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

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

MONDAY, OCTOBER 12, 2009
1:00 P.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

STAFF

Mr. James Goldstene, Executive Officer

Mr. Paul Jacobs, Chief, Mobile Source Enforcement Branch

Mr. Kirk Oliver, Senior Staff Counsel

Mr. James Ryder, Chief, Enforcement Division

Mr. Mark Stover, Chief, Stationary Source Enforcement Branch

ALSO PRESENT

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

Mr. Will Barrett, American Lung Association

Mr. Dennis Beck, CEC

Mr. Ray Biasotti, T&D Transport

Mr. Todd Bloomstine, Southern California Contractors Association

Ms. Jacquee Castain, Elmhurst Blight Committee

Mr. Stephen Clark, Stevedoring Services of America

Mr. Bill Davis, SCCA

Mr. John Dunlap, American Home Furnishing

Mr. Tovah Ealey, Energy Commission

Mr. Sean Edgar, Clean Fleets Coalition

Mr. Kit Enger, Sand Car Builders Association

Mr. John Fentis, city of Long Beach

Mr. Randal Friedman, U.S. Navy
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Guerry, Californians for Enforcement Reform and Transparency

Mr. Allan Lind, CCEEB

Mr. Charles Marlow, City of Los Angeles

Mr. Sierra Martinez, NRDC

Mr. Jim Mattesich, Greenburg Traurig

Mr. Clayton Miller, CIAQC

Ms. Maxine Oliver-Benson, Elmhurst Blight Committee

Mr. Nick Pheifer, Granite Construction, Inc.

Mr. John Paliwoda, California Motorcycle Dealers Association

Ms. Betty Plowman, California Dump Truck Owners Association

Mr. Matthew Schrap, CTA

Ms. Mitzi Shpak, Action Now

Ms. Robina Suwol, California Safe Schools

Mr. Tim Tutt, SMUD

Mr. Chuck White, Waste Management

Ms. Pamela Williams, California Retailers Association

Mr. Bob Wyman, California Climate Coalition
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EXECUTIVE OFFICER GOLDSTENE: Good afternoon, everyone.

I'm James Goldstene, the Executive Officer of the Air Resources Board.

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

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

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

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

ARB CHAIRPERSON NICHOLS: Thank you.

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

I can't be here for the entire workshop, but I
will be here for a little bit of it anyway.

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

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

I have believed ever since I first got involved in regulations in the environmental field that without an enforcement program that parallels the thinking of the regulators that regulations in and of themselves aren't worth very much. And while we try to craft regulations that the affected parties will know about, understand, and be able to follow logically without undue burden, we also know that in order for there to be a system of law in which people have confidence that those who are subject to regulations have to also know that those who flout the law -- I guess is the correct word -- who are deliberate
violators or who ignore the law will in some way be found, identified, and receive penalties. That's kind of one of the fundamental things that you learn in the very beginning of law school and it I think is applicable throughout our society, that where we do go to a regulatory approach or we feel like we have to have regulations, then there's also a need for the enforcement program to be very much integral to the regulatory system itself.

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

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

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

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

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

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

Thank you.

(Applause)

SENIOR STAFF COUNSEL OLIVER: Well, thank you, Mary and James, for kicking off the workshop today. And I am Kirk Oliver. I'm an attorney with our legal office at the Air Resources Board. And I'm involved in our Enforcement Program. So I get the privilege of doing the initial presentation for you here today that we've put together to hopefully explain in the broad contours how we do enforcement at ARB. And the rest of the time, we're going to be listening to the comments that you give us.

We think this is a very propitious time to be having this workshop, especially given the fact that the
Board is enacting constantly more and more regulations for us to go out in the field and enforce. And that being so, we need your help in telling us what works and what doesn't. And so we very much appreciate the time you've taken out of your schedule to come here today and give us the benefit of your wisdom on these subjects.

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

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

So we're going to take you from the beginning and what our mission statement is through the end and show you some of the facts and figures about the most recent time period that we have, the calendar year 2008, which is a
fairly typical year for us and the numbers of cases and
the subject matter areas in which they arose. So to get
between there and here, we have a brief slide show for
you.

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

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

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

So without further ado, welcome to the
Enforcement Program overview.
(Thereupon an overhead presentation was presented as follows.)

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

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

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

How to prioritize the actions. As I mentioned, we have an ever-growing list of regulations to enforce
here. And the regulations that are on the books aren't
going anywhere either. So it's not like we acquire new
ones and other ones drop off the list. The burden grows.
And so we are required to make some decisions about where
to spend our resources and what areas to concentrate on.
So we would like your help in also formulating some ways
to go about doing this.

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

We'd like to ensure consistent enforcement
results. And we try to do that by applying the criteria
that I'll go into with you that the law specifies for us
to consider in setting the penalty. We try to apply those
criteria evenly across the board.
And by now, we've been at this business of enforcing our rules and regulations for quite some time. And we've developed a history of settlements, and these are published and available for your review. We have a compendium that we publish every year that goes into them in great detail, so people are generally aware of when we talk to them what similar violations have resulted in similar circumstances throughout time.

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

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

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

We strive to serve the environmental justice communities in California. And we do targeted enforcement
activity out at those communities and report it in that enforcement report. But I'm sure that we can do more. And I'm sure that we can do a better job of it. So we look forward to hearing your suggestions and how we might go about doing that.

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

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

And we don't stop there. After the regulations have been adopted, we're constantly fine tuning them. And we step out of the role of being regulation writers and do outreach to segments of the community and the regulated community that need that type of outreach.
One big part of our operation in the enforcement division is, as you'll see, a compliance assistance program. So after the regulations have been written, the initial public outreach has occurred, the public outreach from the reg writers then goes to the implementation phase, and then cases begin to be referred to the enforcement division. Before that ever happens, we've developed state-of-the-art courses for people to come to and take, over the web, or free of charge here, materials, many of which we have in our booth outside for you to use because we would like people to have the ability to voluntarily comply with our regs. So we spend an awful lot of time and a great deal of resources in providing them with the knowledge they need to do that.

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

Now, that's a violation. That doesn't
predetermine a particular penalty. And we'll go through how we set the penalty once we find a violation later in the presentation.

We've also had suggested for our use model penalty policies, and we're interested in looking at any of those that you might have for our consideration. We would like to finally increase -- find some ways to increase opportunities for public access and assist this outreach, compliance assistance, and training aspect that we have to our operations.

So that's the purpose of why we're here. We'll look forward to working with you on furthering these important goals.

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SENIOR STAFF COUNSEL OLIVER: But we do have a mission statement with the Enforcement Program, and it is this: "That the Enforcement Division seeks to protect the environment and public health and provide safe, clean air to all Californians by reducing emissions of air contaminants through the fair, consistent, and comprehensive enforcement of California's air pollution laws and by providing training and compliance assistance."

Trying to roll all of our interests into one there.

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SENIOR STAFF COUNSEL OLIVER: What are our goals
of the program? Well, like I said, to obtain immediate compliance. When we find a violation, that's the absolute first thing that we look for is to get the party into compliance, because that is the foremost fundamental goal of all these regulations. And all the penalties that have been enacted to enforce them is to obtain compliance.

We then seek to achieve a level playing field. We don't want people disadvantaged by having complied with our laws, taken the time and gone to the expense of doing that while other people don't. And for the people that don't, we have to level the field of play from an economic and competitive point of view by taking penalties that remove that type of an incentive to do the violation.

And, finally, we have to set penalties and conduct our entire program in a way that adequately deters people from engaging in violative behavior in the first place.

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SENIOR STAFF COUNSEL OLIVER: Obtaining immediate compliance, especially important in the air pollution field, because there's no technological way available to clean up the air. Once emissions have occurred, people get exposed to them. And that's why we focus so heavily on outreach, deterring violations, assisting compliance, and obtaining immediate compliance when violations occur,
especially because these air pollution standards are not
some vague ideal that have been developed in the
laboratory here. But they're based instead on reams and
reams of health studies about what happens to people when
they are exposed to different types of air contaminates.
So it's extremely important to get immediate compliance.
People's health is at stake here, and we treat it seriously
as if it were.

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SENIOR STAFF COUNSEL OLIVER: In achieving the
level playing field, again we're trying to vindicate and
create fairness for people who have complied.
Consistent enforcement is a key to the integrity
of our program. We seek similar penalties for similar
violations.
And we take financial hardship into account. In
setting a penalty case law as well as the Health and
Safety Code allows us to take into account people's
financial condition. And that is one of the ways that
we're able to legitimately diverge from the similar
penalties for similar violations regime that we follow.
If you do have financial hardship, we work very closely
with you to determine its extent. And we have economic
experts on staff who we have available to analyze data
that you provide us and allow us to fine tune the penalty,
given your economic position.

And from time to time, during the course of our running of this program, the economy has fluctuated. And as you might imagine now with the economy the way it is, we are doing an awful lot of economic analysis of people's financial conditions. But it's part of the way we go about doing things and because we take financial hardship into account.

