



A P P E A R A N C E S

Members Present:

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SUPERVISOR DOUG VAGIM  
MAYOR M. PATRICIA HILLIGOSS  
MR. JOHN S. LAGARIAS  
SUPERVISOR HARRIETT WIEDER  
MR. JACK C. PARNELL  
SUPERVISOR BARBARA RIORDAN  
MR. JOSEPH C. CALHOUN  
MS. LYNNE T. EDGERTON

Staff present:

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TOM CACKETTE, Chief Deputy Executive Officer  
MIKE SCHEIBLE, Deputy Executive Officer  
MICHAEL KENNY, Chief Counsel  
PETER VENTURINI, Chief, Stationary  
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DEAN SIMEROTH, Chief, Criteria Pollutants  
Branch, SSD  
JOSE GOMEZ, SSD  
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Section, SSD  
FLOYD VERGARA, Staff, SSD  
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BOB JENNE, Senior Staff Counsel, Office of  
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BOB BARHAM, Assistant Chief, RD  
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DR. STEPHEN BROWN, Staff, RD  
KURT KARPEROS, Staff  
LYNN TERRY, Magr., No. CA Liaison Section  
PATRICIA HUTCHENS, Board Secretary  
BILL VALDEZ  
WENDY PENDLETON

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1 appreciate that as well as adding my thanks to you  
2 publicly for your excellent testimony at the LEV/ZEV  
3 hearing and for your presentation and organization --  
4 presentation of the -- of the ad hoc committee's report  
5 at the El Monte workshop last week.

6 So thank you very much, Dennis.

7 MR. ZANE: Thank you. I'm looking forward  
8 to success together.

9 CHAIRWOMAN SCHAFER: Thank you very much.

10 At this point we'll break for lunch. I would  
11 like to suggest coming back at 1:30 to begin the board  
12 item that -- the Board Item No. 2, and that is the  
13 Alternate Control Plan.

14 Thank you very much.

15 (Lunch recess was taken.)

16 CHAIRWOMAN SCHAFER: I think we have a  
17 quorum in the room. I'd like to remind those in the  
18 audience who would like to testify on this next board  
19 agenda item, please sign up with the board secretary.

20 The next item on the agenda this afternoon  
21 is 94-9-2, a public hearing to consider adoption of the  
22 Alternative Control Plan for consumer products. That's  
23 known as the ACP.

24 As you all know, the California Clean Air Act  
25 requires the board to adopt regulations to achieve

1 reductions in volatile organic compound emissions from  
2 the consumer products. The reduction of the VOC  
3 emissions from consumer products is an important element  
4 in our overall strategy to attain state and federal  
5 ambient air quality standards.

6 The importance of consumer products as a  
7 significant source of VOCs is recognized by the U.S.  
8 Environmental Protection Agency, which has included  
9 measures to regulate consumer products in their Federal  
10 Implementation Plan for the South Coast, Ventura, and  
11 Sacramento.

12 In 1989, '90, and '92, the board adopted  
13 regulations placing emission limits on 27 types of  
14 consumer products. These include antiperspirants and  
15 deodorants, hairsprays, and various automotive,  
16 cleaning, and household products. The board's consumer  
17 products program is bringing about significant  
18 reductions in ozone-forming pollutants.

19 To illustrate, we projected consumer product  
20 VOC emissions in the South Coast Air Basin to grow to  
21 approximately 162 tons a day by the year 2010 without  
22 the consumer products program. That level of consumer  
23 products would comprise 20 percent of the total  
24 stationary source VOC emissions in the South Coast  
25 basin. Without our regulating, consumer product VOC

1 emissions would -- will -- I'm sorry.

2           With our regulations the consumer product VOC  
3 emissions will be reduced by 30 percent statewide or  
4 approximately 27 tons per day of VOC emissions in the  
5 South Coast basin by the year 2000.

6           Even with the current regulations, however,  
7 further reductions in consumer product emissions will  
8 likely be necessary to achieve federal and state air  
9 quality objectives. Even within CARB regulations,  
10 consumer product emissions in the South Coast in 2010  
11 will account for roughly 30 percent of the allowable VOC  
12 emissions to meet the federal ozone standard.

13           Clearly, more reduction in VOC emissions from  
14 consumer products are needed if we are to meet federal  
15 and state air quality standards.

16           To assist the board to determine what  
17 options we have to seek further reductions, I've  
18 scheduled a special symposium for tomorrow, right here  
19 in this room. This will provide an opportunity for  
20 manufacturers of consumer products and others to  
21 present us with their ideas on how best to achieve that  
22 objective as we move towards the assembly of our State  
23 Implementation Plan.

24           Our task today, however, will be to focus on  
25 the Alternative Control Plan regulation. The ACP is

1 designed to supplement the existing consumer products  
2 regulation by using market incentives to provide  
3 manufacturers with additional flexibility while  
4 preserving the significant emission reductions in the  
5 existing regulations.

6 To this end, the board directed the staff  
7 back in 1992 to investigate the feasibility of  
8 developing a market-based program to supplement the  
9 existing regulations. The regulation before us today is  
10 a result of that directive.

11 During these challenging economic times, we  
12 are all concerned with the costs of achieving clean  
13 air. In response to this challenge, the staff has over  
14 the past two and a half years worked closely with the  
15 consumer products industry to develop the proposal  
16 before us today. Innovative control programs like the  
17 ACP provides manufacturers with flexibility in meeting  
18 our air quality goals.

19 With the cooperative partnership approach  
20 that's been used to develop the ACP, marketlike  
21 principles can be powerful tools in achieving  
22 environmental goals while building a strong economy.

23 At this point, with that background, I'd like  
24 Mr. Boyd to introduce this item and begin the staff  
25 presentation.

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Mr. Boyd.

MR. BOYD: Thank you, Chairwoman Schafer, members of the board. As the chairwoman indicated, the purpose of the Alternative Control Plan -- or ACP, as we call it -- is indeed to provide consumer product manufacturers an additional voluntary compliance option.

At present the manufacturers have two options to use to comply with our consumer product regulations. First, they can just comply directly with the established VOC standards. Second, they can formulate and sell product that meets the innovative product provision of the current regulation.

We're not proposing it replace the existing regulation or any of the options; rather, we're proposing a third compliance option that manufacturers may select to reduce emissions from their products.

This approach relies on market principles, as the chairwoman indicated, to provide consumer product manufacturers flexibility in deciding the method of reducing emissions from their mix of products.

This approach, while providing flexibility to manufacturers, also preserves fully the air quality benefits of our regulation and the intent of our regulation.

1 Over the last two and a half years, we and  
2 the staff have worked very closely with representatives  
3 of the consumer product industry to develop the proposal  
4 that we're bringing before you today. We conducted  
5 seven public workshops, held enumerable meetings with  
6 the U.S. EPA staff, and met, of course, with the  
7 industry and industry association representatives.

8 You may recall that we provided your board a  
9 status report on the progress with the ACP in March of  
10 this year.

11 At this time I'd like to take the opportunity  
12 to express my appreciation to those members of the  
13 industry and others who spent a considerable amount of  
14 time with the staff in the development of this  
15 proposal. We very much appreciate the partnership that  
16 has been formed in this area, and we look forward to  
17 continuing in the future.

18 Finally, I'd like to take note that in  
19 addition to providing flexibility to consumer product  
20 manufacturers, implementing this ACP proposal will  
21 provide us at the board the opportunity to obtain real  
22 world experience with this emission control approach.  
23 We'll use this experience to help us identify additional  
24 opportunities for using this or similar market-based air  
25 pollution control approaches in the future.

1           And with that brief background, I'd like to  
2 now call upon Mr. Floyd Vergara of the stationary source  
3 division to present the proposed ACP regulations for  
4 consumer products.

5           Floyd, if you would.

6           MR. VERGARA: Thank you, Mr. Boyd.

7           (Slide presented.)

8           Chairwoman Schafer and members of the board,  
9 today we are proposing for your consideration the  
10 Alternative Control Plan, or ACP, regulation for  
11 consumer products.

12           (Slide presented.)

13           I'll begin my presentation by providing you  
14 with a background on the regulation of consumer  
15 products. I will then discuss the development, the  
16 concepts, the elements, and some of the potential  
17 impacts of the proposed regulation.

18           (Slide presented.)

19           In the California Clean Air Act of 1988,  
20 consumer products are defined very broadly to include  
21 any chemically formulated product used by household and  
22 institutional consumers. These include a wide variety  
23 of household cleaning, personal care, pesticide,  
24 automotive, and other types of products.

25           (Slide presented.)

1           Consumer products are a large source of  
2 volatile organic compounds, or VOCs. At first glance  
3 the VOC emissions from an individual can of hair spray  
4 or engine degreaser may seem small. However, as this  
5 slide indicates, the combined use of consumer products  
6 by 30 million people in California results in  
7 approximately 250 tons per day of VOC emissions, or over  
8 91,000 tons per year, based on the ARB's 1991 emissions  
9 inventory.

10                           (Slide presented.)

11           These 250 tons per day of VOC emissions,  
12 including aerosol paints, represent approximately 13  
13 percent of the total nonvehicular VOC emissions shown  
14 here by the red slice. As compared to all solvent use  
15 categories, consumer products ranks among the largest  
16 sources, comprising approximately 42 percent of the  
17 total VOC emissions from solvent use categories shown  
18 here as the combined red and dark blue slices.

19           Clearly, consumer product VOC emissions are  
20 significant and without emission limitations will  
21 continue to grow as the population increases.

22                           (Slide presented.)

23           As you know, VOCs react with oxides of  
24 nitrogen, or NOx, in the presence of sunlight to form  
25 ground level ozone. VOCs are also precursors to PM<sub>10</sub>.

1 (Slide presented.)

2 Ozone and PM10 are major respiratory air  
3 tents in California. As this slide shows, over  
4 90 percent of the state's population live in urban areas  
5 where the state air quality standards for ozone and PM10  
6 are frequently exceeded.

7 For instance, the two bars on the extreme  
8 left show that the state standards for ozone and PM10  
9 were exceeded in approximately two out of every three  
10 days in the South Coast Los Angeles area in 1992.

11 (Slide presented.)

12 The legislature recognized the contribution  
13 of consumer products to the air quality problems in the  
14 state and incorporated provisions specific to consumer  
15 products in the California Clean Air Act of 1988. These  
16 provisions require the ARB to adopt regulations to  
17 achieve the maximum feasible reductions in VOC emissions  
18 from consumer products. The Act also requires that such  
19 regulations be technologically and commercially  
20 feasible, be necessary to achieve reductions, and be  
21 supported by adequate data.

22 (Slide presented.)

23 What have we done so far to comply with the  
24 California Clean Air Act's mandates? In 1989 the board  
25 adopted the Consumer Product Control Plan, which

1 outlined various control strategies to be investigated  
2 for reducing VOC emissions from consumer products.  
3 Later that year the board adopted the nation's first  
4 consumer products VOC regulation for antiperspirants and  
5 deodorants. In 1990 the board adopted the more  
6 comprehensive Phase 1 statewide regulation covering 16  
7 additional product categories. And in 1992 the board  
8 adopted the Phase 2 amendments to the statewide  
9 regulations and the antiperspirant and deodorant  
10 regulations adding an additional ten product  
11 categories.

12 (Slide presented.)

13 So in total there are 27 product categories  
14 subject to the existing regulations, ranging from  
15 personal care products, like hair sprays, to automotive  
16 windshield washer fluids and charcoal lighter material  
17 products.

18 (Slide presented.)

19 The existing regulations are phased in  
20 from 1993 to 1999, so that VOC emissions are reduced by  
21 a total of about 60 tons per day statewide by 1999.

22 (Slide presented.)

23 What are the options manufacturers have for  
24 complying with the existing regulations? The primary  
25 compliance option available to manufacturers is to

1 comply with product-specific standards in the  
2 regulations. These standards reduce VOC emissions by  
3 limiting the amount of VOC in each of the 27 regulated  
4 product categories.

5 (Slide presented.)

6 To provide flexibility to manufacturers and  
7 to encourage creative solutions for reducing VOC  
8 emissions, the existing regulations provide a second  
9 option to manufacturers, known as the innovative  
10 products provision.

11 An innovative product is a product that does  
12 not meet the VOC standard in the regulation, yet results  
13 in less VOC emissions than a product which meets the VOC  
14 standard. Over its lifetime an innovative product emits  
15 less than a product which meets the standard because of  
16 its unique design or formulation.

17 (Slide presented.)

18 So as you can see, the existing regulations  
19 already provide flexibility by giving manufacturers two  
20 available compliance options. Today we are proposing a  
21 third compliance option, the Alternative Control Plan,  
22 that will provide an even higher level of flexibility  
23 for manufacturers while preserving the emission  
24 reductions in the existing regulations.

25 (Slide presented.)



1 (Slide presented.)

2 The industry's ACP task force participated in  
3 the entire workshop process. This group consists of  
4 representatives from the Chemical Specialties  
5 Manufacturers Association, the Cosmetic, Toiletry, and  
6 Fragrance Association, and individual company  
7 representatives.

8 As I stated earlier, representatives from our  
9 sister agencies at the U.S. EPA and the local districts  
10 also participated in the development process.

11 (Slide presented.)

12 Early in the development process, the  
13 workshop participants mutually agreed on a set of common  
14 goals to guide in development of the ACP regulation.  
15 These goals state that the ACP should be a voluntary  
16 option, treat all manufacturers and products fairly,  
17 provide flexibility to manufacturers to make key  
18 production and marketing decisions without excessive  
19 restrictions, allow for growth and expansion of product  
20 market share, and sales, apply to as many product  
21 categories as possible, be enforceable, and last, but  
22 not least, the ACP should be a binding commitment for  
23 both the ARB and the manufacturer to provide certainty  
24 for long-term planning.

25 (Slide presented.)

1 I will now talk about the general concepts  
2 of the ACP and then discuss the elements of the  
3 regulation.

4 (Slide presented.)

