

STATE OF CALIFORNIA  
AIR RESOURCES BOARD  
EXECUTIVE OFFICER HEARING ON THE REGULATION FOR IN-USE  
OFF-ROAD DIESEL VEHICLES

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

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9:02 A.M.

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

Ms. Kim Heroy-Rogalski, Staff Air Pollution Specialist

Mr. Todd Sax, Manager, Regulatory Support Section

Mr. Erik White, Assistant Division Chief, Heavy Duty  
Diesel In-Use Strategies Branch

### ALSO PRESENT

Mr. Brant Ambrose, Downs Equipment

Mr. Frank Barados, Engineered Concrete

Ms. Harlene Barados, Engineered Concrete

Mr. Peter Bransfield, Rypos

Mr. Rasto Brezny, MECA

Mr. Skip Brown, Delta Construction Company

Mr. Mike Buckantz, Associates Environmental

Mr. Charles Bynum, Operating Engineers #3

Mr. Don Chapin, Chapin Co, Inc.

Mr. Jon Cloud, J. Cloud, Inc.

Mr. Bill Davis, SCCA

Mr. Gordon Downs, Downs Equipment

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ALSO PRESENT

Mr. Dermot Fallon, Foundation Constructors, Inc.

Mr. Jeff Farano, S.A. Recycling, LLC

Mr. Tom Foss, The Griffith Company

Mr. Randal Friedman, U.S. Navy

Mr. Dave Harrison, Operating Engineers #3

Mr. Robert Hasselbrock, Weatherford

Mr. Mike Herron, Engineering and Utility Contractors  
Association

Mr. Henry Hogo, South Coast AQMD

Mr. Jim Jacobs, Operating Engineers #3

Mr. John Juette, J&M Land Restoration, Inc.

Mr. Mike Kennedy, General Counsel, AGC of America

Ms. Camille Kustin, Environmental Defense Fund

Mr. Tyler Lebon, Fremont Paving Company

Mr. Richard Lee

Mr. Sam Leeper, B&B Equipment

Mr. Michael Lewis, CIAQC

Mr. Stephen Lewis, Operating Engineers #3

Mr. Jim Lyons, Sierra Research

Mr. Mike Mehawk, Operating Engineers #3

Mr. Ned McKinley, U.S. Marine Corps.

Mr. Rod Michaelson, BAJ Cities Paving and Grading

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Clayton Miller, CIAQC

Mr. Larry Milton, 21 Eagle

Mr. Nick Pfeifer, Granite Construction

Ms. Betty Plowman, California Dump Truck Owners

Mr. Michael Quigley, California Alliance for Jobs

Mr. Charlie Ray, California Construction Industrial  
Materials Association

Ms. Lynn Reaser

Mr. Mike Shaw, Perry and Shaw

Mr. Armando Sinclair, 21 Eagle

Mr. Michael Steele, AGC

Mr. Ken Stoddard, Waste Management

Mr. Dave Valdez, Penhall Co.

Mr. Keith Wood, Shimmick Construction

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## PROCEEDINGS

1

2 EXECUTIVE OFFICER GOLDSTONE: Good morning. My  
3 names is James Goldstone. I'm the Executive Officer of  
4 the California Air Resources Board.

5 Today, we're here in response to a petition filed  
6 on January 11th, 2010, by the Associated General  
7 Contractors of America. In that petition, AGC requested,  
8 among other things, that ARB adopt an emergency amendment  
9 to the off-road regulation to delay the fleet average  
10 target dates for two years.

11 As you may know, one of the primary components of  
12 the off-road regulation is to require affected fleets to  
13 begin taking actions to reduce emissions from their  
14 off-road vehicles by installing exhaust retrofits and/or  
15 replacing older vehicles with those having newer cleaner  
16 engines.

17 AGC's request that ARB delay implementation of  
18 the regulation is based on the fact that since the Board's  
19 adoption of the regulation in 2007, the recession has  
20 affected the financial ability of construction fleets to  
21 comply with the regulation's requirements while also  
22 resulting in fewer emissions from construction vehicles.

23 The petition argued that despite the relief  
24 already provided to affected fleets since the regulation's  
25 original adoption, without immediate additional relief,

1 California construction contractors would have to either  
2 downsize or purchase emission control devices to meet the  
3 2010 and 2011 fleet average requirements.

4           AGC further argued that the current economic  
5 conditions in the construction industry will not improve  
6 over the next two years and the reduced emissions  
7 resulting from the current economy give ARB flexibility to  
8 delay the regulation while still meeting the Board's air  
9 quality goals and commitments.

10           While I did not grant the AGC petition to adopt  
11 emergency amendments to the off-road regulation, we did  
12 issue an enforcement advisory indicating that  
13 emission-related requirements of the regulation would not  
14 be enforced until further notice.

15           I also agreed to conduct today's hearing to take  
16 testimony and receive other relevant information on the  
17 need for further amendments to the regulation.

18           Today's hearing is somewhat unique in that while  
19 it is not a hearing of our Board, it is a formal hearing  
20 nonetheless and is being transcribed by a court reporter.  
21 All of this information will be posted to our website and  
22 also will be summarized and presented to our Board as part  
23 of an update that we will be providing at next month's  
24 Board meeting in April. That update is part of a  
25 comprehensive effort by staff to evaluate the effect of

1 the recession on emissions and rule reductions for the  
2 truck and bus rule and off-road regulation and, in light  
3 of those findings, determine what adjustments to the truck  
4 and bus rule and the off-road regulations should be  
5 proposed later this summer to provide relief.

6 I'll now ask Ms. Kim Heroy-Rogalski, who you've  
7 already met, of our Mobile Source Control Division to give  
8 a short staff presentation that will provide an overview  
9 of the regulation, a summary of the AGC petition, a  
10 description of the type of information we are seeking to  
11 gather today and provide greater detail on the scope of  
12 future changes to the truck and bus rule and the off-road  
13 regulation.

14 Thank you. We're glad you're here.

15 And Kim, you want to begin your presentation?

16 (Thereupon an overhead presentation was  
17 presented as follows.)

18 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

19 Thank you, James. Good morning.

20 As James said, my name is Kim Heroy-Rogalski. I  
21 see many familiar faces here. I've met many of you  
22 before. And I manage the Off-Road Implementation Section  
23 here at ARB. Thank you very much for coming today.

24 Today's hearing is to take testimony and gather  
25 other relevant information on the need for further



1 maintaining our clean air commitments.

2 --o0o--

3 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

4 Okay. So now I'd like to discuss why we're all here today  
5 and what the agenda is going to be.

6 I'd first like to begin by stating that everyone  
7 here at ARB, including James and the members of our Board,  
8 recognize that the economy is in a terrible recession and  
9 that this has had an impact on emissions from the  
10 industries that use off-road diesel vehicles.

11 We understand that all of California has been  
12 affected, and we're here today to hear from you as to what  
13 additional relief might be most appropriate. The comments  
14 and testimony that we receive today will be used to  
15 determine if further modifications to the regulation are  
16 necessary.

17 And as James told you, all testimony that we  
18 receive will be summarized and presented at next month's  
19 Board hearing so that our Board members will be aware of  
20 what you've told us today.

21 Once my presentation has concluded -- and it  
22 should take probably 20 minutes -- AGC and their  
23 representatives will have time to speak. And then after a  
24 short break, we'll encourage you to speak to us. And I'll  
25 go through a list of questions that we are more





--o0o--

1

2

STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

3

So those were some of the administrative and operational

4

requirements.

5

Last spring, on March 1st of 2009, a restriction

6

on adding Tier 0 vehicles, and those are the oldest

7

dirtiest vehicles, took effect.

8

And then as of March 1st of 2010 this year, that

9

was the first large fleet compliance deadline. So that's

10

when the requirements for actually reducing emissions were

11

scheduled to begin. And again that was only for large

12

fleets, those with more than 5,000 horsepower. And what

13

the reg said is beginning March 1st, 2010, and every year

14

thereafter, large fleets have to either meet the fleet

15

averages or meet the best available control technology, or

16

BACT, retrofit, and turnover requirements.

17

And so there's two pollutants that we're after:

18

NOx and diesel PM.

19

And fleets can meet the NOx BACT requirements by

20

retiring vehicles, repowering vehicles with cleaner

21

engines, designating vehicles as permanent low use, or

22

installing NOx retrofits.

23

And they can meet the PM BACT requirements by

24

installing retrofits or by retiring Tier 0 vehicles and

25

thereby shrinking the fleets.

--o0o--

1

2

STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

3 So the reg built in a lot of flexibility, and there were a

4 lot of credits and flexibility provisions within the reg.

5 Some of these include credits for repowers completed

6 before March 1st, 2009. That's even if you took out a

7 Tier 0 engine and put in a Tier 1. Turnover credit for

8 replacing vehicles between 2006 and 2009.

9 And then to encourage people to act early, the

10 regulation included double credit for PM retrofits that

11 were installed before January 1st of this year for large

12 fleets. And then that deadline still hasn't come yet for

13 small or medium fleets. So they get double credit for

14 installing PM retrofits as long as they do so by March 1st

15 of 2012. It also includes double credit for NOx retrofits

16 installed before March 1st of 2011.

17 In addition to these credits, there's also

18 exemptions for vehicles that are low use, so used less

19 than 100 hours per year, and vehicles that already have

20 exhaust retrofits installed.

21

--o0o--

22

STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

23 As part of the California budget agreement that was signed

24 in February of last year, Assembly Bill 8 2X directed ARB

25 to make several changes to the off-road regulation. And



1           So first, if a fleet's operating hours or fleet  
2 size is down 20 percent or more since 2007, so sort of  
3 since the peak, their credits will completely satisfy the  
4 regulation's March 1st, 2010, requirements. In other  
5 words, that fleet wouldn't be required to do any  
6 retrofitting or any turnover.

7           So let's say if there was a fleet that was  
8 affected a little more, if their hours or fleet size are  
9 down 32 percent or more, then they're completely off the  
10 hook for 2010 and 2011. Again, that means that fleet  
11 would have to do no retrofitting or no turnover until 2012  
12 at the earliest. And they would be fully in compliance.

13           Let's consider an example of a large fleet that  
14 was affected by the recession and has off-loaded a bunch  
15 of equipment so they're down in size 50 percent since  
16 three years ago. So that fleet would get horsepower  
17 credit equivalent to 50 percent of its horsepower, and  
18 that credit which would never expire -- they can use it  
19 whenever they want -- would satisfy the fleet's  
20 retrofitting requirements until 2013 and its turnover  
21 requirements until 2016.

22           And just to make sure that's clear, a fleet in  
23 this situation would be required to do no turnover or  
24 retrofitting even if the off-road regulation is not  
25 modified further. And so we're right now receiving all

1 the applications for the reduced activity credit, and  
2 large fleets are reporting that to us. So that's good.

3 --o0o--

4 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

5 So this slide shows a time line of the current compliance  
6 requirements for fleets subject to the regulation. And  
7 the requirements in blue are reporting deadlines. And  
8 requirements in red are performance deadlines; that is,  
9 dates that you'd actually have to do some turnover or  
10 retrofitting.

11 And as shown on this time line, because of AB 8  
12 2X, many fleets won't have to meet any performance  
13 requirements for the next several years. And although  
14 most fleets have not yet claimed their reduced activity  
15 and reduced horsepower credits because they don't have to  
16 until April 1st of this year, based on the current  
17 economic conditions, we expect with the AB 8 2X credits  
18 most fleets won't actually have to install retrofits or do  
19 any turnover until at least March 1st, 2010. Until then,  
20 only the reporting, labeling, idling, and sales disclosure  
21 requirements would be in effect.

22 And, again, the way the regulation is set up, the  
23 medium/small fleets don't have any performance  
24 requirements until 2013 and 2015 respectively.

25 --o0o--

1                   STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

2   So as Mr. Goldstene mentioned, in January, AGC filed a  
3   petition with us that requested that ARB delay the  
4   off-road regulation fleet average target dates for  
5   two years. Their petition also requested that ARB ask the  
6   United States EPA to postpone consideration of  
7   California's request for authorization until such time  
8   that we have resolved the issues underlying the petition.  
9   And again, U.S. EPA authorization is required before ARB  
10   can enforce the performance requirements of the  
11   regulation.

12                   AGC's request stated since the Board's adoption  
13   of the regulation in 2007, the recession has affected the  
14   financial ability of construction fleets to comply. And  
15   the petition argued that without immediate relief,  
16   California construction contractors would suffer immediate  
17   and irreparable harm. In making this claim, AGC was  
18   asserting that the relief by AB 8 2X was insufficient.

19                   AGC further argued that economic conditions will  
20   not improve over the next two years and that the reduced  
21   emissions resulting from the current economy give the  
22   Board some flexibility to delay the regulation and thereby  
23   reduce the financial burdens that were imposed, while  
24   still meeting our goals and SIP commitment.

25

--o0o--

1 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

2 So our executive office responded to AGC's petition on  
3 February 11th in two ways.

4 First, we issued an enforcement advisory  
5 notifying all stakeholders subject to the regulation that  
6 we will take no enforcement action regarding compliance  
7 with the reg's emission standards or other  
8 emission-related requirements until we get authorization  
9 from EPA. And this means fleets that didn't meet the  
10 March 1st, 2010, BACT or fleet average requirements won't  
11 be fined for noncompliance. And in addition, the ban on  
12 adding Tier 0 vehicles won't be enforced.

13 And then second, ARB scheduled today's hearing.  
14 And today we hope to hear from you on the need for further  
15 amendments to the regulation to address the recession.  
16 And as we've already said, this information will be passed  
17 to our Board next month.

18 --o0o--

19 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

20 So here's just some guidelines on what we're hoping to  
21 hear about today to assist us in collecting relevant  
22 information.

23 We'd like to ask you to respond to the questions  
24 on this slide and the next. And we're asking folks to  
25 testify today as well as submit written comments if they'd

1 like, and you have until the 18th to submit those written  
2 comments.

3           So if you're a large fleet, we're interested in  
4 your answers to the following:

5           So taking into account the AB 8 2X reduced  
6 horsepower and reduced activity credits, did your fleets  
7 already meet the March 1st, 2010, requirements? And if  
8 no, why not? If yes, what cost did you incur for  
9 compliance?

10           And if you didn't, then what additional actions  
11 and cost do you think you would have had to do to comply?

12           And similarly, again taking into account the AB 8  
13 2X credits, do you think your fleet is going to meet the  
14 March 1st, 2011, requirements? And if not, why not? If  
15 yes, what cost do you think you're going to face to do  
16 that?

17           And, finally, do you think that AB 8 2X has  
18 provided sufficient relief over the next couple years?  
19 And if you don't think so, why not?

20   --o0o--

21           STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

22 And then from everyone, even if you're not a fleet owner,  
23 we'd like to know what further amendments to the  
24 regulation you think are necessary to address the economy  
25 over the next couple years.





1 the off-road reg based on the information presented.

2           And then our plan for the next few months after  
3 that is we're going to hold some public workshops in May  
4 and June. And then we plan to return to the Board later  
5 this summer to propose appropriate changes to not only the  
6 off-road regulation, but the truck and bus rule as well.

7           So that concludes my presentation. And now I'll  
8 pause briefly to take any questions or clarifying remarks  
9 regarding what I presented.

10           If you have comments or testimony for our  
11 Executive Officer, please hold that until later. And  
12 we'll do that after the AGC witnesses have concluded their  
13 remarks.

14           For folks watching on the webcast, we welcome  
15 your clarifying questions as well. You can e-mail any  
16 such questions to auditorium@calepa.ca.gov. That's  
17 auditorium@calepa.ca.gov.

18           Any questions? I think we have some.

19           EXECUTIVE OFFICER GOLDSTENE: Please make sure to  
20 state your name and affiliation so the court reporter can  
21 capture that.

22           MR. AMBROSE: Okay. Can you hear me?

23           My name is Brant Ambrose. I'm manager at Downs  
24 Equipment Rentals in Bakersfield, California.

25           I would appreciate if Kim would explain to the

1 audience what the SIP is and how it has created this  
2 situation with these diesel rules. I don't think -- most  
3 people I talk to don't understand how the two are tied  
4 together.

5 EXECUTIVE OFFICER GOLDSTENE: That's a good  
6 question. Thanks for that.

7 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
8 So there is a Federal Clean Air Act that sort of lays out  
9 the nation's laws for making sure the whole nation cleans  
10 up our air. And there is a set of sort of ambient  
11 standards for the different pollutants that can harm  
12 people. And the federal government lays out certain  
13 timelines by which all the different regions of the  
14 country have to attain those standards. And so they sort  
15 of assign that responsibility to the state.

16 And the way the state has to show we're on track,  
17 we're going to achieve those public health standards on  
18 time, is by preparing what we call a State Implementation  
19 Plan, or SIP. And a SIP is kind of like a blueprint that  
20 contains all the different measures for how we're going to  
21 reduce pollution from all the sources in time to achieve  
22 the clean air on the timetable laid out in federal law.

23 So this regulation is one of the regulations that  
24 are part of that blueprint. And it's a big one. It's a  
25 big and important one.

1           So part of what was driving how we designed this  
2 regulation and pushing emission reductions that we thought  
3 we needed was the overall timeline we knew we had to meet  
4 and the magnitude of emission reductions we knew we had to  
5 get in order to achieve clean air on time.

6           And I mentioned the South Coast and the San  
7 Joaquin Valley. And those are sort of the two parts of  
8 the state that face the greatest challenges for achieving  
9 clean air. So the needs in those regions drove some of  
10 the design of this regulation.

11           Erik?

12           HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH  
13 ASSISTANT DIVISION CHIEF WHITE:

14           MR. AMBROSE: In regards to that though, if my  
15 understanding is correct, 2014 is the date you folks have  
16 to hit for the State Implementation Plan. This is  
17 supposed to be a 21-year rule on the off-road diesel  
18 industry, but we have to make 100 percent of our PM  
19 requirement and -- what is it -- 46 percent I think it is  
20 of the NOx part of our requirement by 2014. There's the  
21 biggest problem with your rule. It needs to be spread out  
22 over -- I mean, I'm lecturing now I guess instead of  
23 asking questions. Excuse me.

24           But I mean, that really becomes the issue for the  
25 industry is you're delaying this. The State Legislature

1 gave us these delays, but they don't lighten our load  
2 before 2014. It's like having a 30-year mortgage that's  
3 due in the first three years. That's not a 30-year  
4 mortgage; it's a three-year mortgage. And now this has  
5 been rolled up into a two-year mortgage. We were going to  
6 end up with 24 months to comply 100 percent on PM and 46  
7 percent on NOx.

8 EXECUTIVE OFFICER GOLDSTENE: Excuse me.

9 MR. AMBROSE: That's what I wanted to have  
10 addressed in my questions.

11 EXECUTIVE OFFICER GOLDSTENE: Okay. Thank you.

12 I think we should move to Mr. Steele's  
13 presentation or Dr. Reese, the AGC presentation.

14 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
15 Just so folks on the webcast know, AGC brought us three  
16 presentations today, and those are all now posted on our  
17 website. So you should be able to pull those up if you're  
18 watching from home.

19 MR. STEELE: This way everybody can see my face.  
20 I'm ready for my close-up now.

21 My name is Michael Steel. And I'm outside  
22 counsel for the Associated General Contractors. And I  
23 want to thank you for the opportunity to be here today on  
24 behalf of AGC and its 33,000 members.

25 We're here really because over 300,000 California

1 families have lost their livelihood in the construction  
2 industry in the last couple of years of this recession.  
3 And it's a very grim picture for those families and we  
4 think it's not really necessary.

5           We endorse the State's commitment to reach the  
6 State Implementation Plan. We realize that they have  
7 committed to reducing emissions from this sector. But  
8 what we think has happened is, in effect, we have sort of  
9 a windfall unfortunately because of this recession and  
10 emissions are already significantly down. And that gives  
11 the Board the flexibility to give some relief to these  
12 300,00 families and to the construction contractors who  
13 are here today. And what we want is for the Board to look  
14 at that situation and provide that relief.

15           So I'm just going to briefly introduce the  
16 speakers we're going to have here today, and then I'll  
17 come back around at the end and kind of sum up a couple of  
18 thoughts. We're going to try to keep us to the one-hour  
19 the staff has asked us to commit to.

20           We see two key issues this morning.

21           The first one is: Have emissions from the  
22 construction equipment declined sufficiently so there is a  
23 cushion that would allow ARB to grant some relief from the  
24 rule without compromising air quality goals that it  
25 articulated when it adopted the rule? Is there a cushion

1 available?

2           The second question: Are California's  
3 construction contractors suffering irreparable harm in  
4 their efforts to comply with this rule?

5           Those to us are the key questions.

6           As to the first question, we're very pleased to  
7 have here today Dr. Lynn Reaser, who for ten years, from  
8 1999 to 2009, served as the chief economist for Bank of  
9 America Investment Strategies Group. She was educated at  
10 UCLA. She now serves as the Chief Economist at the  
11 Fermanian Business and Economic Institute in San Diego and  
12 is President of the National Association of Business  
13 Economics.

14           Dr. Reaser is going to discuss the current  
15 economic situation and latest projection for the pace of  
16 recovery, which a recovery we all hope is inevitable, is  
17 simply a question of time. She's going to focus  
18 particularly on the pace of the recovery in the  
19 construction sector, which you will hear is different from  
20 the rest of the economy.

21           We'll also hear this morning from Jim Lyons, a  
22 senior partner at Sierra Research here in Sacramento.  
23 Before joining Sierra Research, Jim was a Senior Air  
24 Pollution Specialist at the Air Resources Board.

25           Jim is going to describe the results of modeling

1 work he performed using ARB's model. Jim's work shows  
2 that using ARB's model and their fleet data that was  
3 supplied last year emissions are, in fact, well below what  
4 ARB had predicted when it adopted the rule. This means  
5 there is a cushion available to ARB so it can provide some  
6 relief.

7           And Mike Kennedy, general counsel of AGC, is  
8 going to give some further insights into that data.

9           We'll also hear from contractors who are making  
10 Herculean efforts to comply with this rule. And I want to  
11 draw a distinction here that's very important. Some of  
12 the introductory slides that you saw talked about the  
13 flexibility in the rule and the ability to comply. For  
14 example, by cutting your fleet size in half and retiring  
15 half your fleet, you can avoid obligation for 2010 and  
16 2011 under the rule. The problem is that, yes, that's a  
17 means for compliance. And, in fact, I think many  
18 companies are adopting that means for compliance. They're  
19 reducing their fleet size. They're scrapping equipment.  
20 They're selling it for ten cents on the dollar out of  
21 California.

22           But that's not a solution that makes economic  
23 sense for those companies. It permanently weakens them.  
24 It makes it more difficult to compete to take on new work  
25 when the economy does recover to borrow, to bond. All the

1 basic principles of business are violated by that kind of  
2 contraction approach.

3           So we'll also hear to drive home that point from  
4 Mike Shaw of Perry and Shaw and Tom Foss of the Griffith  
5 Company who will give you some perspectives on their real  
6 life experiences here, and also from Mike Buckantz.

7           So finally, we will hear from some of the workers  
8 whose livelihood is at stake with this rule.

9           With that, I'm going to turn it over to Dr.  
10 Reaser and ask her to give you her thoughts on the  
11 economic outlook.

12           (Thereupon an overhead presentation was  
13 presented as follows.)

14           MS. REASER: Thank you very much, Mr. Goldstene,  
15 members of the staff, and the audience.

16           My name is Lynn Reaser. I'm Chief Economist at  
17 the Point Loma Nazarene University Fermanian Business and  
18 Economic Institute. A word of exactly who we are. We're  
19 a new economic analysis unit at Point Loma Nazarene  
20 University, which is a small university in San Diego,  
21 California. It's existed for about 100 years. Our  
22 institute was formed within the last several months. We  
23 are not a think tank. We are not an academic unit. We  
24 are an applied economic research organization devoted to  
25 analyzing economic data, modeling, developing forecasts,

1 and then developing actual conclusions for nonprofit  
2 organizations, companies, and government agencies.

3 I will tell you that our core values are  
4 integrity and analysis of the data so that when we take  
5 clients, we tell them that we will analyze the data  
6 objectively. We will not by any means guarantee that the  
7 results will be what they're looking for. So we are very  
8 adamant when we come to the table on that issue.

9 --o0o--

10 MS. REASER: What I would like to do today is  
11 basically focus on some implications and where we've been  
12 on the construction industry.

13 First, describe the last 15 years so you have  
14 some perspective where we've been in the economic cycle  
15 for construction.

16 Second, describe to you where we are today in  
17 terms of the industry.

18 Third, indicate to you our projections for the  
19 next five years so you have a platform for understanding  
20 what emissions might look like and then some concluding  
21 remarks.

22 --o0o--

23 MS. REASER: So first of all, where we've been in  
24 the industry.

25 We had, following the last construction





1 increase and is at very depressed levels.

2 --o0o--

3 MS. REASER: Here again you can see this huge  
4 drop in jobs where again if you look at the very end,  
5 there is a slight up-tick in January. First uptake we've  
6 seen in a long time, but a huge drop of over 360,000 jobs  
7 from the peak.

8 --o0o--

9 MS. REASER: Here you can see that the decline in  
10 construction spending has been very broad-based: Housing,  
11 non-residential, public infrastructure building, all down  
12 very sharply from the levels we saw in the 2002-2006  
13 period.

14 --o0o--

15 MS. REASER: Now, what is the outlook?

16 It's important to understand there are some  
17 different dynamics going on in the construction industry.  
18 And I will start my outlook by telling you that I'm  
19 probably more optimistic about the general economy than  
20 are most economists. I think the national recession is  
21 over. California generally tracks the nation fairly  
22 closely, and I think California will be coming out of the  
23 recession in 2009. It probably will lag the nation,  
24 because particularly the problems in state and local  
25 governments, particularly some of the problems in the

1 housing and non-residential sector which continue to range  
2 here and problems in the financial system. But we  
3 probably will see some recovery.