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SENIOR STAFF COUNSEL OLIVER: Creating deterrence. It's fairly obvious. How did we do that though?

We conduct frequent unannounced inspections. We don't tell people we're coming out, generally. And we assess appropriate penalties when we do find violation. That part is pretty simple.

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SENIOR STAFF COUNSEL OLIVER: What are penalties supposed to do?

We've taken a look at the statutes, the case law here. We're supposed to come up with an amount sufficient to achieve compliance, deter repeat violations, deter violations by other entities, offset economic benefit, level the playing field, and to account for human harm or the environment where it occurs in a violation.
SENIOR STAFF COUNSEL OLIVER: There are a number of statutes that establish the penalties that we enforce here and we seek when we find violations. And they require us, as do the cases that study and resolve issues regarding civil penalties, they basically require us to take into account all relevant circumstances, just like anyone in our position would do. But they enumerate certain ones, and we've taken the liberty of listing them here for you:

1. The extent of the harm.
2. The nature and persistence of the violation.
3. The length of time the violation extends over.
4. The frequency of past violations.
5. Preventative efforts that were taken by the violator.
6. The record of maintenance at the facility.
7. Innovative nature of the equipment involved, whether it's a proven or unproven technology.
8. Any mitigation efforts taken on behalf of the violator.
9. The violator's cooperation during the investigation.
10. And financial hardship; there it is again.

That's one of the enumerated criteria. The Health and
Safety Code lists when it tells us what we're supposed to take into account when we look at civil penalties.

And mind you, these statutes that set the civil penalties are very prescriptive. They set particular amounts. They don't set minimum amounts. Depending on the different program or the different regulation that's involved in the violation, the statutes dictate what the maximum penalties are. Plain and simple.

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SENIOR STAFF COUNSEL OLIVER: We've talked about strict liability. Again, we're in the main regulating ongoing business activity. And these aren't the kinds of things that people do with a wicked mind or evil heart. So in this area, the Legislature has allowed the finding of a violation under the theory of strict liability. That means if a violation has occurred and you or your entity committed it, you're in violation. And your lack of negligence or lack of intent or recklessness does not determine whether or not you committed a violation. All of those factors, however, are determinative of the penalty that is appropriate for you.

So the art in doing what we do is finding the strict liability violations and crafting a proper penalty for doing it.

And as you'll see from some of these numbers at
the end of the presentation, numbers that are pretty
typical for the last eight, nine, or ten years of our
program, we've gotten fairly adept at coming up with
penalties that people agree to with us and don't litigate
either in a court context or any kind of administrative
context either.

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

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

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

People have records that aren't the greatest
recordkeeping systems. We go to great extremes to help.
And we have some people that are very, very good at
reading this kind of data and working with you and
generating the kind of data that we need to make a fair
assessment, because that ultimately is the name of the
game for us, coming up with a fair assessment that
vindicates all of these rights that we're charged with
protecting and is fair to you. So we'll go the extra mile
and do that. And because we do, we haven't found the need
to submit our disputes to a neutral third party, whether
they be a judge or an administrative law judge in a
different context.

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

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

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SENIOR STAFF COUNSEL OLIVER: We'd like to talk
about the structure of our program. And it's broken down
into the two big subject area matters that we enforce,
both mobile and stationary source.
Under mobile source, you have heavy-duty diesel and general mobile course cases.
And under stationary source enforcement, we regulate such things as fuels, consumer products. We're developing the program to enforce our greenhouse gas regulations. And we have a specific investigations unit that also assists air pollution control districts.
And as I mentioned before, as just as large a part of our organization is our training and compliance assistance group.

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

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SENIOR STAFF COUNSEL OLIVER: No need.

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SENIOR STAFF COUNSEL OLIVER: The fuels enforcement from the every gallon of gasoline that's refined at California refineries has to meet our standards, we have an active sampling program to determine if they do or not. And we also have a mobile fuels laboratory, a big bus that's been outfitted and goes from the refineries, can take samples and analyze them on the road.
senior staff counsel oliver: consumer products; we regulate a great number of different things that you use and we all use in our personal lives from household cleaning products, personal care, automotive chemicals, household pesticides, aerosol coatings, and portable fuel containers, and we're --

senior staff counsel oliver: -- developing the greenhouse gas program.

senior staff counsel oliver: special investigations pretty much speaks for themselves, but this is where our environmental justice activities also come up within this part of our organization.

senior staff counsel oliver: and the compliance and assistance.

senior staff counsel oliver: we publish and take a great deal of time publishing the results of these enforcement actions so people are aware of what we do and are aware of the consequences of the violations that we find, to inform the public at large that we're out here doing our job, to inform the regulated community of that
too, and to inform potential violators.

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

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

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

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

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

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

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SENIOR STAFF COUNSEL OLIVER: So it's very important for us to hear from you both today and
afterwards. And believe me, people know where to find us.

And we're out in the public eye quite a bit. This is not
anything new for us to be doing. We usually do it in a
context of targeting particular new regulations that come
on board. We do an awful lot of public speaking,
appearing at your trade associations.

And if you haven't had one of our speakers yet,
please feel free to contact us. We appear free of charge.
And usually they don't even have to feed us; right?

Anyhow, we take a lot of our time, both evening
and otherwise, coming out and doing this kind of speaking.
So please contact us.

And here's our general phone numbers. There is a
complaint hotline. We get a lot of our cases through
complaints either to this hotline and anonymous e-mails,
anonymous letters. We get a lot of referrals that way.
We got a lot of our business that way. And so we have
actually we developed a website for people to file those
complaints on line. And there's the website for our
enforcement main page.

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SENIOR STAFF COUNSEL OLIVER: We have a number of
people that are viewing us over the web. And if you would
like to make a comment during this workshop, please use
this address. It's auditorium@calepa.ca.gov.
And with that, I would like to start calling people down for testimony. Thank you.

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

So anyhow --

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

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

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

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

After the first ten speakers, we're going to take
questions from the webcast. After the second ten
speakers, we'll take any questions that have come in from
the webcast at that point.

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

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

So Kit Enger.

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

MS. MILLER: Who would that be?

MR. ENGER: CERT.

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

Next speaker is Nick Pheifer.

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

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

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

I see this as being a win-win. It's going to open up industry to CARB. You're going to get in front of the companies who are trying to be proactive, who are
making an honest effort to comply with the rules. And you'll be able to give those companies an opportunity to comply with the somewhat complicated aspects of these rules. All the rules have fairly extensive administrative requirements. And it would allow companies to have a chance to ensure that they're doing the right thing on the administrative end so that they can avoid some of the penalties for more the paperwork end of it.

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

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

Okay. Matt Schrap.

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

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

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

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

Will all future workshops be handled in this way where we have a formal presentation and there is a court reporter, or is this kid of just a one-off workshop?
SENIOR STAFF COUNSEL OLIVER: We have no definite plans on how to proceed from here, except that we will be reporting the results of the workshop to our management and evaluating all the comments that we get.

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

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

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

But, again, appreciate the opportunity to come up. And, you know, from our perspective, fair, consistent, and sustainable enforcement or our three
favorite words or two favorite words are level playing field here in California. Especially in the trucking industry, we're competing on a national basis with many fleets from out of state doing here business here. It's very important that all actors are consistently enforced. And we, as California Trucking Association, are more than willing to assist enforcement staff in getting out the word.

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Thank you, Matt.

Paul Jacobs, Chief of Mobile Source Enforcement. Enforcement Division wide, we have roughly about 125 staff, of which in the Mobile Source Enforcement side about 60 full-time staff and a handful of students. And in terms of those that are deployed to the field at any given time, any of the enforcement division staff full-time that are can be employed to the field.
In terms of specific ones assigned to diesel, it's near about 50 enforcement staff.

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

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

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

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

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS: No. They track their own statistics. They do have express authority under statute to write tickets for
various violations, be it tampering or smoke and the like. And they report those in their own enforcement reporting.

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

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

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

Companion to that is our community college
training program, longstanding California Council on Diesel Education and Technology that's been in effect since 1992. And we're expanding the scope of that curriculum as well.

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

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

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

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

I think that one point that you made especially with the TRAC, the recent Truck Rule Advisory Committee, I think it would be -- behoove staff to be involved in that, someone from the Enforcement staff to be directly involved with TRAC. I think it's important to hear some of the
issues that will be popping up. And especially the enforcement of these on-road regulations is going to be interesting, to say the least.

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

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

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

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:
Just real quick on the Mexican trucking issue, we do have ongoing meetings with the Mexican Trucking Association.
And we host with the California Highway Patrol in the border region these industry compliance days. And we fully plan to continue those. And we'll continue our very aggressive outreach efforts with our friends south of the border.

MR. MILLER: Thank you.

Next up is Stephen Clark.

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

Next up is Stephen Clark.