5 The ACP is a market-based program that places  
6 an emissions cap over the aggregate VOC emissions from a  
7 group of products that are subject to the Phase 1 and  
8 Phase 2 regulation. The program achieves emission  
9 reductions which are equivalent to the existing  
10 regulation. The ACP, therefore, preserves the emission  
11 reduction benefits of the existing regulation while  
12 providing a high level of flexibility. The emission  
13 caps can shrink or grow to reflect actual market  
14 conditions, thereby accounting for growth in product  
15 sales and market share.

16 (Slide presented.)

17 The ACP is a simple concept. Under the  
18 existing regulations, the manufacturer of two  
19 noncomplying products would have to reformulate both  
20 products to comply with each individual VOC standard, as  
21 shown by the two products on the left. However, under  
22 the ACP, the manufacturer could leave the first product  
23 alone and reformulate the second product below its VOC  
24 standard, as shown by the two products on the right.  
25 The VOC emissions from both products, under the

1 emissions cap, would be equivalent to the emissions  
2 under the existing regulation.

3 (Slide presented.)

4 Why do we believe an ACP would be useful  
5 to manufacturers? Well, it allows manufacturers to  
6 maintain an existing product line at its current  
7 formulation by reformulating another product line to  
8 achieve excess emission reductions.

9 An ACP also provides manufacturers additional  
10 time to reformulate a product if the manufacturer  
11 reformulates another product line before its specified  
12 compliance date.

13 These are just two examples of how the ACP  
14 regulation can benefit manufacturers while preserving  
15 emission reductions.

16 (Slide presented.)

17 At this point I would like to cover the  
18 elements of the regulation which govern how it is  
19 implemented, including the approval of a proposed ACP  
20 plan and how an approved plan is managed.

21 (Slide presented.)

22 As I stated previously, the ACP is a  
23 voluntary program, providing manufacturers with a third  
24 compliance option. At this time the ACP applies to  
25 the -- applies only to the 26 product categories subject

1 to the Phase 1 and 2 existing regulation. The ACP does  
2 not include antiperspirants and deodorants at this time  
3 because of fundamental differences between the  
4 antiperspirant and deodorant regulation and the Phase 1  
5 and 2 regulation. These differences make emissions  
6 averaging between these two regulations very difficult  
7 to implement. This was mutually agreed upon by the ARB  
8 staff and the industry representatives during the  
9 development process.

10 To ensure that the ARB and participating  
11 manufacturers are speaking the same language, we are  
12 proposing an extensive set of definitions. These  
13 definitions, along with the definitions in the existing  
14 Phase 1 and 2 regulation, will ensure clarity,  
15 consistency, and enforceability.

16 (Slide presented.)

17 Once the ACP program is chosen, the  
18 manufacturer develops a comprehensive ACP plan for the  
19 executive officer's approval. In essence, the proposed  
20 ACP plan needs to show that for the time the ACP plan  
21 will be in effect, the aggregate VOC emissions from the  
22 selected products will be no greater than they would be  
23 under the existing regulation.

24 If the proposed plan meets the regulatory  
25 requirements, the executive officer issues an executive

1 order with specific permit conditions to ensure the  
2 enforceability of the plan.

3 The approval process is conducted within a  
4 specified time frame to ensure that the plans are  
5 processed in a timely manner.

6 (Slide presented.)

7 To be approvable, a proposed ACP plan must  
8 contain specific information and demonstrations. The  
9 submitted plan must demonstrate that the sales records  
10 accurately reflect the amount of products which are sold  
11 in California. The plan must also be termed under the  
12 compliance period. Manufacturers can choose compliance  
13 periods up to one year. Compliance with the emissions  
14 cap is determined at the end of these compliance  
15 periods.

16 In addition, the plan must clearly specify  
17 how the manufacturer will reconcile shortfalls in the --  
18 in its emission reduction commitments.

19 By requiring these measures in the approval  
20 process, we ensure that both the ARB and the  
21 manufacturer know what to expect and how to reconcile  
22 shortfalls if such an event occurs.

23 This information, along with other required  
24 data, is used by the executive officer to specify  
25 enforceable permit conditions that will ensure the

1 emissions under an ACP will not exceed the specified  
2 emissions caps.

3 (Slide presented.)

4 To this point I have discussed how a  
5 manufacturer obtains approval for an ACP plan. Now I  
6 would like to discuss other aspects of implementing ACP  
7 plans.

8 At the end of each compliance period, the  
9 data reported by the manufacturer will show one of three  
10 possible outcomes:

11 1. The VOC emissions equal the emissions  
12 cap, in which case the manufacturer has met its  
13 requirements and is in compliance.

14 2. The VOC emissions are less than the  
15 emissions cap, in which case the manufacturer is also in  
16 compliance, but has resulted in what we call surplus  
17 reductions.

18 3. The VOC emissions are greater than the  
19 emissions cap, in which case the manufacturer is in  
20 noncompliance and has resulted in what we call  
21 shortfalls.

22 In the next two slides, I will discuss these  
23 concepts of surplus reductions and shortfalls.

24 (Slide presented.)

25 If the emissions at the end of a compliance

1 period are less than the emissions cap, the manufacturer  
2 has surplus reductions. This drawing simplifies the  
3 surplus reductions credit provision. As shown, surplus  
4 reduction credits result when the emissions from  
5 products under an ACP are less than the specified  
6 emissions cap. The surplus reductions shown here as the  
7 blue area is the difference between the emissions in red  
8 and the emissions cap, which is the green line.

9 Credits for surplus reductions are issued by  
10 the executive officer at the end of each compliance  
11 period. Manufacturers can take these surplus credits  
12 and use them in the following compliance period, they  
13 can sell them to a small or one-product business, or  
14 they can sell them to another manufacturer who has  
15 failed to meet its ACP emission reduction commitments.

16 Any surplus reductions that are traded must  
17 be reported to the ARB, who will serve as a  
18 clearinghouse for such information.

19 (Slide presented.)

20 If the emissions at the end of the compliance  
21 period are greater than the emissions cap, the  
22 manufacturer has shortfalls. As this simplification  
23 shows, shortfalls are essentially the opposite of  
24 surplus reductions. In this case, the manufacturer has  
25 failed to meet its emission reduction commitments in the

1 plan. The shortfall represented in red is the  
2 difference between the total emissions cap, the blue  
3 area, and the product's actual emissions.

4 The manufacturer would reconcile this  
5 shortfall by implementing its preapproved contingency  
6 plan.

7 (Slide presented.)

8 We have included a violations provision,  
9 because the ACP program is new and innovative. We  
10 believe this provision is critical to the success of the  
11 program, to ensure that both the ARB and participating  
12 manufacturers will be speaking the same language.

13 This provision improves the enforceability of  
14 the program by defining and clarifying the activities  
15 that will be considered violations of the regulation.

16 As proposed, the violations provision is  
17 consistent with applicable federal and state statutes.

18 (Slide presented.)

19 Some examples of the more critical violations  
20 are: Operating an approved ACP plan that is based on  
21 false data submitted during the approval process,  
22 reporting false or inaccurate product sales or VOC  
23 content data, exceeding the reported VOC content for any  
24 product under an ACP, exceeding the specified emissions  
25 cap, and failing to reconcile shortfalls as required by

1 the plan.

2           These are just a few of the different  
3 activities that have been defined as violations of the  
4 regulation.

5                           (Slide presented.)

6           How are we going to enforce the emissions  
7 caps? In the approved plan, the manufacturer would  
8 report to the executive officer the product sales and  
9 VOC content for each product. At the end of each  
10 compliance period, the manufacturer uses the actual  
11 sales and the reported VOC content data to determine for  
12 itself whether its VOC emissions meet or exceed the  
13 emissions cap.

14           For its part, the ARB would audit the sales  
15 and manufacturing records to verify the reported  
16 California sales. The ARB would also test the VOC  
17 content of products manufactured under the ACP plan to  
18 verify the reported VOC content levels.

19           Based on these data and additional  
20 information, the ARB would determine if the manufacturer  
21 has met, exceeded, or emitted less than its emissions  
22 cap.

23                           (Slide presented.)

24           The regulation allows the manufacturer to  
25 cancel an ACP plan if the manufacturer can show that

1 continued operation under an approved plan will result  
2 in extreme economic hardship. The executive officer can  
3 also cancel an ACP plan if the manufacturer demonstrates  
4 an inability to meet the requirements in the approved  
5 plan.

6           Upon cancellation of an ACP, all remaining  
7 shortfalls must be reconciled and all products under the  
8 ACP must be in compliance with the VOC standards.

9                           (Slide presented.)

10           Also included in the ACP regulation are  
11 administrative requirements for record keeping,  
12 modifications to an ACP plan by the manufacturer or the  
13 executive officer, and the transfer of an ACP plan  
14 between manufacturers in case of a company merger or  
15 buyout.

16                           (Slide presented.)

17           As I stated previously, the ACP preserves  
18 the emission reductions in the existing regulation.  
19 Therefore, we anticipate the ACP will have no  
20 significant adverse impacts on ozone and PM10, ozone  
21 depletion, global warming, and other environmental  
22 media.

23                           (Slide presented.)

24           Because the ACP is voluntary, it is  
25 reasonable to assume that manufacturers would not enter

1 and participate in the ACP program unless the program  
2 will provide higher flexibility or lower compliance  
3 cost. Therefore, the ACP should provide an overall  
4 economic benefit to the consumer products industry and  
5 to consumers.

6 (Slide presented.)

7 Industry representatives have requested very  
8 limited credits for early reformulations below the VOC  
9 standards. Only overcomplying reformulations which were  
10 achieved in the compliance period prior to the submittal  
11 of an ACP plan would be credited. Such credits would  
12 have a lifetime of only one compliance period and would  
13 be restricted for use solely to reconcile shortfalls in  
14 the first compliance period of an approved ACP plan.  
15 These credits would not be tradable to any other party.

16 This is really just a timing issue. Some  
17 manufacturers recently have reformulated to be below  
18 the 1995 or future standards; however, because the ACP  
19 is being considered this year, instead of last year,  
20 these early overcomplying reformulations would not --  
21 would not have been credited.

22 We believe these limited one-time-use credits  
23 will encourage manufacturers to participate in the  
24 program by providing a cushion for reconciling  
25 shortfalls in the initial stage of this new program.

1 We, therefore, recommend a modification to our proposal  
2 to provide for such limited credits.

3           Some firms have expressed concerns about the  
4 violations provision. As written, any exceedance of the  
5 emissions cap would be a violation for every day in the  
6 compliance period regardless of the size of the  
7 exceedance.

8           For example, if the compliance period is one  
9 year, any exceedance of the emissions cap would result  
10 in 365 violations.

11           There has been extensive discussion among  
12 staff, industry, and the U.S. EPA on this issue. These  
13 discussions continued after the publication of the staff  
14 report. As a result of these discussions, we are  
15 recommending a modification to our proposal that would  
16 determine the number of violations for an emissions cap  
17 exceedance based on a one violation per 40 pounds  
18 of exceedance.

19           So, for example, if the emissions cap is  
20 exceeded by only 200 pounds, the number of violations  
21 would be 5 -- 200 divided by 40 -- instead of 365.

22           The U.S. EPA has determined, based on their  
23 experience with the acid rain program, that this  
24 approach would be acceptable to them, because it is  
25 enforceable, it provides adequate deterrence to

1 noncompliance, and it meets their economic incentives  
2 program rule and the Federal Clean Air Act.

3           Industry representatives have requested  
4 additional time to reconcile shortfalls. As you'll  
5 recall, a shortfall is the amount of emissions in excess  
6 of the emissions cap. The regulation, as proposed,  
7 allows a maximum of 90 working days to reconcile  
8 shortfalls, which we believe is an adequate period. We,  
9 therefore, recommend no changes to the reconciliation of  
10 the shortfalls provision.

11                           (Slide presented.)

12           An industry representative has requested  
13 expansion of the ACP to cover all consumer products  
14 not those just currently subject to the existing  
15 regulations. We recommend not expanding the ACP to  
16 cover unregulated products at this time. We believe it  
17 is inappropriate to expand the ACP at this time because  
18 the ACP uses the existing VOC standards as the baseline  
19 for determining whether emission reductions are real.  
20 For products without VOC standards, we would not be able  
21 to ensure that the emission reductions claims are real  
22 or enforceable since there would be no baseline. We'd  
23 also look to limit ACP to the existing regulation to  
24 gain experience with this new program before expanding  
25 it.

1                   Lastly, some manufacturers are concerned that  
2 the ARB will mandate the use of the ACP to reduce  
3 emissions. We emphasize at this point that our proposal  
4 before you today is voluntary and that any further use  
5 of the ACP regulation will go through a full -- a full  
6 rulemaking process.

7                   (Slide presented.)

8                   In conclusion, the ACP regulation was  
9 developed with an extensive, cooperative effort among  
10 ARB staff, industry, and other interested parties. We  
11 believe the ACP will provide a valuable compliance tool  
12 to manufacturers as their third voluntary option. The  
13 ACP regulation preserves the emission reductions in the  
14 existing regulation while providing a high level of  
15 flexibility to manufacturers. We would, therefore,  
16 recommend that the board adopt the ACP regulation with  
17 the proposed modifications I described.

18                   This concludes my presentation. We would be  
19 happy to answer any questions you may have at this  
20 time.

21                   CHAIRWOMAN SCHAFFER: Thank you very much.

22                   If I neglected to mention it before, I'd like  
23 to now use the opportunity to remind those of you in the  
24 audience who would like to testify on this agenda item  
25 to please sign up with the board secretary.

1           At this point I would like to ask board  
2 members if they have questions for the staff on the  
3 presentation.

4           CHAIRWOMAN SCHAFER: Mr. Parnell.

5           MR. PARNELL: Yes, if I may. It appears  
6 that one of the fundamental questions is, In order to  
7 determine whether the goal is being met is the  
8 monitoring of sales, and that has to be accurate. It  
9 has to be a program that can take -- I guess my question  
10 is, Do we have physically the staff and wherewithal to  
11 continue to do that, or are we continuing to build  
12 infrastructure in this?

