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# Implementation of California Clean Air Act of 1988

Assembly Committee on Natural Resources

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**CALIFORNIA LEGISLATURE**

**ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**Oversight Hearing**

**on**

**IMPLEMENTATION OF CALIFORNIA CLEAN AIR ACT OF 1988**

**Assembly Member Bryon D. Sher**

**Chairman**



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Sacramento, California  
November 25, 1991**

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**TRANSCRIPT OF PROCEEDINGS**

**NOVEMBER 25, 1991**

**ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**OVERSIGHT HEARING ON**

**\*\*\*IMPLEMENTATION OF CALIFORNIA CLEAN AIR ACT OF 1988\*\*\***

**COMMITTEE MEMBERS PRESENT**

**ASSEMBLY MEMBER BYRON D. SHER, CHAIR  
ASSEMBLY MEMBER CAROL BENTLEY  
ASSEMBLY MEMBER SAM FARR  
ASSEMBLY MEMBER NOLAN FRIZZELLE  
ASSEMBLY MEMBER MIKE GOTCH**

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**KIP LIPPER, CHIEF CONSULTANT  
ASSEMBLY NATURAL RESOURCES COMMITTEE**

**ANN BOONE, COMMITTEE SECRETARY  
ASSEMBLY NATURAL RESOURCES COMMITTEE**



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**BACKGROUND PAPER**  
**FOR OVERSIGHT HEARING ON**  
**THE CALIFORNIA CLEAN AIR ACT OF 1988**

November 25, 1991  
Assembly Natural Resources Committee  
State Capitol, Room 4202  
Sacramento, CA

Background On California's Air Quality

California is a state of many "firsts", particularly when it comes to discussions about the state's infamously polluted air. The state has adopted the most stringent air standards in the country to protect human health from the adverse effects of air pollution. The state Air Resources Board (ARB) and local air districts throughout the state have adopted some of the most innovative, far-reaching, and strict measures found anywhere in the world to reduce air pollution. As a result, new automobiles sold in this state are among the least polluting on the market today and California industries by and large produce proportionately less air pollution than their counterparts in other states.

Nonetheless, more than ninety-five percent of Californians continue to live in areas of the state that frequently suffer health threatening levels of air pollution. Approximately 4 in 10 Californians live in the South Coasts Air Basin when the air is unhealthy on far more days than it is clean. Seven in 10 live in basins that suffer 100 or more unhealthy days a year. Even the cleanest urban area of the state, the San Francisco Bay Area can expect to have unhealthy air between 20 and 40 days a year.

Ambient air standards for ozone and particulate matter are exceeded most frequently. For example these standards were exceeded on 58 and 83 percent of the days, respectively, in the South Coast Air basin in 1989. Carbon monoxide is almost exclusively a wintertime problem, and the standard was exceeded on 46 percent of the winter days (November through February) in the South Coast Air Basin in 1989/90.

Background On California Clean Air Act

In 1988, in response to concerns about deteriorating air quality, and the lack of action to address the issue at the federal level, the Legislature passed, and Governor Deukmejian signed into law, the AB 2595 (Sher), which became the California Clean Air Act of 1988 (hereafter "CCAA or "the Act"). The Act was the product of several years of sometimes arduous negotiations among a broad cross-section of industry groups, environmental organizations, local and regional government agencies, air districts and the state Air Resources Board (ARB), all of whom supported the final version of the Act as it was sent to the Governor. By all accounts, the CCAA marked a major turning point in California air quality planning and enforcement programs.

The Act was drafted and passed in response to several significant problems which had arisen in air quality law, planning and regulation and which reached their zenith in the mid-1980's.

First, the federal Clean Air Act, which since 1977 had provided the basic "road map" the ARB and air districts used in achieving clean air, was about to expire; Congress and then President Reagan were arguing over issues which had little relevance to California and seemed ill-disposed toward passing a newly reauthorized Act that year (Indeed, the newly reauthorized federal Clean Air Act did not pass until late 1990).

Second, while the federal Act had established a deadline of mid-1988 for air districts to attain the federal ambient air standards, few major urban regions of the state had done so. Industry and environmental groups alike resisted the idea of implementing clean air laws through the courts. Instead, a wide consensus emerged that a new state statutory framework was needed to address air pollution problems which were unique to the state.

Last, it was becoming increasingly clear that the traditional authorities granted to the ARB and air districts under California law provided an incomplete set of tools to regulatory agencies to clean up the air. Sheer growth in the number of automobiles clogging California's streets and highways, and in the number of "vehicle miles traveled" by these vehicles were diminishing or even offsetting significant gains achieved through the reduction of air pollution from stationary sources and from the individual internal combustion engine. It became clear that new planning and implementation strategies were needed to ensure that the state stayed on track in its efforts to clean up the air.

#### Summary of Key Provisions Of The Act

The California Clean Air Act made the following changes in state air quality laws:

- 1) It created a clear mandate for non-attainment areas to meet state ambient air standards (which are more protective of public health and more numerous than the federal standards) as well as federal standards by "the earliest practicable date."
- 2) It required air districts in these areas to adopt and implement plans which achieve a 5% annual reduction in emissions from sources of air pollution in order to demonstrate progress toward meeting standards. The law expressly allowed this 5% amount to be reduced or waived altogether if the state air resources board determines that a district is taking all feasible actions to clean up its air.
- 3) It required the state Air Resources Board to regulate so-called inter-basin transport of air pollution so that rural areas such as those in central valley do not suffer from air pollution transported from urban, upwind areas.
- 4) It required air districts to develop, adopt and enforce transportation control measures (e.g. ridesharing, vanpooling and carpooling) to reduce air pollution and traffic.

- 5) It gave new authority to the state Air Resources Board to reduce air pollution from a broad set of heretofore unregulated or underregulated sources of air pollution such as consumer products, locomotives, marine vessels and the like. It also gave the ARB the authority to adopt regulations reducing emissions from vehicular sources.
- 6) It made numerous other changes to ARB and district regulatory procedures to require the establishment of cost-effective and predictable regulatory programs for industry.

#### Key Issues To Be Examined At Hearing

Since the CCAA was enacted, a number of key regulatory and statutory issues have arisen around the Act. These issues fall into three general categories: (1) many industry groups feel that implementation of the CCAA by the ARB and Air Districts has been too stringent; (2) in contrast, environmental and public health groups believe that the ARB and the air districts have been too lax in implementing the law; and (3) many parties, including those mentioned above, believe that there may be areas of the CCAA which could be conformed to the newly re-authorized federal Clean Air Act without sacrificing air quality benefits. Some of these issues are more fully outlined below:

- 1) Since the CCAA was enacted, and as mentioned above, the Congress has enacted the 1990 revisions to the federal Clean Air Act. There are numerous provisions of federal law which touch upon issues addressed under the CCAA. Some have suggested that those areas in the CCAA which overlap and duplicate provisions of federal law should be conformed to the federal law to better coordinate implementation of both laws without sacrificing air quality benefits. This appears to be the case with respect to the district clean air plan provisions of the CCAA, the statutory deadlines of which could be better meshed with the federal deadlines.
- 2) A great deal of discussion took place this year in the Legislature over air district regulatory programs and the alleged burden of air district permitting programs on businesses. The committee has asked air districts, business groups and others to comment on what suggestions, if any, should be considered to ensure that businesses receive fair and expeditious treatment under air district permitting rules, without sacrificing air quality improvements?
- 3) Health and Safety Code Sections 39607(e) and 39608 require the ARB to develop and adopt criteria for designating air basins as in attainment or nonattainment for any state ambient air standard and to so designate basins on an individual pollutant basis. Several business groups, including CCEEB, Chevron Oil Corp., the Bay Area Council and the Santa Clara County Manufacturers Group maintain that the attainment/nonattainment designation criteria adopted by the ARB make it virtually impossible for air districts to develop plans which shows attainment of state ambient air standards. In contrast, environmental and public health groups believe that the current criteria should be retained.
- 4) Health and Safety Code Sections 40716 and 40717 authorize air districts to adopt and enforce indirect and areawide source control measures and require

districts to plan for, adopt and enforce transportation control measures. These new authorities, and ARB guidance in implementing these authorities, have been among the most controversial provisions of the CCAA.

- a) Several business groups, including the Bay Area Council and the Santa Clara County Manufacturers Group, have stated that the ARB guidance on transportation control measures does not allow credit for trip reductions or eliminations for such strategies as telecommuting and compressed work weeks. The ARB has indicated that the law may need to be amended to allow these strategies to count.
  - b) In legislative hearings on the subject of Growth Management, it has been suggested that provisions of the federal Clean Air Act Amendments of 1990 (FCAA) which require metropolitan planning agencies (e.g. councils of governments) to review development projects of regional significance to ensure that they conform to air quality objectives might function as a surrogate for the indirect source review (ISR) authority provided to air districts under the CCAA. Several witnesses at the hearing will speak to whether or not this may be the case.
  - c) The California Building Industry Association, developers and local governments have expressed concern about ISR authority, as interpreted by the ARB in its guidance to air districts. Specifically, they contend that the ARB's guidance usurps local land use authority, in contradiction to Health And Safety Code Section 40716(b). (Some of these interests have sponsored SB 352 (Greene), which is presently pending before this committee and which would limit air district ISR authority to comments on CEQA documents). The committee will hear testimony from air districts, developers and local and regional government officials on this issue.
  - d) It is unclear what criteria the ARB will use to judge TCM and ISR control measures to be in compliance with state law when it reviews district attainment plans. Several environmental groups have objected to the classification of new highway and toll road construction as TCM's under the air district attainment plans. Others have raised questions as to whether the market-based strategies in the recently adopted Bay Area Plan (e.g. increased gas taxes, increased bridge tolls), which may require changes in state law to implement, and which may meet with strong political opposition, should be counted as TCM's when their feasibility is questionable.
- 5) Several of the same business groups mentioned above have raised concerns about terms used in the planning provisions of the CCAA and their potential to result in litigation. They cite language in Health And Safety Code Section 40913(b) which require districts to determine that their plans result in "cost-effective" strategies to reduce air pollution, and in Section 40914(b) (2) which allows an air district to achieve less than the 5 percent annual emission reduction if it shows that its plan includes "every feasible measure" and "an expeditious adoption schedule" to improve air quality. Environmental groups are wary of changing, or further defining these terms in a manner which would relieve air districts of the obligation to ensure that their plans would clean up the air.

- 6) Health and Safety Code Sections 40918-40920 establish a classification scheme for air districts, based upon projected date of attainment, and specify control measures which must be adopted by air districts in each classification.
  - a) The Bay Area Council, the Santa Clara County Manufacturers Group, local governments and other interests in the bay area contend that the classification scheme unfairly groups areas such as the bay area, which have reasonably "good" air quality, with the South Coast basin, which has much more serious air quality problems. They contend that this results in the bay area having to adopt the same stringent control measures as the South Coast in order to address a much less serious air pollution problem. These same bay area groups state that the CCAA classification scheme should be conformed to the federal scheme for classifying air districts, and that classification should be based upon design values of a given area using federal criteria rather than on state ambient air standards. This would result in a reduction in the types and stringency of measures the bay area would have to adopt to achieve clean air, something environmental groups strongly oppose.
- 7) Health And Safety Code Section 41712 requires the ARB to adopt regulations to achieve the maximum feasible reductions in reactive organic compounds from consumer products, but authorizes air districts to adopt their own rules with respect to such products prior to when the ARB acts to regulate these materials. Several consumer product and business groups have suggested that regulation of consumer products is more appropriately addressed at the state level, rather than by individual districts, and that districts should be preempted from further action in this area. Several districts already have regulations governing emissions from consumer products and may resist this change in law.



**CHAIRMAN SHER:** Welcome to this hearing of the Assembly Natural Resources Committee.

The subject today is, of course, an oversight hearing on the implementation of the state's clean air planning and implementation law, the California Clean Air Act of 1988. Today we're going to hear from the chair of the Air Resources Board, air district officials, a wide variety of industrial groups, environmental organizations, and local and regional government officials.

We have a very lengthy list of witnesses, and so I want to reiterate what most of the witnesses have already been told by committee staff and that is, we urge you to be as concise as possible, not to read long, written statements, but of course we would be pleased to receive any statements in writing for our record. As the hearing progresses, if it appears that we are not adhering to the time allocations that we have outlined, then we may have to ask witnesses to reduce their testimony in order that others who follow can be heard, and I would just ask you to be considerate of others and keep your remarks to the point.

Before we turn to our first witness, I just want to make a couple of brief opening remarks.

The California Clean Air Act represents an important step in California's already landmark efforts to protect public health from the effects of air pollution. There are three key principles which were established by the Act. Principles, I might

say, which lead industry groups, such as the California Manufacturers Association, to join with environmental organizations such as the Sierra Club in strongly supporting the enactment of the Act back in 1988.

The first principle. The Act continues the state's long tradition of placing central emphasis on protection of public health by creating a clear mandate for non-attainment areas to plan for and to attain state ambient air standards by the earliest practical date -- to use the phrase -- in the Act. The Act establishes explicit yardsticks by which air districts would be measured in terms of their progress in achieving the state's standards by requiring non-attainment areas to achieve a minimum 5 percent annual reduction in emissions from sources of air pollution in order to demonstrate progress toward meeting the state's standards. However, recognizing that this is a tough standard to achieve, and in order to provide flexibility both to the Air Resources Board and to the Air Districts, the Act allows this 5 percent reduction itself to be reduced or even waived altogether, if the Air Resources Board determines that a district is taking all feasible actions to clean up its air.

The second principle, and one which was particularly important to business interests, is that air district plans which identify the actions they will take to clean up the air must be -- and this is also terminology from the Act -- must be cost-effective, and they "must strive to achieve the most

efficient methods of air pollution control." The Act further requires air districts to plan ahead and to notify the regulated community up to a year in advance of any regulatory actions to provide industry with ample opportunity to respond to any proposed regulatory actions and to work with air district officials to make them as workable as possible for the effected parties.

The third principle can best be summarized by saying that the Act brought everybody under the tent. At the strong urging of the industry groups such as the California Council on Environmental and Economic Balance and the Western States Petroleum Association, which were concerned about air districts ever-tightening stationary source controls and, at the same time, the growing amount of emissions from the transportation sector, the Act required the State Air Resources Board and air districts to reduce air pollution, not just from the so called smoke stack industries, but also from heretofore unregulated or underregulated sources of air pollution, for example: motor vehicle trips, consumer products, locomotives, and marine vessels.

These new authorities, particularly those effecting reductions in vehicle miles traveled, have been the subject of a good deal of controversy and, indeed, of legislative efforts to weaken air district authority. But to their credit, groups like the Council on Environmental and Economic Balance have opposed these efforts until better approaches can be devised. After three years on the books, and despite concerns expressed about various

provisions of the Act, most of the parties who supported the original law continue to support these fundamental principles of the Act.

Some have expressed concern that the California Clean Air Act has delegated too much responsibility concerning the state's air pollution problems to regional and local governments, which, they say, do not have sufficient tools or political capital to improve air quality.

Now, I think that we would all agree that while the state clearly can do more to assist in reducing air pollution, we also know that the state Air Resources Board, acting under the statutory authority provided by the Legislature, has certainly done its share by enacting some of the most sweeping measures in the world to reduce air pollution from automotive sources, consumer products, and petroleum fuels. Other parties have contended that the transportation control measures under the Act inappropriately usurp local and regional perogatives to control residential and commercial development.

