, you said you will -- when appropriate, you will rely on the existing infrastructure that is in place at the local air district and will put that in place and will use that to minimize the cost.
All we're asking here is that in Section 95204 and Section 95104 where it says "ARB's tool is the only system to use," add a sentence at the end that will say "or an equivalent system adopted by local air districts and approved by your executive director," if it's appropriate. Thanks.

CHAIRPERSON NICHOLS: Thanks.

Before we go further, because it may save us a little bit of time and some apprehension, I'd like to say that I agree with you. We have just been through an exercise with EPA which staff has mentioned, but which we can talk about a little bit more at the end, to try to make sure that California's reporting system can move seamlessly into the federal system. We need to do the same thing between the locals and the states. I understand that we need to move forward with the mandatory reporting rule. And at this point, we don't yet have software that works the way we would like it. We would all like it to work so there's a single port of entry for anybody who has to report. They don't have to do multiple filings. That should be everybody's goal. But we definitely need to make sure that we are open to that
occurring and helping to the extent that we can to make
that possible.
So I just want to say that I will be making that
recommendation when we get to that point. I appreciate
your bringing it to us. Thank you.
Mr. Hansen followed by Todd Priest.
MR. HANSEN: Thank you, Chairperson Nichols.
Appreciate the opportunity to address you today.
Like Scott Sommer, I'm a member of the firm of
Pillsbury, Winthrop, Shaw, Pitman, who has been
representing the eleven associations involved in the

Public Records Act litigation. And we are commenting on
their behalf both today and in greater detail through
written materials that we submitted to your staff on
September 23.

As stated in John Rosa's report, and Mr. Rozsa
addressed you a moment ago, which he submitted on behalf
of the association CARB has refused to release to the
associations or otherwise make available any -- and I
underscore the word "any" -- materials that validate past
cost of AB 32 cost implementation to be covered through
the proposed fee.
Indeed, in response to the Public Records Act
request from the associations, CARB staff withheld on the
asserted basis a privilege over 84 percent of their file
on the proposed regulation. By CARB's own admission, the
withheld records contain facts, financial information,
numbers, and estimates relating to the amount of the
proposed AB 32 fee and to the nexus with the regulatory
programs of AB 32.

For fiscal year 2007-2008, CARB claims staff
person years, or PYs, of 125.44 direct staff cost
approximately $10.6 million and staff overhead of
approximately $3.7 million.

For fiscal year 2008-2009, the staff PYs are
182.23. Direct staff cost are approximately 16.1 million,
and staff overhead is approximately 5.6 million.

We estimate that approximately 27.8 million is
claimed by CARB for staff hours and staff overhead for
fiscal year 2007-08 and 2008-09 of the approximately $54.6
being retroactively claimed for those years.

The fact is that CARB staff has admitted through
the declaration of Daniel J. Whitney that CARB staff did
not keep records. Mr. Whitney stated, and I quote, "ARB
did not keep hourly records of AB 32 implementation
administration work for fiscal years 2007-2008 or 2008-2009. The time spent on such work by CARB employees was estimated."

The bottom line is that CARB staff has taken the position that the public is not entitled to see the supporting documentation for the calculation of past year costs and that the public is only entitled to see CARB staff's final totals determined through its secretive process. This position is contrary to the Legislative intent of AB 32, the statutory requirements of AB 32 --

CHAIRPERSON NICHOLS: Mr. Hansen, your time it up.

MR. HANSEN: -- and requirements of the Administrative Procedures Act. Thank you very much.

CHAIRPERSON NICHOLS: Mr. Priest followed by Bill Haller.

MR. PRIEST: Thank you, Chair Nichols.

I'm Todd Priest representing the California Business Properties Association, a member of the AB 32 implementation working group. And our members aren't direct fee payers, but they will indirectly pay the costs through higher energy cost, as will most consumers here in California. And our concern too has been the fairness and
the equity involving this rulemaking process. As previous
speakers have mentioned, there's not an opposition to the
need for an administrative fee. It's how it's done and
make sure it's done fairly.

There's been a concern that a great deal of money
has been spent by CARB in moving forward with AB 32, and
we recognize that. AB 32 is changing the landscape of how
we do business here in California. But understanding
that, there will be a financial obligation paid by most
businesses for implementation. And with that obligation
comes the ability for those costs to then be borne upon
our rate payers, which would be businesses and residences.

So we would request that as you move forward that
you require that there be an audit system included into
this rulemaking and that you set up an advisory committee
of those who are actually paying the rates, are paying
those fees to make sure that they can be substantiated,
since it is an administrative fee, that there's a nexus

study that's done, and to make sure there's direct
accountability for all those fees that are addressed.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
Mr. Haller, followed by Jay McKeeman.

MR. HALLER: Madam Chair, honored Board members, my name is Bill Haller. I'm a volunteer with Sierra Club. I serve as the Chair of Sierra Club of California Air Quality Committee. I'm a volunteer. I'm not a $450 an hour lawyer getting paid to be up here.

I'm here in support of AB 32 the administrative fee as proposed. This action is fiscally responsible, as funds are needed for implementation of AB 32.

It would be fiscally irresponsible to move the process forward without identifying how California agencies will cover AB 32 implementation costs.

California taxpayers have already borne the burden of this economy and future repayment of bonds with interest. It's time for the polluter to pay for their pollution. They created it. They profited from it. And they should pay for it.

There is a clear split in California's business community. There are many highly vocal and organized individuals, many here today, that represent old dirty business interests in California, who every step of the way have been hard at work trying to delay or detail AB 32. It's the same old, same old. These companies sue
over every environmental regulation and then run ads
during the nightly news claiming how green they are.

Let's make no mistake. AB 32 enjoys strong
support from innovative business leaders across the state.
Six months ago, hundreds of business leaders, including
top executives from Google, Ebay, Gap, Warner Brothers,
many other highly respected companies, they signed a full
page ad in the Sacramento Bee expressing their strong
support of AB 32 and also claiming, rightfully so, siting
the economic opportunities it would spark.

Finally, AB 32 is an investment in stabilizing
California's future. I'm a native California. Born and
bred here. Lived my whole life here. It will put
California's environment and economy on a more secure
path, insulating us from the price shocks that they want
to continue to give us and supply disruptions for our
energy.

Regardless of how they're caused, these trends of
our growing oil demand in a business as usual mode will
continue to make these price shocks more frequent, deeply
felt, and longer lasting. The costs of driving a mile in
the U.S. has nearly doubled between 2002 and 2007.

And, finally, I have two little kids at home.
I'm more than willing to pay my fair share, as deemed by this Board, of $0.77 a year to see AB 32 implemented.

Thank you so much.

CHAIRPERSON NICHOLS: Thank you.

I should have said this earlier. I appreciate people showing enthusiasm on either side, but it's actually not helpful in terms of keeping the proceeding moving along. So maybe you could just raise your hand and wave like they do at the Coastal Commission if you want to show enthusiasm.

Mr. McKeeman, followed by Robert Kard.

MR. MC KEEMAN: I'm Jay McKeeman, California Independent Oil Marketers Association. And I take great offense at being called a dirty industry. Our members spend millions of dollars every year out of their own pocketbooks paying for environmental improvement. If the Board and the State doesn't recognize that, shame on you.

We oppose this regulation for several reasons. First of all, we believe it is an inappropriate delegation of taxing authority by the Legislature. The way this regulation has unfolded shows that it is a guessing game, that somehow ARB is going to guess on what's going to happen and how much it's going to cost, and they apparently have no obligation to tell us how they got those guesses. So we believe that that's inappropriate
delegation of taxing authority to you.

Secondly, we adamantly oppose any retroactive assessment at the rack. I have contacted our members that will be included in such a proposal, that every one of them has said that they will not be able to pay the invoice -- they'll be able to pay. They will not be able to pass along the money or the price of the invoices to their customers. That is just the way the pricing mechanism works in this industry. We're in competition. One company decides not to pass it on, nobody gets to pass it on. That's the way it works. This is not just a simple assessment of cost and pass it on to the customer. That's not the way it works. And it's obvious your staff doesn't understand that.

Finally, we would oppose any retroactive establishment, refinery gate, or at the rack. It's just not the way to do business. When a price -- when a fee gets laid into a gallon at the rack, that's apparent to everybody. It gets laid into the gallon. It goes along with the gallon. People pay that price laid in going forward.

Retroactive fees don't work that way. It's a mystery on whether those fees get paid for not. So this regulation has just got a major amount of problems with us, and we don't think that it is appropriate regulation.
CHAIRPERSON NICHOLS: Thank you.

Mr. McKeeman, if you could stay there for just a second. I just want to clarify something with staff. We've heard a lot about at the rack, at the refinery. Do you want to clarify a little bit what you're proposing here in terms of where the fee will be assessed?

MR. COSTANTINO: Yes. The original proposal in June, which we have not changed, is to assess the fee at the refinery. That means the amount of fuel produced at the refinery or imported into the state would be where the point of regulation would be.

In our August workshop, we discussed the idea of moving to the rack due to the stakeholder concerns the refinery wasn't the right place. And upon looking at it, as the staff presentation laid out, we determined at the refinery is still what we think is the best place. So we are not proposing to move it to the rack.

CHAIRPERSON NICHOLS: And secondly on this issue of retrospective versus prospective, I know there is a lot of conversation here about the lack of hourly records by state workers for what time they put in in previous years on AB 32. And I just want to say one thing about that, which is that, powerful as the Air Resources Board is -- and I won't deny that we have a lot of authority in
Finance in terms of how we actually do our budgeting and how our numbers are created and publicized and all of that as we go along.

But as I understand what you're proposing to do, it's to document past years. That is, no one is getting a bill today or when this rule passes. You will still have to go through a process of actually establishing what the numbers are based on the best information that is there. Obviously, people can disagree with that. But there will be information produced, made available. And then people will get bills if they're subject to this regulation. Is that correct?

MR. COSTANTINO: That's correct in that the way the fee regulation is set up, only public numbers will be used for establishing the fee rate. Reported numbers and the budget approved by the State Legislature and signed by the Governor are the only numbers that we would be using to assess the fee. So the fact that there's claims of guessing of our cost is not accurate, because we can only recover the cost approved and authorized by the Legislature for us to spend.
CHAIRPERSON NICHOLS: Okay. I'm sorry to make you keep standing up here, but I just wanted to clarify that while you were still here. If you have 13 more seconds, if you want to say anything in addition.

MR. MC KEEMAN: I've said my peace.

CHAIRPERSON NICHOLS: Thank you, sir.

Mr. Kard, followed by Jill Whynot.

MR. KARD: Good morning, Chairman Nichols and Board members.

My name is Robert Kard. I'm the Air Pollution Control Officer for the County of San Diego.

Chairman Nichols, you pretty much addressed the issue that Seyed spoke to. We were up here concerned with the greenhouse gas reporting tool being the only option. And I appreciate the fact that you said you're going to expand those into federal as well as perhaps our needs. I think the data quality will be better with the APC districts involved.

Thank you for your efforts as well as your staff. It's a huge effort, and I look forward to continuing a good relationship with you folks and your staff. Thank you.

CHAIRPERSON NICHOLS: Thank you. Now we just...
have to come up with a system that actually works with all
the different districts and their reporting systems.

MR. KARD: The IRS did it with Turbo Tax and
others. I think we can do it.

CHAIRPERSON NICHOLS: Thanks.

Jill Whynot, followed by Jim Stewart.

MS. WHYNOT: Good morning, Chairman Nichols and
members of the Board. Thank you very much for the
opportunity to provide some comments this morning.

South Coast staff supports the recommendations
from CAPCOA. They recently submitted a letter which Mr.
Kard and Mr. Seyed had discussed. And basically wanted to
show you the specific language that we think should be
added to the rule.

This specific language is a little bit different
from what South Coast staff proposed previously. But this
would enable tools developed by local air control
districts or local APCD's to provide an optional reporting
tool that, should the Air Resources Board staff approve
it, would be a good opportunity to streamline and
consolidate reporting.

The South Coast is willing to provide funding to
pay the CARB consultant that developed your tool to help
in the evaluation and to make sure that our tool would
meet all of your needs.

So we strongly support the CAPCOA recommended
language. And we really appreciate the opportunity to
continue working on this. We believe it would be very
good for business and also for our agencies.

Thank you.

CHAIRPERSON NICHOLS: Well, thank you. And thank

you for the offer to participate financially as well.
That's always welcome.

Okay. Mr. Stewart followed by Wendy James.

MR. STEWART: I'm Jim Stewart, the co-chair of
the Sierra Club's Energy Climate Global Warming Committee
for the state of California.

I'm also a volunteer speaking on behalf of the
200,000 volunteer members of the Sierra Club in
California. And I want to say that this is a great day.

This is the day when we finally get the financial
structure in place to move AB 32 forward. We are totally
thrilled with the amazingly brilliant staff that Mary
Nichols and the whole -- Mr. Goldstene and everybody has
put together, that this is a great staff. And obviously
we need to pay them. And so this is great that we're now
moving forward to get that pay structure in place.
And we know that this is obviously essential in
terms of getting this whole effort of the AB 32 on its
way. And this fee is pretty small, right? What was that,
1.4-tenths of a cent? In other words, less than
two-tenths of a cent of a gallon. How in the heck could
you ever know that that fee was added to your three or $4
a gallon gas price?
This is truly a nominal fee to get us on the
track to do what we need to get done. And I think that it
is pretty embarrassing by all these emitters, polluters,
whatever trying to delay this thing with some ridiculous
Public Records Act that this is legal, mumbo-jumbo.
And what we need to do is move forward. And you
are all well aware that the cost of delaying of global
warming is getting worse and worse. As I said yesterday,
we're this deep trouble on this thing, because the methane
klath rates in Siberia are starting to leave. They're
starting to be emitted as the global warming. We're
getting very, very close to global warming runaway tipping
point.
So your action today is totally critical. And we are going to look forward to supporting you in all the rest of this wonderful implementation of AB 32. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Wendy James, followed by Brian Bateman.

MS. JAMES: Good morning, Chairman Nichols and members of the Board.

My name is Wendy James. I'm here on behalf of several public interest groups, environmental public health, and other public interests. They submitted a letter you should have received. The groups are the Natural Resources Defense Council, American Lung Association of California, Center for Resource Solutions, Planning and Conservation League, Environment California, Union of Concerned Scientists, California League of Conservation Voters, California Tax Reform Association, Coalition for Clean Air, California Interfaith Power and Light, Sierra Club, Environmental Defense Fund, Climate Protection Campaign, and a late addition that wasn't on the letter you received, Breathe California.

I want to provide just some highlights of the written copy you received. And those are the following:
That this regulation, the fee you're adopting today, avoids adding to the already over-burdened state budget by collecting fees from the largest sources of global warming emissions in California.

Current law requires ARB to impose a fee on sources of greenhouse gas emissions to carry out the Scoping Plan you have adopted. AB 32 specifically authorized the implementation of a fee to generate funds for carrying out the AB 32 programs. And this regulation will prevent ARB from continuing to borrow from existing funding sources that the State has and repay these borrowed funds to support the program over the last two fiscal years, clearly not the intent.

This proposal equitably covers 85 percent of all greenhouse gas emission sources in California. It would not be applied to small businesses.

As was stated earlier, it's a very minimal fee, even if passed along to consumers. And while it's not in the letter, I will say it's a fraction of the cost associated, I'm sure, with the legions of lawyers being employed by those who are trying to delay it.

The cost of this program is minor compared to the
cost of global warming to California. California's vast real estate, agriculture, and tourism industries face significant threats from global warming with trillions of dollars of assets and revenues at risk.

California's benefits far outweigh the annual estimated 30 million of administrative cost of implementation. We strongly support the proposed AB 32 administrative fee. We've had enough delay. We've had an extensive public process. And we thank you for your continued leadership.

CHAIRPERSON NICHOLS: Thank you. I was so excited by your testimony I flipped over my coffee. I apologize. I was listening. Thank you.

Then we'll hear from Brian Bateman, followed by Colleen Callahan.

MR. BATEMAN: Good morning, Madam Chair and members of the Board.

My name is Brian Bateman. I'm the Director of Engineering at the Bay Area air Quality Management District.

And like the other CAPCOA members that you've heard from this morning, my comments are directed at the proposed amendment to the mandatory reporting regulation.
We've had for many years a system in place for facilities in the bay area to establish and update emission inventories for criteria and toxic air pollutants. A few years ago, that system was expanded to cover greenhouse gases.

We've also been working on a major upgrade to our inventory system, which we expect will be completed at the end of next year. The upgraded system will be in the form of intuitive online tool where facilities can enter their data, check it for errors, and then submit it to us electronically.

We've had discussions with ARB staff about the possibility of extending our system so that it can be used for Bay Area facilities to submit their greenhouse gas inventory data directly to CARB rather than having to duplicate their effort by using a separate tool.

The staff has been open to that idea and has indicated a willingness to continue the discussions with us toward that end. And so we're looking forward and toward the time when we can have a more efficient integrated approach that can provide all of the required data directly from the facilities to both of our agencies.
Realistically, in the Bay Area, we're probably still a couple years away from that point. But we do support the language that was proposed by South Coast staff a moment ago.

I'd like to conclude by thanking the ARB staff for their time and cooperation in this matter. They obviously have a great deal going on, and they have shown a sincere interest in what we're doing. And we look forward to continuing to work with them on this.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER RIORDAN: Madam Chair, may I make a request? I had difficulty reading on the monitor the language. I wondered if staff during the speakers could make a copy. At least my eyes didn't pick it up well. I don't know about the rest.

CHAIRPERSON NICHOLS: It was pretty small. Do you have a copy of the language that was submitted by Ms. Whynot? Just pass it down then, if you wouldn't mind. Thank you. Everybody can take a look at it. Okay.

Then we'll hear from Ms. Callahan, followed by Chris Carney.

MS. CALLAHAN: Good morning, honorable Chairwoman and Board members.
My name is Colleen Callahan. On behalf of the American Lung Association in California, I'm pleased to reiterate our strong support for adoption of the AB 32 administrative fee. As we've stated in letters, workshops, and other Board meetings, we feel that this fee is necessary to maintain the important work of CARB and other State agencies to implement AB 32.

Like others, we applaud CARB for moving forward in a responsible manner to protect our air quality, public health, and environment from the worst effects of global warming by maintaining California's role as a global leader in climate policy.

Among the many reasons to proceed with adaptation are:

One, we have seen the effects of California's budget crisis on our many State programs. And AB 32 implementation is too important to delay.

Secondly, this regulation would provide a stable and continuous source of funding in an equitable manner ensuring that a broad range of major greenhouse gas emission sources are responsible to pay for their pollution.

And, third, as others have stated -- and I'll just quickly reiterate, the overall cost of this program is minor compared to the cost of global warming to
California, especially in terms of air quality and public health that are already in crisis and will be further threatened by rising temperatures, increased energy demand, emissions, and other factors.

Climate change impacts could cost the public health sector $3.8 billion to 24 billion in additional annual costs. And this is on top of the $170 billion attributed to ozone and PM pollution every year.

So just conclude by again thanking you for the opportunity to reiterate our strong support for adoption without delay of the administrative fee. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Chris Carney, followed by Rosa Zambrano.

MR. CARNEY: Good morning, Madam Chair and members of the Board. Thank you for the opportunity to speak.

My name is Chris Carney with the Union of Concerned Scientists. And I'll be very brief. I want to echo the support you've heard from others. We believe this fee is both fair and equitable. It's reasonable. And it's fiscally responsible. So we encourage you and support you in adopting this without delay. Thank you so much.

CHAIRPERSON NICHOLS: Thank you.

Ms. Zambrano and then Jackie McMillan.
MS. ZAMBRANO: Good morning, Chairman Nichols.

My name is Rosa Zambrano. I'm here to represent the city of Commerce residents that were not able to be here today. I'm here to say no to pollution. I know the residents living in our city of Commerce have 140 percent increase risk of cancer. And to show you care, I know it's awareness week this week. And yesterday in the L.A. Times there was a great article in the front page. It describes our city as cancer alley. It is. You'll hear residents later on in Spanish, and these residents that care. Some of them have lost their husband to lung cancer. Some of them they didn't even smoke.

I know I don't live in that alley, but I live in that city and I care. So therefore we're asking you to make our community a better place in the enforcement that you have to make. You have the power to have environmental justice in our city and the cities around us.

And I believe it's been a difficult time to gather signatures, because everybody that works, they don't have time to actually come here. But I have collected some signatures, and I would like to give them to you. They are in opposition of so much pollution in
CHAIRPERSON NICHOLS: Thank you, ma'am. You can leave them with the Board Clerk over here on the end. Thank you for taking the time to come. Jackie McMillan followed by Norman Pedersen.

MS. Mc MILLAN: First of all, again, thank you for the opportunity to come and address the Board. And I really appreciate it.

I'm Jackie McMillan, Vice Chair of VICA, which is the Valley Industry and Commerce Association of the San Fernando Valley. And I am also co-chair of its Energy, Environment and Water Committee.

VICA is a business advocacy association that for nearly 60 years has advocates on behalf of the businesses for the San Fernando Valley, which has reached 21,000 businesses and that provide over 387,000 jobs.

I'm here to respectfully ask that you oppose approving the $57 million in additional fees as we believe this action will have a detrimental impact to our business community and the consumers that we serve. Ensuring a vibrant business community is of paramount importance to us and our organization. And we
believe we support the principles behind AB 32, yet we are
deeper concerned about the associated costs with complying
with the government regulations.

For example, our local public utility districts

of Los Angeles, Pasadena, Glendale, and Burbank have
estimated that AB 32 implementation will increase the cost
of electricity anywhere from 30 to 60 percent. These
increases will inerently be passed on to our businesses
and consumers in the form of higher energy rates, higher
costs of products and services, or worse, layoffs.

Given the strain placed on our current economic
climate, we believe it is extremely unwise to ask business
to pay more fees to comply with government imposed
regulation.

We appreciate greatly the opportunity to be able
to come to you today and voice my concern on behalf of the
VICA membership, but we ask you to give great
consideration to the economic backlash this would have to
our communities.

Again, we thank you for this opportunity to voice
our opposition.

BOARD MEMBER LOVERIDGE: Mary, could I --
CHAIRPERSON NICHOLS:  Excuse me. Yes.

BOARD MEMBER LOVERIDGE: Help me out again. The increase in utility fees, where did that number come from?

MS. MC MILLAN: They were provided to us by the utilities. The cities of Pasadena, Burbank, and Glendale.

BOARD MEMBER LOVERIDGE: It came from the city's utility company, that is where that number --

MS. MC MILLAN: Correct.

BOARD MEMBER LOVERIDGE: It was 30 to 40 percent?

MS. MC MILLAN: No. The number I have is 30 to 60 percent. And I cannot break out for you which one would have the greatest impact. I apologize for that.

CHAIRPERSON NICHOLS: But that's not due to this fee necessarily. It's due to many other factors.

BOARD MEMBER LOVERIDGE: I was trying to get the connection with this fee.

MS. MC MILLAN: Well, just all the impacts of AB 32. This would be one more thing that would be layered on to it.

CHAIRPERSON NICHOLS: Okay. Thank you.

Mr. Pedersen, followed by Martin Schlageter, and Jesse Marquez.

MR. PEDERSEN: Thank you very much, Chairman
And, actually, I'm Norman Pedersen from the Southern California Public Power Authority. And if I have time, I could explain that 30 to 60 percent. But I don't want to take time right now.

The time since July has been well spent by your staff. They have proposed 15-day language that significantly improves the fee regulation. However, there is one improvement they have not yet made that I would like to highlight for you this morning. Like the July version, today's proposed regulations still applies a fee to both the import leg and the export leg of an electric utilities exchange arrangement with an out-of-state counterparty.

For example, for Riverside's agreement with BPA in Oregon, the fee would be applied to the electricity that Riverside imports from BPA in the summertime. The fee would be applied again when Riverside generates in the winter to return electricity to BPA.

If Riverside simply generated in the summer instead of seasonally exchanging with BPA and realizing the resulting economies, Riverside would pay only one fee.
By applying the fee twice instead of once on exchanges, the fee discourages socially beneficial economy exchange arrangements. The fee also discriminates against interstate commerce. If a southern California utility enters into an exchange agreement with a northern California utility, the southern California utility pays no fee on the electricity that would be received from the northern California utility. It would pay a fee only once upon generating electricity to return to the northern California utility.