13           CHAIRWOMAN SCHAFER: I suspect that it  
14 is largely dependent, as often these things are, on  
15 self-reporting and our monitoring of that.

16           Miss Shiroma.

17           MS. SHIROMA: The plain and simple answer  
18 to your question is yes. We have staff dedicated to the  
19 consumer products program, and also our compliance  
20 division has staff that's devoted to the enforcement of  
21 the program.

22           CHAIRWOMAN SCHAFER: The question was  
23 about the monitoring of sales.

24           MS. SHIROMA: And the monitoring of the  
25 sales is that portion of looking at the plan to

1 determine whether or not the requirements are being met,  
2 to assure that the reductions are enforceable, and they  
3 are. They are real. And again, the answer is yes. We  
4 have them looking at the mechanisms to ensure that the  
5 sales have occurred, to anticipate what those sales  
6 might be, and we do have staffing to be able to  
7 implement that part of the program.

8 MR. PARNELL: Well, the age-old "You can  
9 have your feet in the oven and your head on ice and on  
10 average feel pretty good" kind of applies here, I  
11 guess.

12 It seems as though we have products that are  
13 totally in compliance and we have products that will not  
14 comply, and on the average, they're pretty good. And it  
15 concerns me that the monitoring has been well thought  
16 out in order to be able to determine whether the goals  
17 are being met.

18 The second question that I would have would  
19 be in the area of VOCs in general. A lot of these  
20 consumer products are used inside, and do we know  
21 enough -- are those all emitted and become problematic  
22 in air, or are they entrained? Could they  
23 potentially be entrained in draperies or something  
24 inside? Do we know the answer to that? Or am I --

25 MS. TARICCO: This issue was addressed

1 when the board adopted the Phase 2 portion of the  
2 regulation, and there have been some studies that looked  
3 at indoor emissions and the transport of these emissions  
4 to the outside. And there are certain chemicals that  
5 will get entrained into interior objects, but what they  
6 also found is that there's an equilibrium that gets set  
7 up, and they desorb again. And in most of the houses in  
8 California -- I don't know if I remember the exact  
9 number. There's about seven air exchange rates per  
10 hour, so eventually they do get to the outside. It may  
11 not occur at the time you're applying the hair spray.  
12 It may happen a little bit later, but there is a  
13 constant push of these solvents out the window, I  
14 guess.

15 MR. PARNELL: Good. Thanks.

16 CHAIRWOMAN SCHAFER: Any other questions  
17 for board members at this time?

18 Miss Edgerton.

19 MS. EDGERTON: I'd like to follow up a  
20 little on my colleague's question about the monitoring.  
21 One of the concerns is that a program like this just  
22 becomes a hyperbolic program, and there's been so much  
23 that's gone into this, and it's so constructive.

24 But more specifically, is there a provision  
25 for ARB to audit the -- say there's a plan approved.

1 Can ARB go in and audit the actual way that the company  
2 goes about reporting its sales, and -- of different  
3 products -- to independently verify what has been  
4 represented?

5 MS. SHIROMA: Yes. The way the regulation  
6 is fashioned, first of all, the company must apply to  
7 the Air Resources Board and a full assessment of the VOC  
8 content and the sales is made by our staff, and the  
9 executive order is issued. Then throughout the life of  
10 the ACP, at the end of each compliance period the Air  
11 Resources Board has a role in that we will need to  
12 review the report that's provided at the end of each  
13 compliance period, and that compliance period may be up  
14 to one year's time. So we will be reviewing each of  
15 those compliance plans as they come in throughout the  
16 lifetime of the program.

17 Also, we will be looking at the individual  
18 products. Our compliance inspectors will be able to  
19 pull parts off the shelf to verify that the VOC contents  
20 are, in fact, complying with ACP plan that was agreed to  
21 in a binding agreement between the company and  
22 ourselves.

23 So we have two ways of looking at it, the  
24 product off the shelf, and then at the end of each  
25 compliance period, we review those plans and assure that

1 they are in compliance.

2 MS. EDGERTON: Well, so if I understand  
3 you right, you will -- as part of reviewing the plan,  
4 you'll look over a piece of paper that they submit?

5 MS. SHIROMA: Peggy is going to elaborate  
6 on that.

7 MS. TARICCO: Yes, as part of the  
8 preapproval process, they're going to have to  
9 demonstrate to us that they can track their sales and  
10 that there's a mechanism for us to check on that. And  
11 in some cases it may be an independent auditing firm.  
12 There's a couple of consumer product tracking programs,  
13 Nielsen and IRI, that are fairly sophisticated, and  
14 they're constantly looking at the sales of these  
15 products. That may be one mechanism.

16 For some products we will be coordinating  
17 with DPR to look at the meal (phonetic) tax assessment,  
18 because pesticides are included in this regulation, and  
19 we expect that there's going to be many other types of  
20 ways that we will be doing the checking.

21 This was discussed at great length at many of  
22 our workshops, and for many of the manufacturers, the  
23 way they track their products is confidential, and so  
24 the regulation was designed to give that flexibility so  
25 that they can come in to us, show us this is how they

1 track their products, give us a way that we can  
2 double-check, and then they can go into the plan.

3 MS. EDGERTON: So if I understand you,  
4 there's going to be an approved mechanism that the Air  
5 Resources Board will use that must be included in every  
6 Alternate Control Plan?

7 MS. TARICCO: Yes. And that has to be set  
8 up front before the plan is approved.

9 MS. EDGERTON: And it will be an  
10 independent third party?

11 MS. TARICCO: In some cases, it may. Not  
12 always. It's set up so that it can be done on a  
13 case-by-case basis, because -- because of the diversity  
14 of this market, there's many different ways that these  
15 manufacturers monitor themselves. Some manufacturers  
16 have told us that it's very difficult to do that. We  
17 expect that those manufacturers won't be able to have  
18 an approved ACP plan. Only manufacturers that can  
19 demonstrate to us that the products can be tracked and  
20 that we can monitor them will be allowed into ACP.

21 MS. EDGERTON: Well, I think that's key,  
22 so I understand -- if I understand you right, it's  
23 not -- you haven't done it yet, you don't know exactly  
24 how you're going to do it, but from the standpoint of  
25 our effectiveness of the regulation, obviously, that's

1 something that can't be overemphasized.

2           How good is -- how good is our ability to --  
3 ARB's ability to assess the VOC emissions? And when we  
4 do that in this plan, are we going to look at the whole  
5 inventory of emissions from that particular product, or  
6 are we only going to know what VOCs there are? And what  
7 I'm driving at is obviously the ARB has responsibilities  
8 beyond VOCs. We have all kinds of toxic air  
9 contaminants and other obligations, and when we look at  
10 a particular consumer product under this plan, will  
11 we -- what will we know about that product? Only VOCs  
12 or what will we know?

13           MS. TARICCO: I guess I'm not sure I  
14 understood your question. Are you concerned that when  
15 we look at the product, that we look at other impacts  
16 besides the potential to contribute to the reaction that  
17 forms photochemical smog?

18           CHAIRWOMAN SCHAFER: Mr. Venturini.

19           MR. VENTURINI: Maybe I can help on this.  
20 Part of the consumer product regulations are designed  
21 primarily for VOC reductions. When we take a look at  
22 these plans, we will be looking primarily to make sure  
23 that the emission reductions are consistent and assure  
24 that this is what -- the Table of Standards that they're  
25 working under in this ACP. But I think just as a matter

1 of course, we will be also looking at the plan to make  
2 sure there aren't any other adverse impacts that may be  
3 created, such as potentially an increase in toxic --  
4 toxic emissions.

5 Now, in the adoption of VOC content  
6 standards, if we're to look at toxic emissions, that's  
7 done through our air toxic contaminant program, but  
8 we've also -- whenever we evaluate the -- a product for  
9 VOC reduction, you take a look at the full spectrum of  
10 the emissions.

11 MS. EDGERTON: Good. So that is what my  
12 question was, was that I didn't want to know a product  
13 with higher VOCs -- didn't want ACP to go into place,  
14 that inadvertently substituted a chemical that was  
15 equally undesirable for us to -- we didn't want to  
16 encourage it. So thank you.

17 MR. VENTURINI: I think the ACP covers  
18 that.

19 Peggy, can you verify that the ACP covers the  
20 other undesirable -- that they don't -- that the VOCs  
21 aren't replaced with some other compound.

22 MS. TARICCO: I think there's many  
23 different regulations in place that would prevent that  
24 from happening. It's not just our system regulations,  
25 but there's several regulations on this industry that

1 require them to be very careful with the different types  
2 of compounds that they use in their products.

3 Another thing is that we do have a  
4 registration provision in the consumer product  
5 regulation that will allow us to request information  
6 from manufacturers, and then we can take a step back and  
7 look to see how people are reformulating their products  
8 and whether or not there's any adverse environmental  
9 impact.

10 MS. EDGERTON: Thank you. And one other  
11 final question. What if somebody -- what if a company  
12 completely replaces a product with something that has no  
13 VOCs? Do they get credit?

14 MS. TARICCO: If they're in the ACP. If  
15 it's set up that way, yes -- and it had been a  
16 reformulation. Now, if they had done this several years  
17 ago, then no, they wouldn't get credit for that. But if  
18 they were in an ACP plan, and they reformulated that  
19 product to remove all the VOCs, then yes, they would.

20 MS. EDGERTON: Thank you.

21 CHAIRWOMAN SCHAFER: Are there any other  
22 questions from the board members for the staff at this  
23 time?

24 If not, I'd like to --

25 MR. CALHOUN: Madam Chairman.

1 CHAIRWOMAN SCHAFER: Oh, I'm sorry.  
2 Mr. Calhoun.

3 MR. CALHOUN: I understand that staff made  
4 some changes to the proposal. Can you very briefly  
5 repeat what those modifications were -- what they are.

6 MR. VERGARA: Yes. Basically there were  
7 two proposed modifications, one is to the violations  
8 provision. And what we're proposing is to -- we're  
9 proposing modification that will determine the number of  
10 emissions violations of the cap to be based on a one  
11 violation for 40 pounds of exceedance increment.

12 So in other words, you take the amount over  
13 the -- over the especially the cap, and divide that  
14 by 40, and that would be your number of emissions  
15 violations. Okay. So that's the first proposed  
16 modification.

17 The second one is to provide for credit  
18 for early overcomplying reformulation, where the  
19 manufacturer in the compliance period, say the year  
20 before the -- it -- the manufacturer submits its ACP  
21 plan -- if in the year before that, that manufacturer  
22 had achieved a reformulation which went below the  
23 standard, then they would get credit, a one-time, very  
24 limited credit for that reformulation, which they could  
25 use to reconcile shortfalls in the first compliance

1 period of that plan.

2 So basically, as I said, it's a timing  
3 issue. If the ACP had gone into effect last year, the  
4 program would have worked to give that reformulation  
5 credit under -- you know, under the existing proposal.  
6 So it's just those two proposals.

7 CHAIRWOMAN SCHAFER: Okay. Good.

8 Thank you.

9 I think it's time that we moved on now to the  
10 witnesses who'd like to make presentations today. I'd  
11 like to first call on Mr. Mike Thompson, with the  
12 Chemical Specialties Manufacturers Association. Welcome  
13 at this time. Good afternoon, Mr. Thompson.

14 MR. THOMPSON: Thank you,  
15 Madam Chairwoman. My name is Mike Thompson. Our  
16 president, Ralph Engel (phonetic), is unable to attend  
17 today and has asked that I present the views of the  
18 Chemical Specialties Manufacturers Association  
19 concerning the ARB's proposed ACP.

20 Briefly, CSMA is a nonprofit trade  
21 association representing more than 440 firms engaged  
22 in the manufacture, formulation, distribution and sales  
23 of consumer and specialty products for household,  
24 institutional, and industrial use. CSMA and this  
25 industry have worked closely and cooperatively for

1 several years with CARB staff along with members of  
2 the entire consumer products coalition.

3 Dr. Dan Knoth of 3M serves as chairman  
4 of an industrywide ACP task force which includes  
5 representatives of all areas of the consumer products  
6 industry. Douglas Raymond, from Sprayon Industries,  
7 serves as vice chairman of the task force. Both  
8 Dr. Knoth and Mr. Raymond will present their views  
9 later.

10 CSMA has and continues to support the  
11 development of an alternative method of complying with  
12 the requirements of the existing VOC limits for consumer  
13 and commercial products. Our task force has appreciated  
14 the cooperation of the CARB staff in this area. As we  
15 have stated in previous comments to both CARB staff and  
16 before this board, the development of an effective and  
17 workable ACP is a most difficult task.

18 At the third workshop considerable discussion  
19 took place concerning the goals of the ACP. This  
20 November '93 workshop provided valuable goals which were  
21 agreed to both by CARB staff and the industry for the  
22 development of the ACP. Mr. Vergara has presented  
23 those, and I will not repeat those goals which are part  
24 of his presentation, which were -- which we fully  
25 support.

1           We have no specific comments today concerning  
2 the applicability section of this rule. Here we find  
3 that it's a difficult position because we have members  
4 that have differing views. Individual members feel that  
5 it should cover only the Table of Standards products,  
6 while some other members feel that it could cover all  
7 consumer products, and others feel it should cover all  
8 VOCs.

9           CSMA does not oppose the proposal as it's  
10 written today concerning the applicability, although our  
11 members have varying views.

12           We appreciate all of the efforts that have  
13 been made to this regulation throughout, and I think  
14 the best way we can describe it was to make it as  
15 user-friendly as possible to avoid confusion to either  
16 the applicant or the ARB. We do acknowledge that ACP  
17 applicant will have additional burdens, however, we have  
18 strongly encouraged CARB to minimize the paperwork and  
19 the administrative burdens on both the agency and the  
20 applicant. This will benefit both long term.