As a former Mayor and City Council Member myself, I would be the first to support alternative strategies which reduce vehicle miles traveled, air pollution, and traffic congestion, and I would say that it is incumbent upon us, and I would encourage those who have expressed concern about the system under the California Clean Air Act, with the role played by the air districts, I think's it's incumbent on them to come forward with

concrete and specific alternative proposals which ensure that the objectives to reduce vehicle miles traveled, and so forth, will actually be achieved. Still others have argued that the Act and other air quality laws are having a detrimental impact on the state's economy. Now while I support efforts to make state and local regulatory programs as efficient as possible, the South Coast plan notes that efforts to clean up the polluted air in these regions may actually result in a net increase in jobs and in a net economic benefit in terms of dollars spent to clean up the air verses dollars saved in health care costs, declining property values, and the like.

Now one last point on the economics of reducing air pollution. Some of you may have read recently about a recent California business round-table survey of the state's business climate. Aside from a criticism that this survey has received on the basis that it may have been designed to paint a picture desired by its sponsors, leaving that aside, the press in reporting on the survey tended to dwell on concerns business had expressed over high workers' compensation costs, state tax liabilities, high cost of labor and housing, all of which clearly need to be addressed in order to retain a vibrant economy in California.

However, there was a part of this survey that received less attention and that was the fact that many industries find the state a less desirable place to do business in because of

so-called "quality of life" deterioration factors. Specifically, the survey found that 40 of the businesses that responded to the survey sited poor air quality and 47 percent sited clogged transportation systems as having a negative impact on their desire to do business in this state. So clearly, even under that survey, accurate or not, the respondents are concerned about air quality and clogged transportation systems as far as their ability to do business in the state. So it's clear, then, that business and environmentalists alike all have a stake in cleaning up California's polluted air.

Today's hearing will explore some of these issues in greater depth. I hope that at the end of the hearing we will have aired these issues fully and that we can then turn to what actions, if any, the Legislature should take to ensure that California's air quality laws are implemented as effectively and as efficiently as possible.

So now we turn to our first witness, Ms. Jananne Sharpless, Chairwoman of the Air Resources Board, and we're grateful for her for being here today because we know you had a busy week last week and you had other plans for today, so we're certainly grateful that you're here at our hearing and want you to lead off.

Before you start, Ms. Sharpless, let me just introduce other members of the committee who are here: Assemblywoman Carol Bentley on my far left; Assemblyman Mike Gotch on the right; and,

we hope others will arrive during the course of the morning.

MS. JANANNE SHARPLESS: Okay. Thank you very much. It's a pleasure for me to be here. Yes, I was scheduled to do jury duty today. So, it's one jury verses another, I guess.

I'd like to introduce some key members of my staff here today, who you may know and have worked with in the past: Mr. Jim Boyd, who is the Executive Officer of the Air Resources Board, and Catherine Weatherspoon is, of course, key to working with districts on implementation of the Clean Air Act provisions.

It is a privilege for me to be here today and have an opportunity to reflect on the implementation of the California Clean Air Act. The Air Resources Board is proud of its accomplishments over the last two years, and in addition, we are confident that the Act will yield impressive gains at the local level once the current planning cycle is completed.

As you mentioned, Chairman Sher, these are difficult economic times, and we are operating under a shadow that none of us anticipated when the Act was passed in 1987, a persistent downturn in the state and national economy, a deficit approaching \$3 billion in the coming fiscal year. As guardians of the public trust, we in both branches of government need to proceed cautiously. It's time for great sensitivity to economic concerns. However, it's not time to abandoned the basis on which this law was enacted. If we're prudent and a little bit patient, we'll come out of this with a stronger state economy, I believe, and an

environment that's necessary to sustain the health and the well-being of the citizens of this great state.

Unlike some individuals, I have not become discouraged or distraught by the experience of working through the Act's provisions. To be sure, there have been surprises along the way. We did not, for example, anticipate the widespread difficulty in achieving the 5 percent annual emission reduction requirement, but there is flexibility in the Act to manage these difficulties.

I think we should all keep in mind how new this law is and how different it is from everything that came before. We did not follow the federal pattern of rigid, unyielding deadlines. We do not have the same threat of locking into strategies which later prove to be unworkable. We can revise our course at any time. If we allow the Act to be fully tested, I believe we'll find that this framework is both sensible and accommodating. The Act provides the means through which a variety of responsible plans can be developed, approved, and implemented. It can be responsive and successful if given a chance. It will produce dramatic improvements in air quality if positive forces come together to work. The Act is not fundamentally flawed and it is amazingly consistent with the federal Act despite being signed into the law 2 years previous. Furthermore, the head start we've gotten will be tremendously useful in meeting the new national requirements.

I have a handout that I hope has already been given out -- Yes? -- which summarizes our actions during 1989, 1990, and

1991 to implement the Act. It's broken into three parts: regulatory, guidelines, studies -- I guess it's four parts -- and plan implementation. I will not dwell on this material since I know you are eager to hear our responses to particular questions and you have a long agenda. However, I want to highlight the Board's regulatory accomplishments and the vehicle, fuel, and offroad mobile source areas because they will, more than any other action, be determining the quality of air in the 21st century.

Given everything we know about air pollution, and everything we continue to learn about mobile source contribution, it is undeniable that the key to success lies in the transportation sector. How we move about, how we transport society's goods, the kind of vehicles we drive, and the purity of the fuel we burn will all be critical to clean up the air. For the last 2 years and as recently as last Friday, the Air Resources Board has been steadily bringing motor vehicle and fuel standards to a new, cleaner plateau.

In September of 1990, the family of low-emitting automobiles was born. The family consists of transitional, low-emission, ultra-low emission, and zero-emission vehicles. We are phasing these in progressively starting with the 1994 model year. The zero-emission vehicles, which many of you may have heard about will debut in 1998. We expect electric vehicles to contribute greatly to clean air, and we are very excited about some of the prototypes that we've seen car companies working on.

Last week, we completed the second phase of a comprehensive regulation to reformulate the state's gasoline. This regulation reduces gasoline's tendency to evaporate in warm temperatures, makes detergents mandatory, bans lead, increases the oxygen content which lowers carbon monoxide, sets new and more stringent content for limits of sulfur, benzene, aromatic hydrocarbons and olefins. California's reformulated gasoline will reduce the emission of every car on the road today and every offroad engine that runs on commercial gasoline. The major criteria pollutants of concern, and many of the most dangerous, toxic pollutants are reduced by this regulation.

In January, we hope to complete the second phase of our control program for consumer products. A major emission category that was virtually unregulated before the California Clean Air Act was adopted. I want to stress the efficiency of these regulations that the Air Board has done. All place a high priority on minimizing effects on the affected industry. For example, we have combined the resources of the world's fuel and auto industries to shape the cost of producing low-emission vehicles, and we've prevented our oil refineries from being hit again and again with different fuel regulations, which is a more costly proposition, by combining our requirements into a single package.

The last accomplishment I want to mention is the off-road mobile source area. We've made dramatic headway in developing off-road strategies for locomotives, marine vessels,

heavy-duty engines, off-road engines, and utility engines. A regulation for utility engines was adopted in December of last year. The first part of next year, we will consider rules for construction and farm equipment. Control plans have been completed for all other categories excepting off-road vehicles, which will be finished early next year. The combined effect of these regulations is a 460 ton-per-day statewide reduction of hydro carbons, a 550 ton-per-day cut in nitrogen oxides, 3,200 fewer tons of carbon monoxide and a significant decrease in particulate matter. These estimates are for the year 2000 which is fast approaching. To put this in perspective, the reduction we've achieved in smog-reducing emissions alone -- that's reactive organic gases and nitrogenous of oxides -- is roughly equal to the current emissions of the San Francisco Bay Area for the same pollutants. Now, I don't want to consume a lot of the committee's time with a lengthy recitation of the Air Board's actions but, as I said a moment ago, we are proud of the accomplishments that the Board has achieved with the mandates provided by the act that you sponsored.

Now I'd like to turn to the questions posed in your November 12th letter, and in view of the time constraints, I'll limit my remarks to the asterisk subjects. Our detailed written responses will be provided to the committee very shortly.

One of the first things we did under the Act was establish criteria for designating the definition of attainment

and non-attainment areas. The criteria are based on the state's standards, which differ from the federal standards in two respects: our targets are lower, that is they are more health protective, and the definition of what constitutes a violation of the standard is also different. However, the state criteria also contains a measure of flexibility as contemplated by the language in the Act. Right now, attainment is defined as the consecutive -- three consecutive years without a violation of the state ozone standard. There are some very important caveats. Exceptional events such as forest fires, earthquakes, or the breakdown of a major facility located near a monitor, are excluded, and if it seems due to highly unusual meteorology they're also excluded. Thus, the criteria is intended to address only the representative conditions. The criteria do not compel air districts to attain standards under every conceivable circumstance.

The stringency of the attainment test has proven to be a very contentious issue. Some say they are too demanding and argue that there would be large savings and control costs with little public health damage if we were to forgive more exceedences. We've had extended discussions with interested parties about the determination of highly unusual meteorology. This term was not defined in the Act, so the Board was required to make a determination as to what it meant. We pegged the definition of "unusual" as meteorology that you expect to see only once every 7 years, but other definitions are clearly possible. Both I and my

fellow Board members are persuaded that a less restrictive definition could be employed without significant deleterious effects. Staff are working on a proposal to accomplish this; and after extensive public discussion and workshops, we'll be bringing that proposal back to the Board for consideration.

I think it's important to give all parties a chance to express their views, since we're talking about at least a slight reduction in public health protection if we make such a modification. I do not agree with the statement that ARB's designation criteria establishes an unachievable goal. The statutes, which the criteria seek to implement, stop real short of that mark by requiring feasibility, cost-effectiveness, and reasonableness to be considered in every circumstance.

Let me also point out that attainment of either the state or federal ozone standard is more than a decade away from most urbanized areas in California. This means, the consequences of state and federal standards are the same for the near- to middle-term years. We're going to need the same control strategies over the next 10 years or so to achieve either goal. The purported disparity between state and federal designation criteria in this respect is substantially exaggerated. Those who argue that we need to change the designation criteria right now to avoid over-control aren't recognizing how far we need to go; and even the Bay Area who could reach the federal milestone first, will face maintenance requirements once they do to avoid slipping

back into non-attainment.

To sum up, state standards are the right goal. Federal standards and the federal designation criteria, by all of human health research, are less restrictive than they should be to protect public health. The process in the Act for establishing designation criteria has yielded reasonable results so far, and we'll be improving on those criteria in early-1992. Once that occurs, the controversy over the Act's attainment goal should be substantially diminished.

I'd like to go on the Act's classification scheme, since the issues relating to that scheme are somewhat analogous. One of the surprises we've seen is how many districts landed in the severe category, whether for lack of a reliable photo-chemical model to produce future air quality -- rather to project future air quality -- or due to the difficulties of achieving steep emission reductions. Most districts cannot show attainment by the end of 1997, thereby putting them in the severe category. Some say it's unfair to group all the post-1997 districts in the same category; others say it's confusing, since the federal classifications are different. Well, we can't totally solve the second problem since the state and the federal classifications are based on different parameters. We're looking at how long it takes to attain; EPA looks only at the ambient concentrations of ozone -- the higher they are, the more serious the classification. We're also aiming at different goals. By the time we meet the

federal ozone standard, we'll still have a significant health problem. If we use their scheme, we'd be significantly relaxing a public health standard.

Regarding the fairness concern, let me respond in two ways. The common label does not convey the variation between districts that some people wish to highlight. The Bay Area does, in fact, have lower pollutant concentrations than the South Coast or the Central Valley. If public education is one of our goals, it is right to be concerned about imprecise labels that imply the problems are the same. However, the control strategies triggered by the severe classification are generally appropriate for any long-term, non-attainment area. The theory is that the level of effort ought to increase as unhealthy ozone levels persist. Whether you live in San Jose or whether you live in San Bernardino, you're entitled to diligent effort on the part of your local air quality district. Unhealthful air pollution should not be allowed to linger any longer than is absolutely necessary. This is particularly important given recent studies on the health effects on long-term, chronic illnesses.

If possible, exception to this statement is that no net increase requirement from permitted sources, which currently applies to both serious and severe areas, in non-attainment pollutants is intended to mitigate the adverse effects of increased emissions from new or expanding sources in non-attainment areas. The no net increase requirement is placing

enormous pressure on the permitting system, thereby making it difficult to accommodate the business growth California so clearly needs to sustain. In a well administered program, adequate mitigation can still occur if some small sources are excluded from the "no net" increase requirement. The approach can also reduce part of the regulatory burden on small businesses. We would characterize these changes as fine-tuning and would be happy to work with the committee in the future to craft them.

We would also be happy to work with this committee to address the labeling problem in a way that addresses the misperceptions created by the current system while retaining appropriate control requirements to match the nature and severity of the state's air quality problems.

Since I broached the subject of control requirements, let me turn now to some of the specific measures that are eliciting concern. I'll start with transportation controls, then move to indirect source review, and consumer products. The debate over what should count towards the average vehicle occupancy requirement is instructive. In this instance, several beneficial strategies are being pursued and we need only adjust the law to keep up with them. The Air Resources Board has no objections to assigning appropriate credit to telecommuting and to compressed workweeks. Those are valid components of transportation management plans. The concern about capacity enhancements, such as freeway expansions, requires a balanced response. We believe

that the California Clean Air Act will work in concert with the recent changes in the state's transportation laws. If we design them correctly, transportation control measures will reduce both congestion and emissions, and provided that we analyze the emission-increasing potential of new capacity, and include mitigation for that within our air quality plans, we will not be sacrificing our air quality goals for increased mobility. I know the thought of new highway lanes, even if they are high-occupancy vehicle lanes, is an anathema to some groups. However, I am convinced that society will be better off if we keep both goals in mind.

We are interested in the market-based TCMS (transportation control measures) being debated in the Bay Area and elsewhere. We've long viewed pricing mechanisms as an under-utilized tool for bringing about desired changes. Our current pricing system, which provides substantial but generally hidden subsidies to auto users, encourages individuals to drive in a manner that increases both emissions and congestion. Clearly, we need to do something better. We should at least explore whether congestion pricing, taxation policies, and vehicle use fees can do the job in a reasonable and cost-effective way. Of course, if pricing is used, it must be done in a way that is fair to lower income groups and must be tied to the availability and the timeliness of transit and ride-sharing options.

That brings me to indirect source review (ISR). It is

the Board's legal opinion that the district's adoption of indirect source rules would not usurp or infringe upon local government land-use powers. The situation is analogous to stationery source rules where districts and local government exercise concurrent jurisdiction. Be that as it may, we're seeing a uniform trend toward delegation of ISR responsibilities. Districts prefer to vest local government with this responsibility rather than impose a separate potentially burdensome permit requirement. All of the plans we have received to date take this approach, and I'm certain that the district representatives, here today, will bear with out as they talk about their own experiences.

Concerning the proposal being floated in the growth management hearings to substitute conformity review for ISR, I have to admit to some puzzlement and concern. I don't understand how the federal conformity approach could ever be an adequate substitute for ISR. As maker of that recommendation is aware, federal conformity requirements do not grant ISR authority to regional agencies. Well-intentioned COGS can strive to fill the gap and SCAG certainly has tried, but their efforts to achieve change through indirect advisory means cannot match the regulatory authority of cities, counties, or, if ultimately necessary, air districts. By this response, I do not mean to dismiss other proposals that may emerge from the growth management proceedings. The Governor's task force which will be issuing it's report next month will present several proposals for more successfully

coordinating the efforts of districts, COGS, and local government. How we treat ISR will need to be considered in light of those recommendations.

Turning closer to home, let me respond to some of the concerns related to our adopted and proposed consumer product regulations. In mid-1989, the Board approved a control plan that established a goal of cutting consumer product emissions by 50 percent in the year 2000. Later that year, we adopted a regulation for antiperspirants and deodorants. In 1990, we adopted comprehensive regulations concerning 16 consumer product categories, and we're proposing to add 12 more categories in January, including fragrance products and disinfectants. The cost-effectiveness of these regulations is in the 5 cents to the \$1.70 per pound range, which is, in today's terms, incredibly good. Both we and local districts have adopted hydrocarbon measures in years past that approach \$5 per pound of emissions reduced.