However, if the southern California utility enters into an exchange arrangement with an Oregon utility, a fee would be paid both on the electricity received from the Oregon utility and on electricity returned to the Oregon utility. Placing the double burden on exchanges with out-of-state counterparties while placing a single burden on exchange with interstate counterparts unconstitutionally discriminates against interstate commerce in favor of intrastate commerce.

Thus, for both public policy and legal reasons, we urge the Board to relook at the treatment of imports and exports under electricity utility economy exchange agreements. SCAPA has filed written comments proposing
12 some fixes.
13 And thank you very much, Chairman Nichols.
14 CHAIRPERSON NICHOLS: Thank you.
15 Mr. Schlageter.
16 MR. SCHLAGETER: Thank you. Martin Schlageter with the Coalition for Clean Air. And glad to have the Board here in Diamond Bar this month.
17 I'm here to support this fee, because I support as do so many of my environmental colleagues the strong implementation of AB 32 to reduce global warming pollution. We know this pollution is on top of and related to the pollution that so many communities are already burdened with. And while I hear concerns about whether the time that your staff is going to spend exactly

1 matches this fee, let me just say if there is any over-estimate there, I have plenty of work for the staff to do. So we are going to make sure you got plenty of work to fill any gaps in that administrative fee. But I know that's a lighthearted way of saying there's more work to do and this fee is necessary, essentially believe that your numbers are going to be accurate and appropriate and publicly acceptable.
This fee is just along the way to an appropriate pricing of carbon in the global warming pollution that is causing such damage that and has the prospect for such greater damage that is requiring the leadership of California and this fee which at the consumer level is so small and which the Board here and the staff here is appropriately considering putting up for upstream, this will help mitigate some of the financial damage that comes with global warming and climate change and the burden that has on already over-burdened communities. So I urge you to expeditiously adopt this fee so that we can continue on the path of implementing AB 32 to reduce global warming pollution. And appreciate your time today. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Marquez.

MR. MARQUEZ: Chair Nichols and members of the Board, it's a pleasure to be here today at this public hearing.

My name is Jesse Marquez. I'm the Executive Director for the Coalition for Safe Environment. We're an environmental justice organization headquartered in Wilmington with membership in over 25 cities in the state of California.
I'm happy to state that we are here to support the AB 32 cost implementation fee. We believe that CARB needs sufficient funds for the administration and enforcement of AB 32. We believe that major greenhouse gas emitters should pay for their violation of AB 32. We believe that polluters should pay for the assessment of their illegal greenhouse gas emissions. We believe that a fee should not be passed on to the public, as has been mentioned, if the emissions are due to the negligence, failure to incorporate the maximum achievable control technologies, or the failure to replace parts, equipment, and systems on a regular basis, which has been causing regular breakdowns and malfunctions.

We do wish to have some modifications of what you're proposing. In section -- where it says applicability A, three refineries, we believe that you should add a D category, which means -- states something to the effect of planned and unplanned flare events.

Today, our refinery in Wilmington had a major breakdown fire. There are hundreds and hundreds and hundreds of tons of PM, NOx, SOX, and greenhouse gases that are being emitted right now as we speak. The television has
reported there are over 100 fire engines there putting it out.

We cannot just include just the regular day-to-day operations. When you have major incidents like this, one day can equal one or two months. So we ask that you add that as another section.

We ask there be another section added that is B that there is no exemption for emissions caused by planned and unplanned flare events. So we don't want that to be left out of the loop. So we want that to basically include both process emissions and non-process emissions. And that's what we're asking that be included in the language. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Okay. That completes my list of witnesses. It's now time to return to the staff for any further comments. And I'm sure Board members will have questions or comments as well. Mr. Goldstene.

EXECUTIVE OFFICER GOLDSTENE: I think it might be easiest if we talk about the mandatory reporting issue and CAPCOA issue first. I'd like to do that and then have staff respond to any other questions relative to the
CHAIRPERSON NICHOLS: Sounds good.

EXECUTIVE OFFICER GOLDSTENE: I'll ask Lynn Terry to provide an overview on what we heard from CAPCOA members.

DEPUTY EXECUTIVE OFFICER TERRY: Happy to say we're all on the same page. As of this week, we now have a new federal mandatory reporting requirement, and we need to get to work together to have a system that is efficient. And so we are very happy to see CAPCOA step up and work with us and the federal government to devise the most efficient way to both comply with State greenhouse gas reporting as well as federal.

We certainly have been encouraging EPA to consider a data sharing concept so that it would be a very simple way for multiple parties to have access to the data. So that is our goal as we move forward in this program. And we have proposed some language that's a little bit broader than the CAPCOA language, which mentions only air districts, because we see with the adoption of the federal rule this week it's really a much broader issue.

So we would hope the Board would consider this broad language that we give the Executive Officer the flexibility to approve a tool in the future that will
guarantee compliance with both our mandatory reporting
regulation and the fee regulation, as well as enable us to
have an efficient system as we work with the federal
government.

CHAIRPERSON NICHOLS: Okay. I believe the
language has been distributed to the Board members. Any
questions or comments?

BOARD MEMBER LOVERIDGE: Does CAPCOA sign off on
what is being proposed by CARB staff or do they have a
different take?

CHAIRPERSON NICHOLS: We could certainly ask
them.

It seems to me this incorporates their proposal
but adds onto it, the possibility that there might be
other entities that would also be submitting reporting
tools that could be approved. So definitely gives the ARB
Executive Officer a wider range to choose from.

Maybe we should give them a moment to caucus
before we call them up.

I'm assuming they've seen this language. Well,
you better distribute it to them then. That would be
helpful. Okay. We have some copies here.

While they are caucusing on this point, maybe we
should then address some of the other issues --

BOARD MEMBER TELLES: Mary, the language that
CAPCOA suggested is actually very broad.

CHAIRPERSON NICHOLS: But it does only mention them.

BOARD MEMBER TELLES: No, it doesn't. Says "or any other reporting tool approved by the Executive Officer." Is this CAPCOA's or --

CHAIRPERSON NICHOLS: No. This is the staff. That's the staff language. Sorry.

The CAPCOA language here, I have copies of this. I'm sorry. I had it, and it was in front of me, but it wasn't in front of everybody else. So here you all are.

BOARD MEMBER TELLES: That would be inconclusive of the CAPCOA recommendation.

CHAIRPERSON NICHOLS: Yeah.

EXECUTIVE OFFICER GOLDSTENE: Chairman Nichols, we can project this up in a moment so everybody can see it.

CHAIRPERSON NICHOLS: Okay. They can probably project it on to the screen. Okay. This is the ARB staff language.

MR. SADREDIN: Thank you for your considerations. I think the word that we object is to "identical."

Because if you have two identical systems essentially -- we've seen how that works in government where you look at the line-by-line identical as opposed -- we suggest to
replace that word with "equivalent."

CHAIRPERSON NICHOLS: How about if we don't do either of those, but instead scratch out "receipt of data required by ARB's mandatory reporting regulation," so it doesn't say identical to that. It doesn't say equivalent to that. It just says the data there's required. Would that do it for you? Then we don't have to quibble.

MR. SADREDIN: Exactly.

CHAIRPERSON NICHOLS: Saves a couple of words, too.

UNIDENTIFIED SPEAKER: Excuse me. One more minor point. There are two different places that this would have to go, not just Section 95204 but also in the other rule as well, because it's in the fee rule and the mandatory reporting. If the language mirrored there, we'd be happy.

CHAIRPERSON NICHOLS: I see Ms. Terry nodding we agree.

We will take that as a proposed amendment then when we discuss the full rule -- when we act on the full rule.

Okay. Let's now go back to the fee regulation. Obviously, there remains some very significant issues and
concerns that are being raised by several important
business organizations. Certainly, the language that
they've used here at the hearing today and in their
written comments suggest that there is likely to be
further litigation about this fee. This is one of the
things that we had hoped to avoid or at least to narrow as
a result of the extra time that we took. And I think I
hear that we've made progress. But there still are some
very basic issues that people want to raise. So I don't
expect that we can make that issue go away.
But I do want to hear from our counsel. And then
I'd like to say just to kind of sum up a little bit I
think what the rational is for moving forward.
Initially, I wanted to discuss briefly the Public
Records Act lawsuit that was referred to here today. And
that lawsuit was filed the day before the initial
statement of reasons and the draft regulation was put out
on the public.
And the plaintiffs in that case included the
Chamber of Commerce, the California Manufacturers'}
Association, Western States Petroleum Association, and
eight other groups. And they were very capably
represented by the Pillsbury firm. And two of their
lawyers who are here this morning.

And just as a side note here, the court totally,

absolutely agreed with ARB in its view of how it handled
the Public Records Act issue. We had a nine-page total
victory, just as a note on that point. I'm not sure if
the other side will appeal. And if they do, then I'm
confident that our position will be withheld.

What the court focused on was what -- and there
was mention of the number of pages that was not released.
It sounds like a large number. But what they are are
drafts. The 140-page ISOR, they were circulated. There
were lots of pages that were going around. Those don't
have to be given to the other side, and they weren't, and
the court agreed with that.

There was also some deliberative discussions
about where to put the point of regulation. That early
preliminary kind of discussion is not things that the
Board said that we had to give up. So once again, they
absolutely -- the court absolutely agreed with ARB's
position.
19 Now, in terms of the numbers in the staff report, 
20 there's been some broad statements here this morning that 
21 no documents were given up. They hadn't gotten anything, 
22 and that's simply not correct. 
23 What was given up was summaries of the 
24 documentation that was posted on the website for the 
25 public. Additional documentation will be coming up. And

1 we are going to have a very transparent process here. 
2 One thing I just wanted to also mention. The 
3 court talked about the efficiency of the State agencies 
4 being able to do the rulemaking. And I think he was 
5 talking about the public interest in that. The Public 
6 Records Act litigation consumed hundreds of hours of our 
7 legal staff, the attorney general's office, and the OCC 
8 staff in terms of responding to making privileged logs of 
9 each document we withheld. 
10 So I just wanted to comment that the court noted 
11 there was a public interest in letting the rulemaking go 
12 ahead, and not every single piece of paper has to be given 
13 over in response to Public Records Act requests. 
14 Now turning to the merits, there was some 
15 complaints that no documents were given up. That's
incorrect. There were summary documents. We related it by person. We withheld the names of the people that were doing the work. And we have it broken out as by person, what kinds of programs they worked on, an estimate of the percentage of time that they did. A lot of these staff people, their only job is AB 32. So those are easier positions, because 100 percent of their time is on that.

ARB has never had a time sheet kind of process by project. Some of the lawyers that testified here are used to the every six minutes you say what you wrote on and you bill it to a client. ARB does not use that kind of a time sheet process. We obviously keep track of our times and projects. But we don't have the absolute every six minutes this is what I did on AB 32.

And that issue had been raised in other fee cases in court about 15 years ago. And courts have said you don't have to keep time records of that degree of detail. So the comments here that we don't have records, we didn't give anything up, those are overstated.

I think based on the litigation so far that we are -- I strongly suspect we're going to get sued on this record. As the court noted, we have an obligation to pull that information together. The court was quoting from
what we said we were going to do. We're going to put out information. We're going to put out more information during the next comment period, which will be open for people to comment.

So in terms of the other legal claims that were here, the illegal delegation, on the commerce clause issues, we think we got it right. But we also will be looking at all the written comments and the testimony today and make sure we get it right, because we'd like to have a regulation that will withstand the litigation, which I fear is inevitable. But in terms of -- I just want to correct a few of the comments about documentation that was not produced.

CHAIRPERSON NICHOLS: Well, thank you, Ms. Peter. And, Mr. Goldstene, I'm assuming that this is one of those regulations that we will also be revisiting on a regular basis, at least to make some adjustments as we've learned from our experience actually implementing it.

EXECUTIVE OFFICER GOLDSTENE: That's right. Not only will we keep the Board advised as we move forward on the program, but through the regulator annual budget process and through the Department of Finance and to the
legislative process, everything we do will be very public and transparent. And we will have to justify all of the support we need for the program every year.

Of course, our goal is to make sure that everything we do, we do do as efficiently as possible. I'm simply responding to that Ms. Reheis-Boyd was articulating. We have done what we could to be as conservative as possible in our estimates, and we will continue to do that to make sure we are running the staff operation as lean as possible, but also able to get the work done.

CHAIRPERSON NICHOLS: Thank you. Okay. Well, I think we're at the point now where we need to put the resolution in front of the Board. I just wanted to make a comment. First of all, I think we do need to close the record formally, but make it clear at the end of our action today, the record will be reopened when a 15-day notice of public availability is issued. Written or oral comments received after today, but before the 15-day notice won't be accepted as part of the official record. But when the reopening occurs, there will be an opportunity for open public comment, and that will be considered and responded to as part of the final
statement of reasons for a regulation.

And I also have to call for ex partes before we move as well.

I just wanted to add to the discussion that we've already heard two brief points. First of all, just to reiterate that AB 32 contained within it a requirement that the ARB developed the rule that we're doing today, and I think it did so for sound reason. It's never pleasant to be in the position of asking consumers to pay. But if you're going to start a new program, I think it makes a lot of sense to be asking that it be a pay-as-you-go program. And that's exactly what we have here.

So we're not simply pretending that this doesn't cost any money. We're, in fact, indicating that it does cost money to run this program and giving the public the opportunity to weigh in on what those costs are.

Secondly, I do think it's worth at least saying that we yesterday celebrated the third anniversary of AB 32. I wasn't here with the Board, because I was in San Francisco with the Governor and with Fran Pavley, one of the principle authors of AB 32, while we celebrated the
third anniversary of this bill being signed.

And while we still are a long way from achieving all the goals of AB 32, we, in fact, have adopted the rules that will get us 40 percent of the emissions that are called for in the 2020 time line of that rule and are well on our way to meeting the rest of the goals.

So just in terms of how the Board is actually doing with the task that was assigned to us, I'd like to say that my report card is that we're doing a really excellent job thanks to all of you as well as to our staff.

And I also would like to simply bring back the overwhelming affirmation that we received from the Governor and his remarks at the Commonwealth Club and from many others as well, including representatives of the business community in the Bay Area for the fact that while we are asking for investments here, these are investments that are being made as our economy begins to come back from the worst recession since the Great Depression and that the investments are all designed to make our state more resilient, more capable of withstanding the oil shocks that we know are coming. And so it's a phased investment that the bill calls for. It doesn't all hit at
once but, in fact, will ramp up as the economy begins to come back as well. And so I just wanted to bring you the encouraging word from the Administration and from the Governor that there is very strong support for what we are doing here.

And with that --

BOARD MEMBER LOVERIDGE: Mary, before you go to the resolution, can I ask a question? It's a narrow parochial question, but it was prompted by Norman Pedersen siting of Riverside. It's really four-and-a-half million residents or users electricity may have the same question. If he could explain to me the import/export exchange and that question that was raised why --

CHAIRPERSON NICHOLS: Why we're doing it?

BOARD MEMBER LOVERIDGE: Why we're doing it the way we're doing it.

CHAIRPERSON NICHOLS: Explain it.

MR. COSTANTINO: This is John Costantino. And we are putting the fee on all imported power into the state as AB 32 requires us to look at those emissions and count them as California emissions and all California emissions that are generated in state.
The scenario that Mr. Pedersen explained about intrastate state trades not having to pay the fee is actually incorrect, because if the power is generated in northern California and then traded to southern California, the fee will have already been paid by the northern California utility. Whereas, something coming from out of state would not have had that fee assessed on it. So there will not be double counting of emissions or an inequity in the way that we have structured it.

So power that comes from out of state that immediately leaves the state to another state will not be covered, because that never is considered California power. But anything that's generated in the state is an in-state emission and any power that is generated out of state and used for California is counted as a California emission.

CHAIRPERSON NICHOLS: And that's under AB 32?

MR. COSTANTINO: Yes.

CHAIRPERSON NICHOLS: Other questions before we move.

Barbara and then --

BOARD MEMBER RIORDAN: Just a comment, Madam Chair.

I had missed the June meeting. And for the record, I'd like the audience to know that I have reviewed
and read the June transcript, and so I think I can participate fully with the discussion and the final vote. Having said that, Madam Chair, maybe it would be appropriate. This is not as a part of the resolution necessarily, but a suggestion going forward. It seems to me that there are some concerns about how we determine what the costs of implementing AB 32 are. And it might be, for the staff, wise to put together a Committee of stakeholders of particularly some of the industries that are going to be paying a part of this, some of the environmental community. Not a huge Committee, but enough of a Committee that you could review your working document and how you get to the numbers in the future. I'm not talking about going back. But in the future. And it just might make for a better process. I think sometimes we can learn a great deal and it can be very helpful if the industries have an opportunity to be a part of the discussion of where numbers come from and how they are then actually administered in terms of a fee later in the year. So I just make that as a suggestion.

CHAIRPERSON NICHOLS: Okay. Thank you.

Ms. Berg.

BOARD MEMBER BERG: Thank you, Chairman.

Is that logic that we were talking about the
import and export, not the double counting, does not that also apply to the transportation fuels? In other words, all transportation fuels, regardless where they go, if they're generated in California, they will also be subject to the fee?

MR. COSTANTINO: No, that is not the way it works. Only transportation fuels destined for California are subject to the fee. Transportation fuels that are made in California but exported and recorded on the forms that are required will not be assessed a fee.

The emissions from the refinery associated with it are in -- the production emissions will be subject to the fee, but the actual fuel which is exported out of the state will not be subject to the fee.

BOARD MEMBER BERG: Okay. So the comment by WSPA that we would be including fuels that would be going out of state, such as Nevada I believe was mentioned, that is not correct?

MR. COSTANTINO: You're correct, that's not correct.

CHAIRPERSON NICHOLS: Ms. Kennard.

BOARD MEMBER BERG: I just have one other question, and that was on the collecting the fees which is necessary for past expenditures. But it is 41.3 percent of the total for the next four years approximately. Are
we to then reasonably assume that the fee amount will drop in 2015?

MR. COSTANTINO: Yes. The next four years have to pay for the loan amounts that were given to us. And that's a statutory obligation to pay them back at a set rate by a certain date. Once those fees are paid, then the fee will go down to only the operating cost, which as you said, is much less than the total cost we have to collect in the first couple years.

MR. COSTANTINO: Ms. Kennard.

BOARD MEMBER KENNARD: I'm always troubled when we can't seem to work out a compromise with industry. And I'm struck by Ms. Peters' comments about the status of the litigation and the fact there will be continuing litigation.

So Ms. Riordan is always the most diplomatic person I know. And I think her recommendation is well taken that if there is any way that you can continue to communicate with industry and at least communicate the information basis upon which you're making these fee decisions, I think it would be enormously helpful as the process goes forward.
EXECUTIVE OFFICER GOLDSTENE: We will continue to do that. And in addition, as I said earlier, the entire budgeting process every year is a very open and transparent process and everyone gets to participate, and they do quite actively.

Both through that process and through our ongoing discussions and interactions with industry through our stakeholder processes, through our workshops, through Board meetings, there will be lots of information sharing.

CHAIRPERSON NICHOLS: All right. Are there any additional comments?

If not, I'll ask for the moving and seconding of the resolution. And then we can do the ex parte statements.

Is there a motion?

BOARD MEMBER KENNARD: So moved.

CHAIRPERSON NICHOLS: A second?

BOARD MEMBER BALMES: I'll second.

CHAIRPERSON NICHOLS: All right. Do we have any ex parte communications that need to be noted for the record?

All right. If not, then I think I will just ask for a vote. Would all in favor -- and this resolution, by
the way, is subject to the amended language on mandatory
reporting; correct?

EXECUTIVE OFFICER GOLDSTENE: Right.

CHAIRPERSON NICHOLS: That change is being made.

BOARD MEMBER TELLES: I have a question. The

last recommendations that Barbara Riordan and other
members have made, is that going to be an amendment also?

CHAIRPERSON NICHOLS: It's not being requested as
an amendment, because if we did that, we would have to
then I think get into more detail than we can at the
moment about who should be on it. But it is a statement
of Board direction, which I believe the staff hears. It
will be in the minutes, and it will be taken seriously by
them.

CHAIRPERSON NICHOLS: Okay. In that case, all in
favor of the resolution please signify by saying aye.

(Ayes)

CHAIRPERSON NICHOLS: Opposed?

Very good. Thank you. Thank you. All right.

We will take a break for the court reporter and
others. We'll be back in 15 minutes, please.

(Thereupon a recess was taken.)
CHAIRPERSON NICHOLS: Ladies and gentlemen, we're going to be reconvening now, and I want to ask for your help. If I may, for the people who are here, we have a wonderful crowd of people. We are very, very pleased that so many people have taken the time to come and be here today. We appreciate your interest and your presence and we want to hear from you.

The Board also wants to take action, and I want to make something clear here. There is a staff report, and the staff is making certain recommendations for what they want the Board to do. After we hear from the staff, we will then hear from the public; that's all of you. And then the Board will need some time also to think and reflect and respond to what we have heard. We are not a rubber stamp. We do make changes and we give direction to the staff, and we really want to hear from you.

But it's hard when we have such a large group of people if everyone is saying the exact same thing over and over again. We would appreciate it very much if those of you who have come as part of a group of any kind if you could get together.

We impose a time limit. Normally, on sort of a standard item, it would be three minutes per speaker.
16 With so many speakers, we might have to go to a two-minute limit. But we would also hear more and learn more if it's possible for you to come together and have a few people all have one person speak and speak on behalf of more than one person. We see that you're here. You can come up. You can say your name if you want to. But if you can organize your time so that you only use three minutes for several people to make one particular point, that would help us really to absorb what you're saying and to respond to it more effectively.

So I'm going to ask you while the staff is doing their presentation for those of you who are planning to speak, if you're here with a friend or a neighbor or an organization, if you can consult in the back of the room or outside preferably if you're going to be speaking, we would really appreciate it.

And the other thing I want to say is for those of you who have been here, I think you'll know what I mean. We can hear when you're talking in the back of the room. We really appreciate it if you'll take a seat rather than standing. If you're going to be with us for the whole time, try to find a seat. There are lots of seats around
And there's even an overflow room actually that's available with all the sound and video equipment available. So that's my preliminary plea.

And with that, I'd like to open up this item on the railyards and ask staff to begin with their comments.

EXECUTIVE OFFICER GOLDSTENE: Thank you, Chairman Nichols.

Over the last several years, the Board has been very engaged in efforts to address emissions and risk reductions from locomotives and railyards. This has involved specific ARB regulatory measures to require the best available controls for cargo handling equipment, drayage trucks, transport refrigeration units, and cleaner fuel for interstate locomotives.

Two agreements reached with the railroads will ensure that significantly cleaner locomotives are used in the South Coast area basin by 2010 that idle reduction devices are installed on all interstate locomotives and the cleaner fuel is used for most interstate locomotives.

The most recent agreement also required that ARB work with the railyards to conduct health risk assessments for 18 major railyards in the state. These are the first such health risk assessments conducted anywhere and have
demonstrated that residents living near railyards experience a significant increase in public health risk from diesel particulate matter. The base year for these assessments was 2005, before actions to significantly reduce emissions were implemented.

With the above, the public health risk around railyards is expected to decline by an average of about one-third by 2010 and one-half by 2015. However, the risk around the railyards will still be far too high. Therefore, the April 2008 Board meeting, the Board directed staff to identify measures that could be implemented that would provide additional emissions and risk reductions. As a result, we prepared a technical assessment of 37 options that could provide further locomotives and railyard emissions and risk reductions.

Each option was evaluated based on technical feasibility, emissions reductions, cost, and cost effectiveness. Staff released ARB's draft report in December and recently posted a revised report. Based on the technical options report, staff developed a series of recommendations on how best to reduce the emissions and risks from locomotives and railyards. These
recommendations are provided in the report before you today. The highest priority recommendations are to work cooperatively with all stakeholders, to seek incentive funds in the very near term to reduce emissions from locomotives.

As other reduction measures take effect, locomotives represent the largest single source of diesel particulate matter at the railyards. Locomotives are also a major source of oxides of nitrogen, the prime component of regional smog. Consequently, focusing efforts to replace and retrofit locomotives represents the best and most expeditious way to reduce emissions and public health risks.

