MEETING

CALIFORNIA AIR RESOURCES BOARD

CALIFORNIA AIR RESOURCES BOARD

HEARING ROOM

2020 L STREET

SACRAMENTO, CALIFORNIA

THURSDAY, JULY 8, 1993

9:40 A.M.

Nadine J. Parks

Shorthand Reporter

MEMBERS PRESENT

Jananne Sharpless, Chairwoman
Eugene Boston, M.D.
M. Patricia Hilligoss
Betty Ichikawa
Jack Lagarias
Barbara Riordan
Harriett Wieder
Andrew Wortman, Ph.D.

Staff:

James Boyd, Executive Officer
Mike Scheible, Deputy Executive Officer
Michael Kenny, Chief Counsel

Peter Venturini, Chief, Stationary Source Division
Don Ames, Assistant Chief, SSD
Bob Fletcher, Chief, TACCB, SSD
Dan Donohoue, Manager, TAS, SSD
Alexander Santos, Staff, SSD
Kirk Oliver, Staff Counsel

Genevieve Shiroma, Chief, TACB, SSD
Janette Brooks, Manager, Special Projects Section, SSD
Roger Korenberg, Staff, Special Projects Section, SSD

Terry McGuire, Chief, Technical Support Division
Rich Bradley, Chief, AQDB, Technical Support Division
Debbie Popejoy, Manager, AQAS, TSD
Larry Larsen, Statistical Methods Analyst, TSD
Marci Nystrom, Staff, TSD
Bob Jenne, Staff Counsel

Also Present:

Dr. Carol Henry, Director
Office of Environmental Health Hazard Assessment

Dr. George Alexeeff
Office of Environmental Health Hazard Assessment

Patricia Hutchens, Board Secretary
Bill Valdez

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AFTERNOON SESSION

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CHAIRWOMAN SHARPLESS: If I can have your attention, I'd ask you to take your seats, and we'll start on our next item.

Well, after this morning's discussion, we are still talking about the toxics program, only this time we're shifting to how we pay for these programs and how we assess the fees.

So, we will be considering amendments to the air toxics hot spot fee regulation in this item. These are amendments to the air toxic hot spot fee regulation for fiscal year 1993-94. The Hot Spot Act requires California industries to inventory their toxic air emissions, to notify the public health risk -- if they happen to be significant - and because of recent changes in the law, to reduce these significant emissions.

The Act also places extensive responsibilities on local air districts, the Office of Environmental Health Hazard Assessment, and the ARB. The Legislature established the Hot Spots Act as a fee-supported program. The Act is clear that the revenues needed by public agencies to implement the program are to be provided by the industries that emit the toxic air contaminants.

As the Board is well aware, we've made some very extensive changes to the hot spots program last night --

(Laughter.)

CHAIRWOMAN SHARPLESS: Not last night. Last month, when we reviewed the reporting requirements. We approved substantial streamlining of the toxics emission inventory reporting requirements. And although these changes did not involve the fees that are paid, they will result in dramatic reductions in the cost that industry must bear over the next couple of years.

I know that some industries are concerned that today's proposal will increase their fees. As part of their presentation, staff is prepared to present the net effect that both last month's actions and today's proposal would have on the total cost of the hot spots program.

In addition, the staff will project how costs will be reduced for the program over the next five years.

Before I turn the presentation over to Mr. Boyd, I'd like to recognize my colleague, Dr. Carol Henry, and thank her for taking the time. I saw her in the audience this morning, and she's back again this afternoon. She is the Director of the Office of Environmental Health Hazard Assessment and a wonderful addition to the California Environmental Protection Agency, and we're very happy to have you here today, Dr. Henry.

Mr. Boyd, would you like to carry on with the presentation?

MR. BOYD: Thank you, Chairwoman Sharpless, members of the Board.

As you noted, Chairwoman Sharpless, the purpose of the fee regulation is to provide revenues and to equitably allocate the costs the districts, the Board, and the Office of Environmental Health Hazard Assessment incur because of the statutory mandates of the hot spots program.

The regulation that we have before you today sets forth the amount each district is to remit to the State to recover costs. The regulation also establishes the fee schedules for those 12 districts who requested to be included in the State regulations. The others will process their own fee regulations.

As the Board members may recall, this Board first adopted a regulation to recover the State and local government costs of the program in 1988. We have amended the fee regulation annually to reflect changing costs and changes in the number of facilities that are included in the program.

Now, as you directed the staff -- and as now frankly, required by the law -- the proposal before you today shifts the basis for the fees away from criteria pollutants to a toxic risk and a program workload basis.

In addition, the proposed regulation will generate additional revenues that are essential to implementing new provisions of the hot spots program. Both of the major changes we are proposing today are in response to recent legislation. The first major amendment is to increase fees to provide revenue to fund the legislatively mandated expansion of the program.

As you know, last year, at the fee regulation hearing, I stated to you that we expect the cost of the program to stabilize for fiscal year 1993-94. Had the program not been changed by the Legislature, this would have been the case.

However, Senate Bill 1731 by Senator Calderon was enacted at the end of the last legislative year, and it adds substantial requirements to the air toxic hot spots program.

These new elements generate additional program costs, thus necessitate additional fee revenue. This was known to the Legislature when it passed the bill and it was known to the Governor when he signed the bill into law.

Senate Bill 1731 adds a major new component to the program that requires facilities with significant risk to prepare plans and carry out measures to reduce this risk. The ARB is required to assist smaller businesses in preparing these risk reduction audits and plans.

We anticipate developing several industry-specific audit and plan guidance documents to fulfill this requirement.

And it's our feeling that this work will result in substantial cost savings to businesses who benefit from the guidance that we develop.

Senate Bill 1731 also requires the Office of Environmental Health Hazard Assessment to adopt comprehensive, new risk assessment guidelines. And you certainly heard plenty about that this morning.

These guidelines will address, hopefully, uncertainty in risk assessment. Now, to comply with these new mandates, an increase in program cost was included in the proposed Governor's Budget. However, because of the current economic climate and in response to comments received about this climate, we are proposing a reduction of $457,000 from the increase included in the Governor's Budget.

As Chairwoman Sharpless mentioned, we have also developed a five-year program, or a projection of the program, that proposes a substantial reduction in the State hot spot resources over the next five years.

The second major change being proposed involves changing the basis for calculating fees from the criteria pollutant inventory that the law originally established to one based on toxic releases and facility risk priority.

This change is required by Senate Bill 1378 by

Senator McCorquodale. The fee basis you are considering today is the result of a detailed and thorough development process which we began in May of last year. We have worked very hard to develop a proposal that is equitable for the sources, that is workable for the districts, that complies with Senate Bill 1378, and hopefully allows a smooth transition away from the existing system.

We have held seven public workshops, met with all Cal-EPA agencies, met with representatives of the districts, held four meetings with the Fee Regulation Committee, and met numerous times with affected industries and affected industry associations.

And not unlike this morning's item, these issues really are almost in tandem. This also has been subjected to perhaps the most exhaustive public consultation process that I've experienced.

Finally, to follow up on Chairwoman Sharpless' remarks on the total cost of the hot spots program to California's industry, I'd like to note that California industry will see much lower costs -- we think in the order of a $12 million reduction per year -- to comply with the hot spots program beginning in 1994, as compared to 1993.

To put the proposed cost increase into perspective, sources in aggregate should realize a savings that is about 10 times the amount of the cost increase.

Now, with that, I'd like to turn the program over to the staff to make the detailed presentation. That will be done by Mr. Roger Korenberg of the Special Projects Section of our Toxic Air Contaminant Identification Branch. And with that, Mr. Korenberg, if you would.

MR. KORENBERG: Thank you, Mr. Boyd.

Madam Chairwoman and members of the Board, my presentation today will discuss the staff's proposal to amend the air toxics hot spots fee regulation for fiscal year 1993-94.

For today's presentation, I will first give a short overview of our proposal and briefly review the program areas of responsibility for the Air Resources Board, the Office of Environmental Health Hazard Assessment, or OEHHA, and the local air districts.

Next, I'll move on to the major changes and other amendments which are contained in our staff report.

Following that, I'll discuss the program costs for the coming fiscal year and our future plans. I will conclude with the additional modifications we are proposing today.

Beginning with an overview of our proposal, then: We are proposing to change the method used for calculating fees from criteria pollutants to a method based on toxics risk priority. The method is also workload related.

We told this Board last year that State program costs were stabilizing and we did not expect any cost increases, because the program was peaking. However, Senate Bill 1731, Calderon, was passed late last year. And it imposes significant new mandates on the program which require additional resources.

We believe that these new requirements are important, because they focus on the pollutants and facilities that pose the greatest risk to public health. Under the new program requirements, these facilities must reduce their risk. In addition, OEHHA's required to address the uncertainty in risk assessment.

As you just heard in the last item, the uncertainty in risk assessment is a key concern for industry. Both of these new requirements will produce tangible results. Ultimately, the public, as well as industry, will benefit.

To fulfill those requirements, the State signed budget includes a $1.9 million increase for the program, which would bring the State portion of the program to $5.6 million.

However, we are sensitive to the current economic conditions. As a result, we are proposing an immediate reduction of approximately one-half million in the proposed increase, which will bring the increase to $1.4 million.

This will mean certain program requirements will not be addressed this year, and the State program would be reduced to $5.1 million.

Even with this increase, district costs are two-thirds of the total implementation costs, and State costs are one-third.

We also examined program requirements for the next five years. We are committed to scaling back the program as the program needs diminish. And we have a five-year resource plan that we will present later.

The plan shows a reduction in overall ARB costs of about 40 percent, and also about 40 percent for OEHHA, which would reduce the total program cost in five years by about 2.1 million. Without any further legislation, we project the costs to go down.

Ultimately, industry will pay less this year and in subsequent years for this program. Even though State costs are increasing this year, the total cost to industry will go down immediately as a result of the emission inventory changes this Board approved last month.

I will describe these points in more detail in this presentation.

Before describing the specific amendments, I would like to briefly outline the program activities. Previous to this year, the program had three basic program elements --

emission inventory, risk assessment, and public notification.

As we noted previously, Senate Bill 1731, added new requirements in the risk assessment area -- shown in the red box on the slide -- and added a fourth program element, risk reduction, shown in the green box.

In the risk assessment area, OEHHA evaluates the health impact of the assessment. Senate 1731 now requires OEHHA to adopt new statewide facility risk assessment guideline, following a public review process.

Senate Bill 1731 also added risk reduction requirements to the program. The bill requires that facilities, whose emissions of toxics pose significant potential health risks, to conduct a toxic risk reduction audit. Based on the audit, they must also develop a plan that uses risk reduction measures to reduce the risk below significant levels defined by the districts.

The ARB is required to assist smaller businesses in complying in complying with the risk reduction audit and plan requirements of Senate Bill 1731.

The ARB would develop risk reductions guidelines, each covering a different small business category.

I will now discuss the amendments we are asking you to consider today. The first major amendment that we are proposing is to move away from fees based on criteria pollutants to fees related to toxics. This is in response to the Board's direction as well as our intent.

We now have enough program information to propose this change. Recent legislation, Senate Bill 1378, McCorquodale, also requires us to move in this direction.

We are proposing a significant change in the method we use to calculate fees and distribute State costs. Since the beginning of the program, distribution of State costs and fees were based on criteria pollutant emissions. Under this method, emitters of high amounts of criteria pollutants paid the highest fees without regard to their toxic emissions.

However, we now have sufficient information to change the fee basis. We will continue to reevaluate the method and change it in future years as necessary.

We were directed by this Board in June, 1991 to consider an alternative basis for fees for fiscal year 93-94. In addition, in 1992, the Hot Spots Act was amended by Senate Bill 1378. This bill requires the ARB to adopt a regulation that bases fees on toxic emissions and facility risk priority to the extent information is available. Our proposal for a new fee basis is the result of a thorough development process, which began last year.

As stated by Mr. Boyd, we have worked to develop a basis that complies with Senate Bill 1378, allows a smooth transition, and we believe is fair and equitable. We've involved the districts, industry, and the general public throughout our process.

Our proposal today is a result of compromises to make it workable across diverse districts. Our approach balances the requirements of Senate Bill 1378 with facility complexity. We call this a program category approach.

We developed several program categories in our fee basis which parallel the program elements I covered earlier. In calculating fees, we apply several resource indexes to balance workload or complexity of the facility with the risk priority.

As shown on this graph, there are six major program categories under this approach: survey, industrywide, plan and report, risk assessment, notification, and audit and plan.

These categories correspond to the program requirements and risk priorities outlined in the Act. The first three categories -- survey, industrywide, and plan and report -- refer to emissions inventory categories. The fees are the lowest for the emissions inventory categories and increase with risk priority and workload. Ninety-eight percent of the facilities fall in the inventory categories.

We believe that most small businesses fall into the first two categories -- survey and industrywide -- and would pay the lowest fees. Depending on a facility's status, it is placed into one of these categories and pays the fee associated only with that category.

The proposed method of allocating fees has benefits over other methods. Toxics emissions and risk priority are considered in the method. The method is also related to the proportion of work the State does for individual districts and the amount of work the districts do for the facility categories.

We believe the method is equitable, since the facility only pays a category fee for the time they are in that category. For example, under this method, if a facility in the risk assessment category is determined not to pose a significant risk, then that facility returns the next year to the lower plan and report category and would pay a lower plan and report fee.

As I mentioned, most of the facilities in the program are in the emission inventory phase. The average fees for the emission inventory categories for the 12 districts for which we are adopting fee schedules are as indicated. These fees include both State and district costs.

Since this is a new method, it is difficult to make a direct comparison with previous years. However, last year, a large criteria pollutant emitter, but low risk facility, could have paid a few many times the $4,000 fee it would pay this year.

There are several other amendments we are proposing for the fee regulation. These amendments were all included in the staff report.

The regulation currently allows fees to be waived for facilities in the survey category if they have previously paid fees and are low risk.

We propose extending this provision to the industrywide program category.

For small businesses in any category, we are proposing a fee cap if $700. A small business is defined as a business with 10 or fewer employees and total annual gross receipts less than $500,000.

We are proposing a maximum fee of $1,000 for the plan and report simple category at the district's option.

This amendment was requested by San Bernardino County APCD to ensure that the plan and report fee for simple facilities is less than the corresponding fee for a facility preparing a risk assessment.

Mendocino is the only other district that has chosen to use this option.

Senate Bill 1731 contains provisions for the submission of supplemental risk assessment information and specifically requires us to provide a fee to review that information, and specifically requires us to provide a fee to review that information. The State is not assessing an extra fee for its review, but the districts may charge the supplemental fee. We propose to set the supplemental fee at $2,000.

We are adding clarifying language, which was requested by Colusa County APCD concerning the annual adoption of fee rules. The new language states that the regulations shall be reviewed annually and may be amended if necessary.

Colusa felt that this would provide the flexibility contained in the law for the districts.

We are proposing to update the fee schedules, as necessary, to reflect the change in fee basis, program costs, specified fees in the list of district toxics inventories, and to reflect that 12 districts requested ARB adoption of their fee schedules. The other 22 districts will be adopting their own fee regulations.