21           The ACP, as proposed today, is not a perfect  
22 document, but it is an effort to provide an additional  
23 tool for consumer products and manufacturers. It by no  
24 means should be the primary option for a manufacturer.  
25 Rather, this is another voluntary alternative option

1 which joins the innovative products in the existing  
2 variance procedure for consumer products.

3           Concerning the areas of discussion that have  
4 come down towards the end, where there's been some areas  
5 of disagreement, in the area of early compliance, we  
6 support the concept that was put forward by staff today  
7 for manufacturers, subject to the rule, who may have a  
8 one-time, one-year emissions credit that would be  
9 applied to the ACP. We feel that this is a logical  
10 compromise. Although some in the industry would like to  
11 have received greater credits for early reductions, we  
12 feel that this is an important compromise. It allows  
13 for early compliance or a benefit to someone who  
14 complies early.

15           In the violation section, our industry is  
16 very concerned by the proposal that was put forward, and  
17 the concept that one would be in -- if you were out of  
18 compliance by one pound, that you would be in violation  
19 for 365 days was not a workable concept. Here again, we  
20 support the proposed amendments that were put forward by  
21 staff today.

22           Another one, which is the time to reconcile  
23 shortfalls in 90 working days, frankly, I think that we  
24 have a fairly workable approach. The only concern that  
25 we have at this point in time is the area of seasonal

1 products and whether there would be adequate time for  
2 those products within the ACP.

3 We look forward to continuing discussions for  
4 working on that. That has not been fully resolved, but  
5 it is again confined only to those seasonal products  
6 that may have a shortfall, that would have to be  
7 reconciled possibly one year later.

8 Concerning the two questions that were  
9 brought up -- and let me elaborate, if I might take the  
10 liberty on two of them. I have to compliment the staff  
11 on a creative way when it comes to monitoring sales and  
12 doing it with minimal paperwork burdens.

13 In the enforceable sales records provisions,  
14 there is a provision that allows an interagency transfer  
15 of records for, for example, pesticide products, within  
16 Cal EPA from the Department of Pesticide Regulation.  
17 Here they have currently existing sales records in which  
18 they have auditors who are doing this currently. That  
19 is one method which would allow those existing records  
20 to be transferred over to the Air Resources Board, and  
21 we feel that that is a creative way to do it and would  
22 hopefully reduce the burden on both the agency and the  
23 applicant.

24 In the area of use of the products --  
25 Mr. Parnell brought this up -- according to our

1 information, about 95 percent of the product usage is  
2 indoors, and we continue to see that this is a major  
3 concern for the industry, and we question whether they  
4 are fully emitted into the atmosphere.

5           At this point in time -- I think you brought  
6 up an excellent point that we may bring back tomorrow,  
7 and that is an area of research that may be needed in  
8 regards to consumer products and what is actually  
9 emitted.

10           In summary, CSMA members support the concept  
11 of the ACP; however, some of our members fear that the  
12 voluntary plan will become mandatory and ignore some of  
13 the onerous provisions found in some of the  
14 technology-forcing standards.

15           CARB has approved standards which are in some  
16 cases impossible to meet. We have actively opposed any  
17 effort to make the ACP anything other than a voluntary  
18 method of complying with the Table of Standards.

19           Let me repeat that. Excuse me. CSMA members  
20 fear this voluntary plan will become mandatory and  
21 ignore the onerous provisions found in certain of the  
22 technology-forcing standards. CARB has approved  
23 standards which are in some cases impossible to meet.

24           We would actively oppose any effort to make  
25 the ACP an involuntary method of complying with future

1 effective dates which are not technologically and  
2 commercially feasible. CSMA views the ACP as a  
3 voluntary alternative to the Table of Standards. We do  
4 not view the ACP a replacement for the command and  
5 control regulations. This ACP is not the vehicle for  
6 regulating other nonregulated consumer products.

7 Again, I appreciate the opportunity to  
8 express the views of CSMA, and another special thanks to  
9 the CARB staff for an outstanding job in three years'  
10 worth of work in developing this proposal.

11 Thank you.

12 CHAIRWOMAN SCHAFER: Thank you very much.  
13 Mr. Thompson.

14 Are there any questions for Mr. Thompson from  
15 the board members at this time?

16 MR. THOMPSON: Thank you.

17 CHAIRWOMAN SCHAFER: I'd like to raise a  
18 view. Are we making this too complicated? Or do you  
19 think this is about as good as we can do until we get  
20 some experience?

21 MR. THOMPSON: Let's put it this way: I  
22 think that may be something that would probably be  
23 better answered by the individual applicants. As a  
24 trade association, we would not be an applicant for an  
25 ACP. I think others who will speak later are much more

1 qualified to answer that question, potential  
2 applicants. At this point I think you have to balance  
3 your need for information with the need for the plan,  
4 and that might be appropriate for others to take a crack  
5 at that question.

6 CHAIRWOMAN SCHAFER: Do you think a lot of  
7 your members will, in fact, prepare plans?

8 MR. THOMPSON: Frankly, no. I would not  
9 anticipate this as being --

10 CHAIRWOMAN SCHAFER: That's why I asked  
11 the question.

12 MR. THOMPSON: -- the major activity. I  
13 would see a manufacturer first going to the Table of  
14 Standards, and that being the primary method of  
15 compliance. We have estimated this as being a second or  
16 third or fourth option that someone would go to.

17 Yes, there is additional paperwork burdens,  
18 there are additional requirements, and I would not  
19 envision someone, if you could comply with the Table of  
20 Standards, needing to go into an ACP.

21 CHAIRWOMAN SCHAFER: Okay. Well, we put a  
22 lot of effort into it, and I'm just hoping that it will  
23 pay off some dividends. I assume there is some demand  
24 for this out there and that --

25 MR. THOMPSON: There is, and hopefully, as

1 with other provisions, similar to the innovative product  
2 provision, it will foster and encourage technology  
3 within the industry. And so it is something that  
4 although a -- certain portions of the industry support  
5 and some oppose, I think conceptually it is a good  
6 plan.

7 CHAIRWOMAN SCHAFFER: Very good. Thank you  
8 very much for --

9 MR. THOMPSON: Thank you.

10 CHAIRWOMAN SCHAFFER: -- your testimony  
11 this afternoon, Mr. Thompson.

12 Our next witness is Mr. Doug Raymond with the  
13 Specialties Division of Sherwin-Williams.

14 MR. RAYMOND: My name is Doug Raymond, and  
15 I'm the Divisional Director of Regulatory Affairs for  
16 the Specialty Division of Sherwin-Williams. We are a  
17 large custom manufacturer of consumer products and a  
18 large marketer of aerosol coatings.

19 The Specialties Division has supported the  
20 ACP concept from the beginning, and we would like to  
21 start by thanking the staff for their time and their  
22 consideration and all the hard work that they've done on  
23 this issue. This has taken over two years and numerous  
24 workshops.

25 The Specialty Division has some of the same

1 concerns as CSMA, and we support the amendments being  
2 put forth today by the staff. We believe that the  
3 regulation that is being put forward is the best  
4 possible one that we could make at this time, however,  
5 we think that further refinements in this concept are  
6 going to be needed in the future.

7           For example, the first is the extension of  
8 coverage of sources regulated by this rule. The  
9 Sherwin-Williams Company believes that all consumer  
10 products and all sources of VOC emissions should fall  
11 under this rule. And we also understand the staff  
12 prefers to keep this small until they can find if it's a  
13 workable rule. However, we would urge the board at this  
14 time to make a commitment to add aerosol spray paints to  
15 this ACP as soon as they are regulated in January. We  
16 have worked long and hard on this regulation, and we  
17 think it will be a very important tool in the future.

18           Second, we believe that further inclusion  
19 into this ACP should be a concept of emission trading.  
20 I think that will be an important tool for the future,  
21 and we think it should be started to be researched right  
22 now.

23           Again, we'd like to thank the staff for  
24 their time and their hard work on this issue, and this  
25 regulation provides a new option for our industry, and I

1 urge the board to support it and to adopt it today.

2 Thank you.

3 CHAIRWOMAN SCHAFER: Thank you very much,  
4 Mr. Raymond.

5 Are there any questions?

6 Excuse me, Mr. Raymond, if you'd step back  
7 to the podium. Mr. Calhoun would like to ask you a  
8 question.

9 MR. CALHOUN: Mr. Raymond, you are urging  
10 the board to commit at this time to include other  
11 compounds in the regulation?

12 MR. RAYMOND: Yes, I do.

13 MR. CALHOUN: And the staff is somewhat  
14 reluctant. They've taken a small bite here in order to  
15 develop this learning curve that we all need, and I'm  
16 just wondering if the staff has any comment to make in  
17 that regard.

18 MR. RAYMOND: Well, I could explain a  
19 little bit about what I'm talking about. The reason --  
20 we've had extensive conversations with staff on this  
21 issue. The reason it is not in the rule today is  
22 because there is no regulation on aerosol spray paint.  
23 Aerosol spray paint is a consumer product, by California  
24 law, and it will be adopted -- a regulation on aerosol  
25 spray paint will be adopted in January, and I would like

1 to get this issue brought to you before we come to you  
2 in January and say, "With the aerosol paint regulation,  
3 we'd also like it to be put into the ACP," because it is  
4 a consumer product and it should have all the advantages  
5 that all the rest of the consumer products do have.

6 CHAIRWOMAN SCHAFFER: Mr. Venturini, could  
7 you comment on Mr. Calhoun's question.

8 MR. VENTURINI: I just want to indicate  
9 with respect to the aerosol paint regulation which is  
10 now scheduled to come before you in January, we're in  
11 the process now of continuing the discussions with the  
12 industry, and I think one of the things that's under the  
13 discussion is including aerosol paints into the ACP.

14 With respect to expanding, say, this concept  
15 to other products, even -- I think what Mr. Raymond  
16 would like to see is unregulated products, so that  
17 presents us some difficulties which how do you develop a  
18 baseline and your starting point and so forth. And we  
19 really felt it was important to take this first step to  
20 learn how this program works and get basically the bugs  
21 out of it, and -- but that doesn't prevent us, while  
22 we're doing that, to continue discussions with the  
23 industry about concepts and how we might be able to look  
24 for other opportunities for this type of a market-based  
25 approach.

1 CHAIRWOMAN SCHAFFER: Are there any other  
2 board members who would look to ask Sherwin-Williams at  
3 this time any further questions?

4 If not, thank you very much.

5 MR. RAYMOND: One more comment. You asked  
6 a question about whether this was too complicated to be  
7 implemented. We have done some research on this issue  
8 and to see how viable it is for our company, and we  
9 don't think it's going to be that complicated to be able  
10 to comply with.

11 Thank you.

12 CHAIRWOMAN SCHAFFER: Good. Thank you very  
13 much. I appreciate it.

14 Our next witness is Mr. Jim Mattesich with  
15 the CTFA.

16 If you could spell out CTFA. I was going to  
17 make a stab at it, because that's all that's written  
18 here, and I know I'm going to get something out of  
19 order.

20 MR. MATTESICH: Madam Chair, members, my  
21 name is Jim Mattesich. CTFA stands for the Cosmetic,  
22 Toiletries and Fragrance Association. And I realized  
23 when I signed the sign-up list that there was an order  
24 at the top of it, and you somewhat adjusted the order.  
25 One of the principal member companies of CTFA is

1 Procter & Gamble, and the representative of Procter &  
2 Gamble is here and had signed up ahead of me. And so I  
3 wanted to simply ask whether or not our important member  
4 wanted to testify.

5 CHAIRWOMAN SCHAFER: No, no. We'll put  
6 Mr. -- we'll put Dr. Geis on next. Why don't you go  
7 ahead. I'm trying to get a big picture first.

8 MR. MATTESICH: I understand.

9 CHAIRWOMAN SCHAFER: Okay.

10 MR. MATTESICH: My name is Jim Mattesich,  
11 and I am here today on behalf of CTFA. I am with the  
12 law firm of Livingston & Mattesich in Sacramento. And  
13 we're here obviously on this issue which we have been  
14 involved in as well. You saw so many slides, I think  
15 you have probably forgotten that CTFA's name was up  
16 there as one of the groups that was involved in this.

17 CTFA, in brief, is a hundred-year-old  
18 association of personal care products manufacturers.  
19 There are 500 members in the association. Half of those  
20 members are actively engaged in producing consumer  
21 products, personal care products, many of which are sold  
22 nationally and internationally and are already subject  
23 to regulations in your Phase 1 and Phase 2, and in the  
24 antiperspirant and deodorant area, as well, such as hair  
25 care products, nail polishes, shaving creams, and

1 personal fragrance products. The remaining half of the  
2 membership are the businesses that provide goods and  
3 services to those active manufacturers. Those are  
4 affiliate members, and they are the companies that  
5 provide ingredients in the packaging for the  
6 manufacturers. All of those companies are directly  
7 affected by your original antiperspirant Phase 1 and  
8 Phase 2 regulations as well as this particular  
9 proposal.

10 We appreciate the effort that's gone into  
11 this on the part of your staff and on the part of  
12 industry, and we appreciate the intent of the board to  
13 provide flexibility to manufacturers in ways that makes  
14 it a -- them able to comply with consumer product VOC  
15 regulations. We think the provisions like the  
16 innovative products rule, which already exists and has  
17 been utilized by some of our membership and other trade  
18 association members, are good ideas, and they've worked  
19 well. They encourage innovation, they encourage what  
20 you want, which is manufacturers to spend some R&D money  
21 to figure out ways to reduce the VOCs in their products  
22 and therefore reduce VOC emissions.

23 We think that you need to continue to look  
24 at ways to build flexibility into your regulations.  
25 However, having said that, after almost the three years

1 that have gone into this effort, we regret to tell you  
2 today that CTFA is unable to support the proposal.

3 After serious consideration by much of the  
4 membership that are directly affected by this, they have  
5 come to the conclusion that the present plan offers them  
6 no discernible benefit to either the manufacturers or  
7 the distributors of personal care products, and it's  
8 principally for three reasons.