As staff will discuss, we are also providing a number of other recommendations that are designed to achieve additional reductions, facilitate longer term regulations of locomotives, and improve our understanding of emissions from locomotives and railyards.

I'll now ask Mr. Harold Holmes of our Stationary Source Division to provide the staff presentation. Harold.

(Thereupon an overhead presentation was presented as follows.)
MR. HOLMES: Thank you, Mr. Goldstene.

As you mentioned, today's presentation provides staff's recommendation to provide further locomotive and railyards emission reductions beyond those required by U.S. EPA and ARB regulations and agreements.

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MR. HOLMES: These are the five topics areas I will cover today.

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MR. HOLMES: Staff has identified three key objectives which serve as the basis and the need for further locomotive and railyard emissions reductions.

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MR. HOLMES: These objectives are:

1. To reduce directly emitted diesel particulate matter in and around the railyards and the associated excess cancer risks and non-cancer health impacts.

2. To meet the State Implementation Plan targets for both ozone and fine particulate matter. Both the South Coast air basin and the San Joaquin Valley air basin need additional emission reductions to meet State Implementation Plan targets.
And 3. To continue to reduce greenhouse gas emissions associated with goods movement.

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MR. HOLMES: Prior to discussing the staff's recommendations, I would like to present some background on recent activities that impact locomotives and railyards.

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MR. HOLMES: As shown on this slide, there has been a number of significant actions taken to address locomotives and railyards.

In the next few slides, I will discuss each of these actions as background to our specific recommendations.

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MR. HOLMES: The ARB has adopted a number of regulations that specifically reduce both locomotive and railyard emissions. These regulations include measures to require the best available emission control technology for drayage trucks, cargo handling equipment, and transport refrigeration units, and cleaner fuel for intrastate locomotives.

In addition, ARB has also two agreements with
Union Pacific and Berlington Northern Santa Fe that provide significant diesel PM and oxides of nitrogen emissions reduction. The first agreement, reached in 1998, requires on average that clean locomotives operate in South Coast air basin by 2010. The 2005 railroad agreement provides for idling reduction devices on intrastate locomotives and for cleaner fuel for interstate locomotives. This agreement applies statewide.

Finally, the two U.S. EPA locomotive regulations in 1998 and 2008 provide significant locomotive oxides of nitrogen and particulate matter emission reductions.

MR. HOLMES: The 2005 agreement also required ARB in cooperation with Union Pacific and BNSF to complete health risk assessments for the major railyards in California. These health risk assessments, or HRAs, which were based on 2005 railyard activities, were the first comprehensive assessments of railyard emissions and public health risk anywhere in the country.

The HRAs showed this living around a railyard poses significant public health risks, adversely affecting millions of California residents. Based on an analysis of these railyards HRAs, the staff identified locomotives as the major contributor to emissions and risks, particularly at railyards where no intermodal activity takes place. At
intermodal railyards, trucks and cargo handling equipment were significant in 2005, but their contribution drops off steadily as the ARB regulations for these sources take effect.

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MR. HOLMES: Subsequent analysis of the available information shows that the existing ARB and U.S. EPA actions mentioned previously will significantly reduce railyard diesel PM emissions from 2005 levels through 2020.

On average, across these 18 railyards, these actions are expected to reduce emissions and risk around railyards by about one-third in 2010, over half by 2015, and about two-thirds, or 65 percent, by 2020.

Due to the time required to turn over the locomotive fleet, the U.S. EPA regulations will have significant benefits in later years, but only moderate reductions in diesel PM and NOx during the next ten years.

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MR. HOLMES: This slide shows graphically the estimated railyard diesel particulate matter emissions reductions from existing U.S. EPA and ARB regulations. As you can see from this graph, diesel particulate matter emissions are declining rapidly, but locomotives represent over 85 percent of the remaining emissions in and around
railyards in 2020.

Staff estimates that even with these emission reductions, nearly one million residents will still continue to be exposed to excess cancer risks of greater than 10 in a million in 2020. As a result, there is still a need to expeditiously provide further locomotive and railyard emission reductions.

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MR. HOLMES: To respond to the needs in and around the railyards, staff developed a technical options report that evaluated 37 options to further reduce locomotive and other railyard source emissions.

The technical assessment of each option was based on the following criteria: Technical and operational feasibility, potential emissions reductions, cost, and cost effectiveness.

Staff released a draft of the technical options report last December to allow for public comment. Since the release of that document in December, staff incorporated public comments, incorporated modifications, such as the Carl Moyer program cost effectiveness methodology, and also updated some of the information. The revised report was released last month.

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The major finding of the technical options report was that the most cost effective and expeditious way to achieve regional reductions in oxides of nitrogen and diesel PM emissions and to reduce health risks around the railyards is to reduce the emissions from locomotives.

For the switch and medium horsepower locomotives, the technology is either commercial or near commercial. By way of introduction, switch locomotives typically operate in and around railyards pushing rail cars to form trains.

Medium horsepower locomotives serve as large switch locomotives or they're helpers to get over hills, or serve as intrastate line haul locomotives. They are older locomotives that were typically used to be formerly in line haul service. Other medium horsepower locomotives are also used in passenger service.

For new Tier 4 line haul locomotives used in interstate freight service, the technology is under development, but is required by U.S. EPA to be commercially produced beginning in 2015.

Other measures evaluated in the report may have potential. But in general, they are not as cost effective
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Based on the technical options document, staff identified five locomotive measures as the highest priority options. These measures provide the largest potential emissions and risk reductions and were significantly more cost effective than the other options evaluated.

To implement the five locomotive measures, staff recommends the use of state and federal incentive funding, but with particular emphasis in the near term.

Staff also identified additional recommendations that should be pursued in parallel with the locomotive measures. In particular, staff is recommending that focus be placed on pursuing cost-effective railyard-specific measures.

The staff's recommendations are presented in a report that was released on September 9th. These recommendations were also the subject of a public workshop which was held at the city of Commerce on September 15th.
discuss staff's recommendations in greater detail.

MR. HOLMES: The five locomotive measures are presented in this slide. The first category is the switch or the yard locomotives. These are locomotives that can be 40 years or older and are about 2,000 horsepower, about half of size of an interstate line haul locomotive.

Staff proposes to repower older switch locomotives with commercially produced genset switch locomotives powered with new Tier 3 non-road engines. Ultimately, staff proposes to retrofit the new genset switch locomotives with a diesel particulate filter and selective catalytic reduction aftertreatment to achieve or exceed Tier 4 emission levels.

The second large category is about 300 freight medium horsepower locomotives. They are typically between 15 and 40 years old. The horsepower ranges between 2300 and can be up to 4400 horsepower.

There are also about 125 passenger locomotives that are about 3,000 horsepower. And those units are about 15 years old on average as well.

Staff proposes to repower medium horsepower locomotives with commercially produced advanced Tier 2
plus or Tier 3 engines and to ultimately retrofit the cleaner engines with a diesel particulate filter and selective catalytic reduction aftertreatment to achieve or exceed Tier 4 emission levels.

The third category is interstate line haul locomotives, which are usually less than 15 years old and typically travel across the country.

Interstate line haul locomotives tend to be the newest most reliable and fuel efficient locomotives in the national fleets. New Tier 4 interstate line haul locomotives are required by U.S. EPA to be commercially produced by 2015.

Staff proposes to accelerate the full introduction of these new Tier 4 locomotives to operate in California by 2025. This would be instead of relying on the nation fleet turnover, which is expected to take at least 30 years, or by 2045.

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MR. HOLMES: This slide summarizes the potential oxides of nitrogen and particulate matter emissions reductions from the five locomotive measures. As you can see, the five measures combined could provide roughly up
to 69 and 3-and-a-half tons per day of NOx and PM emission reductions statewide when fully implemented.

Roughly 45 percent of the emissions reductions would come from medium horsepower locomotives, about ten percent from the switch locomotives, and the balance from the interstate line haul locomotives.

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MR. HOLMES: This slide summarizes the cost and the cost effectiveness of the five measures. Based on the Carl Moyer program methodology, the cost effectiveness ranges from one to $5 per pound for the switch and medium horsepower engine repowers and the aftertreatment retrofits.

For comparison, typical cost effectiveness for approved Carl Moyer projects are in the one to three dollars per pound range, with a cap of about eight dollars per pound.

The first four measures would cost about one billion dollars. Accelerated replacement of interstate line haul locomotives is significantly more costly due to the number of locomotives affected.

In summary, though the capital costs may be high for these measures, the cost effectiveness is low.
Further, the capital costs do not incorporate any contributions from the railroads or other funding sources, and the estimated costs may be overstated for several reasons.

MR. HOLMES: This slide illustrates the potential additional diesel particulate matter emission reductions that could be provided by the five locomotive measures within the railyards.

The red bars represent the estimated emission reductions due to existing regulations and agreements. The lighter bars represent the additional emission reductions that could be achieved over time with the five locomotive measures. Overall, this would represent nearly a 90 percent reduction in railyard diesel PM emissions from 2005 levels.

Additional benefits would be expected beyond 2020 due to the accelerated introduction and full turnover of the fleet to new Tier 4 interstate line haul locomotives by 2025 under staff's proposal.

MR. HOLMES: On a regional basis, the five
locomotive measures would also provide significant oxides of nitrogen emission reduction. NOx emissions would be reduced by up to 85 percent beyond the existing U.S. EPA locomotive regulations and ARB railroad agreements. The estimated locomotive NOx reductions are also needed to comply with the State Implementation Plan targets for both the South Coast and the San Joaquin Valley air basins.

MR. HOLMES: Similarly, the five locomotive measures would provide significant regional and statewide diesel PM emission reductions. Diesel PM emissions could be reduced up to 90 percent or more beyond the existing U.S. EPA locomotive regulations and ARB railroad agreements.

MR. HOLMES: To implement these measures, staff is recommending that ARB lead a coalition of stakeholders to seek incentive funds, particularly in the near-term, for the switch and medium horsepower locomotives.

Staff considered other approaches, including regulations and enforceable agreements, but believes that the incentive approach provides the most expeditious and effective way to achieve the reductions necessary to
reduce risk around railyards and to achieve 2014 SIP
targets.

ARB does have some limited regulatory authority
over older, uncontrolled locomotives. However, due to the
nature of the authority, staff is concerned that there are
realistic scenarios that would result in the minimum net
reduction in emissions.

In addition, regulatory action may adversely
affect the existing 1998 agreement. Both of these factors
may jeopardize our ability to meet State Implementation
Plan targets and also reduce railyard risk. And in the
worst-case scenario may actually result in an increase in
emissions. Consequently, we believe that incentives
provide a better option at this time.

We also considered an enforceable agreement
option. However, our experience here has been that it is
a slow and cumbersome process that would not be as
effective as pursuing incentives. This approach may play

a role in the future regarding the accelerated
introduction of new Tier 4 interstate line haul
locomotives.
MR. HOLMES: There are a number of potential sources of incentive funding as listed in this slide. We believe the bulk of the funds would need to come from federal sources, however. ARB staff has successfully secured about $9 million to repower a minimum of eight older switch locomotives in the South Coast air basin. This is obviously just a down payment, but it is a start.

In addition, the public voted for Proposition 1B, which included up to one billion for air quality improvement projects. Under this program, up to $100 million has been identified for potential locomotive emission reduction projects with an emphasis on switch locomotives. Should UP and BNSF match those funds, the total could be up to $200 million.

Two other ARB incentive funding programs are the Carl Moyer and AB 118 air quality improvement programs. These two programs combined can allocate up to $190 million annually for all source categories, but also including locomotives.

We believe that a concentrated and cooperative effort from stakeholders might be effective in identifying other sources of incentive funds.
MR. HOLMES: This table illustrates a potential schedule of incentive funding that would be needed to achieve the goals staff has outlined for the switch and medium horsepower engine repowers and aftertreatment retrofits.

As you may recall, there are about 650 switch and medium horsepower locomotives that would need total funding up to $900 million for engine repowers and aftertreatment retrofits.

In 2010 or 2011, staff would suggest a reliance on Proposition 1B locomotive funding in which the ARB would fund up to 100 million and UP and BNSF would match those funds with an additional 100 million.

Once Proposition 1B locomotive funds are exhausted, ARB staff would recommend potential projects be funded through the Carl Moyer and air quality improvement programs. In addition, ARB staff would continue to submit proposals for federal DERA, Diesel Emission Reduction Act, funding.

Clearly, a lot more incentive funding will be needed to fully implement these measures. To acquire the necessary funding, staff believes a broad coalition needs to be formed that consists of ARB, other State agencies,
local air districts, and transportation agencies, local
residents, and the railroads to present our case and our
funding needs to the federal government.

MR. HOLMES: I would now like to discuss the
other staff recommendations.

MR. HOLMES: A key recommendation is to implement
railyard-specific measures that can reduce diesel PM
emissions and associated cancer risks. Some examples of
measures already implemented include manual shut-downs of
locomotives that would go beyond the existing 15-minute
shutdown limits programmed for locomotive idle reduction
devices.

For example, locomotive engineers could manually
shut down locomotives in five minutes if all locomotive
operational parameters had been met.

Another example is to move truck gate entrances
further away from where residents live and to reduce truck
idling and queuing at truck gate entrances through system
efficiencies.

A further example is to move service operations
such as maintenance facility and refueling centers further
away from residents to reduce risks.

Other measures that are currently being
investigated by ARB staff include the use of idle
reduction devices on cargo handling equipment and research
programs to identify advanced technology for cargo
handling equipment.

Finally, there may be opportunities to use
technology to enhance system efficiencies within
railyards, like the auto gate systems and container
loading tracking systems.

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MR. HOLMES: In addition to the railyard-specific
measures, ARB staff has recommended the pursuit of a
number of additional measures.

One recommendation involves seeking changes to
the federal law to provide greater authority for
California to regulate locomotives. This will be
particularly important relative to the accelerated
introduction of new Tier 4 interstate line haul
locomotives. This recommendation would need a broad
coalition of stakeholders to support in order to be
effective.

Another key recommendation by ARB staff is to
form a broad coalition with U.S. EPA, ARB, other states,
other state agencies, local air districts, citizen groups,
and the railroads to seek improvements in the existing
U.S. EPA locomotive rulemakings to try to address the
problems in California and other major rail urban centers like Chicago, Dallas, Kansas City, Portland, and Seattle.

As mentioned before, ARB staff will continue to identify cost-effective regulatory opportunities for cargo handling equipment and is currently in the public workshop process for reduced idling of cargo handling equipment.

Relative to improving goods movement efficiency, the Scoping Plan for reducing greenhouse gas emissions identifies goods movement as a significant category. As such, ARB staff is currently evaluating potential measures for improving the efficiency of goods movement operations.

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MR. HOLMES: This slide summarizes additional recommendations that include supporting the ports in their efforts with the Clean Air Action Plan update, working with the South Coast District and others to evaluate two new railyard projects in the South Coast, continuing to evaluate rail electrification, and improving our emissions inventories.

Finally, staff recommends that we continue to work with the railroads on some of the most innovative locomotive research and demonstration projects in the world. These efforts may be able to ultimately prove technologies that can significantly reduce locomotive...
retrofits. Furthermore, greater fuel efficiencies may be achieved that can also reduce greenhouse gas emissions.

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MR. HOLMES: I would like to close with a brief summary and an identification of our next steps.

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MR. HOLMES: In summary, staff believes further locomotive railyards emissions and risk reductions are needed, beyond the substantial reductions provided by the existing U.S. EPA and ARB regulations and agreements.

To reduce emissions, staff has recommended a combination of high priority locomotive measures, railyard-specific measures, and a number of additional recommendations.

Staff has identified switch and medium horsepower locomotives as the highest priority options, because they are commercially produced or technically feasible in the near term and they are extremely cost effective.

Staff believes incentive funding is critical to being able to implement these measures. However, these measures have significant capital costs that will require
a high degree of cofunding by the railyards.

Finally, staff believes that seeking changes in federal laws and regulations is warranted.

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MR. HOLMES: As to the next steps, staff recommends that a broad coalition of stakeholders be assembled to identify and solicit incentive funding for the locomotive measures.

In addition, there needs to be a coordinated effort by ARB, local governments, the railroads, and the local air districts to work together to identify, evaluate, and implement railyard-specific measures that will provide real emissions and risk reductions in and around railyards.

Also to pursue the changes in federal laws and regulations, ARB staff intends to form a coalition of interested stakeholders to propose appropriate changes.

Finally, we propose to continue our efforts to implement the additional recommendations.

That concludes my presentation. We would be happy to answer any questions you may have.

CHAIRPERSON NICHOLS: Thank you for that excellent presentation. I think staff has done a really
good job of pulling together a comprehensive list of what
the issues are from a technical perspective.

There is one point that I would think may be a
little bit misleading. When you refer to incentive
funding and the need for funds for the transition that
you're talking about, you're not suggesting that the
government would have to bear the full cost of all of
these improvement, are you?

MR. HOLMES: No. As a matter of fact, we believe
what the key elements is leveraging the funds. We ask
that railroads and other agencies that would be involved
to contribute toward this funding.

What you will see in the slides is we assume
there was not one dollar contributed for the cost
effectiveness. The cost effectiveness is actually much
better if we were to get some kind of contribution from
other sources.

CHAIRPERSON NICHOLS: Okay. I think it's
important that we acknowledge at the beginning -- and you
did -- but I think I can speak for the Board, because this
is not the first time we've had a hearing on
railroad-related issues, although it is the first time I
guess in this location, to say that we are here to devote
a substantial additional time and effort because of the
size and scope of the problem.
There is nobody on this Board who doesn't
recognize that when it comes to risk and toxic air
contaminants that these issues are at the very top of our
agenda. And even though we have other responsibilities
that spread far and wide and are national and
international in their scope, all the work we do on

engines and fuels and so forth that when it comes to
actually impact on people in California, this is a very
high priority area for our concerns.
So I think it's good that we can look back and
see that much has been accomplished and it's important
that we acknowledge that. At the same time, we are
looking for every possible effective and cost effective
thing that we can do to move ahead further.
Okay. We have as, I said before, a very long
list of witnesses, and so we better get started. For
those who aren't familiar with the system here -- and I
know our first witness is -- there are two podiums and we
ask people to line up so that we don't have to spend time
waiting for people to come up to speak.
So I'll read ahead the first names. We're starting with Joe Lyou, Governor's appointee to the South Coast Air Quality Management District, followed by Peter Greenwald and Mayor Morris of San Bernardino.

MR. LYOU: Good morning, Chairman Nichols and members of the Board. I'm Dr. Joseph Lyou, the Governor's appointee to the South Coast Air Quality Management District Governing Board. I am also the Executive Director of the California Environmental Rights Alliance, a nonprofit environmental justice organization.

I appreciate the opportunity to address the Board on behalf of the South Coast AQMD. My comments will be of a general policy nature and will be followed by Mr. Peter Greenwald of our staff who will provide additional technical and legal details.

It's no secret that locomotives at railyard emissions has been a significant area of tension between our agencies in the past. And I'm pleased to report that after a lot of hard work, the staff at our agencies is now much closer to reaching complete agreement on the available technologies and legal authority issues.

The task at hand, however, is to translate those
areas of agreement into an action plan to protect public health and help us achieve our federal and clean air standards.

Your findings about the health risks at major railyards in California tell us that there is much more that needs to be done and that we can't delay doing it. For example, cancer risks of greater than 2,500 in a million at the BNSP railyard in San Bernardino is just unacceptable.

In addition, the failure of existing regulations to address those issues and reduce that risk sufficiently within 10 to 15 years is plainly unacceptable. Certainly this cannot be our final response to this or other communities that are impacted by railyard operations.

We must also remember that this is an environmental justice issue. These impacted communities are mostly low-income communities of color, and they have a right to clean air and they have a right to equal protection from exposure to toxic contaminants.

In addition to local impacts, these railyard operations emit significant amounts of oxides of nitrogen and particulate matter on a daily basis within our state. And for us to meet our federal and state standards, we
must go beyond your existing goods movement regulations.

Our bottom line, and what we're asking your Board to do today, is that you use the full array of strategies available to you to address pollution at railyard operations and locomotive operations. This includes rulemaking proceedings to reduce emissions from railyards. These rules should require the use of low to zero emission equipment for railyard operations and address intrastate and switch locomotives. This won't be easy, but it's necessary to get real measurable pollution reductions in a timely manner.

The South Coast AQMD is prepared to provide any assistance or partnership necessary for ARB to move forward in this direction in an expeditious manner. Chairman Nichols and members of the Board, we truly appreciate the time, resources, and careful consideration you've given to this important matter.

I'd like to turn it over to Mr. Peter Greenwald for an opportunity to talk about our request in more detail. Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. GREENWALD: Thank you very much.
Peter Greenwald, Senior Policy advisor for the South Coast Air Quality Management District. I want to begin by commanding your staff for their considerable technical work to identify railyard emission control strategies.

However, the approaches proposed by your staff to implement those strategies all involve much uncertainty. The primary implementation approach is to provide public funding. But acquiring the hundreds of millions dollars, indeed, billions of dollars needed, is by no means assured. And even if it was, will the railroads agree to fund their share and take the needed actions?

Under these circumstances, we urge you to concurrently use all the tools at your disposable, including the tool that state law explicitly authorizes you to utilize, which is rulemaking. The solid technical work done by your staff already provides a strong basis to commence rule development. The need for control has been amply documented. Technical solutions have been identified. And you have much authority.

Regarding need, let me site just one fact. Your staff projects that with existing control programs cancer risks at the BNSF San Bernardino yard will still be over...
600 in a million in 2020. Clearly, more must be done.

Regarding authority, your staff has determined that you may adopt emission standards for most, if not all, sources other than locomotives. And for locomotives, your staff has concluded that you have likely authority to regulate relatively old switch or medium horsepower locomotives that primarily operate intrastate. There are hundreds of such locomotives in the state. And most importantly, they are the dirtiest of all locomotives.

We urge you to commence development of rules to accomplish three ends.

First: Require medium hours power locomotives to achieve Tier 4. That’s 90 percent control levels by 2014.

Second: Require enforceable health risk reduction plans for railyards creating the greatest risks. Specify needed risk reductions and dates certain for them to be achieved.

And third: Require the most advanced level of control for types of sources operating at high-risk railyards. For example, require electrification of cargo handling equipment where possible. Some electrified equipment, such as gantry cranes, are available today and...
are even proposed by the railroads when they are seeking
approval for new railyard projects. If it's good enough
for a new railyard, it ought to be good enough for
existing ones.

Also, please consider the greenhouse gas
cobenefits and our long-term need to move away from
combustion sources.

In closing, there's nothing incompatible between
developing such rules and concurrently pursuing the
funding and other approaches proposed by your staff.

Indeed, Appendix B to your staff report states that ARB
can pursue "a voluntary agreement or a regulation,
combined with a formal public incentive funding program."

AQMD is ready to assist any way it can. We would
be pleased to discuss with your staff whether the
district's use of the district's resources of a technical
nature or exercise of the district's indirect source
authority might compliment your actions.

Thank you again. And we urge you to take
decisive action to resolve this longstanding serious
public health problem.

CHAIRPERSON NICHOLS: Thank you very much for
those comments.

I would just acknowledge that in the staff report
and in my remarks as well, I hope that we understand that this is a time when all the agencies that have any legal authority need to be working together and collaborating. I think technically we've made a lot of progress. But now we all need to be looking at our legal authority. So I appreciate your last comments about what the district is willing to do well.

Question here.

BOARD MEMBER BALMES: In that spirit of cooperation, your recommendations went by pretty fast and you didn't provide written comments.

MR. GREENWALD: We did provide a written comment letter.

BOARD MEMBER BALMES: So it's in my pile here.

CHAIRPERSON NICHOLS: We'll find it, okay. Thank you.

Yes, Mayor Morris.

MAYOR MORRIS: Chairman Nichols, members of the Board. I am the mayor of the city that's been referred to twice now by the prior two speakers, a city that is the poster child for the adverse effects of both locomotive and truck diesel pollution on the health of the surrounding community.

You know the data. It's in your reports. Mr. Holmes has given it to us and has given it to you. Based
on your health risk assessment, there is an enormously disproportionate level of risk in our city's intermodal railyard. Our railyard has a 300 percent higher level of risk than the second most polluting railyard in California. It's 500 percent over the third most polluting and a thousand percent over the fourth.