4           But construction has its own dynamics. And  
5 that's what I would like to focus with you on this  
6 morning.

7           First of all, it does appear that housing is  
8 beginning to see some signs of improvement. Inventories  
9 are down. We've seen some firming in sales and even  
10 prices. But in terms of construction, it's going to be  
11 still an area that faces a lot of road blocks.

12           One is that you've heard this daily in the press,  
13 the issue of more foreclosed properties coming onto the  
14 market, which is going to hold down an improvement in  
15 sales in terms of new housing as well as prices. And so  
16 that's going to continue to come on the market and prevent  
17 a robust recovery in new construction.

18           Also, financing remains very tight. It's very  
19 hard for particularly small- and medium-size businesses  
20 who are relying on banks for their credit to get funding  
21 for new construction activity.

22           The non-residential area remains the biggest  
23 problem of the construction sector. It always lags the  
24 recovery. And this will be no different. You have at the  
25 present time weakness pretty much across the board.

1 Office space, huge declines in prices and rents.  
2 Industrial space, hotels, retail properties, all under a  
3 lot of pressure. And as a result, you will unlikely see  
4 any improvement in new building until probably 2012. The  
5 overall pricing structure may start to flatten out in  
6 2011.

7           In terms of new building, it will be hard to get  
8 improvement until 2012. And the financing for commercial  
9 non-residential building is particularly severely  
10 constrained. The commercial mortgage-backed securities  
11 market had virtually shut down and it's only received some  
12 support from the Federal Reserve's activities to prop up  
13 that market.

14           You have a situation where banks do not want to  
15 entertain any kind of discussion of new construction  
16 activity in this space. And it's also even difficult to  
17 get refinancing. So this is an area that's probably going  
18 to be the weakest of the overall economy as well as the  
19 construction industry.

20           Finally, in terms of the public sector, we talk a  
21 lot about infrastructure building. The stimulus package  
22 from last year had focused on this as its primary effort  
23 to help the economy. But again, that's a small piece of  
24 the total. And what you have is the overriding problems,  
25 the ongoing federal budget deficit, which is now ten

1 percent of our GDP. The federal debt is expected to rise  
2 to \$24 trillion within the next ten years. So we have  
3 nationally a very large budget and debt problem, which  
4 means that construction spending is going to be  
5 constrained.

6 At the same time, you all are knowing very well  
7 the problems in our state government, which also is going  
8 to have an impact on funding of these infrastructure  
9 problems.

10 So as an economist, people in the public, we  
11 essentially know the importance of infrastructure  
12 building. We talk about it. But in terms of the funding  
13 of it, it's going to be a very constrained element.

14 So the bottom lines in term of our construction  
15 outlook --

16 --o0o--

17 MS. REASER: You can see here we are looking for  
18 some improvement in the construction value of spending.  
19 These are in real dollars. So we do believe we've hit the  
20 low point. But the issue is that because of these  
21 constraints I talked about, by the year 2015, you're still  
22 going to be at a level that's just two-thirds of the level  
23 you saw in 2002, 2006 which was when a lot of the  
24 regulations implemented in 2007 was based on. That's the  
25 picture: Two-thirds of that level of 2002, 2006.

--o0o--

1

2 MS. REASER: If we look at the individual pieces  
3 of it, here you can see again kind of a fairly sort of V  
4 shape recovery in housing that we all talk about. But  
5 again, because of these constraints of financing and the  
6 foreclosed homes, way below what we saw in the early 2000  
7 period.

8 Nonresidential construction, as I indicated,  
9 probably not showing some improvement until 2012 and again  
10 way below its previous levels. And public construction I  
11 would say pretty flat. A little bit of an increase over  
12 the next five years because of its budget constraints, a  
13 strained increase.

14

--o0o--

15 MS. REASER: So as we look at the picture for the  
16 overall activity in the next five years, we would expect  
17 to see really a constrained rise also in gross state  
18 product that's related to construction spending.

19 And then in terms of the impact on jobs, which is  
20 I think what we're all really concerned with ultimately,  
21 you can see here we do expect to see some improvement in  
22 employment. But even when you get to 2015, you're still  
23 going to be looking at a level of construction jobs in the  
24 state of California that is about a quarter million,  
25 250,000, jobs fewer than we had at the peak of the upturn.

--o0o--

1

2 MS. REASER: So in terms of the recap here, we've  
3 been through a very severe cycle of a huge swing up in  
4 construction activity in the last 15 years, the first 12  
5 years, and then followed by a very rapid downturn.

6 We probably have hit bottom in terms of the  
7 overall economy and even in the construction spending.  
8 But it's likely to be really quite a constrained recovery  
9 so that again when you get to 2015, we're still looking at  
10 a level of activity which is very much lower than what you  
11 saw in the 2002, 2006 base period.

12

--o0o--

13 MS. REASER: So in terms of the conclusions, what  
14 we would see at this point, we would believe that you're  
15 looking at a situation where again activity is quite  
16 constrained. And if you look at as Kim pointed out the  
17 overall impact of the recession has been to a really  
18 depressed level of activity.

19 I would start by saying in my concluding remarks  
20 what we're trying to do here is think is: One, have as  
21 healthy of an economic recovery as you can and not  
22 compromise your objectives of a clean environment. So  
23 we're really trying to achieve two goals. And I think  
24 they can be done.

25 As Kim indicated, the side-effects of the great

1 recession has been not just in the U.S. and California,  
2 but worldwide is a significant reduction in pollution.  
3 And this is across the board: Air, sea, et cetera.  
4 Particularly in California, you have seen again the level  
5 of degradation of air quality significantly reduced  
6 because of recession. And it's not just because of fewer  
7 hours worked in the industry. It's also because the older  
8 equipment has been sold. It's been sold out of the state,  
9 and it's been sold off-shore.

10           So the question is: If we have a recovery, what  
11 does that mean? Will that equipment be brought back  
12 online so that you have a new pollution problem. I think  
13 the answer is no, because it's been sold out of state and  
14 even more often off shore to China, to the middle east,  
15 and to Mexico. So it is gone. It will not be brought  
16 back.

17           So we would expect to see, as you see a recovery,  
18 purchase of new more efficient cleaner equipment. But the  
19 problem in terms of that taking place is three-fold. You  
20 have particularly on the part of smaller and medium-size  
21 equipment owners some major constraints.

22           One: Their finances have been severely hampered  
23 by the recession in terms of the revenues. So they're  
24 incurring losses.

25           Second, their balance sheets have been severely

1 weakened because of capital losses. When they sold this  
2 older equipment, its residual value has been declining  
3 drastically in part because of your rules that have  
4 reduced its value.

5           And then third, it's very difficult to get again  
6 financing in this environment. The bank regulators -- the  
7 banks are going to be under a lot of duress. So there is  
8 a lot of pressure on the one hand to make more loans, but  
9 even more importantly not incur losses. So credit is  
10 going to be very tight. And I don't think it's going to  
11 be loosening up for small and medium businesses in a  
12 meaningful way for the near term.

13           So in terms of our recommendations, I think the  
14 optimal solution to, one, achieve an economic recovery  
15 that has sustainability and also not compromise the  
16 important air regulation standards that we'd like to  
17 achieve would be actually to defer the regulatory rules  
18 until 2015. That would, one, still with this depressed  
19 level of economic activity not compromise the air quality  
20 standard, but, A, give companies some breathing room so  
21 they can get back on their feet, restore their balance  
22 sheets, get back to an economic healthy situation and give  
23 the banks time to shore up their balance sheets so they're  
24 ready to lend so that by 2015 you're in a situation where  
25 these companies are able and need to invest in new

1 equipment to expanded activity, which also is a time that  
2 the equipment makers will have a new generation of  
3 technology with equipment then that's ready to really be  
4 able to meet the most productive and efficient standards  
5 for the industry.

6           So I think that's our basic conclusion: Waiting  
7 until 2015 puts us in a very optimal position probably  
8 would be the best economic outcome that I think you'd want  
9 to achieve.

10           So with that, please let me answer any questions  
11 that you might have.

12           EXECUTIVE OFFICER GOLDSTONE: We should just move  
13 to the next presentation. Thank you very much for that.

14           MR. STEELE: Thank you, Dr. Reaser.

15           And so Jim Lyons. James Lyons.

16           MR. KENNEDY: Thank you for having me here today.  
17 My name is Mike Kennedy. I'm the General Counsel for AGC  
18 of America.

19           Before I get started, I want to thank all the  
20 people in the audience for being here today. You all lead  
21 busy lives, and taking the time to be here is much  
22 appreciated.

23           AGC is pleased to be here today with not only  
24 many of its members, but many of its partners and  
25 organized labor. We value that relationship and we thank

1 you for your help and support. I want to thank all of you  
2 for the opportunity to testify and to be here today.

3           And I'd like to begin by emphasizing what we are  
4 not here to discuss. AGC does not seek a broad or even a  
5 narrow reassessment of the emission goals that the Board  
6 has established for the construction industry. AGC is  
7 well aware of the Board's legal if not moral  
8 responsibilities to the citizens of California. And we  
9 recognize that the construction industry can and should  
10 participate in the larger effort to improve the state's  
11 air quality.

12           What AGC does question is whether the current  
13 rule is necessary to meet the Board's goals. AGC believes  
14 that a candid and transparent reassessment of the  
15 emissions from the off-road equipment in the construction  
16 industry based on the best information now available to  
17 the Board will reveal that the Board has the latitude to  
18 relieve the tremendous pressure that it has put on this  
19 industry and still protect the environment and public  
20 health.

21           The starting point for the rule was a forecast  
22 that NOx emissions from the regulated fleets of off-road  
23 equipment would drop each and every year in a total of  
24 68.2 percent between 2009 and 2025. The Board similarly  
25 forecast that PM emissions would drop 76 percent over this

1 17-year period. For reasons that we have already heard,  
2 the Board made the policy judgment that even these  
3 dramatic declines in emissions from the regulated fleets  
4 were not enough to enhance California's air quality and  
5 protect the public health.

6           The Board, therefore, set annual goals below the  
7 baseline levels that its off-road model had forecast in  
8 the absence of any rule of any kind. Over the same  
9 period, the Board sought to drop NOx emissions another 5.9  
10 percent. And it sought to drop PM emissions another 16.4  
11 percent.

12           Now I'll be candid. If reasonable people of  
13 equally good will could debate the environmental and  
14 public health benefits of such marginal changes in the  
15 emissions from the regulated fleets, AGC does not seek,  
16 however, to invigorate such a debate. Rather, it proceeds  
17 from at least the assumption that the Board exercised its  
18 best judgment and most importantly that the rulemaking  
19 record provided at least reasonable support for the  
20 Board's finding that these changes would have a  
21 significant impact on California's air quality.

22           Once again, what AGC does raise is a different  
23 question. And that is whether this rule as currently  
24 written and the timetables written into that rule are  
25 needed to achieve the Board's original objectives.

1           At the outset, AGC hoped to engage the Board in a  
2 concurrent if not joint effort to answer that question.

3           In December of 2008, when the association filed  
4 its first and still pending petition to amend the off-road  
5 rule, the association made it clear that it did not object  
6 to the reporting requirements imbedded in the rule. AGC  
7 also agreed to suspend the deadline for the staff to  
8 respond to the association's petition, giving both AGC and  
9 the staff time to study the new data that those  
10 requirements would yield.

11           AGC also welcomed the remarks that Chair Mary  
12 Nichols delivered in January of 2009 when she directed the  
13 staff to work with AGC and to report back to the Board  
14 during the fall of 2009. While AGC suspected that the new  
15 data would paint a new and very different picture of  
16 emissions from the regulated fleets, AGC was and remains  
17 prepared to follow the data to its most logical  
18 conclusions. AGC subsequently engaged one of California's  
19 most respected consultants to analyze the new data. And  
20 in May and June, AGC met directly with the staff to  
21 prepare for the work that lay ahead.

22           Among other things, AGC requested and received a  
23 copy of the off-road model that the staff had used to  
24 develop its original emissions inventory, and AGC worked  
25 with its consultant to master that model.

1           On September 26th of 2009, the staff finally  
2 provided AGC with its first batch of new data on the  
3 regulated fleets, whether large, medium, or small. And  
4 AGC then ran the data through the Board's off-road model.  
5 The association's consultant updated the inputs that he  
6 could derive directly from the new data, such as the  
7 population of each type of vehicle, but he made no changes  
8 to the model itself. While tedious, it was a relatively  
9 straight forward process that did not take long to  
10 complete.

11           I will not today dwell on the results. They are  
12 the subject of a lengthy and detailed report that AGC  
13 delivered to the staff on December 3 of 2009. AGC  
14 attached a copy of that report to the petition that is the  
15 subject of today's hearing, and it is already a matter of  
16 record.

17           Suffice it to note the following: The model's  
18 new forecast for emissions from the regulated fleets were  
19 quite different from the earlier forecasts that had formed  
20 the foundation for the off-road rule. The model forecasts  
21 significantly lower emissions of both NO<sub>x</sub> and PM in each  
22 and every year from 2009 to 2025.

23           The model forecast that the regulated fleets  
24 would exceed the Board's annual goals for NO<sub>x</sub> emissions in  
25 14 of the 17 years between 2009 and 2025, including the

1 first eleven of those years. The model forecasts that the  
2 regulated fleets would exceed CARB's annual goals for PM  
3 emissions in both 2010 and 2011 and that additional  
4 reductions needed to meet the goals in subsequent years  
5 would be less than two-thirds of what CARB had expected.

6           As we sit here today, I'm pleased to report that  
7 the staff has yet to take exception to any of these  
8 forecasts. Quite to the contrary, the staff has been  
9 complementary of the work AGC has provided. One month  
10 ago, when AGC last met with CARB, Chair Mary Nichols was  
11 also complementary of the approach AGC had taken.

12           I am, however, disappointed to add that the staff  
13 has been slow to undertake its own analysis of the same  
14 data. In early December, when it met with the staff and  
15 presented its results, AGC expected the staff to have some  
16 of its own results to present. The staff, however, had  
17 nothing to share. The staff took a great interest in  
18 AGC's results but had nothing to add to them.

19           The staff then missed the Chair's deadline for a  
20 report back to the Board on the recession's effects on  
21 emissions from the off-road fleets. The Chair had  
22 requested such a report by the end of 2009. The Board put  
23 the off-road rule on the agenda for the December meeting.  
24 The staff, however, had nothing to report. Indeed, in  
25 stunning disregard of the March 1 deadline for compliance

1 with the first of the rule's fleet average requirements,  
2 the staff insisted that it would need much more time to  
3 make any meaningful analysis of the new data. The work  
4 that AGC had easily completed in a matter of weeks, the  
5 staff had apparently yet to begin and could not replicate  
6 for at least seven months.

7           Never mind that long ago AGC provided the staff  
8 with all of the data files that formed the foundation for  
9 AGC's conclusions. Only when pressed did the staff agree  
10 that it could have something to report by April of 2010.

11           Then in February of 2010 when AGC and CARB held  
12 their last meeting, AGC learned that the staff had  
13 accumulated but neglected to share a significant amount of  
14 new data on the regulated fleets as new information had  
15 continued to trickle in. AGC is now in the process of  
16 analyzing that new data, and very shortly AGC expects to  
17 have the results available to report.

18           As my colleague Jim Lyons will address in just a  
19 moment, AGC is still revising the equipment populations  
20 and other inputs to the model. AGC is also making  
21 adjustments for the number of vehicles reported to be low  
22 use.

23           In recent weeks, AGC has also confirmed public  
24 reports of a serious flaw in the model itself. And it is  
25 also in the process of quantifying and correcting for that

1 flaw.

2           At the February meeting, both the Chair and the  
3 staff confirmed that they were aware of the same problem  
4 and that they were also working on it. But curiously, AGC  
5 has yet to see any reports on the approach the staff is  
6 taking. Hopefully, the work that AGC is now in the  
7 process of completing will cut the time that the staff  
8 requires to reach its own conclusions. Once AGC completes  
9 its work, the association will share its new data files  
10 and methodologies with both the Board and the public, as  
11 AGC remains committed to the transparency that the public  
12 has every right to expect.

13           In the interim, we are pleased to share with the  
14 Board or the staff the outlines of the approach that we  
15 are currently taking. And for that, I will now turn to  
16 Jim Lyons, a senior partner at Sierra Research.

17           (Thereupon an overhead presentation was  
18           presented as follows.)

19           MR. LYONS: Thank you, Mike.

20           As Mike indicated, I'm Jim Lyons with Sierra  
21 Research. Sierra Research is an independent consulting  
22 company that specializes in air quality issues. And my  
23 goal today is just to provide a little bit of detail with  
24 respect to what Mike has outlined in his comments.

25

--o0o--

1           MR. LYONS: I'm going to start by giving you an  
2 overview of the research that AGC is sponsoring us to do.

3           As Mike indicated, what we've already done, as  
4 indicated in the first bullet, is we've taken DOORS data  
5 from CARB and used that to replace the data in the CARB's  
6 off-road model which is based on surveys. The data that  
7 we have available from DOORS deals with equipment  
8 populations by type. We have engine power ratings again  
9 by equipment type. And then we can also deal with the age  
10 distributions of the equipment that were based on survey  
11 data in the off-road model.

12           The results of that initial work which was based  
13 on a September 2009 set of DOORS data were presented to  
14 the Board in December, and they are available in the  
15 public record.

16           What we're currently doing is to update that  
17 previous work using another more recent set of DOORS data  
18 that we have received from CARB staff in the middle of  
19 February of this year.

20           We're also working to properly account for  
21 low-use equipment. In our initial work, we treated  
22 low-use equipment like any other piece of equipment and  
23 therefore it was assigned default operating rates by the  
24 off-road model. So the rules got a limitation on what  
25 low-use equipment is, so we're investigating the



1 equipment type.

2           It also uses assumptions regarding the average  
3 load of engines during operation. For example, if you're  
4 looking at a bulldozer, it may estimate that the engine is  
5 operating on average at 60 percent of the engine's rated  
6 power, that kind of assumption.

7           The final bullet indicates that CARB has never  
8 compared these off-road model results to the fuel-based  
9 records, as I indicated that we're trying to do now.

10                               --o0o--

11           MR. LYONS: There's really two ways to do the  
12 fuel-based characterization. There are emission factors  
13 in the literature that relate emissions to fuel use, and  
14 you can do the direct relation of fuel consumption data  
15 that I mentioned earlier. We're looking at it both ways.

16                               --o0o--

17           MR. LYONS: I'd like to take credit for this  
18 basic approach in inventing it, but I can't. It's been  
19 around for quite a while and well known in the literature.

20           The first application to non-road equipment was  
21 performed in a paper published in 2000. The authors on  
22 that paper included former CARB Chair Robert Sawyer along  
23 with Andrew Kean, who I believe is a graduate student, and  
24 Robert Harley, who's a Professor at Berkeley. They did  
25 their comparison relative to an EPA version of this model

1 known as non-road, which has subsequently been updated  
2 several times.

3           Moving forward in time, I found a 2004 report  
4 that was prepared for CARB that sponsored part of the  
5 research that Dr. Harley recommended such a fuel-based  
6 assessment of the off-road model results be conducted.  
7 This was obviously well in advance of the 2007 rulemaking.

8           As I indicated, I have no kind of record that  
9 assessment was ever done. Dr. Harley apparently along  
10 with his co-worker Milstein decided they would do it  
11 themselves. And they did it specifically for the  
12 construction industry. This paper was published in 2009  
13 in Atmospheric Environment, which is a well-known and  
14 respected peer review journal.

15           The finding which is quoted directly from the  
16 paper is off-road model estimates -- these were for the  
17 2005 calendar year -- were four-and-a-half and 31.1 times  
18 greater for NOx and PM than the fuel-based estimates that  
19 Harley and his co-worker developed. They focused on  
20 southern California and again on the construction  
21 industry. And this table, while perhaps a little bit  
22 busy, shows the ratio of the off-road results to the  
23 fuel-based method that they published. And you can see --  
24 take L.A. County and the off-road estimate they compared  
25 to their method was 6.3 times higher for NOx emissions in

1 2005 than they got using fuel-based approaches and about  
2 four times for PM. And you can look across the different  
3 counties there and see it varies from county to county as  
4 a result of their methodology.

5 As Mike Kennedy pointed out --

6 --o0o--

7 MR. LYONS: -- we're doing work in this area.

8 We're doing it for 2009 in conjunction with our use of the  
9 DOORS data. And so far, although we're still working on  
10 it, our preliminary results bear out these kinds of  
11 differences in the fuel-based inventory compared to what's  
12 coming out of the off-road model.

13 What are the implications of our research and  
14 Harley's research?

15 First, the paper that's published in 2009 shows  
16 that if you use a fuel-based method, the off-road 2007  
17 baseline inventory for 2005 is grossly overestimated.  
18 Because that baseline was used to estimate the benefits of  
19 the rule, it also follows that the benefits of the rule  
20 are similarly overstated.

21 The cost effectiveness ratio for the rule, which  
22 is how much money you spend per ton of pollution  
23 eliminated, is as a result probably much higher. And that  
24 translates into the rule providing a much smaller air  
25 quality benefit per dollar spent by the affected industry



1 extend the deadlines for compliance with the rule's core  
2 requirements. It is simply wrong to suggest that the  
3 Board has to choose between environmental protection and  
4 economic growth. This is one of those rare situations  
5 where you can, in fact, have it both ways. Thank you.

6 MR. STEELE: Thanks, Mike.

7 I think we'll turn now to hear from some of our  
8 real people, the contractors. So Mike.

9 MR. SHAW: I suppose that was a compliment.

10 My name is Mike Shaw. I'm a contractor from San  
11 Diego County. Our company is generally a heavy earth  
12 moving company. Ninety-five percent of our revenue is  
13 generated with self-performed work. All of that revenue  
14 is generated by the use of the heavy equipment. We have  
15 the large bulldozers and scrapers and loaders and rock  
16 trucks. So this rule is particularly onerous on our  
17 operation, because we self-perform with that equipment.

18 I just want to make a couple of quick comments on  
19 some stuff I've just learned. I've always taken this as  
20 being a very serious discussion. I've been engaged in  
21 this for a long time. This became much more serious when  
22 I listened to the economist here predict that if I fight  
23 in this business environment for five more years, we'll be  
24 back to the levels we had two years ago, which was just  
25 crap. So that's a very sobering realization, for me

1 anyway, and I imagine some other people in this room.

2           The second thing is that looking at the comments  
3 and the analysis suggesting that maybe this regulation is  
4 based on information that may have overstated what our  
5 industry does becomes very serious when I look back and  
6 look at what I've done in anticipation of complying with  
7 this regulation and whether or not it was necessary.

8           A little bit more about little background of what  
9 we've done and who we are. In 2006, we had a fleet that  
10 included 110 pieces of this equipment, 56,000 horsepower.  
11 Today, we have about 45 pieces of this equipment, 28,000  
12 horsepower. We reduced the fleet in anticipation of  
13 compliance with this regulation. In normal circumstances,  
14 we would probably would have just parked it and waited for  
15 businesses to come back. At least in our aspect of the  
16 business, that's sort of how you do it.

17           In terms of real life stuff you can touch, in  
18 2006 -- we're a union contractor. Our reported operating  
19 engineer hours in 2006 were 168,000 man hours. In 2009,  
20 we reported 29,000 man hours. So that's a pretty good  
21 dip.

22           Our sales are off 87 percent from 2006 levels.  
23 So even though we still have half of what we had before,  
24 most of it's not running. Most of it's not generating  
25 revenue. We're like everybody else in this room. We're

1 in survival mode. I'm surprised people even take the time  
2 to come here, because isn't top of the radar screen  
3 anymore. All anybody is trying to do is make payroll on  
4 Friday, period.

5           So I want to make a real important point here.  
6 We talk about the credits that we've received. We've  
7 received credits sufficient to get us into 2014, which  
8 sounds like a really good thing. And I'm happy about that  
9 aspect of it.

10           The problem is what I've had to do to get those  
11 credits. We've had -- of course, reduced activity credit,  
12 that works for us somewhat. But the big deal is we've had  
13 to shrink our fleet by 50 percent. We've taken 60  
14 seats -- 60 operating engineers seats and thrown them  
15 away. If we were running our equipment, we've reduced our  
16 ability to earn by at least 50 percent or perhaps a little  
17 greater than 50 percent. We do not have the ability to  
18 earn that we used to have. We're not going to have it  
19 again for a long, long time.

20           If this business comes back as it's been  
21 projected as slowly as it does with the kind of capital  
22 investment it takes just to buy one of these machines,  
23 we're not going to be increasing our fleet size at all.  
24 So to suggest there's going to be some boom come down the  
25 road, we're all going to go buy a bunch of million-dollar

1 scrapers, I don't think it's going to happen. I know I  
2 can't do it.

3           And you look at this and you think, well, you  
4 have three or four years of credits of benefit in front of  
5 you. And it will get you by. Everything is fine for now.  
6 That's not necessarily the case. One of the really big  
7 deals about this is that when we get to the other side of  
8 going through our credits, I call it a balloon payment.  
9 This PM threshold, this NOx threshold continues to ratchet  
10 up every year, even though you're not coming after me for  
11 it. And then at the end of my utilization of these  
12 credits, I'm in a position where there's only one out for  
13 my company, and that's to start diminishing the fleet 20  
14 percent a year.

15           We have a fleet that's fairly contemporary.  
16 We've repowered five-and-a-half million dollars worth of  
17 engines in the Moyer program starting in 2002, 44 engines.  
18 We've got 37/38 percent Tier 3 on the high horsepower  
19 stuff, which is a big deal. So we've done a lot of good  
20 stuff.

21           Interestingly enough, a bunch of the early  
22 repowers that we paid for, the State paid for under the  
23 Moyer program, Tier 1s, which are now getting pushed out.  
24 So, you know, we've done a lot of stuff. But the way this  
25 thing ratchets up on the PM side is destructive.