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

We're probably one of -- I feel one of the most regulated industries out there. We've got the CAP, the WRAP, the ILSI, the cargo handling rule. These rules have been given to us, which we are complying with 100 percent.

But you don't have EPA waivers on the LSI or the cargo handling rule. So I have to tell my management we need to spend millions of dollars in an economy that's down 30 percent or wait until you get the EPA waiver, which means I've got 30 days. So which foot do I shoot myself in?

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

In terms of enforcement and the EPA waivers, for the on-road program, we do have the waivers in effect. And
those just carry over as we add additional sources.

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

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Well, we give you a little more than 30 days. We adopt these rules through the public process and provide more than adequate lead time for compliance, and we have to go out and enforce them so we have an equitable level playing field.

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

MR. CLARK: Thank you.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Thank you.

MS. MILLER: Next up, Bill Guerry. And Mr. Enger
has seeded his time to you, so you have up to 20 minutes.

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

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

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

And I was delighted in terms of the remarks this morning from Kirk and Chairwoman Nichols that we all I believe agree on the fundamental goals that the CERT Coalition is trying to achieve that we believe all the stakeholders, including the environmental groups, should all want to achieve. And those core elements are evaluating through a consensus process whether improvements can be made in the way we go about consistently and transparently as a matter of good
government having the best focus in our Enforcement
Program so that limited resources are spent addressing the
greatest compliance problems. And if there is an
efficient process that is consistently applied and that
there is a distinguishing between administrative paperwork
violations from air quality violations.

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

If I could quickly go through the position
paper -- which by the way, these materials for those of
you on the webcast available on the following website:

We have put together this position paper largely
in response to Ellen Peter's request on behalf of the 12
associations. This reflects the experience as well of my
colleague John Dunlap and I, the prior CARB Chairman, who
have together worked on 30 or 40 EPA and CARB enforcement
matters.
And what I've done here -- and I want to just hit
the one point. It is CERT's desire to strengthen, not to
weaken, CARB's Enforcement Program and policies. And
specifically, we would like to strengthen and preserve and
enhance CARB's credibility and integrity through the
adoption and implementation of consistent, fair, and
transparent penalty policies, which support the commitment
made by Chairman Nichols at the July 23rd Board hearing.

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

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

And our first policy question relates to that
issue in making sure the system is incentivizing companies
to spend the extra time and effort to achieve full
compliance.

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

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

There is a note on the table and on the website I
gave you earlier prepared by George Lawrence which
explains the benefits of the EPA penalty policy. And that
policy was developed in large part with the risk of
grossly noncompliant product coming in from off-shore from
mostly new market entrance that were deliberately
uncertified and high emitting and trying to figure out how
to develop a policy that hit those grossly noncompliant products with the maximum penalties and distinguish those from paperwork glitches.

Unfortunately, George couldn't tie in today. I do have some slides he would have liked to have presented.

But the questions if you see at the bottom as you go through questions one through four all relate to why we think that the EPA penalty policy would provide a much more efficient process, reach settlements sooner, ensure consistency, and you would ensure greater credibility and integrity in the process and system.

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

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

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

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

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

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

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

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

You're going to hear from several CERT members that have specific concerns where they believe that CARB is currently applying interpretations outside the scope of the clear regulations. And I know that is an issue that CARB and the AG -- and we're delighted the AG is here
today -- that the attorney general's office obviously wants to make sure that all agencies are fully following those important procedures.

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

MS. MILLER: Thank you.

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

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

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

We also have a policy that allows the diversion of up to 25 percent of any penalty into a supplemental environmental project. This is a good works environmental project that meets a certain rigid set of criteria that appear in this supplemental environmental project policy. It's something that has to be agreed upon between the
enforcement agency and the violator. So when you see the
figures on our enforcement criteria there that specify
that some of these penalty moneys went to diesel retrofits
or to education programs or to other environmentally
beneficial programs, that refers to that 25 percent that
this penalty policy that was adopted by Cal/EPA and by all
the Cal/EPA boards and departments allows for that
diversion. Otherwise, the remaining money and the vast
majority of the moneys that we take in through penalties
goes to this special fund that the Legislature has control
over; we don't.

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

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

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

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

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

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

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

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

And another part of the problem, of course, is our industry, at least the construction industry, is under six different regulations right now. We've got the off-road rule. We've got the on-road rule. We've got the
LSI rule. We have the cargo rule. We have the stationary rule, because if you leave a piece of construction equipment on a job site for a year, it's stationary. And we know we're going to get under the greenhouse gas regulations.

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

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

Any questions?

Thank you.

MS. MILLER: Thank you.

Next up we have Clayton Miller.
MR. MILLER: Thank you.

Clayton Miller with the Construction Industry Air Quality coalition.

Bill Davis' group, the Southern California Contractors' Association, is a founding member of CIAQC.

I think Bill did a good job of sharing the extent to which the construction industry is I guess exposed or need to comply with CARB regulations just by the numbers of vehicles and number of contractors in the state.

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

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

There's the prohibition of adding equipment now to fleets that -- no longer can anybody in California buy
a Tier 0 piece of equipment. They add it to their fleet; and also identification numbers. Those are things that people are becoming familiar with now.

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

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

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

Contractors also own on-road trucks. CARB estimated one-fifth of all the affected vehicles could be in construction. So that's pretty significant. There's the portable equipment air toxic control measure that contractors need to comply with as well. So there's just a whole host of things, and we want to just encourage
moving forward in a positive way that benefits both air
quality and benefit to those in the regulated community.

Thanks.

MS. MILLER: Thank you, Mr. Miller.

Next up is John Fentis, followed by Sierra Martinez.

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

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

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

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

And let me start out by saying I really appreciate the work that CARB has done in not only designing an effective Enforcement Program, but doing it in a time when resources are dwindling. And during these
kinds of times, it's always the most difficult conversation to have in terms of enforcement and continuing to try and execute the objectives of your Enforcement Program in times when you don't have money to do it.

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

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

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

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

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

Let's talk about repeat violators for a second. The biggest complaint I have heard as a former prosecutor is the prosecutors simply do not get enough cases from the Air Resources Board and the local air quality management districts. Not an unfamiliar complaint. And I think it's important that some system be developed.
I can give you one example from the vehicle code.

We have a system of points. If you get so many points within three years, you lose your license.

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

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

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

The next thing I want to talk about are SEPs.

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

I'm fully aware of it. And as a prosecutor, I engaged in many of those kinds of resolutions of very, very tough cases.
But one of the complaints I have heard and one of the complaints that I constantly ran into, especially from some of the environmental justice activists in the communities that I visited, is there is simply not enough money getting back to the members of the community which has been most severely impacted by the alleged violations. And while 25 percent is not a figure to be scoffed at, I think in my opinion you should explore ways of perhaps increasing this figure.

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

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

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

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

It's not an easy thing to set out with the idea that we're going to solve all of the problems. But I would encourage the development of the system whereby all groups are brought to the table to engage in a conversation designed to achieve your enforcement objectives without necessarily hitting people over the head with a two-by-four. I'm very sensitive to some of
the comments that have been made here on behalf of industry, and conversations should not be ceased. It should be constantly engaged in with a view towards everybody working together to solve the environmental problems.

Thank you very much.

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

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

This year, we've had 131 days of enforcement in environmental justice communities, which are the areas you mentioned, the port of Long Beach, Los Angeles, port of Oakland, Colton, and the other areas indicated. And roughly 6,000 inspections with about 800 violations. That's about a 14 percent noncompliance rate. That's where we do focus resources, as we do at the Mexico border, the previous speaker's covered. And program today, we have had roughly 50,000 inspections in environmental justice areas with over 6,000 violations.
So it is a critical part of our program. And we appreciate you pointing that out about the policing practices. Thank you.

MR. FENTIS: Thank you, Paul.

MS. MILLER: Thank you.

Next up is Sierra Martinez.

MR. MARTINEZ: Thank you for the opportunity to speak at this workshop.

My name is Sierra Martinez, and I'm here representing the Natural Resources Defense Council.

NRDC supports CARB maintaining its status quo penalty policies, and CARB should not adopt the changes proposed by industry trade groups today. These policies are critical in California because of our notorious air quality problems, especially in places like the South Coast Air Basin and the San Joaquin Valley.

First, on maintaining strict liability, CARB should not forgo its authority to regulate based on strict liability through incorporating levels of negligence. Whether or not a violator took reasonable or prudent precautions does not mitigate the fact that harm did occur. CARB's use of strict liability is essential for a full enforcement of the law.

The California Legislature granted CARB strict liability enforcement for a good reason. Watering down
CARB's strict liability authority is unnecessary, as CARB already can take into account mitigating factors.