This is a valuable asset to our city. It employs 500 good peoples at living wage jobs.

But this issue of diesel pollution is an enormous issue for our city and has been referred -- the community that surrounds this, this historic community that surrounds this railyard in our city is largely a community of color and a community of poverty. And so their voices are largely unheard. And they've endured generations of this kind of environmental disaster.

Our city has done and will do all that we can to address these issues. We've increased parking fines for diesel trucks, provided barricades around the areas so trucks don't park as they wait for the gates to open in the morning when the railyard opens. We've issued flyers to all the truckers to be good neighbors to the community. We've done all we can in terms of parking and violations enforcements around the yards.

We partnered with SANBAG and JB Hunt to replace a large percentage of the local fleet with CNG trucks. We
have almost $20 million in grants. We'll be the largest
fleet conversion in the nation to convert a diesel fleet
JB Hunt to a CNG fleet, and that is a major accomplishment
for our city, because 25 percent, according to Mr. Holmes'
report, of our pollution from comes from those
18-wheelers.

We partnered with BNSF to submit a $3 million
application to AQMD's Prop. 1 Goods Movement Emission
Reduction Program to replace old switchers with genset
engines.

And we've partnered with Loma Linda University
School of Medicine to do research funding on the long-term
adverse impacts of this diesel pollution on our
surrounding community.

We've talked about -- Mr. Holmes talked about a
coalition of stakeholders. We are, by George, one of
those important stakeholders. We want to be in this
formulation with you and be advocating for major changes
in regulations as well as in resources.

You've got 18 railyards in this state. Limited
resources to apply. Let me suggest that you start at the
top, and that's my city. You focus on our city and its
intermodal yards, because it is the most adversely
I understand my time is up, but please consider

the fact that we should create a model, our city, a model
of cleanup, a template in our city to create the kind of
model that we hope other railroads would follow and other
yards would follow.

We have 5,000 people living within a mile of this
great intermodal railyard, people described by the prior
speakers and by me, people that are quite challenged in
many ways, who don't speak for themselves. And it
requires you and me to speak for them with our regulations
and with our investments.

So we're a stakeholder. Depend upon us to be a
partner with you. We're good partners. And together I
think we can solve the problem. But look at us first and
foremost. We are that poster child that needs attention.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you for coming, Mayor
Morris. We really appreciate those comments.

Our next speakers are Andrea Hrico, Chi Ho, and
Bill Haller.

And while you're coming up, a lady who spoke
earlier, Ms. Zambrano, spoke on the fee regulation, but I
know she really meant her remarks to refer to the locomotive item. I don't believe it's necessary for her to come up and repeat her remarks. Ms. Zambrano, if you're still with us, we'll just move your comments over to the next so you don't have to worry about it. Thank you.

MS. HRICKO: Thank you, Chair Nichols and Board members.

My name is Andrea Hricko from the University of Southern California Tech School of Medicine. I work with a team of scientists who have conducted the children's health study for probably 20 years at this point, first with ARB funding and support. And we thank you for that support.

As a result of that study funded by the ARB, we now know that children who grow up in polluted communities are more likely to suffer decreased lung function. We now know that children living near busy roads and traffic-related pollution are more likely to have reduced lung function and asthma. We also know that particulate matter -- that breathing particulate matter at elevated levels is linked to heart disease and other problems.
Now from your health risk assessments of the 18 railyards, we know that there are significantly elevated levels of diesel emissions and cancer risks in close proximity to 18 railyards in California. I urge you to take action to reduce railyard or we will lose another generation of children to the adverse health effects of diesel pollution.

I also urge the ARB to review its land use guidelines issued several years ago and to consider including a revised guideline on railyards in your railyard recommendations that are part of today's issues that you're considering.

Your current guidelines were written when you had only completed the Roseville railyard HRA. The guidelines say "do not site homes or schools within 1,000 feet of a railyard and consider siting restrictions within one mile of a railyard." Now you have 18 HRAs showing elevated risks some at many railyards that are beyond even a mile.

So in that regard, I urge you to look specifically at your railyard recommendations, in particular, number four, which is on your page 22 of the handout that they gave us up front, of additional measures concerning ARB's involvement in two railyard expansion
17 projects, the BNSP SCIG and the UPICTF. Both of these
18 facilities would be within 1,000 feet of homes and schools
19 and playgrounds. From what ARB knows about railyard
20 emissions and how hard it is to get the railroads the
21 railyards cleaned up, I urge you to consider whether
22 having ARB staff's apparent support of putting these two
23 rail projects -- siting them within feet of homes and
24 schools is a wise land use and public health decision for
25 the ARB staff to be recommending.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
Chi Ho and then Bill Haller.
MS. HO: Dear Chairman Nichols and Board members
and staff, thank you for providing the opportunity to
speak about this important issue.
I'm Dr. Chi Ho. I'm here seeking on behalf of
the Office of Environmental Health and Safety for the Los
Angeles Unified School District.
The Los Angeles Unified School District educates
700,000 students, is second largest school district in the
nation. Five railyards are located within the LAUSD,
including the two largest in southern California, the ICTF
and the Cobar.

Approximately five percent, or 35,000, of our students attend schools where the cancer risk from railyards is greater than 50 in one million. These children are missing school due to asthma and other respiratory diseases and are at risk for long-term lung disease due to their early life exposure.

The LAUSD is encouraged by the efforts of ARB as well as the railyard companies to reduce emissions at the source. The measures outlined in the staff report are long overdue and their quick implementation is welcome. Understandably, these major effects will take many years to decades before health risks from railyards are at acceptable levels. Unfortunately, our students will continue to suffer during this implementation period and the waiting is not a reasonable option.

More immediately measures to reduce health risk are necessary in the short term. We recommend that a fund be immediately established to provide mitigation, such as enhanced filtration and/or asthma programs for the most sensitive receptors such as schools. Most schools already include HVAC system capable of filtration upgrade and are centers of large sensitive population during period of
high emission activities. While reducing pollution effect at receptor is not ideal, it can be the cost effective measure to reduce health risk until more permanent source reduction measure are fully implemented.

We look forward to continuing to work with all stakeholders are on this important issue. Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

Mr. Haller, followed by Jim Stewart and Gilbert Estrada.

MR. HALLER: Madam Chair, honorable Board members, Bill Haller, volunteer with Sierra Club California.

I did miss the slide that included identifying and evaluating incentive funding for children's clinics in the affected railyard areas. We have a tendency to pay attention to those machines, and we're going to give these machines 10, 20 years to get their act together, but the real immediate need happens to be the children. And we're not looking for the incentive funding strategy to support these children as they grow in those areas.

Sierra Club California stands with the East Yard Communities and Coalition for Safe Environment and all of
our environmental justice friends.

The incentives are a great thing for great companies. But, of course, bad companies either don't comply or they sue no matter what. We encourage regulations as strong as possible.

The reason the railyards and the railways wouldn't clean up their pollution is because they didn't have to. ARB has the power to say you have to. And we look forward to hearing those words in the future stronger regulations. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Jim Stewart.

MR. STEWART: Jim Stewart, co-chair of the Air Quality Global Warming Committee for the Sierra Club of California. And I'm representing the 200,000 members of the Sierra Club in California.

And we're, of course, supportive of the efforts that your staff is making here, but they're woefully inadequate to deal with this issue. We think that the excellent recommendations put forth by the South Coast Air Quality Management District need to be your guidelines. In fact, I guess we'd actually go beyond what AQMD is saying, and we'd like your staff to really look at that
issue of the 1998 voluntary agreement that has questionable reductions from our perspective.

Is it really a block to your regulations? That's what I gathered from the staff presentation was that they didn't want to propose any regulations, because it might eliminate that voluntary 1998 agreement. And we would like to see the actual emissions results that are happening from that agreement versus what could happen from some good regulations that your staff can come up with. So we encourage you to give your staff directions to move on that.

Thirdly, I'd like to say that the Sierra Club nationwide is concerned about this. We have 700,000 members, and we would really like to help you on this federal business, right. So that anything that your staff wants us to do to promote in other states, with the EPA, with the various railyards, we need your input, because we're not the experts. But we can mobilize volunteers across the nation that can help us move ahead in getting these federal regulations and law changed. So let's go forward together.

Thank you.
CHAIRPERSON NICHOLS: Thank you.

Is Gilbert Estrada here? He had to leave.

I have now 70 witnesses on the list, and we've heard from seven. So in three minutes, I'm going to cut off the list. If you were thinking about maybe testifying, you weren't sure, this is your time to sign up. And if not, we will close the list within three minutes. Okay. Thank you. I see there are more cards over there. So it's more than 70 anyway.

Kristina Santana, followed by George Osborn, and Maria Chavez.

MS. SANTANA: Good morning, Chairman Nichols and members of the Board.

My name is Kristina Santana, and I'm a concerned resident of the city of Commerce. Like many struggling families today, my family cannot afford to be sick.

My mother, sister, and two nieces have asthma, and I worry about them. I also worry what will happen if one of us gets cancer and we're not able to pay the bills.

The cancer risk in our community is real, and it's scary, especially when I know we can't afford it.

I'm here because I care about the environment and...
is not an option. I urge you to take the necessary
measures to clean the air and keep toxic particulate
matter out of our lungs now.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Osborn.

MR. OSBORN: Thank you, Madam Chair and members.

George Osborn representing Advance Cleanup

Technologies, Incorporated.

You may recall last year a presentation made to
you where the bonnet was fitted over an oceangoing ship.
I wanted to compliment your staff, frankly, for helping us
through with that project. They took the time to listen
to us, work with us. They reviewed our test protocols.
They suggested changes to the protocols, which we adopted.
They attended the testing. And they suggested changes to
the shore power regulations to allow the advanced maritime
emission control system as an alternative reduction
control technology now accepted at the ports.

There has been great cooperation between Union
Pacific, the Placer County Air Board, specifically at the
Roseville railyard, under the terrific leadership of Tom
Christoff, in the testing of the advanced locomotive
emission control system at that yard. We are looking
1 forward to the next phrase of that testing and hope that
2 CARB will participate both in helping to develop the test
3 protocols and with funding. We'd certainly appreciate
4 that as well.
5       But we do take exception to some of the report
6 before you today, specifically with the cost effectiveness
7 calculations having to do with the alex system. We've
8 done some additional analysis on the report, and we'd like
9 to have the opportunity to meet with and work again
10 closely with your staff in reviewing those findings on the
11 report before you finally adopt those recommendations.
12       And I'm happy to answer any questions if you have
13 any.
14       CHAIRPERSON NICHOLS: Not at this time. But I
15 appreciate the offer, and I hope you will get together
16 with the staff.
17       MR. OSBORN: We intend to do that. Thank you
18 very much for the opportunity.
19       CHAIRPERSON NICHOLS: Thank you, sir.
20       MS. CHAVEZ: My name is Maria Chavez, and this is
21 Marelise Santiagos. We are here today with the Long Beach
22 Alliance for Children with Asthma, LBACA. And thank you
23 for allowing us to speak this morning.
I, Maria Chavez, live in front of Hudson Elementary School in Long Beach -- in west Long Beach. There are 1200 students at this school that daily breathe in pollution from the nearby railyards. The State has the obligation to regulate the pollution generated by diesel that is harming our families and our communities. We want healthy children, youth, and families, clean air without pollution.

Thank you.

CHAIRPERSON NICHOLS: Thank you very much.
Jalene Forbis, Delphine Smith, and Juan Garibay.

MS. FORBIS: Chairman Nichols and Board, my name is Jalene Forbis. I'm Executive Director of the California Short Line Railroad Association. I represent the 28 short lines that operate within California. We are the small business of the railroad industry. And we're absolutely essential in keeping our customers connected to the national rail network.

A short line railroad is not defined by miles of track that grows annual revenues, and most of our short lines are actually spinoffs of unprofitable sections of the Class 1s. We haul everything from containers internationally that come in internationally, agricultural products, and even some of our short line operators have passenger operations as well. And most of our short lines
are locally owned and operated. And we're a vital part to
the local communities in which we operate.

The Short Line Association believes the Board
should pursue an incentive-based program and co-funded by
the railroads rather than the regulatory approach to
maximize the efficiency and the emission standards and
benefits of the rail industry.

Many short lines simply can't afford the
additional regulations without help of the incentive
programs. Many of our short lines are participating in
the Carl Moyer funding program. Pacific Harbor Line is
the one that you guys work with most that's closest to
this operation here.

And short lines like our Class 1 partners has
seen a major decline in the car loads because of the
economy. And we are facing the same difficulties due to
the current recession. So the design of the incentive
program will have to take the current financial crisis
into account.

According to the Pacific Maritime Association,
the period between January and June of this year, the
total number of containers handled in LA/Long Beach
designed 21.8 percent. Volumes were down 10.8 percent in
There is one other environmental benefit of rail transportation I hope you will consider, and that is the greenhouse gas benefit. Last year, the U.S. EPA stated one method of controlling the greenhouse gas is to increase the use of rail transportation. Diversion of additional traffic from trucks to railroads would lead to an overall net decrease in the greenhouse gas emissions. By pursuing a rail incentive program, CARB will reduce criteria pollutants, simultaneously reduce greenhouse gas reductions.

CHAIRPERSON NICHOLS: Thank you. Your time is up.

MS. SMITH: Good morning. My name is Delphine Smith, and I'm a resident of Richmond, California. And I also live with BNSF in my front yard. I come to you today to just ask you to make your regulations stronger and harsher than what they've been, because obviously if they were a little stronger, they would do what they need to do.
Basically, I understand that the railroads are part of our economy, but now they're affecting my health. I have asthma. Two of my children have asthma. And since this it affecting my health, I don't feel they should be able to do what they do.

I'm also a member of -- I was part of project 12898. As a member the 12898, the west county group, we came up with solutions that we have suggested to retrofit train engines and railyard equipment to minimize diesel pollution:

- Create grade separation at key locations with history of rail crossing related accidents or deaths.
- Require fencing, shrubbery, or other physical buffers to separate rail lines and railyard facilities from residential areas.
- Amend train schedule to avoid peak hours and be more predictable and notify residents of train schedules to minimize delays at intersections.
- Place limits on the length of allowable freight trains, particularly those passing at peak hours in order to reduce traffic congestion at intersections.
- Institute quiet zones to minimize train horn noises in residential areas.
Take measures to prevent tanker cars storing hazardous materials from being parked on rail line adjacent to resident areas. This is very important, because they sit for days and heat and everything in front of residential areas.

Involve the community residents from directly impacted neighborhood in identifying additional site-specific areas to reduce these risks that rail related land uses pose to community health and quality of life.

I hope you take head to all the words from my brothers and sisters from all the neighborhoods all over California, because we're here. We are not going away. And we appreciate if you do something about it. Thank you.

CHAIRPERSON NICHOLS: Thank you. Thank you for traveling to be with us today.

Mr. Garibay.

MR. GARIBAY: Chairman Nichols and members of the Board, I'm concerned the proposed recommendations fail to include numerous measures that can reduce locomotive engine and railyard toxic air emissions and public health
impacts from exposure to air emissions.

For example, we cannot only concentrate on the overall air quality and air pollution high above the city, but also the pollution that is created nearest and blown into our faces and homes. That is, we are still allowing trains to use routes that cut through our neighborhoods and blow toxins into our windows.

At the BNSF Watson railyard in Wilmington, there are two rail track routes to the railyard. One route travels right through the middle of the residential community of Wilmington, and one that goes around the residential community in the industry area. BNSF uses a route right through the middle of the residential community. This simple change would reduce public exposures to significantly. It is not a recommendation.

The BNSF Watson railyard is in the middle of Wilmington residential community and near the port of L.A., port of Long Beach, and numerous oil refineries. BNSF can could use electric trains. We need to invest in the development of alternative transportation technologies. And this simple change would eliminate 100 percent of toxic emissions, yet it is not a recommendation.
These smaller recommendations can directly and immediately reduce the amount of sicknesses and disease in our communities and reduces the amount of trips to and money spent on the doctor, which could allow our residents to use our small hard-earned income to actually improving their lives, rather than fighting for their lives; towards their children's education, rather than on their children's asthma inhalers; and on local businesses, improving the economy both in the short run and the long run.

It is a disgrace that some families cannot spend their afternoons actually enjoying their community with their children and grandchildren, for example, a local burger joint, but rather time is spend in an emergency room of a local hospital.

The BNSF Watson railyard handles ethanol trail cars, and I cannot find any health risk assessment for the ambient leakage of VOCs from locomotive trains from the incomplete burning of diesel fuel, fuel storage tanks, and ground contamination.

Benzene is a VOC of diesel fuel which can cause leukemia, lymphoma, myeloma and anemia, yet there is no
reference to any study of public health impacts of these toxic chemicals. I ask you to reassess public health impacts and increase the number of proposed measures. I also have many signatures of residents.

CHAIRPERSON NICHOLS: Thank you very much. Ms. Prakash, and then Alex Pugh and Sophia Carrillo.

MS. PRAKASH: Good morning. Thank you, Chair Nichols. My name is Swati Prakash, and I work with the Pacific Institute. And we're also members of the Ditching Dirty Diesel Collaborative. We submitted a letter that's on green paper for you today. There should be an attached map. And the Ditching Dirty Diesel Collaborative is coalition of over 20 organizations working to reduce diesel pollution in the San Francisco Bay Area and in particular in low-income communities of color.

And there's been about ten of us who traveled over seven hours by car yesterday to come testify before you, and that's because there are four communities in our coalition that have railyards in them. Two of these are considered major railyards, in West Oakland, the UP...
railyard, and in Richmond, the BNSF railyard. But there's also two smaller railyards in San Leandro and southeast San Francisco which are not considered major railyards but have significant health risks and impacts on legal residents.

And all of those railyards and associated infrastructure are in lower income neighborhoods and communities of color, which really reflect a statewide pattern of rail infrastructure being located in the most vulnerable communities with the highest asthma rates and the least access to resources to mitigate the impacts of diesel pollution.

This is clearly an environmental justice issue. And one of the maps that we present shows the regional impact of rail infrastructure in lower income neighborhoods. Actually, show the flip side is the Richmond map which shows the proximity of the BNSF railyard to residential neighborhoods and to the Perez Elementary School, as well as the iron triangle neighborhood which is boxed in by rail lines.

Thank you.

And so we see that the California Air Resources
Board has before you the opportunity to address this grave, grave environmental justice issue and to protect the health of all California residents by doing three things.

We would like to ask you to direct staff to initiate rulemaking to implement some of the excellent measures that they, themselves, have pointed out can significantly reduce diesel pollution from trains and from railyards and to finalize site-specific mitigation plans for the 18 major railyards. But we urge you not to stop at those 18 major railyards. Like southeast San Francisco and San Leandro, there's many smaller railyards throughout California that didn't make the cutoff in 2005 when the MOU was signed to be considered major, but since then have grown significantly and will only continue to grow and have significant impacts on the neighborhoods.

And we also urge you to advance concurrent reductions in health risks from things not directly related to diesel pollution. Things like noise and too many pedestrian fatalities we have, because rail lines are not separated from streets and yards by tying or prioritizing the awarding of publicly-funded incentive funds to those projects that both reduce diesel pollution.
and that also reduce other health risks. For example, building sound walls or creating barriers or grade separations can both potentially result in a reduction in diesel pollution as well as reduce health risks we have from pedestrian fatalities. Thank you very much.

And I have a lot of postcards.

CHAIRPERSON NICHOLS: Okay. We can add them to our collection. Silent applause from the back, too.

Alex Pugh, Sofia Carrillo, and Jennifer Renteria.

MR. PUGH: Thank you, Chairman Nichols and members of the ARB Board.

My name is Alex Pugh. I'm with the Los Angeles area Chamber of Commerce. We are the oldest and largest chamber in LA County, serving 1,600 member businesses and over 700,000 employees.

As a trustee for the region, we champion economic prosperity and quality of life. So we are here in support of staff recommendations to provide an incentive to reduce emissions from local railyards.

One thing we would like for you to consider is that the goods movement industry is very important to our
region. It's a driver of business and we need to protect it. It's been surpassed as the largest industry in southern California, and Los Angeles County specifically. And there are a lot of other regions that are gunning for our traffic.

So we certainly believe incentives are the quickest and most efficient way to achieve the emissions reductions, but more importantly, it sends a good signal to the international trade community and the international shipping community that southern California and California as a whole is open for business.

We thank you for recognizing the importance of incentives. And we urge you to provide them going forward. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Sophia Carrillo.

MS. CARRILLO: Good morning. My name is Sophia Carrillo.

I have reviewed the proposed recommendation and wish to comment they are not adequate to reduce toxic air pollution and prevent public health impacts.

There are hundreds of families that live near to the fence line to the BNSF Watson railyard in Wilmington. The communities who lives there are being serious impacted every day.
CARB staff did not recommend numerous possible
that could reduce air pollution and reduce public exposure
and air pollution.

Number one, to reduce air pollution, CARB can
electric trains and Maglev trains with zero air pollution.

Number two, to reduce public exposure, CARB can
install air purification system in resident's homes,
public schools, senior citizen housing, and all sensitive
receptors with 1,500 feet. I ask that you adopt all
possible air pollution reduction and public exposure
mitigation measures. Thank you.

THE INTERPRETER: I have another history. Okay.
In February, woman of 34-years-old died of an asthma
attack. She arrived too late to get treatments at the
hospital, because she didn't have the money to pay for the
medical care. And furthermore, the family did not have
the funds to actually pay for the funeral services, so
they actually to fund-raise for two weeks to pay for the
services.

This is just an example of what our community is
facing for not having health insurance and also not
having -- dealing with the impacts from poor air quality.
It is only just that the companies that have the funds to
pay for these costs pay for them.

Thank you.
CHAIRPERSON NICHOLS: Thank you.

Jennifer Renteria, Jesse Marquez, and Daniela Esparza.

MS. RENTERIA: Hello. My name is Jennifer Renteria. I'm a life-long resident of the city of Commerce as well as a graduate student at the U.C. School of Architecture. And I'm also a member of the East Yard Communities for Environmental Justice.

And I'd like to take this moment to share a letter with you that was composed by 33 different organizations all dedicated to the cause that is environmental justice.

"We, the undersigned, public health, environmental, and environmental justice organizations ask you to exercise your authority in protecting the public health of California communities by taking aggressive steps to reduce emissions from railyards and locomotives.

"In 2008, the California Air Resources Board completed health risk assessments for 18 railyards in the state of California. The HRAs demonstrate these 18 railyards pose an unacceptable level of diesel exposure to California residents. In total, these railyards are responsible for 210 tons of diesel pollution a year and put more than three million Californians at greatly elevated risk of cancer."
"The CARB staff has generated the technical analysis titled, 'Technical Options to Achieve Additional Emissions and Risk Reductions from California Locomotives and Railyards,' and has also released ARB's locomotive and railyard recommendations documents titled 'Recommendations to Implement Further Locomotive and Railyard Emissions Reductions.'

While we appreciate the recommendations provided by ARB staff do show a reduction in real emissions, we are concerned by the overreliance on incentive programs as the main strategy to achieve reductions from this pollution source. An incentive program does not guarantee those reductions will be achieved purely through incentives or that they will be enough to bring health risks down to acceptable levels.

"The State has the authority and duty to regulate the railyards in California, because they are a significant source of pollution in the local area region. "We need rules and regulations to ensure that the public health is prioritized. The California Health and Safety Code Sections 43013, 43018 provide the duty that California ARB achieve maximum reductions possible for
mobile sources to comply with the national ambient air quality standard and state standards, unless preempted by federal law. To achieve the maximum reductions possible, locomotives cannot be the only emission sources considered in these recommendation documents. Diesel emissions from other sources of pollution, such as cargo handling equipment and heavy-duty trucks, also contribute significantly.

"Approximately 48 percent of intermodal railyards the exceedance of the state and federal ozone and particulate matter standard in many California air basins and therefore should be considered for additional reduction of opportunities."

As you see there, the letter continues on. I see that my time is up.

CHAIRPERSON NICHOLS: We do have your letter.

MS. RENTERIA: And we urge you to continue with that.