We are proposing to delete the list of substances from the fee regulation and make appropriate reference to the list in the emission inventory criteria and guidelines regulation.

As I stated, these proposed amendments were all included in the staff report.

The second major amendment we are proposing today is an amendment to program costs. The Hot Spots Act requires that the State and district costs of implementing the program be fully funded by facilities subject to the Act.

Last year, we stated that we anticipated that State costs would stabilize for this fiscal year. However, legislation enacted last year imposes significant new requirements on the program which will require additional resources.

We are proposing a State program cost increase of 1.4 million. This change is necessary to perform the work required by Senate Bill 1731. Senate Bill 1731 requires OEHHA to develop new risk assessment guidelines and requires the ARB to assist smaller businesses complying with risk reduction provisions.

The new legislation is specific as to the development process for the new risk assessment guidelines. OEHHA's required to adopt new facility risk assessment guidelines after consulting with the California Air Pollution Control Officers Association's Risk Assessment Committee and the ARB; circulating the guidelines to the public and regulated community; submitting the guidelines to the Scientific Review Panel on Toxic Air Contaminants; and holding public workshops.

These newly mandated risk assessment guidelines will require development of a large database to allow facility operators to include alternative risk parameters. Guidance on addressing uncertainty in parameter values must be in the guidelines.

The second new requirement mandated by Senate Bill 1731 is for risk reduction. Facilities whose emissions of toxics pose significant potential health risks, must conduct a toxic risk reduction audit and develop a plan that evaluates risk reduction measures. These facilities must submit plans that describe how toxics emissions will be lowered below a significance level.

The bill requires the ARB and the districts to assist smaller businesses in obtaining information, assessing risk reduction methods, and applying risk reduction techniques.

To comply with this, ARB would develop industry-specific guidelines, each covering different smaller business categories. The ARB is also to develop self-conducted audit and checklists for smaller businesses to assist them to meet the new requirements.

The development of industry-specific guidance and the checklist is expected to save affected industries the costs of individually evaluating risk reduction methods.

We have already initiated discussions with the California Air Pollution Control Officers Association to begin setting the framework on how best to implement these new provisions.

Staff is proposing reductions of $.5 million for the State program to implement the provisions of Senate Bill 1731. To fulfill the requirements of Senate Bill 1731, the State budget for the air toxics hot spots program for fiscal year 93-94 reflects an increase of about 1.9 million. This is about 1.4 million for the OEHHA and .5 million for ARB.

However, as a result of the comments we received at the workshops and in recognition of the current economic climate, we propose that the increase be reduced by $457,000, to a total of about 1.4 million. This would result in an increase of .9 million for the OEHHA and .5 million for ARB.

The reduced budget will affect planned program activities. OEHHA will not be able to evaluate risk reduction audits and plans the coming fiscal year. OEHHA also will not address air quality modeling and emissions uncertainty analysis in the new risk assessment guidelines.

Fewer microenvironmental factors will be evaluated for uncertainty. Our proposal includes an additional reduction in total State costs. We included in the State budget a reduction in program costs for the ARB of $221,000 from the database budget.

The proposed for ARB, with the reduction, is 2.4

million. The proposed budget for OEHHA, with their reduction, is 2.7 million. The combined total for fiscal year 93-94 with the reductions is 5.1 million.

As in previous years, an adjustment factor of 5 percent will be added to this amount to account for closing of businesses, nonpayment, and uncertainty in the number of facilities.

State costs are only one element of fees. At this graph depicts, the district costs account for approximately two-thirds of the total implementation costs. For fiscal year 93-94, 12 of the 34 districts are estimating increases in district program costs for a combined increase of $1 million. The other 22 districts are estimating a combined reduction in costs of $540,000.

REcognizing that the program is now reaching full implementation, we have prepared a State five-year resource plan. This plan was prepared in conjunction with OEHHA to forecast the program requirements for the next five fiscal years.

We are sensitive to cost concerns and we looked for cost-effective reductions and streamlining wherever possible. We have carefully evaluated the mandated program tasks and the resources required to accomplish them.

We examined the program areas that I discussed in the first part of the presentation, assessed the people and contract dollars that we have assigned to that area, and projected our requirements. The next series of slides presents the results of our analysis. The reductions were calculated using the State budget as the baseline.

The Air Resources Board staff proposes to reduce its hot spots resources by about 40 percent, from $2.4 million for this fiscal year to $1.5 million by fiscal year 97-97. Of the total reduction, one-third would occur in the next fiscal year.

We are able to do this because our needs will be decreasing in the following areas: fee regulation and inventory regulation development, source test methods development, air toxics emission database system, emission data collection and validation, risk assessment assistance, public notification assistance, and risk assessment guideline development assistance.

OEHHA proposes to reduce its resources by about 40 percent, from 3.2 million in fiscal year 93-94 to 2 million in fiscal year 97-98. The cost reductions will be able to be realized because, as the program matures, OEHHA expects to receive fewer risk assessments to review by fiscal year 97-98.

OEHHA anticipates increased efficiency in its review process when the OEHHA risk assessment guidelines are adopted and in place. Facilities following these guidelines should produce risk assessments that are easier to review.

Once the guidelines have been adopted, OEHHA's resource needs for guidelines updates will be less than those initial costs of preparing the guidelines and carrying the guidelines to the Scientific Review Panel and public comments process.

The total combined reduction is 2.1 million, or about a 40 percent decrease. These projections are based on the assumption that there will be no new legislative mandates.

This slide shows the State costs from the beginning of the program through our five-year plan. We do not have projections for future district costs, but we expect that the districts will be looking at their five-year needs as well.

Thus far, we have focused on State and district costs. While this is an important element, it is only one part of the overall cost to industry. As shown here, for fiscal year 93-94 and subsequent years, industry will be saving on the order of $12 million per year in ongoing program costs compared to previous years.

Ongoing program costs are for biennial emission updates, district costs, and State costs. Industry's costs to comply with Senate Bill 1731 were not included. Savings in ongoing costs will occur because of the action taken by this Board last month to streamline the emission inventory regulation. Facilities will spend less on source tests, engineering analysis, and consulting costs to comply with the Act beginning this year.

Also, we would begin to implement our five-year resource plan, which will lower costs. This does not include any reduction in costs the districts may have.

I will now discuss modifications to the regulation that was published in the staff report. These changes are essentially technical in nature.

We have received information from the districts that changes the number of facilities and district costs. We are proposing changes for the following districts: Imperial, Lake, Kern, Mendocino, Sacramento, San Luis Obispo, Santa Barbara, and Yolo-Solano.

South Coast AQMD provided a new specified fee for the industrywide facility category, changing the fee from $20 to $25.

We are proposing, at the request of Santa Barbara District, that facilities in the Santa Barbara District that were categorized as intermediate priority and had a risk assessment prepared for them by the district be considered a plan and report facility for fee purposes.

We are also proposing to change the definition of small business contained in the staff report in response to comments we received from small oil producers.

In our modified definition, we clarify that a business means a facility, that the facility must meet the criteria for the most recent calendar year, and that small businesses affiliated with other small businesses do not have to consider the combined activities to meet the criteria.

CHAIRWOMAN SHARPLESS: Excuse me.

MR. KORENBERG: Although not shown on the slide --

CHAIRWOMAN SHARPLESS: Excuse me, can you repeat that last element there on the proposed change for small business definition?

MR. KORENBERG: I'll read again the section on small business definition.

CHAIRWOMAN SHARPLESS: Okay.

MR. KORENBERG: We're proposing to change the definition of small business contained in the staff report in response to comments we received from small oil producers.

In our modified definition, we clarify that a business means a facility, that the facility must meet the criteria for the most recent calendar year, and that small businesses affiliated with other small businesses do not have to consider the combined activities to meet the criteria.

CHAIRWOMAN SHARPLESS: Thank you.

MR. KORENBERG: Although not shown on the slide, in response to comments, we are proposing to retain the requirement for annual State adoption of the fee regulation.

In our process of developing the proposed amendments, two major issues have been raised. These issues are, one, that fees should be based on a few for service method; and, two, there should be no State cost increase for Senate Bill 1731, Calderon, work.

A few for service option was one of the methods we considered and evaluated early in our development process with our fee committee. We had concluded that it was not feasible to apply a strict fee for service approach, because most of OEHHA and ARB's responsibilities are not the facility specific, but rather have statewide implication.

While our method does not assess individual facilities for time spent, we have incorporated the concept by using different program categories and subdividing categories for complexity.

Program categories which require more resource effort from the State and the district pay the higher fees.

However, we intend next year to reevaluate moving in the direction of fee for service where the method is applicable.

The second major issue was that there should be no cost increase for Senate Bill 1731 work. Some commenters suggested that Senate bill 1731 costs could be absorbed in the current program.

Senate Bill 1731 mandates specific new requirements which are in addition to current responsibilities. Accomplishing the new tasks without additional resources would mean that the basic, or core, program would be adversely affected.

The work backlog would increase for both ARB and OEHHA. For ARB, inventory compilation and validation would be delayed. For OEHHA, a major impact would be an increasing backlog of risk assessment reviews.

We would be able to provide only limited assistance to the districts and facilities in source testing, risk assessment methods and engineering parameters, and public notification.

OEHHA would provide less assistance to the districts on risk assessments.

We would not be able to perform needed quality assurance checks on the inventory data. Effective streamlining of the inventory data reporting is based on having an initial round of accurate and reliable data. These are just a few examples of the negative impacts of absorbing 1731 costs into the current program.

The net result would be that there would be a delay in providing the public exposure information and potential health risk. There also could be a delay in accomplishing risk reduction.

In summary, we are first proposing that the fee basis be changed to our program category method to reflect toxics risk priority and workload. We believe this method is fair and equitable.

Second, Senate Bill 1731, Calderon, imposes significant new and important requirements on the program which require additional resources. To fulfill those requirements, the State Budget includes a $1.9 million increase for the program.

However, we are sensitive to the current economic conditions. As a result, we are proposing an immediate reduction of one-half million dollars in the State costs.

We also examined program requirements for the next five years. We are committed to scaling back the program, and we have a five-year resource plan that shows a reduction in overall State costs of about 40 percent. Without any further legislation, we project the costs will go down over the next five years.

Ultimately, industry will pay less this year and in subsequent years for this program. Even though State costs are increasing this year, the total cost to industry will go down immediately by approximately $12 million per year.

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

CHAIRWOMAN SHARPLESS: Okay. Thank you very much, staff? Are there questions at this point? Is there anything that -- Dr. Henry, do you have any comments that you would like to make at this point before we go to the witness list?

DR. HENRY: I don't have any specific comments, other than I think that the staff -- the ARB staff and the OEHHA staff -- have worked very hard at looking at these increased costs. We're very concerned about them. I think we've tried to keep the mandate of protecting the public health as our highest priority, and yet address the issues of moving forward with the program, given the economic conditions that are in existence today.

We'd be happy to try and discuss this further, if there are other issues to address, but I think that staff report and the public outreach that has gone on has -- it would be surprising if there are new issues raised.

So, I'm very pleased to be here and our staff, Dr. George Alexeeff and Dr. Melanie Marty, I think, have worked extensively to get the program in the shape that it's in right now.

So, I'd be happy to answer any other questions.

Thank you, Chairwoman Sharpless.

CHAIRWOMAN SHARPLESS: Thank you, Dr. Henry.

Let us start on our witness list, then, and I'm sure we will have some exchanges as people come up and express their views to us today.

I'd like to begin with Doug Allard from Santa Barbara APCD.

MR. ALLARD: Thank you, Madam Chair, members of the Board.

My name is Doug Allard. I'm the Planning Division Manager of the Santa Barbara Air Pollution Control District. And within our division, we have the AB 2588 hot spots program for Santa Barbara County.

We view the hot spots program as a very important program. We think it's the most effective program, with the possible exception of reducing automobile usage, for identifying, and now with the advent of SB 1731, for controlling the cancer-causing pollution that we all breathe.

We've also tried to be sensitive to business concerned -- concerns, and we've streamlined our program through automation extensively, to the point where we've been able now to reduce our costs by over 60 percent in the last two years, including a recent reduction to reflect your Board's streamlining of the emission inventory regulation.

Our automation efforts have included creating the Ace risk assessment program, which is now becoming, I think, a standard throughout the State. And we are the only district to perform risk assessments for our businesses, saving each of them between 50 -- 15 and $50,000, which is what, I think, consultants normally charge for that kind of activity.

Now, we did send a letter in June to your Board, or to your staff, questioning the State cost increases. Since then, your staff has worked closely with us and with our industry, particularly to address some small business concerns.

We've seen the one-half million dollar reduction in the State costs in the fee regulation that your staff told you about today. We've received a letter from Mr. Boyd implying future cost increases. And now, today, we've seen the evidence of that -- about a five-year plan reflecting cost increases.

So, what these actions and these commitments for future cost reductions, we believe that your staff has made a sincere effort to address our concerns about needed cost reductions. However, we do strongly suggest that next year's fees be based solely on air toxic emissions, in accordance with SB 1378, and we will work with your staff to try to ensure that that happens. Thank you.

CHAIRWOMAN SHARPLESS: Thank you very much.

I'd like to call forward Tim Sturdavant, IEA.

MR. STURDAVANT: Madam Chairwoman, members of the Board, my name is Tim Sturdavant. I represent the San Diego Industrial Environmental Association.

And on behalf of that association, I'd like to express our sincere thanks to ARB staff for communicating with us on the issues of this fee regulation, and soliciting our involvement and participation in moving forward with the proposal.

We would like to say we strongly support the methodology that's being proposed in the fee regulation, in that it does, indeed, address McCorquodale's requirements, and it does try to break up the source categories to be more fair in assessing the fee regulation; again, not tying in to criteria pollutant emissions.

However, we do see one area, one real obvious area where fee for service can be implemented immediately. And that's primarily in the health risk assessment reviews. If I understand things correctly, the health risk assessment reviews are done on a facility-specific basis. Therefore, the amount of time that staff would put into doing that review, multiplied times a cost multiplier to cover overhead, and then charged directly back to the source might accomplish a real fair and adequate methodology for recovery of fees for that process.

I would like to say -- again, supporting the changes that are being proposed, we have concerns about the price tag. And even the reductions, which are much appreciated, we feel probably don't go far enough. And I'll give you an example. In our industry or in business, a customer might require that we make some modifications in the widgets we produce. And we have three choices then. Either we make the modifications or changes and pass the cost off to the customer -- we might lose a few customers -- or we don't make the modifications and we definitely lose the customer, or we make the modifications and perhaps find ways to be more efficient and productive and absorb the cost internally so that we don't lose the customer.

This is the kind of concept we're proposing to ARB staff and OEHHA, you know, in this -- in their involvement with the 2588 program.

I'd like to also say that when OEHHA does develop these health risk assessment guidelines, that they make them user friendly. I've heard from many of the districts and from industry that work in that effort in the past has not produced a product that's very useful. And I guess we're all learning in this process. And I'm sensitive to that, so I just would request that they solicit the involvement of all of the affected parties, including industry, in the development of these guidelines, because we would gladly like to participate.