9 First, the world of VOC regulations has  
10 changed since staff began this proposal two and a half  
11 years ago. At that time the Air Resources Board here in  
12 California was the de facto national regulatory agency  
13 for VOCs in consumer products. Only one other state,  
14 New York, had regulated its consumer products  
15 approximately at that time, and the U.S. EPA was at  
16 the very beginning stages of its national regulatory  
17 effort.

18 However, in the last few years, while this  
19 project has been going on, other states have regulated  
20 VOCs in consumer products, or they're in the process of  
21 doing that, and those include Texas, Oregon, Rhode  
22 Island, Massachusetts, Connecticut, New Jersey, and  
23 others are beginning to do the same thing. But more  
24 significantly, U.S. EPA, as you know, has already  
25 embarked on the regulation process for consumer and

1 commercial products and is on the verge of having its  
2 own national regulation in place.

3 Even, however, U.S. EPA is not consistent  
4 within itself. As we well know, Region IX has proposed  
5 Federal Implementation Plan, but -- and that plan would  
6 make California regulations federally enforceable.  
7 However, that implementation plan as proposed could end  
8 up being inconsistent in practice with the California  
9 regulations and possibly with the national regulations  
10 which are being created back on the East Coast, away  
11 from Region IX, but another separate arm of the U.S.  
12 EPA.

13 The key fact here for us is that products  
14 that comply with the California regulations as a part of  
15 an ACP would not comply with the regulations of any  
16 other state and wouldn't comply necessarily with  
17 whatever regulations the U.S. EPA comes out with on a  
18 national basis -- principally because of the bubbling  
19 aspect of this regulation. We wouldn't be able to  
20 produce product and sell it in other states simply  
21 because we are able to produce it and sell it in  
22 California.

23 The second reason why we have a problem with  
24 the proposal is we have heard directly from other  
25 regulators the misunderstanding caused by the

1 availability of an ACP in California. We're concerned  
2 about a perception that's been voiced to us directly by  
3 one federal air quality official that said we should no  
4 longer be concerned about the future effective dates and  
5 VOC levels for products that are existing in your  
6 Phase 1 and Phase 2 regulations; that we have taken the  
7 position with your staff for a long period of time that  
8 these are not levels that we are going to be able to  
9 reach.

10 But this federal official said, "Well, you'll  
11 have an ACP, so the fact that we can't meet a 55 percent  
12 hair spray standard in 1998, for example, really isn't  
13 going to hurt you because you could bubble those hair  
14 sprays with something else."

15 Well, that isn't true. That's a  
16 misperception. There may be many manufacturers of hair  
17 sprays that don't have products that would fit within a  
18 bubbling concept, because they don't have the low level  
19 reformulated product to offset the non-VOC-compliant  
20 55 percent hair spray.

21 So those are a -- that is a major concern of  
22 ours, that regulators would simply look to California's  
23 ACP and say, "We can expect you to meet low levels  
24 because there's an ACP in California."

25 Thirdly, we have a continuing concern that

1 while the plan -- that the plan will discriminate  
2 against small or single-product-line manufacturers that  
3 don't have another product to offset it because they're  
4 a small manufacturer or your single-line manufacturer;  
5 this ACP isn't good for you. Larger manufacturers, some  
6 of the largest companies in the world, may have a  
7 distinct competitive advantage if this ACP is adopted,  
8 but the small and single-line companies will be put at a  
9 disadvantage.

10 Now, we recognize that staff has attempted to  
11 answer that question by the use of emissions trading  
12 options. But we want you to remember that this is a  
13 very -- especially in the consumer products area -- is a  
14 very competitive industry, and the fact that one company  
15 may be able to create emissions trading credits doesn't  
16 necessarily mean that they will make them available or  
17 sell them to a competitor.

18 In conclusion, CTFA can't support this  
19 regulation. However, if the board should choose to  
20 adopt it, we have provided language also to the staff  
21 that we would like it see either in the board's  
22 resolution or in the regulation itself to deal with the  
23 three points that I've made.

24 Without the inclusion of that language, which  
25 would clarify that participation in an ACP is a totally

1 voluntary alternative to compliance with the VOC content  
2 limits in the Table of Standards; and secondly, that the  
3 availability of the ACP for any specific product  
4 category does not in any way affect the rigorous  
5 standards to be applied in ensuring that compliance with  
6 the VOC content limit for that product category is  
7 technologically and commercially feasible, which is the  
8 legal standard the board must comply with in terms of  
9 consumer product regulation; and third, that the ARB  
10 recognizes that participation in the ACP is not a viable  
11 option for a single product or small companies,  
12 necessarily.

13           Nevertheless, despite our concerns and our  
14 opposition to the proposal, we want to reiterate that we  
15 have worked with CARB and with its staff during the --  
16 all three of the prior regulatory efforts, and we look  
17 forward to continuing to work with you on future efforts  
18 affecting consumer products. And we want to stress that  
19 we appreciate the consideration, the patience, the  
20 highly professional efforts of your staff in this  
21 particular effort, especially Floyd Vergara, who put two  
22 or three years of his life in this, and Peggy Vanicek --  
23 pardon me -- Peggy Taricco -- working with us, even  
24 though we are not at this juncture able to support this  
25 regulation. It doesn't diminish our desire to work with

1 the board and to find ways to improve California's air  
2 quality in the future, while maintaining a steady supply  
3 of the products that our manufacturers present to  
4 California consumers and that they have come to expect.

5 Thank you.

6 CHAIRWOMAN SCHAFFER: Thank you,  
7 Mr. Mattesich.

8 Are there any members of CTFA that do support  
9 the regulation change here or might apply for a plan  
10 under this proposal?

11 MR. MATTESICH: I'm told by the vice  
12 president of CTFA that I spoke to, and who attends to  
13 the meetings in Washington, D.C., where the association  
14 is located, that all of the members who have reviewed it  
15 and been involved in it have indicated that they cannot  
16 see any benefit to them.

17 CHAIRWOMAN SCHAFFER: Well, I can  
18 understand, you know, that they may be going --

19 MR. MATTESICH: And they will not be using  
20 it.

21 CHAIRWOMAN SCHAFFER: -- to use it or not,  
22 but I'm a little puzzled as to why you would not want  
23 someone else to have the opportunity to use it.

24 MR. MATTESICH: For the reasons that I  
25 expressed, that we think that it will be misconstrued

1 elsewhere --

2 CHAIRWOMAN SCHAFFER: I mean, I think we  
3 can't just let people be ignorant about how these things  
4 are applied. We need to work on that, obviously, but I  
5 don't think that's sufficiently reason to deny  
6 flexibility to others who might be able to use it.

7 MR. MATTESICH: Chairwoman Schafer, I  
8 understand that position, but I also understand that it  
9 was a very, very heartfelt concern of the membership  
10 that considered this proposal and they are -- as you  
11 will hear, I believe -- very concerned about how it's  
12 going to be perceived in the rest of the nation.

13 CHAIRWOMAN SCHAFFER: Okay. Thank you.

14 Any other questions from board members? Yes,  
15 Mr. Parnell.

16 MR. PARNELL: I just ask a question of  
17 staff. You referred to a federal regulation that's  
18 being drafted currently that may overlap or be  
19 redundant. Can you speak to that just a moment?

20 MR. VENTURINI: Yes.

21 MS. TARICCO: Yes.

22 MR. VENTURINI: I'm going to ask  
23 Miss Taricco if she can just summarize briefly what the  
24 federal requirements are in this area.

25 MS. TARICCO: When the Clean Air Act was

1 amended, there was a requirement in there that U.S. EPA  
2 do several studies on consumer products. And the  
3 federal definition is different than ours in that it  
4 encompasses all the different coatings and solvent  
5 sources, they had a bigger universe. And they were to  
6 look at this universe of emissions and determine how  
7 they were going to regulate these sources. They were  
8 supposed to rank them and then regulate so many every  
9 two years, I think it was.

10 It's my understanding that the report was due  
11 to Congress in November '93. It didn't get there, but  
12 it is close to being delivered to OMB (phonetic), and  
13 one of the higher priorities will be to look at some of  
14 the traditional consumer products that we have  
15 regulated.

16 Now, whatever they do, they will not be  
17 preempting us unless they're more restrictive. I was  
18 unaware that they were on the verge of having a  
19 proposal, so that was news to us.

20 MR. VENTURINI: Mr. Parnell, I'd like to  
21 just add from our staff's perspective as well. We've  
22 been continuing communication with EPA technical staff  
23 and sharing our technical information with them as they  
24 develop their work and as they develop standards for the  
25 various consumer products, particularly maybe some

1 categories that we haven't addressed yet. Basically,  
2 our view, that we feel that the EPA standard is -- is a  
3 good standard and an effective and appropriate  
4 standard.

5 We wouldn't necessarily want to do something  
6 different and would look to basically adopting a  
7 consistent standard here for California to minimize any  
8 duplication.

9 I think one of our frustrations has been the  
10 slowness with which EPA has been moving with their --  
11 with these measures, and we have to move along.

12 MR. PARNELL: My experience is that that's  
13 not unusual.

14 CHAIRWOMAN SCHAFER: Well, we did hear  
15 some testimony along those lines this morning earlier.

16 Mr. Calhoun.

17 MR. CALHOUN: Yes. I'd like to get some  
18 clarification of the position of the association.

19 MR. MATTESICH: I'll try, sir.

20 MR. CALHOUN: The last paragraph on the  
21 first page of the letter states something to the effect  
22 that CTFA is unable to support the ACP. Now, supporting  
23 something and opposing it are two different -- I guess  
24 I'd like to get some clarification. You can't support  
25 it or you oppose it?

1 MR. MATTESICH: Without the language  
2 that we provided to staff to include in your board  
3 resolution, our position would be to oppose.

4 CHAIRWOMAN SCHAFER: Miss Edgerton?

5 MS. EDGERTON: If I understand you  
6 correctly, your -- well, your agency -- your trade  
7 association has large and small companies.

8 MR. MATTESICH: It does.

9 MS. EDGERTON: So if I understand this  
10 correctly, the small manufacturers oppose it because  
11 they may have a single line or -- and so they won't be  
12 able to use it. The large manufacturers oppose it  
13 because, in any event, they have a national market,  
14 therefore -- and they like to make single products --  
15 and so they're going to -- the other states might have  
16 small -- lower emissions or more emissions than -- VOC  
17 reductions, lower standards, and so they're going to  
18 have to make their products to the lowest emission  
19 standards, anyway, and so they won't be able to use it  
20 either.

21 MR. MATTESICH: That may be a  
22 consideration of some of the larger ones, yes. You're  
23 going to hear from one of the larger companies. I think  
24 you can hear directly what their concerns are.

25 MS. EDGERTON: So to the extent that

1 they're trying to lead the way with their  
2 environmentally sensitive claims on their products, if  
3 they have to make a good product for New York, they'd  
4 just as soon be able to make that nationally?

5 MR. MATTESICH: It may turn out, though,  
6 Miss Edgerton, that we have standards in a wide number  
7 of states that vary, one from the other. Some may be  
8 higher than in California, some may be lower than in  
9 California.

10 The same reason that the California  
11 legislature decided to grant authority to the Air  
12 Resources Board over consumer products in California was  
13 to eliminate the possibility that we would have all of  
14 the different air districts adopting rules which could  
15 turn out to be inconsistent for products marketed not  
16 just in California but nationally, so we would have all  
17 kinds of different standards, so that it was all brought  
18 to at the state level by California.

19 So we now have the phenomenon of a lot of  
20 different states adopting what may turn out to be  
21 different rules than California. Some could be more  
22 strict, some could be less strict. All of that, because  
23 it's in flux right now, and because the EPA has embarked  
24 on its own consumer product regulations, causes us to be  
25 concerned about this particular effort.

1 I understand what the board staff wants to  
2 do. We've been involved for two and a half years with  
3 them. But it is still a major concern of ours that this  
4 particular effort will be misconstrued by other states  
5 that aren't as sophisticated, that don't have the  
6 talented staff you do -- because we've seen it happen  
7 already, and we've already heard from one federal  
8 official who didn't understand it enough, and simply  
9 said to us, "Well, gee, whiz, if you're going to have a  
10 problem down the road, just use the ACP. Put a bubble  
11 around your products."

12 That isn't the real world. And we're  
13 concerned that we're going to face that in state after  
14 state after state.

15 MS. EDGERTON: So stay with me just a  
16 minute more so I understand your point for the large  
17 companies. So they say -- the concern -- if I  
18 understand you, their concern is that there will be a  
19 misunderstanding of the availability of the ACP --  
20 explain it to me again. I'm having -- you know, I  
21 understand that -- I'm kind of like -- a little bit of  
22 the point that Miss Schafer is in. We can get it  
23 straightened out so there wouldn't be a  
24 misunderstanding. Explain to me again why the large  
25 companies don't want it.

1 MR. MATTESICH: We provided language to  
2 your staff which we thought if it was included in your  
3 resolution would do exactly that; it would take care of  
4 any perception out there about how this ACP should be  
5 interpreted and how it would be used in California.

6 Staff, from my understanding, recommended  
7 that you not take our language. But if you did take our  
8 language, our position would be we do not oppose it any  
9 longer; but as we stand here today, without that  
10 language, we do oppose the adoption.

11 CHAIRWOMAN SCHAFER: And what does the  
12 language say, Mr. Mattesich, on that point?

13 MR. MATTESICH: I'll read it to you.

14 CHAIRWOMAN SCHAFER: Thank you.

15 MR. MATTESICH: "The board is enacting  
16 the Alternative" -- pardon me -- "the  
17 Alternate" -- yes -- "Control Plan, ACP, for  
18 the benefit of companies that are able to use  
19 this as an alternative means of complying with  
20 the ARB consumer product regulations. It is a  
21 totally voluntary option, and the board  
22 recognizes that many companies will not be able  
23 to use the ACP. The ARB, therefore, recognizes  
24 the continuing need to ensure that both present  
25 and future VOC content limits for consumer

1 products are technologically and commercially  
2 feasible. The ARB confirms its intent that the  
3 availability of the ACP for any regulated  
4 product category is not to be considered in  
5 determining whether present or future VOC  
6 limits for that product category are  
7 technologically and commercially feasible."