But most importantly, I'd like you to all keep in mind that child that -- whose life in its entirety and whose understanding -- scope of understanding is completely bounded by the physical boundaries that are placed before him by freeways, railyards, rendering
21 plants, heavily-trafficced polluted streets, who liked
22 attends and underfunded, over-crowded school and is likely
23 uninsured. I'd like you to consider how you can take this
24 moment to make this child -- provide that opportunity to
25 succeed to become a civically-engaged American citizen and

1 provide for himself. Thank you.
    CHAIRPERSON NICHOLS: Thank you for your
2 testimony.
3 Jesse.
4 MR. MARQUEZ: Jesse Marquez, Executive Director,
5 Coalition for a Safe Environment with members in over 25
6 cities.
7 The Coalition is one of the petitioners for
8 rulemaking in which this public meeting is being held to
9 adopt the new railroad industry measures.
10 We support the new CARB staff recommended
11 measures. However, the few measures being recommended are
12 not adequate to mitigate all of the environmental toxic
13 air emissions and the significant public health impacts.
14 If CARB decides to adopt an incentive-only measures
15 program, then CARB is required to conduct a CEQA review
16 and analysis of all requested alternatives, significant
environmental and public health impacts.

CARB is also required to assess the feasibility and cost effectiveness of all requested mitigation measures.

CARB is also required to provide the basis, rational, and justification for all of its final decision making.

We would also like to add additional measures to be considered that there be a prohibition of more than five locomotive engines operating within 500 feet of fence lines communities for more than one hour; a prohibition of more than ten locomotives operating within a 1,000 feet of fence line residents for more than one hour.

We had an opportunity to review the advantaged locomotive engine control system in its operation. We also found that in doing research through the publications that you provided and the data that your cost effectiveness information was outdated. And that was part of the reason we were told that was not included as a valid mitigation measure.

And I have now since talked with the principles of Advanced Control Systems Technology, and they have advised me that when they reviewed the data of the CARB
staff, they found it was not accurate and that they are completely cost effective. And I ask that this Board get together with the Advanced Control Technology staff to update its information.

We also realize that locomotive engines can also be replaced with electric trains as well as Maglev trains, and we see these as two viable technologies that exist today and now. And we ask that you move forward in recommending these as also viable measures.

In addition to the health risk assessments that have been performed, we realize they are not complete and do not provide a comprehensive review and assessment of public health impacts. Therefore, we would also like to ask that the CARB include the conducting of a health impact assessment. Both Los Angeles County Department of Health and U.S. EPA Region 9 recommend that health impact assessments be performed. So we ask that that be included.

In addition to air pollution regulations, we also think you should consider sound impacts of the railroad industry in neighborhoods and provide sound proofing also be provided to protect the public as another health
We have additional cards to turn in. I thank you for this time.

CHAIRPERSON NICHOLS: Thank you.

Daniela Esparza.

MS. ESPARZA: Good morning.

My name is Daniela Esparza. I want to thank you for allowing me to speak before you today.

As a Pacoima resident and a member of Pacoima Beautiful, I can say that we are being affected by diesel trucks. And that is why we urge you and the Board to adopt more regulatory measures that will protect the health of our community from deadly locomotive and railyard pollution.

My friend's, family, and community's health depends on your support. And why that is why we have postcards asking for your support. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Ms. Ramirez, followed by Gideon Kracov and Angelo Logan.

(Thereupon an overhead presentation was presented as follows.)

MS. RAMIREZ: Good morning, Chairman Nichols and
members of the Board. I'm Isela Ramirez here with East Yard Communities for Environmental Justice.

Before I begin the presentation, I just want to thank you for allowing us to present the presentation, which will be divided by three. I will do the first part and then I be followed by attorney Gideon Kracov who will be followed by our executive director.

Next slide.

--oOo--

MS. RAMIREZ: So to begin with, I'll begin with the basics is that is California ARB, or the people here sitting in front of me, have the duty to adopt enforceable locomotive and railyard pollution control measures to address significant health risks with diesel particulates at California railyards to meet the SIP's criteria standards for ozone and PM.

This presentation will provide you with facts concerning California railyard activities, the regulatory record, and the review of the options recommend and ARB regulatory approaches. The 18 intermodal and classification railyards in the state of California -- next slide.
MS. RAMIREZ: The 18 intermodal and classification railyards in the state of California cause significant emissions of criteria and toxic air contaminants, including diesel PM. And despite the downfall in the economy, the railroads predict and are planning for growth. I can point to the ITCF and the SCIG as prime examples of that point.

Furthermore, locomotives alone are a big source of pollution as they account for 4.8 tons per day of PM and 158 tons per day of NOx in the state of California.

In the chart below, you can see for the eight intermodal railyards that locomotives account for about 40 percent of the emissions, followed by heavy-duty diesel trucks with 27 percent, and then cargo handling equipment with about 20 percent followed TRUs.

Next slide.
threshold of only ten per million.

The bottom graphic is the cancer risk as applied for the four railyards in the city of Commerce. And as an organizer in that area, I can tell you these dark clouds expand over a vast area. It goes on for miles and miles. And that's a lot of homes, a lot of teachers, a lot of students that are impacted.

--o0o--

MS. RAMIREZ: Thus, ARB's 2007 SIPS include locomotive reduction targets. The SIPS can see that the severity of the region's PM2.5 problem and attainment deadline make it necessary to further mitigate locomotive emissions in 2014.

Also Executive Officer Goldstene acknowledges that health risk is unacceptably high and that every feasible effort is needed. Yet, the implementations for both federal locomotive rules and ARB's goods movement measures will take years.

Plainly put, more needs to be done. Over 3 million Californians are exposed to railyard cancer risks in excess of ten in one million.

We, the petitioners, have submitted a draft
resolution, a detailed comment letter, which has just been
read, and an expert evaluation for the record. This
concludes my portion of the presentation.

CHAIRPERSON NICHOLS: Time for the hand off.

MS. RAMIREZ: And I will now pass it on to

Gideon.

MR. KRACOV: Good afternoon now. My name is
Gideon Kracov for the East Yard.

--o0o--

MR. KRACOV: I'm starting here. Years ago, when
we started working on this, the question from your Board
was show us what's not preempted. And that's what I'd
like to do today in these two-and-a-half remaining
minutes.

California Health and Safety Code gives your
Board a duty to adopt and implement controlled measures
that are necessary, cost effective, and technologically
feasible for these sources, unless preempted by federal
law. And that's the standard that governs your decisions
today. To meet this charge, it's true. You adopted many
goods movement regulations, but you have been loathe to
directly regulate railroads. Instead, favoring the 1998
and 2005 MOUs.
In 2007, East Yard Communities filed a lawsuit against ARB challenging the MOUs and seeking stricter regulations. We also filed a request for rulemaking with your agency.

In 2009, ARB granted in part that petition for rulemaking. And Executive Officer Goldstene promised to bring before your Board a study of all the measures. That's what's before today. It was a new day, and we don't want to be adverse with ARB again.

--o0o--

MR. KRACOV: Let's be clear. Since 2005 and the MOU, the legal landscape has changed.

First, in 2007, the court in the ARR AQMD clarified that State regulations to implement federal environmental laws like the Clean Air Act and your SIP, our SIP, are not preempted by ICTA, the federal railroad. In fact, the court left the issue at your doorstep finding under California law that the State, not the AQMD, can regulate locomotive sources.

Then in 2007, U.S. EPA recognized in writing older switchers are not CAA preempted and are subject to regulation by California. Then in 2008, a local court ruled that ICTA, the federal railroad law, does not override CEQA on municipal land.

--o0o--
MR. KRACOV: As a result, look at your staff presentation today at appendix 6 through 8 concluding that many of the measures we're talking about are not preempted by federal law. These are your staff's own quotes. I'll read just a few.

"ARB staff believes that ARB likely possesses authority to establish emission standards for switcher and medium horsepower locomotive for a little bit lower."

ARB thus has authority under California law and Clean Air Act Section 209(e)(2) to adopt emission sources for most, if not all, of the sources covered by these options.

So, years later, after all this work, the answer is you can't regulate everything. But there are literally hundreds of locomotives and numerous site-specific measures that you can adopt, and we urge you to do so.

Come for a position of strength like you do with other goods movement sources, like trucks and ships.

Finally, we've heard about the railroads possibly suing or speculation they might terminate the 1998 MOU. Please take that with a grain of salt. They're seeking approvals here in the South Coast for the same areas where those locomotives are used.

And in any event, the point is, you have authority and a duty to regulate these sources. And
Angelo is going to talk more about those options.

MR. LOGAN: Hello, Chairman Nichols and members of the Board.

Angelo Logan with East Yard Communities.

And so after hearing the two previous presenters, we would like to propose that the California Air Resources Board implement regulations and finalize site-specific mitigation plans.

In the options report, staff had determined that numerous control measures are economically and technologically feasible to dramatically reduce criteria pollutants and health risk.

As a result, ARB has a duty to employ available implementation mechanisms for these measures, including rulemaking. We do believe that incentive program needs to be part of this program, but an incentive-only approach is not comprehensive and disempowers the State in its ability to regulate these sources.

Also, petitioners agree that interstate locomotives, such as options one, two, five, and seven are cost effective and feasible. And this would be replacement, repowering, and retrofitting locomotives. However, locomotive options are not the only non-preempted options that will have significant impacts on emissions.
In addition, options 11, 35, 36, and 37 are also feasible and cost effective, and some of these measures would include advanced locomotive emission controls and moving railyard emission sources away from the nearby residents.

Mr. Logan: These site-specific measures can be implemented to reduce public health exposure and emissions from these railyards throughout California. In 2008, your staff was present at more than one dozen community meetings to discuss railyard's draft mitigation plans. Yet, the plans are not finalized or enforceable. It is time to do so. Significant reductions can be achieved through relocation of maintenance facilities, staging areas, and yard entrances or by requiring higher emission controls near high risk residential areas.

Also, monitoring is needed to back up staff's modeling. So therefore, ARB should -- next slide.

Mr. Logan: ARB should initiate a rulemaking within 60 days for older non-preemptive switcher and medium horsepower locomotives.

A regulatory approach would give us the ability
to analyze the cost and benefits of each measure.

So we are asking you to direct staff to report to
the Board within 120 days to finalize site-specific diesel particulate matter mitigation plans for the 18 railyards in California and the additional ones that are also gaining in size.

We also ask that you direct staff to report back to the Board within 120 days on other recommended actions.

And to sum it up, we, the petitioners, would respectfully urge the Board to satisfy its mandatory duty to regulate through all available mechanisms, including rulemaking, for non-preempted California locomotives and railyard sources. California communities, our health depend on it. Thank you.

CHAIRPERSON NICHOLS: Thank you very much. And thank you for that excellent and well coordinated presentation. It's very helpful.

Before we move on to the next group of speakers, I want to suggest so that people know the timing, we've just gotten beyond one page, and we have two-and-a-half more pages to go. So rather than taking a break, I'm going to propose that we get food for the Board and staff
That want to have something to eat back in the staff room. And people just leave for a few minutes, you know, in staggered groups rather than trying to take a formal break.

For those of you in the audience, if you can see where you are on the agenda, you could do the same thing.

I know there are people who got up very early this morning and possibly even some with diabetes or other needs that would require them to eat at a particular time. So we'll understand if somebody isn't here when they were called. But I think we should just move along.

BOARD MEMBER LOVERIDGE: There is a very good cafeteria not very far from here. You can walk a few paces down and to the left.

CHAIRPERSON NICHOLS: So people can go to the cafeteria and get the food when they need something.

MR. WRIGHT: Madam Chair, if you could let the audience know the Board members are able to view the proceedings as well. And audience members can watch on the cafeteria monitors as well.

CHAIRPERSON NICHOLS: If you need to the cafeteria, you will not be cut off from the proceedings. And the same is true for Board members if they go to the
back room. Okay. Thanks very much. We'll press on then.

And our next witness is Penny Newman, followed by Maria Birruetta and Maria Hernandez. Are they here?

MS. NEWMAN: I'm Penny Newman. I'm the Executive Director of the Center for Community Action and Environmental Justice out in the Riverside/San Bernardino Counties.

Mira Loma has the highest level of particulate pollution in the nation. Mira Loma children have the weakest lung capacity and slowest lung growth of all children studied in southern California due to particulate pollution.

People living near the BNSF railyard in San Bernardino face the highest cancer risk of all railyards in California at a whopping 3300 in a million. That is not the ten in a million that we typically talk about in the Clean Air Act. It is 3300. It is astronomical. These alarming statistics are the reality of the hard-working Latino residents in the communities of Mira Loma and the west side of San Bernardino.

For more than six years, CCAEJ communities have urged action on the critical health issue. For more than
six years, ARB has refused to step forward and use its regulatory authority to reduce the impacts on our families. To date, our calls for action have been disregarded by this agency in favor of deals and voluntary measures.

At times, the agency staff has appeared to be more of a PR arm of the railroads than the champion for clean healthy air.

ARB actively opposed bills in the state Legislature which would have lead to the reduction of rail pollution, opting instead to enter into that secretly negotiated agreements, the infamous 2005 MOU, that undercut our community's effort to regulate the railroads.

In April of 2005, CCAEJ, along with our sister organizations, petitioned this Board to adopt regulations to control criteria and toxic emissions from railroad sources. After first denying our petition, upon reconsideration, we now find ourselves in this hearing. I want to point out this was in the initiated by this agency. This was pushed on the ARB due to a lawsuit by East Yards and by the petition with CCAEJ and other communities.

To our disappointment, but I have to say not our
13 surprise, ARB staff has once again proposed incentives to
deal with railroad instead of the enforceable regulations.
15 Your conciliatory actions with the railroad have prolonged
16 our misery and resulted in more people being harmed. We
17 have had enough.
18 
19 To address this critical health issue, we cannot
20 rely on the whims of whether the railroad wants to
21 voluntarily do something or not. They have to be forced
22 to.
23 
24 I want to address real quickly two procedural
25 things. We heard earlier that people living near these
26 railyards really don't have a voice in these proceedings.
27 That is not due to their choice. It is because agencies

1 hold their hearings during the day when people have to
2 work, and many of our people are going to have to leave
3 before they have the opportunity to speak because they
4 have to pick up their children or get back to work. They
5 can't spend all day here.
6 
7 I was appalled to come in here today in this day
8 and time in 2009 when all of the agencies have EJ advisory
9 counsels to find that there is no translation available.
10 While we may be able to get people to translate what
people are saying to you, they can't hear what you're saying. And you have eliminated them from being heard. That is unconscionable in this day and time. To come to southern California with the demographics we have, to be dealing with an issue that hits not just the general public, but these specific communities and you not make conditions for them is unconscionable. And I hope that you will look into the future into your rules and how you operate to make sure that everyone has an opportunity to participate and that their voices are heard loudly, clearly, and translated. Thank you.

CHAIRPERSON NICHOLS: Thank you.

I would just comment the scheduling of this hearing for this morning was done at the specific request of representatives of the groups that are here today, as opposed to continuing it on into the night on Friday night. There was a choice between those two.

MS. NEWMAN: If I understood, the choice was Thursday or Friday. And we tried to get it for Friday because it was easier for people to get off work.

CHAIRPERSON NICHOLS: But there would have been the opportunity to stay late in the evening on Thursday,
and Board members had indicated they were willing to stay and so were staff. I don't want to argue. I just want to note that, that was the reason why that decision was made.

MS. NEWMAN: I want it noted there's a lot of people you're going to be calling who aren't going to be here because they simply couldn't stay longer.

CHAIRPERSON NICHOLS: I hear you.

For those who are wanting to know where they are on the witness list, I just want to point out that there is a list outside this auditorium immediately outside the room so that you can tell where you are in the order and know if you've got some time before you need to come back.

Okay. We'll hear now from Maria Birru eta, Maria Hernandez, and Sylvia Betancourt.

MS. BIRRUETA: Hello. Hi. Good afternoon. My name is Maria Birru etta. I live in the west side of San Bernardino. And I'm a part of the organization CCAEJ. I just came here to tell you that I have a young daughter that suffers problems because of the bad air quality.

I live here in the red zone that you see up here on the map. And I just want to tell you that my neighbors have been dying from cancer. My animals have died.
illnesses. I live across the street right in front of a 
school, and the teachers have died from cancer from that 
school.

The problem is huge, and you here in front of us 
have the solution for those that are living in this area 
of danger. You have the power to stop those companies 
that have been intoxicating the air that we're breathing 
right now. And basically we're just saying no more, no 
more bad air quality. The number of people dying per 
million has been extremely large, and now it's 3300 in a 
million. It's so much. So thank you so much for this time 
and letting me speak.

CHAIRPERSON NICHOLS: Thank you for coming.

Maria Hernandez, Sylvia Betancourt, Susan 
Negrete.

MS. HERNANDEZ: Good morning. My name is Maria 
Hernandez. I live in San Bernardino. And my family moved 
here from the -- to the city of San Bernardino two years 
ago. And in such short time, my daughter of eight years 
old suffers from hemorrhoids from her nose. And my son 
suffers from headaches; he's 12 years old.

My family as well as others have the right to 
breathe clean air. And you as an agency that regulates 
...
the quality of air has the right to regulate our --
basically give us that right to breathe that clean air.
Thank you.

BOARD MEMBER LOVERIDGE: Could I ask a question?
CHAIRPERSON NICHOLS: A question. Excuse me.
BOARD MEMBER LOVERIDGE: As you chose to move in,
was there any information? Was there any notice about the
exposure that was there because the railroad yards? Did
you have any information before you moved?

MS. HERNANDEZ: We moved there in order to own a
home, a house, basically. Yet, we never knew how the
situation was in that area.

BOARD MEMBER LOVERIDGE: Thank you very much.

CHAIRPERSON NICHOLS: Ms. Betancourt and Susana
Negrete, and Rachel Lopez.

MS BETANCOURT: Good afternoon, Board members.

My name is Sylvia Betancourt, and I work with the
Center for Community Action and Environmental Justice
based in Riverside. We do our work in Riverside and in
San Bernardino.

I have come before this Board a number of times,
and one in particular in this room back in 2005 when CARB
signed the infamous MOU that at the time was widely
opposed by communities, especially environmental justice communities. One of the things that it did yield was one of the things that we already knew was there is a huge health risk to living close to these rail facilities. And that we found that in San Bernardino being the worst in the state at 3300 in a million that it was confirming what our community members, our role models, and our family members already knew, that people were getting sick because of their neighbors.

CARB has the legal authority and the responsibility to do something about this problem. So I stand here before you today to say an incentive program is not enough. An incentive program doesn't guarantee that emissions will be reduced. And by looking at the Power Point, the expression of the additional recommendations or measures for reductions would not be as cost effective as some of the initial recommendations they were making.

Some of those additional recommendations are actually the things that we would support. We would support site-specific measures, like moving a gate, like moving operations around so that they are further away from community members.

And what we urge is that you take a step that has some teeth behind it. A regulatory measure is what this community -- these communities need across the state.
Thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

Ms. Susana Negrete and then Rachel Lopez.

MS. NEGRETE: Good afternoon. My name is Susan Negrete. I live in San Bernardino. I'm also a member of CCAEJ.

I live across the street from the BNSF facility railyard. I live like 200 feet away from their facility. The issue that we're having in the east side of San Bernardino is a well known for all of you and all of us, especially for all of us who are living in that area. 3,300 in a million is not a small number not even to count. It's a big huge number. Talking about lives.

How is it affecting me personally? It's affecting me because in the last ten, years my children and I have developed asthma. I have a nine-year-old boy who wakes up in the middle of the night yelling for help because he used to get heavily bloody nose.

How do you think I feel unable to help him? It's so difficult and sad to have this kind of life. And it's frequently. The next day I cannot perform 100 percent in my work, because I'm tired and sleepy. And it's just me. I'm talking about myself.

But you heard we are 5,000 families just like my family within a mile away from BNSF. So we have a
problem. You have a solution. You have the power. You
have authority to do the regulations. You have to respond
for all of us.

So that's what I have to say. Thank you for the
time and to listen to us.

CHAIRPERSON NICHOLS: Of course. Thank you.

Ms. Lopez, followed by Josie Gaytan.

Ms. LOPEZ: Good afternoon, members of the Board.

My name is Rachel Lopez. And I work with the
Center for Communities Action Environmental Justice and a
resident of Mira Loma in the unincorporated area of
Riverside.

I come before you today, again as I have many
times before regarding these railroads -- the railroad
companies seeking for you to do what you need to do in our
communities.

Mira Loma also was part of that health risk
assessment. Although our numbers are comparatively
smaller, they're not any less critical, one hundred in a
million. And I know that's a smaller number than San
Bernardino, but 100 in a million is still too much. That
particular railroad, they've done some things there that
only through community organizing and support from CCAEJ
have been able to change some things in that particulate
railyard. However, the effects of the diesel exposure is still there in all of our communities. We look at ARB and the relationship that we've had in the past. We are here again in front of you wanting to believe that you are here for the communities and that you have the ability. You have the authority to make rules and regulations.

Our organization, along with others, came before you in Oakland in 2008 to present the rulemaking petition. Again, we are waiting. We cannot wait any longer. Our communities are dying. The residents in our communities are dying on a daily basis. We cannot wait ten, 15, or 20 years. We won't be there in 10, 15 or 20 years. Many of us will not be there.

It is your duty to make regulations, to make rules, not allow these railroad companies to expand to build new facilities until they've cleaned up the messes they've made in our communities. Now, at this time they need to clean up. We can no longer accept this type of pollution in our communities.

Thank you.

CHAIRPERSON NICHOLS: Thank you very much.

You also were providing some translation services.
also for -- did you help with the translation earlier? It was the other lady behind you. Sorry -- also with the gray t-shirt. Okay. Sorry. I just wanted to say thank you. Appreciate it.

MS. GAYTAN: Good afternoon. My name is Josie Gaytan, and I work for CCAEJ. And I live in Mira Loma and I've lived there for 28 years. And I'm right now also working in west San Bernardino.

I can sit here and tell you guys all the studies and everything that everybody has been talking about. One of the things to us, the numbers of very important. But it's all the numbers that we're looking at, all our friends and neighbors and all our communities members that are dying of cancer. Those are the numbers that we are looking at that nobody seems to be understanding us that those are the numbers that are important. It's not the other numbers you guys are all talking about or everybody is talking about.

Several years ago I came and testified in front of most of the Board that's up here and asked -- we're talking about the railroads. And one of the intersections that we have in Mira Loma, the trains sit there and idle for 20 to 40 minutes. It's about half a block away from
one of the elementary schools. They idle. They get off their train. They leave their train there, and they go down and eat. And they leave the train in the middle of street, stopping traffic, idling, and polluting the air. At that time, somebody was going to do something about it. Well, there's nothing done about it. That's one of the little problems that we have in our community. They're idling now we can see two or three trains a week now that get off and eat and leave their train idling in the middle of the streets.

And you guys don't do something. You guys put stronger regulations. This is a small problem I'm telling you about. The bigger problems -- they aren't doing anything about the littler ones. Can you imagine if they're going to do something about the big ones that we have, killing our people, killing our neighbors, our friends.

We're tired of waiting. The MOU, they're not doing nothing about it. You guys are the only ones that are going to have to put something there for them to have a stronger regulation so they can do something about killing our people, our neighbors, our friends.
So this is all I have to say. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Jose Velasco, Teresa Flores, Rudi Flores.

MR. VELASCO: My name is Jose. I live in San Bernardino. I had a story prepared telling you who I am, where I live. Also that he is a member from CCAEC investment team and that I guess instead of telling you my story, I'm going to tell you about a story about a young child that incidentally dropped a glass of water. And what does he do? He tries to hide it so nobody sees that he had just dropped the glass of water. The kid has two solutions to his problem. One, he can hid it and then like never happened. Or, two, try to fix it and know what he did.

Well, the solution he found was that since he no intention to drop the glass of water, he knew what to do to fix the problem. He had no intention to commit that, so therefore he just knows the solution so he does whatever he can to fix it. Thank you very much for your time.

CHAIRPERSON NICHOLS: Okay. Thank you.

Teresa Flores, Rudi Flores.