1           So what I have to look forward to, what I have to  
2 plan for is 20 percent reduction starting when my credits  
3 ran out. And the problem with the way I do my business --  
4 and everybody has a different way they do their  
5 business -- but the problem I have with that is I have to  
6 look down the road. We started the repowering in 2001,  
7 2002 because we were looking down the road. We started  
8 selling equipment in 2006 because we were looking down the  
9 road at what this stuff is.

10           So to think that three to four years from now  
11 that my credits carried me to then and everything is good  
12 is not how I look at my business. I have to plan my  
13 business today. These are huge capital investments. I  
14 have plan my business three, four, five, ten years down  
15 the road. So this credit stuff, it's fine as far as it  
16 goes. But it doesn't solve the problem for me right now.

17           And the problem is that I have to plan. I know  
18 what I'm going to have to do. I'm not going to have any  
19 money. And I'm going to have to just continue to shrink  
20 my fleet and put operating engineers out of work to comply  
21 with this thing. And I don't know why I really want to do  
22 that. I mean, it's not a very -- it's nothing to look  
23 forward to in terms of any kind of an intelligent business  
24 plan.

25           And another reason -- and I think this is very

1 core to me in terms of why you have to push this  
2 regulation back is because this regulation hanging over my  
3 head is a big deal. Okay. And it is with me every day  
4 that I'm in business. And it's hard to explain what that  
5 means. It's like having an elephant on your back. It's  
6 just there. It's diminishing, and it makes it very  
7 difficult to get excited about trying to do business. So  
8 that's an important point.

9 Any questions?

10 EXECUTIVE OFFICER GOLDSTENE: Thank you for your  
11 candor and your comments.

12 MR. STEELE: Next we'll hear from Tom Foss.

13 MR. FOSS: Mr. Goldstene and the staff, thank you  
14 very much for taking my testimony this morning.

15 My name is Tom Foss, F-o-s-s. I'm President and  
16 CEO of Griffith Company. We are a general engineering  
17 contractor operating in southern California. We build all  
18 types of transportation infrastructure: Roads, bridges,  
19 airports, ports, anything in that area.

20 I'm a native Californian. I have lived almost  
21 all of my life in L.A. or Orange County. And I can  
22 remember as a kid in the early '60s coming home in the  
23 evening after playing hard all day and not being able to  
24 breathe well as I settled down to sleep because my lungs  
25 would burn.

1           We don't have that problem anymore. And I think  
2 that the Air Board had something to do with that. I think  
3 the use of technology in gasoline and auto engines and  
4 regulation on the auto industry really significantly  
5 cleaned up our air.

6           Griffith Company and myself, I'm committed to  
7 clean air. I was frustrated there for a while, and I  
8 thought I would say I'm in favor of dirty air, but I  
9 thought that was probably not the right place to go.

10           But I am committed to clean air. In fact,  
11 Griffith Company has transitioned our auto fleet to today  
12 we have about somewhere between 80 and 90 percent of our  
13 auto fleet is hybrid autos.

14           Today, I think that's where Mary Nichols is.  
15 She's down on one of my job sites in the port of Los  
16 Angeles. We're demonstrating a hybrid excavator. She's  
17 down there taking a look at that. It's a Tier 3 engine in  
18 it. So still a little bit short of the ultimate goal.  
19 But the hybrid piece gives almost a 30 percent fuel  
20 savings, which is a huge savings as far as the PM and NOx  
21 emission piece.

22           I met yesterday with another equipment  
23 manufacturer. They've introduced their hybrid dozer. All  
24 this stuff is still -- it's new. It's experimental. And  
25 my point that I'm trying to make here is that with time

1 and technology -- we've seen it with the autos -- the  
2 industry is going to clean itself up. That is going to  
3 happen.

4           The current economic slow-down has really hurt  
5 our industry. Since the peak in construction activity, I  
6 measure that since January of '07, and nationally there's  
7 1.7 million construction jobs that have been lost. And in  
8 the last year, that's accelerated, because the spending in  
9 construction constricted in 2009 by \$100 billion. Our  
10 industry is impacted. Our current unemployment in  
11 construction is 24.7 percent. In California, since the  
12 peak, our drop in employment has dropped 37 percent.  
13 These are down to levels that were about 1998 numbers.  
14 Our industry is almost in a depression, not just a  
15 recession.

16           In California, the collapse of the housing and  
17 commercial markets has led to an increase in the number of  
18 contractors competing in the public sector where I do most  
19 of my work. A few years ago, Caltrans averaged between  
20 three and four bidders on their projects. Today, that  
21 number is somewhere between nine and ten contractors at an  
22 average. We've all seen projects bid with well over 20  
23 competitors.

24           In the current bidding climate, it's very  
25 difficult to be low bidder. And it's even more difficult

1 to make a profit.

2           AGC has demonstrated that this slowdown has  
3 brought the industry into compliance on a lot of the goals  
4 that the CARB staff and Board set as far as the PM and NOx  
5 go. And likely in the next several years it's not going  
6 to have much of a rebound.

7           When I met yesterday with the equipment  
8 manufacturer, I told him I had no plans to buy any new  
9 equipment this year because of the uncertainty in the  
10 economy and the uncertainty in the construction industry.  
11 Griffith Company is conserving our cash right now. So  
12 we're not doing any capital investment. We're really  
13 trying to sit tight.

14           Griffith Company has, like Mike has, budgeted out  
15 what the CARB regulation will do to us. We have about 85  
16 pieces of equipment. We have already liquidated all of  
17 our Tier 0 equipment. Some of it we replaced. Some of it  
18 was just old. We got rid of it. We got some credits for  
19 that.

20           But we've looked at our fleet, and in the next  
21 two years -- all these costs for us take place in the  
22 early years of the regulation. Over the next two years,  
23 Griffith Company is budgeted to spend about a  
24 million-and-a-half dollars in filters, repowers, to try to  
25 get in compliance.

1           In this economy, and since the slowdown has  
2 brought the industry relatively into compliance for the  
3 next several years and causes companies like Griffith  
4 Company to spend the cash that we need to hold onto  
5 maintain our operation on these aftermarket filters, my  
6 request to you is to -- I know AGC has asked for a  
7 two-year delay. I'm asking for a five-year delay. What  
8 I'd like to see -- unless if the economy rebounds. I  
9 would say that if the economy rebounds, I would say we  
10 have to have a reopener and have a discussion on what  
11 happens -- what has happened to the pollutants. But with  
12 some of the forecasts we see now, I don't see that  
13 happening. I think, like Mike has said, there is that  
14 cushion that's there that you can work with.

15           And the reason why I would ask for five years is  
16 that five years allows the technology to catch up. So  
17 that as I just normally replace my equipment based on the  
18 service life replacement, the number of hours you run it,  
19 the economic life you get out of it, you replace your  
20 equipment with minimal expense. I can save the  
21 million-and-a-half dollars cost of my company. And with  
22 just a minimal investment in some filters in the period  
23 between now and 2015, I can get to that date and then  
24 begin my normal replacement of equipment and stay in  
25 compliance, not effecting, not causing me to dig into my

1 working capital and my company wealth to put in a  
2 temporary filter.

3           So I would just ask that you would consider in  
4 the postponement based on the economic condition an  
5 extension. I would ask for 2015. That would help a  
6 company like mine and a lot of companies like mine.

7           Thank you very much.

8           (Applause)

9           MR. STEELE: Thank you, Tom.

10           We will now hear from Mike Buckantz of Associates  
11 Environmental, who spends much of his time working with  
12 folks like you helping them figure out how to comply.

13           MR. BUCKANTZ: Thanks. And I've put together  
14 just a very small number of slides that will hopefully  
15 paint some pictures of what our clients are experiencing.  
16 Their stories are very similar to Mike's and to Tom's, and  
17 their concerns are the same.

18           (Thereupon an overhead presentation was  
19 presented as follows.)

20           MR. BUCKANTZ: Here are the few fleets that we  
21 put together. Today, we're going to call them Fleets A  
22 through G. And I won't read all that for you. But I  
23 wanted to show you that though we tried to select a  
24 handful of different industries, not cherry-picked one  
25 type of operation or another, I wanted you to see what the

1 impacts good, bad, and otherwise have been on several  
2 different types of companies here.

3 --o0o--

4 MR. BUCKANTZ: And I basically just took their  
5 information, some of them have provided us, and we've been  
6 working with them long enough to have their information  
7 back all the way to 2006. Some we only have for the last  
8 couple years, 2009 here going into 2010. You can see that  
9 most of the fleets -- this is total horsepower per fleet.  
10 Most of the fleets have seen a dramatic drop in their  
11 total fleet horsepower. Please B, in particular, has  
12 taken on the strategy that Mike put together for his  
13 company, which was to sell a lot of equipment to try to  
14 generate credit early on and to maintain during the first  
15 few years of the regulation.

16 --o0o--

17 MR. BUCKANTZ: Number of vehicles in the fleets.  
18 A couple of the things that our clients say to us all the  
19 time is we're doing what we can just to survive, just to  
20 hang onto the people and maintain the few jobs that we  
21 have for the few projects that we're working on. And each  
22 one of these reductions in the number of vehicles  
23 typically represents a job that goes along with it. If  
24 there's an increase, that's somebody that's working.

25 One of my contractors -- I think they're probably

1 all smarter than me -- said to me, "I don't understand why  
2 if I just keep my equipment and park it and it's not  
3 emitting a single pound of pollution I can be out of  
4 compliance with this regulation, when somebody that runs  
5 equipment, Tier 2, Tier 3 if they just ran circles around  
6 their parking lot with it for year after year could be  
7 deemed to be in compliance." That's a very mysterious  
8 concept for him.

9           As a result mainly of dropping equipment, you can  
10 see that by and large some of the NOx fleet averages, the  
11 NOx fleet averages have improved.

12   --o0o--

13           MR. BUCKANTZ: Same story with particulate. The  
14 folks that are shedding equipment, parking equipment, if  
15 we looked at the impact of the equipment that was parked,  
16 we would see an even more dramatic decline in emissions.

17   --o0o--

18           MR. BUCKANTZ: I put up some numbers with respect  
19 to average horsepower and average age to see for myself  
20 whether or not the fleets that we were doing a lot of work  
21 for were trying to change the type of business that they  
22 were in, to switch from a type of work where they were  
23 using a larger piece of equipment, higher horsepower to  
24 try to do more or different or to perform the same  
25 functions with smaller horsepower equipment. And the next

1 couple slides really show that is not the case.

2 --o0o--

3 MR. BUCKANTZ: Average engine age kind of waves  
4 around. And there's not a lot of consistency between the  
5 fleets. But over time, as they're getting rid of their  
6 older equipment, the general trend in average engine age,  
7 average vehicle age, you know, is down. And when it goes  
8 up, it's typically a function of guys just hanging onto  
9 the same equipment and it becoming older. It's not a  
10 function of these guys running out and saying, "Man, I'd  
11 like to own some older equipment."

12 --o0o--

13 MR. BUCKANTZ: Number of vehicles purchased.  
14 Over the years, you can see a steep decline with probably  
15 one exception there in Fleet E. By and large, people are  
16 not buying stuff.

17 --o0o--

18 MR. BUCKANTZ: Vehicles retired, on the other  
19 hand, you can see a pretty dramatic impact of the number  
20 of vehicles retired and therefore the number of jobs that  
21 go with it. Each of these pieces of equipment have a  
22 person that takes care of it, have a person that operates  
23 it and wages that get paid and benefits to the economy  
24 that result through the use of the equipment.

25 --o0o--

1           MR. BUCKANTZ: This last slide is just a fleet  
2 summary. Horsepower reductions on the left, some  
3 dramatic, some not. Equipment count, reductions on the  
4 right.

5           One of the things that I can tell you that our  
6 clients find a little bit frustrating especially when they  
7 see an example that says, hey, if you've lost 50 percent  
8 of your equipment, you're probably good for a few years.  
9 The concept that somehow that makes you good for a few  
10 years is pretty distasteful to them to begin with.

11           That aside, nobody ever talks about the barriers  
12 to getting the 50 percent credit. There is a mound of  
13 paperwork that goes along with it. The barrier for 20  
14 percent is okay. But unlike a lot of regulations where  
15 we're saying, hey, have the records there if we come to  
16 visit you. This regulation is saying, yeah, the carrot of  
17 that 50 percent credit is out there, but we want to  
18 approve it for you. And a couple of our contractors have  
19 asked us how long is it going to take to know whether our  
20 application for credit has been approved or not? Are we  
21 going to be dealing with a long period of time of  
22 uncertainty where we think that we're in compliance based  
23 on our credits, only to have ARB come back a few years  
24 later, a few months later, some period of time later that  
25 is passed the compliance deadline and say, "You know what?

1 We checked your math. We checked your records. We don't  
2 agree. You're out of compliance." When does that happen?  
3 There's nothing that I can see in the regulation that  
4 makes it incumbent upon the Air Resources Board to get  
5 back and approve these credits within a particular period  
6 of time if you've asked for more than just your garden  
7 variety 20 percent.

8           And lastly, just the other concern that we  
9 hear -- there are lots and lots of small contractors who  
10 have fleets that are large fleets under the regulation.  
11 It doesn't take a lot of equipment to get to 5,000  
12 horsepower. Most of these guys don't have time to come to  
13 a meeting like this. They don't have the money to hire a  
14 consulting firm like Associates Environment or some of the  
15 other qualified firms that are out there. They're in  
16 there punching numbers, putting their fleets into DOORS by  
17 themselves. They look at the CARB calculator. They look  
18 at the DOORS numbers. And they look at their own  
19 interpretation of the regulation. And DOORS is telling  
20 them something different from how the regulation is  
21 interpreted. And they're a little concerned that, for  
22 example, in some cases, we've seen fleets that have  
23 apparently enough credit to get them through several  
24 years. When they enter into DOORS, as DOORS projects  
25 their fleet out, it's deducting credit in years when

1 they've met a fleet average target, for example. I won't  
2 spend a lot of time going into details like that.

3 I will thank Mr. Goldstene for the opportunity to  
4 speak and for AGC to give me the opportunity. And we'll  
5 move onto the next segment. Thank you.

6 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
7 Sorry to jump in.

8 Could I please ask for the fleets A to G here --  
9 first of all, thank you for sharing this data with us.  
10 But for these fleets, did you have records on how much  
11 their activity is down and how much their horsepower is  
12 down?

13 MR. BUCKANTZ: Yeah. And activity in number of  
14 hours and in fuel, it varies between the fleets. E and F,  
15 their activity has decreased somewhat, although they  
16 probably won't seek credits. The rest of the fleets,  
17 their activity on fuel, on hours is down in a range of 50  
18 to 80 percent.

19 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
20 So they're covered for the first two years.

21 MR. BUCKANTZ: That's what you say. If they were  
22 trying to respond, I'm not sure you would get a real  
23 polite response to that.

24 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI: I  
25 just want to clarify one thing, too. We are requiring

1 documentation of the reduced activity. And that paperwork  
2 is coming now. And my staff is responding absolutely as  
3 quickly as we can.

4 For fleets that have experienced a loss in  
5 horsepower, there is no special submittal of paperwork  
6 they need to provide to us. So just to clarify that,  
7 because I think that was incorrect.

8 EXECUTIVE OFFICER GOLDSTENE: So Mr. Steel, there  
9 are a couple of people that want to speak?

10 MR. STEELE: We just have a couple more real  
11 people --

12 EXECUTIVE OFFICER GOLDSTENE: And then we can  
13 take a break.

14 MR. STEELE: And then we can take a break.

15 EXECUTIVE OFFICER GOLDSTENE: I know we've been  
16 going --

17 EXECUTIVE OFFICER GOLDSTENE: We have a couple of  
18 fellows here from the Operating Engineers who wanted to  
19 have a chance to talk. You guys want to come up now? You  
20 want to wait until public comment. That's fine.

21 MR. STEELE: So then let me just wrap up then.  
22 This should take a minute here.

23 So I guess this morning we've heard the answers  
24 to the two questions that we posed at the beginning of the  
25 morning.

1           The first question was: Is the off-road diesel  
2 rule needed to achieve the reductions in emissions from  
3 construction equipment that the state has promised under  
4 its clean air plan? As you know, this rule was developed  
5 back in 2006 when our economy was booming and construction  
6 activity was at very high levels. The rule therefore  
7 assumed a continuing increasing construction work and the  
8 emissions that go along with that high level of work on  
9 out into the future.

10           To bring these emissions down, the Board adopted  
11 the off-road rule's strict requirements for replacing,  
12 retrofitting, or reducing the size of California's  
13 construction fleets.

14           As Dr. Reaser pointed out, the economic collapse  
15 of 2007 and '08 hit the construction industry especially  
16 hard. It dramatically reduced construction work in  
17 California. Experts from the State Treasurer's Office,  
18 leading industry forecasters, and the University of  
19 California, along with Dr. Reaser, report that  
20 construction is down about 50 percent from 2006 and that  
21 any recovery is likely to be very slow and painful.  
22 Although it's hardly what you call a silver lining, this  
23 decrease in construction activity does mean that there has  
24 been a decrease in emissions from this equipment.

25           And that's where we find the answer to our first

1 question: Is the rule really needed to meet the State's  
2 emission reduction targets? Or are we even meeting those  
3 emission reduction targets without the rule?

4           This question is critical, because no one wants  
5 us to fail to meet the air quality goals that we believe  
6 are needed to protect public health. And we're not asking  
7 that such a compromise be made. All we're saying is that  
8 there is room to provide relief to contractors because  
9 emissions are already below the levels you predicted when  
10 you adopted the rule and contractors should be given a  
11 break.

12           Or as one member of the Board itself put it, "If  
13 there's an air emissions cushion available, the benefit of  
14 the cushion should be given to contractors." We believe  
15 that there is, indeed, a substantial emissions cushion  
16 available and that there is plenty of room for the Board  
17 to provide relief to California's contractors.

18           Jim Lyons and Mike Kennedy described the results  
19 of their work in running the ARB's computer model. As you  
20 know, when ARB adopted this model, it used estimates of  
21 the size and the nature of the existing construction fleet  
22 to predict emissions out into the future. The model  
23 assumed that the industry would continue to grow and the  
24 equipment would be operated for long hours.

25           There was considerable uncertainty in these

1 predictions, and these issues were pointed out to the ARB  
2 staff in a report prepared under contract to ARB during  
3 the rule adoption process. That report by Rick Baker of  
4 Eastern Research Group found ARB's model significantly  
5 overestimated fleet size, hours of operation, and  
6 horsepower. That doesn't seem to have been taken into  
7 account, but the reality is that Baker has been proven  
8 right by the test of time.

9           You've also heard a little bit this morning about  
10 the fuel-based analysis and how that might affect the  
11 over-prediction. And we'll be back to you when we finish  
12 that analysis. I think you all have seen Professor  
13 Harley's research, and it does raise some very serious  
14 questions.

15           Now to the second question this morning: Is the  
16 rule as currently drafted causing irreparable harm to  
17 contractors?

18           Let's start with the undisputed facts. Dr.  
19 Reaser has explained that the economy is the worst that  
20 most contractors have ever seen. Tom Foss mentioned the  
21 composition for work out there and how little there is and  
22 the significant under bidding. I just read an article  
23 recently about the BART airport extension from the Oakland  
24 coliseum to the Oakland airport. BART's engineers  
25 estimated that that project would cost \$552 million. They

1 put it out to bid, and the bid came in at 492 million.

2 That's 60 million below the engineer's estimates.

3           And that's not unusual for what we're seeing.

4 It's not that the estimates were grossly overstated. It's

5 that the bids are coming in at extraordinary low levels

6 due to competition and the fierce desire to survive a

7 natural human instinct.

8           Despite the overwhelming burden of the rule,

9 contractors are, in fact, struggling to comply. Mike Shaw

10 and Mike Buckantz both explained to you the efforts that

11 people are going through. Many are doing it by reducing

12 their fleet size and horsepower. But the problem with

13 this approach is it leaves contractors weaker and less

14 able to recover when the economy does come around. Once

15 fleets are smaller and jobs are down, it will be very

16 difficult and a very long battle to grow back in size.

17           You know, a word about employment. When these

18 skilled work jobs go away, those people don't stay in

19 California. Those are those homes you see being

20 foreclosed. They're leaving California. And to get them

21 to come back and have that skilled labor force available

22 is a major challenge and a major consequence I don't think

23 anyone thought about in the context of this rule.

24           So in closing -- I think that actually pretty

25 well summarizes our position. Just in closing, again

1 we're not asking that air pollution be increased. We're  
2 not disputing the goals that were set by the state. We  
3 are respectful of the need to meet the SIP obligations.  
4 We think that can be done. We think that Dr. Reaser's  
5 explanation of the economic forecast that shows that this  
6 is not a blip on the screen but a very serious problem  
7 that's going to take time to recover from.

8 Thank you all for your attention this morning.

9 EXECUTIVE OFFICER GOLDSTENE: Thank you very much  
10 for your presentation. Nicely put together and we  
11 appreciate the effort that went into it.

12 I think we should take a break until 11:00 and  
13 then we'll start taking public testimony.

14 (Thereupon a recess was taken.)

15 EXECUTIVE OFFICER GOLDSTENE: I'd like to get  
16 started. We have about 45 people that have signed up to  
17 speak, and I'd like to give everybody a chance to be  
18 heard. If we can begin, that would be great. Give  
19 everybody a chance to take their seat.

20 Again, thank you for being here. Before we start  
21 taking testimony from the individuals who've signed up to  
22 speak, I'd like to ask Erik White, our Assistant Division  
23 Chief, to give a quick summary of what we've heard so far  
24 this morning.

25 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH

1 ASSISTANT DIVISION CHIEF WHITE: Thank you, Mr. Goldstene.

2 I'd like to echo the earlier comments this  
3 morning and welcome everybody and say thank you for  
4 coming. I think this is a very important endeavor on  
5 behalf of the ARB staff to continue to better understand  
6 this industry and the impacts the recession has had on  
7 this industry.

8 Certainly want to thank AGC and their associates  
9 for presenting a lot of good information to us this  
10 morning.

11 What I'd like to do is just maybe touch on a  
12 couple of things that we heard and just to provide some  
13 additional information about how ARB staff are continuing  
14 to look at that. And I think fundamentally one of the  
15 first things we heard about was the ongoing work relative  
16 to the emission inventory and how ARB is taking into  
17 account changes to what has been going on because of the  
18 recession and what we've learned since the original  
19 approval of the rule.

20 And I would say that, you know, emission  
21 inventories that we use at the Air Resources Board,  
22 whether they're for trucks, whether they're for  
23 automobiles are always a work in progress. They're always  
24 being improved upon. We take new information that we  
25 gather and learn and fold that in, and we're able to

1 revise our estimates in time. We've been working on  
2 emission inventories ever since the Air Resources Board  
3 was created as we started to understand what was being  
4 emitted into the air.

5           And so the information that AGC has gathered, the  
6 information that many of you in this room and on the  
7 webcast have provided to us through your reporting is  
8 being incorporated and used to look at the emission  
9 inventory for off-road construction.

10           And I think one of the important things that we  
11 are going to have moving forward, as Ms. Heroy-Rogalski  
12 indicated, as fleets begin to report how the recession has  
13 impacted them through either reduced activity or vehicle  
14 retirements is going to be folded in. So the amount of  
15 time that ARB is using and taking advantage of is intended  
16 to provide to our Board this year a much more  
17 comprehensive look at where construction emissions are  
18 today and where we think they may be going in the near  
19 term.

20           I think the numbers that we saw from Ms. Reaser  
21 in terms of potential growth in the industry are not  
22 inconsistent with numbers we've been looking at for other  
23 source categories, for instance, such as trucks and buses.  
24 So I think we all recognize that the recovery has been  
25 devastating, that the growth that we expect is going to be

1 slow, and we are certainly prepared and intend to  
2 incorporate that into the analysis that we do.

3           Why it's important I think to be very careful and  
4 take time in terms of looking at this is that in this  
5 morning's presentation we heard, for instance, from  
6 Ms. Reaser that the old equipment is being sold off to  
7 Asia and Mexico and other areas. And I think we expect --  
8 and as we look at this information, that might in fact be  
9 the case. When you look at a smaller set of vehicles, the  
10 set of fleets that Mr. Buckantz identified, we didn't  
11 exactly see that.

12           So I think it's very important to take the time  
13 and fully understand how all of this integrates together  
14 in a way that there is going to be a high level of  
15 confidence in where emissions are. And so that was an  
16 important thing that I want to just simply explain a  
17 little more and reiterate that the information that we  
18 have gathered from you all, the information that we're  
19 getting from AGC and from others is, in fact, going to be  
20 fully folded into all of the work that we do. And we  
21 certainly intend to share that work with the public as we  
22 move forward I think as you heard towards some changes to  
23 the regulation and our truck and bus regulation later this  
24 summer.

25           The other thing I wanted to make an offer of --

1 and I would essentially make this offer. The first two  
2 fleets that were kind enough to step up this morning and  
3 talk about the impact of the recession and the rule on  
4 their fleets is to sit down and work with you. Sit down  
5 and help understand, help us understand what the  
6 regulation is going to mean, what the credits that we've  
7 already built into the regulation provide, the relief they  
8 provide.

9           And then looking beyond that as I think we've  
10 heard that those will be exhausted and there's going to  
11 need to be actions that occur after these are exhausted.  
12 What these action are going to be. I think as we do that,  
13 we want to make sure we're fully folding in all of the  
14 available options to fleets. That includes the use of  
15 retrofits, and I know there are many in the industry who  
16 view those as not a long-term solution. But I think if  
17 you look at the opportunities the use of retrofits  
18 provide, there are an important compliance aspect that  
19 need to be looked at.

20           I would make that offer to the two fleets we've  
21 heard from this morning and any other fleets that come up.  
22 My staff is here ready to talk with you if you would like  
23 about where you are and where the rule would have you go  
24 moving forward and again fold in whatever additional  
25 information we can.