And the last item is the issue with compliance assistance. And we strongly support compliance assistance, but -- like with all things -- it has a price tag on it. Perhaps we need to establish some level where compliance assistance needs to convert to a few for service breakpoint. In other words, if the amount of time -- ARB staff time -- that's extended to a source to help them comply with the program is not that significant, then it can be absorbed in the program. But if we exceed that, I think maybe we need to consider charging the source for it.

We do the same thing in our business. Oftentimes, we get calls and questions from our customers, and we provide that service for them. But when it goes beyond a certain point, they're billed for it.

And generally speaking, though, overall, the proposed fee regulation is acceptable, except we need to think about the price tag.

Thank you very much.

CHAIRWOMAN SHARPLESS: Okay. Don't leave yet. First of all, you heard the staff say that, within the next year, they would be considering additional options for fee for service. And so, I would definitely solicit your organization's participation, and I know that staff would be contacting you when that process began.

You mentioned -- not in our area, but in the Office of Environmental Health Hazard Assessment -- a fee for service on risk assessments. And I'm just going to give Dr. Henry, or George, or whoever -- Carol, you want to respond on whether or not you think that's a good idea? Are you considering it?

DR. HENRY: George has certainly thought about this, because this is not a new concept. So, let me ask him to make a couple of comments about the fact that we are not a business. We would like to operate in a businesslike and efficient manner, but we are not a business. So, let me ask him to perhaps point out why. We're not opposed to the concept; but I think, in its implementation, there would have to be some differences. So, George?

DR. ALEXEEFF: Yes. We did look at the concept of fee for service initially, and decided to go with ARB's general fee guidelines in the past several years.

And we are -- the risk assessment portion is simply a portion of our duties. Some of our responsibilities, such as developing guidelines or developing health guidance, would cover all facilities.

However, we're willing to -- there has been this interest raised again to try to look at that fee for service. So, we're willing to work with the CAPCOA committees, and however else they integrate other individuals outside of the CAPCOA group, to see if some sort of fee for service process could be established, and if it would likely be an improvement over the current process.

CHAIRWOMAN SHARPLESS: I think I heard you say that you recognize, in some areas, fee for service doesn't have a practical application. That would be areas like the development of the risk assessment guidelines --

MR. STURDAVANT: Sure.

CHAIRWOMAN SHARPLESS: -- the public process. There's simply no easy way to do a fee for service in that area, because it impacts everybody equally. So, I think what your point is, though, in areas where it is applicable to take a good, strong look at it, and see if there isn't some way that we can work things out.

MR. STURDAVANT: Sure. I'd like to emphasize and respond to her comment earlier about government not being a business. Good point. And I respect that point of view.

But keep in mind, there are districts that have implemented fee for service in their fee recovery programs And, again, they're an agency, and it's been successful. And it's been well received by both the regulated community and the agency. And it provides -- and I say this with deep sincerity -- it provides an opportunity for you to even look at your own staff and try to -- pardon my expression, but get rid of the dead wood.

You have certain engineers, certain people who do reviews that will be very productive and efficient, and certain people that aren't. And it allows you an opportunity to address it and perhaps bring them up to speed with the standard, for instance.

It's just a good mechanism to track labor, a good mechanism to track efficiency, plus districts are doing reviews on health risk assessments also. And if their reviews show that there's a flaw, because the OEHHA needs are much more extensive, let's say, then we can all learn from that process.

And that's why this kind of a tracking mechanism has tremendous benefit. And one other key point, too. In the area of permit streamlining, which IEA strongly supports and has been involved in San Diego extensively, this labor tracking mechanism has been ideal in looking for areas where streamlining would most benefit everybody involved in permitting processes.

So, there are benefits that aren't direct that come from such programs.

CHAIRWOMAN SHARPLESS: I would make one more point. I think what you're saying is correct. Obviously, there are areas where we can streamline. There are areas where we can be more efficient. There are tools that are there that we can use that we're currently not using.

But I will make one point with regard to issues like small business. When the Legislature put that provision in the bill, it was with recognition that small business does not have the same resource capacity; that, oftentimes, they're working on lower margins than other businesses that -- and I know I'm going to probably have people thinking in the audience that I don't understand big business and the way it operates and their margins -- but they have less ability to spread the cost.

And I think the sensitivity was for small businesses. And because of that, there is a provision in this bill to give them some relief. Now, by giving them some relief, they're offering them some assistance from the Air Resources Board in helping them -- providing them a service that, if they were to go on to the outside, would probably individually cost them more money.

How you deal with the concept of giving relief and the concept of requiring a fee for service on small business is that sometimes there's a conflict there in trying to resolve that issue.

Now, you raised the point that you could give it up to a certain level and, then after a certain level, you know, you start charging them. And those are things we can look at. But I just wanted to kind of react to what you're saying. There are cases, tax relief, tax incentives, where all of us taxpayers pay for incentives or whatever -- credits or relief -- in recognition that there are special needs and special cases.

So, in those areas, I don't think that fee for service necessarily has application.

MR. STURDAVANT: We -- you recall the Air Resources Board embarked on a very effective compliance assistance program.

CHAIRWOMAN SHARPLESS: Not only embarked, continue.

MR. STURDAVANT: Remember the comic books?

CHAIRWOMAN SHARPLESS: Remember them, we continue to put them out. And thank you for the plug.

MR. STURDAVANT: They were very effective.

CHAIRWOMAN SHARPLESS: They are.

MR. STURDAVANT: I, being a former inspector myself in an agency, used those extensively, and what a great tool it was. Perhaps this is one of the tools that could be considered for this program. I don't know. Because, obviously, 2588 probably won't go away, and there'll be small businesses coming and going in the years to come. So, I throw that out as a suggestion to help in the compliance assistance world. You do it one time. You have a publication that's easy to understand and easy to read that small business can readily address, and perhaps your immediate interaction diminishes a bit and, overall, the cost is reduced.

CHAIRWOMAN SHARPLESS: Well, that's exactly where the program is going. I think it's to lend that kind of assistance to the small business, not so much to explain the law, but to help industry categories -- develop audits for industry categories to make it easier for them to do the work rather than go out and have to contract with maybe a more expensive consulting firm to do that work.

So, on the one hand, it sounds like we're increasing fees; on the other hand, it can be seen as a cost cutting mechanism for small business costs. It just depends.

MR. STURDAVANT: What's called return on investment.

CHAIRWOMAN SHARPLESS: Right. That's exactly what it is.

MR. STURDAVANT: But, at any rate, thank you for considering my points.

CHAIRWOMAN SHARPLESS: Thank you. We'll ask William Sandman, Colusa County.

MR. SANDMAN: Good afternoon, Chairwoman Sharpless and Board members. I've been sitting in back for a good part of the day, and it's been pretty chilly back there.

But coming up here to the podium, it's a lot warmer. So --

(Laughter.)

SUPERVISOR WIEDER: It's been chilly up here, too.

MR. SANDMAN: I'd like to thank you for allowing me to comment on the proposed amendments to the hot spots fee regulations for 1993-94.

My name is William Sandman. I'm from Colusa County Air Pollution Control District. My boss is Harry Krug. He's the air pollution control officer for Colusa County. My comments relate to concerns of my district and other rural districts throughout the State.

First, though, I'd like to thank the ARB staff for working closely with my district and asking for input and other districts in the Sac Valley Air Basin.

The Air Toxics Hot Spots Information and Assessment Act of 1987 has been an information gathering process covering the emissions of toxic materials in the air. Sources were to submit a plan and report on how and what emissions entered the air. Once a report was submitted, the report was to be updated on a biennial basis.

Common sense would suggest that fees for operating a maintenance program should go down. We were told this by the ARB, and we relayed this information to our facilities.

In 1992, legislation passed requiring risk assessments for certain specified facilities. Of the 39 facilities in Colusa County with over 10 tons of emissions, there is not a single facility which will fall under the additional health risk assessment requirements of the Hot Spots Act.

In Table 4 on page 45 of the proposed amendments, the Colusa County District costs are reduced from $27,200 in fiscal year 92-93, to $13,750 for 93-94. This is a 49.5 percent reduction in program costs, because the district is in a program maintenance phase of this Act.

If you look at Table 1 on the page marked Roman Numeral I-12, you can see that the ARB fee for this program has increased 41.6 percent for Colusa County, up from 13,697 in fiscal year 92-93 to 23,441 in 93-94.

In this day and age of tight economic times, it is not the time to spread the cost on everyone. The added costs of the health risk assessments must be borne by the affected industries. If the cost of this program is too burdensome on the affected industries, then a legislative change is needed.

The proposed amendments to the fee regulation are clearly a case of trying to spread a noncost-effective program over a larger base of nonparticipatory businesses to make the program cost more bearable.

The Colusa County Air Pollution Control District does not agree with this practice, and feels it is unfair to the many businesses throughout the State who have very limited toxic emissions.

The district strongly urges the Board to modify the proposed amendment to direct added costs to the specific portion of the program that is incurring those costs.

Let's not try and hide these excessive costs by spreading them out on the other businesses who are not under the legal requirements for the added risk information.

Finally, it makes the districts and the ARB look bad when we anticipate the reduced cost of a program and have it end up significantly increasing.

Thank you for your attention.

CHAIRWOMAN SHARPLESS: Thank you, Mr. Sandman. Are there any comments by staff?

SUPERVISOR WIEDER: I have a question.

CHAIRWOMAN SHARPLESS: Okay. Yes.

SUPERVISOR WIEDER: Do you not believe what we were told, that the -- as the program goes on, it's going to decrease?

MR. SANDMAN: Well, as of -- from what I understand, this next year -- 93-94, the program is increasing. And I think I'm looking at that year right now. And I'm all for the program decreasing in cost and looking forward to that.

SUPERVISOR WIEDER: Well, I'm looking forward to the fact that it'll be different than when we were told down in Southern California -- of course, you Northerners won't understand this -- that we had to conserve on water, and we did that. And our bills went up. So, this, we hope, will not be like that.

CHAIRWOMAN SHARPLESS: Staff, would you like to comment on the concept of spreading costs only to those areas where there are facilities that have perhaps a greater risk than in areas where they have facilities, but they have no risk.

MS. SHIROMA: For the court reporter, I'm Genevieve Shiroma, Chief of the Toxic Air Contaminant Identification Branch.

Yes. And Colusa has been right there at our workshops and our district meetings working with us. We appreciate their efforts as well.

The way the method was developed, those districts that do, in fact, have risk assessment facilities or notification facilities will, in fact, pick up a higher portion of the cost. It is true that Colusa does not have these facilities. With the increased program cost, we did spread the increased cost across everyone. For example, for the risk reduction guideline work -- as we were discussing earlier -- the statute says it's for smaller businesses.

We do feel that it was fair to spread that, because businesses in general will benefit from the technology development. And also, what we're looking at in our five-year plan is to reduce the cost, and then modifying it to accommodate your needs as well.

MR. SANDMAN: Fantastic.

MR. VENTURINI: Madam Chair?

CHAIRWOMAN SHARPLESS: Yes, Mr. Venturini.

MR. VENTURINI: A couple other observations. When we went to this new method, as you change from any method to another method, there are going to be some effects where some people may be having to pay a little more, some maybe having to pay less. And that is one of the outcomes of going to this method, which is more directed to the fee for service. This also means that, as each year goes by, we will reevaluate where facilities in a specific district are -- say, Colusa. And the next year, because those facilities have passed through a phase, their costs may be less. So, there'll be another redistribution. That's just the nature of going to this method that is really, in many respects, a fee for service concept to give us some confidence that this method that we had made some sense to us and was fair and equitable.

We did take a look at the total State costs and the percent of the total State costs each district was paying -- would be paying, and the percent of the larger facilities each district had.

And when we took a look at that, we found there was a very good correlation between the percent of the State costs and the percent of the larger facilities, the more complex facilities in that district.

For example, for Colusa specifically, their percent of the State cost is on the order of .4 percent; the percent of the facilities is .7. And so, that gives us some confidence that we're apportioning the costs in a reasonable manner, and there's some equity amongst all of the districts.

CHAIRWOMAN SHARPLESS: Okay. Thank you very much, Mr. Sandman.

MR. SANDMAN: Thank you.

CHAIRWOMAN SHARPLESS: Mr. Kenneth Selover.

MS. CARRUTHERS: I am not Kenneth Selover. He had to leave. Kenneth Selover had to leave. He's the APCO with Yolo-Solano APCD.

I'm Annette Carruthers, the Enforcement Manager. So, I'll present his comments as best as I can.

I'd like to take this opportunity to thank you for allowing me the time to address the Board, and to the ARB staff for their continuing efforts to work with us, and allowing me to participate in the task force.

We're going to flash a few headlines for you from our very active newspapers in the district. We recently, within the last year, increased our permit fees to the 80 percent level of cost recovery, and it was no easy task. And we were really blasted in the newspapers as -- you can go ahead and just show them one after another.

So, here we are at the Yolo-Solano Air Pollution Control District, and are frankly puzzled as to how we can pass at this critical time a 400 percent increase onto our sources.

And we aren't convinced that the State has done everything they can to cut their budget and operate within the constraints of a budget that can be tolerated by businesses, particularly in this time of financial crisis.

Maybe an even more streamlined approach needs to be considered. Certainly, this has been the case at the district. With only 60 facilities involved in the AB 2588 program, the district has been able to keep our expenses down to $35,000 per year.

Conversely, our share of State costs is presently at somewhere between 47 and 52,000 for 94-94.

I guess we're one of the few districts that gets a cartoon in our name (remarking on the cartoon image displayed on screen).

As only two of our facilities are currently performing risk assessments, it is difficult for both the district and affected sources to comprehend a need for a fee increase when the amount of work we are all required to perform is actually decreasing.

Please understand that, as a member of the task force that developed this methodology, we have no problem with the methodology itself. But no matter how you slice this budget pie to attempt to fairly divide the costs, the pie appears to be simply too big.

In conclusion, I have submitted some written comments. We suggest that working -- the budget be more drastically cut and the operation be streamlined to fit within that budget, and that the five-year reduction plan begin this year when California is in such a crisis. And some of these other -- I'm just showing you the increase to some of our sources, what it would look like for 93-94. They don't show up real well, but I have the hard copies for you.

CHAIRWOMAN SHARPLESS: Thank you. I'd like to ask Mr. Venturini maybe. Mr. Venturini, since they have six facilities in the program --

MS. CARRUTHERS: We have 60 facilities in the district --

CHAIRWOMAN SHARPLESS: Oh, 60.

MS. CARRUTHERS: -- two doing risk assessments.

CHAIRWOMAN SHARPLESS: Two doing risk assessments.

Wouldn't the fees for their area be going down and for their facilities be going down under this new methodology, where it depends on where you are in the workload as to how much you pay?

What happened to their facilities?

MR. VENTURINI: Genevieve can explain why their fees are where they are. And let me just mention once again, as a percent of the State costs, they're at about .96 percent of State costs and 1.06 percent of larger facilities.

Genevieve can provide you with more specifics on the reason why the increase.

MS. SHIROMA: The reason is because, last year, the allotment of the State portion of costs was based on criteria pollutants. So, we basically took the straight-and-narrow criteria pollutant database and divided it up among all the different districts.