Second, on maintaining the freedom to pursue judicial enforcement, CARB should not be forced to use the administrative process to the exclusion of pursuing judicial enforcement. Limiting CARB's enforcement to the administrative process would weaken CARB's ability to fully enforce the law. Further, to limit the enforcement to the administrative process would draw down CARB's enforcement resources, because CARB would have to pay for administrative law judges in the administrative hearings. Such administrative hearings would also consume more judicial resources than it would save, as violators could still have the option to appeal to superior court.

Third, on maintaining the discretion as to enforcement with respect to the degree of environmental impacts. CARB should have the discretion to enforce the law against a wide range of violators, both large and small. Limiting discretion is not necessary, as we have seen CARB can and does take into account mitigating factors. The deterrent power of the law is weakened if CARB systematically goes after only large violators.

Fourth, on maintaining penalty policy independence, California is a recognized leader in air quality enforcement and should retain its independence to
pursue such a leading Enforcement Program. Adopting the
U.S. EPA schemes would weaken CARB's enforcement power.
The financial amount of the penalty should not be just a
replica of the U.S. EPA matrixes.

In closing, because California's severe air
quality problems and the fact that U.S. EPA penalty
matrixes are weaker than California's, it's critical that
CARB maintain its independence in establishing penalties
for violations of the law.

NRDC appreciates this opportunity to make
comments at the workshop. And thank you for your time.

MS. MILLER: Thank you.

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

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

The first one is from the Regional Center of
Orange County and People First and Mr. Michael Bailey.
And his concerns are basically making sure that we are out
enforcing the regulations to protect sensitive
populations, and specifically disabled persons. And he
again is a representative of that particular group.

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

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

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

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

We also encourage industry to sign up for our
list serves to continue a dialogue with the CARB program, the Program staff, and Enforcement staff. And to talk directly to the section manager for enforcement and the staff if they want to report violations. And on the compliance side, report to the Program staff.

STATIONARY SOURCE ENFORCEMENT BRANCH CHIEF

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

Now we also have e-mail from Gina Grey of WSPA. The question they have is when staff is planning on developing recommendations on revisions to the current program and providing them to the Board. And I'm not certain that we have a final time line for that, but I would expect it would be somewhere near the end of the year.

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

And another composite wood formaldehyde question wanting to know if CARB is planning enforcement visits to fabricators located in China. And a question concerning
the strict liability.

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

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

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

First thing we would recommend is that if you do not have access to the Internet in their homes, go to a public library where they can obtain access to the
Internet and utilize library computers or to use those 800 numbers that I had mentioned. Again, 1-800-end-smog or 1-866-6DIESEL. Or they can also report violations to the local air district for the stationary sources and for smoking vehicles and the like.

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

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

But we do have considerable work to do in this area, and we again invite the communities to partner with us and helping us enforce those rules. The more of you in these communities that engage in enforcement by reporting violators -- you'll notice my e-mails are stamped "help us clean up the environment by reporting violations." It's
something we take very seriously. We need to know that.
So those of you that are community members or those of you
that are industry, let us know. And I will give the
construction industry the gold star.
They get the gold metal for reporting violations
within their industry. I thought the truck industry was
number one in my 25 years of doing this; the construction
industry is much more readily on top of reporting.
They're in for competition. It's just amazing how many
e-mails I get on that front, with the waste haulers a
pretty close second.
The next commenter is Ms. Jessica Peters, Master
of Public Health, Program Associate. And the name of
organization is Regional Asthma Management and Prevention,
Statewide Coordinator for Community Action to Fight
Asthma. And she's from Oakland, California.
And a very lengthy e-mail pointing out the risk
that Californians have in terms of 99 percent of
Californians live in areas that fail to meet the state's
health-based ozone and particulate matter standards. She
goes on to say that one in seven Californians have been
diagnosed with cancer. She goes on to say the children
are the most vulnerable populations affected by air
pollution and diesel exhaust is uniquely devastating in
that their lungs are still developing.
And her comment is while the ARB is doing a good job working towards the emission statement of the enforcement program in addressing diesel emissions, more can be done. In particular, more can be done to address violations within environmental justice communities. So, again, we're going to continue to focus our efforts in the environmental justice communities.

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

Well, first of all, we publish an annual enforcement report that was addressed by Mr. Oliver in his presentation. There are copies available at our booth in the foyer. And when we do receive a complaint, we try to respond immediately, given our resources, but typically within a two-week to 30-day period. And the penalties are prescribed, as Mr. Oliver stated in his presentation, in the statute primarily and also may be adopted under our regulations. And if we do have repeat offenders, we
definitely assess maximum penalties and take those cases and extract penalties to the maximum extent we can as afforded under the applicable statute of regulations.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Do we want to continue or go to a break?

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

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

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


Ms. Jacquee Castain?

This is going fast.

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

MR. BECK: Thank you. My name is Dennis Beck.
I'm Senior Staff Counsel with the California Energy Commission. And appreciate your having this enforcement workshop.

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

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

Thank you.

MS. MILLER: Thank you.

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

MS. BENSON: Good afternoon. How are you?
My name is Maxine Oliver-Benson. I'm here from the Oakland Elmhurst Blight Committee. I'm here -- first of all, because this is my first time speaking with you. I've never been here to this Committee, and I've been in the district in which I live in now 16 years.

I've been working with Jacquee Castain ever since I've been in that community. And I've never seen anybody from this Committee, and I've never been invited to come to this Committee. You said you came to west Oakland.

And I live in east Oakland, which is blocks and blocks away from west Oakland. And we are in an environmental justice community.

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

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

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

So you can tell I live in a wonderful community.

And I had no one from the city or EPA coming to help me to fight any of that, until I joined the Elmhurst Blight Committee. We, the community, got together and said we are either going to live here and be safe and breathe clean air or they're going to kill us here.
We are homeowners. We pay our taxes. And we are here because we feel we need the money to come to our community to help us to continue to fight, to help us to continue to survive, to help us to continue to live in a safe, clean community with some sort of clean air.

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

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

Thank you.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:
Ms. Benson, I'd like to quickly respond.
Thank you for your wonderful comments. We do have staff assigned to the EJ project. As a matter of
fact, Ms. Shulz is here, and she'd be happy to talk to you
in the back of the room or in the foyer.

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

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

But thank you for coming and providing the
comments.

MS. BENSON: Okay.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:
And Ms. Shulz is back here. If you can raise your hand,
Michelle. She would be more than happy to tell you in
great detail the work she's been doing. She's very
dedicated to this activity. Thank you.

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

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

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

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

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

We didn't think we were going to make it, because
we have to get back to Oakland before there's traffic.
But we came today because we have created -- at
least I have to say the Department of Toxic Substance
Control has been good enough to create a partnership with
our community. We have had Committee -- our Blight
Committee has actually been in operation for 15 years
since 1994 trying to clean up all the toxins in our
community.

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

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

We found out that there wasn't really anything we
could do. We went to EPA in San Francisco, and
fortunately they did help us. But it took from 1995 to
1997 to get that cleanup to start.

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

But I'm saying the other plants that we've had, I
cannot tell you how many we're still working on. But at
least we've gotten four cleaned up that we have done in
the community. And I'm saying we've gotten some EPA help.
The city has done some things through public works.

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

And Michelle was there at our meeting in
September when we had the 100-day meeting. We need to
have more of that. The air quality right now, one of the
issues that we're working on is on International
Boulevard. We have 30 blocks where there used to be
service stations every block. And where there was a
service station, there are now two and three auto repair
shops. They are there illegally.

The fumes -- there are so many people in my block
alone -- we have a service station on International
Boulevard and 84th. There are three repair shops on that
one corner where there was one 76 station. I have had
four neighbors in a block-and-a-half on that street die --
cancer, heart trouble. It shouldn't be. We shouldn't
have to live in that. We're paying taxes to live there. Something needs to be done. And I'm really grateful to the Department of Toxic Substance Control for working and us. And I'll hope you'll do the same thing. We need it. Thank you.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Thank you, Ms. Castain.

Again Paul Jacobs, Chief of Mobile Source Enforcement.

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

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

MR. MARLOW: Hello. My name is Charles Marlow from the city of Los Angeles. The city has been 100 percent in compliance. But there are some questions that we just have not had answers for. I have a couple of them here. I don't know if you guys can answer them.

One is the records policy, you went to a workshop in Montebello, and it was said then there was going to be
some kind of policy to maintain records -- DPF records and
they were going to be public.

I'm just going to call four questions, and then
I'll sit down and take your questions when I'm in a seat.
P-trap cleaning machine certification, that also
came up at the Montebello workshop, and I haven't seen
anything about that on your website.
The third one is p-trap swapping within a fleet.
There is a partial answer to that. It is up to the
manufacturer that has to be approved by CARB, but what if
the trap is not warrantee? The manufacturer doesn't care
at that point. So what is CARB's role at that point?

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

And that's all.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Thank you.

I'll just briefly respond to these. And what I'd
like to do is get your business card, and I'll have the
staff with the Mobile Source Control Division that
oversees this program, Ms. Shawn Daley and her team,
respond in greater detail. But this is something I'm
responsible for enforcing and have pretty good working knowledge of it.