1           So I just wanted to hit on those two topics  
2 before we get into the testimony this morning. So thank  
3 you.

4           EXECUTIVE OFFICER GOLDSTENE: Thank you, Erik.

5           STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
6 Just to add one thing. So a couple weeks ago, we held a  
7 special training for large fleets to kind of go over and  
8 make sure they understood what the requirements were for  
9 March 1st and make sure they understand how the paperwork  
10 associated with reduced activity, and we are going to be  
11 repeating that training on March 18th.

12           And we're also, as Erik mentioned, very willing  
13 to sit down individually with any large fleets that are  
14 working on that reduced activity paperwork or if they have  
15 any questions about how the reg works and how it works  
16 with the current enforcement delay, please do let me or  
17 one of my staff know. We would be happy to sit down with  
18 you individually.

19           EXECUTIVE OFFICER GOLDSTENE: Thanks, Kim. Thank  
20 you.

21           We have about 50 people who have signed up to  
22 testify today. I think what we'll try to do is to the  
23 extent that you can limit your testimony to approximately  
24 three minutes or less, that would be appreciated by  
25 everybody else who's behind you waiting to testify.

1           If there are additional information that you want  
2 to provide to us in writing by March 18th, we would very  
3 much appreciate that as well. So if you can summarize  
4 your remarks and try to respond directly to the questions  
5 that were in the notice and in Kim's presentation earlier  
6 today this morning about the type of information we're  
7 seeking about compliance and the challenges that you may  
8 be having, we want to hear that, and we want to get any  
9 other detailed information that you're willing to share  
10 with us so we can make the best decisions about how we  
11 make any adjustments going forward or proposals for  
12 adjustments to the Board.

13           With that, I think we'll begin. Ken Stoddard is  
14 at the top of the list from Waste Management.

15           MR. STODDARD: I'm Ken Stoddard of behalf of  
16 Waste Management. I'll try to make my comments very brief  
17 and be responsive to the questions.

18           Just by way of background, Waste Management has  
19 550 vehicles that are subject to the rule at 65 different  
20 locations within California. Let me back up. Of those  
21 550, we did achieve compliance on March 1st, and that was  
22 through the retirement of 144 vehicles, 38 new vehicle  
23 purchases, 36 retrofits, and five repowers. The cost was  
24 \$9 million.

25           We did not rely on AB 8 or other activity credits

1 to achieve compliance in the first round. And we will  
2 also comply on March 2011 with the requirements. And at  
3 this point, we would assume without any activity credits.

4 I think our situation is a little different from  
5 much of what you heard today. Our industry, the solid  
6 waste industry and our company, was certainly hit hard by  
7 the recession. Volumes at our landfills are down 20  
8 percent. So there is some pain out there. However, I  
9 would say it's not the same level that the construction  
10 industry is experiencing. We provide services to that  
11 industry, and it's basically gone away. You won't find  
12 roll-off containers there at construction sites because  
13 the activity is so minuscule at this point.

14 Despite the financial pain, we're staying the  
15 course with the original schedule that the Board proposed.  
16 And I think really two reasons is we're really well down  
17 the path. But second, the corporation has its own  
18 emission reduction targets, and we're serious about  
19 achieving those. We perfectly understand the  
20 environmental benefits associated with this rule, so we're  
21 pushing on.

22 Regarding the recommendations for further  
23 amendments, we really only have one today. And it really  
24 is for those fleets that are staying the course that are  
25 going to meet this original schedule, we would really urge

1 the Board to try to better harmonize the NOx and the PM  
2 compliance schedules. As we look at the capital  
3 investments that we need to make, it gets tough because of  
4 the big discrepancy between those two different schedules.  
5 So if those could be better harmonized, we believe our  
6 money is so much better spent buying new equipment than it  
7 is retrofitting and repowering older equipment that really  
8 the highest and best use of our capital and I think  
9 ultimately the highest and best use -- the best  
10 performance in terms of emission reductions is going to  
11 come through the purchase of new equipment. So we will  
12 also provide written comments relative to that one  
13 specific recommendation.

14 EXECUTIVE OFFICER GOLDSTONE: Thank you. That's  
15 a great recommendation. We're looking at it. Thank you  
16 very much.

17 Rasto Brezny is next. And after Rasto is Peter  
18 Bransfield.

19 MR. BREZNY: Thank you, Mr. Goldstone and staff.

20 I'm Rasto Brezny with the Manufacturers of  
21 Emission Controls Association.

22 Our members have worked with your staff to verify  
23 most of the devices that are on ARB's verified device list  
24 today. I believe the last time I checked, that includes  
25 12 Level 3 DPF devices, six of which are passive filters

1 for off-road vehicles.

2           To get where we are today has taken at least ten  
3 and in some cases 20 years of technology development,  
4 investment, in order to commercialize these retrofits, and  
5 ensure their durability.

6           Continued investment relies on some level of  
7 regulatory stability. We certainly understand the strain  
8 that today's economy has put on businesses of all sizes,  
9 including our members are certainly not immune to this  
10 economic environment. And that's why we've supported  
11 ARB's efforts to increase the availability of more  
12 incentive funds, grants, and loan programs to help end  
13 users pay for retrofits.

14           MECA has also supported ARB's relief amendments  
15 that the Board adopted in 2009. And if after reviewing  
16 the data there's presented here today ARB decides that  
17 more relief is necessary, we believe that rather than an  
18 abrupt delay of the regulation, a phased-in approach to  
19 full compliance should be used in order to maintain some  
20 demand for retrofits and allow manufacturers to continue  
21 to invest in this technology.

22           A phased-in approach is valuable for two reasons.  
23 First of all, the retrofit industry does create jobs, and  
24 regulatory stability ensures that these devices are  
25 available when they're needed.

1           With regard to jobs, one independent economic  
2 analysis suggests that a full-time job is created for  
3 every three to seven retrofits that are installed. So  
4 another way to look at this is if you use some of the  
5 estimates of retrofit demand that staff presented several  
6 years ago, you would estimate that the first three years  
7 of implementation of the off-road rule would create  
8 somewhere in the range of 11- to 26,000 jobs. And these  
9 jobs include sales, manufacturing, installation, as well  
10 as maintenance. And many of these jobs are in California.

11           So before I close, I just want to say that the  
12 performance and durability of retrofit devices has been  
13 proven time and time again. In fact, there's over 50,000  
14 off-road retrofits around the world that have been  
15 operating for years.

16           A recent study published in 2003 by SAE, the  
17 Society of Automotive Engineers, tracked nearly 4,000  
18 construction retrofits for a period of several years and  
19 found that the failure rate was only on the order of one  
20 to two percent. And most of these failures were  
21 associated with the performance of the engine and  
22 maintenance of the engine rather than the functionality of  
23 the device itself.

24           And finally I just want to thank you and your  
25 staff for holding this open forum and getting us the

1 opportunity to speak. And MECA will continue to work with  
2 ARB and all the stakeholders to achieve the goals of this  
3 regulation. Thank you.

4 EXECUTIVE OFFICER GOLDSTENE: Thank you.

5 Peter Bransfield and Don Chapin and Ron  
6 Michaelson.

7 MR. BRANSFIELD: Good morning, Mr. Goldstene and  
8 staff.

9 My name is Peter Bransfield. I'm the CEO of a  
10 small business named Rypos. We're a retrofit  
11 manufacturer. We're a clean tech enterprise that develops  
12 and manufacturers diesel emission control devices for  
13 stationary, off-road, and refrigerated transport  
14 applications.

15 In the last year, we've retrofitted more than  
16 3200 engines in California with control devices removing  
17 more than 30 tons of particulate.

18 In the last six months, we've noticed several  
19 trends that merit your attention as you consider further  
20 action. The ARB diesel emission regulations are helping  
21 to push California into a sustainable green economy by  
22 retaining and creating jobs associated with the diesel  
23 exhaust emission control technology industry. These are  
24 technologies that we and others have developed, verified  
25 for their performance and durability, and are now

1 installing, servicing, and supporting in California and  
2 elsewhere in north America.

3           We and our industry partners continue to spend  
4 significant resources in developing and verifying these  
5 low-cost diesel retrofit technologies with a whole range  
6 of in-use diesel engines currently operating in  
7 California. The stability of the regulations and the  
8 predictability of their enforcement are significant  
9 considerations in determining whether to invest further in  
10 these clean air technologies that will make it possible to  
11 cost effectively meet the increasingly stringent  
12 regulations that were put in place to clean the air.

13           It takes us approximately three-and-a-half years  
14 from concept to field to bring one of these devices to  
15 market. Postponing or diluting the regulations or  
16 enforcement discourages further development of these new  
17 technologies essential to cleaning up the air we breathe  
18 and creating additional clean tech jobs here in  
19 California.

20           The California regulations have resulted in the  
21 growth of clean tech jobs nationwide. At my company,  
22 we've created 40 new jobs in the last 18 months, more than  
23 half of which are in manufacturing as a direct result of  
24 the compliance requirements here in California.

25           Our supplier base has reported preservation or

1 growth or a similar number of positions due to inactivity.  
2 Our dealership network of over 35 small businesses here in  
3 California have prospered in these tough economic times,  
4 creating and preserving jobs in all corners of the state,  
5 but in particular along the highway 99 corridor.

6           In summary, I urge you to uphold the current  
7 regulation and to support the new industry it has  
8 successfully created. The air quality in California will  
9 continue to be impaired by older diesel engines, unless  
10 these new technologies are allowed to come to market.  
11 Proven technology exists to remove these harmful  
12 emissions, but stable regulation is required to accelerate  
13 its adoption. The technologies and the people that  
14 install and support these reside in California. With an  
15 increased demand, we will continue this pattern of job  
16 creation. Thank you.

17           EXECUTIVE OFFICER GOLDSTENE: Thank you very  
18 much, Mr. Bransfield.

19           Mr. Chapin, then Rod Michaelson, and then Keith  
20 Wood.

21           MR. CHAPIN: Good morning, Director Goldstene.  
22 Thank you very much.

23           My name is Doug Chapin. I'm the President and  
24 CEO of Don Chapin Company located in Salinas, California.  
25 I started my business in 1978, and I'm here this morning

1 because in my 32 years of businesses I've never  
2 experienced conditions in times like we have today. No  
3 work. No money. Facing huge issues.

4 My company currently operates 143 pieces of  
5 off-road equipment. Total horsepower just under 21,000.

6 Since 2006, knowing that the subject regulation  
7 was on its way, we began a comprehensive program to bring  
8 our fleet into compliance. At the time, we were fairly  
9 confident we could make it happen. Business was good.  
10 Our revenue projections were appropriate for the time.

11 Since 2006, we've sold or disposed of 35 pieces  
12 of Tier 0 equipment. We purchased 24 new machines, none  
13 of which by the way will be in compliance with your  
14 regulation in just a few years without further  
15 modification.

16 We spent millions of dollars in our efforts to  
17 comply with this regulation. And we still can't make it.  
18 As of today, our NOx average is 6.9. Our PM average is  
19 .51. We have a long way to go, and we have no means to  
20 get there.

21 In 2006, I employed 260 people just in our  
22 construction business. Today, that number is 185. Most  
23 of the 185 are part time.

24 Most pieces of our equipment are being operated  
25 for less than 500 hours per year. Some larger pieces are

1 being operated less than 200 hours per year.

2           Our fuel use compared to 2007 is down 32 percent  
3 March 9 to February 10.

4           Since 2006, our construction revenues have  
5 decreased by 38 percent. Our profitability has plummeted  
6 three years in a row. The outlook for the future is bleak  
7 at best.

8           I'm going to leave you today. I'm going to hand  
9 you my company's last three year financial statements.  
10 They're for your confidential review. And this will be  
11 evidence that our company is where it is and where it's  
12 going.

13           I live in Monterey County, 2.4 million acres of  
14 land. I just checked the records for 2009 for building  
15 permits that were issued. In 2009, 191 new building  
16 permits in all of Monterey county. Residential new  
17 permits, 66.

18           I'm going to as well provide to you today a  
19 letter from my bank. Simply stated: We can't borrow any  
20 more money.

21           I'm going to provide you a letter from my bonding  
22 company. Simply stated: Provide capital, reduce  
23 expenses, improve profitability, and be prepared for  
24 reduced limits.

25           I'm going to provide you some other articles, a

1 surety market report. And I'm going to provide you an  
2 industry forecast from McGraw-Hill. I hope that you'll  
3 understand, study all this material, and make some reviews  
4 based on your own reading.

5 I understand your job, and I understand that good  
6 air is in all of our best interest. I consider our  
7 company very cutting knowledge and progressive.

8 We've approached compliance with your regulations  
9 with determination to do the right thing. I have,  
10 however, performed with very little reward. I get no  
11 credit for early retirement of older equipment. I get no  
12 bonus credits for buying new equipment early. I got no  
13 leg up after spending millions on new equipment. I did  
14 all of this with no help from anybody that's enforcing  
15 this regulation.

16 And now the economy chimes in. Except for low  
17 use and giving my fleet away, I can't make this  
18 requirement. We can't do it this year; we won't do it  
19 next year. Unfortunately, low use is not producing enough  
20 revenue to sustain our company, not even close. 2010  
21 looks much worse than 2009. Unless the economy picks up,  
22 I have few choices, none of which are positive. And I'm  
23 concerned standing here today that you don't get it. I  
24 can promise you after two more years of low use, we're  
25 done.

1           Can you please consider re-looking at the reg?  
2 Can you consider the fact that my fleet's operating at  
3 less than a third of the hours we operated in '06? Can  
4 you consider that without some other sources of funding,  
5 replacing and retrofitting our equipment is just not  
6 possible? And can you consider in light of the current  
7 economic situation suspending the implementation of the  
8 reg while folks like me deal with larger issues in our  
9 business, that of keeping our employees employed and our  
10 doors open, we need at least two to five years if not  
11 more?

12           I appreciate the opportunity. And I will  
13 dedicate myself and my staff to work with you and your  
14 staff to find a solution that works for all of us in  
15 California. Thank you.

16           EXECUTIVE OFFICER GOLDSTENE: Thanks, Mr. Chapin.

17           Rod Michaelson and then Keith Wood and then  
18 Harlene Barados.

19           Mr. Michaelson.

20           MR. MICHAELSON: Hi, James.

21           Rod Michaelson, I'm a member of the Off-Road  
22 Advisory Group since the beginning representing large  
23 fleets. I'm also the equipment manager for Bay Cities  
24 Paving and Grading. We did a little over \$100 million  
25 last year. We have 104 pieces of equipment, about 14,500

1 horsepower. Breaks up: Eight percent Tier 0; 34 percent  
2 Tier 1, with 20 percent of those having DPFs; Tier 2, 45  
3 percent of our fleet, 20 percent having DPFs; 9 percent  
4 Tier 3; and four percent Tier 4I. Our fleet average is  
5 seven years old.

6           So of that 104, I did nine retrofits on my  
7 machines at the price out of our pocket of \$209,000. That  
8 gave me 1960 horsepower. I did it for the double  
9 horsepower credit, because unfortunately we weren't doing  
10 terribly. I'm conservative politically and economically.  
11 And even through the good times, I saw the bubble was  
12 going to bust. The boss wanted to buy new equipment, I  
13 said, no, let's rent, and keep our equipment where we  
14 could.

15           So DPFs, I'm against them and this is why. Out  
16 of the 104 pieces, I have 24 pieces that are high  
17 frequency violation paving equipment. They can't handle  
18 DPFs. I have 47 pieces that I keep less than six years.  
19 I'm not going to put a DPF on something I'm going to keep  
20 six years.

21           I have nine machines I've done the DPFs on. I  
22 have six machines that are Tier 0, not using much, but I  
23 can't go out and buy a million-dollar machine to replace  
24 that \$100,000 machine, so I keep it. But I only have six  
25 of them.

1           Five machines are motor graders I would rather  
2 put a Tier 3 engine on than a DPF on because the engines  
3 are getting older, but that doesn't give me DPF credit.

4           I have six smaller dozers that are worth less  
5 than \$50,000, and I'm not going to put a \$20,000 filter  
6 on. That leaves me seven machines I can put DPFs on, or  
7 six percent.

8           My truck fleet is 12 years old on the average.  
9 I'd buy newer trucks, but I can't buy a new truck, but  
10 these regulations don't say get rid of that 1988 and get a  
11 2004 and that's better. So I don't buy anything.

12           I could make my fleet younger, but I don't know  
13 what to do.

14           Of those 28 trucks that I have on my fleet -- I  
15 called Emissions Retrofit Group yesterday out of  
16 Sacramento, sent them my list of trucks and asked them  
17 what I can do. Their answer, two. In the way that we use  
18 our trucks, water trucks on jobs, mechanic trucks with  
19 PTOs, I can do two.

20           One of our competitors might be in this room. We  
21 lost a \$91 million Caltrans estimated job by \$60,000. The  
22 bid went for \$61 million. It's a four-year job. I'm glad  
23 I'm not their equipment manager.

24           So the reports are that 4I engine from the major  
25 manufacturer is going to cost me 12 percent more to get a

1 4I engine, the latest and greatest. I've heard from one  
2 of my friends that the true 4 is going to be 50 percent  
3 more. That's going to be tough.

4 Now I know that CARB has a \$1.2 billion yearly  
5 budget. That's a lot of money. And you're giving a lot  
6 of DPF money out to people to put DPFs on older trucks.  
7 Well, like I explained to the Senate when I testified a  
8 couple weeks ago, I listen to my music on this. What  
9 you're doing is retrofitting really expensive cassette  
10 players. Thank you.

11 EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr.  
12 Michaelson.

13 Keith Wood and then Harlene Barados and Frank  
14 Barados.

15 MR. WOOD: Thank you.

16 Keith Wood, equipment superintendent, Shimmick  
17 Construction Company.

18 First thing I'd like to do is say thank you to  
19 the president of our company, Mr. Paul Cackotas, who  
20 advised us in our equipment division to not act too  
21 aggressively to CARB's threats and to get too excited  
22 about DPFs and retrofit our equipment until you have a  
23 waiver. This proved to be very good advice last month.

24 We have 100 pieces of equipment in the off-road  
25 rule. We're also a member of South Coast's showcase

1 program. We tried very hard to get in there and become a  
2 big part of this program.

3 Out of our 100 pieces of equipment, we could only  
4 come up with four pieces that we could retrofit through  
5 their program that was either economically viable to us or  
6 to them or that would even work on.

7 Now we have out of all this older Tier 0  
8 equipment we have, it's no longer worth pennies on the  
9 dollar. We sell it by the ton for scrap metal. If you've  
10 got large old excavators, the poor guys out here that have  
11 scrapers, they're not worth anything. Tractors we had  
12 that were worth \$250,000 in 2005 are now worth \$150 a ton.

13 And I was talking to Rod earlier. I read in  
14 Diesel Progress CAT published that their new gen-sets will  
15 be 25 to 50 percent more expensive when they start adding  
16 Tier 4 finals in them.

17 And you guys need to be careful, because what  
18 you're going to do is kill the local state fleets. You're  
19 going to kill these good old California companies and give  
20 serious advantage to out-of-state fleets that can rotate  
21 in fresh brand-new equipment. And they're just going to  
22 rotate it in and out, and we will be gone. And I really,  
23 really hope that you pay attention to what the AGC said  
24 today, because they have some great statistics.

25 Thank you.

1 EXECUTIVE OFFICER GOLDSTONE: Thank you, Mr.  
2 Wood.

3 Can we hold our applause? We are just trying to  
4 get the testimony here.

5 Baratos, Harlene and Frank, are you here, from  
6 Engineered Concrete? Okay.

7 The next group which is presenting as a group is  
8 William Pursel, Mike Mehawk, Charles Bynum, Stephen Lewis,  
9 Jim Jacobs, Dave Harrison. You're all with the Local  
10 Union Operating Engineers 3.

11 MR. HARRISON: Mr. Goldstone, staff, my name is  
12 Dave Harrison, Director of Safety for the Operating  
13 Engineers Local 3. We are the largest construction union  
14 in the country, and so we thought it only fitting that we  
15 come up as a group.

16 I'm going to start out -- we're going to take  
17 some testimony from some of our members, and I'm going to  
18 finish with some final statements and requests.

19 MR. PURSEL: Good afternoon. My name is William  
20 Pursel. I'm a 30-year member of the Operating Engineers.  
21 I've worked in the trade for 30 years.

22 I think the trades came a long ways with our  
23 engines and our equipment. I've seen it. I don't know if  
24 you've seen it. I know you have your statistics and what  
25 the diesel pollutants are, and I'm for clean air. But I

1 think, you know, we need to look back at where we're going  
2 and how we're approaching this situation. Are we just  
3 putting another nail in the coffin? I mean, pretty soon  
4 are you going to have anybody here in the state to govern?  
5 Or are you driving all the industries out? Like has been  
6 stated earlier, I'm for clean air, but let's look at where  
7 we're going.

8           We've heard about producing jobs, making these  
9 retrofit systems on older equipment. Our equipment is  
10 getting older. I'm a good old tool, but pretty soon you  
11 got to put me away, too. But the new stuff has come a  
12 long ways. But at this present economy, we're not going  
13 out and buying a whole new fleet. So think about that.

14           As was stated earlier about when somebody is  
15 driving an old car down the road, we're not on them that  
16 bad to get rid of that. But now we're getting on the  
17 industries that make money that produce jobs in the state  
18 and pay our taxes. So just think about that.

19           Thank you for your time.

20           EXECUTIVE OFFICER GOLDSTENE: Mike Mehawk.

21           MR. MEHAWK: My name is Mike Mehawk. I'm an  
22 operator with the Operating Engineers Local 3. And being  
23 here today, I was fortunate enough to come into this  
24 industry just three years ago. So dealing with this and  
25 the complexity and the gravity and thank you for the

1 opportunity, Mr. Goldstene, and your staff. The  
2 complexity and the gravity of the decisions you have to  
3 make are beyond my pay scale. It's just that simple.

4           And you talk about a rock and a hard place. What  
5 I'm getting from this and listening to you -- I climbed in  
6 the Himalayas in '91. Walking out in Kathmandu as a young  
7 man, I realized what the EPA does. Because I didn't need  
8 a finely tuned instrument to understand what I was  
9 breathing in. So I understand what you're doing.

10           But sitting in my seat -- and I appreciate Mr.  
11 Shaw and his share and everybody today because those  
12 seats -- the company I worked with last year, they had a  
13 job out of state. They took their equipment there and  
14 they left it. When Mr. Shaw said that, when that seat  
15 leaves, there's my job. So all I can do is really I don't  
16 have any numbers or analysis for you, just a face and a  
17 heart. That seat that leaves, that's me.

18           EXECUTIVE OFFICER GOLDSTENE: Thank you very  
19 much. Where are you from? What area of the state are  
20 you --

21           MR. MEHAWK: Dixon.

22           EXECUTIVE OFFICER GOLDSTENE: Thank you.

23           Are you Charles?

24           MR. BYNUM: Thank you, Mr. Goldstene and staff,  
25 for letting us come here.

1           Most of us all for the clean air. We've been  
2 hearing it over and over. We are seeing what's happening  
3 with the environment and everything else. But at the same  
4 time, it comes at a time when the economy is so bad. I  
5 mean, I don't know any of you have been around during when  
6 the 80s hit, the recession, that was a small recession at  
7 the time. It took a little while for that to peak out.

8           Well, this is worse. So it's going to take these  
9 contractors a lot more time to start getting things back  
10 up to par. And all we're asking -- we can see they're  
11 really trying -- that you give a little bit of leeway.

12           I hear Kim is still talking about training for  
13 March, instead of saying maybe we can try to work on that.  
14 Maybe extend to some training distance date. Give these  
15 guys a break, because it gives us a break. We need to  
16 work.

17           The banks don't care. They want to repossess  
18 this building, they'll tell you to move out. They don't  
19 have a heart.

20           But the construction workers is the one that  
21 built this place, that give you a place to work at. Just  
22 like give the contractors some jobs to do, it gives us  
23 work to do.

24           So without the contractors, without any  
25 machinery, and without any help on your end to help them

1 out, you know, you're going to have all this retrofit work  
2 that's going down the tubes. You've got a lot of freeways  
3 that need to be worked on, a lot of bridges. You're going  
4 to have another scenario like what happened in '89 when  
5 the Bay Bridge collapse, the Cypress went down, because of  
6 maintenance. We need that work.

7           Right now, a lot of construction guys that help  
8 build this place put this building up so you can have a  
9 job. I know you probably say get out of the business.  
10 Get white collar work. We chose what we want to do  
11 because I like what I do. Because when I see a building  
12 goes up, it employs people like you. Simple as that. So  
13 I like what I do.

14           But if I can't -- the bank tells me, "Well, what  
15 do you do for a living?" "I do construction." "Well, get  
16 out and do something else." Because we need that payment  
17 for their house. So what do you tell them?

18           Just like the contractors, the guy just said, the  
19 bank wants to know, what do you have for collateral? What  
20 do you have to keep things going? If you don't, then  
21 you're out of business. I'm out of my house. But I'm the  
22 same person that helped build your houses and your roads.  
23 So that's just something to think about.

24           EXECUTIVE OFFICER GOLDSTENE: Thank you. Where  
25 are you from?

1 MR. BYNUM: Sacramento.

2 EXECUTIVE OFFICER GOLDSTONE: You're all local?

3 Okay. Just curious. Thank you very much.

4 Mr. Lewis.

5 MR. LEWIS: Good morning. My name is Steve  
6 Lewis. I'm from Fairfield. I've been with Operating  
7 Engineers for 20 years. I'm one of the 364,000 that are  
8 out of work right now. Not saying that these rules are  
9 what put me there at this moment, but I'm sure it helps a  
10 little bit.