Well, as we've discussed before, and as you're aware, the criteria pollutant inventory is a very different inventory from the toxics inventory. So, in compliance with McCorquodale and also in response to your direction to us, we went towards a toxics-based fee. And in doing that, with the number of facilities in the Yolo-Solano area and the fact that they did have two risk assessment facilities, as we went through the 34 districts and allotted the fees, their share, given the equation that we had devised, came to the amount that Annette referenced, the 45 to $50,000.

And, therefore, their share increased. And, as Peter mentioned, the method will show an increase for some districts and a decrease for others, because we are going towards a toxics-based fee.

MR. VENTURINI: Let me just mention, Yolo-Solano is one of those districts that will be adopting their own fee schedule. So, we do not know how much they will be charging, how they will be distributing the fees to their individual facilities, because they will be doing their own fee regulation.

And, as Ms. Shiroma mentioned, since they do have some facilities in the risk assessment mode, depending on what happens with that -- when we do the reassessment next year -- if those facilities drop out of the risk assessment mode to a lower category, then the district's fees for State costs would go down. That's the dynamics of this new system. It's going to be fluid from year to year.

MS. SHIROMA: Also, as we implement our five-year plan and show reductions in our program costs next year, that will be reflected in the allotment among the 34 districts, and should show a benefit for Yolo-Solano as well.

CHAIRWOMAN SHARPLESS: Of the facilities that they have in their inventory, how many of them would fall within the small business criteria?

MS. SHIROMA: Annette, I'm not sure if you were able to quantify --

MS. CARRUTHERS: I don't think we had any.

MS. SHIROMA: You didn't have any.

MS. CARRUTHERS: We didn't have any.

MS. SHIROMA: But the other thing that is interesting about Yolo-Solano is that they do have a large percentage of the complex types of industries within their district. And that also affects the allotment. The more complex facilities there are in the districts, that will raise their share of the State costs.

MR. VENTURINI: One final point, on the small businesses, we are not imposing a State fee on those sources doing a survey or an industrywide inventory.

CHAIRWOMAN SHARPLESS: Well, I also noticed --

MR. VENTURINI: -- which are primarily the small businesses, so --

CHAIRWOMAN SHARPLESS: I also noticed --

MR. VENTURINI: -- there is no State charge.

CHAIRWOMAN SHARPLESS: Yes. I also noticed in the proposal that you had a cap of $700 for small business under certain situations.

MR. VENTURINI: That's correct.

MS. SHIROMA: That's correct.

CHAIRWOMAN SHARPLESS: But you don't happen to fall into that category?

MS. CARRUTHERS: No. Our small businesses would fall into the industrywide or survey category.

CHAIRWOMAN SHARPLESS: But you don't have any of those.

MS. CARRUTHERS: We don't have any small businesses that are in the other fee structure.

CHAIRWOMAN SHARPLESS: I see.

MS. CARRUTHERS: And the two -- the two facilities that we presently have in the risk assessment category will remain in that, because it's a two-year -- you remain in the risk assessment category for two years. The first year, you would enter -- as this program is, and that's where we fall in, or these two facilities fall in. You fall into what's titled the risk assessment district level.

So, for this period of time, the district is reviewing the risk assessment. However, there is -- you know, it falls into the accumulation of State fees, also. And then, next year, those same two facilities would be in the next risk assessment category, which risk assessment-State, which is a higher fee level.

So, although it's true, we did not submit our expenses so that we would be part of this fee calculation -- the fee regulation, and we -- it's up to us to distribute those costs.

You can see that, because of those two facilities, our share of State costs will remain high at least for this year and next year. And if they then go into a notification category, they would also remain high and that's yet to be determined.

CHAIRWOMAN SHARPLESS: Even though they're in that category, next year, the State fees -- based on the five-year plan -- will be going down.

MS. SHIROMA: That's correct. Also, we will be taking a look at other modifications we need to consider going towards the toxics-based fee allotment. So, we'll be taking a look at the methodology.

CHAIRWOMAN SHARPLESS: Any other questions of this witness?

Thank you very much.

MS. CARRUTHERS: Thank you.

CHAIRWOMAN SHARPLESS: Mr. Les Clark, Independent Oil Producers Association.

MR. CLARK: Madam Chairwoman, members of the Board, just more of a point of clarification. Could we revisit the small operator definition that was discussed?

I'm still not sure that I know what that means as far as --

CHAIRWOMAN SHARPLESS: You mean during the staff presentation --

MR. CLARK: Yes.

CHAIRWOMAN SHARPLESS: -- the one that was referred to that must meet the criteria for the most recent calendar year. And if it's affiliated, the combined activities will not be considered. Is that the definition you were talking --

MR. CLARK: That's the one. That's the one.

CHAIRWOMAN SHARPLESS: Sure. What do you want? Just a redefinition of it, Les?

MR. CLARK: Yeah.

MR. LAGARIAS: I'm glad you asked that question.

MR. CLARK: I'm still -- yeah, I just need a little bit of clarification. That would do it.

MS. SHIROMA: Okay. Why don't I step us through the proposed modified definition. And we had had some discussions earlier with Mr. Clark, and we can definitely clarify this.

We proposed the small definition in the event that there were businesses that might otherwise suffer an economic hardship. And what we indicated was that the definition would specify that the small business, which would be a facility, would have less than 10 employees or less than $500,000 gross receipts.

We also wanted to indicate that this definition would apply to those facilities that were not affiliated with large corporations or large businesses. So, we're proposing to add language which says that the affiliation of a small business must be with other small businesses. Okay?

And we were clarifying that we would look at the individual facility and then at those other affiliations. And what we were discussing earlier with Mr. Clark was how that would be applied in the San Joaquin Valley.

We'd also clarify that, when you look at gross receipts, you're looking at the last calendar year. So, again, the reader knows how to implement that definition.

CHAIRWOMAN SHARPLESS: Les, for our edification, what would be your concern? What are you concerned about?

MR. CLARK: As you know, in Kern County and Fresno County, we have a different source definition, and that source definition -- for example, I have one member that has 13 members. And each one of the properties are probably -- I think his largest property's two tons. And that's the extent of it. And other ones are about a half a ton to one ton.

And those properties are located on the west side of Kern County in a 30-mile stretch, if you will. With the current definition, as it was proposed and where we were wanting a clarification on how he'd fit into this, he would actually be between 10 and 25 tons.

CHAIRWOMAN SHARPLESS: If you added them all up together.

MR. CLARK: If you add them altogether. So, with that, then this gentleman or lady that owns this property would, in fact, experience an increase in fees from -- anywhere from $400 -- well, from $400, maybe up to $4,000, which is completely out of line, as far as we were concerned, and why we had met for clarification on the definition.

We are also cognizant of the fact that you all are going to work this next year, and we appreciate the efforts that have gone on from your staff and also the local districts to -- you know, to discuss this issue with us. And we're willing to say that the $700 cap, I can see where, you know, we're going to pay that. But to go up to $4,000, there's just no way with that source definition, because that's not correct and that's not consistent with the rest of the State.

The law does not read that way when you read the law. It doesn't say, "except in Kern County or Fresno." We have a unique source definition. We're willing to work -- and Mr. Weiss is in the back -- and also with your staff this upcoming year to discuss that more.

But in the interim, our suggestion was the $700 cap. And, you know, that's regardless if it's 10 to 25, or whatever, because -- and then, those less than 10 tons, we were asking for the hundred dollars. We know we're going to pay that.

So, we feel that that's a lot more equitable. And to put us in that category of going up -- possibly up to, like I say, the $4,000, we just couldn't see it, because the bottom line on toxic hot spots is to address a toxic hot spot. It's not to talk about a property that's in Maricopa. For you guys who've been lucky enough to drive through Maricopa, close to my home --

MR. LAGARIAS: Yes.

MR. CLARK: -- and also the one up in -- another one in Devil's Den, for you people who've been lucky enough to go to Devil's Den. I mean, those are like 50 miles apart, and they're not toxic hot spots. So, that was our concern. And we would strongly encourage, you know, direction from the Board to instruct the staff to continue working with us to, you know, to address what we consider is something that's not with the spirit of the rule as it was originally adopted.

And we look forward to doing that and provide information. And I certainly wouldn't want to put anybody in the situation where that they didn't have information to base a sound decision. So, we're willing to work and put some numbers together, and actually survey our membership to see where everybody would fit in that.

So, that's where I'm coming from on this. I --

CHAIRWOMAN SHARPLESS: Is this definition an interim that will help that situation, or avoid what Mr. Clark has indicated is the situation?

MS. SHIROMA: Yes. That's our intent, and that's what we were discussing earlier. And we've discussed this with the district as well. The intent here --

CHAIRWOMAN SHARPLESS: Excuse me. With whom?

MS. SHIROMA: Pardon?

CHAIRWOMAN SHARPLESS: With whom?

MS. SHIROMA: With the air pollution control district staff, San Joaquin Valley Unified staff.

We had a chance to discuss this with them earlier as well. And our intention is, that with the definition -- that it will be implemented the same, whether you're in Santa Barbara, or South Coast, or San Joaquin. So, we'll clarify that we're looking on a lease facility basis in application of the small business criteria in the San Joaquin Valley, so it's consistently applied across the State.

CHAIRWOMAN SHARPLESS: Does that take some kind -- the language that was proposed earlier -- Mr. Korenberg proposed earlier -- is the language that carries out that intention, I take it?

MR. VENTURINI: We would have to add some additional language to make it clear that it would apply on a lease basis for these types of --

CHAIRWOMAN SHARPLESS: So, that would occur during a 15-day comment period?

MR. VENTURINI: That's correct.

MR. CLARK: I appreciate your time and for the clarification, and pledge to your staff, through the Chairwoman, that we'll be willing to work and put some numbers together. Looking forward to working with you.

Thanks a lot. Appreciate it.

CHAIRWOMAN SHARPLESS: Okay. Thank you.

Bruce Falkenhagen?

MR. FALKENHAGEN: Madam Chairman and members of the Board, my name is Bruce Falkenhagen. I'm here on behalf of my company, Energy Enterprises; my clients, the independent oil producers of Santa Barbara County; and COLAB of Santa Barbara, the Coalition of Labor, Agriculture, and Business.

I've prepared over 40 plans, reports, and risk assessments for five of the major districts. So, I feel like I'm qualified to speak before your Board.

Before I start, I'd like to let you be aware of what I feel are some of the outstanding efforts by your regulators. Genevieve Shiroma and her staff have done a great job on a very difficult task.

While they may have changed some of the methodology, the factors in the algorithms, et cetera, the basic intent of the system, I feel, is fair.

I would also like to praise our district, the Santa Barbara APCD, in this program. While I've been one of the largest critics of the district on many issues, their efforts in the AB 2588 program are exemplary.

I feel the program has done what the Legislature's intent was. They've required every company to quantify all possible sources to the nth degree.

They have independently developed a system which is standardized across all businesses. And they have worked towards this day, when the risk assessments, and plans, and reports can be punched out like cookie cutters. Their efforts have definitely kept seven of the companies I represent in business in these difficult economic times.

I hope their guidance can be mimicked across the State, taking away the inequities that cause an uneven playing field across the State.

So much for the platitudes. Now, down to business.

The small business definition needs work. A small business is defined as a company with less than 10 employees and gross receipts of less than a half a million dollars.

There are two independent problems with this approach. In the first situation, I represent a company that has five different operations in Santa Barbara, Ventura, and three in Los Angeles. Four of the operations produce a gross income of between $50,000 to a hundred thousand dollars a year.

One in L.A. produces a gross income of $600,000. Under the wording, as it's proposed now, this operator would have to pay as if all of the operations were large businesses. He'll have to pay approximately $25,000.

I feel each facility must be treated separately. Looking at it on a facility-by-facility basis, his fee would drop to $7,000, which seems more reasonable.

I want you to note that this change would make no change whatsoever in either the district or the Air Resources Board income. They did not know that the one facility was a large source.

Santa Barbara only expected income of $700,000 and Ventura only $700,000 (sic). $4300 of this would be a windfall.

My other concern is the half-million dollar gross receipt limit for a small business for a single operation. The oil industry is very unique, in that it's the only industry that is heavily capital intensive. Approximately 20 percent of the gross income off the top goes straight to royalty -- it's gone -- leaving only $400,000 available for income. No other industry in the State of California has this burden.

In the case of a heavy oil facility, the facility must also purchase a hundred thousand dollars of light oil to blend with the heavy oil to be able to sell the oil. That hundred thousand dollars, the way the wording is, comes back in as gross revenue. But it's an expense to get to it.

That drops the total gross receipts down to $300,000 to qualify as a small business. From that must come employee wages, taxes, other air pollution fees, repair of equipment, capital replacement, et cetera.

Without seeing the detailed figures, I'm sure that each of you can see there's very little profit, if any, if one State (sic) starts with a half-million dollar gross receipts figure, and saying that is the small business level.

Also, think of it on a personal basis. Look at your own personal income. Most of you are married. Add in your spouse's income. You have a few investments. Add that in. Then look at the person next to you, add his in to yours. Between the two of you, you then are no longer a small business.

The change proposed by the ARB staff has the limit of a half-million dollars to prequalify. I'd like to see that level for a single operation raised to $1 million. It's my understanding of the California codes that small businesses are defined in various places as between $2 million to $6 million of gross receipts.

While not going to this level on a single operation, the level of a half-million dollars is unrealistic. I'm proposing a level of $1 million. The ARB staff is concerned that numerous facilities will then drop into the small business category based on this increase.

Based on the Santa Barbara County operations that I'm aware of -- and I've looked at every one of the 82 that are part of this program -- only one or two more out of the 82 facilities will qualify. This change will keep them in business.

The representative of Yolo-Solano may have more small businesses qualifying if you do increase this level. Because of this proposed change at such a late time, I encourage you to direct staff to report back to you on the impact of raising the level from a half-million to $1 million when they finalize this report.

If it's in the range that I believe it is, the cost increase for the small -- for the large sources to subsidize this may only be a hundreds per facility. It does keep the small businesses in business.

The other concern I have with this fee schedule is that everyone needs to pay something into the program. The industrywide and survey facilities are paying an average amount of $85. None of that money goes to the Air Resources Board or OEHHA. However, much of the efforts by these organizations over this next year are for these people.

$390,000 of the proposed budget for the ARB is to develop a small business checklist and risk reduction guidelines. Some portion of the $126,000 for OEHHA is for these minor sources also. It seems only fair that some money flow to the ARB from these sources.

For the 24,000 facilities in this category in this category, a surcharge of a hundred dollars would bring in $2.4 million. This is a very small amount to be asked for.

With the exception of the independent oil producers, these small sources are truly the only ones who can pass on the cost to the consumer. Hence, there is no true financial impact. The corner dry cleaner competes with a similar dry cleaner across town. They both will have the $100 increase. They both can raise the price to clean -- to dry clean a shirt by 5 cents to recover these costs. The same can be said about the corner gas station.

The survey and industrywide sources are all competing in the same area. The same increase is seen by all.

The same cannot be said for the medium-size operations in the 10 to 25 ton sources or the independent oil companies. We must compete on a national and international market. We can't pass on those costs unless the bulk of our competitors have a similar fee. A roofing plant in Bakersfield competes against roofing plants in Arkansas, Arizona, or West Virginia.