8 I believe the language is there in front of  
9 you. I believe staff provided it to you.

10 CHAIRWOMAN SCHAFFER: Are there any other  
11 questions for Mr. Mattesich at this time? If not --

12 MR. MATTESICH: Thank you for the  
13 opportunity.

14 CHAIRWOMAN SCHAFFER: Thank you very much.

15 I'd like to now recognize Dr. Philip Geis  
16 with Procter & Gamble, undeniably a large organization.

17 DR. GEIS: Thank you very much. And  
18 thanks to the staff and the board for listening to us  
19 today and offering this opportunity to comment.

20 I would welcome the question that you had  
21 when I am going to get to that stage in my  
22 presentation.

23 Procter & Gamble, as you said, is a national  
24 manufacturer, and that's what brings us here today. We  
25 have worked with staff for a number of years, and I

1 think we have a pretty productive relationship in  
2 developing regulations that are to satisfy your  
3 environmental needs as well as maintaining the technical  
4 and commercial feasibility of our products. We have the  
5 greatest respect for your staff, and we think they're  
6 probably as good as you're going to get in the whole  
7 U.S., and that may be part of the whole crux of our  
8 problem, they are pretty good.

9           They've brought to you today an ACP that is  
10 technically very good, that shows a lot of good work and  
11 effort that we actively participated in through the  
12 first year or so of its inception and work. We entered  
13 this with staff back in the good old days when  
14 California was a leader.

15           California pretty much controlled the field  
16 in this area, the consumer product regulation. New York  
17 followed California, and then the best ideas came from  
18 here.

19           The world has changed a lot since then,  
20 fortunately. We have, as Jim said, regulations in  
21 probably seven other states either now or soon to be  
22 hitting the books, and we have a federal regulation.

23           And the crux of the matter is that we don't  
24 have a difficulty with the technical elements of the  
25 ACP; it's more the conceptual elements as all the other

1 states look at what's being done in the various areas of  
2 the regulation -- and I'll give you an example in a  
3 second -- they have started to monkey with the  
4 regulation. Either they don't understand it or they  
5 decide they can get a few more pounds out of the  
6 regulation by changing this provision or just because  
7 they forget to put in a section, despite the fact that  
8 they call up Peggy and say, "Peggy, what should we do?"  
9 And Peggy has very good advice and very good  
10 instruction. These guys aren't as sharp as the folks  
11 here are.

12 As I said before, we've worked for almost ten  
13 years with staff, and we find ourselves in opposition to  
14 the ACP today, the first time we've opposed any general  
15 principle that the staff has proposed, and we regret to  
16 be in this position. We were compelled to do so because  
17 primarily of our experience with other states and the  
18 federal government during the last year.

19 I guess there's basically two elements that  
20 drive our opposition. The first is less important, but  
21 it's critical. The second one is real important. The  
22 first one is, we don't think that many people are going  
23 to have the opportunity to use an ACP.

24 Procter & Gamble has a big line of products.  
25 We market in many of the categories that are regulated

1 right now. And I've gone through very carefully the  
2 products market to see where we might have the  
3 opportunity to use the ACP, and I find virtually no  
4 opportunity because of the need for balancing.

5 We have -- our biggest problem is in hair  
6 sprays, which has a lot of VOCs in it. We have other  
7 products that -- with small amounts of VOCs that -- the  
8 unique product balance that's required to participate in  
9 the ACP doesn't exist in our company.

10 More importantly, we have these regulations  
11 in these other states. So that means that we can't --  
12 and they don't have an ACP. So that means we can only  
13 use an ACP here in California. Our distribution systems  
14 don't allow us to isolate or sequester California. We  
15 can't just ship products to California. We might have  
16 some of it going into Arizona. In fact, we have the  
17 same product now going nationwide. That is how our  
18 economy is scaled. So the other states are really an  
19 impediment to us in this regard.

20 So what you're looking at in terms of  
21 application is a narrow group of companies who have a  
22 unique product balance that can use the ACP. And even  
23 more narrow, one that is a California-only company or  
24 one that can isolate California. So you're down to  
25 virtually a handful of companies now.

1                   Certainly that wasn't anticipated back two or  
2 three years ago when we started working on this, but  
3 certainly that's the case we have today. The case we're  
4 facing today is just a handful of companies can use it.  
5 That in itself is not enough of a concern to kill us,  
6 but the elements that my colleague just mentioned are  
7 the ones that are of most concern to Procter & Gamble.

8                   There's both internal and external factors.  
9 The internal factors are the ones that are most  
10 applicable to your consideration, I think the ones that  
11 are going to happen here in California. One of them is  
12 that this ACP would become mandatory.

13                   Now, even if it became mandatory across the  
14 nation, Procter & Gamble knows that our balance of  
15 products doesn't let us use an ACP. If this was used  
16 for Phase 3, we'd be in a lot of trouble. We would have  
17 a hell of a time trying to comply. And we would comply,  
18 but we would really be in a lot of trouble.

19                   The other internal element is -- that Jim  
20 also alluded to -- are the Phase 2 standards. Hair  
21 sprays have a 55 percent VOC standard that goes into  
22 effect in 1998. Now, when that was first developed, the  
23 board realized that it was technology-forcing. It was  
24 not something that the industry currently considered  
25 something they could achieve. It was not technically or

1 commercially feasible at that time. But the standard  
2 list identified and projected in 1988 to give us an  
3 opportunity to work toward it, and we are indeed working  
4 toward it right now.

5 In the same regulation, or in the same  
6 regulatory exercise, the board adopted a resolution that  
7 said this would be revisited. The staff would keep  
8 track of our progress to satisfy this limit. And if it  
9 wasn't feasible, it couldn't be hit, then it might be  
10 revisited in the future, adjusted to what was  
11 technically and commercially feasible, based on that  
12 technology to be gained by 1998 or somewhat before  
13 then.

14 Our concern is that this ACP will be  
15 interpreted to establish a de facto technical and  
16 commercial feasibility, because the presumption would be  
17 that we would be able to bubble this hair spray, if it  
18 wasn't achievable at 55 percent, with something else,  
19 and hit it.

20 Those are basically our internal concerns.  
21 One, it would be mandatory to go into an ACP to hit a  
22 lower limit for Phase 3, and also that the current  
23 Phase 2 limits that we don't think we can achieve at  
24 this time will become de facto commercially and  
25 technically feasible because we have an ACP.

1           The external ones you also heard about, and  
2 let me go into some detail. These are the other  
3 states. As I said, these guys are not as experienced  
4 as the staff here is. An example might be, we have an  
5 innovative product exemption in the -- in your guy's  
6 regulation, and we're working real hard to get it into  
7 all the other states that pass regulations like this.  
8 Lot of them don't want to do it. They say, "It's too  
9 much trouble; we don't understand."

10           But we argue with them, we talk to them.  
11 They call Peggy, and then Peggy explains what the  
12 concept is. So they pretty much have been putting into  
13 place. But they typically don't have the staff to help  
14 us set it up. They -- for perspective, our innovative  
15 product that we have here in California took just a bit  
16 of time to get it through. I think four or five  
17 months. But when we went to New York to get the same  
18 thing approved with the approval enhancement from the  
19 executive officer, it took almost a year. It put us  
20 right up against the date by which we would have to stop  
21 manufacturing, because they didn't have the experience.  
22 Despite the fact that they were willing to accept the  
23 staff's (unintelligible) -- they didn't know how to get  
24 it through the system.

25           CHAIRWOMAN SCHAFER: They don't even have

1 a board.

2 DR. GEIS: They don't, you're right. That  
3 was part of the problem.

4 CHAIRWOMAN SCHAFFER: One member.

5 DR. GEIS: They had one person.

6 CHAIRWOMAN SCHAFFER: One person to make a  
7 decision.

8 DR. GEIS: The delegations that went  
9 around and around about that were very arcane, but they  
10 finally approved it, and the VOC went into effect.

11 But they all -- and another state, very  
12 recently, we had the innovative product concept there,  
13 as well, but this state decided they didn't need the  
14 equivalent perfume exemption. Your regulation currently  
15 exempts perfume at 2 percent. And it's a complex  
16 mixture. It's not worth messing with, because it's a  
17 very small piece of the pie. But your regulation  
18 excludes 2 percent of it for that very purpose. The  
19 Connecticut regulation didn't exclude perfumes.

20 They said, "We don't want to give you an  
21 exemption for perfumes."

22 We said, "Why wouldn't you do that?  
23 California found it very feasible to do that."

24 Their response was, "You have the innovative  
25 product exemption."

1           This is maybe a complex concept, but the  
2 perfume, if it's in there at 1 percent or half  
3 a percent, has nothing to do with being an innovative  
4 product. Their interpretation of the innovative product  
5 exemption was it would cover a multitude of odd things  
6 in the regulation, so we would come to them for an  
7 innovative product for each of our perfume components in  
8 our products, showing a complete lack of understanding  
9 of both the need for perfumes in products as well as the  
10 need for the innovative product concept.

11           That kind of inability to accept the -- or to  
12 understand the principles and the concepts that are  
13 developed makes us worry that these guys -- and somebody  
14 will adopt the ACP in another state -- they all won't,  
15 but somebody will -- can use this inappropriately,  
16 either lowering the VOC standards further and saying,  
17 "You have the ACP, don't talk to us about this very low  
18 standard," or are taking something else out, like the  
19 perfume standard, saying, "You have the ACP. Bubble it  
20 for the perfumes." So we're concerned about the  
21 misapplication.

22           Jim Mattesich mentioned also the federal  
23 official who said, "Your 55 percent hair spray is  
24 achievable because you have the ACP."

25           So the two elements are this: We don't see

1 that many people using it. P&G can't use it, because  
2 we're a national marketer. Our distribution channels  
3 don't let us isolate California; and we also don't have  
4 the mixture of products that allows us to proceed with  
5 this.

6 The second element is even more worrisome,  
7 that it can be misapplied, either here, by future  
8 boards, or even in states like Connecticut or New York  
9 or someplace else, where they see this ACP, they see  
10 this marvelous new concept, but they can't grasp it,  
11 they can't put it into effect in a meaningful manner;  
12 but they can put it in there in an inappropriate manner  
13 to burden us.

14 So based on these things, based on the fact  
15 that we don't see many applications and we see a  
16 downside, the Procter & Gamble Company opposes the  
17 current ACP program. We request the board not approve  
18 this.

19 Nevertheless, again, we praise staff for  
20 their effort. We think they've done an excellent job in  
21 a technical sense. The broader issues, the broader  
22 concepts of the application across the United States  
23 drive us to opposition.

24 CHAIRWOMAN SCHAFFER: Thank you very much,  
25 Dr. Geis.

1           Are there any questions for this witness from  
2 members of the board?

3           Mr. Lagarias.

4           MR. LAGARIAS: Mr. Geis, do you support  
5 the suggested board resolution language that CTFA has  
6 suggested?

7           DR. GEIS: We support the board resolution  
8 if the board proceeds to approve the ACP. We are in  
9 opposition of the ACP with or without that language; we  
10 would prefer to see the language in there. Here, too --

11           MR. LAGARIAS: What did I hear? Are you  
12 for it or against it?

13           DR. GEIS: I'm against it. I'm for the  
14 the CTFA language. I'm against the ACP in any case.  
15 But if the board proceeds with it --

16                           (General laughter.)

17           -- I would ask you to put it in.

18           MR. LAGARIAS: Well, let me ask the staff,  
19 what is their reaction to the suggested language that  
20 CTFA has proposed?

21           MR. JENNE: Mr. Lagarias, we're concerned  
22 that the proposed language is ambiguous and would create  
23 problems in the implementation of the consumer product  
24 regulation; therefore, we're recommending that it not be  
25 included.

1 MR. LAGARIAS: What do you mean by  
2 ambiguous? What's the ambiguity.

3 MR. JENNE: Specifically, the last part of  
4 it talks about the -- well, the first part talks about  
5 whether the -- that the ACP is voluntary. We think that  
6 part is not necessary because it's repeatedly stated in  
7 the regulation and the staff report that it is  
8 voluntary.

9 The last part of it talks about --  
10 essentially attempts to define commercially and  
11 technologically feasible in a very limited way. There  
12 have been several lawsuits about consumer product  
13 regulations, and we're concerned that the inclusion of  
14 this language could adversely affect both pending  
15 lawsuits and future -- possible future lawsuits.

16 MR. LAGARIAS: All right.

17 CHAIRWOMAN SCHAFER: Which I think is part  
18 of the intent.

19 MR. LAGARIAS: Yes. When you read the  
20 first part, it doesn't make any sense, because it's  
21 clearly voluntary all the way, so the heart of the  
22 matter is in that last sentence.

23 Thank you.

24 DR. GEIS: Did I answer your question,  
25 sir?

1 MR. LAGARIAS: (Nods head.)

2 CHAIRWOMAN SCHAFER: Are there any other  
3 questions for Dr. Geis from members of the board?

4 If not, thank you very much for your  
5 testimony.

6 The next witness is Mr. Ted Wernick with The  
7 Gillette Company.

8 MR. WERNICK: Thank you.

9 CHAIRWOMAN SCHAFER: Good afternoon.

10 MR. WERNICK: I'll be very brief. My name  
11 is Ted Wernick. I'm Director of Scientific Regulatory  
12 Affairs for The Gillette Company.

13 While we support the board's efforts to  
14 provide an alternative method for compliance with the  
15 VOC regulations, and we appreciate the staff's efforts,  
16 particularly Peggy and Floyd, in providing the good  
17 technical document, we are concerned that the plan will  
18 become mandatory. Therefore, without the language to  
19 ensure the voluntary nature of this alternate compliance  
20 plan, we cannot support the plan. And we spent a lot of  
21 time and effort on it, and we regret our position on  
22 it.