Even with these numbers, we've been sensitive to compliance difficulties from the start. To give manufacturers some flexibility in meeting the emission control requirements, we have included a provision for innovative products in the 1990 regulation. That provision allows industry to avoid reformulation when they have an alternative approach which would receive the same result. We've had a few products come forward under this provision already. Next year, we hope to put an alternative

compliance procedure in effect to complete the emission of achieving a 50 percent reduction from the consumer product category.

One of the most interesting concepts we are exploring is an emissions cap or a bubble that would cover a manufacturers entire line of various consumer products. The approach would give manufacturers the maximum degree of flexibility in meeting emission control standards. Here's how it works: An emission cap would be placed on the whole product line and reduced over time. The manufacturer would choose which products to modify to stay within the cap. We expect the cheapest and easiest modification to be done first, followed by the more complex adjustments as lessons are learned. If approved by the Board, this procedure will be in place well before the 1995 implementation date of the proposed consumer regulation and will also proceed the 1993 deadline for the phase 1 regulation that we've already adopted.

In response to Lysol's concerns. That reformulation would compromise the health protectiveness of their product. Let me say this, we are taking steps to ensure that any product which claims to be a low-polluting, aerosol disinfectant is as fully effective as killing the organisms which endanger public health. We're consulting with the Department of Health Services on this score and are continuing to discuss possible options with the affected industry as we prepare for January's Board meeting.

With regard to personal fragrance products, we believe

that the proposed regulation insures commercial feasibility. There will continue to be a market for these products even if they are slightly reformulated, but we appreciate the industry's keen concern about consumer loyalty and whether a rose by any other formulation will still smell as sweet. Staff will continue to meet with fragrance industry representatives to see if we can't find some middle ground. Of course, these manufacturers are already eligible for the innovative product provision that I mentioned earlier.

In response to your question, "Should consumer products be regulated at the state or local level? I think the former is most appropriate, and that is, in fact, what is happening. The sole exception, of course, is in the South Coast's early action on charcoal lighter fluid, which will soon be expanded to an equivalent statewide rule. To our knowledge, no district is contemplating independent consumer product controls, and next month's regulation will make such action even less likely.

I believe I have covered all of the specific control measures culled out of your November 12th letter. These measures and more are contained within the 1991 air quality plans that are winding their way to the Air Resources Board for approval. We've been asked how we intend to handle these plans and whether any criteria had been established for their approval. The handout I gave you earlier contains a long list of the guidances that have been offered to date by the Air Resources Board. All of

those documents were reviewed and approved by the Board at public meetings. While they are not binding in a regulatory sense, they provide a strong indication of the factors that will be considered when reviewing district plans.

The process we are following is one of constant communication. Immediately after the Act was passed, we set up an Office of Air Quality Planning and assigned staff liaison to every non-attainment area. Since then, we've been working with districts and affected parties each step of the way. In addition, we have provided extensive comments on draft plans to bring about fuller compliance with the law. Early next year, we will begin our public hearings on individual plans. These will be in the local air basins and will be preceded by a staff report and a published notice. Along with the criteria stated in the Health and Safety Code Section 4913, the Act directs us to encourage uniformity within air basins, and compliance with any transport mitigation measures set by the Board, to concur with their projected attainment dates, and to determine when 5 percent annual emission reductions are not possible, whether the plan contains every feasible measure and an expeditious adoption schedule. These parameters are set forth in Section 41503.

Now the terms "feasibility measure" and "expeditious adoption" are not defined in the Act but echo terms used throughout environmental statutes. Since there is extensive case law and policy precedent for the latter, we do not find these

terms as ambiguous or vulnerable as business groups seem to. I can't discount the probability of lawsuits since we live in a highly litigious society. The environmental arena is particularly prone to citizen suits on both meritorious and less admirable grounds. I can give my views as to the probable outcome, however. While no agency welcomes litigation, I am confident that the Board's interpretation of feasible, cost-effective, and expeditious will withstand judicial scrutiny. I'm also of the view that the Legislature probably could not define these terms in more detail without injecting new ambiguity in the Act and encouraging more litigation despite your best intentions. Feasible, cost-effective, and expeditious are time-bound and fact-bound concepts. Applying them to any particular plan requires a factual analysis and a comparison to other similarly situated districts, but some generalizations can be made.

Let me tell you how we've interpreted these terms so far. We've reached the preliminary conclusion that feasible means a certain universe of demonstrated control measures. We've identified 22 such measures for stationary sources and offered general guidance for transportation-related sources. As districts' experience with emission controls deepen, more measures will be added. Before the Act even passed, we'd pretty much defined cost-effectiveness as the amount of dollars per tons of emission reduced. We kept that same definition for the purpose of implementing the Act's cost-effective ranking requirements. In

the future, we might be able to talk in terms of ambient change, that is, dollars per unit of air quality improvement, but at the moment we just simply do not have the tools to do that.

We've interpreted expeditious adoption as maintaining a steady pace of rule-making. The workload associated with new regulatory measures is not trivial, but it seems reasonable to expect several products by each year's end; but it also seems reasonable that exactly how many of those products may depend on the district itself and what they're trying to accomplish in any given year. Some rules, like utility retrofits for example, are more controversial and therefore more time-consuming than others. Since the Act requires plans to be revised every three years, our interpretation of feasible, cost-effective, and expeditious are viewed from a 3- to 5-year window. As we interpret the Act, what's most important is whether the districts in ARB have chosen the right priorities for the current planning cycle. We must start somewhere and it is impossible to do a decade's worth of work all at once.

Since I've spent some time telling you what shouldn't be changed in the California Clean Air Act, let me wind up by suggesting what should. In the coming years, we will have to expend a considerable amount of effort meeting federal deadlines for state implementation plan submittals. Lining up the state and federal planning cycles will lessen the load. The preferred approach of a single comprehensive plan is no longer an available

option. Unlike California, Congress has doled out its mandates by individual pollutant and by individual planning element. The paper-pushing that will be required to stay ahead of federal sanctions will bury us unless we minimize the number of separate plan submittal deadlines and the associated paperwork.

The next opportunity we have to line things up is in 1994 when the federal ozone plans are due. If the Act's 3-year timetable shifted a little bit to parallel this date, we could save some energy for where we really need it, just moving the control program forward. This recommendation is made reluctantly. It should not be interpreted as an endorsement of the federal planning process, rather, it is an effort to make a difficult situation somewhat less difficult. In addition, I am not suggesting that we replace the entire California planning process with the federal version -- that simply would just not do the job for California.

Congress demonstrated its lack of concern for California's unique difficulties in many ways, including its preemption of critically needed regulatory powers. The US-EPA's interpretations of the federal Act are another cause for concern. EPA simply can't, and won't, base their implementing regulation on our state's needs since that may produce an over-control elsewhere in the nation. No other state in the nation has ambient pollution levels that compare to our state. So, we have to solve California's air quality problems in our own way. In my view,

that means we need our own laws even more than we did before. We also need to have a little faith.

Many of the concerns that have been brought to the committee are rooted in pessimism. People are assuming the very worst, rather than joining in the search for workable solutions. As I said in my opening remarks, "workable" means taking a present economic situation into account. We do not want to make rash control decisions, and we do not want to overlook alternate, cheaper pathways to accomplish our emission reduction goals. The ARB is doing everything possible to work with these constraints, since it's sound public policy for both good times and bad times. Let's not turn the clock back. The California Clean Air Act has given us a sustainable framework for managing the state's significant air quality programs. It has spurred us on. It has granted relief when, despite our best efforts, its particular mandates remain beyond our control. Let's fine-tune the law if we must, but let's also give it a chance to be fully tested.

Thank you very much.

**CHAIRMAN SHER:** Well, thank you very much. I'm sure my colleagues agree that that was a comprehensive and well-organized, I might say, summary of where you've gone in the ARB and we particularly appreciate your suggesting points where you would be in support of trying to do a little fine-tuning in a way that would not in any way weaken the Act.

I want to introduce our colleagues who have arrived

during your statement: Assemblymember Sam Farr and Assemblymember Nolan Frizzelle. Welcome to the hearing. We'll give members a chance to ask questions if they have any for you or your very able staff people.

Let me start with the point that I made in my opening about some suggestions that the cost of cleaning up California's air pollution exceeds the benefits of cleaning up the air. Does the ARB have any studies or have you tried to quantify this cost benefit question?

**MS. SHARPLESS:** Yes. We have tried and I don't know -- Catherine do you want to take a stab in telling about how we've looked at the issue and what kinds of things we've come up with?

**MS. CATHERINE WEATHERSPOON:** Good morning, Assembly Chair and Members. The most extensive work on cost versus benefits has been done in the South Coast Air Quality Management District, where Dr. Jean Hall was able to do a more thorough job than had been done previously in assessing the benefit side. We tend to hear a great deal about the cost but much less about the countervailing benefits. The Lung Association has done some analysis to that extent also, pertaining to the Bay Area Air Quality Management District. Right now, we're trying to assemble all of that into somewhat of a more comprehensive view of what it costs versus what we gain, and we do think, overall, it's either a wash or we come out slightly ahead for investing in pollution control technologies.

MR. JIM BOYD: Chairman Sher, just to build on that a little bit. We have emphasized, as the Chairwoman indicated in her statement, the issue of cost-effectiveness historically, because of the extreme difficulty of getting a handle on true benefits when you deal with cost-benefit type's analyses. The public, the value of a life, the value of improving on public health is a very difficult issue to put a price tag on, and as Ms. Weatherspoon indicated, work has been done over the years in that area, and we are trying to compile that into something of use and of value to all the policy decision-makers.

CHAIRMAN SHER: I think, as the Chair indicated in her comments, the Act itself requires that the strategies be cost-effective and provides for a ranking, which you say you have done and have given guidelines.

MS. SHARPLESS: Yes, and I think the other point is that it is very difficult when you're dealing at a plan level to put a good price tag on the various controls. We do try. In some areas we have better information because the technology is known. It may be a case of technology transfer in some areas. In some areas we are really out there on the cutting edge, and my experience on the Board is oftentimes people come in with a very high cost figure for a proposal, and after the Board gets through working with the industry, and we put flexibility in it - in other words, to give you some examples in the area of vehicle controls for instance -- What we've done is allow flexibility through timing

and sequencing. This allows them to start with the easier to deal with problems and build on it so that, in the long term, you give the industry an opportunity to do it in its most cost-effective way. Even though you have a group of industries, like the oil refineries, the ones that we just dealt with on Friday, there is such a range of possibilities that you have to build in flexibility to allow for the most cost-effective approach. These things you really don't get to until you get to the control strategy.

We are in the first part of the California Clean Air Act. We are in the first half of the planning cycle, and naturally, people are very concerned about the cost to society of the various proposals, but, in many ways, we haven't been able to come up with finite costs on these proposals because we're not at that stage yet. We're still working through what we should put on the menu before we can get to how we are going to go about accomplishing what's on the menu, and there's a lot of very bright and able people in this state that, when we start working on the control end of things, come up with some very creative ideas. And that's why, in the consumer product area, we've come up with innovative product provisions and other kinds of things. That's why that, in Los Angeles, they're looking at tradable permits; different kinds of ways to deal with the problem, but if you start tinkering around with the first phase of the problem, of whether or not the standard is too high to be met, you never get to the

possibilities of how to achieve it.

**CHAIRMAN SHER:** All right. Thank you. Do any Members of the committee have questions? Mr. Farr?

**ASSEMBLYMAN SAM FARR:** I have two questions, and kind of an observation since we've been out of session here. The first question is that the words from your remarks, "Do you think that the federal standard is essentially too weak to handle California's problems?"

**MS. SHARPLESS:** well, I think it's too weak for the whole nation, and I think that the scientists back in Washington, many people who sit on the panel back there and gather information, have come to the same conclusion.

**ASSEMBLYMAN FARR:** The second question I have is regarding your comment about dealing with the Governor. You've been on the Governor's Interagency Task Force on Growth Management?

**MS. SHARPLESS:** I'm a subset. The agency is on the task force.

**ASSEMBLYMAN FARR:** As you know, my committee's struggling with that issue, and could you enlarge a little bit on your comments about what you think's going to come out of the Governor's proposal as it relates to Air Boards?

**MS. SHARPLESS:** Not really. They are still in the process at the agency level of culling through a lot of different proposals that have been put on the table, and I don't think that

they're yet at the point where they have decided exactly what they're going to propose to the Governor or to the Legislature. I'm not trying to be evasive, Mr. Farr, but I really don't have a clue.

**ASSEMBLYMAN FARR:** The last part is an observation. I have a 1981 --

**MS. SHARPLESS:** A 19 what?

**ASSEMBLYMAN FARR:** 1981 station wagon that has to get --

**MS. SHARPLESS:** Domestic?

**ASSEMBLYMAN FARR:** the smog -- yeah, domestic. It has to get a smog check.

**CHAIRMAN SHER:** You never drive it though, do you, Sam?

**MS. SHARPLESS:** It has to get a smog check?

**ASSEMBLYMAN FARR:** Yeah, and when I went to do the smog check it was very interesting. This very enlightened person was telling me that this program is not working at all for several reasons. One, he pointed out that he's never found a car manufactured since 1985 that's been in violation; and therefore, he feels like he's kind of ripping people off asking people to pay fees to get the check, particularly with the new cars. Secondly, he was showing me the threshold exemption for cars that are older than that, and in essence, I think that the one, for older than '71 was \$50. Everybody knows it's almost impossible to get any work done on a car for less than \$50. Therefore, if you had to spend more than that, you're exempt. I say that's kind of

swimming against the whole stream of attitude, that we needed to put this emphasis on cars. Are we, in fact, putting too much emphasis in that area that triggers this kind of public reaction? because that's where most people come into contact with any kind of regulation is through their automobile.

**MS. SHARPLESS:** Yes, well --

**ASSEMBLYMAN FARR:** We're collecting a lot of money and creating a lot of industry out there for people, but one of the things that I'm concerned about is how regulations end up benefiting the private sector and then we never go back and revisit those regulations. In fact, the private sector developed it's own bureaucracy and its own lobbying effort to claim that it's a motherhood issue that we must keep. Do you have any feelings as to how effective all this monitoring been, and whether in fact, it has, indeed, been a cost-effective way to be putting our resources, or could we be better off putting that money into other more effective --

**MS. SHARPLESS:** The maintenance inspection program is a very integral part of the control program on vehicles. Many people just focus on whether or not we're getting lower and lower emissions from new cars through this certification process. One of the problems that car companies simply can't deal with is how people treat their cars and drive their cars. So we tend to have a higher emission from cars in use than what the car was designed to do, and one of the reasons we have a smog check program is to

make sure that the smog controls on the vehicle have not been tampered with, and --

**ASSEMBLYMAN FARR:** Well, see, that's the assumption, that they've all been tampered with.

**MS. SHARPLESS:** No, it's not the entire assumption. I know some cars have been tampered with, some simply need to be tuned to work in the best operating fashion that they can, but there have been problems with this program, and we have a very -- we have a group of people, a review committee that has, ever since the inception of the program, been reviewing the benefits of this program. Now, the program was adopted, I believe, in 1983 -- the one that we have now; we had one before that -- and was just recently enhanced, to deal with some of the problems that you're just talking about. And, the federal Clean Air Act is now asking for yet another iteration of that program to make it even better. You will find that and probably this will come up in testimony today, that many businesses are supporting the strongest possible smog inspection program because it is one of the most cost-effective ways to bring down emissions.