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

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

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

And, likewise, in terms of the replacement and back order issue, four to six weeks, we should talk about that, because I don't think that's the case that spans all the different manufacturers. You may have a
specific issue with one or two manufacturers, but we can
talk about that.

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

Thank you.

MS. MILLER:  Thank you, Paul.

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

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

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

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

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

We also need to recognize that our installations
really are small cities spread throughout California.
Every day, we have hundreds of contractors that come onto the bases to do our work. That is only increasing now with the stimulus package with a great deal -- almost a billion dollars just from this last stimulus package -- coming to military installations in California, all that work being done by contractors.

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

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

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

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

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

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

MS. MILLER: Next, we have Bob Wyman followed by Pamela Williams.
MR. WYMAN: Thank you very much.

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

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

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

The California Climate Coalition as part of the Scoping Plan testimony last year recommended that the Board direct staff to undertake a troubleshooting exercise to anticipate the types of noncompliant problems that are likely to occur as AB 32 and its complementary measures like the low carbon fuel standard and renewable portfolio standard start taking effect, because it's our belief that
due entirely to circumstances beyond the control of many of the regulated entities in this hybrid program that there will be a lot of noncompliance as some anticipated in the early years. So some of it will be confusion and a lack of education. Some of it will be that compliance assumes and depends on events which are outside the regulated entity's control.

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

So I guess the first recommendation that we have made to your Board that we would make to you is that you start now anticipating what's likely to happen over the next few years and brainstorm what some of these situations might be through some kind of simulation. It won't be that hard. I think you have a lot of expertise
in the audience and on the web of people who are going to have to comply with these regulations and who have in the last few years complied with a whole new wave of regulations that have been complex that you've acknowledged.

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

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

And there is I think -- although evidence is mixed -- certainly there are lots of good examples in this state of where that process has enabled the administrative agency in a publicly transparent way to adjudicate disputes of fact to avoid what could otherwise fester and be a longer-term problem. It can be done efficiently.

You can have class variances if there is a problem that's
common to a number of regulated entities. But I think it's appropriate. And I would encourage you to do some brainstorming on that front as well, because no matter how well intended the regulatory design is, there will be unanticipated problems. And rather than start with some kind of polarizing enforcement debate, even if it leads to a wise and prudent exercise of your discretion, I think it would be better, given this unique period of time we have, at least during a transition and possibly thereafter to have a fairly robust variance process.

On the third issue, the last point I'll comment on, you know, at this point I do think it would be helpful to have more in writing than you have. Obviously, there are lots of cases one can envision where one would want you to have the discretion not to be tied to a penalty policy, because not every circumstance is a cookie cutter, and we recognize that. On the other hand, I do think there are a lot of folks out there who have a lot at stake who are investing in this state and really want to know what the rules of the game will be. So somewhere in the middle, some additional written advice that defines and describes your penalty policy probably would be appropriate. And we certainly commit as a coalition over the next few weeks to
think about what that balance is. But we recognize that
you have many times in the past exercised your discretion
in a way that might have been difficult if you had a
policy that defined all possible permutations. So some
balance is probably appropriate here. But at least at
this hearing, we err slightly on the side of more than
what you currently have.

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

MS. MILLER: Thank you very much.

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

So now we have Pamela Williams.

MS. WILLIAMS: I represent the California
Retailers Association, which is a statewide trade
association consisting of a broad array of mostly retail
companies from department stores to major grocery chains,
chain drug stores, and then what we call specialty retail,
which are the mass merchandisers, the book stores, the
jewelry stores, the auto stores, and the home improvements
stores.
And a lot of the testimony today was from a number of different or organization that I think have one or two sets of regulations that they're subject to. And I know the Trucking Association said they had a couple, and Bill Davis said he had a couple.

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

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

And the first one is on the issue of certainty. There are some policies that we think are being enforced rather than the actual text of the regulations. And our example on this one is the composite wood ATCM. The regs itself that require retailers take reasonably prudent
precautions to ensure compliance. At the webinar and in subsequent e-mail conversations from my members where they've said, "Could you give us what does 'reasonably prudent precautions' mean? We want to be sure we're doing whatever it is you think we should be doing."

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

Fair enough.

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

Doesn't sound terribly consistent.

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

And secondarily, we would urge you to perhaps tier or rank some of the criteria on the initial
presentation -- staff presentation. There's the list of criteria that you take into effect when you're considering a penalty, and all of which are very good and very viable criteria by which to judge culpability. But we would suggest that they be ranked in terms of priority based on your goals which are emissions.

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

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

Thank you.

MS. MILLER: Thank you.

Next up we have Will Barrett, followed by Sean Edgar, followed by Betty Plowman.
MR. BARRETT: Good afternoon. My name is Will Barrett with America Lung Association of California. We really appreciate the opportunity to provide comments today and appreciate the outreach efforts that have brought everyone here today. We feel that's important.

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

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

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

We feel that strong enforcement in environmental
justice areas should be a key goal of CARB's Enforcement Program. And we believe it's CARB's duty to protect public health. Particularly concerned about vulnerable communities already overburdened by smog and other air toxics.

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

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

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

Following the administrative requirement is part of the program. And failure to comply with the
administrative requirements will make detection of
emission violations much more difficult.

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

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

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

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

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

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

The multiple associations that I work for -- have
had the privilege of working for the CRRC, the State Trash Haulers Association for a lot of years, and now I do a lot of work with the dump truckers and Moving and Storage Association and a lot of those vocational truck segments that are heading into new fleet rules.

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

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

So beyond the press release, I think the number one item that I'll address -- I have a few process recommendations and a few content recommendations -- but I guess my overarching comment when I go out and speak to
groups that are this size or larger -- and find myself in
front of one of those groups probably every few weeks -- I
get to go to exotic locations like Bakersfield as an
example where I recently spoke to 35 small companies down
there from the oil field operations, small trucking
companies, some ag-related businesses. And I asked them
well, gee, how many of you do you hear this about from the
California Trucking Association or from Farm Bureau
Federation? And guess what? Not a one out of 35
companies belong to a statewide trade association.

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

You got multiple -- even large companies, you
have multiple rules, four, five, six. Some companies, you
know, that level of rules and the information that's out
there is just not adequate to help them. I know ARB has a
website and the 866-DIESEL. I'll credit the Board on
setting that up, and I think that's had some merit to it,
although my recent experience where I e-mailed over a
question for one of my clients and was informed within a
day or two by staff that, well, my question wasn't really
legitimate because the clients has to ask their own
question, or it was some process-related tripwire that
didn't have anything to do with getting the information
that was needed.

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

Second, on a process level, I've noticed that
when I go out and people ask a lot of questions of me
about enforcement. As often as I go out talking to folks
about enforcement, because I've had over the last six
years aggressively implementing fleet rules, I often tell
them, who's going to enforce? Is it the air district? Is
it the air - I said, well -- my punch line usually is I
tell them I don't know if it's the ARB or the CHP or the
KGB or whoever else is going to go out and enforce rules.
The point is you want to do your best to step up to meet
the rule requirements.

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

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

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

Board staff and along the lines of moving into a
couple content recommendations I have, there are
oftentimes things that are put out as Board policy and there are preferences and not necessarily consistent with the statute. One of that is the C-DAG requirement for step idle. So there's been some conversation recently about what is a matter of the statute and what's a matter of Board preference. I think we need to do a better job of distinguishing exactly which is which.

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

At the statewide truck and bus hearing in this auditorium at the end of last year, one of things that I'll reference Mr. Pfeifer again on the issue of the compliance audit if you will or compliance information comprehensive or courtesy -- I think it was called courtesy inspection. So I haven't yet seen a description of that. And I know Board members directed staff to come out with that, and so I would be very interested to participate and help form that, because I think -- I don't know if fix-it ticket. Mr. Davis was here talking about fix-it ticket. I don't know what Mr. Pfeifer's intent was. But there's definitely a need out there before a business I think that has an intent to want to do good
things gets really far down the road on multiple
violations with multiple rules, I think there needs to be
some sort of mechanism for those folks to have courtesy
inspection as I think your Board intended.

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

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

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

So with that, I realize there are probably a few
items that we can collaborate on and possibly a little bit
more apart from this format, more in the legislative
format -- so as an example, snap idle. I don't know why
snap idle wouldn't apply to every truck in the state. And
I don't know why snap idle wouldn't be a thing.

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

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

And then relative to -- I'll just close out on a
local playing field saying some of the items like I
mentioned possibility of -- I think it would require a
change of statute. But every truck every year I don't
know any reason why owner/operators would be exempted from
a snap idle requirement. So that's something I think you
would find support from industry just as across the board
everybody having to do it.