MS. FLORES: Hello. My name is Teresa Flores. I
live in the city of San Bernardino. I'm a member of CCAEJ. I live right across the street from BNSF. What separates me are four lanes, the street. I'm a stone's throw away from the railyard. I was here also in 2005 with the MOU. I went back into my computer and I was looking for some documents for that time. And when I started reading some of these documents I had, I got very angry. And right now I'm very emotional, because we're right back where we started. And what I see across the street with these locomotives smoking, I can't enjoy my evening and open my windows, because I smell the pollution coming into my house. I'm being very dramatic right now, because this is a 24-hour, seven-day a week facility. Not to mention the noise at 3:00 in the morning from the racket from the lifts picking up the cargo, dropping them, the truckers going by and waving at each other honk, honk, honk. This is 3:00 in the morning. How would you feel? Our residents are getting sick. This place holds 300 people. Can you imagine 300 people getting sick in
You've been listening to these people for hours. You know what you need to do -- because we're not going to get any better. And working with the railroad and telling you, oh, we're going to do this and we're going to do that. And when you see it across the street, you know they're not doing what they're supposed to be doing.

But you can enforce the laws. You can get them to do it. You have the power to do it. And we're all relying on you. And if you don't do it, you're showing us that you let us down. Thank you.

CHAIRPERSON NICHOLS: Thank you. Okay.

Rudi Flores.

MR. FLORES: My name is Rudi Flores, and I live in San Bernardino. Life-long resident there, except for my military time. And I live about less than a mile from the monstrosity belching out all this poison.

In one respect, I guess I'm speaking for the other people that have died, from the grave. They're asking you and I'm asking you, because I'm a cancer patient myself, borderline COPD, do your job or you don't need your job or we'll put somebody else in. Because like I said, I'm speaking to you from the grave. I don't know
how much time I have left myself.

Here's a report that tells these companies, these monstrosities where they can crap on us. Unless you've been there -- I mean, these are just words to you. But, you see, those aren't numbers. Those are real people that were flesh at one time. They had pictures. They had families. And now their families are deprived of them. We're not asking you; we're telling you do something about it. Do it. Otherwise, you don't need your jobs.

Thank you.

CHAIRPERSON NICHOLS: All right.

Martha Cota, followed by Erin Huffer and Allan Lind.

We're going to run out of time and the translator has not spoken.

MS. COTA: Good afternoon. My name is Martha Cota. I represent hundreds of families with the Long Beach Alliance for Children with Asthma. And the families, because of the time you chose to hold this hearing, they could not be here today.

And I wanted to tell you about that I'm a mother. My son, Jose, is 19 years old, and he has been suffering
from asthma since he was a baby. And I experience the
difficulty that this causes him every day. Jose's life is
difficult because he has to live with asthma day after
day, an illness caused by multi-million dollar industry
that does not care about our families.

I also wanted to say that it's important for you
to listen to studies, such as a USC study, that shows that
children who grow up breathing polluted air have reduced
lung function. When they reach adulthood, that air
pollution is linked to increased school absences and as
well as to work absences for working adults, like myself.
That children with asthma suffer other health problems
when they're exposed to high levels of particulate matter
from diesel. And thousands of children that live near
railyards, busy roads, and freeways are more likely to
have asthma or reduced lung function.

CHAIRPERSON NICHOLS: Okay. Your time is up.

Ms. COTA: So I do not understand, just as the

last person mentioned, that if diesel emissions are
classified in California as toxic air contaminants and at
the federal level as hazardous air pollutant because of
concerns they cause cancer and other illnesses, then why
are you not doing your job? Why haven't diesel emission
been effectively regulated by either the State or federal
government?

CHAIRPERSON NICHOLS: We're going to let you
translate the last bit, and that's it.

MS. COTA: And I urge you to do your part as we
do our part to protect our families and our communities.

But you need to do your part to do your job.

Thank you. And I also have postcards.

CHAIRPERSON NICHOLS: I do just want to say while
we're moving along, the USC studies were supported by the
Air Resources Board. We are very mindful of them and very
interested in incorporating them into our work.


MS. HUFFER: Good afternoon. My name is Erin
Huffer. I'm the Program Manager for Long Beach Alliance
for Children with Asthma.

As you may or may not know, Long Beach has some
of the highest rates of asthma in the nation. This
community is over-burdened by the effects of pollution and
a good portion of which is caused by railyard activity.

For instance, we have about eight schools, homes,
and other facilities with sensitive receptors, because
that as the term I understand, within one mile of
railyards. We need to prioritize public health. As
you've heard from many people today, this is not something
that we can keep putting on hold.
I therefore urge you to use your authority to
implement not just any regulations, but strong and
enforceable regulations that protect public health and are
ineffective in reducing emissions and the health risks
from railyards. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Lind.

MR. LIND: Thank you, Madam Chair.

My name is Allan Lind. I'm here on behalf of the
California Council for Environmental and Economic Balance.
And CCEEB, I think you know, is a coalition of business
labor and public leaders that strives to advance
collaborative strategies for a strong economy and healthy
environment.

We're here to support the staff's
recommendations. We keenly appreciate the complexity of
this problem that you have taken on to solve here, and
we've been impressed with staff's work and the
collaborative efforts they've had with the stakeholders in
getting to the conclusions that you have before you today.

We're particularly appreciative of the incentive approach that the staff is taking here. We have worked extensively with CARB on incentive programs over the years, and we think that CARB has had significant success with their existing incentive programs. And we're pleased that the Board is now looking at incentive programs comprehensively with the guidance of Board Member Berg. And we're an active participate in that process and looking forward to improving all of the incentive programs to achieve the outcomes of the programs like this.

I don't think anybody would dispute the fact that transporting goods by rail is the most environmentally sound way to move goods and goods movement. And goods movement is vital to the economy in California. So the work that you're doing today is going to be very important to sustaining the vitality of California's economy. Well targeted incentive programs, such as preferred by your staff, is an ambitious plan for cleaning up the air and will preserve competitiveness and efficiency.

And no pun intended, we do believe CARB and the railroads are on the right track in this effort. CCEEB looks forward to working with the Board and with the financial incentives working group to make sure that all of the worth while programs like this one get the funding
they deserve. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

I neglected when I was coming up with my grand scheme for moving us along to recognize the fact that our court reporter is a human being also and may need a break. How long should we give you? We'll take a ten-minute break and resume the hearing at 1:15 sharp. Everybody can stretch.

(Thereupon a recess was taken.)

CHAIRPERSON NICHOLS: The Board will resume the hearing.

I believe our next witness is Eric Coker, followed by DePrima Mayo and Robert Cabrales.

MR. COKER: Hello. And thank you for holding this hearing today.

I'm appreciative the fact the Board is taking on this issue. I've traveled from the Bay Area. And I'm here today to advocate for the Board to protect the health of people living near railyards.

As you know, the diesel pollution specifically particulate matter less than 2.5 micrometers spewing from these railyards are harmful to respiratory and heart health and increases the chance of cancer.

Numerous epidemiology studies have demonstrated that close proximity to major roadways and freeways is
associated with increased right with the respiratory
disease and heart diseases.

There is no reason to believe that living next to
a rail -- living in close or working and going to school
in close proximity to a major polluting railroad is any
different from that.

Just last night I toured the railyard in
Commerce, California, which is not very far from here.
While there, I observed a residential neighborhood right
next to in massive rail facility. I noticed a young child
in her front yard. A railyard was no more than 30 feet
from where she plays in her front yard and where the fine
particulate matter and ozone emissions are able to
penetrate into her home living area.

So I'm going to be brief here. So I urge the
Board to mandate drastic change at these railyards. One
specific change that can be made is for railyards to
switch to less polluting fuel sources aside from diesel,
such as electrification of their systems.

And a big contention I have with the
recommendations from the staff here is the issue of not
having mandatory regulations. The incentive process comes
with great uncertainty, and the graph that was showed
earlier with regard to the anticipated reductions in emissions, I think it would be nice to see another graph that takes into account the uncertainty. And it seems like you're basing that graph on the assumption that the incentive process will work and that the funds will be generated somehow. And so it would be nice to see just a worst-case scenario, best-case scenario type of presentation.

That's all I have. Thank you.

CHAIRPERSON NICHOLS: Thank you. Thank for making the journey. Okay.

DePrima Mayo, are you here? And then Robert Cabrales and Cassandra Martin.

MS. MAYO: Hello. My name is DePrima Mayo. This is my first trip out here to Los Angeles with my grandmother. I have never been to any event like this that I've seen since last night. I went out to the railyard, and I seen such pollution in the skies of the railyards of the smoke and all that. And people live right next door to the railyard is something that I would not like to experience ever again. Okay.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
Robert Cabrales, are you here?

Cassandra Martin.

MS. MARTIN: Hello. My name is Cassandra Martin, and I'm with West Oakland Environmental Land Project and

Ditching Dirty Diesel. And I'm going to give you a brief summary of what I've gone through.

I'm from Indiana and railyard was right in my front yard. And I remember as a kid playing in the railyards. And at least 20 to 30 of the members of my family have died from cancer. My oldest sister recently had a mastectomy and I, myself, even had problems with my breasts.

And I have three children, 31, 21, and 16. Both of my boys have asthma. My daughter has upper respiratory problems.

I now have allergies where I'm scared to go outside, because every time the air hits my skin, I break out in hives. And sometimes I'm rushed to the hospital and I have to have shots and take medication, and it's scary.

And coming to your railyard here and visiting it and seeing all the children there in this environment
breathing these toxic fumes is just horrendous. Totally horrendous.

And will someone stand up for us people that need your help? Thank you.

CHAIRPERSON NICHOLS: Thank you, Ms. Martin.

Elena Rodriguez, are you here?

Margaret Gordon.

MS. GORDON: Good afternoon. Hi. I'm Margaret Gordon the West Oakland Environmental Indicators Project.

CHAIRPERSON NICHOLS: I was with you in Oakland.

MS. GORDON: I'm one of the 15 people who traveled down all the way from Oakland, California to come and talk to you about railyards and the goods movement and how trains and transportation impacts on community.

I live in west Oakland. I'm surrounded by three freeways, the port on one side of me, a railyard on one side. And we have a 24-hours, seven days a week truck traffic, either getting to a train or trying to get on rail or trying to get to a ship.

And one of the things we have found out is that within the last two years, we have had an increase of train traffic blowing in the wee hours. We have not had that before. So we know that there is movement going on page 197
from the goods movement. Even though they say the economy is down, we're still being impacted by the trains and the trucks and the ships.

And in retrospect to the resolution that we want CARB to really start caring about the community, really start caring about us. And with many of the ports in the state of California, who will be doing the CIP projects? There will be some increases.

So we have to start thinking about no net processes as well as mitigation processes for the other communities that will be suffering or look Commerce railyard in the next five, ten, 15 years.

We've known in Oakland there is a new expansion program that's going to happen at the old army base. We know that there are a company called Ports America is going to be coming into West Oakland. There's going to be increase. There's not going to be less traffic. There's going to be more traffic.

So my hope is that CARB needs to start caring about the communities that are going to be impacted by all these expansions. It's good to have business. But when is business going to be responsible and have new business
models where the people are being cared for as they make -- change the economy?

You need to ask the automobile industry. They had to change their business model to survive. The railroads need to start doing the same thing. You can't have all these operations of the maintenance yards, the trucks, the trains, all these activities going on at the same time to impact our communities.

So one thing that we need to have is new models of how to do these things without harming people. Thank you very much.

And I also want to give signature cards that we collected on our own also.

CHAIRPERSON NICHOLS: Thank you, Ms. Gordon.

Thank you.

Christine Cordero. Is Christine here?

MS. CORDERO: Good afternoon, Board members and Chair.

Thank you for having us here. We have traveled seven hours in the minivan and the car to really ask or to tell you that we need you to exercise your full authority to regulate the railyard emissions to protect our community's health.
You have heard and will continue to hear testimony from Oakland and Richmond residents who have been living and dying from pollution from rail operations, the cars, the cargo handling equipment, and the trucks. Similarly, we stand with our sister organizations and communities from the central valley and all through southern California and with all the individuals that couldn't are here from San Francisco, San Leandro, and throughout the state who deal and can testify to the unacceptable high risks to already overburdened communities dealing with toxic exposure above and beyond acceptable standards, above and beyond what we should be paying in our health and our lives for goods movement through this state.

In the Bay Area, as Margaret said, we are facing expansion of rail cargo. They're talking about double stacking the containers to go through Donner Pass and the Tehachapi. They're talking about a 50-year lease with the Port America which will double the overall cargo at the Port of Oakland from what it is now. So these cargos will move from the ports and through our communities. The risks are already too high. And to add to that without
actual serious controls and regulatory measures is unacceptable.
You have the full legal authority and duty to regulate. We urge you to support the most health protective options.
While incentives and voluntary measures are good, they must be in addition to strong regulatory measures. Incentives must be the icing on the cake, not the cake itself. Incentives and voluntary measures alone have not in the past, and nor can they now, guarantee the protection of our people's health.
The rail companies are saying they not afford to be regulated to clean up their operations. We are here to say right now to ask you to exercise your full authority to regulate these rail emissions to protect public health. We, our communities, our children, our lungs, and our bodies cannot afford for you to do anything less.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
We have Jose Torres and Adrian Martinez.
THE INTERPRETER: Elena Rodriguez was called, and she was out. Can she do her public comment now?
CHAIRPERSON NICHOLS: Yes. I'll let her go.
MS. RODRIGUEZ: Good afternoon. My name is Elena Rodriguez, and I'm here with the Long Beach Alliance for Children with Asthma.

Thank you for coming down to L.A. and hearing our concerns. I live in west Long Beach where there is an average of 10,000 students that are minute by minute impacted by pollution. One of the students is my daughter who was diagnosed with the beginnings of asthma.

As you can see, the railyards are dangerous for the health of our communities, especially children in the first stages of development and the elderly who are already afflicted with other health problems. All though there have been efforts to reduce railyards emissions, the levels of risk for cancer and asthma continues to be unacceptable. It is still necessary to reduce the level of emissions to a level that is healthier for our community.

The railyards should not be located near sensitive receptors. CARB should establish regulations that guarantee that the railyards are located outside of our communities and then specifically places like schools, churches, parks, and homes.
In summary, our families are suffering from the
effects of pollution and you here have a solution. Thank
you.

CHAIRPERSON NICHOLS: Thank you.
Okay. We'll go back to the schedule then.
Hi there.

MS. MARTINEZ: Hi. Good afternoon, members of
the Board.

My name is Adrian Martinez, and I'm an attorney
for the Natural Resources Defense Council.

I will present some very brief comments, and I'm
just going to touch on three issues. The first is the
incentive approach here today. The second is the black
box issues in the South Coast and other areas of
California. And then also finally the 1998 MOU between
the railroads, CARB, and US EPA.

The first issue, as we're all aware, CARB is the
leading in battling diesel pollution. We've seen
significant regulations on sources such as marine fuels,
trucks, non-road equipment. And NRDC has been very
supportive along the way, even when industry challenges
these rules, we jump into court to help defend, because
throughout the state and NRDC's members.

So this first issue is the incentive-based approach. I feel like we've been here and discussed this. This is really what Prop 1B was about. NRDC and several other groups have been very supportive of incentive funding. That's why we were supportive of the Prop 1B and the significant effort CARB staff put into developing guidelines and providing funding to turn over these facilities.

We do note, however, that the proposal today entails almost half a billion dollars in incentive funding for a handful of companies. Generally, it's been the approach of CARB to help companies that need compliance, whether it be through socioeconomic reasons, et cetera, and this seems like a lot of incentive funding for a handful of companies.

During the Prop 1B process, we actually recommended there be a greater factor of contribution by the railroads compared to every dollar spent by the State or federal government.

The second issue is, as we all are aware, the black box to obtain the ozone standard is quite significant in places like the South Coast. We think what this means is that a greater suite of measures needs to be
explored beyond incentives.

We also think there needs to be exploration further about the control of rail electrification to help meet our clean air goals and get us to attain the federal clean air standards. We think a strategy of attainment is definitely going to require the railroads to really shift from a diesel to electric.

The final thing I want to go over is the 1998 MOU. There's been some fear that somehow the railroads might leave or not comply with that agreement. I note that in that agreement there is a backstop from U.S. EPA where they said if the railroads do not comply, the U.S. EPA committed to achieving the same amount of reductions. We think that provides the support needed to go forward with the broader suite of incentive and regulatory measures.

Once again, thank you for the ability to comment today.

CHAIRPERSON NICHOLS: Thank you.

We now have quite a contingent of people from the East Yard Communities for Environmental Justice. And I'm hoping that we can save some time if we can organize this group and have you come forward at the same time. Jocelyn Vivar, Nathen Mata, Maria Becerra, Madeline Clarke, Robert Eula, and Anna Arriola, are any of these people here? Can
we get you to come forward then at this time, since you're all residents of the same area? And I visited your community at one point. I know something about the impact of the railyard. So if I could get all of you to come forward and speak, that would be great.

MS. ARRIOLA: I think they are on the bus. I think they're leaving.

Good afternoon, Madam Chairman and Air Resources Board.

My name is Anna Arriola. I live in the Montebello Commerce area. I came in support of the recommendations to provide further locomotion and railyard emissions.

I live in an area where four railyards are located. We understand the railroad companies have the right to make money. It's a business. And we, the people, have the right to clean air. We have -- you're in the middle. So you're like a referee between us. We have to create win-win solutions. We have to negotiate regulations to lower the emissions. Your job is to create the negotiations and make way -- create ways to lower the emissions. We don't expect you to do it in one day. But gradually, but fast, because we no more mañana. We want it today.

Since you're in the middle, your job is to
1  protect the people. We need the clean air. Your job also
2  is to help the business. You're like our middle person
3  that talks to them and lets them know our needs and lets
4  them know that we understand their needs and we have to
5  help each other. We're in this planet together. We have
6  to exist together. We have to co-exist. And we have to
7  make some form of creating ways where we can exist
8  together; them not polluting the air.
9    And I don't mind if they make money. We need
10  them. They provide jobs, and they transfer materials,
11  food, everything that we consume. So we cannot live
12  without them. So it's up to you to create this atmosphere
13  where negotiations can be made and we can have the clean
14  air and they can make their money. But we want it now.
15  That's the big thing. So in the future, try to do as many
16  rules and regulations and help us. You are our savours.
17  Thank you.
18    CHAIRPERSON NICHOLS: Thank you.
19    Next?
20    MR. MATA: My name is Nathan, I'm with the East
21  Yard Communities for Environmental Justices. I'm here
22  today because I've been living in Commerce for 15 years
23  now. And I recently discovered -- it's been a year now
that I discovered that living so close to the railyards is very dangerous. And I think that it's -- it was my backyard growing up. I grew up in a house, and the only thing that divided me from the railyards was an eight-foot wall. You can imagine how bad that was.

To me, it feels like, you know, I should have known this for all my life that it's bad, because, I mean, growing up, my friends and family, they were all -- had problems, you know. Some were asthmatic and other respiratory problems. It feels like no one is actually doing anything to protect the people. It feels like everyone is thinking more about the railyards. And it feels like you guys are being cowards to them. You're not doing anything -- or you're not doing everything in your power to protect the people, which is what you're supposed to be doing is protecting us. It feels like it's getting nowhere.

I hope with those new recommendations -- not the staff recommendations, but the ones that were recommended to you by the organizations that you do take these into considerations, because I feel it's very important that the generations that come after us, they don't have to
worry about the air they breathe and they won't have to
live like this in fear of what's going to happen to my
children, what's going to happen to me if I live here for
X amount of time. So I just hope that you make the right
decision in the end.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MS. CLARKE: Hello, Ms. Nichols and Board. I'm
Madeline Clarke, and I live in Commerce. And I live every
day, day in and day out 35, 37 feet from a railroad track
that is constantly being used.

I'm here to represent my neighbors and my parents
who passed away with complications of living there.
Cancer, if you go down the block where I live,
which is cancer alley Aster Avenue, every other house has
an ill person with one form of cancer or another on Aster
Avenue.

Everything I say is going to be repeated, but
it's being repeated over and over again, but I also
brought a bunch of these forms to let you know the people
who could not come. And that is my statement.

And I hope you vote to help some of the people
who have to exist under these situations and environmental
19  problems in our neighborhood. If you help anybody, help
20  the people who are there who have to live under these
21  conditions.
22           And I thank you very much for your time.
23           CHAIRPERSON NICHOLS: Thank you.
24           Sir?
25           MR. EULA: Bob Eula, city of Commerce. Thank you

1  for coming and having us here.
2           I've been living there 64 years. I came when
3  there were Japanese farms behind my home, not the
4  railroad. The railroad is within 10, 15 feet of my back
5  doors.
6           The staff that you have given us if the railroad
7  does this, if the State does this, if the EPA does this,
8  but what is it doing for us?
9           The railroad the first quarter did 615 million;
10  second quarter, 404 million. That was BNFS UP; 362
11  million, 462 million. That's in the billions now.
12           I wonder if they could spend a few pennies and
13  move the containers from my back door that they wake us up
14  at 4:30, 5:00 in the morning, repairing them with air
15  compressors, changing tires, doing everything back there.
If they could move them into the railyards further in
where they used to be, and now they moved them to the
residential section.

Maybe they can spend a few pennies and move the
locomotives where they're load testing where they load the
test on the locomotives that go 15 minutes at a time at
full speed to see if they're capable of pulling a load.
That goes on. Last night, we had a load test, 45 minutes.
So nobody is shutting down engines or anything.
And we can't go along with voluntary with the railroad or

anything. We need things done. And if they can do these
little steps to help our neighborhood -- and I appreciate
Ms. Nichols and some of the Board that came down into my
neighborhood and I spoke to you about those matters.

It is critical not to say "if we can do this" or 
"will we do this," it's to do it.

We used to have a lady come up here several times
in all these meetings, Maggie Holgein. She died of lung
cancer across from my home.

"Why do you stay there, Bob Eula?" Why do I stay
there? Because there's no property tax in the city of
Commerce. Where would I go and not have no property tax,
free bus, free medical, transportation?
Thank you.

CHAIRPERSON NICHOLS: Thank you, Mr. Eula.

Sir.

MR. AGUILAR: My name is Joe Aguilar.

I'm the mayor of the city of Commerce. You've heard my community speak, and I'm here to let you know that myself and the City Council are wholeheartedly behind their concerns.

We're not asking for the railroad to voluntarily do these things. We're asking that you, as a Board, put some mandates on them. Give them some strong regulations that they need to adhere to.

I worked for the city for 42 years. My children grew up there. My grandchildren are now growing up there, and I'm concerned about their welfare also.

I lived in a part that at Bandini Park that's adjacent to the railroad and the 710 freeway.

So I'm probably -- maybe, hopefully not, I won't get sick. Hopefully my children will not get sick. But I'm here to ask for your support in these strong measures.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you, sir.
All right. I believe that is the group from Commerce. And I was next going to try to call on the Excel High School group. I know you've traveled a long way to get here, too.

MS. NATHANIEL: Hello. My name is Terranisha Nathaniel, and I'm from Excel High School in the West Oakland community.

I'm a Junior at Excel High School. My freshman year at Excel High School, I joined a legal environmental justice class. Our class focused on air pollution in the neighborhood of our school. Me and the other students in my legal studies class did an investigation on lead and took samples from our school windowsills inside of our classrooms. The samples were sent to a lab, and the results indicated a high level of lead.

We also took indoor and outdoor samples and continued to find high levels of lead in the air.

We identified a local metal resource recycling company that seems to be the source. We use the media and got in city council officials, fire departments, and police departments to support and enforce the air pollution laws.

This is an ongoing process, and we are very pleased.
with the support that we have received. However, this is just one source of many in my neighborhood.

As we have learned more about air quality issues and its effect on our environment, we have come to realize that the cumulative impact of the pollution caused by rail, trucks, and the port of Oakland is an ongoing problem. The reason that I think this is important is the railyard pollution to be reduced is because it is one of many significant pollution sources in West Oakland.

Our class started with one source, and we are seeing progress. We are hope you are willing to tighten regulations since so many of my classmates and their families live near the railyards. Please help us improve the air we breathe.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MS. WILSON: Hello. My name is Lexus, and I'm here to speak on the health impacts of pollution in my community.

I was a former resident of the West Oakland community. I attend Excel High School, and I see the way the air pollution effects my fellow classmates and family.
In class, my teacher gave me the county asthma rates, and I saw that in the West Oakland community age groups zero to 14, 112 per 10,000 hospital visits are children, but only 18 per 10,000 for the entire state.

My nephew was two when he had a low level lead poison caused by the air pollution in West Oakland. When we moved, he was no longer effected by lead. He is now four.