**ASSEMBLYMAN FARR:** Well, I believe your comment about developing the technical devices, the machinery -- the apparatus is absolutely essential -- but I wonder whether we're putting too much emphasis, once the machinery is developed, assuming that people are tampering with it. Once you tamper with a small control device, you lose the warranty on your engine. We're not

going to resolve this issue today, but it seems to me that --

**MS SHARPLESS:** No, it's going to come back to you for sure. I can promise you.

**ASSEMBLYMAN FARR:** Just from this one moment of going through this whole system and this fellow says he's making a good living off this, but he's feeling like it's totally not necessary, because the cars are, in fact, having the devices installed on them, built into the engines, you can't sell them in California unless you do that, and you lose your warranty if you tamper with it, and then there's the threshold exemption for the older cars.

**MS. SHARPLESS:** Well, I'll tell you something, Assemblyman. We did a roadside inspection, you know, check, on the cars that ran through the smog check program, and the evidence that we've gotten from that program would deny that man's basic assumption.

**CHAIRMAN SHER:** I'm going to step in here and interrupt this fascinating and provocative conversation. This, of course, the inspection maintenance program is not a part of the California Clean Air Act; it's separate legislation, and I understand there's going to be a hearing next month. Senator Presley and Assemblyman Katz are co-sponsoring a hearing on the inspection and maintenance program and that would be a time, I think, to pursue these kinds of questions.

Mr. Frizzelle?

**ASSEMBLYMAN NOLAN FRIZZELLE:** Thank you. I'd like to

insert a question about the cost and your panel here, along with you, have made statements about that. I am concerned primarily about the small business. The larger business that can absorb the cost some way or another or pass them through, they don't see as much problem with that as significant, but the small business, the silk screener, the furniture business, the varying kinds of industries that jobs depend on, are very frequently in a position where they feel the apprehension strongly enough that they simply do not borrow the money, they do not continue to make the effort to stay in business, even because of the litigation. I don't know how you're going to get at cost factors for small business so much as large business.

**MS. SHARPLESS:** Well, in response to that we do try to take into consideration the impacts of financing, and levels of operation, and what they can absorb in terms of their profit margin, and the ways that we deal with small business is to provide them more time, for instance, to meet the regulatory goals. There's also a lot being talked about in terms of designing a program so that you have a performance level and then allowing those companies to come up with innovative ways to meet those without telling them what kinds of technology they have to do. There's a lot of small businesses created as a result of some of our air quality regulations as well, because they come up with those creative ways to meet them and finally, I guess, there is yet another activity going on where we're looking into the

possibility of tradable permits, where there will be an emission reduction level established and then companies can help small businesses or other areas where they can meet the emission goals and still find the most effective way to do that, and some people feel that small businesses will benefit from the type of program.

**ASSEMBLYMAN FRIZZELLE:** Well, small businesses not only need that kind of flexibility, they need to know there is that kind of flexibility. To go on hiring and borrowing and trying to stay in business requires, in advance, some kind of a comfort level, and I have talked to a number of constituents that are concerned, who operate small businesses, not so much as to what the regulations actually are going to be interpreted to mean, but the changing scope of it, the changeableness or arbitrariness of it worries them. That worry translates into no businesses at all, and I'm concerned for this administration and for the public as a whole and jobs, whether or not small business gets the message that somehow or another this regulation is going to cost them more than they can afford.

**MS. SHARPLESS:** Well, we try to really do an outreach program for small businesses, all industry. When we propose a program that we have several workshops where we bring the individual industries, affected parties in, and try to determine what impacts that it's going to be on their business and then design a program that will minimize those impacts on them.

**ASSEMBLYMAN FRIZZELLE:** Do they know it?

**MS. SHARPLESS:** We have a very long mailing list.

**ASSEMBLYMAN FRIZZELLE:** Are you sending out notices in any way?

**MS. SHARPLESS:** And Mr. Boyd can maybe elaborate or further elaborate on that, but we have a very extensive mailing list.

**MR. BOYD:** Assemblyman, first let me say we share your concern, and I think some of your question goes not only to what does the Air Resources Board do, but to local air quality districts do, and there is a relationship there. The Air Board tends to deal with much larger issues and businesses, and therefore our definition of small still remains to be quite large. We have a very extensive outreach program in our regulatory operations. What we're trying to do now is work with the local air districts, create some kind of synergistic program whereas they and we, working together, take into account the concern that exists today, the very real concern about the status of small business in this state. I think you'll hear from the panel of local districts after --

**CHAIRMAN SHER:** That's a nice transition to our next panel, the air district officers, and we hope that one or more of them would --

**ASSEMBLYMAN FRIZZELLE:** Well, I think that's true, but I'm concerned about costs here, Mr. Chairman, and I'm concerned also that as you try to measure costs, there's a drop-off. You

can't measure those costs in small businesses. Oftentimes, it's a matter of apprehension rather than reality. The fact is, I'm concerned right now about jobs, and I'm concerned that small business doesn't have the stamina and the capital to keep it going under those circumstances, and I don't know what you're transmitting to local air resource boards regarding your general policy for the state, but I think there needs to be significant categories that help protect those small business areas.

**CHAIRMAN SHER:** Okay. Well, I think the point's been well made, and I think we share the concern, and the air districts are about to come forward. I'm going to invite now -- thank you very much for your testimony, Ms. Sharpless, and we appreciate, again, your coming here this morning.

Our next panel are indeed the executive officers of the air districts, and we show in the agenda that five such people have been invited: Mr. James Lents from the South Coast District, Mr. Milton Feldstein from the Bay Area District, Mr. James Ryerson, Santa Barbara District, Norm Covell from the Sacramento District, and Ms. Abra Bennett from the Monterey District. So, I think we'll just start in the order you're listed, unless you've agreed on some other order. Mr. Feldstein you've got a button there you can press.

**MR. MILTON FELDSTEIN:** Out of deference for my seniority, they've elected me to start off.

**CHAIRMAN SHER:** Okay, well we've allowed, again, about

an hour for this panel, so it's nice to see that you're working together and no one protested, when you said that so I take it that they concur. So Mr. Feldstein proceed.

**MR. FELDSTEIN:** Thank you sir. Let me first say, if I may, that we have decided to make the best use of your time by each of us not going over all of the questions you asked us.

**CHAIRMAN SHER:** We appreciate that.

**MR. FELDSTEIN:** Each of us will take a particular segment of the questions raised. Let me start off, if I may, by first pointing out to you that in the Bay Area our Board of Directors has unanimously adopted the Clean Air Plan based upon the California Clean Air Act. This was done after three public hearings and after much controversy on both sides of the aisle, but a vote of 16 to 0, the Board, as you know made up of elected officials in the Bay Area, adopted the plan and will start the implementation process. The subject that I wanted to comment on, based upon the testimony submitted to you -- and you all have copies I believe of what we have proposed -- essentially relates to what we call the Federal Clean Air Act and conformity. A lot of questions have been raised about the Federal Clean Air Act. Let me point out -- and I think Ms. Sharpless has eluded to it -- the planning processes for the state plan and the federal plan are on different timelines, and it creates administrative problems with all of the agencies that are planning to put together both the CAP and the SIP for the federal government not to be able to

do it on a contiguous kind of basis. One of the things that we would recommend is that you look at conformity. But by conformity we do not mean adopt the federal program, but adopt the requirements in terms of designation of districts, in terms of the seriousness of the air quality problem, but remembering that the objective is to meet the California standards, not the federal standards. I think there is confusion, sometimes, in terms of looking at the federal act, and people saying, "Why don't we just adopt the federal program?" I think there are many aspects of the federal program that can be adopted, but we must remember that it is related to achieving the California standards and not the federal standards. That's an important difference.

Now the other thing, I think, that I would like to comment on is in terms of transportation. People have argued that if you use the federal process for conformity, that the federal plans will address transportation. Unfortunately, as you know, in the federal program the conformity relates solely to federally funded projects that MPOs can require attainment or conformance to the SIP only for federally funded projects. It does not include non-federally funded projects such as shopping centers or new ball parks or things of that nature. That's why using that process does not respond to California's needs in meeting its own air quality requirements. So that transportation is not a substitute program under the federal program. It must remain under the state program.

Additionally, Ms. Sharpless has talked about local government and the attempts for districts to get local government involved in doing most of the TCMs. I believe that we as a district agree with that philosophy. One of the things that I think you may look at is to require that local government, by adopting air quality elements in their general plans, be able to go a long way towards achieving the kind of controls that are needed without getting into the deeper concept of indirect source review for example. Additionally, congestion management agencies should be required under the law to meet the requirements of the California Clean Air Act, not just the SIP, as was mentioned earlier, because we're talking about more stringent California standards. So congestion management, land use programs, all of these can make the work of delegating TCMs to local agencies much easier if they were required to meet the requirements of the California Clean Air Act and the CAP, the Clean Air Plan, which has developed out of those requirements.

So, in summary, I think we have an opportunity to conform some of the administrative requirements of the California Act with the federal requirement, but maintaining, solely, the goal of meeting California air quality standards and making some of the land-use decisions whether they be related to congestion management or be related to transportation conforming to the California Clean Air Act.

Thank you. I believe now that we'll have Norm Covell

address you.

**CHAIRMAN SHER:** Thank you. Okay. Mr. Covell?

**MR. NORM COVELL:** Thank you and good morning. Mr. Sher, members of the committee, my name's Norm Covell. I'm the executive officer of the Air Pollution Control Program for the Sacramento Metropolitan Air Quality Management District. Like the Bay Area, our district has successfully developed the air quality plan, the first round of planning required by the Clean Air Act, and this has been submitted to the California Air Resources Board where they are beginning their review of it. I might add that this plan calls for significant reductions over the period of its life from two of the categories that I want to speak to you about this morning that being those issues related to indirect source and transportation control measures. Your letter of invitation to the district asked that we address some questions specifically in these two areas.

First, with regard to indirect source review. The concern that the building industry and some developers throughout the state have felt that this authority will be utilized by air districts to usurp the local land use authority in contradiction to what the health and safety code specifically spells out.

Do I agree or disagree with this contention? and do we have any suggestions as to how the Legislature might change the ISR authority under the California Clean Air Act to better ensure that local and regional governments work together to address air

quality issues? Initially, I might say, and I think I speak for all the districts in the state, that we certainly do not want to be in the business of denying land-use project proposals. As was pointed out in your letter, we're explicitly prohibited from doing that by this very law. The concern is, however, that most areas in California are experiencing, at least where we have metropolitan centers, the health-based standards that have been established in state law for air pollution, and the Act calls for us to do some very specific things in that regard to achieve the 1.5 average vehicle rider-ship by 1999, to achieve no net increase in emissions from motor vehicles by 1997. In addition, there have been other laws put into place like congestion management plan requirements now, that I think form the basis for effective linkages between air quality planning and congestion management planning that is now required to be done throughout these areas of California that are suffering from congestion and air quality problems.

We feel that the proposal that has been developed by the Sacramento district, wherein we would develop a regulation that sets uniformity district-wide and then to meet with local governments, i.e., the cities and the counties, to develop an agreement whereby they would implement this regulation for us when it comes to programs related to review of indirect sources, that this provides for uniformity throughout the district would set the guidelines, whereby we would have an understanding of what the

mitigation significance would be, what the trigger levels of the project review would be, and we would have a uniform methodology for implementation of the program district-wide would certainly be a benefit. I think this type of an approach is in line with what the California Business Industry Association has identified within their policy statement on indirect source review. It would also provide the opportunity then for concerns in terms of mitigation if there were concerns that a project had not mitigated to the extent that it should have. That's dealt with then by the respective elective bodies dealing with the issues, i.e., the City Councils or the Boards of Supervisors that deal with those planning departments either at the city or county level. They have overview, oversight of this activity by the air district, to the extent that activities in the county are successfully implementing it. That authority would continue to rest with those entities, or if there was an attempt to shine on or not implement then the district would have authority to pull that back and implement at the district level.

I think this takes care of the concern that, in some cases around the state of California, where we have air districts that are established such that the Board of Supervisors is the Board of Directors for that district, then it is the concern then that you have a Board making land-use decisions over cities. This would deal successfully with that because you would have the City Councils sitting in review of the processes that their own staffs

are implementing at the request of air districts. So we see that as a definite alternative that is workable for implementing indirect sources.

**CHAIRMAN SHER:** I want to break in at this point, because this obviously is a very lively subject of debate --

**MR. COVELL:** It certainly is.

**CHAIRMAN SHER:** -- the indirect source review. Your proposal then is to try to, in a sense, delegate to the local governments in reviewing project this authority, under guidelines that the air district would prepare, to take into account the potential for generating pollution and to require mitigation or probably more importantly, build-in ways to reduce vehicle miles traveled by facilitating public transportation or whatever, and as I understood you, if a city which doesn't have the regional perspective always on a particular project or has a course of conduct on a number of projects and not really implementing those guidelines, then you say the district takes it back. Is that -- and would then directly be involved on those project proposals?

**MR. COVELL:** That's correct. Or have some type of a process in place where you work it out with the city so that those problems are dealt with. I might add, that within our plan we have identified an ISR strategy; however, we don't call for the implementation of a regulation dealing with that until 1994; because we feel it's critical that we're sitting down with local government within our area and those folks that will be affected

by the regulation, i.e., the building industry, the real estate people, and developers, to formulate a successful proposal that identifies these thresholds of significance. What would be the size of the project that we agree does need to be looked at. How we're going to quantify the mitigation, and then, hopefully, formulate a consistent process that we can ensure that would be uniformly employed, implemented, by the various entities.

**CHAIRMAN SHER:** Let me ask you another question, because I know, because they've made this statement to me, the people who represent the building industry are going to be up here later in the day saying that the approach which you have outlined will have impact on proposed new developments where the project is being reviewed and where these mitigation or strategies to reduce vehicles miles traveled will apply to a new, let's say residential development, but won't apply to existing residential developments, and so they argue -- and you're going to hear it later I'm sure -- that you ought to focus just generally on vehicle miles traveled, as it relates to all vehicles, no matter whether it's an existing development or one that's being proposed to be built. They suggest that it's unreasonable to focus just on new projects under these guidelines. So how would you respond to that? I want to give you a chance, because you're not going to be up here when they come up and make this statement.

**MR. COVELL:** I think, first of all, I have to say that they have a good point, and I think you'll find embodied within

the Sacramento plan will be an effort to address existing development at some point to retrofit, if you will, to the extent practical, mitigation of those types of projects. We're able to go back to existing business parks for instance, and I think one thing we need to understand clearly is that when we talk about indirect sources, we're talking way beyond just new homes --

**CHAIRMAN SHER:** I understand that.

**MR. COVELL:** -- business parks, sports arenas, shopping centers and the like. I think the opportunity does exist to go back and deal with some of these entities that are already existing and retrofit with shuttles, develop the types of facilities within that will cut down on noontime trips.

**CHAIRMAN SHER:** So, your answer is they have to be addressed too, whatever the best strategies, but for new projects it may be effective before the project is built to try to find the strategies that will help reduce the vehicle miles.

**MR. COVELL:** That's correct, because I think everybody realizes that it's going to be extremely difficult to go back and, for lack of a better term, try to retrofit existing facilities, but I think it's going to have to be addressed and dealt with in the process.

**CHAIRMAN SHER:** Sorry to interrupt your testimony, but I just wanted to give you the opportunity to respond to a point that I know will be made.

**MR. COVELL:** Fine, I'm glad you did. So I feel that

this type of an approach is one that I think we can look to to bring some degree of success as we look to implement ISR. Within our plan for reactive organics, we're looking at a little over a ton a day as we begin to implement that in 1994. By 2010, we're looking at up to 5 tons a day, through the implementation of this strategy. I have to impress you with the fact that that 5 tons a day in 2010 and take into consideration all the other emission reductions that we'll be calling for in 2010, including the very aggressive emission reductions on new automobiles that the Air Resources Board is pursuing diligently, we fall short of the 5 percent annual emission reduction in 2010 for reactive organics. So the bottom line to that is that if we remove indirect source review and transportation control measure implementation as a strategy, it moves us farther away, much farther away from the annual emission reductions that we are so desperately seeking.