A sugar plant competes against a sugar plant in Alabama or Hawaii. An oil operation competes against Alaska, Venezuela, and Iraq companies.

My point is that the industrywide and survey facilities need to help subsidize the program. They are receiving the direct benefits of the program; hence, must contribute.

A level of a hundred dollars does not seem unreasonable, considering that many of these facilities have gross receipts, as a small business, far in excess of the half a million to $1 million level for a small business.

The fees now can't ever recover -- the fees, as they're set now, can never recover the cost, even to send out the invoices. If you look at Los Angeles, a $25 fee doesn't even cover the cost to send out the invoice.

In today's era, other businesses can only afford to subsidize others only for so long. The $100 surcharge would cover all of the 49 percent increase in the 1993 fee increase. There's no excess money in the semi and large businesses these days. The free ride and subsidies are over. There is no money.

Chairwoman Sharpless, in your introduction for this agenda item, you stated that -- and I quote -- "Each industry must pay for their share of these costs." Everyone must contribute something. I hope that you will consider these changes.

Thank you for your time.

CHAIRWOMAN SHARPLESS: Thank you very much. I'm not quite sure -- oh, you've gone.

MR. FALKENHAGEN: I'm used to Santa Barbara County.

(Laughter.)

CHAIRWOMAN SHARPLESS: Yeah. I'm not quite sure where you got the million-dollar level that you would like to amend as the definition for small business. Where did you say that came from?

MR. FALKENHAGEN: I'm pulling that out of the air.

CHAIRWOMAN SHARPLESS: Excuse me?

MR. FALKENHAGEN: I'm pulling that out of the air, the same way that I think the half-million was pretty much pulled out of the air. The 2 million to $6 million number is from the California codes as I understand it. Different regulations have different levels of what qualifies as a small business. I'm just putting that -- throwing out a number, something greater than half a million, but shouldn't be up to the $5 million level.

MR. LAGARIAS: Are you in Los Angeles County? Is one of your businesses in Los Angeles?

MR. FALKENHAGEN: Yes, it is.

MR. LAGARIAS: From our report, it says that a small business is defined as a company that has 10 employees or less and gross income of $500,000 or less. You indicate that one of your companies would not meet that definition.

MR. FALKENHAGEN: That's correct. One company -- actually, there's many of my companies that don't meet that definition, because they're right at maybe 490,000 to 520,000 or so. The one company in L.A., yes, they are income. They have only four employees, and they have a gross income of around $620,000.

MR. LAGARIAS: And they're not defined as a small business in Los Angeles.

MR. FALKENHAGEN: No, they're not defined by this regulation as a small business. And what happens is that, because that one operation is not a small business, none of the other four are small businesses.

That's why this company will be paying $25,000 in fees, which is the entire Yolo-Solano cost for the program.

That company will go bankrupt.

MR. LAGARIAS: Yeah. Well, the definition used in this report apparently was based on the South Coast's definition of a small business. Staff, could you look at that again? Or do you have any comment on that?

MS. SHIROMA: We also had discussions with Mr. Falkenhagen earlier, and are grappling with this. When we set about looking for a reasonable definition, we looked at all the many definitions that were in existence, to look for one that set a precedent. And many of those definitions involved extensive documentation and review. And the definition of the 10 employees and $500,000 seemed to be one that districts could implement.

And, again, in working with our fee committee and with the affected parties, we struck what we thought was a reasonable compromise.

In fairness to Mr. Falkenhagen, he brings up an issue where, overall, it's a small business, and that the one knocks out the other four. And we've been -- what we're grappling with is, if we change this definition, what impact will it have on the rest of the types of facilities? And the rest of the cost revenues would have to be taken up by the other larger facilities. And what we're grappling with is we don't -- we aren't able to quantify that.

Now, we do have a report from the Department of

Commerce, which gives numbers of individuals whose taxable income ranges between various amounts. And we do note that, if we were to go up to $750,000 or up to $1 million, it does add -- well, a hundred to two hundred individuals involved in various kinds of businesses, whether it's retail or manufacturing, what have you. Again, what we're grappling with is the overall effect of making this change.

CHAIRWOMAN SHARPLESS: There's always that particular unique case that is very difficult to fit into a more generic term. Mrs. Ichikawa?

MRS. ICHIKAWA: I don't understand that. If he's got five businesses and one is not a small business, but just one being a big business knocks the other four into the big business category. How come it doesn't work the other way around? The four small businesses pull the one big business down into the small business?

MR. LAGARIAS: That's called a loophole.

(Laughter.)

MRS. ICHIKAWA: How do you figure that?

MS. SHIROMA: Well, what we were trying to address and we did discuss this with the larger companies -- what we were trying to address is that, when you do have the business affiliations, and if that fifth business were a large corporation, that there is that ability to influence the other four smaller businesses.

Mr. Falkenhagen brings up a unique case where his fifth business is a little over the cap. And we knew that, when we drew the line, there would be people very close to that line. Unfortunately, we didn't have the comprehensive data statewide that we thought we would be able to get. We did poll the districts as to what a million-dollar change would make -- going from 500,000 to a million dollars. And in truth, most of the districts did not know. And there was a concern about the shortfall, although we definitely understand Mr. Falkenhagen's situation here.

MRS. ICHIKAWA: Madam Chair, I really think this is important, because I do own a small business. And I'm thinking, too, like if I had four others and one does well, there's no way that the one that I'm working in now can come up with that kind of money. It just doesn't -- it's not making sense.

CHAIRWOMAN SHARPLESS: Well, if I understand what this witness said, the reason why this corporation finds itself in this particular situation is that, while it may be viewed as a million-dollar company, it really isn't. It's a $300,000 company, because -- did I follow your argument? Or were you talking about some other business?

MR. FALKENHAGEN: No. That was a different issue.

CHAIRWOMAN SHARPLESS: Oh, that was a different issue?

MRS. ICHIKAWA: That was the classification of a small business.

MR. FALKENHAGEN: The company finds themselves (sic) as a large business because one operation produces over a half-million dollars. Now, you can go one step -- one has gross receipts of over a half-million dollars.

This can go to the point that that -- that one operation -- I'm talking about just five tank operations, five little tank operations.

That one is over a half-million dollars. But one of the companies is located in Kansas. The way the rule is worded now, you're not limiting this to even the State of California.

That operation could be in Argentina. And still, if I have one operation getting gross receipts over a half-million dollars, every operation that comes under AB 2588 is a large business.

CHAIRWOMAN SHARPLESS: Well, I thought that that was the language that was being worked out by staff. I thought that the issue that Mr. Clark brought up was a similar issue concerning affiliated businesses. Was not that the same issue, and does this language that you're working to try to deal with Mr. Clark's problem also deal with this problem this gentleman is talking about?

MS. SHIROMA: No. I'm sorry. The issue that Mr.

Clark brought up dealt within the framework of the 10 employees and $500,000 gross for the leases within the San Joaquin Valley.

CHAIRWOMAN SHARPLESS: Oh, I see. I see the difference.

MS. SHIROMA: But I did want to clarify -- and I realized I needed to do this, Bruce -- that, when you look at the companies that are involved in your aggregate, that they are companies that would be subject to the hot spots program, so we are talking about California companies. You were mentioning about companies out in Kansas. But these would be companies that are actually subject to the California program.

MR. FALKENHAGEN: As long as you have that on the record, that's fine.

CHAIRWOMAN SHARPLESS: Does that take care of that problem?

MRS. ICHIKAWA: No.

MR. FALKENHAGEN: It takes care of the one problem, well, for one company.

MR. LAGARIAS: It takes care of Kansas.

MR. FALKENHAGEN: There are a lot of problems. Now, the company that has five different operations across different district boundaries -- as far as Santa Barbara was concerned, they were going to get $700 as a small business from them. As far as Ventura was concerned, they were going to get $700 as a small business.

Because one facility over in L.A. makes it a large business, Santa Barbara and Ventura would receive -- if I were honest, I would tell them that there's another operation; that we do not qualify as a small business.

What I would suggest is that you make the definition be facility -- the gross income facility by facility.

Now, the Air Resources Board --

CHAIRWOMAN SHARPLESS: That seems to make more sense than trying to switch from 500,000 to a million.

MR. FALKENHAGEN: Well, no, they're two different issues.

CHAIRWOMAN SHARPLESS: Because you don't know what the impact is going to --

MR. FALKENHAGEN: That's two different issues. That's one issue. Then, the other question is, is the half-million dollars for one facility, is that an appropriate level?

CHAIRWOMAN SHARPLESS: Well, we're in a bind here. I mean, on the one hand, we're helping your client. On the other hand, we've got a whole bunch of people that will be impacted by us changing the definition by their fees going up, because you don't know how many or we don't know how many will fall under the small business definition if we change the definition from 500,000 up to one million. And in the event that we do that, then that just means that the fees increase for everybody who's outside that one million dollar classification.

So, then what do you say? What if I'm a company that's, you know, $1,500,000? There's always somebody just right over the edge that's going to be impacted.

MR. FALKENHAGEN: Okay. But if you have it high enough, people won't be arguing, because you're talking about a $5,000 fee. When you're down at a half-million dollars and your gross profit is only $10,000 a year, that $5,000 is a big impact.

CHAIRWOMAN SHARPLESS: That's true.

MR. FALKENHAGEN: Okay. If --

CHAIRWOMAN SHARPLESS: But what about the intermediate companies?

MR. FALKENHAGEN: Well, you've asked -- okay. What I have suggested is that you direct staff that in the interim 15-day period, or when you work this thing through, see what the difference is by going from a half-million to a million. Based on my look at Santa Barbara County and 88 facilities -- or 82 facilities there, only one or two of the 88 (sic) would suddenly -- would qualify as a small business. Those one or two, you're going to lose income of about $8,000 from that, or $8400. $8400 spread over income of $250,000 is going to work out to be somewhere less than $100 per facility.

It's not a big increase.

CHAIRWOMAN SHARPLESS: If, in fact, the rest of the districts are anything like Santa Barbara; what if you get into an area like L.A., where it's a lot different?

MR. FALKENHAGEN: I can't speak for L.A.

CHAIRWOMAN SHARPLESS: Now, that's the problem. We've got 34 districts here. Mr. Venturini?

MR. VENTURINI: Maybe I can make a suggestion that maybe will hopefully deal with this. The main reason why we did not go facility by facility is because we didn't want to provide that small business relief to a very large corporation that would have a lot of small facilities. Maybe it'd be possible to go with the facility by facility, but then have an overall cap over all of the facilities, something on the order of maybe $3 million. So, truly, someone, like in this case, that may have three or four small businesses, they could be looked at individually. But then you wouldn't pull in the multitude of facilities a major corporation would have, because they'd be obviously over the broader cap.

MR. FALKENHAGEN: I agree with what the gentleman is saying. Except, ask yourself, conceptually, does it really matter if Mobil or Unocal has one or two facilities that are qualified as a small business? They operate as a business. If that one operation is not making money, it will be shut down.

That's going to be shut down. Now, if other parts of their operation must subsidize that, it doesn't make sense. From a business viewpoint, it doesn't make sense. I see no reason in --

CHAIRWOMAN SHARPLESS: Well --

MR. FALKENHAGEN: I don't understand the concern about this. Why should a major company not get the benefit of a small business? If they have one small operation somewhere up in Yolo County, why should they not get the benefit of it?

CHAIRWOMAN SHARPLESS: The problem I'm having with this discussion, this very interesting, theoretical, academic discussion is that none of this has really been costed out to figure out if what you're suggesting is fair and equitable to the majority of businesses in the State of California.

That's the problem I'm having with the line and direction. I'd like to see if we can't somehow come up with something that's reasonable that doesn't do -- make a major modification to the proposal that has already been workshopped, and businesses are aware of and have already looked at the impacts.

But once you start making major changes in the calculation of this proposal, then I think it's only fair that, you know, that other businesses have a shot at it. And quite frankly, I think -- you know, after seven workshops, this thing has had plenty of opportunity to go through all of those various reviews and evaluations. I am sympathetic to this one situation, and I'm not quite sure how we deal with it. I'm not sure.

So, staff, you're making a suggestion that this is something that you could look at during the 15-day comment period?

MR. VENTURINI: Well, we could do it during that period of time, or we may be able to, if you wanted to, is while the discussion continues, look at it a little further here.

CHAIRWOMAN SHARPLESS: How much time would you take?

(Laughter.)

MR. VENTURINI: There probably isn't sufficient time, so probably during the 15-day --

CHAIRWOMAN SHARPLESS: Yeah, I was going to say. I hope we're not here until you have adequate time to run through all of the statistics of the State of California.

(Laughter.)

SUPERVISOR RIORDAN: Madam Chairman, if I might, I do think Mr. Venturini had a good idea that might accommodate some of the concerns. And that is that you place a cap. Where the cap goes is the question. But it seems very reasonable. Because that would offset, you know, the issue that perhaps is raised now, where somebody is just over the mark of what is considered a small business, but doesn't affect, necessarily, those others that are the small businesses.

But you better be sure of where to put that cap.

MR. LAGARIAS: But if that -- that raises more problems, though. Because if you put a cap -- if you have four employees at one place, and five employees at a second, and three at a third, you're going to add up more than 10 employees.

SUPERVISOR RIORDAN: Well, no. These are separate facilities.

MR. LAGARIAS: But then you start dividing your staff up so that you have less than 10 --

SUPERVISOR RIORDAN: No, no, no. Not at all.

MR. VENTURINI: The cap would only have been on the dollar amount.

SUPERVISOR RIORDAN: The cap's on the dollar.

MR. LAGARIAS: That's right, but that dollar amount does not cover -- may cover a lot more than 10 employees.

MR. VENTURINI: But it was 10 employees per facility.

MR. LAGARIAS: That's --

MR. VENTURINI: Okay. I understand. Maybe what it sounds like -- maybe the best thing is to provide us the guidance and the direction, and then we can work on it during the 15 days.

CHAIRWOMAN SHARPLESS: I mean, if it obviously is not going to work out, I don't think this is something that the Board wants to buy into to complicate the process and cause inequities.

MR. LAGARIAS: I don't know if it makes sense or not to divide it and have 10 employees or a total gross sales of 500,000. I don't know what kind of problem that would present.

CHAIRWOMAN SHARPLESS: The real problem, once again, is that we try to give relief to small businesses. If we didn't put a cap on small businesses, then small businesses would be counted as a facility, and they would be charged a few based on where they are in the workload.

As it is, on the $700 fee, they're just charged the $700 fee and not charged on the workload, right? So, they are, you know, I mean they're getting a lot. They're getting a lot, and other people are subsidizing them.

Now, if you've been here and you listen to the other folks who represent other businesses, they want to go for a fee for service. And so, here we are. Now listening to this other situation, which is --

MR. FALKENHAGEN: The fee for service --

CHAIRWOMAN SHARPLESS: -- relief.

MR. FALKENHAGEN: The fee for service makes good sense in certain cases. I think Santa Barbara County and the companies in Santa Barbara would probably think that it was a very good idea for the Air Resources Board to go completely that way. The reason being is that our Air Resources -- or our APCD has standardized things so well, the Air Resources Board couldn't spend $97,000 the same looking plan 82 times. I think they'd want to go for a fee, you know.