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

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

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

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

So I challenge everybody there's got to be some
way beyond just kind of a command and control where we're
going. And I appreciate the dialogue today and staff
being attentive and listening to our gripes. But there's
got to be really a way to get resources to the end users.
The fleet owners are expected to pull off this extremely
aggressive time line the Board has set out. Because if
you look at the dates, port drayage truck rules, truck and
bus rule, off-road equipment rule all really getting
launched in the next six to twelve months and they're
going through 2020 and 2023. So just huge level of
effort.

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Just briefly, Mr. Edgar, and all of you that have spoken
today and all of those on the webcast, we are offering to
have one-on-one meetings with industry groups. And you've
raised some good issues here. And we would welcome all of
you to ask for those meetings.

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

MS. MILLER: Next up is Betty Plowman.
MS. PLOWMAN: My name is Betty Plowman. I'm with the California Dump Truck Owners Association.

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

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

I have been certified by the State of California to inspect diesel trucks. I've probably done over a thousand of them. One thing that has always bothered me was the fact that this was not tied into DMV registration, because I wrote down the words "expedite settlements." By the time you expedite a settlement, you've already failed, because you've had a failure within the system. And, to me, the periodic smoke inspection program should have never been a failure. It should have been tied into DMV from the beginning if you'd ever intended it to work.

I don't even know if we'd be going through this on-road rule if that had been implemented. We would have gotten the dirtiest trucks off the road, or they wouldn't have gotten their registration.

Where this program has failed is its basically word-of-mouth. Now, we've had Paul and staff to our
meetings. But if there is not a way to enforce this, it's just not going to happen.

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

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

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

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

As I look at the citations and the penalties -- and I know that's a great source of advertisement for why
you've got to do this, because look what's going to happen
to you? And I see cities out there -- cities. Cities
have legal counsel. They have a full staff telling them
what the rule is, and they can't figure this out. You're
fining cities; we know they're not in good shape now. If
a city can't do it, how does Joe blow contractor figure it
out? That's just being honest.

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

Thank you.

MS. MILLER: Thank you.

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

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

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

We have public hearings and meetings such as
this. We have the association meetings that we speak at routinely for these local entities, like the Association of California Cities and Counties, California Transit Association. And we have our training program that we've addressed in detail this afternoon.

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

The next commenter is from Rick Grove at paymentrecycling.com. He has questions and concerns about the off-road rule, the diesel rule, and the level playing field as stated by others this morning. He's saying they're seeing out-of-state contractors bring in noncompliant equipment and the like.

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

What we're going to do is hold off on the web comments and have those of you that are present continue
to provide testimony, and then we'll cover these at the end.

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

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

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

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

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

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

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

It would be I think pretty interesting if we could measure achievements in terms of compliance, for example. There's really not a lot to be said in the enforcement report about how effective ARB has been in assisting parties who are subject to the regulations and
complying with it. I would consider that to be a really high standard of achievement for the Board is how effective the compliance programs are. And I'm sure they're probably effective, but it's not described or handled in the enforcement report very well.

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

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

I think the last point that I'd like to leave you
with is I think you've heard a lot of excellent comments
from the audience here today. I think there's plenty of
room for improvement for our increased transparency. And
I think that supports the notion of having an ongoing
effort here.

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

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

Thank you.

MS. MILLER: Thank you.

Next up we have Chuck White.

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

I really don't have any formally prepared
comments, but I just wanted to come and mention one area
that we think would be helpful, and we think it would be
good for you to move towards a strategic enforcement
policy that's in written form. A key component would be
with respect to the incentives for voluntary disclosure or
self-reporting of violated conditions.
Cal/EPA has a recommended guidance for incentives for voluntary disclosure, but as some previous speaker mentioned, is not binding on ARB. And it's unclear from any of the documents you have or your website whether or not you give credence to this Cal/EPA policy. So it would be helpful if you would.

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

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

With respect to acquisitions, the EPA recently amended their policy to allow a 45-day window. Even though we do due diligence every time we purchase a new site or acquisition or fleet, invariably we do find problems -- not all the time, but many times. So a little more flexibility for us to understand what the previous owner was doing with respect to their operation and be able to then disclose the violated conditions and
hopefully have some level of consideration under a self-reporting, self-disclosure policy which we would certainly encourage you to develop.

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

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

Thank you very much.

MS. MILLER: Thank you.

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

MR. PALIWODA: My name is John Paliwoda. I'm Executive Director of the California Motorcycle Dealers'
Association, or CMDA as we're commonly referred to. We're the motorcycle trade association for franchise motorcycle dealers here in California. We still counted over 200 factory authorized dealers and associated businesses as CMDA members. However, the current economic depression that we are in, it's anybody's guess as to really where this is going to come out. We used to be a $3 billion industry. But really no one knows really where we're standing now. And, of course, our regulations enter into almost every vehicle, every product that our motorcycle dealers sell.

So you ask yourself, what does this have to do with the ARB Enforcement workshop? Well, since I began representing the CMDA 13 years ago, I've often been engaged with CARB personnel from the Chair, senior management, to certification and enforcement staff on a variety of motor vehicle products ranging from on-highway, off-road motorcycles, on highway motorcycles, all-terrain vehicles, utility vehicles, aftermarket and performance parts, enforcement issues, utility gas can sales restrictions, and personal watercraft emission regulations, among some others. I found myself often dueling with ARB staff interpretations of what I would characterize as underground regulations. That's just the beginning. And,
quite frankly, I'm here from a main concern about an underground regulation, which I won't go into. But never the less, it's part of what I have experienced in the last 13 years in a number of issues in dealing with the ARB staff.

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

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

The second issue is you cannot capture lost emissions. Maybe they can't be recaptured, but the penalties must be based on the verifiable environmental
cost damage caused by the violation. And we're talking about motorcycles here and the gamut of vehicles and products that basically I outlined a little earlier.

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

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

Account for harm to human health and the environment. In a number of cases that I have knowledge of, rarely, if ever, is the penalty based on the environmental damage done by the alleged violator. In fact, that should be the most important element in determining a citation or an amount of citation or for a
violator. I mean, isn't this about clean air?

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

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

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

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

MS. MILLER: He's on the list.

Next up is Tim Tutt.

MR. TUTT: Good afternoon. Thank you for the opportunity to speak.
I'm Tim Tutt. I represent the Sacramento Municipal Utility District. And I'm here to talk about perspective enforcement of regulations that are coming up and dealing with global climate change and now the RPS.

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

Now, what we would like to note for you is that GHG and RPS compliance and enforcement are going to be completely different animals. Greenhouse gases, while important to control over the long term and SMUD's committed to those controls, do not have the same day-to-day public health impacts as criteria pollutants and toxic air contaminants. For GHG and upcoming RPS regulations, compliance would likely be on an annual basis with three years' compliance period and banking considerations fundamentally different than the criteria pollutant framework. And, for example, that we contend that this would imply the daily penalties for violations. Considering each day of noncompliance as a separate violation does not make sense with such an annual limit or
We'd also like to point out that the forthcoming RPS and the GHG regulations are complicated and comprehensive news structures. They're going to require some initial flexibility for the first and second rounds. But it's still an evolving set of protocols to establish efficient long-term penalty and enforcement protocols. Don't put the enforcement in stone yet. Work on it for a couple of rounds, because it's going to need some flexibility.

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

Utilities in general regard compliance with regulations as a must, but circumstances can occur that result in a technical but unavoidable violation. And CARB
should be aware of those and reflect those in their up-front regulations.

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

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

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

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

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

MS. MILLER: Thank you.

Melissa Cohen. Is Melissa here?

Take you off the list. Okay. Thank you.

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

Rick Bailer, are you here?

Todd Bloomstine?

Ray Biasotti. Is Ray here?

Todd Bloomstine.

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

First, I'd like to thank you for the report that you prepared. As someone that doesn't do this every day, I greatly appreciate the alphabet soup of acronyms that
you explained. That was most helpful to me as somebody
that doesn't do this every day.

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

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

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

As you said, Mr. Oliver, earlier, as regulations
come on, the books get bigger. Regulations aren't
leaving. I think it's a safe assumption that your
penalties within the Air Pollution Control Fund will also
increase. And I think it's helpful to have complete
transparency dealing with these funds. That's my point.
Want to thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

Next up, Ray Biasotti.

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

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

I can testify here today that in the -- I've done almost 11,000 smoke tests in my ten years of business. That's a lot of smoke tests. And when I first started the business in 1999, about one in ten to 12 vehicles failed the periodic smoke inspection program. That's a fairly high failure rate. Luckily, the system is so -- I don't
want to say forgiving -- but so lenient it lets people
correct these things and get them corrected and have
re-tests within 45 days. And people get them fixed, and I
go back and test them and they're fine.

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

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

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

And I think a greater outreach program in the way
of mail communication, whatever -- like somebody said, we
get that little thing about the drunk driving statistics
on your renewing your vehicle license, something that just
goes to fleet owners of two or more trucks, which is what
the law requires to be smoke tested, would be a huge
increase in compliance.