I think that our plan will show you that in that requirement of 5 percent annually, we're able to achieve reactive organic gases, the hydrocarbon reductions of 5 percent in this first round of planning. In 1994, we show that as optimistic as we can possibly be, we'll achieve it for the reactive organics, another pollutant that we come close in the early stages of our planning, the 1990, 1994 on through 2010. So it's going to be extremely difficult, extremely difficult to achieve.

Let me move to the second point here, that being transportation control measures. Specifically, the concern is

that additional air quality improvements from transportation sources will be achieved through tighter emission controls and removal of older cars from the road. If this is the case, why should the California Clean Air Act focus efforts on reducing vehicle miles traveled and increasing average vehicle occupancy when time and resources will be better spent on other strategies? That sounds like a concern I heard somewhere this morning about another air quality improvement strategy, the smog check program. The point being, all of these are subject to scrutiny as to whether they are as cost-effective as possible.

There is a contention that the length of commute is decreasing, and if this is the case, is the Clean Air Act misguided in its focus on reducing vehicle trips and VMT? Well, I would trust that that information has not come to you from the Sacramento area or the Bay Area, where I attempted to thread my way through traffic over there to attend meetings. I think it's important to understand, and I'm speaking now specifically for the Sacramento area, but I'd be very surprised if it's not the case in our other metropolitan centers of California. Here we have vehicle trips increasing at a rate greater than our population. Vehicle miles traveled are increasing. Right now we're experiencing about 28 million miles a day. By the year 2010 we are projecting 53 million miles a day within our Sacramento area. I've been here on this job since 1984. In this amount of time, I've seen trip length, the average commute trip length increase

from a little over 7 miles to a little over 11 miles. Congestion is increasing and commute times are now longer than they were just 5 years ago. Time spent in congested traffic is increasing and this, in turn, is causing an increase in energy consumption due to traffic congestion, and I have to point out also here that the on-road fleet that is currently operating within the state of California is emitting at a rate of about 3 to 4 times higher than the requirements that that are being placed on the new cars built to be utilized in California. So the point here is that it's going to take a tremendous amount of time for that fleet to turn over and the emissions are going to remain a lot higher than what the new car standards are calling for.

Current research that's being done on transportation control measures. Because we've experienced two rounds of this now, I think, through federal planning, and they've been shown to be quite costly when considering the air quality benefit alone, if you just do transportation control measures for air quality, sometimes they're costed out of the picture. I think there is agreement there. Transportation control measures, I think, have to be considered in conjunction with congested management planning, energy savings and time savings as well. When we're able to link the planning that's done and look at transportation control measures, then the benefit to air quality and the other factors, being energy and the reduction in congestion, makes a transportation control measure a lot more effective. I think the

days are gone when we would want to look at a transportation control measure solely for the air quality benefit.

I think that covers the major points that I wanted to make before you this morning.

**CHAIRMAN SHER:** Thank you. Mr. Frizzelle, you have a point you wanted to make?

**ASSEMBLYMAN FRIZZELLE:** I want to ask a question. Of course the 5 percent decrease that's required by the feds every year is 5 percent based on population changes, isn't it?

**MR. COVELL:** Well, no. The 5 percent I referred to is the 5 percent annual emission reduction that's required by the California Clean Air Act for each of the pollutants --

**ASSEMBLYMAN FRIZZELLE:** The California Clean Air Act to conform with the federal Act requires a 5 percent reduction, but in what?

**MR. COVELL:** That's each of the pollutants that we're currently in violation for. In other words, if we violate an ozone standard, you have to look at what causes those ozone violations which are mainly emissions of hydrocarbon sources and nitrogen oxide sources.

**ASSEMBLYMAN FRIZZELLE:** I don't want to get overly technical, but I do want to ask -- I want to make sure we're comparing apples and oranges. In a community like Sacramento that is increasing very much in size, and you have surrounding towns and cities and communities building up, and you have commute times

longer and longer to get into Sacramento, if indeed that's necessary from those communities, you have a natural increase in costs and pollutants and everything else. Since you have a natural increase in pollutants because of the growth of the community and so forth, do you still have to reduce the 5 percent to conform to the California State Clean Air Act, or is it 5 percent based on a change in population?

**CHAIRMAN SHER:** No, it's 5 -- there's a base year of 1987 under the Act and there's a mandate in the state law of the reduction of 5 percent a year in the four --

**ASSEMBLYMAN FRIZZELLE:** Whether you have an increase in population or not?

**chairman SHER:** Then you get 2 people to ride in one car or you get them to take --

**ASSEMBLYMAN FRIZZELLE:** Or 5 people or 6 people or 10 people --

**CHAIRMAN SHER:** Well, I mean there are a variety of strategies, but if you're serious about cleaning up the air, the fact that the population is growing, and some changes are going to be needed in order to make progress, but as the witness pointed out, that's not only for purposes of air pollution, it's for purposes of gridlock, traffic congestion, and energy as well.

**ASSEMBLYMAN FRIZZELLE:** Well, I recognize that, but I want to make sure that we're comparing the same things. This 5 percent in a growing community is a lot. It's a lot more in Los

Angeles, for instance, and in the Inland Empire. I do think that somehow or other a 5 percent decrease in the face of the increase in population is unreasonable, and I think it's more so in some areas than it is in others.

**CHAIRMAN SHER:** The 5 percent decrease only continues until you reach the standards that are mandated by state law that the Air Resources Board has established for pollution and --

**ASSEMBLYMAN FRIZZELLE:** No matter how much population there is?

**CHAIRMAN SHER:** Well, these are the standards of air quality that have been established to protect public health.

**ASSEMBLYMAN FRIZZELLE:** You see, what I'm trying to get at is, can cities regulate all those kinds of things because as cities grow and communities grow, they require, for a city, to be able to implement 5 percent is different if it has only its entity to control, but if it has to control all the community in a basin, it's a lot different.

**CHAIRMAN SHER:** No city has to do that. That's why the mandate is put on the air district that has jurisdiction over the whole air basin.

**ASSEMBLYMAN FRIZZELLE:** Then how can the cities make the review that's necessary?

**CHAIRMAN SHER:** Mr. Covell, I think, in his testimony, covered that, and the air district would tell the cities about how they can help accomplish the objective and the mandate for the

whole district through their review of projects and --

**ASSEMBLYMAN FRIZZELLE:** Then we have created, through the Clean Air Act, a super government, in a sense. The local government does not have jurisdiction in making the decision anyway. It's the Air Resources Board.

**CHAIRMAN SHER:** The Air Resources Board. The mandate is on the air districts which are under the Air Resources Board to submit plans for the whole air basin.

**ASSEMBLYMAN FRIZZELLE:** It has to be approved at that level and the cities have no choice.

**CHAIRMAN SHER:** Well, except that I'd point out that the people who serve on the air districts are locally elected officials and they prepare --

**ASSEMBLYMAN FRIZZELLE:** They can't be thrown out by any local -- they can't be thrown out on that basis. The fact is, there's no effective control except the Air Resources Board and whoever appoints it, and however it's appointed doesn't really matter. The Air Resources Board are currently, by the Clean Air Act, a super agency or regional agency --

**CHAIRMAN SHER:** It's a state agency. The Air Resources Board is a state agency, and then under it are these air districts in the different parts of the state.

**ASSEMBLYMAN FRIZZELLE:** So we already have that regionalization in review, and the things that are pending to try to change that notwithstanding; is that correct?

**CHAIRMAN SHER:** Right. Well, long before we had the California Clean Air Act, we had this structure of a state Air Resources Board and the Regional Air Districts and that was necessary. That was set up to comply with the original federal Clean Air Act through the state implementation program. This was a system, where the Air Resources Board dealt with vehicles and the air districts primarily dealt with stationary sources --

**ASSEMBLYMAN FRIZZELLE:** I'm trying to get at where the planning commissions and the cities have decision-making power over air resources. They don't, do they?

**CHAIRMAN SHER:** They only decision-making powers over projects and land use that --

**ASSEMBLYMAN FRIZZELLE:** As long as it conforms?

**CHAIRMAN SHER:** Well, no. That's their jurisdiction and responsibility, but there's a recognition that the things that they review and approve have some impact on air quality.

**ASSEMBLYMAN FRIZZELLE:** In the basin.

**CHAIRMAN SHER:** In the basin; yeah, they are a part of it.

**MR. COVELL:** The methodology that we're proposing would, in fact, provide an opportunity for the cities to review projects within the boundaries of the other cities after we've come together, in other words, the city sitting down with us and the development community within our area to identify and make uniform the ISR process.

ASSEMBLYMAN FRIZZELLE: But you do control how much a city can allocate for growth?

MR. COVELL: Well, I would like to think of it in terms of the city being able to control their own, with (inaudible) --

ASSEMBLYMAN FRIZZELLE: I know what you'd like to think, but in effect, that's not the case.

MR. COVELL: The bottom line is to mitigate air quality impacts of these projects to reduce emission. I don't think it's impossible for the cities, the community itself, and the air district to sit down together, come to grips with what the threshold of significance should be for review of these projects, what the mitigation quantification should be, and come to agreement on what a consistent process would be that could be implemented at the local level, then provide for that to be done by these individual entities.

ASSEMBLYMAN FRIZZELLE: Then the growth rate in Sacramento area is very much controlled already by the Air Resources Board; is it not?

MR. COVELL: Well, I hesitate to say --

ASSEMBLYMAN FRIZZELLE: Never mind how you'd like to think about it, but that is the fact, isn't it?

MR. COVELL: The California Clean Air Act now calls for the 5 percent annual emission reduction net of growth, to answer your question.

ASSEMBLYMAN FRIZZELLE: Thank you.

**CHAIRMAN SHER:** Shall we go on to the next member of the panel? Who's next? Mr. Gotch is going to preside here for a moment. Ms. Bennett.

**MS. ABRA BENNETT:** Mr. Chairman even though you're departing and members of the committee, I am Abra Bennett. I'm the Executive Officer of the Monterey Bay Unified Air Pollution Control District which serves Monterey, Santa Cruz, and San Benito Counties. It's a pleasure to be here this morning, especially since I'm probably the newest of the air pollution control officers, and this is quite a year to be a new Executive Officer of an environmental regulatory agency.

I'm going to speak exclusively about indirect source review, so perhaps that will address some of Assemblyman Frizzelle's concerns. I would just like to start out by saying that in this particular year all the environmental regulators that I know of are overwhelmed by their job. We have holes in the ozone. We have landfills that can't contain the materials that they have to receive. We have cities that are congested and polluted beyond anybody's ability to tolerate them, and in my view, indirect source review was the Legislature's answer to one of the major social problems that we're facing today, and that is the effect of our urban lifestyle on our urban environments.

The question really is, can it succeed? I know there are a lot of people that think that it probably can't, and another important question is, are the air districts the agencies to make

it succeed? I would argue that we are.

Let me explain to you why I believe that's true. I think it was a bold move on the part of the Legislature to assign the indirect source review program to the air districts, agencies that have historically not been involved to any great extent in land use decision-making. It's certainly one of the greatest challenges that air districts have ever had put before them, and not only that, it's a very bad year to have to face a challenge like this, as we all know. I think that it's important that in agonizing over the impacts of the Clean Air Act that we try to separate the economic impacts of a very bad year from the impact of environmental regulation per se.

I'd like to talk about what we're doing in Monterey with regard to indirect source review, and I think it's particularly important because I know that this committee has heard representations in the past about Monterey and its program as was established prior to my appointment. That program has been changed substantially since I've been in Monterey, and I believe that we are doing now exactly what the Legislature hoped and intended when it created the Indirect Source Review Program.

As soon as I was appointed in January -- so I've been in this job less than a year now -- I met with each of the cities in our 3 county area to discuss with them these issues of local control, which had been brought to my attention by my board members as being the issues that the cities were the most

concerned with. In addition, building industry association representatives alerted me to the notion that they weren't entirely happy with the control of new sources exclusively as opposed to some of the existing sources, and I'd have to agree with Mr. Covell that that argument makes some sense. So I did meet with the cities, and I asked them, "How do you think we should run the program?" and they basically said, "We think you should let us run the program; we think that we can do it better, and we think that we have the political will to do it. Just tell us what you want."

So that resulted in my going to my board and our board developing a set of approvable program criteria for an indirect source review program that would be administered by the local jurisdictions, and those criteria included requirements for enforceability of the program for quantifiability of the emission reductions and for an ongoing relationship between the local jurisdictions and the district to ensure that the programs were in place. And, we're meeting the reductions that were described in the Air Quality Management Plan.

In our particular case, our plan is not adopted yet. It's going to be heard for adoption on December 11th, and we do have a reduction target for transportation control measures and indirect source review altogether at .88 tons per year. What we did was to disaggregate that number on the basis of the population of the local jurisdictions, and we assigned each local

jurisdiction, each of the cities and counties in our 3-county district, a reduction target on the basis of their population. Then, we established a consensus committee which was appointed by the Board's of Supervisors of each of the 3 counties and the consensus committee consists of representatives of cities, counties, building industry, the business community at large, the environmental community, and schools, because we say them as an important indirect source in terms of being able to achieve some reductions there.

So we have a committee of 21 representatives representing those 6 constituent groups and from each of the 3 counties and their charge is to develop a menu of acceptable measures that could be adopted by local jurisdictions in the form of model ordinances that could be adopted by a city or county, for example. We'll be working on air quality elements that could be adopted as part of the general plan that would be found to be consistent with the air quality management plan. So each of the representatives of the consensus group now is charged with going out into his or her community and constituent group to alert the public to the fact that there is a need for indirect source review and that it's going to be handled by the local jurisdictions. In fact, next week I'm meeting with the mayors of all 3 of our counties to set up public meetings in each of the cities in our 3-county area to begin to have kind of town meetings on the issue of what lifestyle changes are needed in order to reduce air

pollution from vehicles and from indirect sources. The mayors are very enthusiastic in participating in that effort with the air district.

There is the possibility of course that not all local jurisdictions will want to adopt such a program. Some may be too small, lack adequate resources, or lack the political will to carry out these programs because they're tough. So what the district is doing is to adopt a rule, which we hope that we'll never impose, but a rule that will be in place in case a local jurisdiction is unable to carry out its program or unwilling to adopt a program at the outset. So the district will have a rule as a fail-safe measure to impose in areas lacking a local program, and as I mentioned earlier, we hope that we won't have to use that rule. Our major concern is that we're able to certify to the Air Resources Board, and ultimately to the Legislature, that the reductions are in place and that they are quantifiable and that they are permanent, that they meet the intent of the California Clean Air Act.

So is it working, and is there any opposition? Let me say, first of all, we face in Monterey probably the cleanest of the dirty areas. We face a couple of fundamental questions. One is, is there really any air pollution here? Although this is not the answer people want to hear, the answer is, yes, there is. The second fundamental question is, doesn't it all come from the Bay Area? And again, it's not the answer people want to hear, but the

answer is no. We do generate air pollution. We do have air pollution, and once the cities and local jurisdictions and community get beyond those fundamental questions and realize that they have the option through our program to, in fact, retain local control of a program they feel strongly about, I believe, from the perspective of the cities, this program has a very good chance of working.

I would mention -- since Assemblyman Sher did ask the question about the Building Industry Association -- I would mention that they do have seats on our committee. They don't very often come, but I would submit that the process has enough momentum generated that the failure of any one constituent group to get on board is not going to derail this train. I don't know why they come. Perhaps you can ask them when they're before you.