This is a different matter. I don't really want to get into it.

CHAIRWOMAN SHARPLESS: No. I appreciate what you're saying, but I think that you ignore the fact that the program is bigger than that, and that it does more than that. And that, in some ways, those very businesses benefit from -- or in some cases, are even being subsidized from what's happening in the other aspects of the program, such as the small business assistance part of the program, such as all of the risk assessment issues that we talked about earlier this morning and the impacts that they have on whether they're in or out of the program, and what their costs are in terms of 1731 and what their costs are in terms of where they fall in the ranking.

So, you know --

MR. FALKENHAGEN: I think --

CHAIRWOMAN SHARPLESS: -- you don't take that as a benefit, I guess, --

MR. FALKENHAGEN: Well, no, I look at --

CHAIRWOMAN SHARPLESS: -- on a few for service.

MR. FALKENHAGEN: -- what Santa Barbara did. I look at what we've done. We have -- we had a total -- let me give you some numbers here.

Santa Barbara County has a total of 82 plans and reports. 82 and a total of 65 health risk assessments. 79 percent of all businesses did a health risk assessment in Santa Barbara County. The statewide average is 22.2 percent. There were only, in San Bernardino, 9.4 percent of them did health risk assessments.

Santa Barbara's APCD has done such a good job because of standardizing things, making it cookie cutter. I give them a disk to run a risk assessment. They run it. And they've been able to keep control of their costs because of that.

Because of that, in all of these 65 risk assessments, only eight are going to be in the notification step. I think if you compare those percentages to any other district, you're going to find that every other district will have a lot more people into the notification steps than in Santa Barbara County. The reason being is that aa lot of these small facilities -- the one I told you in Santa Barbara County for this five operation (sic), in any other county, they would not have even been at the plan and report step. They would be in the industrywide survey.

I've got four companies in Santa Barbara that should be in the survey or industrywide survey. But because of decisions that were made by our Board of Supervisors, they are in the risk assessment level.

CHAIRWOMAN SHARPLESS: I appreciate that.

MR. FALKENHAGEN: I guess my point is --

CHAIRWOMAN SHARPLESS: And I -- but what I think that gets to is the district part of the program.

MR. FALKENHAGEN: No. We have been doing a lot more work in Santa Barbara County than should really have been submitted to the Air Resources Board. We've been doing a lot more. The benefits that you talked about that you're implying that someone else is subsidizing us -- and I don't think that's the case. I think that we are subsidizing. But it's a moot point.

CHAIRWOMAN SHARPLESS: It's not a moot point. I mean, the point is that what Santa Barbara did was how it implemented its district part of the program, how it carried out doing its industrywide risk assessments, and the fact that it made a decision that it was going to do the risk assessments. Other districts haven't chosen to do it that way. And so, their industries are in different situations.

What happens at the State level is entirely different than what's going on at the district level. And, you know, sometimes these distinctions, I think, are not recognized. And so, we kind of fall into the entire mix here. That's the only point I was making. I understand what your concerns are. I think staff will be attempting to see what possibilities are out there.

MR. FALKENHAGEN: Maybe one way around it -- you've said that there is a concern for the definition of stationary source in effect, for San Joaquin. Maybe make the small business exemption be specific for a certain definition for San Joaquin to cover their particular problems, a specific definition for Santa Barbara County to handle the situation there in this particular case.

CHAIRWOMAN SHARPLESS: No. Because you're here for Santa Barbara --

MR. FALKENHAGEN: No, I'm --

CHAIRWOMAN SHARPLESS: -- what about everybody else in the State?

MR. FALKENHAGEN: Well, I think Santa Barbara's definition would probably be close to the rest of the State's. But I'm just -- I'm giving an option. Maybe you can have two different definitions of small business to handle the San Joaquin problem.

CHAIRWOMAN SHARPLESS: Mrs. Ichikawa.

MRS. ICHIKAWA: I want to get to the first point. I mean, I don't want to prolong this. But the first point in your testimony about the inequity about the five small businesses. Well, one isn't small.

I think we do need to look into that. I just don't think it's fair for this one -- because one is considered a big business, then all five are categorized as big businesses. And they really aren't, not in the real world.

And I would like to see some information, another workshop, or something happen regarding this definition. It just doesn't seem right to me.

CHAIRWOMAN SHARPLESS: Well, I think the staff has made a commitment that, during the 15-day comment period, they are going to be looking at this issue.

MRS. ICHIKAWA: Okay.

CHAIRWOMAN SHARPLESS: I don't think we want to build in a different inequity by dealing with this inequity.

So, we have to be very careful as to how we deal with this.

DR. BOSTON: Question.

CHAIRWOMAN SHARPLESS: Yes, Dr. Boston.

DR. BOSTON: Mr. Lagarias just passed over something there that went by and I thought was a pretty good suggestion. I think he recommended changing the definition to -- of a small business to 10 employees or gross of $500,000. That would seem to handle it completely.

MS. SHIROMA: Now, that is one set of criteria that we did take a look at. And it turns out that, in California, approximately 40 percent of the businesses have 10 employees or less. And so, it -- we were trying to strike a balance in providing some relief.

DR. BOSTON: Well, if they have 50 employees and are making less than $500,000, they need relief.

(Laughter.)

SUPERVISOR RIORDAN: They need a lot more than relief.

DR. WORTMAN: They are on relief.

(Laughter.)

SUPERVISOR RIORDAN: Right.

MS. SHIROMA: However, in response to the discussion, at the Board's direction, we will definitely look at Peter's suggestion of the cap, put that out for the 15 day, and work on that during the 15-day notice.

MR. BOYD: Madam Chair, at the end of the day, when you've heard all the witnesses and you feel the same way, then you can give us direction to do pretty much as we said here, look at various alternatives and come up with some approach.

CHAIRWOMAN SHARPLESS: I appreciate that. Dr. Wortman.

DR. WORTMAN: I have some problems with this concern that was expressed by Mr. Venturini about a large corporation subdividing itself into many, many little units. They don't do that. They can't exist that way. If anything, they tend to consolidate operations to reduce cost.

And, secondly, along the same lines that Dr. Boston started here, 500,000 and 10 employees: If you have a cheap employee with a normal multiplier, "cheap" employee, that may be five employees.

Typical multiplier, about 3. So, 10 means nothing with regard to $500,000, unless you're running illegal, cheap labor.

CHAIRWOMAN SHARPLESS: Was I mistaken, staff -- I'll excuse this witness. Thank you very much.

(Laughter.)

MR. FALKENHAGEN: I'll still stay the night if you want.

CHAIRWOMAN SHARPLESS: No, no. I'd like you to -- I'd like to really move this along, since we're at 4:30.

Was I mistaken, staff? Did you not look at the various options of the various different cut points on number of personnel to ratio of gross profits or --

SUPERVISOR RIORDAN: These aren't profits.

CHAIRWOMAN SHARPLESS: I meant gross receipts.

MS. SHIROMA: Yes. Acknowelegably, there is a paucity of data out there. But we did look at the South Coast experience, using 10 employees and $500,000 gross receipts, they estimated that, based on their experience, 15 to 20 percent of their industries fall within that category.

CHAIRWOMAN SHARPLESS: Now, who made that evaluation?

MS. SHIROMA: The South Coast District themselves. They've been implementing this definition for some time now. Many of the other districts don't have an estimate as to how many industries will come in and verify that they are at the 10 employees and 500,000.

In truth, we thought that the survey and industrywide categories would catch most of the small businesses -- dry cleaners, gas stations, et cetera.

And we do have some information on individuals, taxable receipts, the number count within California. So, that's what I was referring to earlier, that a hundred to

200 additional individuals may fall into this category. But, again, looking again at all kinds of businesses -- retail, manufacturing, et cetera.

So, there is a paucity of data out there, and we have been concerned about that. The best data that we had was on the ten employees and $500,000 gross receipts.

CHAIRWOMAN SHARPLESS: Business associations don't have that kind of data?

MRS. ICHIKAWA: I can probably get that.

MS. SHIROMA: We contacted the local districts and the Federal Government for the analyses that they had conducted on their small industries.

CHAIRWOMAN SHARPLESS: Excuse me. Say that again, Genevieve. I didn't hear it.

MS. SHIROMA: We had contacted the local districts. In fact, my staff called all the districts to query them on the one million/500,000 cut points. We also talked to the Department of Commerce.

And, as I say, we had thought that -- and through our workshop process -- that the small businesses that you normally think of -- the gas stations, dry cleaners, auto body shops, et cetera -- who are in the program, would be caught in that survey and industrywide category, which has the average fee or the $85.

But we did include the small business definition in the event that we did miss someone. And so, there will be facilities, such as in the San Joaquin Valley, which will be able to take the benefit of the small business definition.

CHAIRWOMAN SHARPLESS: I see. Yes, Dr. Wortman.

DR. WORTMAN: You can get data on the costs. The 500,000 gross depends on what kind of business you're in. But you are dealing strictly in the labor-type business, you will never get by with a multiplier of less than about 2.8. So, a hundred thousand dollar a year person is probably getting a salary of about 30,000, 35,000, something like that.

So, these are very -- and if it's some sort of a business where they buy and replace things, half a million is nothing. It's not ten employees. It's probably four. Right now, in engineering, labor goes with a multiplier of 3.6. You pay a man 50,000 a year, and you charge the Federal Government 180,000. And that's legitimate. You can count up all the costs. You pay his holidays, you pay his overheads, you provide him space. It's 180.

MR. LAGARIAS: Well, aren't we really talking about only those businesses that are in the permit programs of the various districts? So, it doesn't include a guitar player, or people that are not involved with some kind of activity.

(Laughter.)

MR. LAGARIAS: What's wrong with guitar players?

MS. SHIROMA: They're totally subject to the act.

SUPERVISOR RIORDAN: Well, they could be a toxic hot spot, some of them.

(Laughter.)

MR. LAGARIAS: What we're really concerned --

SUPERVISOR RIORDAN: We had a group called "The Poison" in our county not long ago.

MR. LAGARIAS: We're really concerned with businesses that may have large pass-through activities, like you buy five tractors for $80,000 apiece, or eight tractors, or nine tractors at 80,000 apiece, and all of a sudden you're big business, because the gross sales of that are over 500,000. So, we're trying to find out how to separate those people that are just passing through a lot of activities without really doing much in the permitting operation. And that's where you're tying our hands when you put both of those -- number of employees and the gross volume sales.

CHAIRWOMAN SHARPLESS: Okay. Well, why don't -- we know this is an issue, and we're going to have to deal with it. Why don't we go through the rest of the witness list and see what else pops up here.

Ask Roger Isom, California Cotton Ginners.

MR. ISOM: Madam Chairwoman and members of the Board, I have two very brief points, and I think one's already been addressed, but I just want to clarify that it has.

Earlier in Mr. Korenberg's report, we had asked that Section 90704(a) not be amended as proposed in the packet that's before you. And I just wanted to confirm that that has been done; that it won't be changed.

CHAIRWOMAN SHARPLESS: Is that the annual adoption of fees for the State level?

MS. SHIROMA: Yes, that's correct.

CHAIRWOMAN SHARPLESS: Okay.

MR. ISOM: Then, simply to move on, the second one is, we'd like to express our gratitude to Genevieve, Janette, and their staff. I've been involved with this since the inception, in that I used to work at Fresno County Air Pollution Control District and then the San Joaquin Valley Unified Air District. And I think this year in the fee regulation development, the criteria guidelines, and the risk management guidelines, that industry has been able to be involved in an industry-ARB type workshop meeting. And I think that that's gone a long way, as evidenced by just yesterday, we came up with this comment on the annual adoption, and we were able to get that corrected within a couple hours.

And the agriculture industry in the San Joaquin Valley would like to echo those sentiments. We really do appreciate it.

CHAIRWOMAN SHARPLESS: Thanks. You'll be receiving your bill at the end of the day.

(Laughter.)

CHAIRWOMAN SHARPLESS: Jack Caufield, environmental consultant.

MR. CAUFIELD: For the record, my name is Jack Caufield. My appearance today is sponsored by several small oil producers again.

CHAIRWOMAN SHARPLESS: If you could lift the mike close to your mouth or speak up, either one.

MR. CAUFIELD: Okay. My appearance today is sponsored by several small oil producers whose fees will increase as much as a factor of 10 times or more, and I know we've been talking about this already. But the problem is that I'm not seeing that some of them are going to have relief. They're still going to be caught going from $400 to $4,000, or $800 to $8,000, or some number even higher than that yet. And I know the staffs have been working on that language, but this small business thing that you've also been talking about also, you know, does hit them. And I do have some of those that, you know, they do make over -- their gross is over 500,000. And so, they're going to be caught by one of their properties, like the other gentleman, Bruce, I think his name was.

Some of these people that I have have similar problems. He's not unique. In other words, I have people that have a property in one little lease in Ventura County. They have a lease in the South Coast. And then they have a lease on the west side of Kern County, and leases over on the central side of Kern County.

That particular one, if they change the definition, he'd probably drop out. But there are other ones that do have that problem. And they have more than 114 barrels on one lease. And so, that 500,000 cap is still going to be a problem with them, and they're still going to have to pay over $4,000 where they paid $400 before.

CHAIRWOMAN SHARPLESS: What would happen if they were under a million-dollar cap?

MR. CAUFIELD: Most of them -- it would help. It would help a lot. At least one of them, I think, would be just -- probably just over that, because they -- you know, whether their leases are actually all exactly contiguous, whether they're adjacent (sic) -- if it went by a lease by lease basis. But if you lump the leases together, because they happen to touch each other, then this one firm might still be caught, because his gross would be just a little bit over that.

If they separated all the leases, I don't know. You know, if he could separate his production from each one of his little leases, which I think he probably can, it might be that he would fall under the million then, because it would be -- part of it would be on one lease and part -- you know. So, I don't know whether it would help him or not. It would definitely help the other one.

CHAIRWOMAN SHARPLESS: Okay, Mr. Caufield. Thank you very much.

MR. CAUFIELD: Thank you.

CHAIRWOMAN SHARPLESS: Dan Phelan?

MR. PHELAN: My name is Dan Phelan, representing the Bay Area League of Industrial Associations.

My remarks will be very short. We basically support the staff, and we think they've done a good job. Who pays is always a very hard decision. I might add that the Bay Area moved out ahead before the McCorquodale bill to toxic-related fees.

They've used the option to develop their own method of collecting. And it's a formula. We do it on emissions and potency by a formula. And the formula's changed several times through the years, but it seems like each time we changed it, it's gotten a little bit better.

And we find it's very difficult to allocate cost. In fact, it's a very complicated matter, and it would be somewhat helpful to the staff there in helping them explain the system to their directors. We believe that the 93-94 fees were very appropriate, even though some of our members that are hurt think they're expensive. But, when you look at it, we think that it's -- that it works. Like so many things in this complicated toxics area, if you stay with it, why, it goes -- we think you're going in the right direction.

I happen to know what the district does on a small business, but --

CHAIRWOMAN SHARPLESS: Good. Tell us.

(Laughter.)

MR. PHELAN: Would you like to know?

CHAIRWOMAN SHARPLESS: Yes.

MR. PHELAN: I wasn't sure.

(Laughter.)