23 Without going into a lot more detail, let me  
24 just say that I -- we echo the comments of CSMA, CTFA,  
25 and our colleagues at Procter & Gamble.

1 Thank you.

2 CHAIRWOMAN SCHAFER: Thank you,  
3 Mr. Wernick.

4 Are there any questions for Mr. Wernick from  
5 members of the board?

6 Thank you very much.

7 The next witness is Mr. Bryan Ruble with the  
8 S. C. Johnson Wax Corporation -- or the S. C. Johnson  
9 Company. One of your products -- one of your products  
10 is Johnson Wax.

11 MR. RUBLE: Madam Chair, board members,  
12 staff, my name is Bryan Ruble, and I represent the S. C.  
13 Johnson Wax Company of Racine, Wisconsin. S. C. Johnson  
14 Wax is a worldwide manufacturer and distributor of  
15 specialty household cleaning products, such as, to give  
16 you an idea, Glade Air Freshener, Raid insecticides,  
17 Windex glass cleaner, Pledge furniture polish.

18 We are a very environmental and innovative  
19 company. As an example, we were the first to have an  
20 innovative product under the California CARB.

21 We believe that the ACP would encourage  
22 invasion and also to encourage the environmental issues  
23 of the companies. I appreciate the opportunity to speak  
24 to you today on the ACP.

25 First of all, I would personally like to

1 thank the staff for all their hard work, time, effort,  
2 and cooperation with the industry in working these past  
3 several years on the ACP. It was a very difficult  
4 task.

5 As stated in previous workshops, in order for  
6 the ACP to be effective, it must be voluntary, fair,  
7 flexible, allow for growth, apply to many different  
8 products, be enforceable, be binding to CARB and  
9 industry.

10 As we look to the future and further  
11 regulations in emissions, I believe the ACP, as did the  
12 innovative products in the past -- and we do have  
13 three -- will become an important voluntary tool for  
14 industry. The ACP is another option in the menu system  
15 for achieving VOC reductions. S. E. Johnson Wax  
16 supports the ACP concept and process.

17 A few issues of concern to us, as outlined by  
18 CSMA earlier, and I concur with their comments, are:  
19 violation section, time for making up shortfalls,  
20 particularly seasonal products, credit for early  
21 compliance, and the ACP must be voluntary. These issues  
22 have been addressed today, and although not perfect, the  
23 latest language represents an acceptable resolution.

24 This is one company that is seriously looking  
25 at using an ACP, and I recommend approval.

1 Thank you..

2 CHAIRWOMAN SCHAFER: Thank you very much,  
3 Mr. Ruble. What are the products that are your  
4 innovative products under California's rule?

5 MR. RUBLE: We have --

6 CHAIRWOMAN SCHAFER: Out of curiosity.

7 MR. RUBLE: The Glade plug-in, Lasting  
8 Mist, and we had a hair spray.

9 CHAIRWOMAN SCHAFER: Earlier witnesses  
10 suggested that this rule was useful only to a few firms  
11 that had sort of a perfect balance of -- I wasn't clear  
12 what it was that was balanced, but anyway it amounted to  
13 an opportunity to use the rule.

14 Is that a fair statement, or do you think  
15 that this has sufficient flexibility to be usable to a  
16 variety of companies?

17 MR. RUBLE: I believe there's sufficient  
18 flexibility that it can be used by many different types  
19 of companies.

20 CHAIRWOMAN SCHAFER: Okay. Mr. Lagarias?

21 MR. LAGARIAS: Does your company feel that  
22 this ACP regulation might be misconstrued or misapplied  
23 in other states?

24 MR. RUBLE: That is a potential problem.  
25 We are working with other states. And also other

1 states, even though they don't have an ACP, they do have  
2 trading allowances, which are even more aggressive than  
3 this.

4 MR. LAGARIAS: But you don't see it as  
5 being an overwhelming impediment?

6 MR. RUBLE: No, we don't.

7 MR. LAGARIAS: All right. Thank you.

8 CHAIRWOMAN SCHAFFER: Are there any other  
9 questions from members of the board for Mr. Ruble at  
10 this time?

11 I just wanted to comment that --

12 MR. PARNELL: Madam Chair, may I?

13 CHAIRWOMAN SCHAFFER: Yes, Mr. Parnell.

14 MR. PARNELL: Only to revisit the concerns  
15 as voiced by our friends from Procter & Gamble if it  
16 relates to overlapping or perhaps a redundant, and we  
17 know late federal regulations.

18 Would you speak to that issue. Obviously,  
19 you don't have those same concerns.

20 MR. RUBLE: You're talking about to the  
21 federal regulations?

22 MR. PARNELL: Federal regulations that may  
23 or may not be promulgated at some point in time.

24 MR. RUBLE: Well, I would like to have  
25 them, and I would like to have had them a couple of

1 years ago, but we don't. And we're going to have to  
2 work with them to see what we can come up with that will  
3 be acceptable to the federal government as well as the  
4 ACP that we would like to use. Right now we don't  
5 know. But I look at the ACP as another option.

6 When we first started innovative products, I  
7 never thought we would use them, and we did. It's just  
8 another option. So we're looking at the ACP as another  
9 option that we can potentially use.

10 MR. PARNELL: Thank you.

11 SUPERVISOR VAGIM: Madam Chair.

12 CHAIRWOMAN SCHAFER: Yes,  
13 Supervisor Vagim.

14 SUPERVISOR VAGIM: Does this rule tend to  
15 favor those companies that have more products with VOCs  
16 in them than companies that don't have as much of a  
17 mix?

18 MR. RUBLE: If you're talking maybe a  
19 single --

20 SUPERVISOR VAGIM: Single product.

21 MR. RUBLE: -- product, whatever -- my  
22 understanding is the way it's set up, they could  
23 purchase credits. Maybe they can use that. I mean,  
24 obviously, we're not a small company, and --

25 SUPERVISOR VAGIM: Are you willing to sell

1 credits?

2 MR. RUBLE: Yes, we are.

3 SUPERVISOR VAGIM: Thank you.

4 CHAIRWOMAN SCHAFER: Miss Edgerton.

5 MS. EDGERTON: Could you tell me, Do you  
6 anticipate being able to bubble within your company, or  
7 do you think you are in surplus credits, or do you think  
8 you purchase them?

9 MR. RUBLE: My understanding is we're not  
10 allowed to purchase them, but we're going to do it  
11 internally.

12 MS. EDGERTON: That's right. You would be  
13 too big.

14 MR. RUBLE: We would do it internally. We  
15 would do the bubble concept.

16 MS. EDGERTON: So you don't expect to have  
17 surplus.

18 MR. RUBLE: There's a very good chance  
19 that we will have a surplus. That's why I said we'd be  
20 willing to sell them.

21 MS. EDGERTON: You'd be willing to sell  
22 them.

23 What, in your opinion, happens with this  
24 program if you phase out a product -- if you find a  
25 completely benign substitute that you think you could

1 sell on the market as a green insecticide. For example,  
2 I think of baking soda. Some people use it as something  
3 that kills roaches, instead of Raid. What would you  
4 do --

5 SUPERVISOR BILBRAY: Boric acid.

6 MS. EDGERTON: Boric acid. Not baking  
7 soda. Whatever.

8 MR. RUBLE: It doesn't matter; either one  
9 would work.

10 (General laughter.)

11 SUPERVISOR BILBRAY: But with the baking  
12 soda, they smell better afterwards.

13 MR. RUBLE: Yes.

14 (General laughter.)

15 SUPERVISOR BILBRAY: Brush your teeth with  
16 it. Oh, I'm not supposed to say that either.

17 MS. EDGERTON: I mean, you're as familiar  
18 as I am, and probably much more familiar with the whole  
19 concept of source reduction -- overall source reduction  
20 issues. How would a regulation -- how do you see  
21 that -- the entire substitution of a product line with a  
22 completely benign product working in this ACP?

23 MR. RUBLE: Well, if we entered into an  
24 ACP and a product like that came along, obviously we'd  
25 have to wait for the conclusion of the ACP before we

1 could go into it, because we'd be bound and so would  
2 CARB until the end of it. But that doesn't -- that  
3 wouldn't prevent us from starting a different line using  
4 that ingredient with no VOCs, if that's what you're  
5 talking about, and then discontinue the product after  
6 the ACP was over.

7 MR. PARNELL: And get some credit in the  
8 process.

9 MR. RUBLE: In the process, right.

10 MS. EDGERTON: Thank you.

11 CHAIRWOMAN SCHAFER: Mr. Lagarias, did you  
12 have another question?

13 MR. LAGARIAS: Yes. Have you considered  
14 the possibility of combining some of your products, say  
15 Raid and Windex, so that after you clean your window  
16 with Windex, if a fly lands on it afterwards, he'll drop  
17 dead?

18 (General laughter.)

19 MR. RUBLE: That's a good idea. I think  
20 I'll write it down.

21 (General laughter.)

22 SUPERVISOR BILBRAY: Fly bait from window  
23 washer.

24 CHAIRWOMAN SCHAFER: I just want to  
25 comment for the benefit of members of the board, that

1 earlier this year I was privileged to attend an award  
2 ceremony by the World Environment Center where they  
3 singled out the S. C. Johnson Wax Company in Racine,  
4 Wisconsin, for its exceptional efforts with respect to  
5 environmental management and improvement.

6           You have singled yourselves out among your  
7 peers in that forum, and I guess I -- after seeing how  
8 this afternoon has proceeded, can understand why you  
9 received that recognition. There is obviously some  
10 risks in doing things in a little bit different way, and  
11 I see that you have managed to eke out some opportunity  
12 from those risks and not just the downside dangers. So  
13 I thank you very much for your testimony today.

14           MR. RUBLE: Thank you.

15           MR. LAGARIAS: I don't recall, but is your  
16 headquarters in a building designed by Frank Lloyd  
17 Wright?

18           MR. RUBLE: Yes, it is.

19           MR. LAGARIAS: Is that where you get your  
20 environmentally sensitive approach?

21           MR. RUBLE: Yes.

22           CHAIRWOMAN SCHAFER: It's in the walls.

23           SUPERVISOR BILBRAY: It's in the -- no, we  
24 don't want to talk about emissions from the walls.

25           CHAIRWOMAN SCHAFER: Thank you very much,

1 Mr. Ruble, for coming this afternoon.

2 Our next witness -- I hope I get this  
3 pronunciation right -- is it Dr. Dan Knoth? Is that  
4 correct?

5 DR. KNOTH: Yes, ma'am.

6 CHAIRWOMAN SCHAFER: With 3M company.

7 DR. KNOTH: Madam Chair, members of the  
8 board, staff, I'm speaking today as the Chair of the  
9 Alternative Compliance Task Force, industry task force.

10 As indicated to the board, I'd like to  
11 reiterate some statistics about how much work and how  
12 much effort has gone into this. Some are interesting,  
13 some may be a little redundant, and some might be  
14 overstated here.

15 One of the things I'd like to do is to, of  
16 course, thank the staff. Floyd and Peggy have been  
17 absolutely outstanding to work with. They've both been  
18 professional, very patient, and worked in a very  
19 productive manner, and I really have to thank them for  
20 all the work that they've put in here.

21 Sometimes I think that your staff works  
22 for -- does a better job for the California board of  
23 tourism. This is my 13th trip to California on the  
24 alternative compliance plan.

25 I'd like to also thank Bob Olivero, from

1 the -- formerly of the S. C. Johnson Wax Company, who  
2 preceded me as the chair of the industry task force.

3 I think one of the things that made this  
4 successful or at least opened the doors for us to  
5 communicate better was to set up a series of guidelines  
6 that have been spoken to earlier. We did this early in  
7 the process, and I want to restate these very quickly.

8 The process -- or the regulations should be  
9 voluntary, it should be fair, it should be flexible,  
10 allow product growth while still maintaining emission  
11 standards, applicable to as many products as possible,  
12 to be enforceable, and then, finally, binding on the  
13 participants, both the industry members and the Air  
14 Resources Board.

15 The concerns from the industry, as you can  
16 see, is quite split and quite fractured at this time.  
17 As the chair of the ACP task force for the CSMA, we  
18 ended up with several concerns.

19 The earlier reduction of credit for first  
20 year could be used for the first year, for shortfalls,  
21 and the staff has recommended that to the board; the  
22 violation provisions that would be less onerous than the  
23 final draft that you see in front of you; and finally,  
24 the recognition of the shortfall of -- recognition of  
25 the making up of shortfall will be 90 days, which works

1 out -- 90 working days, which works out to about four  
2 and a half months. And hopefully this 90-day period  
3 will be sensitive to companies who have seasonal  
4 products. And finally, I think there should be -- and  
5 there is in the rule, and perhaps should be in the board  
6 resolution itself, that this truly, indeed, is a  
7 voluntary process. It's an alternative to the command  
8 and control regulation. And I think that that's an  
9 extremely important portion, to reiterate it as many  
10 times to allow comfort in industry as possible. This is  
11 truly, indeed, a voluntary program.

12 I'll be glad to answer any questions.

13 CHAIRWOMAN SCHAFFER: Thank you very much  
14 for your comments and your support in this matter. I  
15 never realized that it took a lot of dedication, but --  
16 and I suppose if you time it right, a trip from time to  
17 time from Minnesota or Wisconsin to California might be  
18 a relief. The winters aren't quite as long here.

19 DR. KNOTH: Well, Madam Chair, it seemed  
20 like all our meetings were in the summer. I'm not sure  
21 exactly what --

22 (General laughter.)

23 CHAIRWOMAN SCHAFFER: Rats.

24 Are there any questions for this witness from  
25 members of the board? I think we covered a good deal of

1 territory here this afternoon.