We will be adopting interagency agreements with the local jurisdictions as a means to make this process enforceable, and beyond that, I would only say that because this is a fundamental social problem there is no easy solution, and the reason that you're hearing so much opposition and furor is because there is not simple approach to this. It's hard to achieve reductions from indirect sources and from transportation control measures. It takes a lot of work to achieve a small amount of reduction, but I think we all know that if we don't make that effort, the reductions needed are going to be growing and growing as the problems grows. I believe that following the model that

we've established in Monterey, we will be able to succeed, and I believe that this model is transportable to other districts, and that, in fact, any air district that chooses could use a model such as our Monterey model to succeed with indirect source review, and I believe it's what you all were looking for when you put this provision into the California Clean Air Act.

Thank you.

ASSEMBLYMAN MIKE GOTCH (Presiding): Thank you. Are there questions from committee members? Mr. Farr?

**ASSEMBLYMAN FARR:** I appreciate your testimony and appreciate the inclusive process that you've created, because as I go around to the tri-county area, the constant complaint is that these new regulations are coming down. Do the cities really want to take on that responsibility? My feeling is that cities all want to be at the table, but my experience is that people don't want to make tough rules when they're at the table, particularly those tough rules that come down on their own constituents.

**MS. BENNETT:** What I like about the program that we've established is the degree of latitude that it allows the city. For example, if you give a city a reduction target, let's say for example 100 pounds per day, that city can make its own choice about how to achieve those reductions. If you have a city that wants to grow, that city can choose to claim the reductions primarily from existing sources and create an environment that's advantageous to growth -- and here's where I wish Assemblyman

Frizzelle were here -- because the local jurisdiction can make the decision to promote growth by levying the reductions, so to speak, on existing sources. On the other hand, in our area, we certainly have local jurisdictions that are not interested in growing at all, and one of the ways that they can accomplish that, if they so desire, is to look for reductions from new sources as opposed to existing sources. So we do have two mayors participating as well as other city representatives on our committee. I can't say that all cities want to take on this program, but I think that if given a choice between having the district impose a permitting program on them or taking up a voluntary program through this consensus process, I believe that they would, as a general rule, opt for the greater degree of local control. I think that all the cities realize that this issue is not going to go away just by ignoring it.

**ASSEMBLYMAN FARR:** What happens where you have a city that adopts really tough standards on itself and then the unincorporated area right next door -- because the county has a much larger sphere to work in -- doesn't adopt as tough a regulation so that you have a disparity between just the line being drawn between the incorporated, unincorporated area?

**MS. BENNETT:** The way we've set up our program, we've given reduction targets to each of the unincorporated areas as well, which would be administered by a county planning department. If a county were unwilling to reach an agreement with the

district, then the district would impose its rule in that area. We haven't had any indication that that will happen.

**ASSEMBLYMAN FARR:** No, but I mean much more on microcosm. For example, the City of Carmel adopts standards to meet your guidelines, but the unincorporated area around Carmel, which is in the county, doesn't have the same stringent standards because the county may want to put its emphasis in south county where the oil fields are. See what I mean? County can take credit for other areas. So what happens when you have a building process in a developed land use, and transportation policies that the city adopts but are not consistent with what the county may do right next door?

**MS. BENNETT:** You've identified the peril of local control. I think the only answer to that, if you want to eliminate that, is to have a completely centralized program, and we have found that, politically, that's not a salable notion. I think there are inevitably going to be some inequities like that with a program that gives local jurisdictions the authority. We tend to look at it on an air basin-wide basis and say that overall, as long as the reductions are achieved within the air basin, the air will see the same net effect. In terms of growth patterns, that's not necessarily true. You're right, there will be some local differences.

**CHAIRMAN SHER:** Okay. Thank you. Sorry I missed your testimony. I got a summary, though, as I came back. I appreciate

your testimony and I guess now it's time to go to the next member of the panel. Let me introduce another member of our committee who has arrived, Assemblymember Brulte. Welcome.

Mr. Lents?

MR. JAMES LENTS: Mr. Chairman and members of the committee, my name is Jim Lents. I'm Executive Officer for the South Coast Air Quality Management District. We have the district with the largest population and the worst air quality problem in the state, and as such, we tend to end up at the vortex, I think, of a lot of the debate on clean air issues.

I'd like to bring two messages to you if I could this morning. Message number one is that we don't see that the present California Clean Air Act needs any major surgery, that it's in a position as working very well. Message number two is, there are some things that need to happen to reduce the impact on Clean Air Act legislation on the industries, and there are things that we in the district need to do and other agencies may well need to follow suit.

I would like to report to you, however, we have enjoyed the three cleanest years for air quality in the history of monitoring in the South Coast District, the last three years, since monitoring began in 1955. We also have seen this improvement while we've had a historic population growth and a historic growth in the economy. So at least based on real data, cleaning up the air is not automatically opposed to the economy.

As our other agency heads have told you, many of us have adopted air quality management plans for our area, and as such, we're poised, we think, at the threshold of giving our citizens healthy air for the first time in many, many years in California.

As I said before, because of our particular problems, we have got a little bit of a head start on the other programs and actually adopted and started implementing the Clean Air Plan back in 1988. As such, we've bumped into some of the regulatory problems a little ahead, I think, of the rest of the agency. Out of this, we've defined five problem areas that we think need to be solved in the South Coast District and, to a degree, maybe some of these apply in other areas.

First, the permit system that we have devised down there is basically a one-at-a-time, hand-crafted permit system that has been handed down over the past 30 years. That's going to have to change in order to give faster permit response to the business community.

Number two, our enforcement program, that we defined in the area, is basically defined around big business and regulating refineries and major utilities. As we have increased our program to smaller and smaller businesses, we have found that we are going to have to take a little bit different approach to the smaller business community.

Third, in many cases, we've simply regulated the wrong people -- and I'm going to talk with you a little bit about that.

Fourth, the regulatory program we have developed is basically an adversarial, fairly inflexible type of regulatory program. We think there's room to make changes there.

Finally, fifth, we think there's perceptual problems, particularly with use of district fines, that we intend to deal with. I will say happily, most of these can be dealt with totally in the context of the existing California Clean Air Act, but we would be certainly willing to work with you in achieving changes.

Let me talk a little bit about some of the solutions. In our permit program in order to speed it up, we feel like we need to go to, first, a pre-certification program that certifies as much equipment as we can in advance. We've already begun this with a number of manufacturers, and there's some cases, for instance, with some internal combustion engines used for compressing gases or generating electricity off-site where the manufacturer has pre-tested his engines, got the permits and simply, when he sells the engine to the company gives them a completed permit where they simply fill their name in, and we have worked arrangements where we can issue the permit instantly. We're moving this to a broad range of categories. It won't apply to all cases, but there will be a way to go faster. We're in the process of consolidating permits in the area so that the way we handle them will give the permit company one place to contact in the district and a better way of challenging or tracking progress. We have a computerized review system that we're developing now

which will be in place by March 1st. We've looked at the 3500 categories of equipment that we regulate in the basin. We've identified 27 categories of equipment that actually represent over half of the permits we do. We are designing special permit modules to handle those equipment which will make it very much faster and very much simpler to process permits.

Finally, we're moving to a privatized system of permit review which we think will help in the basin. We are developing a training and certification program for professional engineers, who will be able to develop permits and submit them to the district, and they will automatically go through all the prescreening processes and go into the immediate process and be issued much faster.

Similarly, for issuing our permits to operate in the district, we are developing, again, a certification program where we can actually use private engineers to certify that equipment is actually built the way it was designed. Obviously, the district will still maintain auditing and overview over this, but we've done some pilot programs and actually increased our compliance with district regulations rather than decreasing it.

In the enforcement area, we feel like, as I said earlier, that the programs were designed around big business and there's a number of changes that need to occur. First, we are doing a compliance assessment with all the business in advance of a rule coming out. This is particularly important for small

businesses, who often don't even know about us until we walk through the door. This program will actually go out in advance of rules and warn small businesses of upcoming rules. Closely tied to this is a training program where we are generating actual manuals for small businesses and holding training courses for them.

Now these two processes do take up district time. In fact, it's sort of different from what you hear from the rumors that spread around, the number of notices of violations that the district's issuing have actually been cut in half because we're spending much more time, at this point in time, doing compliance assessments and training programs for small businesses. We're also concerned about customer service at the district, and in that area, we have required all of our employees to go through customer service training and also are doing response cards now to get a feel for how good our inspectors are doing in the field for ensuring compliance and explaining rules to the public.

I mentioned that in some cases, for consumers where they are regulating -- we're talking about setting for consumer products a bubble, to let them sell certain consumer products, but make them meet overall certain requirements. We think a similar approach, in fact we're jointly doing this program with CARB, would also work for suppliers of coatings to small businesses in the basin, instead of -- right now, we regulate the users of small coatings, which creates, actually, quite a bit of regulatory

burden on them.

We think a number of regulations ought to be moved to the supplier of the products, and we would actually monitor them. There's a great help to us on this. Today we are tracking about 31,000 facilities in the basin which pollute. If we go to suppliers there's, we think, on the order of 1,000 suppliers, that would allow us to get regulations substantially reduced on maybe up to 15,000 of the 31,000, so we think that there's a lot of room in the area of dealing with suppliers. The Legislature helped us last year on this in passing a rule to allow us to get access to supplier records in the district so we can do a good job in designing this program.

I mention that we've historically had an adversarial, fairly rigid regulatory program. What I meant by that is, the district basically goes out and designs regulations, goes before the board, we have a big debate, and then we adopt the regulation. The problem that we have seen in that, from our viewpoint, is there's no advantage to the business community to come forward and ever tell us a better way to clean up the air. Their job is to resist the particular regulation we bring forward, and thus, it's a type of adversarial system. I don't think we always get the best regulations this way.

Also the program is not flexible in that once we adopt the regulations, we're very specific in how an industry ought to operate. We think there's a way to change that, and we call it a

Marketable Permit Program or an Emissions Rationing Program, another name we use for it. In this case, we actually set a base line for the various businesses in the area. We give them an emissions reduction target. We let them design how they would reduce emissions. We would do audits, and in cases where they felt it was too expensive and another industry could do more than they share of reduction, they would actually be allowed to trade emissions. We think this kind of system actually would provide a lot of flexibility for businesses in the basin. We have a program involving environmental groups and businesses and ourselves now that is meeting trying to design such a program for use in Los Angeles.

We also feel like we need a simpler variance process in the basin for businesses. I have two choices when I write a regulation. I can write a regulation for the lowest common denominator, that is assure that everybody can meet this regulation no matter what variance of a particular business they do. I write a fairly weak regulation if I do that. On the other hand, I can write a regulation where most people can meet it but a few people have severe problems with the rule. I prefer to go to that direction, but the only way you can do that is be able to devise some type of variance system to give these particular problem groups a little extra time to meet a particular regulation. We're writing some rules for our board to adopt which we think will help the variance process. Ultimately, we may need

some legislative help in that area.

There's some misconception on the issue of district fines. Many districts are able to collect and keep the fines. This causes a perception problem in Los Angeles. There's a big belief that we fine people just to get the money to operate. In truth, fines only represent 3 percent of our budget, so it's not a high consideration item, in fact not at all a consideration. However, because that perception exists, we're making a commitment to not use any fines the district collects for district operational programs. They will be used for community clean-up programs and programs to help small business.

Finally, I wanted to touch back on the issues of automobiles, which we think we must press forward vigorously on, and you've talked a lot about indirect source programs, and I won't go back over that, but I wanted to touch on the issue of the smog check program which came up a little bit earlier. If you go out and do a scientific test of automobiles, you find that the typical automobile on the street -- and I'm talking about new automobiles on the street - pollute at about two times the rate they were designed to pollute at, or designed to emit at.

Clearly, if you could design the perfect program and could get those cars corrected to what they were designed at, you'd have the potential of reducing automobile emissions by 50 percent and it could be done immediately. No system is ever perfect and no system will ever achieve that kind of emissions

reduction. We have a system out there that's doing some good, but I think most of us feel like it could do a heck of a lot better and to the greater extent it can do better, the less local areas will have to regulate their local businesses to meet it, so I think it's important that the Legislature does look at the smog check program and see if there isn't a better way to design it to get around some of the problems that we've heard described.

I'd like to close my testimony with a few anecdotes about the area. We started a project with Hughes Aircraft Company recently, trying to identify ways they could comply with district rules a little bit better. Out of that project has come a number of things, one of the most interesting is they accidentally discovered a new type of solder flux. It doesn't pollute at all in the air. It solders better. They don't have a waste production use or waste into the waste stream that they used to have. They don't need the solvents they used to have to use to clean it off of the boards, and it saves them several million dollars a year.

I had a paint company approach me the other day and I can't use its name because I'm sworn to secrecy. They have devised a paint that doesn't pollute when you use it, and it's for interiors of houses. They intend to put it on the market in Los Angeles in the next few months and are worried about getting their marketing issues so they don't want their name out there yet, but we have a non-polluting paint now that's come out of the process

just in the last couple of years as a result of the California Clean Air Act and what we're doing to move ahead.

Many of you know we're infamous for regulating the barbecue, again on that issue, or the starting of barbecue fluids, and we were told a couple of years ago that with this regulation people would be using gasoline to start barbecues and we were going to create all these problems. I can tell you that we just certified two different fluids, one by Kingsford Charcoal Company, that totally meet our regulation and when used in the basin will actually reduce emissions by about 60 percent over what was used in the basin last year . . . Not a big item, but it will be several tons of hydrocarbons that won't go into the air in the summer, and nobody's lifestyle is going to be one bit different than it was before. These, I think, are good stories, and I simply want to tell you that you've created some good momentum here in the Legislature with programs so don't do anything right now that would stop that momentum.

And one last story I'd like to tell you. I heard from Fender Guitar, any of you how know much about guitars have heard of Fender Guitars. I heard the other day that they're leaving the district, and naturally we're very concerned about that, and it's been sort of a lightning rod for complaints about who leaves the district because of our regulations. Therefore, I immediately directed a number of staff to get out and work with them and find out what their problems were. We heard they had problems with

some of our coding rules. We went out and worked with Fender Guitar and actually were able to identify the coding process that, in the end, provided them probably with a better coding than they had, would save them some money, and speed up their process. I got a very nice letter from the owners out there . . . but there's one problem, they still said they're moving, and they said they're moving to Mexico because labor rates are one-third of what they're paying here in Los Angeles. They can get into a new factory at much less. I only tell you that story, because we're disappointed that we couldn't convince them to stay, but we shouldn't confuse economic decisions that are being made with company environmental decisions, and I fear sometimes there's a little bit of that going on very much.

We're committed in the district to making some regulatory reforms to make it easier on districts to comply, and we feel like we're moving well forward and would be pleased to work with you in doing maybe some little nuances to the regulation, but encourage you not to make major changes at this time.

**CHAIRMAN SHER:** Thank you, Mr. Lents. Ms. Bentley has a question for you.

**ASSEMBLYWOMAN CAROL BENTLEY:** I wanted to ask if you have the staff available, when you learn of companies that are possibly going to relocate, possibly based on some of your regulations or the uncertainty of your regulations; do you have

that staff to go out and work with them?

**MR. LENTS:** Yes, we have created a Small Business Office, and their purpose is to identify problems in the business community and try to help businesses comply. We actually have \$2 million set aside, and we'll work with the Department of Commerce to lever that up to many more dollars, about \$50 million, I believe, to actually give small businesses loans to help them comply.

**ASSEMBLYWOMAN BENTLEY:** I have another area I just wanted to ask you about, and that's a concern that all of us have about the hundreds of thousands of manufacturing jobs that we're losing here in the state, and I'm sure a large number of them come under your area of jurisdiction. With these companies not expanding, when they're actually reducing, do you also see a reduction in emissions? and is that factored in if we should have the good fortune of a company wanting to expand?

**MR. LENTS:** There is a reduction in emissions because of rules we pass, but apparently, economically, we're seeing that in the emission fees we collect in the basin.