Railyards and locomotives are another type of air pollution that affects our communities. I don't want anybody else to go through what my nephew went through. So I think we should do what we can to clean up the railyards.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MS. HILL: Hello. My name is Amber Hill. I'm a student at Excel High School in West Oakland, California. I'm also a resident of West Oakland.

My family visits schools and parks near the railyards and my grandmother also lives on 10th Street right near the Oakland railyard. The air pollution is very big problem, because we breathe in unhealthy air constantly.
I have asthma and have visited the hospital once already due to the air pollution from the railyards. My younger brother's fellow classmates also had to live with having asthma and living in the neighbor that has polluted air. The smell is unpleasant. And faster action is needed to ensure that the railyards no longer put our communities at risk.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MS. TOPIA: Good morning. My name is Pamela Topia. I'm a student at Excel High School in West Oakland.

According to the American Lung Association of the State of California, long-term exposure to diesel particles poses the highest cancer of any toxic air contaminant. Cancer is not the only health problem caused by diesel pollution. Exposure to diesel exhaust also causes inflammation in the lungs, which may aggravate chronic respiratory symptoms and increases the frequency or intensity of asthmatics.

Because children's lungs and respiratory systems are still developing, they are more susceptible than
adults to fine particles.

West Oakland asthma hospitalization rates are almost five times higher than the state average for kids ages zero to 14. We're not the only ones being affected by diesel pollution. Richmond is another city with a railyard, and asthma hospitalizations are almost three times higher than the state average. We're counting on you to make sure every kid in California has a chance to live a healthy life.

Thank you.

BOARD MEMBER LOVERIDGE: Mary. Could I -- excuse me.

CHAIRPERSON NICHOLS: Before you leave, just a question here.

BOARD MEMBER LOVERIDGE: Are you a part of a class at Excel, is that how you initially -- are you part a club? What has brought you together as a class?

MS. TOPIA: It is actually the law academy. We're taking the environmental justice class.

BOARD MEMBER LOVERIDGE: So it's a law academy at Excel High School?

MS. TOPIA: Uh-huh.

BOARD MEMBER LOVERIDGE: All right. How did you get down here today?

MS. TOPIA: We wanted to take a part and say
what's happening in our community. We want to advocate for our families and our community about the pollution and about the causes that are affecting our lives.

CHAIRPERSON NICHOLS: I think the question is did you get a ride from someone or --

MS. TOPIA: No. We flew here.

BOARD MEMBER LOVERIDGE: And you've given this message to other groups in Oakland, Bay Area --

MS. TOPIA: We actually -- this is our first project since school started, and we're hoping to do many more projects throughout the year.

BOARD MEMBER LOVERIDGE: Well, most high school students never get to the point of doing this. So my applause to the students at Excel High School.

CHAIRPERSON NICHOLS: We've met with some of your fellow students -- I'm not sure about you personally -- have appeared before us in the past. So I think air pollution organizing in your community has been very effective.

I'll just start calling names from the list, because I don't see any other organized groups that I can put together here. Joy Williams from the Environmental Health Coalition, and then Yolanda Chavez and Maria Yolanda Lopez.

MS. WILLIAMS: Good afternoon. I'm Joy Williams.
I'm here from Environmental Health Coalition in San Diego speaking on behalf of our members living downwind of San Diego's railyard.

The San Diego railyard is a BNSF switch yard immediately upwind of the environmental justice community of Barrio Logan with impacts that extend far into down town and across the bay to Coronado. It's one of the smaller railyards with health risks approaching about 100 cancers per million at the nearest elementary school, but that's very significant. It only seems small in comparison to the really enormous risks at some of the railyards.

BNSF is not committed to any mitigations for this railyard. They're not required by the MOU or EPA. And in their spoken comments at the community meeting on health risk assessment, BNSF made it clear San Diego is not a priority for their voluntary mitigations that they may be willing to make elsewhere in California. So it's very clear that communities downwind of this railyard will not get any further reductions unless they're mandated to by ARB.

I'd like to mention also that the health risk assessment seriously underestimates the background risk for these communities, because it left out the 10th Avenue marine terminal, which is immediately adjacent to the
railyard and about a quarter mile from Perkins Elementary. The health risk assessment included about six tons each of diesel emissions from stationary sources and mobile sources, but it left out the 32 tons from the 10th Avenue marine terminal, which is right, here as you can see on the map. I will give you handouts with this map on it.

So the impacted communities can't wait until BNSF decides to do voluntary reductions. So I join with all those who were here earlier and had to leave in asking for strong enforceable rules to reduce the health impacts from the railyards throughout California.

And thank you for your time.

CHAIRPERSON NICHOLS: Thank you. Thanks for making the trip.

Couple of people who were earlier on the list I skipped I just want to go back and call on to make sure that they're called on if they're here. Maria Becerra, Denise Heredia, Amarilis Mazariegos.

And we're down to number 59, Yolanda Chavez. Maria Yolanda Lopez. Martin Schlageter.

Mr. SCHLAGETER: This is Martin Schlageter with
the Coalition for Clean Air. I know Colleen Callahan is next to me on the list, and she had to leave. And she has submitted from American Lung Association comments in general support of the overwhelming comments we've gotten from the communities members here about the severity of the issue.

I want to acknowledge ARB's health risk assessment here. This, as was noted in the staff report, is the first of its kind item and is a lot of work and extremely important and has been of great help in educating community members and ourselves about the risks that we face. So thank you for that.

It does underscore the seriousness of the situation and the need for action. The action that is prioritized in the recommendations to you today, however, is highly uncertain in its results, not that it couldn't have the results. That's very clear in the documentation. And we certainly support the pursuit of those results. But there's a high degree of uncertainty both in whether this money is going to appear and how it will be spent, how it would be matched up with railroad industry money. For example, your chart indicated a hope for a 50/50 split throughout the chart. But in 2009, it looked more like a
21 25/75 split.
22 So this just is an underscore that we can't stop
23 at the recommendations for subsidy funds that certainly
24 would have a great impact, but need to continue to pursue
25 every means available to you and even pursuing means that

aren't today available to you, but that you seek to
increase your authority over, we encourage that.

What I would like to see is that full suite going
forward with some set of timelines to move this again to
certainly that there's progress advancing, stronger
federal action, more authority from your Board, and
certainly all the authority that you currently have being
used fully on some kind of timeline, including the cargo
handling regulations, which I believe can be tightened up.
And we can start by referring to our 2005 comments on that
matter about how that might be strengthened.

So I appreciate the time to be here in front of
you and encourage strong time-driven and ceaseless action.

Thank you.

CHAIRPERSON NICHOLS: Thank you.
Is Rita Rodarte here?
Chris Carney, you still with us?
MR. CARNEY:  Hi.  Good afternoon.

The Union of Concern Scientists strongly supports efforts to reduce the health risks of exposure to diesel exhaust and applauds the Air Resources Board for the continued commitment.

Even with strong actions this Board has taken over the past decade to control particulate emissions from in-use and new diesel engines, there's still much work to be done as evidenced by the health risk assessments of California's railyards.

ARB staff has carried out an extensive review of the technical options that are available to reduce diesel pollution exposure at rail facilities and identified numerous options from new cleaner locomotive technology, in addition to changes in operational practices that can further reduce exposure. And implementing these emission reduction options will reduce PM, NOx, and in many cases greenhouse gas emissions and are essential to protecting the health of nearby residents. But to ensure these measures are implemented and actually do reduce health risks, there must also be accountability. Enforcement is an essential tool of ensuring emission reductions occur and that health risks are reduced. ARB's nearly weekly
announcements of diesel enforcement actions are a good reminder of how important an enforcement component is to a successful program.

Options to reducing diesel emission at railyards also present a significant opportunity to reduce greenhouse gas emissions. New railyard equipment often emits less carbon emissions than the older equipment being replaced. And electrification of equipment can provide even greater NOx, PM and GHG benefits.

Investing in solutions today that reduce all of these pollutants will help California's meet its air quality and climate change goals. And this especially makes sense when making 20 and 30 year investment in equipment and infrastructure. Solutions that provide immediate relief to the communities directly impacted by rail emissions must not be compromised. But GHG emission reductions should be maximized whenever possible.

So in summary, like many of the groups here, we would ask that ARB follow a regulatory course of action to reduce diesel emissions at railyards that is consistent with ARB's legal authority, and that, in addition, ARB should expand their analysis to quantify in greater detail...
the potential GHG reduction for measures outlined in the technical report.

Cost effective calculations of options which reduce significant greenhouse gas emissions should include not only NOx and PM, but the GHG benefits so that we can protect the public health now with actions that will also pay dividends in the future to help us avoid the worst consequences of climate change.

Thank you very much.

BOARD MEMBER Balmes: Thank you.

Next is Scott Carpenter.

Ms. Weldon: My name is Sarah Weldon. I'm testifying on behalf of Scott Carpenter who had to leave.

He works for RJ Corman Railpower. RJ Corman railpower has hybrid and green goat and multi-engine genset locomotives that are CARB recognized ultra-low emitting and have been instrumental in reducing emissions in California railyards, and especially in the L.A. basin.

There are currently 155 locomotives by RJ Corman in multiple states. In California, they can be found in Roseville, San Joaquin Valley, and the L.A. basin.

RJ Corman will continue to advance technologies and plans to further significantly reduce emissions in the
latter part of 2010 from their genset locomotives from current models.

To this end, RJ Corman urges the continuation of carbon incentive programs, as this allows a wider spread of technology and brings the most advanced technologies to the regions with the greatest needs. An incentive program preserves the competitiveness of the goods movement system, secures continued market for locomotive manufacturers, while reducing emissions effectively to benefit all stakeholders in California.

Thank you, Madam Chair and members of the Board.

BOARD MEMBER BALMES: Thank you.

Next is Kenneth Hofacker.

MR. HOFACKER: Members of the Board, thank you for allowing us to attend today. And I'd like to just spend a couple minutes telling you about some advanced technology.

My name is Ken Hofacker. I work for Progress Rail. It's a Caterpillar company, and we're a relatively new locomotive business. We've spent a lot of years in the rail services business, but now we're part of the Caterpillar family, we can leverage a number of their
technologies. And we've been very pleased to have worked
with your staff.

We're working with members of the Union Pacific
Southwest Research, and we have a product that now will
meet the NOx levels of Tier 4. It will meet the PM levels
of Tier 4. And this locomotives -- there's actually two
and soon be five -- they are in service. And this
technology is moving forward with testing, and this
testing is being done under the close watch of staff and
their participation so that we can validate the product's
performance and we validate its overall emissions
contributions.

And so while you've heard a lot in the last few
hours about Tier 4 and its benefits, we believe we have a
solution that is close to being production intent and can
meet some of the needs of California and your air quality
standards that are very high. And, as you well know,
they're recognized throughout the world.

And what we would like to do is have you to
continue the incentive programs. We think this brings
about innovation. We believe incentives bring about our
ability to move faster.

And we also would like you to avoid any type of
regulatory actions. We believe any type of regulations would only create more roadblocks, slow the process. And more important I believe if you go the regulatory route, you're not going to get the results. I believe railroads will look for lower, easier solutions, less cost effective. And you may see where you will not get the results that you would had you stayed with the incentive programs.

I thank you for your time. We appreciate the opportunity to speak today and look forward to your decision.

BOARD MEMBER BALMES: I'm going to call several names. Nidia Bautista, Lupe Valdez.

MS. BAUTISTA: Good afternoon, members of the Board. Nidia Bautista with the Coalition for Clean Air. I should say welcome to my home town, because I'm a valley native.

I do want to just underscore some of the pollution from trains, just add to the devastating figures that have been shared today.

In terms of regional air quality, the nitrogen oxides from trains represents the second largest source in
the Imperial Valley in the Salton sea air basin. In the
Mojave air basin, it's the third largest source. In the
Sacramento region, it's the fourth largest source. And in
the San Joaquin Valley, it's also the fourth largest
behind ag equipment, trucks, and off-road equipment. And
in the South Coast AQMD, it's one of the top ten in terms
of nitrogen oxide. So clearly there is much to be done
about this source. This is strictly just the trains.
We're not even looking at the full operations of the
railyards.

I want to applaud the work that CARB staff did on
the document. I think the technical work was really good.
And I think the challenge before us today is now how do we
move forward in terms of the policies to actually utilize
that foundation to protect and to also prevent future
harm for communities where there might be growth in
railyard operations.

To that end, I think that's where we would echo
many of the sentiments that have been shared today, that
we are very concerned by the overreliance on incentive
funding as the main strategy. That should be a
complimentary effort. It shouldn't be the primary way
that we are getting these reductions.
And your interest in really developing this coalition I think would be of stakeholders. Clearly, you see there's many stakeholders here who would be interested in engaging in that. But I think one of the first steps for CARB to really develop that faith and that trust would be to make a commitment to some rulemaking and regulations, because I think a coalition of strictly a strategy that's strictly focused on incentives will not get you the benefits of really having all the stakeholders. So I really encourage you to do that.

I hope you exercise your authority.

With the last minute I have left, I do want to see if Ray Pok, who is a representative with Councilwoman Tonia Reyes Uranga's office, is available to comment as well. He wasn't able to add his name to the list. I'm hoping you'll oblige him. Thank you.

MR. POK: Hi. My name is Ray Pok. I'm Chief of staff to Councilwoman Tonia Reyes Uranga in the city of Long Beach.

Thank you for accommodating this.

You've heard a lot from Long Beach representatives. The councilwoman's district is adjacent to the UP ICTF and the proposed SCIG.

Just want to echo Martin's and other people's comments about incorporating strong timelines in some of
these. And the councilwoman also sits on AQMD Board and in strong support of their recommendations.

Our district does include a number of senior and homeless, children's facilities in the area. And we are also in strong support of the advantaged technologies bonnet system.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

After Lupe Valdez, Mark Stehly, and Michael Barr.

MS. VALDEZ: Good afternoon, members of the ARB Board.

My name is Lupe Valdez. I'm here to provide you with an update on community activities.

I serve as Director of Public Affairs for Union Pacific. Previously, I served as the Deputy Executive Officer for the South Coast AQMD, as well as Public Affairs administrator for Metrolink.

Today, I wanted to bring you up to date on new developments.

Since 2005, both railroads combined have convened 32 public meetings to listen to residents' concerns and to answer questions, identify and discuss potential actions to reduce emissions from our operations.

Based on the HRA results and community feedback, UP began evaluating possible actions to further reduce
emissions from our railyards. Let my give you a couple of examples.

We listened to neighbors near our Commerce yard. We have bought 71 ultra-low-emission locomotives which reduce emissions by 85 percent for the South Coast basin and assigned between eight to ten of them to the city of Commerce railyard.

Commerce residents will also benefit from UP's decision to upgrade the engine's powering the transportation refrigeration units, TRUs, on 5,000 refrigerated cars well in advance of the regulatory deadline.

At our Mira Loma automotive distribution facility, residents expressed concern regarding trucks entering and leaving through the Golina gate due to the proximity of the high school. First, UP conducted an engineering study for $250,000 to evaluate the costs of moving the Golina gate. The study found alternative locations would result in slight increase in total emissions. It did not change the DPM isoplex. However, to respond to community concerns, we have diverted the auto transport trucks to another gate.

Second, locomotive emissions have been reduced by 50 percent by replacing the old switchers located at that
Finally, the location of truck maintenance, idling, and parking activity has also been modified to respond to community concerns.

The following quote submitted in a letter to your Board that lives in a home adjacent best sums up the progress.

"Since the ARB and UPRR signed a memorandum of understanding in June of 2005, I have noticed a very significant reduction in idling near my home. The number of calls I have made to the railroad has dropped from an average of more than one per week in early 2005 to a current average of about once every other month. While not perfect, the situations has vastly improved from the way things were."

UP is committed to improve the environmental performance of our locomotive fleet and our railyard operations. We are open to discuss any ideas would residents that will reduce emissions and risk, improve safety, comply with federal standards and be both technically and operationally feasible and cost effective.

We look forward to working with your staff to
continue to bring clean locomotives to California.

CHAIRPERSON NICHOLS: Thank you.

BOARD MEMBER LOVERIDGE: Can I make --

CHAIRPERSON NICHOLS: Yes, you may.

BOARD MEMBER LOVERIDGE: Just want to acknowledge Lupe Valdez's role in southern California of talking to communities and talking to cities and being not only a face but someone who can have important conversations with. And just she actually has been terrific in my judgment in terms of her outreach to communities and to cities. I just want to acknowledge that.

CHAIRPERSON NICHOLS: Thank you.

Mr. Stehly.

MR. STEHLY: Yes, Chair Nichols, Board members.

My name is Mark Stehly. I'm the Assistant Vice President of Environment and Research and Development at BNSF Railway.

I'd like to touch upon a few points. First, the railroads agree CARB's preferred approach should be an incentive program to maximize the efficiency and benefits of rail transportation. The transporting of goods by railroads yields criteria emissions benefits, greenhouse
gas benefits, and freeway congestion benefits.

Rails look forward to working together with CARB staff on the cofunding expectations of both parties.

While the railroads will continue to work with CARB staff and other stakeholders to explore additional reduction opportunities at railyards, it's important to recognize environmental improvements resulting from implementation of 2005 MOU and the completed health risk assessments. Action is taking place.

For example, at San Bernardino at the entry point to our yard that's closest to the highest risk area identified in health risk assessment, BNSF installed a state-of-the-art auto gate processing system that reduces overall amount of time trucks spend entering and leaving the facility. Before the gate went in, it was 9.7 minutes for one to enter and exit. And now it's down to 2.7 minutes, a reduction in time of almost seven minutes. And that's a 72 percent reduction.

It also reduces the overall dwell in the yard by 37 percent. We've instituted shut-down procedures for trucks that are cuing during approach to the yard gate.

We voluntarily installed idle control devices on ten rubber-tired cranes that are currently operating at
There's some draft workshop information about an ARB effort for idle control on yard tractors. We're already instituting that in advance of your rulemaking. Our yard tractors are only -- the worst of them is three years old. We turn them over in a much faster manner than was required under the ARB rules. The trucks are newer -- drayage trucks are newer than we thought them to be when we did the initial HRAs.

The Mayor of San Bernardino talked about the new LNG trucks for JB Hunt. Ninety-seven percent of the locomotives that come into California have idle control devices on them and working. And while the 1998 MOU was mostly about NOx benefits, but there are significant PM benefits as well as some of the older locomotives. We keep them out of the basin, because they won't meet the -- we can't use them to meet the MOU. And we are bringing a hydrogen fuel cell locomotive into southern California next month.
the risk of the yard as being unacceptable. And I guess I'd like you to respond to that.

And second, if you could -- one appreciates the different changes and the work that's being done. But do we have any idea how much difference this is making to the risk to whatever number we're talking about? It seems to me in addition to doing things, we need to understand what consequences it has for the risks to the people who live around there.

MR. STEHLY: The sum total of all the things that we are doing I believe reduces the risk by the end of 2010, the end of next year, will be about a 50 percent 50 percent reduction in diesel PM inventory. That's a 50 percent reduction in risk from the 2005 baseline. So that's while -- we all believe there's more to be done, there has been a lot of progress.

BOARD MEMBER RIORDAN: Let me follow along just a moment. Are you saying that's 50 percent for the San Bernardino yard?

MR. STEHLY: Right.

BOARD MEMBER RIORDAN: Correct. Okay. I just also wanted to ask the idling device -- just remind me -- and it's probably good to put on the record. The idling
devices, they are to achieve what? Just remind me the --

MR. STEHLY: It's a clock that when the

locomotive is not being needed for air conditioning for
the person, not needed air to pump up the brakes on the
train, if the battery is good and it's warm, it will
automatically shut down the engine after 15 minutes.

We are working with GE to change that clock
setting to five minutes. So we're going through the GE
locomotives and changing the clock setting.

They have a maximum number of shut down -- if
they shut down too frequently, then maybe it's
counterproductive. We are going to experiment with that
in order to try to have them shut down more often.

BOARD MEMBER RIORDAN: Thank you.
CHAIRPERSON NICHOLS: Okay. Thanks. Obviously
this has been progress, but it's good to have it noted.

Mike Barr.

MR. BARR: Thank you very much.

AAR's members worked like this with states and
local governments around the country and certainly in
California at every one of the railyards, and some that
haven't been mentioned.
UP and BNSF have already invested a massive amount in complying with regulations, federal and state, and also complying with the MOUs that are groundbreaking and unique for California. And also, as you can hear, a yard by yard throughout California.

As a result, AAR supports continuing the ARB rail partnership in California.

AAR also supports the recommendation of the staff not to regulate locomotives at this point.

And AAR further supports the staff's recommendation to pursue a robust suite of incentives. You saw the list earlier today. It is the largest list we've had. There's quite a few millions of dollars there, and the railroads are in support of that.

However, we don't join in all of the staff's reasoning or recommendations in this report. They're quite a few there. Two in particular I should mention.

AAR cannot support the staff's recommendation to seek changes in federal laws to eliminate federal preemption in California. We can't agree to a patchwork of controls within a state or across the states, and we strongly disagree with some of the statements here today and in the written comments who say that ARB has broad
authority to regulate locomotives, railyards, or rail operations even within limited boundaries.

Secondly, AAR fully supported 2008 U.S. EPA locomotive rulemaking that led to Tier 3 and 4 and enhanced locomotive rebuilding standards for existing locomotives. We believe those EPA standards are rigorous. They're based on sound science, sound economic evaluation. They will bring newer and cleaner technology to markets as soon as feasible and practical. And we therefore cannot support staff's recommendation to change those new EPA federal regulations.

One huge benefit I should mention of a cooperative approach -- and it's been proven out now for 15 years -- is the avoidance of years of legal wrangling and litigation with perhaps very uncertain outcomes.

And so at the end, we -- staff concluded that the regulatory approach would really freeze in place the technology of the past Tier 0. The members are interested in Tier 2 or higher. The program the staff has laid out will achieve that type of focused improvement in technology and further benefits in California.

One thing that the freight railroads cannot do
now is they can't be expected or required to fund or cofund both a regulatory program and an incentive program.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Kirk.

MR. MARCKWALD: Madam Chair, my name is Kirk Marckwald for the California railroad industry.

I'd like to touch on a few items. Member Riordan asked a clarification of reductions. And your staff has identified that overall reductions will -- and risk and emissions will be about 66 percent by 2020. We actually believe that figure will be achieved by 2015.

Secondly, as you've heard, there have been many improvements at the railyards suggested by residents and community members. And I would hope you would urge all of us to continue to talk to each other. We need to find a way other than institutional action to make progress. And there's nothing like success on small items to, in fact, build trust and move forward together. So I think we've made a beginning on that, and we need to do even better in the future.
group of about 30 commenters, some of whom talked today, which include regional and local elected officials, regional air quality management district, business organizations, chambers of commerce, locomotive and pollution control equipment manufacturers all support an incentive pathway as the preferred approach.

Now, some have said, why don't you do the regulatory pathway and the incentive pathway at the same time. And we do not believe such an approach will work. It will sacrifice the potential emission reductions and risk reductions available from innovative technologies Tier 2 and beyond. Such regulations, were you to go that route, will require the railroads to invest in technology of the past, Tier 0. They only have one pot of money available. It will go to satisfy your regulations and, thus, won't be available to cofund the innovative technologies, some of which you heard about today and not be available at the same time they could be in California.

And I will also point out, those innovative technologies have substantial greenhouse gas benefits as well.

There are some details that need to be worked out: What period of time? What are the funding commitments from the railroads? What's the universe of
locomotives that might be repowered? What other changes
need to be made in order to make this particularly
effective? And those should be worked out over the next
year and perhaps coming back to your Board on an annual
basis with updates on progress in that area and progress
on real risk reductions at the railyards would be a
prudent way to proceed.

The railroads' track record of working to this
agency over the past 15 years is steadfast. Whatever they
commit to, they do; be that the '98 MOU, the particulate
research of innovative program, the 2005 MOU. And you can
count on such engagement and commitment going forward as
count well.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

The ringing that was going on up here was the
phone that's underneath the desk. And when I picked it
up, it was one of those recorded messages saying that you
have a credit balance. I don't know who's tracked me down
here.

MR. MARCKWALD: Glad you had a credit balance
rather than a debit.

CHAIRPERSON NICHOLS: I don't know. Okay.