CHAIRWOMAN SHARPLESS: On this one you can feel comfortable.

MR. PHELAN: Thank you. Basically, you -- small business gets an exemption at $5,000. And the definition is by Rule 209. The essence of it is -- well, I'll read it.

"A business which meets all of the following conditions: The principal office must be in California. The officers must live in California. It must be independently owned and operated. It must be not -- not be dominant in its field of operation. It must not be an affiliate of a nonsmall business. If it is a nonmanufacturer, it can employ over -- cannot employ over 25 persons, nor can its actual receipts exceed a million.

If it is a manufacturer, it cannot employ over 50 persons, nor can its annual receipts exceed five million. As I say, it hasn't been a cure all. I could give you some stories about people being hurt. And each year it's a little different people that are hurt.

But generally, it seems to be working well.

CHAIRWOMAN SHARPLESS: The only part of this -- well, I'm keying in on part of this definition. You don't allow the businesses to be affiliated. Did I hear you say that? They can't be affiliated.

MR. PHELAN: Okay. It must not be an affiliate of a nonsmall business.

CHAIRWOMAN SHARPLESS: Of a nonsmall business. So that wouldn't help the folks we've just heard from.

MS. SHIROMA: Also, the district's fee is $5,000 per facility, in contrast to our proposal of $700.

CHAIRWOMAN SHARPLESS: No, I --

MS. SHIROMA: We did draw upon the part of the definition regarding the affiliations. Initially, we had said any affiliations must be in the aggregate added in. But then we went to the Bay Area District's definition, which indicated that, as long as the affiliations were small businesses, then the facility in question would qualify for the fee.

CHAIRWOMAN SHARPLESS: How did you -- maybe you don't know this. But how did you figure out 50 persons and $5 million for manufacturing, and 25 persons and $1 million for the others?

MR. PHELAN: I don't really -- I don't really know. I can't --

CHAIRWOMAN SHARPLESS: You don't know the basis for that.

MR. PHELAN: It just seems to have worked out. The big -- when we originally started, it started out with simply taking the potencies times the emissions and rounding it out. That's the way we did it. The chrome people fees were reduced because of their high potencies. Some of the larger emitters were reduced because of their high emissions.

That's the way it started the first year. And then, as -- it was sort of a -- and then, as the public responded to the complaints, changes were made. So, it was evened out, and the number of complaints have started going down.

The last people -- from looking at this, the last people that were hurt were the hospitals when ethylene oxide came out as a -- as a --

CHAIRWOMAN SHARPLESS: Toxic.

MR. PHELAN: As a toxic, why, they went up from -- one hospital went up from 600 to 10,000. It's expensive. It's cost money to control toxics in the Bay Area. I think our total bill's about two and a half million bucks now. But, the law says to do it, and we're doing it. It's just difficult to allocate the -- allocate the money.

CHAIRWOMAN SHARPLESS: Thank you very much, Dan. I appreciate your comments.

John Donovan, California Independent Petroleum Association.

MR. DONOVAN: They're never long enough. (Speaking of microphone and the fact the microphone would not reach to his height.)

(Laughter.)

MR. DONOVAN: Good afternoon, Madam Chair and members of the Board.

My name is John Donovan, and I'm the Director of Environmental and Regulatory Affairs for the California Independent Petroleum Association.

CIPA is an association of approximately 550 oil and gas producers, royalty owners, and service and supply companies, and environmental consultants.

Approximately half of those members are oil and gas producers. We understand that the bulk of these proposed fee increases can be attributed to the implementation of Senate Bill 1731. We appreciate the fact that these new requirements will result in new risk assessment guidelines and provide assistance to small businesses in preparing risk reduction audits and plans.

However, CIPA would like to express our concern that the small independent oil and gas producer cannot continually absorb these fee increases. The California oil and gas producer does not control the price that he receives for his oil. The independent producer does not have the luxury of passing on these costs to a consumer.

I want to thank Ms. Shiroma and her staff in their efforts for reworking the small business definition as a result of our concerns.

And we appreciate the fact that the ARB is considering the financial impacts their fees have on small businesses.

While CIPA acknowledges ARB's good-faith effort to define small business as those who have 10 employees or less and gross receipts of $500,000. CIPA requests that the gross receipts cap be raised to a minimum of $1 million. This concern echoes comments previously submitted by Mr. Falkenhagen and Mr. Caufield.

I am currently putting together a survey of our members, of which I said is approximately 250 members, oil and gas producers, that will hopefully justify this request. And I'll be working with staff over the next couple weeks to see if we can get them those numbers.

I do have one question of staff that I haven't been able to ask them, and perhaps we can do this at another time, but I would like to know how staff applied its study approach to the independent oil and gas producer.

Appendix 7 of the document describes the study approach used by staff in evaluating the potential economic impacts of the fee increases on California businesses. And it says the approach was based on a sample of one to three businesses for each affected industry. I think, as you've heard today, the independent oil and gas industry is kind of unique. And I would just like to know if staff used a sample of independent oil and gas producers and if it took into account the small producers, the medium producers, and the large producers?

CHAIRWOMAN SHARPLESS: You're talking about the economic analysis --

MR. DONOVAN: Yes.

CHAIRWOMAN SHARPLESS: -- that was done?

Staff?

MR. KORENBERG: Yes. Our economic analysis was based on -- we took our inventory, and took the -- which as broken down by SIC codes, standard industrial classification. We looked at about 400 different classifications of businesses, picked a random sample of three businesses out of each of those particular categories, and then calculated the return on equity for those individual facilities.

We used a standard -- if the return on equity was impacted by more than 10 percent, then that was an impact. We found that, on the average, the impact was around one percent.

MR. VENTURINI: We'd be more than willing to sit down with Mr. Donovan, maybe later, to go through details and the specifics of what was included and not included, as well, if you'd like.

MR. DONOVAN: Okay. I would appreciate that.

CHAIRWOMAN SHARPLESS: I think the bottom line, though, is your request to look at the small business definition.

MR. DONOVAN: Yes.

CHAIRWOMAN SHARPLESS: Right?

MR. DONOVAN: Yes.

I'd just like to take the time to thank the Board and the staff for hearing our concerns. And we acknowledge the efforts made by this Board and staff to reduce certain administrative costs associated with implementing this program, and encourage you to continue to look for areas within the program that will result in lower costs to the State, districts, and the regulated community.

Thank you.

CHAIRWOMAN SHARPLESS: Thank you very much.

Mike Wang, WSPA.

MR. WANG: For those of us who are shorter than John --

(Laughter.)

MR. WANG: Much shorter --

MR. LAGARIAS: That's all of us.

CHAIRWOMAN SHARPLESS: This is a demonstration of the equity issue, right; some are short and some are tall.

MR. WANG: Well, when I started this business, I was 6'2".

CHAIRWOMAN SHARPLESS: Right.

(Laughter.)

MR. WANG: I appreciate the fine effort the ARB -- you see the fine array of staff here; I was noticing that every seat is full -- the fine effort that ARB and OEHHA made to communicate with the regulated industry. I think you've heard that over and over again. And I just want to reiterate how much we appreciated that.

We're supportive of the 40 percent fee reduction in the previous proposal -- certainly, we recognize that

that is a big step -- and the 40 percent five-year reduction over the next five years, which we heard this afternoon.

We're supportive of the change in the fee basis, which is the actual process change, from criteria pollutants to toxic pollutants. The changeover is consistent with legislation, both AB 2588, as initially passed, and subsequent legislation. And it's essentially what the legislation intended, which was to define emissions as a basis for program development and fee assessment.

The new methodology will provide improved equity in few calculation, because larger criteria facilities have funded, to a great extent, the program by virtue of paying on a criteria pollutant basis.

And unless fees are assessed according to toxic emissions, then the relationship between toxic emissions and risk is somewhat lost.

We do support amendments suggested by speakers and staff concerning the small business side. Certainly, we recognize the unique problems of small business. And I know staff has some suggestions and has heard some suggestions about a new definition. That's certainly something that you all need to look at.

So, in conclusion, we support the basis for fee calculation and the need for program and program elements. We expect that streamlining of the process and elimination of duplication between agencies, as was suggested by staff earlier, over the next five years will reduce costs even further. And this is, as you know, especially important in review of the harsh times, and the fact that many districts and sources will be asked to pay significant amounts of fund the program.

Thank you.

CHAIRWOMAN SHARPLESS: Thank you. Any questions? Thank you, Mr. Wang.

Mr. Wang was our last witness. I know that we've received plenty of written comment. How does staff propose that we handle the written comments into the record?

MR. VENTURINI: We have a number of letters that were submitted that were basic, updating information on facility counts and so forth. And those were acknowledged as part of the staff's presentation. So, I suggest that we not summarize those letters. They're basically technical. They'll be reflected in the 15-day comments.

We have a few other letters that we feel would be appropriate to briefly read into the record.

MS. SHIROMA: Yes. At the pleasure of the Board, I'll go ahead and briefly summarize those letters.

We had four districts expressing concerns regarding the staff proposal. We received a letter from the San Joaquin Valley Unified Air Pollution Control District

Board. The district board provides their staff's analysis of the ARB and OEHHA program costs. They do support the proposed method for calculating fees, and they do express their appreciation for the reductions included in our staff proposal.

They do go on to recommend further State cost cuts be made. They recommend that cuts be taken from the regulations development, health risk assessment, public notification, and risk reduction areas.

The reasons given for the budget reduction is that either there is no longer a need for the task, or the task should be delayed. Now, as we indicated in our presentation, we believe that any further reductions this year would compromise the program and impact ARB's and OEHHA's ability to provide an effective program.

As was discussed and as many individuals have emphasized, we do have a five-year resource plan that addresses how the State costs will be reduced as program needs diminish.

Glenn County APCD commented on the increase in the hot spots program budget. Specifically, Glenn County notes that their portion of State costs is increasing by 73 percent and urges the Board to consider a smaller increase in light of the present economic situation.

Glenn County's costs are increasing by

approximately $9,000. And most of this increase is due to the submittal of a complex risk assessment to the OEHHA for review. So, this comes up because of the new method.

We do note, as we've indicated before, that this is a one-time review fee and that their district costs, if we keep this element in our method, would be reduced next year, because that risk assessment will revert back to the inventory plan and report.

The San Diego County Air Pollution Control District commented on the proposed State budget and the method for distributing the State's costs. They indicated that their district board has placed a moratorium on additional regulatory fees, and they would not be able to collect the district's portion of their share of the State's costs.

They suggest that labor tracking be implemented and that State costs associated with specific districts and facilities be recovered from those districts and facilities; in other words, a fee for service.

They further question why State costs are increasing, even though most program development is completed, and suggest that funding that SB 1731 program development is excessive.

We do acknowledge that the San Diego APCD is one of the districts whose State share goes up due to the method change. Approximately 50 percent of their increase is, in fact, due to the method change. This is because the number of facilities in the district and the number of risk assessments going through review -- because of the number count, as we were discussing earlier regarding Yolo-Solano and Colusa, applies also to San Diego.

In our previous discussion and presentation, we did discuss our justification for the proposed costs. And, again, we do believe that with the five-year plan, that we address the peaking of the program, its diminishing requirements, and steady State reductions.

Now, the South Coast has also submitted a letter, and Don Ames is going to summarize that letter.

MR. AMES: Mr. Mohsen Nazemi left the hearing about one hour ago, and asked that I relay his oral comments, which are as follows:

First of all, the increase of 1.7 million in State costs is lower than the South Coast District increase in costs of 1.9 million to be sent to the State.

Although the South Coast District supports the method change, the -- Mr. Nazemi feels it is not possible to increase the industry fees by 60 percent in one year, even with the five-year plan. And that's all the comments he asked that I relay to the Board.

MS. SHIROMA: Okay. Continuing on -- I'm sorry.

Don?

MR. AMES: Just one response. In response to that, if we look at last year's fee, the South Coast District sent the State about one-fourth of the dollars of all districts. This year, with the change in method, that they -- we feel it's more equitable, because now that one-fourth is about 50 percent, which we believe is reflective of their relative number of toxic sources within the State.

MS. SHIROMA: Okay. Another comment letter we received was from Spreckels Sugar Company. Spreckels does not support the collection of fees from low-risk facilities. They believe that the cost to implement SB 1731 should be borne by the higher risk facilities.

Spreckels Sugar is located in the Yolo-Solano District, and they're not -- which district is not included in our fee regulation. And you'd heard from Ms. Annette Carruthers earlier.

That district will be adopting its own rule in fiscal year -- in this fiscal year, 93-94.

We also received a letter from the Proline Paint Company of San Diego. The letter provides information on how their overall permit fees have increased, including the hot spots fees. They recommend that the State hot spots budget be frozen at the fiscal year 92-93 levels, and that additional mandated requirements be funded through savings produced from the ARB streamlining efforts.

And they indicate the concern regarding small businesses remaining competitive with larger businesses. The San Diego District will be adopting its own fee regulation and determining its own methodology for spreading the costs.

And, again, we wanted to emphasize that we do intend to implement the five-year plan, which shows the overall steady reduction in State costs.

We also received 11 letters of partial or full support -- oh, I'm sorry. I forgot one more letter here.

The Manville Company, located in Glenn County, also sent a letter in opposition to the State's proposed cost increase and the resulting increase in Glenn County's cost. And you'd heard from a representative from Glenn County earlier -- excuse me. That was Colusa. I'm sorry.

The company stated that their fee would be increasing up to $10,000, which reduces their ability to compete with businesses in other states.

Let's see. Okay. And again, it is the same issue that you've heard through these letters and from the various testifiers regarding the overall costs of the program.

And the method that we used allotted the State costs among the various 34 districts depending on the number of facilities within those districts.

We received 11 letters of partial or full support. The first letter is from the Northern Sonoma County Air Pollution Control District. They participated in the development of the amendments and they strongly support the changes being proposed. They feel the fee structure recognizes the number and complexity of facilities in the district through the use of the various program categories.

We received a letter from the Lake County Air Quality Management District. They indicate that they have followed and participated in the development of the proposal.

They indicate that they are acutely aware of the real and legal need for the changes proposed by the staff, and wish to make clear that they strongly support the adoption of the proposed amendments.

We also received a letter from the Bay Area Air Quality Management District. They indicate that the methodology of resource indices and program categories was reviewed by the fee committee and chosen as the best alternative to using a toxics emissions based fee.

They indicate that they are adopting their own regulation and have based their fee allotment on toxic emissions since 1990, and encouraged the State regulation to go in that direction.

They also indicate their support of the

development of the guidelines for the implementation of SB 1731. They support streamlining the risk reduction planning requirements for small businesses by developing a simple checklist for facilities, such as dry cleaners, gas stations, and paint shops. They indicate that this will allow districts to implement SB 1731 more efficiently and will help minimize the cost to the program.

The County of Tuolumne Air Pollution Control District also commented, and indicated that the proposed fee calculation method based on facility program categories is a reasonable interim method and an improvement over the criteria pollutant emissions method.

They indicate that they recognize, as with any change in fee assessment technique, some will pay more and some will pay less. They indicate that they believe the proposed methodology of fee assessment is an improvement and should be adopted by the Board.

The Calpine Geothermal Company in Northern California also provided a letter, indicating that they followed the proposed amendments and strongly support the proposed fee structure.