**ASSEMBLYWOMAN BENTLEY:** But is that, then, taken into consideration? the loss of jobs that we've had, the good manufacturing jobs, and the resulting decline in emissions, when a firm wants to expand or is that just --

**CHAIRMAN SHER:** I think her question is -- take the guitar company, they're leaving, going to Mexico; they had

emissions so now can someone else in the grand scheme of things take advantage of those emissions to expand?

**MR. LENTS:** Yes, they sure can, they sure can. And the Marketable Permit Program I described would even make a more comprehensive program for dealing with that.

**CHAIRMAN SHER:** Thank you very much for your testimony. We have one more -- Oh, Mr. Gotch?

**ASSEMBLYMAN GOTCH:** Doctor, thank you for being here. I want to understand what you said at the beginning about three years of cleaner air since you began, I think, in 1955. I'm not sure how you're measuring or quantifying that. Is your monitoring system downtown?

**MR. LENTS:** No. It's based on 35 monitors scattered over the region.

**ASSEMBLYMAN GOTCH:** So it's overall. You wouldn't argue that air quality is better in Glendora than it was 10 years ago, or would you?

**MR. LENTS:** Yes.

**ASSEMBLYMAN GOTCH:** You would argue that.

**MR. LENTS:** Now don't mistake -- air quality in Los Angeles is horrible. It's still, as we stand here today, the worst in the country. There's still people's health hurt, we're still 2-1/2 times the air quality standards that are federal standards, and as you know, the state standards are even tighter than that. So I don't want to represent that I'm claiming victory

in the South Coast Basin -- we are not. I'm simply pointing out that we've been able to make substantial progress in Los Angeles over the years, and, at the same time, have a growing economy, so the two aren't in automatic opposition of one another.

**ASSEMBLYMAN GOTCH:** No, and don't misunderstand me. I'm not trying to either editorialize or to skewer you. I just want to understand what it means. At the majority of the monitoring stations, you've seen an improvement? or every one? I just want to clearly understand. With the growth in Mr. Brulte's district, is the air quality better than the Ontario area than it was in 1982, 1985, with the Glendora High School football team practicing at night now because of the air quality problems in the afternoon?

**MR. LENTS:** It is better. It's actually generally better.

**ASSEMBLYMAN GOTCH:** Okay, you've answered my question. Thank you.

**CHAIRMAN SHER:** Okay, thank you.

Mr. Ryerson, you're our final witness in this panel.

**MR. JAMES RYERSON:** Thank you, Assemblyman Sher. I'm very pleased to be here. My name is Jim Ryerson. I'm the Air Pollution Control Officer in Santa Barbara county, and given the later time on the agenda, I'll be fairly brief.

I think that you've heard from the people here today representing over half the population of the state in the Stationary Source Control realm, and from Chairwoman Sharpless of

the Air Resources Board, a lot of people who may be a little unusual in government these days, and maybe that's why we're somewhat controversial. These are a group of people who have been doers over the last 15 or 20 years in controlling the air pollution problems of the state in the face of all the population growth that we've been talking about. Now that controversy is, I think, in fact a very healthy thing because we are really trying to push the envelope both in Stationary Source Control and in the control of automobiles and in trying to find that secret of interaction with the way the urban system grows, at the same time reducing our pollution. And that controversy really, I think, brings out the best of the kind of debate that we need to be having and, frankly, I think at this time of economic difficulties, this debate is a very important one to have. But as Dr. Lents said just a minute ago, we have great peril to realize or to go beyond the basic fact that in the South Coast Air Basin the air quality has improved dramatically from highs in the mid-'70s of 56 parts per hundred million down to the low 30s in the last 15 to 20 years and, at the same time, over 4-1/2 million people have moved in there, driving more cars, driving more miles, and that has been a combination of the Stationary Source Control and of the Automobile Tailpipe Control and the Smog Check Program that we must really be very careful about changing dramatically.

Changes, however, I think, as Dr. Lents pointed out, and as you've heard from the other members of this panel, are

something that we're eager to look at in finding more efficient and better ways to go. It's very difficult to carry that command and control process that has been successful on larger- and medium-sized industries down to smaller and smaller ones. I think that there is a lot of area that we can work productively together on to find a way to be able to get the emission reductions without sacrificing the economy of this state.

In some of the questions that have come up earlier, relating to the growth management issues, I was lucky enough to represent the air districts as the Caucus Chair in the SOR/AOR-sponsored Growth Management Consensus Project, and one of the things that really became clear during all the controversy about indirect source control, and all of that, was that we were the ones out there trying to do something about a problem with, frankly, a relatively small regulatory ability to deal with the actual implementation. What we have here is a system in our major urban areas that's broken down. We have housing problems, we have congestion problems, we have lack of social infrastructure provision to minorities and poor people, we have a crazy situation where the cost to have a second car just about matches the minimum wage of a worker to afford that car to get to work. We have a situation here that, for reasons that go beyond air quality, we need to take care of.

The good news is that as you look closely at those problems, you can find that if the housing people are successful,

if those people who are trying to provide better jobs and better true mobility, not necessarily more freeways -- which, by the way, there's not enough money in the world to build our way out of the congestion problem -- if those people are successful, we are successful, too, in achieving clean air.

While it hasn't been said a lot today, achieving clean air is the major public health issue that we've got dealing with us in this state, and it's one that people absolutely don't have any choice about. You must breathe, and if you breathe dirty air, you are being impacted: The additional cost to agriculture, the cost to the materials, just an extra set of windshield wipers per year because of ozone pollution all add up, and are seldom counted into the cost of regulation.

I think, in trying to summarize, if I can, some of the things that we representing the regulators have tried to bring to you today, is that we stand willing and eager to talk to you guys and to listen to industry and to be able to find progressive and workable ways out of this sort of quandary that we find ourselves in. We have been successful, and we want to continue to be successful, and I don't think this is the time for major revolutionary changes to the way we do business.

To respond to one thing earlier, the federal government also requires an emission reduction of not 5 percent per year but 3 percent per year, but that also is net of growth. We have a fundamental problem here that no matter how much the state grows,

we must reduce the net emissions in order to achieve the health-based standards. If we simply give up and say we can't deal with it because we're going to grow our way out of anything we can possibly do, then, frankly, I think the message that was given by that 40 and 47 percent response in the business round-table survey, who say they are leaving because of deteriorating lifestyles in California, and one of those major points being air quality, we'll see a lot bigger exit from this state.

Thank you. I'll be glad to respond to questions.

**CHAIRMAN SHER:** Thank you very much. I hope there are no questions. You've been very clear, and I like the way you divided it up. That was excellent, and we hope that our next panel will do the same. In fact, we're scheduled to go until 12:30 this morning. I want to keep going so we don't go too late in the afternoon. I think we're probably going to have to divide the next panel which is in two parts. I'll excuse these witnesses. Thank you very much for your excellent testimony. I appreciate all of you being here today.

We've divided it on the agenda between Statewide Perspective and then the Bay Area Perspective. I think we'll probably postpone the Bay Area Perspective until after lunch, but take the Industry Perspective now, partly because obviously we want to have some balance here on the morning session as well as the afternoon session, so knowing our time constraints which we

have spelled out in advance, we're going to invite our industry friends to address us, and, again, as the previous panel, we will hope that you've divided it up in a way that you don't have to repeat the same points.

Mr. Weisser, you're first.

MR. VIC WEISSER: Thank you Chairman Sher and committee members. My name is Vic Weisser, I'm the President of the California Council for Environmental and Economic Balance. The Council is a private, non-profit, very non-profit, non-partisan coalition of industry, labor, and public members, and we work to try to enhance the state's environment while maintaining our economic vitality. We were actively involved in the extensive discussions in 1987-88 that led to the enactment of the Clean Air Act, and we supported the final version of that Act. During the last three years, we have been deeply involved with ARB's proceedings to implement the Act.

Mr. Chairman and members, we are very concerned that one result of the difficulties encountered by industry in implementation of the act may be an increase in business flight from California and a reduction in jobs, because of the perception that the state does not care enough about preserving the industrial sector. And I believe Mr. Bill Robertson, the secretary of the L.A. Labor Federation and Vice Chairman of CCEEB, has relayed some of these same concerns to you by letter. This perception was most recently confirmed in the annual survey

conducted by the California Business Round-table, which you alluded to earlier, of large, medium, and small company chief executive officers. The character of California's environmental regulations was one of the most cited examples of the negative business climate they perceive to exist. Now perceptions can become reality, and I believe that's what California is facing today. Mr. Chairman and members, you have before you what I believe is a golden opportunity to send a strong signal that California wants business, that California wants jobs, and that California wants to reach its environmental goals efficiently and effectively.

The California Clean Air Act is a landmark piece of legislation, and we believe that the act itself allows for sufficient flexibility to sure that implementation is reasonable. However, implementation is often proceeded with undue rigidity. We believe that changes are needed to the act to restore the flexibility that was intended in 1988.

The ARB has been faced with a series of challenging tasks in fashioning implementation of the act. Often, they have been able to create reasonable and workable strategies, and I'll commend them for that, but there are two areas where the council is strongly concerned about the approach that the ARB has taken on implementation. The first of these is the issue of how the state decides whether an area has attained the state ambient air quality standards. We refer to this as the criteria for attainment issue.

Casey Bishop of Chevron will speak in detail about this issue. In brief, ARB's position has been that, generally, an area will be in non-attainment if the attainment goal has exceeded the state standard in the last three years. This approach makes planning for attainment very difficult, much less attainment itself, and this issue has been unresolved since the Spring of 1989. We believe that statutory changes should be made to stop any further delay on resolving this issue.

The second area of concern regarding ARB's implementation is that of the area of air quality indicators. The Act specifically mandated that the ARB adopt air quality indicators by December 31, 1989. The idea was that the districts were to have the option to use indicators in order to know what improvements in air quality were being achieved, instead of merely counting emission reductions. Casey Bishop will also be speaking to you in detail about this issue. The bottom line, however, is that no indicators have been adopted to this date, and we believe that legislative changes are needed to fix this problem.

There are other issues where we believe adjustments in courts are necessary. One such issue has to do with how districts are classified. Cindy Tuck, one of CCEEB's consultants will present our comments in that area.

A second such issue has to do with air quality permitting. I was frankly surprised to learn that there are over 200,000 active air quality permits in California. Along with

these massive numbers have come unacceptable permitting delays. At a minimum, we believe that the state should develop an expedited permitting process for projects that are being developed for the purpose of complying with environmental requirements. Clean fuels projects are one example of such projects. Duane Bordvick of Tosco Refining will be speaking today about why an expedited permitting process is needed for clean fuels projects.

Next there are areas where we have suggestions for cost-effective clean air improvement strategies. I'd like to mention two of those. First the California Clean Air Act requires that districts with moderate, serious or severe air quality include in their plans a requirement for the application of reasonably available control technology for all existing sources. Districts with severe or serious air quality are required to include in their plans a requirement for the application of the best available retrofit control technology to existing sources. The council believes that the Act should be amended to allow for the application of these technologies on a company basis as an alternative to a facility basis. For an example, consider a company that has several types of sources and facilities within a district. The company would be able to assess what total emission reductions could be achieved by the application of technologies to all the relevant sources. The company would then assess the costs of applying various types of control technologies to the sources, and the company then could select that mix of control that

resulted in the equivalent of the mandated standard across its facilities at the least cost to the company.

This type of an amendment would allow a company to achieve the same emissions reductions as if RAC or BARC were applied on a unit by unit basis but at a lower cost, and this is just the type of cost-effective approach that will keep business and help keep jobs in California. We believe the Act may need to be amended to allow for these kinds of approaches, and we urge you to do so.

You will also be hearing today from PG& E about air quality planning for certain types of projects on the long-term basis. The council supports the concepts that PG&E will be presenting.

Our final issue, that I'd like to speak to you on today, is transportation control measures. The Clean Air Act requires districts to include TCMs in their plans. The council supported the inclusion of TCMs in the Act, because we recognize that if the state was going to attain the state's air quality standards, emissions from mobile sources had to be addressed. Since enactment of the Act, the districts have taken on the challenging tasks of promulgating regulations to implement the TCM provisions. We're concerned that some of the districts are taking possibly inequitable and possibly ineffective approaches in the development of TCMs by predominantly relying on employer-based ride-sharing programs. The council supports cost-effective employer

ride-sharing programs. However, TCMS which focus only on employer programs are not equitable and are not broadly enough structured for success. Work-related trips are only a small fraction of total region wide trips, and we believe that the committee should review implementation of the TCMS and provide additional legislative guidelines to the districts to ensure their programs are reasonable, broad-based, and effective. Specifically, I join with representatives from the environmental community, academia, transportation, and economists, in urging you to consider equitable, region-wide, transportation pricing programs which will reduce single-occupant vehicle trips and vehicle miles traveled and compliment and aid us in the development of attractive public transit and high occupancy vehicle systems.

Well, that concludes the list of issues I wanted to talk to you about today. We ask that you move quickly to address these issues, and others identified in my written testimony. We remain committed to working with the committee, its staff, the ARB, air districts, and other interested parties in these matters, and we appreciate you holding these hearings. I once again urge you to use this golden opportunity to show business and working people here and around the nation that environmental goals can be achieved in a flexible, cost-effective, and reasonable manner.

Thank you very much.

**CHAIRMAN SHER:** Thank you. Excellent overview and you plugged in what each person is going to do except Mr. Kahl maybe.

Did you mention what Mr. Kahl's points were going to be? But anyway, you're next on the agenda. Welcome.

MR. MICHAEL KAHL: Can you hear me all right?

CHAIRMAN SHER: Yes.

MR. KAHL: It's indeed a pleasure for me to be back here before you, Mr. Sher. This is a piece of legislation that we spent many hours on in the ultimate passage of it, and it's something that we were committed to, and we still are committed to making work, and I'm pleased to see that this committee is doing some oversight on it, and perhaps we can address some of our fundamental concerns with the direction as we look at implementation.

I have a few general policy comments based upon feedback from some of our technical people before they go into their specific concerns. It's good to start with why we supported this legislation. It is indeed an important piece of legislation, some say even landmark legislation. We certainly supported the need to keep the California lead, in terms of air quality control, but we also had a different sense of it, and why we supported it. We recognized that a lot of the easy controls for air quality had already been implemented, and we saw with this legislation an opportunity for addressing some of the fundamental concerns on structure and approach to air pollution control. We felt we needed a framework for evaluating all sources contributing to air pollution whether they be trans-boundary or mobile or stationary

or from specific areas of concern. We wanted to see an evaluation based upon a better and more complete scientific understanding of the origins of that air pollution in a particular area, and since we were dealing, at this point, with a more difficult and expensive end of emission control, we wanted solutions that not only work for the environment but ones that work for the economy. And the word you're hearing often today, but still a very important one, is if we are to afford them, we want them to be cost-effective.

I think it's worth noting how hard we did work, in terms of the oil industry at least, on your legislation. As you know, industry support initially was not easy in coming. It was hard fought by some groups, but we did sit down, and we talked about some of the concerns and found a way to find some balance, and we did get an industry consensus and worked hard within the Legislature. We also worked in terms of the Governor and asked for his approval of this measure.

After the bill was passed, we also put together technical groups and have had technical people from our industry actively involved in most aspects of implementation of this Act. But this support, as I said, was after hard negotiation, and it was assurances, we felt, on a more balanced approach to air pollution control. In the future, we felt we would get cost-effectiveness as a key consideration of any standard or technology requirement or district plan. We felt we would be

moving toward more accurate emission inventories as a basis for basic planning. We felt that the air quality monitoring programs would be improved, with a better focus on some of the specific sub-regions in an area and, most importantly, we felt that we would have new indicators of air quality improvement, and we wanted to move beyond the over-reliance on emission reductions as the only measure of progress. As you may recall, this was a continuing concern throughout our debate on the bill and one where we came up with what we considered a flexible alternative -- in short, in exchange for a California track on air quality goals, we felt we were receiving a commitment to make substantial improvements to the program and its approach. That new focus would deliver actual results for public health and the environment. It would be cost-effective and this was the important selling point with industry, and we look forward to that implementation to be most efficient.