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

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

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

Another thing that might be thought about. The
fleet owners here I'm sure are familiar with the biannual
inspection terminals, the BITS program. Right now, most
CHP BITS inspectors claim they don't know -- and I've
gotten this from customers -- too much about the smoke
program, the regulations that are involved in the PSIP, so
they go in and do their BITS inspection on safety items. But when a few of clients have said what about my smoke test that I paid money to have done, that's not our concern; that's Air Resources Board. It seems like it would be fairly simple to tie that in. I know it's two different bureaucracies and somewhat complicated, but it wouldn't be that hard for them to do.

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

And the other thing is that there's somebody else that's exempt -- oh, privately owned diesel vehicles. Somebody mentioned all diesel trucks should be smoke tested. I totally agree with that. But there's lots and lots of diesel vehicles, motorhomes, pickup trucks that you can go out on this street and see guys go by with those pumped up diesel trucks -- they only have one, but they love it being this high off the ground and pours out of a ton of smoke and they take off and it makes a lot of noise; they don't have to get their truck tested. They
Don't have to do a smog test. That's a loophole. That and the owner/operator that I think might help you get a higher compliance ratio.

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

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

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

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

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

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

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

Thank you.

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

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

My community lies in the unincorporated L.A. County strip, or the newly named Harbor Gateway in Los Angeles. We're surrounded by two major freeways, the
Exxon Mobil refinery, Dow chemicals plastic manufacturer, two superfund sites -- one was the World War II synthetic rubber factory. The other was the west coast's largest manufacturer of DDT.

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

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

And it was through activism and getting together with my neighbors that we pushed the agencies to actually really come in there and do some state-of-the-art testing, and that's when they discovered that the DDT manufacturer
had just dumped their pure technical grade DDT in my backyard. That was really a wake-up call to me that sometimes community people become complacent and think that because we pay taxes and we follow the laws ourselves that other people are doing the same and that the agencies have a good handle on protecting public health. I think in environmental justice communities we understand that it's not just a burden that you bear, it's a burden we also bear.

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

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

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

And I'd like to say three years ago I spent a great deal of my time away from my family. I am a caregiver for my handicapped mother as well. When we
leave our families, it has to be something fairly important.

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

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

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

When I go and do work in my community, you know, a lot of times people think, oh, community people just
want a free ride. They want this and that. My people come to me and ask me if there is a way that we can get $100 so they can have a nebulizer so they don't have to spend seven hours at the county hospital dealing with asthma issues as they arise with their children.

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

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

So another thing that a lot of us would like to see is some help with the diesel idling enforcement. We want to know how to go out and count trucks, too. When a
community like Maywood passes an ordinance for truck
idling and they go right across the street to Vernon and
do the same idling, how do we kind of bridge that gap?
You know, how do people that really don't have the
resources actually be able to partner with you to do
something better?

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

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

We would also want to engage with ARB on a deeper
level. We're talking about the partnerships that we're
forming. We do have some of ARB agency members that are
formed there, but we also are forming work groups. I
think the San Bernardino tour that just happened, they
formed a task team, which is probably going to be pretty
fabulous since Penny Newman is involved in that.
And again we want to achieve these real environmental justice measures. And the regulations are only going to be as good as the enforcement measures. So I'm going to leave my card here. And I really encourage you guys as you've heard from many people to really utilize the eyes and ears that are free in our communities, because this is what we're going to continue to focus on. And I think that we can go back and forth, but if you get people into a room together, I think we can find common ground and really find some solutions, because we're certainly not going to go away. We're just going to get more effective.

MS. MILLER: Thank you.

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Looks one that was just handed to me. I'll pass it down to you.

MS. MILLER: Go ahead, Mr. Enger.

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

Not a lobbyist. Not a public speaker, as you'll
I'm not a lawyer or anything else. I just represent a very small coalition of about 38 businesses that are family owned.

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

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

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

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

I kind of took the responsibility for our association to organize us, put us all together, create standards, do all the things that a coalition does. And I kind of rose to the top as being the representative, the president. Okay.
Well, right then and there, as soon as the certification part was over and was introduced to enforcement, began one year of threats and intimidation by ARB staff. One year. I was told that we were liable for $3.6 million of fines for building sand car buggies, which I had no idea that we were out of compliance until they approached us in the beginning. And they didn't come to me with any type of worksheet or number system describing how they came to that $3.6 million. They just had it out of the air. Okay.

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

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

We jumped at the fact that we were out of compliance. We became compliant immediately. We did it
very quickly according to the people at certification.

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

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

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

And then I find out from CERT, this little organization that we're putting together now, that the law we're being penalized for in 2007 wasn't even a law until August 15th, 2007. Okay. What's with that? Just want to know.
And during this whole process of getting together and our little sand car coalition, we went to talk to our State Senator, Senator Hollingsworth. And he sat there across the table from us after we got an appointment and he said -- we told him the story. They wanted 600k from 38 little small family mom and pop businesses. He said, "Pay them. Pay them, they'll go away." Okay. They have no legislative oversight. "I can't touch them. We can't do a damn thing to them. Pay them." Okay.

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

I'd like to request that my settlement be reopened and that we re-discuss what was levied upon us. And I'd also like to make a statement that during
this time almost nothing was put in writing by CARB,
almost nothing by the enforcement people.
So that's the end of my story. And I appreciate
your time today.
MS. MILLER: Thank you.
Next up is Jim Mattesich, followed by Robina
Suwol, Mitzi Shpak, and John Dunlap.
MR. MATTESICH: Jim Mattesich with the law firm
of Greenberg Traurig.
Given the lateness of the hour, I'll try to be
brief.
Also because I don't have a blackboard or
something to write on, I'll ask you to use the face of the
clock with me for a second.
In our experience of working through these
matters over the years, if you will, if we use 9 to 3 for
an arc of sort of the typical potential cases that you
handle and the opening -- if the 9:00 is when you open
your file and 3:00 is when a case that got referred for
civil litigation actually went to trial, we can talk about
intervening points, but I wanted to make sure I
understood -- and I think we agree with it from Kirk's
comment earlier today -- that it's your preference to try
to resolve these matters with Air Resources Board rather
than them get ultimately referred to the attorney general
for litigation. If we use 12 noon as sort of the referral point, it takes mutual agreement, however, as Kirk pointed out, to try to resolve it between 9 and noon with you all. And that sometimes takes longer than you would like and perhaps even our clients would like. But never the less, it also means that sometimes settlements don't happen and you do refer these cases to the attorney general's office.

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

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

Parties in that process, whether it's with a
sitting judge at a mandatory settlement conference or at a mediation earlier on oftentimes get from that third party a better view of the strengths and weaknesses of their case and come to an understanding and ultimately a resolution, because there is a third party in the room.

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

MS. MILLER: Thank you.

Next up, Robina Suwol.

MS. SUWOL: Hi. Good afternoon. Thank you very much for this opportunity and for holding this workshop today and ability to comment. I was very moved by all the heartfelt stories that have been told today.
And just as an introduction of who I am, my name is Robina Suwol. I'm the founder and executive director of a children's environmental health organization located in southern California called California Safe Schools.

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

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

In the presentation today earlier, it was stated that and I quote, "ARB conducts frequent, unannounced inspections generally." And just for clarification, so that I understand this, can you share -- obviously not today -- in the past five years, for example, how many unannounced inspections took place and their locations and how many announced inspections took place and their locations. It would just give some clarification on that
And can you also please expand on CARB's process -- and this is specifically how are decisions made regarding penalties and what role does the public and the environmental justice groups play in the process or discussion?

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

And, finally, I just want to say that I'm extremely encouraged -- although I know it's been challenging today to hear all of these concerns that people have about having this protocol and policy and understanding how it's implemented, but I'm hopeful -- a bruised optimist, but hopeful today's dialogue and comments from industry and public and regulatory agencies
and environmentalists will help us all to continue to work
together to create policies and program that are more
protective for everyone, because this is proven. When we
can work together that great things can and do happen.

So thank you very much.

MS. MILLER: Thank you.

Next up, Mitzi Shpak.

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

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

I, myself, had an incident. In our area, we have
a lot of movie production companies. And we were in our
backyard, and suddenly there were fumes everywhere. The
lady next door who was home schooling her children outside
had to run inside. And we found that a movie company had
parked a flatbed trailer right on the fence line with two
enormous diesel generators. And we're not talking idling
diesel. We're talking full bore. It was a power plant
literally put in our neighborhood one half-block from a
middle school in addition to the many, many trucks that
they bring for their production. And would you be able to
respond to something like that in enough time to keep us
from being exposed to those emissions?

Thank you.

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Just briefly, Paul Jacobs, Enforcement.

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

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

It's clearly stated --

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

MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:

Well, they do have authority under the idling regulations.

We would happy to talk with you more --
Ms. Shpak: It wasn't idling. I mean, seriously, they have a permit to film. They're not idling. They're producing power. They are a mobile power plant.