11 I'm here in support of the contractors and the  
12 AGC and all the employees that go along with it.

13 And on another issue of the safety of these  
14 retrofits, I've actually worked on some of the equipment  
15 with the retrofits done to them. And there are some  
16 safety issues. You know, the vision, it just takes away a  
17 lot of vision for an operator. There are some blind spots  
18 due to the heavy bulky equipment that's been installed on  
19 some of this equipment.

20 And also I personally own a couple pieces of  
21 equipment myself. And I know when it comes time for me to  
22 retrofit, I'm selling. I can't afford to keep the  
23 equipment at that point. I'm just small time, you know,  
24 not a lot of equipment. But what I do have, I can't  
25 afford to retrofit.

1           And if I could, the price of that's just going to  
2 get passed on to the consumer anyway. That's how it's  
3 done.

4           Anyway, I thank you for the opportunity of  
5 speaking here and having you listen.

6           EXECUTIVE OFFICER GOLDSTONE: Thank you very much  
7 for coming this morning.

8           Mr. Jacobs.

9           MR. JACOBS: Jim Jacobs, a 20-year member of the  
10 Operating Engineers and a business representative for the  
11 Operating Engineers.

12           So how are you doing, Erik?

13           I know I worked with you all through the crane  
14 regs. I'm a fifth generation Californian. And it's  
15 getting harder to be proud of that. I don't want to leave  
16 this state. I don't want any of the contractors or  
17 employers in this room to leave the state. And I don't  
18 want out-of-state contractors taking the work of these men  
19 get for our members now.

20           I represent the four that just spoke and the  
21 other 10,000 that are out of work right now. It's daily.  
22 Daily, I'm getting phone calls from our members that are  
23 losing homes, losing their entire livelihood, or leaving  
24 the state because there's no work.

25           Now, I realize you guys didn't create that storm.

1 But you certainly can help make it go away with pushing  
2 these regs off. And I really hope you guys are listening  
3 to everybody in the room today. There was some great  
4 stuff said this morning. It's terrifying at best. So  
5 please give everybody a break. Thank you.

6 EXECUTIVE OFFICER GOLDSTONE: Thank you very  
7 much, Mr. Jacobs.

8 Mr. Harrison, you're going to close?

9 MR. HARRISON: In closing, you've heard the  
10 testimony today and we've heard from our contractor from  
11 industry about economics of the situation. It's not the  
12 only issue at hand.

13 I'm here today to talk about the current  
14 regulations and how they're effecting our members directly  
15 and the companies that employ them.

16 First, I'd like to say that from 2006 until  
17 now -- and I reported this at the last Board meeting --  
18 Operating Engineers, the largest construction unit in the  
19 country, our hours are down almost 40 percent, a direct  
20 relation to the industry, way above the state's  
21 unemployment rate. With our hours down, our employers are  
22 forced to reduce the size of their fleets to comply.

23 We've got contractors working out of state that  
24 never did before, because they're able to. They're able  
25 to actually use the equipment they have. We have

1 contractors that are working out of state and choosing to  
2 not bring that equipment back once it leaves. It's not  
3 economically feasible for them.

4           Unless we reduce the size of our workforce, this  
5 only means higher unemployment. For every seat we lose,  
6 that's one less job for the operating engineers. You go  
7 up to Capitol Hill and go down the road to the State  
8 Capitol, you hear jobs, jobs, jobs. You hear health care,  
9 some other issues, but jobs, jobs, jobs. That's the theme  
10 of today because unemployment is so bad. And this  
11 regulation isn't helping that.

12           We're forcing our employers to choose between a  
13 filter and an employee. Can't afford both.

14           The other issue I'd like to talk about is safety.  
15 You've heard that. I've heard a lot of economic arguments  
16 today. There's also a safety issue. There is this  
17 retrofit. You heard from the filter manufacturers today,  
18 and I'd like to send a request to them when I'm done with  
19 this. These filters create a huge safety hazard. There's  
20 fire burn and obstruction of vision. They're extremely  
21 expensive. And they may have to be installed as many as  
22 three times in some cases working through some of the  
23 exemption and the different methodologies. I'm not sure  
24 who's going to pay for that.

25           Our members are in the seats and on the ground in

1 closest proximity to this equipment. My worry is that when  
2 the choice comes to work in an unsafe condition or put  
3 food on the table for their families, they're going to  
4 take the low road.

5           Then comes incomes the kicker. Ball all this up  
6 into a big pile of garbage, and you can't even legally  
7 implement the entire reg, because you don't have your  
8 waiver from the feds yet. You put the cart before the  
9 horse at the expense of Californians in our opinion.

10           We've suggested that the answer to the safety  
11 issue is research and development. I'm also a member of  
12 the Off-Road Group, and we've suggested that from the  
13 beginning. We heard the filter manufacturers testify  
14 today that they've been working for ten and sometimes  
15 20 years. We need to give it a couple more years. Do  
16 more research and development, because one-size-fits-all  
17 does not work. And we've learned that. If it did work,  
18 we wouldn't be where we're at with the safety issues.  
19 Design a filter that's safe.

20           Our suggestion for the economic impact of the  
21 regulation is to give us more time. The AGC studies show  
22 that acceptable air quality projections even if we add  
23 they say two -- I ask for more. I've heard five. I'll  
24 split the difference and ask for three. Add three years  
25 to all compliance dates. This will allow for R&D on the

1 filters and allow for the economy to rebound from our  
2 great recession. Please allow more time. All we ask is  
3 three years.

4 EXECUTIVE OFFICER GOLDSTONE: Dave Valdez, Nick  
5 Pfeifer and Skip Brown.

6 MR. VALDEZ: Good morning. My name is Dave  
7 Valdez. I'm the equipment manager for the Penhall  
8 Company.

9 I guess this morning I'm just going to reiterate  
10 and reinforce what everybody has told you this morning.  
11 I'll give you information on our California fleet only, as  
12 I have 38 locations around the country.

13 So let's talk about the labor first. 2009 was a  
14 very tough year as a contractor for the Penhall Company.  
15 We had our very first mass reduction in force. We lost 22  
16 percent of our California employees, which was 61 percent  
17 of the total reduction in force.

18 We are going to make our off-highway through 2013  
19 we think through the DOORS program. That's due to  
20 reduction in fleet. We're able to take a 17,000  
21 horsepower credit which eliminated 20 operating engineers'  
22 positions in one division.

23 We subsequently closed three California divisions  
24 over the past 12 months, eliminating both some operating  
25 engineers positions as well as labor positions.

1           Revenues for California from 2006-2009 are off 40  
2 percent. The margins are nonexistent.

3           Something that hasn't been addressed today -- and  
4 I don't know if you want to hear -- was the on-highway  
5 affects us greatly as well. We've got in the California  
6 fleet there's 92 on-highway trucks under the regulation  
7 that are 1994 and older. So the feasibility of  
8 retrofitting or repowering these vehicles is not there.  
9 The majority of them, 60 percent, are HD 3500 GM product  
10 with 6.5 diesel, which wasn't worth buying in the first  
11 place. But another story.

12           We're looking at approximately 8- to \$10.3  
13 million in replacement of those 92 trucks. Just first  
14 round on our DOORS and on-highway combined.

15           Our Tier 0 excavators is four to six million in  
16 replacement that will be necessary. This is today's  
17 dollars, not 2013 dollars when we actually have to get  
18 going, I guess.

19           Our backhoes are 1.8 million. Bobcats, another  
20 million. Our compressors, which is in the PERP program,  
21 today is 325,000. I had to take 29 out of service in  
22 December. Because of the reduced workload, I haven't had  
23 to replace any yet.

24           In our saws, which make most of our money, is  
25 another \$450,000. So in total, our first round

1 replacement, we're looking anywhere from 15.5 million to  
2 17 million. If we do this at 25 percent rather than at 20  
3 percent turnover, it's about \$4.3 million our first turn.  
4 And looking at the economic recovery, we don't have the  
5 money today. It's not looking like we'll have it in 2013.

6           We have been -- anything that we do purchase  
7 since this is upon nationwide we do buy 4I. We won't  
8 buy -- or the latest technology in the case of Tier 3  
9 being the most -- the highest available. We are  
10 repowering specialty equipment with 4I or Tier 3 as well  
11 as we can afford it financially.

12           And I appreciate where we're going. Thank you  
13 for listening to me today.

14           EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr.  
15 Valdes.

16           Nick Pfeifer, Skip Brown, Dermot Fallen.

17           MR. PFEIFER: My name is Nick Pfeifer. I work  
18 for Granite Construction Company.

19           I'm testifying today with mixed feelings on  
20 what's going on. On one hand, Granite is feeling the same  
21 economic pain that every other company that's testified  
22 today is talking about. Our revenues are way down. Our  
23 California equipment utilization is off more than  
24 50 percent. And we've experienced significant cost  
25 reductions and layoffs in our California operations. So I

1 think there's something that needs to be done on the  
2 economic relief end of things.

3           On the other side, it's extremely frustrating as  
4 a proactive fleet who took actions ahead of the compliance  
5 dates and would have been in compliance that there is no  
6 enforcement to hold other fleets accountable.

7           There's hypothetically a situation today where a  
8 company like Granite or some other company that's incurred  
9 costs -- in Granites' case, of over \$2 million for the  
10 original compliance dates -- that an out-of-state company  
11 can bring an entirely Tier 0 fleet into the state and  
12 underbid us on a project in California. This creates a  
13 distinct competitive disadvantage for any fleet that has  
14 invested money in compliance.

15           I'd like to think of myself as a  
16 solution-oriented person. So I have a couple of thoughts  
17 about the situation. The first is that any relief needs  
18 to be in the form of a sliding of time frames.  
19 Compressing of time frames -- I know we're up against the  
20 2014 SIP deadlines, but compressing of time frames creates  
21 logistical nightmares for companies. You plan on the  
22 regulation as it's originally written, and then you start  
23 compressing things and capital budget cycles, things like  
24 that get completely thrown out of whack.

25           The second is to give adequate time between any

1 amendments and the regulatory deadlines that they affect  
2 so that companies can adjust their strategies. Just a  
3 time frame to throw out there is that would be reasonable  
4 is one year. That's an appropriate amount of time for  
5 companies to adjust their capital budgets and to account  
6 for equipment lead times.

7           And lastly, there needs to be recognition of and  
8 credit given to actions taken before original compliance  
9 dates so that companies who took a proactive approach can  
10 be rewarded rather than noncompliant companies or  
11 out-of-state companies being allowed to underbid for work.

12           Thank you.

13           EXECUTIVE OFFICER GOLDSTONE: Thanks.

14           Skip, Dermot, and then Sam Leeper and John  
15 Julette.

16           MR. BROWN: Skip Brown, Delta Construction  
17 Company, family business in California 67 years and  
18 counting.

19           I got a kick out of Nick's comment, adjust your  
20 capital budget. I haven't taken a salary in 18 months so  
21 I can keep my people. That's what the economy is doing to  
22 us.

23           You've heard enough about the economy, so I'm not  
24 going to talk about that.

25           You heard about how companies are going to

1 survive this. If they do survive this, they're going to  
2 do it by attrition. We're going to cancel seats and get  
3 rid of equipment.

4 I want to thank you for the science symposium  
5 that you had here a week or so ago. I think that was  
6 extremely valuable. I think it showed that there is a  
7 serious need for an independent study to be had to really  
8 review the science.

9 And I would like to know when will the posting be  
10 available for public comments on the science symposium? I  
11 sent something in a couple weeks ago and they said, "No,  
12 you can't post it yet."

13 And I said, "Well, wait a minute. We're having a  
14 symposium on the science, and I want to post some comments  
15 about that. And I think it's important before the science  
16 symposium."

17 And they said, "We'll have a posting site up  
18 after we determine our position."

19 Why are we having public comments if you're going  
20 to come up with a position without taking into  
21 consideration?

22 But anyway, when will that posting site happen?  
23 Do you know that yet?

24 EXECUTIVE OFFICER GOLDSTENE: Let me find out  
25 where that is. I'll try to get an answer by the end of

1 the day.

2 MR. BROWN: I'll move on.

3 What I want to do is bring up a couple potential  
4 solutions for you. Instead of whining about this, let's  
5 talk about solutions. Solution one is will be to pay the  
6 cost for the upgrade for these people that are being  
7 charged the upgrade. So I was told by staff after giving  
8 financial statements that I need to raise my prices.

9 If I was a utility company and I was supplying  
10 water to everybody and I had this increase in cost, I  
11 would say every household is going to pay \$10 more a month  
12 because I have a monopolistic situation here. But we have  
13 a free market out here in the world that we live in, and  
14 we have to be low bidder to get the job. I can't put down  
15 at the bottom of the page that I would have been low but  
16 CARB said I had to raise my prices so you need to award  
17 the project to me.

18 How would you pay the cost for the upgrade? The  
19 beneficiaries should pay the cost. That's the population  
20 of the state. That would be the same thing as passing  
21 along the cost, which we're all talking about doing.

22 Well, so how would the beneficiaries pay the cost?  
23 According to your study of March 26th of 2006, for every  
24 one dollar of regulation, you get a four to \$26 return on  
25 investment. That's how much health savings you're having.

1           If that's true, let's put an initiative out, a  
2 bond out to the voters and let's say, you know, we're  
3 going to save all this in your health costs. And so if  
4 the bond passes, then fine, you have the money, provided  
5 of course California can sell us bonds, which I'm not too  
6 sure about that. But then you bring the money up from the  
7 bond and you pay the cost to the owners of the few folks  
8 that have the pay for entire cost of this program.

9           Now if that doesn't work, I say declare victory  
10 and go home. We met your targets. Unless you can come up  
11 with something that shows that AGC's report and their  
12 study is invalid, we've met your targets. Don't move the  
13 goal post on us. We've met your target, at least until  
14 2015.

15           I'm not saying quit monitoring the air. CARB has  
16 done a wonderful job of cleaning up the air in California.  
17 They've done it on new equipment. This is the first time  
18 you've ever taken the equipment that's already owned,  
19 already purchased, and thrown an ex post facto law, have  
20 taken away the use and the ability to sell that equipment.  
21 That's illegal. That's against Amendment 5 of the U.S.  
22 Constitution. At some point in time, someone is going to  
23 sue you under Amendment 5, and the state of California is  
24 going to lose that suit under the takings clause. That's  
25 going to cost everybody here a horrendous amount of money,

1 because once one suit is won, there will be tens of  
2 thousands of suits that are won.

3           So I think that you need to take one of the two  
4 solutions: Either declare victory and go home, and then  
5 if you can't make it in 2015, I think we need to talk to  
6 the fed EPA about the SIP plan and the viability of  
7 possibility meeting that SIP plan.

8           Thank you very much.

9           (Applause)

10           EXECUTIVE OFFICER GOLDSTENE: Dermont, Sam  
11 Leeper, and John Juetta.

12           MR. FALLON: I'd like to thank you for this  
13 opportunity.

14           My name is Dermot Fallon. I'm a project  
15 executive with Foundation Constructors. I'm here with my  
16 equipment manager, Ken Beverage.

17           We consider ourselves the premier pile driving  
18 and specialty foundation contractor on the west coast.  
19 Since 2007, we've seen our revenues drop by 40 percent.  
20 And we see further declines for 2010.

21           As a large fleet contractor, we have equipment  
22 capacities to perform 25 projects on a daily basis.  
23 Today, March 11th, we don't have a single piling driving  
24 crew working. We anticipate project starting early next  
25 week, but that doesn't help this week's revenue. We

1 currently have 25 of our core employees, pile drivers and  
2 operators, sitting at home unable to find work. These are  
3 very highly skilled specialized craft.

4 Our fleet consists of 25,000 horsepower between  
5 northern California and southern California. Again today,  
6 none of that equipment is working.

7 We have 30 cranes between the years of 1969 and  
8 1996 with a majority in the '70s. New cranes are not  
9 conducive to pile driving. However, being proactive for  
10 these, we have retrofitted eleven of these cranes,  
11 installed VDEX, and we have spent approximately \$5 million  
12 in these efforts.

13 Seven of our forklifts have been brought up to  
14 compliance for the 2010 requirements. To meet the 2011  
15 requirements, we are looking at spending another 500 to a  
16 million dollars. For us to comply with the 2011, 2013  
17 requirements could put us out of business.

18 We have a mechanics staff of eight mechanics in  
19 northern California/southern California. Three of those  
20 today are working on retrofits of equipment. Again, we  
21 don't have any pile driving crews to create revenue  
22 working today.

23 It's been difficult to get funding from the banks  
24 to support this equipment endeavors and equipment  
25 retrofits. This money is all coming from our bottom line,

1 our cash flow, and the stockholders' equity.

2           In today's construction competitive bidding  
3 environment, projects have been scarce, resulting in  
4 contractors taking projects with ridiculously low prices  
5 with no intention of making profit but just keeping the  
6 doors open.

7           The majority of our equipment is specialized and  
8 some of the equipment only gets used on one or two  
9 projects a year. This is what keeps us as a specialty  
10 foundation contractor.

11           We can't afford to give this equipment up or ship  
12 it overseas or to other states. This equipment came from  
13 years of research and development of our own company to  
14 come up with this equipment. Foundation is in agreement  
15 with AGC's recommendations and with Tom Foss'  
16 recommendations to extend the deadlines by five years.

17           EXECUTIVE OFFICER GOLDSTENE: Thank you.

18           Sam Leeper and John Juetten and then Clayton  
19 Miller.

20           MR. LEEPER: Good afternoon.

21           My name is Sam Leeper, B&B Equipment Rental.  
22 We're one of the largest heavy equipment rental companies  
23 in southern California.

24           I've been in this industry for almost 40 years,  
25 and this is the worst economy I have seen that I can

1 remember. Not a lot of work out there. Not a lot of  
2 money.

3           And one of the things that happened to B&B, B&B  
4 is -- or should I say used to be a family-owned company.  
5 We were forced because of the economy and the regulations  
6 to sell the company out. We cannot survive the economy  
7 and CARB and keep the company and its employees in  
8 business without help.

9           We were forced into selling the company to a  
10 large out-of-state corporation to survive. This was not  
11 something that B&B wanted to do, but it was necessary to  
12 keep us in business and keep the loyal employees that have  
13 put many years into B&B making it the company that it is  
14 today. The owners of B&B equipment are very, very  
15 employee-oriented people, and they would do whatever it  
16 takes to keep the employees on the payroll.

17           The construction industry asked for CARB  
18 two years ago to push back the compliance dates, and we  
19 were basically told, no, we're not going to do it. A year  
20 ago, the same thing was brought up. Can we possibly push  
21 these back to a later date because of the economy? We  
22 were basically told at that same time we don't see it  
23 happening.

24           Now, shortly before the compliance dates came up,  
25 we're going to push them back. B&B has been working for

1 many years towards making these compliance dates  
2 financially and selling off machines, buying some new ones  
3 when we could afford to do this, and it hasn't been easy  
4 to do. So to make these dates, the company was sold and  
5 we got financial help from a large corporation. Not going  
6 to mention their names at this time. And they're an  
7 out-of-state corporation. So a lot of the revenues are  
8 not staying in California now.

9           If we would have got these compliance dates  
10 pushed back, it would have been a lot different situation  
11 for B&B. We would have been able to make smarter  
12 decisions on what direction for B&B to go into, but we  
13 mainly did it to keep our company in business and to keep  
14 our employees employed. We have had a few small layoffs,  
15 but it hasn't been what a lot of the companies out here  
16 have done just because of what we've done to keep  
17 ourselves in business. It's hard to do it that way.

18           One thing I would like to ask if you're going to  
19 push the compliance dates back, we need to keep the  
20 requirements of 2010 back. If it starts at 2012, that's  
21 where we need to have the requirements -- the PM and the  
22 NOx requirements start again. Because if you say, no,  
23 we're going to push it to 2012 and suddenly, bang, we have  
24 to meet the 2012 requirements, we haven't gained a thing.  
25 We're still going to have to sell off equipment. We're

1 still going to have to buy equipment. In this economy,  
2 it's going to be very, very tough to do.

3 I think everybody in this room right now is --  
4 I'm not going to give statistics, because I think the  
5 statistics I've heard right now are scaring everybody, but  
6 they're true statistics.

7 This industry is on the definite downturn. And I  
8 know for a fact there has been a lot of contractors that  
9 have went out of business because they can't make the  
10 requirements or they're not going to try to make the  
11 requirements, and a lot of contractors have moved out of  
12 state to do business other places. This is not helping  
13 the state of California at all.

14 So if something is not done, the construction  
15 industry in California is going to be dead. And it's  
16 going to take a long time for this industry to come back.  
17 And it's probably not going to be while I'm still working,  
18 and it's not going to be while a lot of these guys are  
19 going to be working. It's going to be the younger guys  
20 coming up fighting this battle, and it is going to be a  
21 tremendous battle.

22 So, you know, I want to thank the Board for  
23 listening to us. I know you're probably going to be  
24 listening to the same scenario the whole time. But this  
25 is the truism. This is exactly what the industry is doing

1 out here right now. And everybody is just not painting  
2 gloom and doom because we don't want to do this.  
3 Everybody here wants to make this a good state to live in  
4 for our kids and our grandkids. But right now, it's just  
5 not financially feasible to do it. Thank you for your  
6 time.

7 EXECUTIVE OFFICER GOLDSTENE: Thank you very  
8 much.

9 John Juette and Clayton Miller and Bill Davis.

10 MR. JUETTE: Good morning.

11 I'm John Juette, J&M Land Restoration. I'm out  
12 of Bakersfield, California, one of the worst air quality  
13 places in the nation.

14 I have one daughter that has asthma, so I'm  
15 sensitive to what you're trying to do. Yet, our company  
16 has gone from 35 employees -- 30 to 35 employees last year  
17 to three. We have our hydro seeders and straw blowers now  
18 we're bidding out-of-state work because of compliance  
19 issues here. We will not make your year 2011 compliance.  
20 There's no way. We don't have the income to buy the  
21 filters, to retrofit new engines, or put new engines in  
22 the machines is just not practical at this point in time.  
23 There's not enough work out there.

24 And then I find out that the county of Kern will  
25 not allow us to use any engines on their work that are not

1 Tier 2 or better. Well, that shoots me down for even my  
2 own backyard of working. So currently, we're working --  
3 or bidding jobs in Nevada and Arizona and New Mexico where  
4 we can put our machines to work.

5           If any possibility if you could see your way to  
6 move this back to give us more time with the economy the  
7 way it is, it would greatly help us. We could buy new  
8 equipment, new engines, retrofit what we have. But the  
9 filters are expensive. The new engines are expensive.  
10 And we just don't have the income to do it right now.  
11 It's just not there.

12           EXECUTIVE OFFICER GOLDSTONE: Thank you very  
13 much.

14           Clayton Miller and Bill Davis and then -- lunch  
15 after Bill? I was thinking we go to 12:30. And then Ed  
16 McKinley.

17           MR. MILLER: Good afternoon.

18           My name is Clayton Miller. I'm representing the  
19 Construction Industry Air Quality Coalition. And one of  
20 the missions of CIAQC is to communicate with our members  
21 and the industry as a whole to the best we can to keep  
22 everyone updated about what's going on.

23           In an effort leading up to this public workshop  
24 today, we asked anyone that wished that we could share  
25 some of their story with you that were not able to attend

1 because of various reasons. So I'm going to do that as  
2 quickly and briefly as I can. There's seven fleets that I  
3 wanted to highlight.

4           The first is a large fleet that indicated that  
5 between 2006 and 2009 it has reduced the size of its fleet  
6 horsepower by 29 percent. The company also is  
7 experiencing a 94 percent reduction in annual fuel usage,  
8 and the company's revenue over the same period is down 93  
9 percent. This unfortunately has led to the letting go of  
10 employees. They had to let 73 percent of their employees  
11 go, resulting in the loss of 24 jobs.

12           The second is a company that was founded by  
13 someone who started in the construction business in 1946.  
14 The company has sold ten pieces of equipment since 2006,  
15 causing the company to shrink from a medium sized to a  
16 small fleet and had to reduce the number of its employees  
17 by 80 percent, resulting in directly 32 jobs.

18           This company believes that to comply with the  
19 future regulations it will need to replace 80 percent of  
20 its existing equipment. I guess it has one bit of  
21 optimism, it thinks the economy may turn around in the  
22 next two years.

23           The next example is a fleet that's owned -- a  
24 large fleet by a company in southern California that  
25 operates throughout the state indicates that between 2007

1 and 2009 its diesel fuel purchases have been reduced by  
2 more than half.

3           Another company that got in contact with us  
4 wanted to express the difficulty with compliance for three  
5 CARB regulations. We're not only talking about the  
6 off-road regulation here today, but also it owns on-road  
7 trucks and also has to comply with the portable  
8 regulation. So it stressed the cumulative impact.

9           But on that, this same company is a large fleet,  
10 and it indicates that over half of its fleet right now is  
11 parked and that the equipment that are on the job sites  
12 that hours are down dramatically. So it's not emitting.  
13 Due to the slowdown of the economy, this company has had  
14 to lay off two-thirds of its mechanics. And since '06, it  
15 has reduced its overall employment by 72 percent,  
16 representing 400 jobs. When asked how it will comply with  
17 the future regulation moving forward, the answer they  
18 really can only see is that we're going to have to  
19 continue to -- sell equipment. The cost to buy new is  
20 just -- and retrofit is too expensive to do anything  
21 otherwise at this point in its view.

22           EXECUTIVE OFFICER GOLDSTENE: Is there any chance  
23 this could be put together and submitted to us in writing?

24           MR. MILLER: I still have four more examples, but  
25 I think what they all do is point to what's important here

1 is that it further illustrates that emissions from the  
2 construction industry are down right now. The  
3 construction industry has been dramatically impacted by  
4 the economy and the future recovery timeframe looks  
5 uncertain at best.

6           So CIAQC would recommend an immediate action.  
7 CARB should delay implementation of the regulation for at  
8 least two years. This will give the Air Board time to  
9 reanalyze the data that supports the regulation and also  
10 provide some relief for contractors struggling to find a  
11 way to stay in business and preserve jobs.