The last witness that was on my list was Barbara
Baird. You are it.
MS. BAIRD: Good afternoon, Madam Chair and Board members. Thank you very much for the opportunity to testify today.

I'd like to commend your staff for their hard work in bringing this matter before the Board and the great amount of research they had done, as well as the many meetings that they had with us in helping to prepare for this meeting.

I'd like to address two issues. One is the '98 MOU issue that has been presented and then secondly the risk of litigation mentioned by Mr. Barr on behalf of the railroads.

The staff report and testimony today shows that the situation requires action by all agencies at local, State, and federal levels.

As Mr. Greenwald had testified earlier, we suggest that the should include regulation by the State Board. Now, the staff presentation was concerned that such regulation would give the railroads the opportunity to terminate the 1998 MOU, but we think that's unlikely.

First, the railroads have spent a decade touting their green credentials based in large part upon this MOU. And without it, it would be much harder to get their proposed expansion projects approved. So what would be their incentive to back off?
Secondly, the MOU as presented by your staff reports has been largely complied with. Why go backwards? And, finally, the failure to achieve and maintain the MOU goals would subject the railroad to further EPA regulation. As Mr. Martinez mentioned, when the railroads signed the MOU, they also signed a statement of principles signed by CARB and EPA which stated that EPA and CARB believe that to fully satisfy their obligations pursuant to EPA's approval of the '94 SIP, the agreement must be accompanied by EPA's commitment to promulgate federal regulations to ensure that the reductions called for in the agreement are credited and achieved.

EPA intend to commit to adopt regulations as necessary that would assure that emission reductions called for in the agreement for the South Coast are achieved. So there is a risk to the railroads in abandoning the MOU.

And just briefly with response to potential litigation, yes, you could get sued. But it's not case that all state and local regulations is preempted by ICTA.

In 2001, the Association of American Railroads filed a brief in a case in the Surface Transportation Board where they convened that the proper test was a balancing test as to whether the local restriction unduly restricts the
carrier from performing operations or unreasonably burdens interstate commerce and that that was a fact-bound question. In fact, the Surface Transportation Board has said in 2008 federal environmental laws, including those that may be implemented or enforced by State and local authorities, typically are not preempted.

Thank you for the opportunity to testify.

CHAIRPERSON NICHOLS: Thank you.

That concludes the list of witnesses. We still have a few people waiving out there.

We have no resolution formally before us today.

This was a report that we had asked our staff for. But I think it’s appropriate that we should give them some direction coming from the Board in any event, because clearly this is an issue which is not simply going to go away of its own accord or resolve itself easily.

And I think it’s -- I was particularly struck -- actually, there was a number of very cogent presentations that were made today. But one of them was the lady from Commerce who said that we stood in the middle between them, the community, and the people who are impacted and the railroad. I thought that was actually a different
formulation than we usually hear. And it caused me to think in a slightly different way about what our role is. Because it's true we are not in a one-way discussion or just a two-way discussion between ourselves and the railroads; that there is not just a public interest, but a specific stakeholder interest in play here.

And I think we all since we first began focusing on this issue again -- at least for me -- was in our Oakland meeting when we heard from the people who live near the port up there about their unique concerns, which we have helped to clarify as a result of the research that we've done and the mapping that we've done and so forth. We have put out the information that makes it very apparent that while there are issues that are statewide in nature, there are also issues that are quite unique to the individual communities that are adjacent to the agglomerations of diesel-related activities, which the railroads are not alone in. The major yards that are the biggest risk areas in our state also are characterized by a lot of truck traffic, ship traffic, et cetera. It's not only the railroads, per se, but it does cause us, I think, to look at the sources in a different way.
And so I know Mayor Loveridge has been wrestling with this issue for a while, and I think he wants to make a proposal. I'm going to start off by calling on him.

BOARD MEMBER LOVERIDGE: Let me just make a series of very quick comments.

One, I think the staff work has been excellent, the technical work, the analysis that we've seen in the presentation earlier this morning.

Second, I'm a strong believer in faster freight and cleaner air. I accept the premises that we all benefit if more freight goes on rail than by truck.

It's also very clear to me, as somebody who's sat here for a while, that we've come a long way. The MOU there was a lot of controversy initially on, it's been followed in good faith and we've come considerable distance.

But at the same time, as you listen and ponder today, it does seem to me that we need to do something more, something more specific. As we focus on what works, we're trying to deal with questions of health and economics.

But as the mayor of Riverside -- I can look out
on the seventh floor I can see within sight line almost
this railroad yard in San Bernardino. And I thought Mayor
Morris' comments today were quite powerful that about the
impacts and his language was not acceptable.

It's clearly true there are many people that bare
responsibility for the land use decisions around that
railroad that not those that are in any way the railroad
companies have made.

But I would like to introduce -- and I think this

is less now a motion; more an idea. And I think I would
like to have Mary or James make comments about this.

But this is a direction again focused on the
high-risk railyards, in particular, the San Bernardino
yard. And I thought again that Pat Morris' call for a
potential template was an important idea.

You can see the motion that is written out before
you has four directions, although I think I at this time
withdraw the fourth one. But I think the most important
is the first, which would be to initiate a risk reduction
rule that would focus on high-risk railyards with
particular direction that the first in any such luck would
be the San Bernardino railyard.

The language here was, "the rule shall require
the railroads to implement the plan, except to the extent that railroad established at this date is preempted from requiring a specific mitigation measure and there's no alternative non-preemptive measure available."

The question about potentially initiating further control rules to try to get at the greatest achievement in emission reductions from sources operating at high risk railyards.

And the third was the opt-in applicability in developing these rules, CARB staff should consider making the rules applicable in an op-ed manner only to those high-risk railyards for which local air districts request applicability and committed to assist in providing the technical legal support needed for plan development and implementation.

Appreciated very much what Mark Stehly identified as action. I think the problem is one probably of monitoring the measurement. But seems to me given what we've heard and given really the progress that's been identified, we ought to know what is happening on these yards and whether or not risks are actually being reduced. I offer this as a kind of concept motion, and I
would ask either Mary or James if they would like to make any comments.

CHAIRPERSON NICHOLS: I think I'm going to actually defer to the staff at this point to respond in terms of how they would -- essentially, these recommendations were the ones that -- they pretty closely track what the South Coast recommended in their testimony. So we've obviously seen this before and had some opportunity to comment on it.

Do you want to reflect how if staff would proceed with this if the Board were to give you some direction? I think the sense is we want to be giving not only the public, but our own staff, a clear picture that we are prepared to use regulatory authority in this area.

We are still very committed to the use of an incentive-based program and to the work that's already been done.

We're not intending to signal -- and actually, except for one or two of the witnesses today, I didn't hear a lot of inflammatory talk about the railroads either. What I heard was people wanting to have the certainty and the enforceability, if you will, of a governmental action plan that they could look to and say
this is what is being done on our behalf as opposed to simply being told we're taking care of it and we'll send you a report, but we won't really let you be part of the solution. So that's kind of the backdrop I think that is coming from.

EXECUTIVE OFFICER GOLDSTENE: Clearly, it's going to be a mix of efforts here that will get us to where we all are trying to go.

I'd like to ask Bob Fletcher and Harold Holmes who have seen Mayor Loveridge's proposal and the South Coast letter to give us their thoughts on the different ideas presented here.

STATIONARY SOURCE DIVISION CHIEF FLETCHER: This is Bob Fletcher.

We certainly as staff have struggled with how to affect the greatest reduction and risk at railyards.

The staff recommendations that we came up reflect a lot of the technical work that we had done that identifies where we see the largest potential for risk reductions.

We've obviously struggled with the regulatory approach. We have looked at the concept of risk reduction
audit and plan measures in the past. And as the South Coast letter identifies that, you know, we would require them to meet certain standards for reductions similar to what we have for the California Hot Spots Program where there is basically a standard in place set by the local district that says you shall make a re-attempt to achieve this. It's a little bit unclear as to what happens when you don't achieve that as to whether you stop operating or what exactly happens there.

But I think in this case in terms of establishing the regulation, we'd have to look at the authority we have for that. We haven't specifically looked at that authority.

And then the question in my mind is, is the Board then giving us direction also to include as part of that risk reduction audit and plan the direction to proceed with the regulation of the locomotives for which we have control over? And those are the -- as we said before, those are the older uncontrolled locomotives. We have a concern that that may regulate us to the lowest tiers, because the railroads would have the potential to simply bring in Tier 0 locomotives and they are not subject to our regulatory authority. And if you recall, we're trying
to get to Tier 3 and Tier 4.

So the federal preemptions would still play a role. And I think in Mayor Loveridge's proposal as well there's that caveat that you do as good as you can for measures that are not preempted.

I think it is a rule that we could write. I think it's physically possible. How we assess what the cost and cost effectiveness of the measures are is a little difficult, because it's going to be railyard-specific in terms of how that's done. And what we actually require in the railyards becomes a little bit problematic because we don't necessarily know what sort of operational measures they would come up with.

CHAIRPERSON NICHOLS: Let me interrupt here just a moment.

Let's focus on number one, because I think it's really the critical piece. It's a risk reduction rule for each and every railyard. We've done the risk assessment. We've asked the railroads to present us with their plans. The plans were, in some instances, vague. In some cases, they've actually done some things that would comport with those plans.
This language says we would require them to put into place the plan and implement it, except to the extent they can show it's specifically preempted and there's no other non-preempted measure available.

Now, obviously there's going to be a discussion around that. That is going to require some serious negotiation.

But this is the kind of thing where I think it gives us an additional tool that we don't really have today, at least that we haven't articulated that we have today, to really focus these activities.

I mean, if every railroad had a Lupe Valdez or equivalent who would go around to the communities and figure out what needed to be done and had the power within the organization to then actually get them to make some of those changes, we'd probably be facing a different situation today, because they are different. These railyards are different from each other. We know they don't all need exactly the same thing.

But on the other hand, we also, I think, are facing a situation where people who live in these areas -- and particularly those, I must say, who they didn't move there knowing there was a railyard there. The people in Commerce were there before the railyard expanded to the
extent it has I think deserve something more specific and concrete.

The San Bernardino situation may be a little bit different.

But can we talk about, could we do this? Can we get there?

BOARD MEMBER LOVERIDGE: I guess the other thing, this was for only high risk. This wasn't for all 18.

CHAIRPERSON NICHOLS: You want to start with the biggest ones.

BOARD MEMBER BERG: What is the definition of the high risk, just so that I have some kind of --

CHAIRPERSON NICHOLS: There's an actual ranking out there.

MR. HOLMES: There is a ranking and we use two metrics. One is the maximum individual cancer risk, which is the highest spot of exposure adjacent to the railyard. And also we look at the broader exposure to the individuals with greater than ten in a million. If you're looking at those two metrics -- and that's somewhat of a simplification, but probably the two most powerful metrics. Then there will probably be three sets of yards that clearly are above 500 a million for the maximum individual cancer risk and effect more than 600,000 people at greater than ten in a million. That would be BNSF San
Bernardino would be the four Commerce railyards and would be UP ICTF, which is near the port.

BOARD MEMBER RIORDAN: Madam Chair, having had a bit of a history with issues at the rail, I'd like to take a little different approach, because I do think there is something to be said for incentives and working together, because I obviously have been a party to the negotiated memorandums of understanding. And I think we've had some real success.

CHAIRPERSON NICHOLS: I think we have.

BOARD MEMBER RIORDAN: And I think we have had a good working relationship with most of the stakeholders, including the communities, because certainly the communities have participated.

There are people -- and I'm convinced there will always be people who are unsatisfied. But by and large, I think there has been progress.

I'm going to suggest maybe instead of initiating a rule that we simply look at taking San Bernardino as the prime example and say to the railroad, "Would you participate with us in a risk reduction plan," and then let's carry it out. And see if that approach works. It's worked in the past. I don't have any reason to believe it wouldn't work in the future.

I don't know if the folks that are here in the
room could commit to that at the moment. But I'd sure
like to give it a try and see if we couldn't use it as a
really good example, and not get caught up in the issues
of who has jurisdiction and whether or not we're going to
run into a court case. Just think we ought to give it a
try.

It takes time. There's no question it takes
time. But in your reference to the lady -- and I, too,
appreciated her conversation -- there is a balance here of
recognition of we need our railroads. We need the
operation in these railroads. We need the jobs in these
railroads. It moves our goods. And by golly, they're
very, very important to us.

At the same time, we have to be sensitive to the
neighborhoods. In some cases, the neighbors and the
railroads grew up together. And in the case of San
Bernardino, that's exactly what happened, because people
used to walk to work. And they came home for lunch, and
they walked back afterwards. This was a partnership. The
town grew right around that railroad.

So I think it's worth a try. I just happen to be
an optimist about that. I see the glass is half full and
not half empty.
BOARD MEMBER BALMES: Actually wanted to take the opportunity to support Mayor Loveridge's concept here. In particular, I think we need to -- we may need to start at San Bernardino, if that's number one on the list, but I think there are other yards that also high risk that communities live around. So I wouldn't be satisfied with just a test case of San Bernardino.

And I feel as my role as the physician member of the Board I have to point out something that I think is obvious to everyone, but needs to be on the record, the local impacts of diesel emissions are quite serious. We're talking about cancer. We're talking about asthma. And living right adjacent to these facilities is harmful to one's health. It's that simple. So we have to take action that's effective at reducing local impacts.

I appreciate as usual the Board staff has done an incredible job with the technical evaluation of options. And I understand very much why they made the recommendations they did. It's really to get the biggest bang for the buck, if you will. And that's an important consideration. But I think we have to be mindful of the...
And I guess I would say that while I'm very supportive of the incentive approach, I think it's the only way we're going to get improved locomotives. I was pretty struck by how limited the resources are now that are available for that incentive plan. I don't think we are going to get very far towards the billions of dollars that are needed with what we have in place now. I mean, hopefully the economy will turn around and we'll have greater resources available to the State to provide public side of the incentive funds. But, you know, I think it's a wish and a prayer right now we're going to end up having enough to do this with just the incentive program.

CHAIRPERSON NICHOLS: Ron, you had your hand up next I think.

BOARD MEMBER LOVERIDGE: Just two points. One, I was just looking at the handout that Pat Morris had. He had down at the bottom after he talking
what's he done with the cooperation between BNSF and the South Coast with JB Hunt and partnership with Loma Linda, it says city of San Bernardino and its partners are seeking over 24 million funding to help -- being sought to help reduce air pollution, improve air quality in the city of San Bernardino. I'm not sure how they arrived at 24 million, but I think this notion it's not simply a railroad; it's a lot of stakeholders. And one of the things that Pat Morris wanted was help. He said I need help doing something about this.

But I would ask -- follow up Barbara Riordan if Mark Stehly would respond to the question that was asked, I would be interested in Mark's comment.

MR. STEHLY: In musing about listening to you talk, I think Barbara's approach has a lot of merit. I'm speaking with my upper management on the issues about this in the ports on Thursday with our Executive VP of Operations. And I certainly can take up it with them and we can get a very early answer on how we'd be interested -- how interested we are in doing it.

You already regulate transportation refrigeration units, drayage trucks to our facilities, our yard tractors, and our cranes. The only thing that's not under
regulation that really emits are the switch engines and
the line haul locomotives. And under the '98 MOU for
southern California, we will not have uncontrolled
locomotives or Tier 0 locomotives in the basin. So we
come right down to Tier 1 and Tier 2 locomotives. So you
already regulate almost everything there, except for what
EPA regulates as a mobile source.

BOARD MEMBER LOVERIDGE: Mary.

CHAIRPERSON NICHOLS: I'd like to respectfully
disagree with this. I mean, we do regulate pieces of
equipment. But that's where we're very good technically.

But what we haven't done is in a focused manner
with stakeholders, like local government, taken a look at
the overall operation of the yards. We heard a lot of
comments about which lines people are using through the
community, time of day, you know, the fence line, the
activities that could be conducted at the fence line
versus further inside the property.

I don't want to get in there and run a railyard.

I wasn't hired for that. I'm not trained for it.

But I think there is a concept here of looking at
a large source that's characterized by a lot of activities
which have individual regulations associated with them and
trying to come up with a plan that will reduce the overall
level of risk to the most immediately affected community.
That's really what we're talking about here.

Because I agree with you. We do have lots of
regulations. And I don't want to be put into a box of
saying that there's something wrong with what's going on
up until now, because I don't think there is. I think
we've been proceeding in a very systematic way. But I
think we've been proceeding in a narrow-minded way and not
looking as holistically as we should have or could have at
the problem and what the real impact on the communities
is.

So I guess I'm not going to be satisfied with
just an invitation to come talk. That's not going, to me,
reflect what an agency like this should be doing.

Now, obviously when ARB issues an invitation,
maybe it has a little more oomph behind it than some -- or
other kind of non-governmental organization does it. But
I think we need to at least be prepared to indicate that,
you know, we will use the authorities that we have if
needed and as needed to actually make these plans work, or
we will be back here years from now with the children of
the people that were here testifying saying, you know, where were you and what did you get accomplished? So that's my concern, if we don't send that message.

And I realize there's been a lot of community organizing done around these issues. I'm sure everybody who was here saw the story in yesterday's Los Angeles Times about the railyard issues and how people have come together around them. And, you know, that doesn't mean that they all the -- every illness that anybody attributes to the living near a railyard is caused by railroads. I think we can stipulate to that.

But we do know from research that we are, ourselves, have done that these are the toxic hot spots that we have in our state and that we're not doing all that could conceivably be done to address it.

So it's a delicate balance. I understand. We've tried very hard to forge a forthright and honorable working relationship with the railroads. And I think they have behaved in an honorable way. So I'm really trying hard not to throw out the baby with the bath water, for lack of a better clique.

But at the same time, I feel like we've been
hearing a steady drum beat of concern here and we haven't
been able to come up with anything up until now, other
than some good initiatives, but they're based on our sort
of traditional cost benefit, you know, dollars per pound
of conventional air pollutants. And we haven't
necessarily been exercising all of our creativity to the
extent that's appropriate given the size of the problem.
I see nodding, but not -- I welcome some
comments. We can still have some discussion here. Yes.
BOARD MEMBER BERG: I think the magnitude of the
problem, after visiting the UP yard yesterday and being
very involved with at least the East Yard Group and
attending several workshops, community workshops on the
rail issue, the question that I keep coming up in my mind
is if we were able to do everything on everybody's wish
list, is it possible for people to live across 30 feet
from a railyard cohesively, being there wouldn't be any

noise, there wouldn't be any pollution, is it that a
possible goal? Are they incompatible to begin with?
And I'm not saying that doesn't mean we didn't do
anything. I'm just saying there should be some realistic
expectations that I was amazed at the five-foot cement
block wall, that if I've gotten out of that truck, I could
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have looked over into those people's yards. It's an untenable situation. And so given that and the fact that the four measures on these lists, all of which I agree need to be addressed, over what time frame and over what type of investment that is going to be needed to make. So what I don't want to do is mislead the communities that we're going to be able to make a significant difference in a short period of time, because I'm a half-full glass kind of girl, but I just don't see that that is very realistic. And I do think we need to tackle it. I'm for that. I'm for the risk reduction. I'm for getting the railroads to the table. I'm for us exercising all the authority we have. But this is a large problem, and I do think that one of the areas where people are very disappointed is when we give false expectations about what truly can be done and the difference that can be made. The load testing, I think that's probably a federal requirement. And to pull these cars and those types of things have to be done. And I don't think we are in a position to be able to suggest to the railroad how,
like you said, they're going to run their business. If we're in a position to be able to set performance standards for clean air, absolutely. By how is that going to control the noise? How is that going to control the amount of cars that go up and down that line? I'm not sure about that.

CHAIRPERSON NICHOLS: Well, I think that's a good point. There are clearly other agencies that have to be involved, including local government, as well as EPA, if we're going to have an effective comprehensive approach.

I think the splintering of authority has been a problem. And certainly there was a period of time when the Air Quality Management District and ARB were at loggerheads, which was a lost opportunity for sure. So it's nice to see that we're coming back from that and have an opportunity to move forward here.

I think we need to have a focus on this issue that goes beyond just the rulemaking people at EPA -- at ARB. I think it needs to be a team approach that includes people from our legal division and people from our group that works on environmental impact assessments.

I'm not only hopeful -- I'm convinced that freight traffic is going to come roaring back and that the
railroads are going to do very well, because the nation
needs to have more goods going by rail. So this is not
a -- that's not even an option as far as I'm concerned.
The question is, as that begins to happen again,
can we direct some of the resources that are going to be
coming available and some of the new projects that are
going to be coming forward to clean up this last bit, not
so small last bit of impacted area in our state?

BOARD MEMBER LOVERIDGE: Well, I was trying to
emphasize the high risk, which is not everything. And
high risk is rather specific, rather than improve the
quality of life of everybody who lives around a railyard.
That was not the intent of the motion.

Can I ask one question? I'm not skilled with the
history of this, but has CARB looked at in the past any
kind of risk reduction kind of rules and what happened to
those looks?

STATIONARY SOURCE DIVISION CHIEF FLETCHER: Well,
we have not looked at rules specifically for risk
reduction audit and plan. We have a lot of history with
the Hot Spots Program where essentially the plans were
laid out in statute. But we have not looked specifically
at a rule for this type of source category in the past.

CHAIRPERSON NICHOLS: I see Ellen with her head
down over there. She's been looking at the legal issues here for a while. You want to weigh in on this?

CHIEF COUNSEL PETER: I think that there's different concepts that have come up through this discussion of the Board. And I think that one way to approach it is to focus on the risk reduction regulations.

If we look at it from a performance type of view and then try to move in a collaborative manner forward with the railroads and community groups to not run the railroads, but the basically look at the concept, it's kind of a version of the indirect sources kind of view of -- or hot spots kind of how to go forward. We can work together with the local air districts and land use groups and basically set a measurable level and a deadline and then move forward in a collaborative way. And then base the recognition and the direction from the Board that if it doesn't seem to be working in a fairly short period of time, then we go back to an initiating rulemaking.

The question is how do we put the -- what the time line is, what kind of direction it would be. I think a combination of the rule this risk rule approach and using it with indirect sources and then linking it to incentives. If we get a burst of incentive funds from U.S. EPA next week when we have an opportunity to make a pitch to the U.S. EPA people, that would give us a certain
amount of information.

But I also don't think that we can continue to
discuss it. We need to have like a plan forward,
timelines, and move forward with the regulatory backdrop.

So in terms of what to do here, I don't think
we -- you could do a motion. You could do direction to
the staff. You could give us concepts to look at.

But I think we do have a few different tools. I
was delighted to hear the South Coast management of
indirect sources earlier today when Peter Greenwald
testified, because I think that's something that kind of
is along the same kind of lines.

CHAIRPERSON NICHOLS: We want to look at
incentives.

We want to look at the South Coast authority.
We want to look at our own authorities in a more
focused way.

We want to invite the railroads to join with us
to have a discussion based at least initially I think on
the highest priority, most hazardous sites first, which
definitely puts San Bernardino at the top of the list and
perhaps use that as a template.

And we want to make it clear that regulation is
not just something never to be discussed, but that it, in
fact, we're going to be developing an approach to it as
part of the background of the whole program really. I've never found it to be inconsistent in any other industry that I've ever worked with to have a regulatory framework and then have voluntary discussions. It's worked in every other industry in every other type of rulemaking we've been involved in that you can suspend the rules; you can decide to put them in abeyance. But if you don't have them, you don't really have very much to make sure that everybody keeps the attention focused on making the progress that needs to be made.

So I guess the way I would frame it is with those elements, I'd like to see staff come back to us within a pretty short space of time, like 120 days maximum, with a specific plan. And I'd like there to have been some work done in that period in terms of fleshing out these ideas and having some conversations with the people that would be our necessary partners in making this happen.

Is that sufficient guidance for you to know what to do?

EXECUTIVE OFFICER GOLDSTENE: Yes, I think it is.

CHAIRPERSON NICHOLS: Do I see enough heads nodding that I can say this is our direction?

All right. Then that's it.
EXECUTIVE OFFICER GOLDSTENE: Thank you.

CHAIRPERSON NICHOLS: You're very welcome. I understand that we have nobody signed up for just the open public comment period. So with that, we will be adjourned. Thank everybody.

(Thereupon the California Air Resources Board adjourned at 3:06 p.m.)
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, 2009.