The Homestake Mining Company also wrote a letter to communicate their support of the staff changes. They indicate they believe the changes demonstrate a fair and equitable approach to fee regulation.

A Unocal distributor, owned by Jim Jonas, Incorporated, submitted a letter indicating that the proposed changes will result in a more equitable fee application. And, as a business owner badly in need of regulatory relief, he supports these changes.

The Aggrelite Rock, volcanic cinder products, Company also submitted a letter. They indicate that, as a quarry operator, they support the fee approach; that it is the equitable way of spreading costs to those who are included in the program.

We received a letter of support for the fee regulation adoption from a Victor Magistrale from South Pasadena.

And finally, we received a letter from the California Council for Environmental and Economic Balance. They indicate that they support the amendments to the proposed fee regulation. They support the underlying direction of the proposal, which is to move towards a fee for service. They participated in many of the forums that we provided. They acknowledge that, as a result of the amendments adopted last month by this Board, the cost for the program should decrease significantly over the next few years, and acknowledge our five-year resource plan to accomplish this.

They commend us for coming forth with the plan at this time and recommend, overall, that the ARB adopt the amendments.

That concludes my summary of the written letters.

CHAIRWOMAN SHARPLESS: Okay. Thank you very much.

I believe that then completes the record for this item. So, I would like to just remind those in the audience that the record on this item will be closed; however, if the Board takes an action that changes the proposal -- and the staff has already suggested several changes -- there will be a 15-day comment period.

Written or oral comments received after this hearing date but before the 15-day notice is issued will not be accepted as part of the official record on this agenda item. However, when the record is reopened for a 15-day comment period, the public may submit written comments on the proposed changes, which will be considered and responded to in the final statement of reasons for this regulation.

Since this is a rule, we do have a procedure here that, if there has been any excommunica -- ex parte communications -- excommunications! -- ex parte communications, that we so state it in the record by the Board members. So, at this moment, we'll survey the faces here. It appears not. So, we have accomplished that.

And we are now to the part in our deliberations where the staff has passed out -- the staff has passed out!

(Laughter.)

CHAIRWOMAN SHARPLESS: The staff has handed out a resolution, 93-48, which -- staff, perhaps you could indicate how many of the changes are included in this resolution that we have discussed thus far. That includes the primary proposal, plus changes that were mentioned earlier in the day. Which changes were those?

MR. VENTURINI: It includes the modifications that we mentioned in the staff presentation. It does not include the modification that we recommended regarding the -- for the San Joaquin Valley, modifying the definition for oil producers to apply the fee on a lease basis.

It does not include the recommendation to require the State to annually adopt a fee regulation. And then there's the small business question that was discussed earlier.

CHAIRWOMAN SHARPLESS: Okay. On the annual adoption of the State, I was under the impression that all we needed to do there was clarify. Do we need to actually make a motion?

MR. VENTURINI: You need to make a change to what's in the staff proposal.

CHAIRWOMAN SHARPLESS: Okay. So, we do need to include that in our motion.

MR. VENTURINI: Yes.

CHAIRWOMAN SHARPLESS: Okay. And then the small business issue is not dealt with in this.

Okay. One question on the first one, the issue that deals with the small independent oil producers on the lease basis. Was that a recommendation that was being made by staff?

MR. VENTURINI: Yes, it was.

CHAIRWOMAN SHARPLESS: That they -- what is the precise language for that?

MR. VENTURINI: I don't believe we have the precise language --

CHAIRWOMAN SHARPLESS: Well, how about a summary of --

MR. VENTURINI: Basically --

CHAIRWOMAN SHARPLESS: -- what we might include in the motion.

MR. VENTURINI: Basically, what we're trying to do is deal with the unique situation in the Southern San Joaquin Valley, where the current definition of a stationary source for other purposes includes the whole west and east part of the Valley, so you have a large area.

So, our proposal would be to modify -- to add a definition into the regulation to indicate for the -- in essence, for the San Joaquin Valley oil producers, the fee be done on a lease basis.

CHAIRWOMAN SHARPLESS: Would you want to be so specific as to say only San Joaquin Valley? Is it only a situation in the San Joaquin Valley?

MS. SHIROMA: That's correct, because of their unique stationary source definition.

CHAIRWOMAN SHARPLESS: Oh, that's right. Okay. So, there are basically three issues that have been discussed during the course of this afternoon that are not dealt with in the staff proposal.

MR. VENTURINI: Correct.

CHAIRWOMAN SHARPLESS: Okay. What is the pleasure of the Board at this point? More questions? More dialogue? Or a motion?

DR. BOSTON: Question.

CHAIRWOMAN SHARPLESS: Yes.

DR. BOSTON: If this resolution is adopted with changes, as suggested by Mr. Venturini, how would we get to see it again to see what the definition of small business turns out to be?

CHAIRWOMAN SHARPLESS: Yes.

DR. WORTMAN: Faith.

CHAIRWOMAN SHARPLESS: No, I don't think faith is the issue.

(Laughter.)

CHAIRWOMAN SHARPLESS: Let me -- let me ask staff, because timing is always an issue here.

Yes, Mr. Kenny?

MR. KENNY: Yes, Madam Chair, there's actually a couple of ways that that could be done. The most -- I guess the easiest way would be that the 15-day changes will be proposed, and the Board could be -- the Board would have the opportunity to review those 15-day changes during the 15-day comment period.

If the Board wanted to review the proposed modifications as a Board sitting in this particular capacity, then we would need to postpone until some later point in time.

So, there isn't really a way for the Board to like see the recommendations specifically on an individual basis outside the context of sitting as a Board.

But the Board can see, basically, the modifications in the context of the 15-day proposals that will be made, and can then make any comments it wants to make, basically, to the staff.

DR. BOSTON: How about if they worked all night and showed it to us tomorrow?

(Laughter.)

CHAIRWOMAN SHARPLESS: No, because I think that the -- like Mr. Donovan was going to provide information to the staff on the million-dollar issue -- the million-dollar question.

MR. KENNY: The 15-day modifications can be made, and that would then basically go into the regulation. If the Board had some difficulty with the language that was then put into the regulation, the Board could then review that regulation again at some point in the future and modify it. But, again, it's going to be a cumbersome process.

CHAIRWOMAN SHARPLESS: Well, we're talking -- on the 15-day comment period, it takes time for the staff to put out a 15-day notice. It takes time, then, for -- there's 15 days, obviously, for people to comment. And then there's time for you to respond to those comments.

MR. KENNY: That's correct.

CHAIRWOMAN SHARPLESS: During that period of time, is it not possible for you to send a memorandum out to the Board members explaining what the recommendation of the staff would be? And if there's some concern about it, we could --

MR. KENNY: The difficulty is that there's no problem with the former. But, basically, where you led off there, that the Board could then do something, that's where the difficulty arises. Because the Board would, then, essentially be meeting to essentially direct the staff in a new direction. And the Board would need to do that in a public hearing setting.

CHAIRWOMAN SHARPLESS: No. I'm not suggesting if they wanted -- if they wanted a new direction, then we would have another Board meeting.

MR. KENNY: Correct.

CHAIRWOMAN SHARPLESS: If they saw the language and everybody was okay with it, then it would t go forward.

MR. KENNY: That'd be fine. That can be done.

I'm worried about the -- sort of the alternative, I guess, a little bit.

MR. BOYD: Madam Chair, it does get a little bit back to a comment that was made earlier. If you can give some general direction to the staff, to the Executive Officer, we can put out some kind of a proposal that we think tries to meet the general direction and, yes, you'd have an opportunity to review this, as with the public, and you would have to give some indication -- you know, there would have to be an indication to me that collectively -- I would have to assess that I sense the Board is not satisfied with the approach that we're taking. And then, we would have to, in effect -- I would have to make a determination that the resolution is not within the purview of the Executive Officer's delegation from the Board, and call for a new meeting of the Board to deal with the issue.

CHAIRWOMAN SHARPLESS: Well, here's --

MR. BOYD: That's historically what we do.

CHAIRWOMAN SHARPLESS: Here's the bind. I mean, the bind is that I don't think that we want to go through another entire Board meeting rehashing all of the issues that we've done today.

I think that, mainly, we're stuck on the small business definition. But there's not enough information -- I mean, we can give you direction. But, really, our direction is based on going out and getting more information on what happens if you do this versus that. And so, without finding out whether this or that happens, you know, that's the part of the process where we're trying to figure out -- let the Board take a look at it and see if it's okay, and then pass it by if it's not -- if it doesn't pass the okay test -- I know (reacting to Mr. Kenny's shaking his head).

MR. KENNY: The difficulty is that the Board --

CHAIRWOMAN SHARPLESS: Do you want us to put this over? No.

MR. KENNY: Well, the difficulty is that the Board can't really meet outside of a public forum.

CHAIRWOMAN SHARPLESS: No. I'm not suggesting we meet.

MR. KENNY: Well, even like a review, basically, of a particular document, where a decision was made by the Board would be considered to be within the context of the Open Meeting Act. And to the extent that the public didn't have an opportunity to hear the Board's deliberations and to provide comments to the Board, that would be a problem.

MR. BOYD: Mr. Kenny, my comment was that it's my responsibility to get a sense of my Board members on the issue, and it's on my head to determine, without, you know, benefit of a vote or a formal survey, that the proposal we're pursuing does not sit well and is not consistent with the direction the Board would like to see us go. And then, I would have to then determine that there is no alternative but to call for a new Board meeting on the issue.

MR. KENNY: And actually, that is consistent and appropriate under the law. Basically, what happens then is that the delegation basically provides to the Executive Officer is carried out. That delegation does have a limitation on it, as Mr. Boyd explained, and that limitation would be one that he would make the call on.

(Thereupon, there was a brief pause to allow the court reporter to replenish her paper.)

CHAIRWOMAN SHARPLESS: The other option is that the Board itself could just say -- it could just say one million and 25 persons or something.

Supervisor Riordan?

SUPERVISOR RIORDAN: Let me ask if -- and I would agree, we don't want to really hear this in its entirety. But, oftentimes -- and I understand counties do things differently than I suspect the State on occasion. But, perhaps, following along with Mr. Boyd's comments, we could narrowly ask that only the item of the definition of small business, should this Board express some concern to Mr. Boyd individually, that that be brought back, not the whole issue be brought back, just that very narrow definition.

I certainly wouldn't mind spending a little time with that if what staff works out is not acceptable. But I think the staff has probably got a pretty clear idea of what our problem is and just trying to figure out what the answer is.

I think we're expressed our concern now.

CHAIRWOMAN SHARPLESS: Yeah. No, that's exactly the line we were going with. The problem is, you know, between the Open Meeting Act, and the Brown Act, and all the other acts that constrain regulators in solving problems, you know, we're boxed in here.

But Mr. Boyd has fine antennas, and I think that, if he got a sense from the Board that what the staff came up with, after we gave some general direction, he would let us know if it wasn't going to meet the satisfactory test.

MR. BOYD: I mean, we've already gotten the sentiment of the Board that the Board -- even the staff to some degree -- is not completely comfortable with the proposed definition. So, there's an indication of a desire for change. We've talked about some alternatives. As indicated, we don't have enough data to make a hard-and-fast answer, or for you even to give us enough guidance to focus in on one, because you are as uncomfortable as we without having that background.

That gives us an indication that some change anticipated and expected. We have to define that change within the reason of the points made by the witnesses and the expressions of various Board members as to a desire to provide some relief from the dilemmas that were put forth.

So, yes, it falls upon my head then to do that. And I appreciate the recognition of my large antenna here.

MR. LAGARIAS: Well, we've made a point that the definition of a small business, as the South Coast Air Quality District has defined it, may not quite suit our purposes for setting fees for toxic emissions from small sources.

Now, it may cover dry cleaners and very specific manufacturing operations, but we've heard that there are other operations that would fit the definition of small business that might not fit the monetary limitations. And that's one of the issues that I hope you can work with to make sure that those industries that do put out toxic emissions that are small industries -- small operation industries do pay their fee, but that they not get lumped into a large industry categorically for -- by some fluke of a definition, or that the monetary value be examined again to see whether a cut off, as the South Coast uses it, is appropriate and whether a better cutoff might suit our purposes.

CHAIRWOMAN SHARPLESS: I think that's very well put, Mr. Lagarias. It sounds like it should be part of a motion.

MR. LAGARIAS: It's part of a motion.

(Laughter.)

CHAIRWOMAN SHARPLESS: What's the other part of the motion, Mr. Lagarias?

MR. LAGARIAS: I move we adopt Resolution 93-48 with the comments that have been put in the -- forth this afternoon and discussed at the Board here.

CHAIRWOMAN SHARPLESS: Okay. So, what the Board is considering here -- if I can restate the motion --

MR. LAGARIAS: You can.

CHAIRWOMAN SHARPLESS: -- for you, Mr. Lagarias?

(Laughter.)

CHAIRWOMAN SHARPLESS: He moves the staff proposal that includes modifications that were stated in the presentation. And, in addition to, will include a change in the language dealing with the San Joaquin Valley small independent oil producers to include their definition of source, which I guess is on a lease basis. Okay.

And also to include the clarification that the Board -- that the State will annually adopt its fees; and, third, with the wonderful general direction that Mr. Lagarias stated on what we want to see done on the small business definition. Those three areas added to it.

SUPERVISOR RIORDAN: And I'll second it.

CHAIRWOMAN SHARPLESS: Okay. It's been moved and it's seconded. Is there any additional comment?

DR. BOSTON: I didn't think he stated the resolution number, 93-48.

CHAIRWOMAN SHARPLESS: We'll include that as an amendment to the motion. Okay. If there is no further discussion on this item, we'll ask the Board Secretary to please call roll.

MS. HUTCHENS: Boston?

DR. BOSTON: Yes.

MS. HUTCHENS: Hilligoss?

MAYOR HILLIGOSS: Aye.

MS. HUTCHENS: Ichikawa?

MRS. ICHIKAWA: Aye.

MS. HUTCHENS: Lagarias?

MR. LAGARIAS: Yes.

MS. HUTCHENS: Riordan

SUPERVISOR RIORDAN: Aye.

MS. HUTCHENS: Wortman

DR. WORTMAN: Aye.

MS. HUTCHENS: Madam Chairwoman?

CHAIRWOMAN SHARPLESS: Aye.

MS. HUTCHENS: Passes 7-0.

CHAIRWOMAN SHARPLESS: Thank you very much. Thank you, Dr. Henry, for your time. Thank you, staff, for your effort.

MRS. ICHIKAWA: I'd like to thank staff, too.

CHAIRWOMAN SHARPLESS: And all of those who were involved in the process. Thank you very much.

The Board members can't go. We have yet another Board item. We'll take a break for the court reporter.

(Thereupon, a recess was taken.)

CHAIRWOMAN SHARPLESS: Okay. We are getting close.

DR. WORTMAN: To exhaustion.

CHAIRWOMAN SHARPLESS: Close to exhaustion.

This is the third and final item for today. Of course, tomorrow, we have another item that will come up.

But we will be discussing on this item the identification of air quality-related indicators for reporting progress in attaining the State ambient air quality standards.

Now, this particular action has been necessitated