12           EXECUTIVE OFFICER GOLDSTONE: Appreciate it.  
13 Thank you.

14           Bill Davis and Ned McKinley and then Larry  
15 Milton.

16           MR. DAVIS: My name is Bill Davis. I'm with the  
17 Southern California Contractors Association, SCCS, and I  
18 promise not to say that 115 times.

19           We're here today with much the same information  
20 that you've already gathered. In fact, I quite honestly  
21 believe that you guys believe the construction industry is  
22 in deep, deep doo-doo. And we could use your help in that  
23 regard.

24           However, I also believe that you've got other  
25 issues, other problems. And among of the things I admire

1 about Mary Nichols is her remarkable candor. At the  
2 January 28th meeting of the Board, Ms. Nichols said that,  
3 "The regulations we have on diesel are based on air  
4 quality standards that we're required to meet. So even if  
5 there is zero mortality" -- no death as caused by  
6 emissions from diesel equipment -- "even if there is zero  
7 mortality, there is an air quality standard based on any  
8 public health issue we still have to come up with  
9 regulations to meet it."

10           So we're in a position of you regulating us  
11 because EPA is regulating you. That's the SIP mystery.  
12 As luck would have it, on February 4th, I was here in  
13 Sacramento attending an EPA hearing because they're  
14 getting ready to ratchet down the ozone requirements for  
15 the second time in two years. And I asked them the  
16 question and the deputy administrator -- I'm sorry I can't  
17 remember her name, I'll go to the transcript and look it  
18 up for you -- deputy administrator from EPA, I asked her  
19 the question about the SIP. I said, "We have a SIP held  
20 over us all the time that we're going to lose all our  
21 highway funds and bad things are going to happen and cats  
22 and dogs are going to fall out of the sky if we don't meet  
23 the SIP requirements." And she said, "No, no. We would  
24 never withhold highway funds from a state that had an  
25 approved plan." Well, California has an approved plan.

1           And we think that one of the things that should  
2 come out of this -- I'll get the transcript for you guys.  
3 I mean, I'm not kidding.

4           One of the things that could come out of this is  
5 if we go together and ask for a slip on the SIP, we could  
6 justify the subsequent changes that you could make on this  
7 regulation.

8           Second point, I despise economic models.

9           Sorry, Todd.

10          They are constructed with best of intent to try  
11 to reconstruct reality. And instead of that, I kind of  
12 like reality. And, in fact, AGC's analysis of your data  
13 and the real word of the DOOR's program provided some  
14 remarkable insight. And by the way, our association  
15 supports AGC's position on this regulation 100 percent.

16          If you could actually know how many construction  
17 companies in California, would that be helpful in  
18 determining how your models function? Because I can  
19 provide you with a remarkable source for that data.

20          REGULATORY SUPPORT SECTION MANAGER SAX: What is  
21 your source?

22          MR. DAVIS: Do you remember the Miracle on 34th  
23 Street?

24          REGULATORY SUPPORT SECTION MANAGER SAX: Nope.  
25 Too young.

1           MR. DAVIS: I have some comments about too young  
2 also.

3           So some people here are old enough to remember  
4 the movie. And there's this remarkable scene where the  
5 hero lawyer defends Santa Clause by pointing out that the  
6 U.S. Postal Service is delivering the mail to him. And  
7 the judge says, "If it's good enough for a branch of the  
8 U.S. government, it's good enough for us."

9           The United States Census Bureau every five years  
10 conducts an economic census of the construction industry.  
11 The latest one was conducted in 2007, and remarkably the  
12 same year that this rule was put together and your  
13 emissions model is based on. It said there were 72,047  
14 construction establishments in the state of California and  
15 it breaks them down by category. Because of that 72,000  
16 firms, a great many of them are guys with paint brushes  
17 and pipe wrenches, and they don't have any diesel  
18 equipment. But there's some segments like -- I don't  
19 know -- heavy civil engineering, site preparation  
20 companies, water and sewer companies, and oil and gas  
21 pipeline companies that have a lot. And if you could  
22 have -- I'm sorry, guys.

23           If you could have real information, would it  
24 improve your model?

25           REGULATORY SUPPORT SECTION MANAGER SAX: Well, I

1 think the answer, yes of course.

2           MR. DAVIS: Then I will send you the link to the  
3 census data.

4           REGULATORY SUPPORT SECTION MANAGER SAX: That  
5 would be great. Thanks.

6           MR. DAVIS: I still hate models, except for the  
7 ones on the swimsuit issue.

8           Finally, and this -- I've been engaged with you  
9 all since 2003. None of you were at the table when we  
10 first had these conversations. And some of this is so  
11 repetitive I'm sure you guys are going oh, God, I've heard  
12 that before. But here's one that's got to be brought back  
13 up. That is, in your world, our people have to deal with  
14 on-road rule, off-road rule, cargo handling rule, LSI  
15 rule -- oh, and smoke testing because some of our members  
16 got dinged last week with the smoke testing program.

17           Then they have to deal with State Water Resources  
18 Control Board, the Department of Industrial Regulation,  
19 the Caltrans regulations, the OSHA regulations, CHP  
20 regulations, and then the federal and the tax guys and  
21 then the fed starts with a whole series of rules they have  
22 to deal with, too.

23           We have to find some way to package your rules at  
24 least in a way that it's cohesive, because these companies  
25 most of them are not Granite Construction. I admire the

1 people at Granite. They're tremendous. I actually  
2 understand what they're saying about, hey, we spent \$2  
3 million on this rule and now you're telling us we wasted  
4 that money? You've got to find a solution for that too.

5           So it brings us to this point. Can we find  
6 points of agreement? Can we identify them? Can we use  
7 them to craft rules that work for both your agency and the  
8 public health of the people of California and the  
9 construction industry's desperate need to find some relief  
10 and that is effective and survivable?

11           Thank you very much.

12           EXECUTIVE OFFICER GOLDSTONE: Thanks, Bill.

13           Ned McKinley, and then Larry Milton, and then  
14 we'll break for lunch for an hour.

15           Mr. MC KINLEY: Good afternoon. My name is Ned  
16 McKinley and I'm here on behalf of Major General Anthony  
17 Jackson, the commanding general of Marine Corps  
18 Installations West. Marine Corps Installation West  
19 includes six bases here in California, and we have a total  
20 of about 44,000 horsepower subject to the off-road rule.

21           Now in our case as a federal agency, we have not  
22 felt the pain of the recession as the private sector has  
23 as you've heard about today. But still the rule presents  
24 some real serious challenges to us. And we really  
25 appreciate the opportunity to come and discuss that with

1 you.

2           Now, I just will run through quickly the  
3 questions posed to us by you and in the presentation today  
4 in terms of the rule. The first couple of questions about  
5 the March 2010 and March 2011 deadline. And we will have  
6 very serious challenges in terms of meeting the deadlines.

7           We recently submitted a letter to you in  
8 conjunction with the rest of the military, the other  
9 services, and we anticipate being in full compliance by  
10 2014. In that letter, we explained a number of reasons  
11 why we will have that challenge. They include just first  
12 of all our need to have conducted an inventory and figure  
13 out how we will get to compliance, federal contracting  
14 requirements which have their own delays, and the single  
15 biggest one in terms of the federal budgeting process, how  
16 long it takes for us to program the funds to obtain the  
17 funds. We'll explain that, and we're happy to talk  
18 through all that with you with your staff.

19           There is a question about cost. This is a pretty  
20 serious cost to us. We have a baseline historical amount  
21 of about \$4 million a year for this kind of equipment for  
22 maintenance and replacement. We're about two and a half  
23 times that amount, ten million, a year to comply with ARB  
24 regulations into the next several years.

25           Question about AB 8 2X credits. These don't

1 apply to us. In our case, Congress has directed us to  
2 grow with multiple overseas conflicts and all the burdens  
3 upon the marine corps, we have grown by about 3,000  
4 marines. In the process of that especially in southern  
5 California, our off-road fleets have actually grown.

6           You do ask what kind of credits would be useful  
7 to us. Would other kinds of credits. I would be happy to  
8 go into this in more detail.

9           I'll mention one right now that I think would be  
10 applicable to us. We have a number of vehicles that did  
11 qualify for the low-use credit. We have a very large  
12 number that are over the 100-hour thresholds but still in  
13 a very low threshold, 200, 250 hours. If there is any way  
14 that we could capture that of an exemption still 2014 or  
15 something along those lines, that can go at least some of  
16 the ways toward helping us with compliance.

17           We have other recommendations along those lines.  
18 Like, we use biodiesel in our fleets, if that could count  
19 for some of the credit.

20           And then in terms of we were able to use some  
21 retirement credits for Tier 0 vehicles. As I said, the  
22 low-use credits, double credits for early retrofits.

23           EXECUTIVE OFFICER GOLDSTENE: All these ideas are  
24 in your letter to us?

25           MR. MC KINLEY: Some are not. We'll follow up

1 with you, definitely.

2           And then just in closing, I just want to say we  
3 are here in California for long term. We have a national  
4 defense mission that the people of the nation expect of  
5 us. And California is absolutely essential for us to  
6 accomplish that mission. We have about 40 percent of the  
7 marine corp's combat power here, about 90 percent of  
8 marines come through the southwest to train before they go  
9 overseas. So what that means is we are absolutely  
10 committed to a good working relationship, a good  
11 partnership with the state of California. We are  
12 absolutely committed to full compliance. We need to  
13 figure out how we're going to get there, but we're  
14 committed to full compliance.

15           We appreciate the opportunity to come talk to you  
16 today, and we appreciate the staff and their willingness  
17 to work with us. Thank you.

18           EXECUTIVE OFFICER GOLDSTENE: Thank you very  
19 much.

20           Larry Milton.

21           MR. MILTON: Good afternoon, sir, Mr. Goldstene  
22 and staff.

23           My name is Larry Milton, and I just recently came  
24 back to California. I used to live here, of course. I  
25 moved out of the area. But I want to give you a quick

1 background here. Twenty-seven retired Air Force. I came  
2 for guys like this marine right over here, because we have  
3 a problem there. These guys are dying because of what is  
4 happening over there, not reliable equipment. That's one  
5 of the thing we can address.

6 I come to let you know and inform you that we  
7 have the technology to meet 2015 emission standards.  
8 Okay. So all of you guys that's looking for where you're  
9 looking for the relief from CARB, we can level the playing  
10 field here. CARB can increase their enforcement simply  
11 because you are enforced by EPA. I'm very much aware of  
12 that I went to Washington, D.C. to present this. Okay.

13 Also, with the people here, you can keep your  
14 equipment. We have just teamed up with one of the major  
15 universities here and the state of California. I'm  
16 looking to move back. In fact, I'm looking to move the  
17 company back here as well.

18 This is aerospace technology. And I'll give you  
19 to website here, [www.mxmproducts.com](http://www.mxmproducts.com).

20 This technology here would also take each and  
21 every company -- I am guaranteeing you this -- each and  
22 every company will have a cost savings in hundreds of  
23 thousands to millions of dollars to billions and within  
24 their budgetary constraints.

25 The old equipment that you have, you don't have

1 to get rid of it now. The technology we have, it comes in  
2 the form of catalytic technology that was overlooked.  
3 It's no one's fault. It's just the way we run.

4 Another one comes in the form of a lubrication,  
5 unknown. It's only one company that carries it. And  
6 that's our company.

7 I'm sorry. I apologize to you guys, because I  
8 love California. And I can say this here. I'm just one  
9 man. We're doing testing right now. And you will see  
10 some of the information on the website where I am. I'm  
11 only here for today. I got to leave after this hearing.  
12 But you will be able to reach me from the website. Also  
13 my number, I'll give you that 318-730-2857.

14 What we have here -- and I want to make it brief  
15 but to the point. We're looking at not only dealing with  
16 the military and cutting their cost in half. Now that's a  
17 small number -- I'm going to give that you much -- in any  
18 of the organizations that you guys have.

19 We also with this technology is now effecting --  
20 and we have the EPA numbers for the testing to show we're  
21 not only going to cut down NOx and PMs, we're going to put  
22 down CO, CO2, PMs, hydrocarbons, NOx, and SOX. Your  
23 equipment is going to last 50 percent longer. Those are  
24 small numbers. We already have a fleet we're testing  
25 since 2006 and sometimes the testing take this long. But

1 you can't -- you just can't fool the process here.

2 EXECUTIVE OFFICER GOLDSTONE: Mr. Milton, thank  
3 you very much. I think people will follow up with you if  
4 they want to.

5 We're getting ready for lunch here. Thank you.  
6 I think Mr. White wants to stay something before we break.

7 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH  
8 ASSISTANT DIVISION CHIEF WHITE: Yes, I do. Mr. Milton,  
9 if you could give me one of your cards.

10 Just so that you understand, we have here in  
11 California -- I know that U.S. EPA has a similar  
12 program -- where we look to verify technologies that will  
13 reduce emissions from existing diesel engines. And so  
14 before fleets can use this technology to be in compliance  
15 with any of our in-use diesel regulations, whether it's  
16 off-road or portable engines, gen-sets, whatever it may  
17 be, it needs to go through this program. So I would like  
18 to get this information into my staff so they can  
19 potentially follow up with you.

20 But before fleets are able to use this, it will  
21 have to go through our verification to evaluate its  
22 effectiveness and durability in the long time.

23 MR. MILTON: I'd like to say, too, the reason in  
24 coming in with the verification, I would like to ask CARB  
25 to expedite it. We're already in the process of doing

1 that. I'm also in the process of doing transformation of  
2 technology for DEO and also emerging technology for the  
3 EPA.

4 EXECUTIVE OFFICER GOLDSTENE: Thank you. That's  
5 great. Thank you.

6 Back at 1:30, everybody. Thank you very much.

7 (Thereupon a lunch recess was taken  
8 at 12:30 p.m.)

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## AFTERNOON SESSION

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1:32 p.m.

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EXECUTIVE OFFICER GOLDSTONE: We're going to

4

start.

5

Let's see who's here.

6

Welcome back from lunch.

7

Tara Lynn Gray, Armando Sinclair, Richard Lee.

8

Mr. Lee. And then after Mr. Lee, we have Gordon

9

Downs, Brant Ambrose, and Henry Hogo. Thank you for being

10

here.

11

MR. LEE: Is this working here? Thank you.

12

My name is Richard Lee. I'm business consultant

13

to a trucking company. I'm from Menlo Park, California.

14

And I'm very pleased to learn that the enforcement of

15

regulations will be postponed for the off-road

16

construction equipment. It's a good first step, but

17

really shouldn't stop there.

18

Focusing only on the construction industry's

19

off-road equipment, clearly, all on-road trucks used in

20

the construction industry at the same time should be

21

exempted from compliance with the on-road truck and bus

22

rule. Those trucks are commonly referred to as vocational

23

vehicles, such as concrete mixers and concrete pumps,

24

cranes, dump trucks, logging trucks, lumber trucks,

25

roll-offs, water trucks, and numerous specialized service

1 and utilities vehicles.

2           With the implementation of the truck and bus  
3 rule, it's clear that not all trucks should be painted  
4 with the same brush of regulation. In fact, there are a  
5 number of specific reasons vocational vehicles must be  
6 granted exemption from the truck and bus rule, regardless  
7 of the current economic downturn.

8           First, they typically operate at a much slower  
9 start-and-stop pace than the constant velocity of the  
10 on-road long-haul trucks. As such, the best available  
11 control technology currently prescribed by CARB for  
12 vocational vehicles is simply not workable. It's too  
13 expensive. It's unsafe and really has yet to be proven  
14 and we'll say a battle hardened conditions.

15           Also, vocational vehicles do not operate year  
16 round. The seasonality of the construction industry  
17 limits the activities and makes the cost of compliance  
18 especially hard for their owners to amortize.

19           As you proceed with your review of the on-road --  
20 or excuse me -- of the off-road rule, please consider  
21 revising the on-road rule as well. As I think you may  
22 well already be moving in that direction certainly as it  
23 pertains to the vocational vehicles. In all fairness,  
24 they deserve being treated the same as off-road equipment  
25 for all the same reasons that off-road construction

1 equipment is now being exempted. Your forbearance will  
2 greatly relieve the unfair economic burden placed on the  
3 owners of those vocational vehicles and help maintain jobs  
4 during this severe economic downturn.

5 EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr. Lee.  
6 And we are planning on doing that. That's what we're  
7 going to be doing in April.

8 Gordon Downs.

9 MR. DOWNS: Thank you for the opportunity to  
10 speak. My name is Gordon downs.

11 And I'm probably going to sound like a broken  
12 record here. I apologize for that. A lot of similar  
13 stories. I own Downs Equipment Rentals in Bakersfield,  
14 San Maria, and Selma.

15 I started the business in 1977 with one motor  
16 grader. Over the years, we grew as the economy grew and  
17 the demand for earth-moving equipment increased. By the  
18 year 2005, we had grown to 60 heavy earth moving machines  
19 and 50 employees and revenues to match.

20 2005 was our peak year for employees and business  
21 measured by revenue, number of fleet vehicles, and diesel  
22 consumption. We have about 44,00 horsepower, about  
23 similar to the Marine Corps in the state of California.  
24 And I notice they were complaining about a shortage of  
25 funds to comply with the regulations. There's the reason

1 I'm here. We both have the same problem.

2           From 2006 to March of 2010, due to the recession,  
3 our revenue has declined 75 percent. The number of  
4 employees has been reduced to 30, 40 percent reduction.  
5 Diesel fuel consumption has fallen 60 percent. Our people  
6 have not had a pay raise in two years. No bonuses have  
7 been paid, and overtime has been eliminated in order to  
8 prevent laying people off.

9           It was the choice of our employees to freeze  
10 their pay and keep the most people working. And I just  
11 heard this morning on the news driving up this morning  
12 that the unemployment rate in Kern County is now 17.1  
13 percent.

14           Compliance over the past two years, our company  
15 has upgraded five failed Tier 0 engines with Tier 2  
16 replacements. We have received no Carl Moyer funding. We  
17 have purchased four Tier 2 used machines. We've sold five  
18 Tier 0 machines, because 75 percent of our fleet is  
19 sitting idle.

20           We have not installed a single diesel particulate  
21 filter. As we have reported in the past, we are a rental  
22 company. A renter will not rent a machine if there is a  
23 choice that has an active diesel particulate filter  
24 installed. The renter will tell you that he will not rent  
25 a machine, that: Number one, increases his chance of

1 damage to an expensive machine; number two, that may cause  
2 unnecessary downtime during a work shift; number three,  
3 creates the possibility of added labor cost to regenerate  
4 the DPF after the work shift is over.

5           So you can see that just the sound the word DPF  
6 causes chills to go up and down our spines because we  
7 can't rent them at this point. We can't rent a machine  
8 with an active diesel particulate filter installed.

9           The only diesel particulate filter suitable for  
10 our company would be 100 percent passive. To date, we are  
11 not convinced that such a thing exists for our type of  
12 equipment and for our use.

13           The added problem is that diesel particulate  
14 filters cost 25,000 to \$50,000 a machine, not the 6- to  
15 \$7,000 per machine we were originally told at a CARB  
16 meeting. Our company does not have money to spend on DPF  
17 or replacement. If our company were required at this time  
18 to spend money for compliance, our response would be to  
19 sell equipment, reduce the workforce, and deal with the  
20 stress and anxiety of what the economy and CARB is going  
21 to do to us next, because we are just simply out there  
22 blowing in the breeze.

23           So I thank you for listening.

24           EXECUTIVE OFFICER GOLDSTENE: Thank you, Mr.  
25 Downs.

1 Brant Ambrose, Henry Hogo, and Randall Friedman.

2 Brant. Mr. Ambrose, you're with Downs as well?

3 MR. AMBROSE: I'm Brant Ambrose, Manager at Downs  
4 Equipment Rentals. I think Gordon summed it up pretty  
5 well.

6 I was going to I guess just go over some of the  
7 questions that you had because you are specifically  
8 wanting answers to these I guess.

9 And to the first question is, no, we would not  
10 make the 2010 compliance date. If it weren't for the  
11 legislative action, we would sell off 20 percent of our  
12 fleet to comply with your rule this year. But we would  
13 have already had to have done it. That's the only answer  
14 we have is to reduce the amount of equipment each year in  
15 order to comply.

16 The military's estimated cost is ten million a  
17 year. Ours isn't that high. You've seen our numbers.  
18 You all went through them as you were developing your  
19 rule. Back then, it would have been around a \$1.2 million  
20 a year cost to us for the first three or four years of the  
21 rule. That's actually gone up, because with these credits  
22 that we're going to get in the first two years, all of our  
23 compliance is going to be required in the next two years.  
24 Logistically, we can't do it. You can't even do it in our  
25 showcase. How would a little company like ours do it? We

1 have fleet the size of the military and a staff the size  
2 of the people in this room. It's not economically  
3 feasible. It's not logistically feasible.

4 We wouldn't be meet 2011 deadline either.

5 No, the AB 8 have not been sufficient credits.  
6 They're not credits. They're delays. That's not the same  
7 thing. I mean, I know it is in your vernacular. But for  
8 the rest of us, we're still required to do 100 percent of  
9 what you're requesting within a short period of time  
10 thereafter.

11 If this was a 21-year rule with a 21-year  
12 requirement, sure, that would be a possibility. I mean,  
13 that would be conceivably achievable. I mean, not that we  
14 would love to do it, but we could do it. But we can't do  
15 it the way you front-loaded this rule.

16 And so, you know, I would recommend that you  
17 really look at, as AGC has said, delaying implementation  
18 to 2015 or delaying the requirements to 2015 is fine. But  
19 in 2015, you're still going to have to look to some kind  
20 of reasonable time frame for the BACT requirements that  
21 allows fleets to spread this cost over more time. It's  
22 too front-loaded.

23 You testified in '07 that 50 percent of the cost  
24 came in the first 36 months of the rule. I remember you  
25 saying it. Well, that's true. That has to change

1 somehow.

2           And I mean, I know you've got emissions goals you  
3 want to reach. But our fleet, as Gordon said, is being  
4 utilized less than 50 percent in terms of horsepower hours  
5 than it was back in '06 and '07. In fact, in '07 -- '06  
6 was even higher than that. '07 we were already seeing a  
7 downturn in the economy. We talked about that, but it  
8 wasn't apparent to everybody. But it was to the  
9 construction industry, because we're at the leading edge  
10 of that downturn.

11           So I would appeal to you to delay the  
12 implementation until 2015 and at that time spread it out  
13 more evenly. It would not only work better for industry,  
14 it might even work better for you folks. Because if you  
15 were to make a mandate that was reasonably achievable by  
16 industry, you wouldn't have people who are broke standing  
17 here complaining about the cost. I mean, we've been  
18 decimated by this recession, and yet we're all here  
19 because your rule is worse than the recession. Seriously.

20           Okay. Grandstand here.

21           EXECUTIVE OFFICER GOLDSTENE: We have details.  
22 We've already worked with your company. You've submitted  
23 to us details?

24           MR. AMBROSE: You guys have tax returns. You had  
25 our fleet information. You've got our horsepower.

1 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

2 If you have some specific suggestions for what you think  
3 we should change, because it sounds -- the BACT rates of  
4 eight and 20 percent are too high. What do you want us to  
5 make them? Why? That would be helpful if you could  
6 follow up. Or tell me now.

7 MR. AMBROSE: Take 100, divide it by 16, and  
8 you'll get real close to what the number should be.

9 You call it a 21-year rule. You sell it as a  
10 21-year rule. Assuming we are in the 21-rule five years,  
11 then you have 16 more years to go. And what would be so  
12 bad about that? I mean, Bob, I'd ask you, because you're  
13 the most probably fervent person in terms of emission  
14 reductions on this rule. Why would that be so onerous?

15 EXECUTIVE OFFICER GOLDSTENE: This is why we are  
16 here, because we're trying to get that information.

17 MR. AMBROSE: From an air quality standpoint.  
18 I'm asking -- so yes --

19 EXECUTIVE OFFICER GOLDSTENE: We hear you. Is  
20 there anything else you want to add?

21 MR. AMBROSE: Yes.

22 We argued for this originally, and I would argue  
23 for it again. And that's an economic hardship provision  
24 in the rule. You folks resisted that idea to begin with.  
25 Here we are. If it would have been incorporated in the

1 original rule, we might not even have to be here right  
2 now, because we are all experiencing economic hardship.

3           This rule is going to reduce employment. You can  
4 avoid that by spreading the rule out over a larger period  
5 of time. Even the fleet average requirements should be  
6 laxed a little bit. They drop off so precipitously it's  
7 like chasing an avalanche down a mountainside. You can't  
8 keep up with it.

9           EXECUTIVE OFFICER GOLDSTENE: These are good  
10 ideas. What else is on your list?

11           MR. AMBROSE: The other thing on my list -- and I  
12 would have you consider it is that you have a provision in  
13 the rule that allows for a fleet to incorporate their  
14 hours of use, horsepower hours. But it's punitive. As  
15 you know, it's punitive. Take away the penalty for that.  
16 I mean, if you're using a 500 horsepower machine 200 hours  
17 in a year and you're using another 500 horsepower a  
18 thousand hours in a year, those things aren't equal from  
19 an emissions standpoint. Why would they be equal from the  
20 rules standpoint?

21           And you can argue it was because it was difficult  
22 to give the accounting for hours. Well, we're all doing  
23 that, because we have to survive. So we apparently know  
24 how to do that or we can figure it out. So give us  
25 credit. If we have an older machine that's parked that we

1 use on a small amount -- and I know you got the 100 hours,  
2 but I'm saying on a continuum, if it's a 200-hour machine,  
3 that's all the fuel it burns, that's all the emissions it  
4 put out.

5 EXECUTIVE OFFICER GOLDSTENE: These are all good  
6 ideas. Are there others that you have or -- there's 25  
7 more people that want to come to the microphone.