2 MR. RUBLE: Thank you, Madam Chair.

3 CHAIRWOMAN SCHAFER: I appreciate your  
4 coming.

5 Are there any other witnesses on this item?  
6 I don't have any more on the list before me, so I think  
7 it is time to ask the staff if we received any written  
8 comments pertaining to this agenda item?

9 MR. JENNE: Yes, staff has some comments.

10 CHAIRWOMAN SCHAFER: Thank you.

11 MS. TARICCO: Yes, we received four  
12 letters on this item. The first letter is from Macfee  
13 Manufacturing Company in Illinois, from Mr. Robert  
14 Bereman. Mr. Bereman had three comments, and we'll  
15 briefly cover them here.

16 The first is that Mr. Bereman stated that he  
17 believes that our definition of small business is too  
18 relaxed; it's not small enough.

19 We believe that the definition that we have  
20 in the regulation is appropriate for the ACP. There was  
21 extension discussion on this definition during the  
22 workshop process, and it was desired by those present  
23 that we have a definition that doesn't confuse it with  
24 other statutes. So the definition in proposed  
25 regulation is the same one that's in the California

1 Administrative Procedures Act. We also think that this  
2 definition will allow for sufficient availability of  
3 emission credits to as many businesses as possible,  
4 while just excluding truly the large businesses.

5 His second comment is that he doesn't think  
6 it would be appropriate to allow a manufacturer that has  
7 a product below the standard to reformulate that product  
8 lower and still get credit.

9 And we would have to disagree with that,  
10 because we think that is an appropriate use of the ACP.  
11 If a manufacturer undertakes a reformulation effort that  
12 results in emission reductions and under an approved ACP  
13 plan, he could use that as credits.

14 And his last comment was that he believed  
15 that the cost of compliance of the ACP should not be  
16 calculated using paints and coatings.

17 And we think there was some misunderstanding  
18 here. We believe maybe Mr. Bereman was looking at an  
19 earlier version of the rule when at that time we were  
20 considering inclusion of the aerosol paints.

21 The second comment letter is from Reckitt &  
22 Colman Incorporated, Miss Eileen Moyer. Reckitt and  
23 Colman indicated that they continue to support the  
24 development of the adoption of options that give  
25 compliance flexibility. They echoed the comments that

1 the CSMA task force made -- the ACP task force -- excuse  
2 me. There were several comments. Most of them have  
3 been covered already today in the discussion, so we'll  
4 only mention the three remaining comments.

5 The first comment was that Reckitt and Colman  
6 believe that the requirement whereby the ACP applicant  
7 give us all the names and telephone numbers of the  
8 persons from which we're going to be giving sales  
9 information excessive and unnecessary.

10 We appreciate that comment. We think there  
11 might have been a misunderstanding in the regulatory  
12 language. Our intent is not to have the names of all  
13 the sales clerks that sell these products, but we do  
14 need to have a business contact person of whom -- who  
15 will be providing sales information, so that we can  
16 enforce the regulation.

17 So what we are proposing to do is that we  
18 will go back and look at the language, and if there is  
19 a way that we can clarify that, we would propose a  
20 modification to the 15-day.

21 The second comment was that they believed it  
22 is not appropriate to require the applicant to inform us  
23 in their application of when they're planning on meeting  
24 the Table of Standards.

25 And this was requested so that we have an

1 idea of how long an ACP plan is going to be in effect.  
2 That's not to say a plan could go on forever, and so  
3 the -- basically, the option is there. A manufacturer  
4 can use the ACP just to get to the point where they can  
5 have all their products at the Table of Standards, or  
6 they can use it as long as they want and never reach the  
7 Table of Standards as long as they continue to offset  
8 the emissions of that product.

9           And in her last comment was that they  
10 believed it was unreasonable to expect a product to  
11 be in compliance with the VOC limits in the Table of  
12 Standards upon cancellation of an ACP.

13           As a refresher, the ACP is a binding  
14 commitment between both ARB and the applicant, and if an  
15 applicant -- a manufacturer who has an ACP has the plan  
16 canceled, then that commitment has been severed; and at  
17 that point the products that that manufacturer had would  
18 be subject to the Table of Standards. To do it any  
19 other way would -- could constitute administrative  
20 variance, and we don't have the authority to do that.

21           If -- there are are specific provisions in  
22 the regulation that provide the guidelines for how an  
23 ACP can be canceled, and this is something that is not  
24 going to happen overnight. There will be some lead time  
25 there so that manufacturers will have time to manage

1 their inventories and get all their products at the  
2 Table of Standards.

3           The next letter is from Dow Brands, a  
4 Mr. John G. Wood. Dow Brands is a manufacturer of  
5 personal care products and household cleaning and  
6 laundry products. Dow Brand stated that they supported  
7 the concept and process of the proposed ACP, and also  
8 echoed the concerns that were raised by the ACP task  
9 force.

10           And as we have addressed all those concerns  
11 earlier, we won't repeat the responses to those.

12           And the last letter is from David Howekamp at  
13 the U.S. EPA Region IX. They stated that they support  
14 the adoption of the current version of the proposed ACP  
15 provided that we address some administrative issues  
16 prior to submittal of the ACP to the SIP.

17           They indicated that this would not require  
18 any language changes, only some administrative paperwork  
19 that we need to do before we submit this reg.

20           We have discussed these concerns with EPA,  
21 and we believe that we can meet these upon submittal of  
22 this reg.

23           And I believe that's all the letters that we  
24 received.

25                           CHAIRWOMAN SCHAFFER: I'd like to ask the

1 staff to comment on the proposed amendments that were  
2 proposed earlier today, just so that we can dispose  
3 of them on the record.

4           Could I ask Mr. Venturini or one of the staff  
5 members to address those three amendments that were  
6 placed before us and your reasons for not including them  
7 in the staff recommendation.

8           MR. VERGARA: Okay. The first proposal,  
9 again, was the proposed modification to the violations  
10 provision, where we would propose language to determine  
11 that the number of -- the number of violations for an  
12 exceedance of the emissions cap would be based on a one  
13 violation per 40 pounds of exceedance increment.

14           CHAIRWOMAN SCHAFER: I'm sorry. What I'm  
15 referring to was the proposed amendments that earlier  
16 witnesses suggested, which I gather you did not include  
17 in the staff recommendation. I want to hear your  
18 reasons for not including those in our -- in the final  
19 resolution.

20           MS. SHIROMA: Yes. There were three  
21 points that they wanted to have included in the board  
22 resolution. The first one was once again emphasize that  
23 the ACP is totally voluntary. And we feel that we have  
24 put sufficient language into both the resolution, the  
25 staff report, and the regulation to emphasize that this

1 is such a regulation.

2           The second one was that they wanted the board  
3 to commit that the ACP would not be used to require  
4 compliance with either future regulations or with  
5 current regulations.

6           And our point there is that the current  
7 regulations were adopted through a (unintelligible)  
8 process. We feel that we provided for documentation  
9 which showed that they were technologically feasible.  
10 There are some future effective standards. We work with  
11 the industries to come into compliance with those  
12 standards. If we encounter problems, and there may be  
13 some companies who have some special problems -- but  
14 after going through a full process with them, if we feel  
15 there is a need to come back and revisit a regulation,  
16 we would do it in that fashion.

17           So anything that we do as far as going  
18 through implementation of current regulations or looking  
19 at future proposals would go through a full board  
20 process. It's not as though we just happened to decide  
21 that an ACP would be used in some fashion other than as  
22 is proposed here today.

23           CHAIRWOMAN SCHAFFER: All right. So, in  
24 effect, it was preempting the board from acting in the  
25 future in some particular fashion.

1 MS. SHIROMA: Correct.

2 CHAIRWOMAN SCHAFFER: All right. And the  
3 third.

4 MS. SHIROMA: And the third was they  
5 wanted us to indicate in the resolution that the ACP is  
6 not a viable option for many companies.

7 And we do not agree. We have gone through a  
8 two-and-a-half-year process of looking at the way this  
9 program would work; we have looked at other similar  
10 kinds of programs; we've looked at the possible effects  
11 that there might be on companies; and we did not reach  
12 the same conclusion as they propose.

13 CHAIRWOMAN SCHAFFER: All right.

14 MR. PARNELL: Madam Chair.

15 CHAIRWOMAN SCHAFFER: Yes,  
16 Mr. Parnell.

17 MR. PARNELL: There was a common thread in  
18 the testimony in both support and the centers (phonetic)  
19 that addressed the issue of how we make up short- -- the  
20 timing of making up shortfalls, particularly on a  
21 seasonal time frame. How is that going to basically be  
22 addressed or is it?

23 MS. SHIROMA: The concern that was  
24 expressed was whether the 90 working days would be a  
25 sufficient period of time for -- to reconcile

1 shortfalls.

2 Our view on this is that if a company decides  
3 to apply for an ACP, in the components of that ACP,  
4 there needs to be a thorough assessment of which product  
5 lines, how that compliance is going to occur, and then  
6 any mitigation measures which will go right into place  
7 should a shortfall occur. And our thought was that with  
8 those components up front and with a 90 working days,  
9 which is four and a half months, that those two,  
10 dovetailing, would be a sufficient amount of time and a  
11 comprehensive program to provide for dealing with those  
12 shortfalls. Again, with the common goal between the  
13 company and ourselves that we wouldn't want them to get  
14 into that shortfall situation in the first place, so  
15 that the application and the program that they propose  
16 addresses that up front.

17 In the unlikely event that there's a  
18 shortfall, then there would be four and a half months to  
19 reconcile that, and we felt that that would be a  
20 sufficient amount of time to do that.

21 MR. PARNELL: Thank you.

22 CHAIRWOMAN SCHAFER: Are there any other  
23 questions from board members for the staff on the  
24 regulation that's before us?

25 Yes, Mr. Lagarias.

1 MR. LAGARIAS: In suggesting that we have  
2 an Alternative Control Plan, that suggests that it's an  
3 option, and in itself, it's not mandated. So doesn't  
4 that indicate that it may not be applicable to all  
5 people?

6 MS. SHIROMA: And we agree that it may not  
7 be applicable to all people.

8 MR. LAGARIAS: That means, in effect, it's  
9 already saying that it may not be a viable option for  
10 some companies.

11 MS. SHIROMA: For some companies.

12 MR. LAGARIAS: That's correct. And so  
13 it's not mandated; it's just an alternative.

14 MS. SHIROMA: Right. And that was --

15 MR. LAGARIAS: And you can choose it or  
16 not choose it.

17 Thank you.

18 SUPERVISOR RIORDAN: Excuse me,  
19 Madam Chair, but it is very clear on the second page --  
20 at least I've noted a couple of instances where there  
21 are clauses of the resolution that's before us where the  
22 word voluntary is very, very clear.

23 CHAIRWOMAN SCHAFFER: Thank you very much  
24 for pointing that out.

25 If there are no other questions from members

1 of the board for the staff, I would now close the record  
2 on this agenda item; however, I note that the record  
3 will be reopened when a 15-day notice of public  
4 availability is issued. Written or oral comments  
5 received after this hearing date but before the 15-day  
6 notice is issued will not be accepted as part of the  
7 official record on this agenda item. When the record is  
8 reopened for the 15-day comment period, the public may  
9 submit written comments on the proposed changes, which  
10 will be considered and responded to in the final  
11 statement of reasons for the regulation.

12 Just a reminder at this point, if there are  
13 any ex parte communications that need to be reported at  
14 this time, we should do so.

15 Hearing none, you have the resolution before  
16 you -- we have had for a few moments now -- and  
17 obviously we've had a chance to read it.

18 Do I have a motion to adopt the proposal?

19 SUPERVISOR RIORDAN: Madam Chair, I would  
20 so move that we adopt the resolution which  
21 is 94-54.

22 CHAIRWOMAN SCHAFER: Thank you very much,  
23 Supervisor Riordan.

24 Is there a second?

25 MR. PARNELL: Second.

1 CHAIRWOMAN SCHAFFER: Mr. Parnell, thank  
2 you.

3 If there's no further discussion among the  
4 board members on this, and I hear none -- yes,  
5 Mr. Lagarias.

6 MR. LAGARIAS: I'd like to respond to  
7 one comment I heard, that other agencies or states may  
8 adopt this regulation and misconstrue it in their  
9 adoption. That may indeed be the case. It's very  
10 common to scissor and paste regulations from one state  
11 to another, and I guess we can't control what other  
12 states do, but we try to be very clear in what the  
13 intent of our regulation is. And hopefully that can be  
14 conveyed to organizations that wish to consider this  
15 approach.

16 CHAIRWOMAN SCHAFFER: Very good.

17 At this point I would like to ask the  
18 secretary to call the roll, please.

19 MS. HUTCHENS: Bilbray. Calhoun.

20 MR. CALHOUN: Aye.

21 MS. HUTCHENS: Edgerton.

22 MS. EDGERTON: Aye.

23 MS. HUTCHENS: Hilligoss.

24 MAYOR HILLIGOSS: Aye.

25 MS. HUTCHENS: Lagarias.

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MR. LAGARIAS: Aye.

MS. HUTCHENS: Parnell.

MR. PARNELL: Aye.

MS. HUTCHENS: Riordan.

SUPERVISOR RIORDAN: Aye.

MS. HUTCHENS: Vagim.

SUPERVISOR VAGIM: Aye.

MS. HUTCHENS: Chairwoman Schafer.

CHAIRWOMAN SCHAFER: Aye.

MS. HUTCHENS: Passes eight to zero.

CHAIRWOMAN SCHAFER: Thank you very much and congratulations to the staff that has spent so much time working on this regulation. I appreciate it.

I'm going to take a five-minute break at this point. Staff can change positions, and we'll take up the last item.

(Brief recess was taken.)

CHAIRWOMAN SCHAFER: The next item is 94-9-3. If there is anyone who would like to comment on it, please let our board secretary know. This is a board consideration of a draft annual report to the governor and the legislature on the Air Resources Board's Atmospheric Acidity Protection Program.

As -- since we appear to be preaching to the choir, I don't intend to finish reading this statement.