Mobile Source Enforcement Branch Chief Jacobs: I understand about the generators. You had mentioned all these trucks and idle as well. These are subject to the rules. And if they have permits on these generators, then you have to pursue look a nuisance-type claim and meet the criteria in the Health and Safety Code. We can talk about that in more detail.

Ms. Shpak: Maybe my question is, are they allowed to put a mobile power plant into a residential neighborhood next to a school? Is that a permissible activity?

Mobile Source Enforcement Branch Chief Jacobs: If they're legal permitted engines, it would be, unless it creates a nuisance, and we can talk about the nuisance criteria under the Health and Safety Code.

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

Ms. Shpak: But that's a specific incident.

And real question was the more general one about how immediate is your enforcement response, because these
1 mobile sources move on. Problem is gone. What do you
2 need as proof that it did exist?
3 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:
4 We need the date, time, location, the license plate
5 number, and the like, and we will go out and investigate
6 and check the fleet for total compliance for all programs.
7 And usually it happens within a 24-hour period we can
8 respond.
9 MS. SHPAK: Within a 24-hour period?
10 MOBILE SOURCE ENFORCEMENT BRANCH CHIEF JACOBS:
11 Yeah, but I encourage you and your community members to
12 report these violations. It's critical that they're
13 reported through the 800 numbers and our web page so we
14 have a record of them. That's how allocate resources. We
15 do need a running count, and we do tens of thousands of
16 unannounced inspections in these communities yearly. And
17 I've covered those numbers earlier. I know the previous
18 speaker had those questions. So something we're very
19 actively enforcing and will continue. And we've trained
20 air districts to enforce these idling regulations and a
21 lot of local law enforcement and are working with CHP to
22 do the same.
23 MR. MILLER: Last is John Dunlap.
24 MR. DUNLAP: Thank you. Good afternoon. I
25 appreciate very much all the effort that we went into
putting on this workshop, and I commend the staff for a
good job. It was a good opportunity for people to come
before the Program staff.

I've been asked by the American Home Furnishings
Association, HFA, to bring to this body's attention an
ongoing regulatory challenge or struggle, as they call it,
that its members are experiencing that illustrates the
kind of problems that CARB's compliance program may have
without thinking too much about it.

CARB recently promulgated the composite wood
products air toxic control measure, ATCM, which requires
downstream parties to take a variety of reasonable and
prudent precautions, which would be due diligence,
recordkeeping, labeling, et cetera, related to the chain
of custody of finished wood, composite wood products.
These down-stream entities must comply with the reasonable
prudent precaution measures under the ATCM to ensure that
the original manufacturers complied with applicable
emission standards. And in this case, formaldehyde
emissions as has been mentioned two or three times today.

Importantly, the ATCM does not require
down-stream entities to do anything other than take this
reasonable and prudent precaution and does not set forth
any lawful procedure that CARB can apply to conducting
deconstructive testing on finished goods.
Never the less, over the last several months, the CARB enforcement team has indicated it will conduct deconstructive testing using its own procedure on finished goods at down-stream facilities to demonstrate formaldehyde content, i.e., compliance with the ATCM. And much of this information is in the CERT group's position paper on page 12.

However, in so doing, the CARB has essentially injected a new regulatory requirement into the ATCM and where none had existed prior. And CARB's deconstructive test procedures have been imposed without any real advance notice, lead time, or meaningful discussion with the stakeholders. This is precisely the type of underground regulation that the CERT group and others have mentioned today that is a cause for concern.

Down stream furniture manufacturers and retailers are being held, they believe, to a more stringent standard that is not delineated in the regulation, while many if not all are complying with the reasonable prudent precautions that are set north in the regulation.

I bring this to your attention on behalf of Mr. Perdue and ask you to please look into it and let us know if that's the way you view this matter and what can be done about it.

A final word about transparency in other
programs. You have as, you've outlined, and I think you
gave a very good report -- Mr. Oliver did earlier --
outlining the depth and breadth of the compliance program
and the challenges you face. I think it's widely
recognized that historically CARB has been very devoted to
educating sources that you've done a lot of outreach. I
notice the material you placed out front about all the
compliance workshops and outreach you've done. I know
Paul, in particular, you and Jim have prided yourself on
doing that. And that's terrific. You need to continue
with that.

If there are budget challenges that you face
where people can speak up on your behalf to make sure you
have the appropriate resources to do that, I think you
have a lot of people that would be prepared and willing to
do that.

Having said that, the hallmark of the Air
Resources has been transparency and technical
decision-making outlining reasons for rulemaking,
scientific basis, linking it to public health, et cetera.
And it's that type of transparency, that type of
commitment that I think has served you very well as you
grow your Enforcement Program. And I don't think you
should take the commentary at least not from the handful
of trade associations I've been working with here today as
being overly critical or concerned about your commitment
to protecting public health. That's a given.

But the program is not perfect and can be improved. And I think if you listen to some of the
stakeholder comments, you'll find areas in which you can perhaps redouble your efforts or make your program more
plain to people. And if you do that, I think you're enjoy the support that you hope to have and even more effective
than you already have been.

One final thing. I would suggest that this not be the necessarily the last public forum or opportunity
for people to comment. I would offer up there is a few people that because of the constraints today with the
meeting -- that is, people couldn't call in or make presentations, like George Lawrence, former EPA official
that worked very hard at coming up with a penalty policy and spearheading that effort that I think you might be
able to learn a few things from him. I think the audience would like to hear from him perhaps in the future.

So I ask that you consider having this be the last forum, to consider having another one. If based on
the commentary today you agree there is some things that can be done relative to administrative things that you
guys can do to make the policy for enforcing and ensuring compliance more transparent that you come up with some
kind of proposal and circulate it with the various stakeholders, perhaps you can have another workshop.

I don't think -- at least I didn't hear today anybody was suggesting the compliance program be gutted or that the people running it are not capable of protecting public health or anything along those lines; but transparency, consistency.

Kirk made a comment earlier about press releases being issued where people can see what's happened with individual compliance cases. And I think those press releases are issued. And I think it's consistent you try to do that.

But the details in trying to deconstruct the data, how many units, what the penalty per unit was, duration of time, potential air quality impacts, those kinds of things are missing and makes it difficult for people to be able to compare. And like it or not, they do compare. If somebody gets hit with a big penalty and you're in the same industry you want to find out why that happened and what the details are behind it.

I would encourage you to think about creative ways in which that information would be shared without violating any confidentiality that would be part of protecting trade secrets or the like.

So with that, I'll conclude. Thank you.
MS. MILLER: At this point, we have a few more webcast viewer questions. I'll turn the program back over to Paul and Mark.

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

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

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

And the next question: Can you share some insight into the current funding for enforcement, how many
officers, cases, and the like?
And we have covered that. Again, just to
reiterate, roughly will 2500 cases per year are closed.
And we roughly have about 120-plus staff in enforcement.
The next commenter Nasser Bekheet, senior quality
engineer with Candle Lite. And the question has to do
with Proposition 65 and consumer products and how items
are recalled by the Consumer Product Safety Commission.
So this would best be handled by the federal government
and the Consumer Product safety Commission.
The next commenter is: becarbcompliance@cox.net.
It's Lisa Grote at that e-mail address. And she asked
about owner/operators and outreach for the trucking
program and the like. And again, as I stated earlier
today, we have all these training opportunities that they
can learn how to comply with the regulations. We have the
joint industry days with highway patrol. We have the
notification in the DMV handbook about CARB compliance and
many other media outlets for compliance assistance and the
like.
The next commenter is Michael Torrez. And looks
like BP Carson Refinery. And they have questions about
diesel particular filters and maintenance in keeping
records for them. And we had a previous commenter that
came up and testified that had questions of this nature,
which I responded to. But we do have recordkeeping requirements, and I will ask my colleagues in the Mobile Source Control Division to work with Mr. Torrez on those specific issues.

The next one is a Mr. Tim Rhodes at yalechase.com. This is just a commentary that Nevada is openly inviting our businesses to relocate. Please take into consideration a fix-it ticket and things of that nature. So that's that particular comment.

And Mr. Michael Torrez at bp.com. "I was wondering if CARB has articulated what the response is to companies using contractors that are not in compliance while their own fleet is in compliance."

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

STATIONARY SOURCE ENFORCEMENT BRANCH CHIEF
STOVER: Last one here is from Rick Grove at Pavement Recycling. And his question concerning Caltrans and the construction contracts that they let out for road improvements in the state of California. He states that the contracts that Caltrans puts out requires that contractors be in full compliance with all CARB
regulations. Taking that further, all local and municipal county public works agencies should have similar requirements. Can CARB reach out to these agencies and encourage them to include this language in their special provisions?

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

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

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

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

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

Thank you very much, everybody, one and all.
(Thereupon the California Air Resources Board Enforcement workshop adjourned at 4:47 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 26th day of October, 2009.

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