8 MR. AMBROSE: I'll finish. Thank you.

9 EXECUTIVE OFFICER GOLDSTENE: Thanks, Brant.  
10 Appreciate it. Thank you.

11 Henry Hogo, Randal Friedman, and Jeremy Smith.

12 MR. HOGO: Good afternoon, Mr. Goldstene and  
13 members of staff.

14 For the record, Henry Hogo with the South Coast  
15 Air Quality Management District.

16 We have reviewed the petitioner's request, and we  
17 will provide more specific written comments based on our  
18 economic analysis of the economy today. We have been  
19 looking at the economy as a whole, because we have other  
20 regulations. We have other sources that are facing the  
21 same situation as the construction industry.

22 We believe that the changes that have been made  
23 in the regulation today will be sufficient for the next  
24 couple years. We actually don't believe that further  
25 amendments should be made at this time, but get closer to

1 2014 and maybe 2012 and take a look at what the economic  
2 forecasts would be at that time, because the economic  
3 forecast is going to change dramatically over the next  
4 couple years, over the next couple days, next couple  
5 months.

6           I do want to talk a little bit about our surplus  
7 off-road opt-in for NOx SOON Program in the South Coast.  
8 We have been working with about over 100 fleets actually  
9 on ways in which they can participate in the SOON Program.  
10 We met with over 70 fleets face to face. And in our first  
11 meetings with them, they saw the regulation as we got  
12 turnover pieces, and they didn't know how many pieces or  
13 how to go through that process. We were able to walk  
14 through them and identify the pieces of equipment that was  
15 most economical for them to replace or repower. And we  
16 actually identified over -- a lot of fleets have  
17 identified what type of equipment that they can replace  
18 and actually participate in the SOON Program.

19           Since we implemented SOON Programs from May of  
20 2008 to today, we have about 48 fleets that participated  
21 in the program. Only 16 of those fleets are required to  
22 participate. That means the other 24 -- sorry -- 22 have  
23 been -- 32 have been participating on a voluntary basis.  
24 And this is during the recession. And these fleets are  
25 actually smaller than the 20,000 horsepower. So we have

1 fleets coming in looking to participate at this time.

2           And our most recent solicitation, we had 18  
3 fleets apply for funding for \$13.2 million worth of  
4 funding to do about 100 engines. Only eight of those  
5 fleets are over 20,000 horsepower. In our workshops, we  
6 have small and medium fleets coming out looking at our  
7 program. So we know that there are fleets that are still  
8 able to participate in the program, and we look forward to  
9 having them participate. We actually have a solicitation  
10 out for up to \$60 million that we'll close in May, and we  
11 hope to have more fleets participating.

12           My point is that I think even this recessionary  
13 time we've seen fleets meet the statewide requirements  
14 through the amendments that you have made so far. And we  
15 believe fleets can still participate in the funding  
16 programs and despite the fact that their capital is low.  
17 So we want to see ways in which they can further  
18 participate. We'll provide further comments before the  
19 March 18th deadline.

20           EXECUTIVE OFFICER GOLDSTENE: Thank you. We  
21 appreciate it. Thank you.

22           Randy Friedman and then Jeremy Smith and Jeff  
23 Farano.

24           MR. FRIEDMAN: Mr. Goldstene, ARB staff, Randal  
25 Friedman on behalf of Navy Region Southwest.

1           We provided written comments on behalf of all the  
2 military services, so I will provide some highlights  
3 relative to the Navy. Before starting, I testified at the  
4 last Board meeting when you received an update on the  
5 activities of the federal government related to climate  
6 change. During that time, I spoke of the military's wide  
7 spectrum of efforts, including energy efficiency,  
8 alternative energy development leadership, including  
9 biofuels, and new weapons systems.

10           I bring this up for overall context beyond our  
11 foundational missions of national security and  
12 humanitarian relief efforts across the globe.

13           Relative to the in-use off-road rule, let me  
14 start with our clear statement that our goal is  
15 compliance. Out of an initial inventory for 589 vehicles,  
16 the Navy has retired 54 and completed four retrofits.  
17 Despite these efforts, we remain unable to meet current  
18 requirement for a large fleet.

19           Our difficulties start from the nature of our  
20 fleet and the requirement that our fleet be aggregated on  
21 a statewide level. Given the diverse nature of our  
22 installations and the complexity of individual  
23 installations, our span of control is not as simple as one  
24 might think. Having completed the statewide inventory, we  
25 then face substantial funding challenges.

1           Our letter provides some depth discussion on  
2 these funding challenges given how our federal budgeting  
3 process works and the fact that retrofit of vehicles must  
4 compete with emission needs around the globe at a time  
5 when operational tempo has been increasing.

6           We also discuss the time delays and the submittal  
7 and consideration of budget requests through the  
8 appropriations process. Beyond this, our letter discusses  
9 the issues we have been trying to procure specialized  
10 items like retrofit through a federal acquisition process.  
11 As a result, even when we have been successful in  
12 reprogramming some small amounts of money, we find  
13 ourselves having difficulty securing contracts. We  
14 believe that both of our missions would best be served  
15 through a cooperative road ahead that balances your  
16 fundamental needs, such as the coming SIP, with our unique  
17 issues. We continue to believe that through our working  
18 together the military can continue to be an environmental  
19 leader in California. We ask that you recognize these  
20 issues we have presented and bring our extension request  
21 before the Board.

22           To answer the questions you posed today, we are  
23 asking for an extension through 2014. We are not able to  
24 meet the upcoming large fleet requirements. Our cost of  
25 compliance for the off-road rule we estimate through 2014

1 to be \$25 million approximately. And again, to emphasize  
2 that our goal is compliance, we are presently working on  
3 an open contract for retrofits that each installation and  
4 others within the Navy could feed into. And again, this  
5 is because there isn't really one Navy in California in  
6 terms of funding appropriations. There are a number of  
7 Navies that each have their funding authority. And they  
8 would contribute to this.

9           That contract I'm told is still at least  
10 six months away if everything goes well. And once that  
11 contract is in place and people -- individual entities put  
12 in their money, we can start working on that. So we are  
13 working very hard on it. We just have some unique federal  
14 hurdles to go.

15           And here is our copy of a letter. Thank you.  
16 I'm available for questions.

17           EXECUTIVE OFFICER GOLDSTENE: Thanks, Randal.  
18 Appreciate it.

19           Jeremy Smith and then Jeff Farano and Robert  
20 Hasselbrock.

21           Anybody? Okay.

22           Camille Kustin.

23           MR. FARANO: I'm Jeff Farano.

24           EXECUTIVE OFFICER GOLDSTENE: Okay. Good.

25           MR. FARANO: My name is Jeff Farano. I'm general

1 counsel for S.A. Recycling. Little bit different here  
2 what you've been hearing from the rest of the folks here.  
3 We're not a contractor.

4           But first of all, let me thank you to take this  
5 opportunity to speak you.

6           S.A. Recycling is a large steel recycling firm,  
7 one of the largest on the west coast with four large  
8 shedders and 38 collection facilities located around  
9 California. We employ over 1200 employees. And currently  
10 we operate 51,000 horsepower fleet, about 311 pieces of  
11 equipment. That's been reduced down from 426 pieces of  
12 equipment and 68,000 horsepower.

13           The steel recycling industry, we're already doing  
14 our part based on what we do and the innovation we've been  
15 making in recycling. We basically reduce California's  
16 carbon footprint by recycling end-of-life automobiles,  
17 appliances, industrial business equipment. Basically on  
18 an average, when you recycle steel, 90 percent of  
19 greenhouse gases are left and 90 percent of the greenhouse  
20 gases produced when you do iron ore. So it's a pretty big  
21 effort that we provide.

22           The scrap metal industry is already contributing  
23 to its share of environmental regulatory burden through  
24 numerous regulations, such as AQMD, CARB, and stormwater  
25 protections. We get impacted by quite a bit more than

1 just what we're dealing with you in our off-road.

2           And recycling and the importance of recycling in  
3 California is extremely important, but it's having  
4 difficulty times and difficult times. As an example,  
5 e-waste recycling program is dying due to regulatory  
6 administrative burdens. CRV program is basically almost  
7 bankrupt and faltering. Plastic, paper, and glass  
8 recycling, a lot of stuff is not being done because of the  
9 economics ending up in landfills possibly.

10           And then scrap metal, we are dealing with the  
11 competitive nature of out of state and out of country  
12 where they're not required to follow environmental  
13 protection issues. So the tighter we get here -- and we  
14 are in agreement with what you're doing here -- but the  
15 tighter it gets here, the better it is for them to do this  
16 stuff in another state or in another country.

17           We do not deny the need for environmental  
18 protection to provide a healthy and safe environment. Who  
19 can provide the beneficial changes we've seen in  
20 California dating back to the smog alert days in the 1970s  
21 and 1960s, and we do not dispute that we need to do  
22 something to keep on cleaning up our air.

23           Here are the issues that are basically affecting  
24 us and being able to comply with these regulations. In  
25 November 2008, our sales inventory virtually stopped with

1 no revenue for two months. We had two ships on the water  
2 going to China. And in November 2008, we just fell off  
3 the end of the platform, and there were no sales for  
4 several months after that.

5           Since that time, we've had 50 percent of our  
6 tonnage been reduced since between June of '08 and 2009.  
7 Thirty-one percent of our workforce has been laid off  
8 since the fall of 2008. We've had more than 30 percent  
9 increase in our unemployment rates. In 2008, we were  
10 paying \$200 for unemployment, and now we're paying  
11 \$800,000 for unemployment. We've had increased  
12 administrative burden for environmental protection  
13 regulations. We've had to hire four full-time people to  
14 just manage what we're doing and trying to keep track of  
15 this.

16           As well, outside consultants. In 2009, 2010, we  
17 spent \$6 million for Southern California AQMD regulations.  
18 So we're having to deal with that.

19           In 2009, 2010, we spent \$3 million for stormwater  
20 compliance for our facilities.

21           And we are estimating on-road compliance over the  
22 next four years will take \$10 million to reach compliance  
23 with that.

24           Cargo handling, we're estimating 2010 will be  
25 1.15 million after the DERA grant. And in 2011, we'll

1 have to spend 1.5 million for cargo handling.

2           And then for PERP, we have about \$270,000 we are  
3 estimating we're having to spend to replace some of our  
4 small equipment.

5           So it isn't just the off-road we're having to  
6 deal with. We're being hit from many angles. And it's  
7 really impacting us and having to deal with competition as  
8 well.

9           We have basically complied with the current  
10 standard by way of a reduction. I already told you our  
11 numbers. We've had reduction of our equipment and  
12 inactivity.

13           We are estimating in 2011/2012, we're to spend  
14 \$20,000 in retrofits. In 2013, \$600,000 in retrofits.  
15 And in 2014, \$1.8 million in retrofits. So these are the  
16 numbers we're going to have to comply with.

17           By having to deal also with the off-road -- and  
18 we estimated over ten years that's going to be a \$25  
19 million estimate.

20           So what's happening is we have reached  
21 compliance -- can reach compliance by way of inactivity  
22 and taking equipment out of place. But we don't -- the  
23 problem is on compression is even though we're a fairly  
24 large company, we are operating on our cash right now,  
25 because banks aren't loaning any money. We had lots of

1 credit available. It's no longer available. So  
2 everything we do, we have to be very careful where we  
3 spend our money. So to say in four years will we have  
4 this money available? I don't know what the economy is  
5 going to be like. As we see here, it's a good possibility  
6 we're not going to be able to spend that kind of money.  
7 Will we be able to get the loan? I don't know if it's  
8 going to be available or not. I don't know.

9           So doing a compression I don't think it's a good  
10 idea. I think everything should be shifted over, because  
11 the economy will over time improve, but it's not going to  
12 come back quick enough I believe for us to be able to  
13 spend the kind of money and keep ahead of our competition.

14           You know, if it continues to go the way it's  
15 going, we can't keep up with our competition, basically  
16 recycling is going to continue to go out of the state. If  
17 not, it's going to be difficult to happen. We spend a lot  
18 of money on innovation to do the recycling, and that money  
19 is going to be taken away in order to comply with this and  
20 on an expedited fashion.

21           EXECUTIVE OFFICER GOLDSTENE: Thank you.

22           MR. FARANO: We agree spread out would be much  
23 better.

24           EXECUTIVE OFFICER GOLDSTENE: Thank you.

25 Appreciate it.

1 Robert Hasselbrock, are you here?

2 Camille Kustin and Betty Plowman.

3 MR. HASSELBROCK: Thank you.

4 I'm Robert Hasselbrock with Weatherford. In our  
5 main part of the business, we got hammered in the PERP  
6 same issues.

7 Our equipment here, mainly this applied with the  
8 off-road. For the predominant part, it's port service,  
9 stuff that doesn't generate revenue for us. I'm here  
10 because this is still a huge cost for our business.

11 Instead of using my comments I prepared, I'll go  
12 over your questions you had.

13 And can we comply? Compliance isn't an issue. I  
14 mean, it's not something imperative. We have to. We'll  
15 find ways. It's going to be through combined efforts  
16 of attrition, removing equipment, sending it out of state,  
17 and buying new and doing without, which means we'll be  
18 downsizing as we have to make that happen.

19 Cost basis, we're looking at approximately 640k  
20 for this portion of the diesel regs we still have. We got  
21 clobbered on the PERP, and we have the on-road stuff to be  
22 dealing with. So it's the culmination of diesel regs that  
23 are the issues at hand here.

24 The AB 8 relief, I think that's just too little.  
25 One to two years is simply not enough from the aspect of

1 capital planning and market basis for our equipment use  
2 and return on investment. One to two years is really not  
3 sufficient for the things we're doing. And to say we're  
4 going to downsize and make it work isn't really what we're  
5 trying -- we heard enough comments today. I don't want to  
6 echo those comments. It's not a good business plan. Put  
7 it that way.

8           So what else is needed? You had some of the  
9 questions there. I think the five years is a great plan.  
10 We have a windfall given to us from emissions reduction on  
11 the recession. It is the great recession. Great phrase  
12 somebody had. It's a windfall that can be used to stop  
13 back and take a look and say let's review the data that  
14 was shown this morning and let the data take us where it  
15 should. That was a great concept. Let the data take us  
16 where it should. We have some time for that to happen. I  
17 you think we should use that time.

18           Something else to think about. In all the fleets  
19 rules, we have this ramping up of regs. You know, we have  
20 the initial implementation and then we have within a few  
21 years you have to keep moving, turning the fleet over, et  
22 cetera. And what we've done strategically, we waited to  
23 make our purchase and then we jump in only to tell our  
24 people in Houston -- we talk about going to the bank.  
25 We're part of a large organization. We go to the

1 corporate office in Switzerland and then the local base.  
2 And we ask them for money and they say we get a rate of  
3 return in former Soviet Union that's much better than  
4 California.

5           They think pot is legal out here in California,  
6 that we're all smoking it. They think we're nuts.  
7 Because return on investment on what we asking for capital  
8 acquisition just does not pan out to what would be a  
9 highly profitable organization. When you look at  
10 transparency international, the countries where corruption  
11 is going crazy and scoring much worse than the U.S., they  
12 can get better returns on investment than we can in  
13 California. Why is that?

14           It's a bad place to do business in a lot of ways.  
15 This is one of the things: Workers comp, industrial  
16 issues, there's a lot of things going on. But these fuels  
17 rules, if we can get a five-year slide. And then we need  
18 to look at the fleet averaging rules and slide those  
19 further. The economy is giving you room to make that  
20 happen. I think we ought to take advantage of that.

21           EXECUTIVE OFFICER GOLDSTENE: Thank you.

22           Did you have more? Go ahead.

23           MR. HASSELBROCK: Let me summarize what I have  
24 written down here.

25           The emission factor -- I wanted to make a point.

1 I saw the fuel-based inventory versus the other. We've  
2 been saying for years -- I've been involved with portable  
3 equipment since '96 I believe it was when we started  
4 getting involved with the CAPCOA issues and the first  
5 rule. Then we came with the PERP rule. And we've always  
6 said that to allocate anything more than about a 40  
7 percent of fuel-based usage of emissions for default  
8 factor is going to build in too much emission for engines.

9           And, you know, when we design equipment, the  
10 maximum we'll ever pull off it is 80 percent, and we'll  
11 never run them full throttle. I won't say we never. It's  
12 cumulative over a days' work. There's much more low  
13 engine demand use than high engine demand use. But all  
14 through these regs, we're running 80 percent throughput  
15 capacity on the things. Your inventory has to be off.  
16 When the economy false off, you're left out there holding  
17 the bag and no one believes it's real. I think that's  
18 where we're at now. We know it's not right.

19           And I think the statement of the economist -- I  
20 really learned something watching the economist talk. But  
21 I'm afraid she's overly optimistic still. AB 32 is coming  
22 down the pike. And we're all getting ready for that. And  
23 that's going to have a huge impact on the economy even  
24 further. So five years out, are we turning around on this  
25 economy? I don't think so. Not unless something is done.

1 EXECUTIVE OFFICER GOLDSTONE: Thank you. That's  
2 great. Thank you.

3 Camille and then Betty Plowman and then Tyler  
4 Lebon.

5 MS. KUSTIN: Good afternoon. I'm Camille Kustin  
6 with Environmental Defense Fund. And I'm speaking on  
7 behalf of several environmental and health organizations  
8 today that couldn't be here. And we will be submitting  
9 public comments by the 18th.

10 Our main message basically is that we urge you,  
11 CARB, to maintain the health protections of the off-road  
12 rule. The economic recession has reused emissions from  
13 off-road equipment which we acknowledge that, but  
14 California's continued to suffer from poor air quality and  
15 is still far from reaching federal clean air mandates and  
16 the diesel risk reduction plan commitments. Emissions  
17 reductions due to reduced activity are also only temporary  
18 while investing in cleaner engines and retrofit technology  
19 ensure long-term reductions and health benefits for all of  
20 Californians.

21 The research and understanding on how diesel  
22 pollution impacts lungs, heart health, and the developing  
23 respiratory system in children is abundant and the  
24 consensus among the scientific community whether that  
25 exposure is short or long term. However, when or how the

1 economy will recover is not certain. And despite the best  
2 information available in all these projections, basically  
3 no one knows what will happen with the economy or how  
4 emissions will change over time. So before any additional  
5 modifications are made, CARB needs to fully evaluate the  
6 emissions and public health impacts of the existing  
7 modifications and credits and allow them to take effect  
8 and not rush into anything. Further modifications that  
9 would erode statewide and local public health impacts are  
10 unacceptable.

11 Thank you.

12 EXECUTIVE OFFICER GOLDSTONE: Thank you, Camille.  
13 Betty and then Tyler and Jon Cloud.

14 MS. PLOWMAN: Hi, folks. I'm going to look at my  
15 notes and then go on.

16 Before I start, you guys probably didn't ever  
17 think you'd see me at the off-road hearings. But before I  
18 became a truck driver, that was only because my operating  
19 engineer husband said, "I need a driver. Get in that  
20 truck."

21 So I was married to an operating engineer. We  
22 started our general engineering company in 1976. All  
23 three of my sons are heavy equipment operators. One just  
24 went back to work. One has been laid off for one year.  
25 And one is lucky enough to work for a municipality in the

1 bay area.

2           Couldn't have been scripted better. And I sure  
3 wish Camille was here, but I think she just left.  
4 Camille, okay. And I didn't mean for this to happen this  
5 way.

6           I want to comment to the Board one thing you've  
7 done for me. You've made me very aware we have our  
8 four-year anniversary coming up of health and health  
9 effects, and you've done that for me. So it was with  
10 great interest about a month ago I was reading my local  
11 paper that is listing the healthiest and unhealthiest  
12 counties in California. My county is Solano, we're number  
13 28. You folks in Sacramento are 32. But what struck me  
14 most, of course, number one, Marin County, lots of money.  
15 Good for them.

16           What struck me most was the county that's ranked  
17 dead last: Del Norte. Del Norte, high north. And guess  
18 what Del Norte's claim to fame is? Zero particulate  
19 matter days and zero ozone days.

20           But what I want to say to Camille is more than  
21 particulate, more than ozone, poverty kills. And that is  
22 a fact. Unemployment and poverty is what is killing the  
23 people of California.

24           I continued to search the counties -- and that's  
25 another thing you've done; you've made me very thorough in

1 my work now. As I continued to search the counties, I saw  
2 that Santa Clara -- Santa Clara right down in the middle  
3 of a huge population zone is number four ranked in  
4 health -- ranked in health.

5           And how do you explain this one? They've got  
6 three interstate highways going through there: 680, 280,  
7 880. They have US 101 and then they have eight  
8 expressways. And according to what I've been told,  
9 anybody that's living by a freeway, number one, take your  
10 pick, you have a low IQ or you're dying prematurely. And,  
11 yet, we have Del Norte with no days of PM.

12           You have Santa Clara with all these highways and  
13 freeways -- by the way, they have 17 days where they're  
14 over their PM.

15           So Camille, it's not our PM that's going to kill  
16 you; it's our unemployment. Thank you.

17           EXECUTIVE OFFICER GOLDSTENE: Tyler and Jon Cloud  
18 and Michael Lewis.

19           MR. LEBON: Thank you guys for letting us come  
20 and speak.

21           EXECUTIVE OFFICER GOLDSTENE: Thanks for coming.  
22 You're with Fremont Paving?

23           MR. LEBON: Correct.

24           One thing I'd like to point out to you guys is as  
25 construction companies, our assets are made up primarily

1 of our equipment. We don't have licensing agreements. We  
2 don't have patents. We don't of trademarks. It's almost  
3 all equipment. This regulation has taken away over 90  
4 percent of that.

5           Now, the problem isn't that the credit industry  
6 has tightened up; it's that we have no more assets left on  
7 our books for the banks to look at and say okay. We have  
8 nothing. So not only can we not afford to get retrofits  
9 done, because a majority of the time the retrofits cost  
10 more than the tractors is worth.

11           We can't go out and buy a new piece of equipment  
12 that's going to be compliant in five years. So I really  
13 don't understand how CARB can mandate that all tractors  
14 must include something that does not exist.

15           If you guys really want to take care of the  
16 issue, deal with the people that are producing the  
17 engines. We didn't buy these engines with the intent of  
18 polluting California. We didn't break any laws when we  
19 bought them.

20           You guys need to get together with the people  
21 that are making the engines and make them more clean. And  
22 that way we will have to buy the cleaner engines. If you  
23 come directly at us, all that's going to do is put people  
24 out of business.

25           There's really nothing that we can do. You know,

1 the diesel particulate filters, they're inefficient.  
2 They're not safe. They cost way more than a lot of the  
3 tractors are worth. And that technology is going to be  
4 completely irrelevant in five years. Once you have a Tier  
5 4 engines, no one is going to go out and buy one of those.  
6 So the fact they're dangling 40 jobs coming to this state  
7 in front of you guys is justification for not making  
8 changes is enough to make you sick. I think it's  
9 despicable.

10           So I really think you guys need to look at  
11 working more with the companies that make these engines  
12 and less on the people that have built the state.

13           Thank you.

14           EXECUTIVE OFFICER GOLDSTONE: Thanks, Tyler.

15           Jon Cloud, Michael Lewis, Alvaro Gomez.

16           MR. CLOUD: Hello. My name is Jon Cloud. I'm  
17 from J. Cloud, Inc. We're a construction recycling  
18 company down in San Diego. I flew up this morning. It's  
19 a family-owned business. I have both the pleasure and the  
20 pain of doing business with my two brothers and my father.

21           And we are a fleet of approximately 80 to 20  
22 pieces. We are about 94 percent Tier 0. So you guys  
23 really love us. And our fleet is basically 4,999 and a  
24 half horsepower. So we are -- and the half horsepower  
25 comes from our Caterpillar kids skid steer that's 38 and a

1 half horsepower.

2           It's always interesting when I come to these type  
3 of meetings, because I don't quite know what I'm going to  
4 say. And I had some idea and I heard some information  
5 this morning that really kind of changed what I wanted to  
6 say.

7           I got to tell you guys, to be honest with you, I  
8 was born an eternal optimist. But from this experience  
9 I'm going through with CARB and part of what I heard this  
10 morning about Dr. Harley's report about his actual burn  
11 rate versus the state's model and the fact the state's  
12 model shows four-and-a-half times the 3.1 times the actual  
13 burn rate has just pushed me ever closer from being an  
14 eternal optimist to being an eternal cynic. The fact that  
15 if those numbers are true and we know for a fact that the  
16 state's census was off, if the burns rates are off -- I  
17 have people in here asking you guys we want a three-year  
18 or five-year pushback.

19           I really don't know why the torches and  
20 pitchforks haven't come out and said throw this whole  
21 thing in the garage and start over. I mean, from my  
22 perspective, you have zero credibility. And you are  
23 putting this industry flat out through to Haiti and back  
24 for numbers that look to be from my perspective made up.  
25 And I don't think it's just my perspective. It's going to

1 be really interesting to see what happens if they go  
2 through the burn rate and if your numbers are off as much  
3 as they are, it's going to be very interesting to see what  
4 happens. We are one of the companies -- I left it up  
5 here -- I had an advisory that came out last year. March  
6 of last year, I remember you started implementing the no  
7 Tier 0. You can't add Tier 0 to your fleet.

8           We are one of the companies that was affected by  
9 that. We have a bunch of Tier 0 equipment. We had our  
10 fleet done in March. Somewhere around June, we lost the  
11 transmission on the 980C loader. My father, who's been  
12 doing this for 50 years, decided, hey, we lost that  
13 transmission. Instead of rebuilding that transmission,  
14 I'm going to upgrade that 980C was his thought, and he  
15 makes a deal with somebody and he comes back to the office  
16 and he tells me and I said, "You realize that's in our  
17 inventory?" He says, "Well, yeah. But I'm going to  
18 upgrade it to a three-year newer Tier 0." "Dad, advisory.  
19 You can't add any Tier 0." What are we going to do? I  
20 think we're in trouble.

21           Well, what happened was his thought was to take  
22 that 980C that's worth about \$40,000, replace it with a  
23 \$50,000 piece of equipment that can do everything we can  
24 do.

25           The reality is the way your rules are written we

1 would have to now replace that piece of equipment with a  
2 Tier 1 for approximately \$100,000, but that Tier 1 is  
3 going to be noncompliant in three years. So we're not  
4 going to go out and replace it with a Tier 1 to clean up  
5 our fleet and have it be noncompliant in three years.

6           And the kicker is if we want to be compliant with  
7 something that we can buy and have and use and hold, we  
8 would have to buy a Tier 4 piece of equipment that costs  
9 about \$250,000. That Tier 4 is not going to do one more  
10 iota bit of work for what we do it with at our business  
11 than a \$40,000 Tier 0. But that's the burden we have.

12           Today, Mike Shaw -- and he left -- he said  
13 something that reminded me of something that I heard the  
14 first day I had the pleasure of being in a meeting with  
15 both Kim and Erik. And that was in San Diego three or  
16 four years ago on the meeting on State Street. That  
17 meeting on State Street, Erik said something that changed  
18 my perspective on this whole thing. We are talking about  
19 compliance and the cost of compliance. And I mentioned at  
20 that meeting what your cost of compliance is going to do,  
21 some of those people in this room cannot afford. Erik  
22 looked at the audience straight in the face and said,  
23 "Some of you will have to go out of business."

24           Now, my thought then as it was now was, and do  
25 what? Become a state bureaucratic and find another

1 industry to run out of the state?

2           Now, my perspective, I'm going to tell you, it  
3 may not be right and I'm not going to tell you it's the  
4 truth, but my perspective from sitting in the meetings  
5 that the other three meetings, San Diego and this one, my  
6 perspective is when these groups get together we have a  
7 clash of cultures. Okay. The clash -- when I say clash  
8 of cultures, correct -- me I'm just going to tell you my  
9 perspective on it. My perspective is when we say equity,  
10 you hear wealth. When we say I have to dig in my pocket  
11 and pay for it, I think you hear I'm rich and I can afford  
12 it. And if you're not rich and can't afford it, go out of  
13 business. Okay. That's my perspective. It may not be  
14 right. It may not be the truth. But there are a lot of  
15 people in this room who think the same damn way.

16           EXECUTIVE OFFICER GOLDSTENE: Thank you.

17           In defense of Erik, I can't imagine that he would  
18 have --

19           DIVISION CHIEF CROSS: I probably said it.

20           MR. LEWIS: I agree, it would have been Bob  
21 Cross.

22           EXECUTIVE OFFICER GOLDSTENE: This is Michael  
23 Lewis and then Alvares Gomez and then Michael Quigley.

24           MR. LEWIS: Good afternoon. I'm Mike Lewis with  
25 the Construction Industry Air Quality Coalition. We're an

1 association of the ten largest construction organizations  
2 in California.

3           I wanted to comment on a couple of things today.  
4 First of all, I wanted to follow up on Henry Hogo's  
5 comments about the SOON Program, because I'm not sure that  
6 it's fair for the district to say that those contractors  
7 under 20,000 horsepower who are applying for SOON funding  
8 are really SOON projects. What they are is Moyer projects  
9 that are being funded as SOON projects, because they took  
10 all the Moyer money and put it into Soon.

11           One of the reasons they have \$60 million to spend  
12 is because they didn't have any takers for the \$30 million  
13 they put up last year and they added it to the 30 million  
14 they want to spend this year.

15           The SOON Program is becoming a program frankly  
16 that the construction industry just can't take advantage  
17 of. And if you wanted to do something to fix that, you  
18 need to deal with the length of the contracts. Seven  
19 years is just way too long for somebody to keep a piece of  
20 equipment as a Tier 0 in their fleet, which is what you  
21 have to do under the SOON Program. And you need to give  
22 the contractors some credit for the horsepower they're  
23 paying for. Right now, under the Soon Program will pay  
24 for 75 percent of the cost of the repower, but they get  
25 100 percent credit for the NOx reduction. The contractor

1 doesn't get any credit for the horsepower that he has  
2 reduced NOx on for the 25 percent contribution he has to  
3 give. So if you want to do something and make that  
4 program more useful for contractors, then you need to make  
5 some of those kinds of changes to it.

6           Secondly, I wanted to give you an update of our  
7 famous chart that you've seen on several occasions. I  
8 think the numbers on there reinforce what you've heard  
9 today. And I would just point out a couple of things.  
10 The operating engineers' hours are down about 40 percent.  
11 New equipment sales in the state of California are down 87  
12 percent from the high point of 2006, which is clearly an  
13 indication that nobody is buying new equipment in the  
14 state.

15           The red dye diesel, well, the Board of  
16 Equalization numbers show it's only down 17 percent. The  
17 red dye diesel, the untax diesel also includes  
18 agriculture, railroads, and marine. So it's difficult to  
19 tease out of that the portion that's construction. But if  
20 you look at the tax paid diesel, which the Board of  
21 Equalization can tease out the construction portion, that  
22 is down 76 percent from the high of 2006.

23           I would assume that the red dye diesel, the  
24 construction portion of it, is somewhere between the  
25 operating engineers' reduction, which is 40 percent since

1 they're the guys that drive the equipment, and that 76  
2 percent that's the taxable diesel. So clearly emissions  
3 are down from diesel consumption -- diesel consumption  
4 because the use of diesel is down considerably in the  
5 construction industry.

6 I also want to talk a little bit about what we're  
7 politely calling a cushion, because I'm not sure it's a  
8 cushion. I think you've told you this before. I believe  
9 we're talking about phantom emissions we're trying to  
10 reduce. That's emissions that never ever existed in the  
11 first place. You saw the presentation this morning on  
12 your model. We believe that your fuel consumption number  
13 is significantly higher than actual. And you need to make  
14 that correction.

15 And there is something wrong with your modeling  
16 if your modeling shows that the number that you're using  
17 for your fuel consumption is actually being consumed by  
18 the fleet. You know what the fleet is. You know what the  
19 load factors are. If those load factors are supporting  
20 that fuel consumption, by my estimation, the entire fleet  
21 in California would have to operate 24 hours a day, seven  
22 days a week in order to consume as much fuel as you  
23 believe we're consuming. That simply is not the case. We  
24 know that the fleet is smaller than you originally  
25 projected. You never projected a downturn in the fleet.

1 You only projected growth.

2           The current DOORS numbers are 50,000 lower than  
3 what you had projected. You're never going to make that  
4 up. When you go back to look at the data, I think you  
5 need to look very closely at the equipment that's being  
6 designated as low use. I think low use in this case is a  
7 colloquialism for about to be sold, because people who  
8 designate their equipment use are only placing it there so  
9 they can maintain the ownership of it but take it out of  
10 their fleet average. It's on its way out the door. If  
11 you look at the sales data of used equipment in  
12 California, more equipment is being sold at auction than  
13 was the previous auction, the highest percentages ever.  
14 And the majority of it is now leaving the state.

15           The fleet is shrinking. By every indication, the  
16 fleet is shrinking. It's never going to get to the number  
17 you thought it was. It's down 25 percent from what you  
18 estimated it would be. And I believe when you look at the  
19 low use designations, of which nearly 10,000 pieces of  
20 equipment in your DOORS data are now low use, when the  
21 fleet is finished reporting in March and they have  
22 indicated how much more equipment has been designated as  
23 low use, I believe you're going to see a significant  
24 increase. Perhaps a doubling of that number. That's  
25 equipment that's not in operation in essence. It's either

1 an antique that somebody has in front of his building and  
2 he wants to show it off to people so he keeps it in his  
3 fleet or something else. It's going out the door, he has  
4 to get rid of it.

5           So I guess in summary, the fleet is shrinking.  
6 The fuel consumption is not -- your assumption on fuel  
7 consumption is not accurate and off by a significant  
8 factor. If you were to take an accurate count of your  
9 fleet, adjust the load factors appropriately, adjust the  
10 fuel consumption, I'm not sure that the rule is necessary  
11 at all. It may be in the out years that something needs  
12 to be done for PM. But the new equipment, the new Tier 4  
13 equipment that's coming into use in 2015, should be enough  
14 to take care of that. You may not need this rule at all.

15           So while the AGC I know has asked at this point  
16 for a two-year delay, and I would support that, I think  
17 what you need to do in the two years is go back and fix  
18 the model and fix the assumptions and get it right now  
19 that you have the data and let's see what it really shows.

20           EXECUTIVE OFFICER GOLDSTENE: Thanks, Mike.

21           Alvaro Gomez, Mike Quigley. After Michael  
22 Quigley is Mike Herron and Jim White, and then Charlie  
23 Ray.

24           MR. QUIGLEY: My name is Mike Quigley. I'm the  
25 Director of Government Affairs with the California

1 Alliance for Jobs. We represent over 2500 union  
2 construction contractors and 80,000 union construction  
3 members representing the three basic crafts of flavors,  
4 operating engineers, and carpenters.

5           As you've heard over and over today, our industry  
6 is hurting. This is unprecedented times. Certainly, the  
7 worst that as I've experienced in my short career and  
8 people who have much more experience than me have told me  
9 the same.

10           One contractor described the current economic  
11 situation as being punched in the gut and there's not  
12 enough air in the room for you to catch your breath.

13           I think a lot of the people in our industry feel  
14 that ARB is contributing to that and that they are  
15 struggling and looking for a way to survive this. I think  
16 what you've heard today is many people asking for some  
17 flexibility in helping them get through this time.

18           I think that one of the important elements that's  
19 contributing to the current economic situation is the lack  
20 of capital in the markets. Back in 2008, when the Wall  
21 Street crisis and the outgoing mortgage problems still  
22 effecting our industry to a great deal, much more so than  
23 other types of industries, because we're both affected by  
24 the capacity for bonding and also even within the state's  
25 public works bonding. This lack of capital is tying the

1 hands of many of our contractors. They can't get the  
2 capital they need to get through this rough patch.

3 I think one of the important things to note is to  
4 effectively regulate an industry you have to take into  
5 account the third party external factors that influence  
6 the industry. In this case, when you use these off-road  
7 regulations were developed in 2005, 2006, the landscape  
8 was significantly different than it is today. And I would  
9 say that even in the worst-case scenarios, no one  
10 projected that the construction industry would be facing  
11 30 percent unemployment and that you have so many  
12 contractors on the threat of going out of business.

13 I want to also say that AGC's presentation today,  
14 they are one of our members. But I can tell you they  
15 spent a great deal of time preparing for this today. They  
16 wanted to present you with the most highly accurate  
17 information they could assemble. And they've been poling  
18 their membership and really trying to present something  
19 that cannot just -- help move this conversation forward  
20 and kind of present a place of saying this is hard facts.  
21 This is representative of today, where I felt a lot of the  
22 previous conversations and previous meetings we've been  
23 arguing over facts and figures that were studied several  
24 years ago. I think AGC's presentation helps bring us more  
25 data there's relevant to the current situation.

1           And finally one of the last points I want to make  
2 is that over and over again you've heard members of the  
3 construction industry ask for flexibility, not repeal.  
4 And I think that's also very significant, because our  
5 workplace is outside. It is the outside air that our  
6 workers breathe every day. No one is more affected from  
7 particulate diesel exhaust than the operator who's sitting  
8 up in this box. He's the closest to it. The guys on the  
9 job site are the ones who are having potential for the  
10 worst health effects. But as someone very accurately  
11 testified, poverty is much more of an impact on public  
12 health.

13           So I guess I'm asking that you -- if you are  
14 looking for suggestions, the two that I have are: Please  
15 move forward with AGC's request for a two-year delay. I  
16 think that this regulation has the ability to be done in a  
17 way that won't strangle the last bit of air out of the  
18 construction industry.

19           And finally I think that when looking at ways to  
20 improve the off-road rule, as someone has suggested  
21 several times over, that the emphasis should be on new  
22 equipment and the manufacturers over time, just as what  
23 was done with automobiles, and cleaned up the air greatly  
24 in California. The new equipment that's coming into the  
25 state can be held to a higher standard. But asking

1 contractors who are low capital, frankly, they're just not  
2 going to be able to get the money to comply. And you're  
3 putting them between a rock and a hard place. But asking  
4 manufacturers to bring new equipment in that's meeting an  
5 increasingly higher standard is something that will  
6 over time bring everyone up and also level the playing  
7 field and prevent the problem of out-of-state contractors  
8 just bringing in their best equipment. If everyone has to  
9 operate off the same level of filtration, then you have a  
10 much more even market and allow a lot of our local guys to  
11 survive.

12           DIVISION CHIEF CROSS: One of the things I think  
13 that we as regulators have been concerned about as we've  
14 gone through this process with you guys was what happens  
15 if the economy turns around faster? I think that's what's  
16 really been driving -- no. That's what's been driving the  
17 fact that we've been keeping the duration of these things  
18 short.

19           And I guess the question I would ask or pose is:  
20 Is there some way that we can work to put an insurance  
21 policy if you will that said, okay, if the economy turned  
22 around tomorrow -- I know it won't. But just  
23 hypothetically if it did, what would we be able to do to  
24 adjust it back on course? Whether it be schedule a Board  
25 meeting, like someone said or whatever. Because I think

1 that's what's in the back of our mind that's making us not  
2 want to go beyond two years. If we can think of something  
3 that does that maybe --

4 MR. QUIGLEY: I would say that two years is a  
5 minimum to start with. And two years from now, it's  
6 unlikely that the industry will be anywhere near where it  
7 was two years ago from today.

8 But what I'm saying is that it's not wrong to  
9 want to go back and continue to check this as time goes  
10 forward. But if you want to raise -- if you're willing to  
11 as the economy increases and you're willing to look at  
12 raising the bar as the economy diseases, you also must  
13 build the flexibility to lower the bar. It has to be a  
14 give and take.

15 EXECUTIVE OFFICER GOLDSTENE: All right. Thanks  
16 Mr. Quigley.

17 Mike Herron, Jim White, Charlie Ray.

18 MR. HERRON: Mr. Goldstene, members of staff,  
19 thank you for giving us this opportunity to speak to you  
20 today.

21 My name is Mike Herron. I represent the  
22 Engineering and Utility Contractors Association. We  
23 represent 250 general engineering and heavy civil  
24 contractors in primarily northern California.

25 On behalf of the EUCA, we wholly support the

1 recommendations in the AGC report of a two-year delay and  
2 a chance to go back and re-visit the numbers and the  
3 modeling.

4           What I would like to share with you today is  
5 three examples. I would like to address two of the  
6 questions that you sent out that we received I think three  
7 days ago. The impact of the recession on emissions and  
8 whether or not the contractor can comply. And I have  
9 three examples, a large and medium and small fleet.

10           The first is the large fleet is between 2006 and  
11 2010, he's seen a reduction in his employment workforce of  
12 20 percent. During that same amount of time, he's had a  
13 33 percent reduction in his fuel consumption and a 15  
14 percent reduction in his fleet size. When I asked him,  
15 "Will you be able to comply? Will you be able to meet  
16 your compliance hurdles?" His answer was, "Yes, I will,  
17 but it will be at significant cost." And this is in a  
18 time when he's seen a 30 percent reduction in revenues.

19           So you've heard today kind of stories about how  
20 competitive it is out there. Just yesterday if you came  
21 in on the Antioch Bridge -- I know some people here did --  
22 the upgrades to the Antioch Bridge bid yesterday. The  
23 engineer's estimate was \$93 million. The winning bid it  
24 was \$37 million. If you think that was an accident, go  
25 back and look at bids number two and three which are

1 within \$10 million of that \$37 million job. That's how  
2 competitive and cutthroat it is out there. So any thought  
3 that they can build the cost of compliance into their bid  
4 is just ludicrous.

5           The second example is the medium fleet  
6 contractor. During the same time period, 2006 to 2010,  
7 he's seen a reduction in his workforce of 60 percent.  
8 He's seen a reduction in revenues of 50 percent and a  
9 reduction in his fuel consumption of 50 percent.

10           I asked him, "Will you be able to meet your  
11 compliance hurdles?" He says maybe. He has two options:  
12 Shrink his fleet further and his fleet has already shrunk  
13 and already taken 30 percent shrinkage in his fleet.  
14 Shrink his fleet as we're heard today means fewer seats,  
15 fewer jobs. So shrink his workforce.

16           And his second option is just shutting down.  
17 It's just shutting down his business and saying in this  
18 market I can't compete and comply at the same time. It  
19 just isn't there.

20           So the last contractor I want to give is a small  
21 fleet. Been in business 50 years. Gentleman bought the  
22 business from his dad. Dad started it. He was three  
23 years away from giving it over to his son. He's reduced  
24 his fuel consumption by 100 percent. He reduced his  
25 employees by 100 percent. And he's going to comply

1 because he doesn't have a fleet anymore. He's out of  
2 business. Over the last three months of last year, he bid  
3 67 jobs. He bid them at cost. He build -- there was no  
4 management cost, no profit margins built into those bids.  
5 He bid his equipment just at fuel cost, no depreciation,  
6 nothing. He got zero call backs on 67 bids. Zero out of  
7 67. And he's gone.

8           So to reiterate, we wholly support AGC's  
9 recommendation. We ask that you take another look. Delay  
10 for two years. Take another look.

11           And in answer to your question to Mr. Quigley  
12 about what happens if things turn around, we open it back  
13 up. It's fair play. Things are bad, and we're asking you  
14 to take another look. Things get better, we open it back  
15 up.

16           EXECUTIVE OFFICER GOLDSTENE: Thank you.

17           STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
18 Can I ask a quick follow up?

19           So you talked about the large fleet. And he was  
20 telling you, "I really don't think I can comply." He's  
21 talking about the 2012 requirements?

22           MR. HERRON: No. The large fleet said he could,  
23 but it's going to be at significant expense to him at a  
24 time when revenues and profit --

25           STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:

1 But he's looking forward two years; right? Because his  
2 credits will bring him well through 2010. He's looking  
3 two years out and saying I don't know how I'm going to  
4 comply.

5 And same with the medium guy. The medium guy,  
6 his first date is 2013. I don't think things are going to  
7 get better in the next three years.

8 MR. HERRON: It's got to pencil out for him. It  
9 doesn't pencil out for him.

10 STAFF AIR POLLUTION SPECIALIST HEROY-ROGALSKI:  
11 Thanks.

12 DIVISION CHIEF CROSS: Do you know whether or not  
13 one that bids --

14 EXECUTIVE OFFICER GOLDSTENE: Let's finish the  
15 testimony and then we can ask questions

16 MR. HERRON: That's all I had. I just want to  
17 reiterate we support the two-year delay and revisit the  
18 numbers.

19 EXECUTIVE OFFICER GOLDSTENE: Jim White and  
20 Charlie Ray.

21 Is there anybody who wishes to speak who didn't  
22 get a chance to sign up?

23 MR. RAY: Charlie Ray. Charlie Ray. I'm with  
24 the California Construction Industrial Materials  
25 Association, a trade association for aggregate ready-mix

1 concrete producers and industrial mineral producers.

2 I have to say I do want to thank staff over the  
3 years in developing the rules and working through some  
4 implementation issues. Appreciate that.

5 Having said that, as you know, the economy is  
6 definitely an issue. And just from our perspective, the  
7 production of aggregates and concrete and so on really  
8 probably hit their peak about 2004, 2005. So from that  
9 period 2004, 2005 to 2008, the production was off about 40  
10 percent. And then last year it was off another 20 to 30  
11 percent. So really got hit a lot lately.

12 The challenge for everyone in complying with the  
13 rule is that you're well aware is the SIP date and kind of  
14 the fact that a lot has to happen fairly soon. The relief  
15 of a couple of years so far is helpful, but still kind of  
16 makes for a bigger hurdle as we get closer to 2014.

17 You asked for some ideas on ways to make some  
18 improvements or consider changes. In a lot of ways,  
19 probably everything has to be looked at and considered in  
20 these times. You know, maybe a few ideas are, you know,  
21 expanding the threshold for the low mileage provisions,  
22 maybe changing some of the baselines like for the  
23 reduction in used credit. Currently, it's comparing 2007  
24 to 2009. Maybe going back further, 2006, 2005 provide  
25 some help.

1           And then I think just finally as was presented  
2 this morning with the construction sector not really  
3 experiencing any real comeback even through 2015, it looks  
4 like, yeah, expanding the dates or pushing them back would  
5 be something that has to be looked at or considered. And  
6 I just think if that does happen, that, you know, kind of  
7 everything needs to slide back as someone commented  
8 earlier on that.

9           That's all I have.

10           EXECUTIVE OFFICER GOLDSTENE: Thank you, Charlie.  
11 You were the last speaker to sign up.

12           So anybody else who wants to speak who hasn't had  
13 a chance to speak? Okay. I think -- oh, are you coming  
14 up? Oh, okay.

15           MR. SINCLAIR: Hi. My name is Armando Sinclair.  
16 I'm a Vice President of Maximizer Products domestic sales.

17           EXECUTIVE OFFICER GOLDSTENE: We already heard  
18 from Maximizer.

19           Is there anyone else from the construction  
20 industry that wants to speak?

21           You can certainly submit a letter, and we asked  
22 your colleague to contact us about how to get your product  
23 certified.

24           MR. SINCLAIR: Thank you very much.

25           EXECUTIVE OFFICER GOLDSTENE: I think what I'll

1 do is ask Erik White to summarize what we've heard this  
2 afternoon and then talk about next steps.

3 HEAVY-DUTY DIESEL IN-USE STRATEGIES BRANCH

4 ASSISTANT DIVISION CHIEF WHITE: Thank you, James.

5 And I want to thank everyone for coming out this  
6 morning and today.

7 Just let everybody know that I know we have been  
8 listening very intently today. I appreciate everyone  
9 taking the time to come and share your perspectives of  
10 what the rule means to you, how the changes that have been  
11 incorporated in the rule since its initial adoption have  
12 helped, but in many cases, as you've looked at your own  
13 fleets, have not helped enough.

14 And want to thank AGC and their stakeholders for  
15 what I thought was a very good presentation, really  
16 focusing on and directing us to really go back and look at  
17 the inventory, which we are going to do. And we will do  
18 that certainly with AGC as we move forward on that, and to  
19 go back and look where, you know, additional relief can be  
20 provided. We certainly recognize that there is strong  
21 support out there for a two-year delay of the  
22 requirements. But we also heard from other stakeholders  
23 as well that whatever relief we do provide we need to make  
24 sure that we are, in fact, maintaining the health  
25 benefits -- substantial health benefits that the

1 regulation does provide. And so I think as we move  
2 forward on opportunities for additional relief, we will  
3 keep both issues in mind, the need for regulatory relief  
4 and economic relief to fleets while maintaining the health  
5 benefits that -- the important health benefits that this  
6 regulation provides.

7           Our next steps as I think as you have heard a  
8 couple times will be compiling the comments. We'll be  
9 releasing the transcript of today's proceedings on our web  
10 page once that's available. We will go ahead and will  
11 summarize what we heard today, transmit to our Board so  
12 that they know what we heard and we can begin the process  
13 of re-looking at not only this rule, but our truck rule as  
14 to where additional relief can be provided while working  
15 within the emission reductions that we need to meet our  
16 SIP obligations and clean air obligations and protect  
17 public health as we go forward.

18           So with that, I think I'll turn it back over to  
19 James for some closing remarks.

20           UNIDENTIFIED SPEAKER: You're going to release  
21 the transcript of today, but we only have until 18th to  
22 submit any written proposal. So how soon are we going to  
23 get the transcript from today versus the drop dead date of  
24 the 18th?

25           EXECUTIVE OFFICER GOLDSTENE: I don't think you

1 need the transcript to submit your comments.

2 UNIDENTIFIED SPEAKER: Well, you don't know that.

3 EXECUTIVE OFFICER GOLDSTENE: Well --

4 UNIDENTIFIED SPEAKER: I'm just saying, you don't  
5 know that.

6 EXECUTIVE OFFICER GOLDSTENE: If your comments  
7 come in -- we're trying to get ready for the April Board  
8 meeting to take as much information as we can get to  
9 present to our Board in April. So the sooner you get your  
10 comments to us, the more helpful it will be.

11 MOBILE SOURCE CONTROL DIVISION CHIEF CROSS:  
12 We're looking for additional -- if you have additional  
13 ideas essentially that weren't discussed today, because we  
14 certainly are trying to summarize the data as well as we  
15 can.

16 EXECUTIVE OFFICER GOLDSTENE: The gentleman in  
17 the middle back has a question.

18 Just to reiterate, if you missed the 18th, please  
19 still submit your thoughts and ideas.

20 MR. DOWNS: I have a question. In the mind of  
21 CARB, which is most important: The unemployment figures  
22 in the state of California or the implementation of your  
23 rule?

24 EXECUTIVE OFFICER GOLDSTENE: Well, I mean, I  
25 think what we're trying to do here is gather the

1 information and use the data to drive the decision-making  
2 which we'll present to the Board in April. And I think  
3 all of the things we've been talking about -- not just the  
4 two items that you mentioned has to be considered and  
5 balanced off each other.

6 MR. DOWNS: Throughout the day, it seems to me  
7 that I what heard was that in most cases our only options  
8 are to, as equipment owners, business operators, in order  
9 to comply with this regulation, we are going to have to  
10 shrink in size, most of us -- there are a few rare  
11 exceptions out there that are going to be able to --

12 EXECUTIVE OFFICER GOLDSTENE: That is what we  
13 heard, exactly.

14 MR. DOWNS: And so I'm just going to throw out  
15 there why don't we meet again? Why don't we put all this  
16 off and then meet again once the unemployment rate in the  
17 state of California drops down to five percent?

18 EXECUTIVE OFFICER GOLDSTENE: Thank you for your  
19 idea.

20 Okay. So thank you all for being here this  
21 afternoon. We're up here for a few minutes if you have  
22 any questions that you want to discuss with us one on one.  
23 Thank you.

24 (Thereupon the Executive Officer hearing  
25 adjourned at 2:51 p.m.)