What do we get? From our feedback, from our technical people that have been participating in implementation of SEC(?), we're hearing that in almost every instance ARB has failed to bring about the balance the law requires. The words cost-effectiveness, as you recall, appear throughout the Act, but they seem to be empty phrases, and, as a result, we're foreseeing a program that will be terribly costly, unnecessarily so, but not necessarily effective.

ARB's guidelines on indicators of air quality progress

cannot be met, and this, in our minds, is essential that we have these alternative measures of progress to the rigid and, what we consider, inaccurate emission reduction requirements.

Indicator-based plans could be a much more precise way to target on actual improvements to air quality, rather than the, what we consider, inaccurate emission inventories. We are concerned that all major air basins are being thrown into the same category as Los Angeles, for example, in terms of a non-attainment. Thus, other districts must supply the most draconian measures even though they may not be appropriate in most instances. Further, the criteria which threw a district into non-attainment with a single exceedence are unworkable in our mind, and we think that this will guarantee a highly costly regulatory program.

We felt that with you, Mr. Sher, when we worked on this that we had dealt with these problems in a balanced way, and we appreciate the fact that you are revisiting them, and we are concerned that we restore this sense of balance to the Act as we conceived it. We care because, at least in our industry, the stakes are huge. Only last week, as you heard the Chairwoman of ARB mention, they passed regulations on reformulated gasoline. That will require our industry to spend \$5-6 billion and cost the consumer in the range of 16 cents a gallon for gasoline.

As we stated, the easy controls are over, but it's essential that every new regulation and plan be based on a scientifically accurate picture of the air quality and what

improvements will be gained from their implementation. We also feel that these air quality improvements must be done more efficiently. If, for example, these latest reformulated gasoline regs are to lead to significant air quality improvements, then it only makes sense to us that we expedite the permitting process for the capital improvements that are essential to making it happen.

The technical people have many specific suggestions to address. I'd like to just leave you with a comment that was included in a letter asking the Governor to sign this bill. He stated, "AB 2595 will assure that air districts understand where the emissions originate and which controls will most effectively reduce them. In short, the bill installs a program to find and implement the most cost-effective program to improve our state's air quality." We're not sure that the case right now. We appreciate and hope that you will help to bring that balance to implementation of this Act.

**CHAIRMAN SHER:** Thank you, Mr. Kahl for your testimony. I, too, remember those heady days and those long hours when we put this together, and that's why I think you're exactly right. We want to re-visit the issue and if there are problems, and we can help through legislation or the ARB in the districts, through their own implementation get a message, that's also to the good, so that's why we're here.

**MR. KAHL:** Thank you.

**CHAIRMAN SHER:** Mr. Bishop?

MR. K. C. BISHOP: I was going to start my testimony with good morning, but good afternoon, Mr. Chairman and committee members. I'm K.C. Bishop, and I'm employed by the Chevron Companies. As Mike noted, there were a lot of us, I was one, in 1987 and '88 that were part of the large industry coalition that helped support, and finally helped have signed, the California Clean Air Act.

Today what I'd like to do, as you've heard, is discuss two truly fundamental issues to the Act, and these concern the goals that were set in the Act. The first, which is probably the single, most important, is the final goal. Where are all these plans ultimately trying to get? and the code word for that, in the Act, is criteria for attainment. And the second issue is sort of interim goals and that is, in the Act, indicators of air quality progress.

I'd like to start with the criteria for attainment. The Act required the Air Resources Board to develop criteria for determining if a district was in attainment, that is if they met the goal. Industry made it clear from the beginning of the Act that we were not out out to try to change the state standard, the California standard, even though it was 25 percent lower than the federal standard. However, what we did want in the Act was -- and what is in the Act -- is that the criteria for attainment allow the ARB to adopt criteria which would consider the highly irregular and infrequent events.

Now, our expectation as industry was that ARB would provide a balance; that there would be a balance between healthful, health-protective criteria and a criteria that would be possible for an air district to develop a plan to actually meet. And, as you've heard, what happened was that the Air Resources Board adopted a criteria which called for zero violations in three years. Now this is an extreme position. It essentially means that a district that was in attainment at all of their monitors on the order of hundreds or thousands of a percent of a time - depending upon which fraction of the year you want to take -- could still be out of attainment, and it puts an enormous -- there's an enormous body of scientific and statistical information that shows that this kind of criteria simply doesn't work. I'm not going to bore you with all the details, but the fundamental thought is, if you have literally tens of thousands of numbers, what we're talking about is the highest and last number. It's what they call extreme value statistics, and extreme value statistics by their very nature tend to be the outliers on the measurements, they bounce up and down. A district consequently wouldn't be able to actually -- even if it was in attainment everywhere -- but just in attainment, would expect to bounce in and out of attainment, putting on plans and taking off plans. In a peer reviewed article, David Chalk calculated that you'd have to be somewhere between 25 and 50 percent below the state standard to achieve the criteria that the California Air Resources Board has

established. So, we're talking about a standard that's already 25 percent lower than the federal standard and to have any confidence that you would stay in attainment, you'd have to design your plan to be another 25 or 50 percent lower than that.

Now, just as a practical matter, what this criteria means is that the more monitors you have, the more likely you're going to be in non-attainment. It means you can't actually develop a plan that you can use to show that you're going to get into attainment. You can't develop a plan to plan for attainment of this last number once every three years. You can't do it. In short, the balancing was removed and the possibility of a district ever reaching attainment is gone. It simply results in controls into the foreseeable future. And that may seem like overstatement . . . it's not, and it is, frankly, in the scientific literature and not controversial.

What I'd like to do now is talk about indicators of air quality progress. As Ms. Sharpless said, the goal of reaching attainment, whatever the criteria are, is probably 10 years into the future and the Act recognized this and required the ARB to adopt a list of approved indicators for air quality progress by December of 1989. Now here again the ARB has failed to carry out their mandate. No indicators of air quality progress have been adopted. Now let me just quickly tell you what these are and why they're important.

Indicators of air quality progress would be alternatives

to the 5 percent or every feasible control measure which districts might put on. What they were envisioned to be are measurable indicators that districts could aim for. If they had a hot spot, they'd to be able to aim for maybe reducing the peak in that hot spot, and in December and January of 1989, we provided the ARB with a list of 16 possible indicators, and I'd just like to give you three that are out there and measurable that could be used right now.

The first would be population exposure, that is how many people, for how many hours, are actually exposed to the unhealthy air above the standard. You could use the EPA design value. I mean, if we're going to a California standard, why not make your road map go through the federal standard so at least we've dealt with that. And another possibility would be the dose of ozone above the standard, that is, not only how many hours do individual monitors exceed the standard but how high above that standard are they actually, and sum them over the district. Any of those are measurable. Our expectation, as industry, was that these alternatives would exist and that there was a possibility that local districts might actually adopt these targets, these air quality targets, for their local plans, instead of simply falling back on 5 percent emission reductions for every feasible control measure. But what has happened is that those targets don't exist, and consequently, no districts have been able to adopt them.

Now I might add that what has happened instead is that

ARB has adopted a series of hurdles, hurdles which, I might add, aren't in the Act, and no indicator that I'm aware of can jump those hurdles to actually be named as possible targets of air quality progress and, consequently, we're left with 5 percent for every feasible control. Now by the same token, the 5 percent of the emission inventory would in no way be able to pass those hurdles. It's impossible. In fact, the measurements of the indicators of air quality progress, which I've named, are far more precise and far more accurately measured than the existing inventories in this state.

Well, obviously, what this all means without indicators districts are required to fall back on 5 percent emission reduction everywhere in the district even if maybe they have a hot spot over here. If they can't do that they just do every feasible control everywhere in the district and we believe that this violates what we thought was going to be one of the fundamental tenets of the act that there was going to be a renewed focus on improving air quality and public health. In the 10 years to attainment, there ought to be some form of interim goal that talks about air quality. People shouldn't just simply get credit because they put controls on. There ought to be a goal to improve the air, there ought to be report cards on how they've done.

Well, in summary, the Act required the ARB to provide a balance concerning the goals of the Act, the criteria for attainment and the indicators of air quality progress and the ARB

has not provided this balance. The criteria can't be met and there are no indicators of air quality. What this again has led to is 5 percent emission reduction, or more likely, every feasible control forever until somebody decides that that's enough. Thank you.

**CHAIRMAN SHER:** Thank you.

Ms. Tuck?

**MS. CINDY TUCK:** Thank you, Chairman Sher and committee members. Cindy Tuck with Seyfarth, Shaw, Fairweather and Geraldson, on behalf of the California Council for Environmental and Economic Balance. All ready this morning you heard the council's president, Vic Weisser, speak briefly about several California Clean Act issues. Today we will be submitting to the committee a white paper prepared by the council that explains each of the issues in more detail and presents the council's suggested solutions. This afternoon I will speak to just one issue and that is how districts are classified.

As you know, the California Clean Air Act, under the act if a district is in non-attainment, it can fall into one of three classifications. The three classifications are moderate, serious and severe. Currently, the act provides the district's classification will be based on the date by which it can attain the state standards so, as you know, when you get into the specifics a district will be classified as being moderate if it can attain the standards by the end of 1994. It will be

classified as serious if it can attain by the end of '97 and it will be classified as severe if it can't plan to attain standards until 1998 or later. That's the existing scenario.

Now, our concern is that when the Act was originally drafted back in those hours and hours of meetings in 1987 and 1988, it was our understanding that only the South Coast Air Basin would be classified as being severe, and it was assumed that the other districts would be able to plan to achieve the state standards by December 31, 1997 and, as Chairwoman Sharpless said this morning, it was a surprise to find out that some of these areas would fall into the severe category as we found out since the enactment of the Act. So, when the districts began developing their plans, it became apparent that some areas, like San Diego and San Francisco, the San Francisco Bay Area Air Basin, would not be able to attain the ozone standard until after December 31, 1997, so they fall into that severe category. And our concern is that such areas like San Diego, San Francisco, they don't have the same severe air quality problem that the South Coast Air Basin has. We're not saying that they don't have a problem, we're not saying that they shouldn't have to meet the standards, they should, but the problem is that they shouldn't be regulated to the same degree as air quality in L.A. is regulated.

So, what's the solution? Naturally the classifications should be based on air quality, and one approach, that we think would be easy to implement and solve the problem,

would be to base the classifications on the EPA design value for the area. You may ask what is a design value? and basically, if you take a look at the monitoring data for a district during the last three years, the design value is the fourth highest daily ozone concentration. For example, the design value for the San Francisco Bay Area, based on 1987 to 1989 data, is 0.14 part per million of ozone. For South Coast, that same design value is 0.33 parts per million of ozone, so it's over double the figure in the Bay Area.

To implement a design value approach, the Legislature could assign ranges of design values. There would be one range for each classification, and this is what Congress did when it enacted the federal Clean Air Act in 1990. There are many specific ways that the approach could work and one would be to mirror the classifications in the federal Clean Air Act. Under the federal Act, the Congress adopted five classifications: they have marginal, moderate, serious, severe, and extreme. That's one approach. Another approach would be to keep the existing California classifications of moderate, serious, and severe, but assign design value ranges to them. And, again, we're not proposing to change the standard. We're saying that the districts would have to meet the state air quality standards, but we're setting new district classifications and a better way of implementing them. We'd like to work with the committee and its staff, ARB, and other interested parties on selecting the best

approach, but we do think a change is needed in the legislation.

It's also important to note that along with the classifications, the Act, of course, also specifies what requirements go with them, what requirements a district must include in its plan depending on its classification. This morning, Chairwoman Sharpless used the word "fine-tuning" and that is how we perceive changes as well. Fine-tuning of these requirements may be appropriate to ensure that the amendments fix the classification problem, that they're not just making a cosmetic change, that they're really fixing the problem. As Chairwoman Sharpless mentioned, one area that probably needs fine-tuning is the area of no net increase requirements. That is one we're interested in, and we'd like to work with the committee on that issue.

To save time, I'll just say, again, that we want to work with you, and we thank you for holding the hearing today, and we'll be providing more detail in our written comments.

**CHAIRMAN SHER:** Thank you very much. We'll turn next to Mr. Barr?

**MR. MICHAEL BARR:** Right. I'm Mike Barr, and my assistant, Mr. Teller, will put this up here in a second.

You've heard that cost-effectiveness is discussed many times in the legislation. It is. The reason why it is is because it's a proven concept which worked before and can work again to give us cleaner air quicker at less cost. That's really what we

need right now in our economy in California, and it's what this law allows us to do with a couple of the fine-tuning changes that we've mentioned in our testimony.

Now my testimony is briefly in four parts. First of all, we've done cost-effectiveness ranking and review and adoption before. It worked real well before. We can do it again, and if we do it again, it'll work real well again. Now we did it before. I've handed out copies of the 1982 Bay Area Air Quality Plan. Note 1982, and this is a reproduction of Table 22, and the most important thing on the whole chart is probably the name of it. It's a ranking up top of proposed stationary source control measures in order of preference based on cost per unit ozone reduction. Not cost per ton but per unit of air quality improvement the way we measure it. And the third or fourth column over is cost-effectiveness in millions of dollars per parts per hundred million of ozone. Now you can see that in those units some of the measures are really inexpensive but they get pretty expensive pretty quickly . . . 5 or 10 or 20 or 30 million dollars per part per hundred million. That's what clean air really costs. What this chart does is rank them strictly in that order, and then down at the bottom of the chart, when you've got enough parts per hundreds of millions, you can draw a cut-off line and say you've done enough.

Now, this chart was prepared for achieving the federal ambient air quality standards, and we're going to have to do

something again like this for the California ambient air quality standards, and it worked very well for us when we did it in 1982, because it got us all of these reductions on time and in full. And note that many of the CCEEB member companies and WISPA members, too, are in the various categories that were targeted for control. That constituted a large investment of time and energy and control expenditures on the part of these companies, but what it really bought in 1982, and really throughout the '80s, was peace in our times in terms of air quality control. It settled the issue of who should go first, and when and who it should be, and you can see that #1 was a measure that affected oil companies and #3 did and #6 affected chemical companies and #11 was coatings and #12 was oil companies again, and you can just see down the list. All of those things have now been adopted and are responsible as much as anything else for achieving the tremendous amount of air quality progress that we've had in the Bay Area.

When this was done, when this whole exercise in the early '80s was done, we had a long way to go in the Bay Area, we had 50 or 60 days that were still over the standard. But, through the work that the staff did, Milt Feldstein and his staff, and industry in constructing this type of an approach through the '80s, we didn't argue about whether to achieve the goal or who should go first. It was clear who should go first from what we did, and we worked instead on the details of the rules. All these rules are now in place.

But this type of an approach wasn't done this time for the California Clean Air Act plans, for the first round of the California Clean Air Act plans, even though the California Clean Air Act says half a dozen times that it ought to be a cost-effective strategy for achieving the state ambient air quality goals. And that's really too bad. That's one of the things we think is a defect of this round of planning, but we think that in the future this approach can be used again because we've done it before and because the ARB in their 1989 study said that this approach for ranking emission control measures offers districts an objective schedule for implementing controls, that (inaudible) back from the ARB at least in 1989. They need to help us, and they need to help the districts, facilitate this type of an approach again in the 1990s, and if we do it again it will work again. It is an objective means for choosing measures. It chooses things which work the best first, which is what we need to do right now.

We've got a series of recommendations in our written testimony, which we think will help the law through a couple of small changes, to ensure that this approach is used again, quickly, now, in California for the '90s. If California does these things, we think it will send a powerful message to California business and the California economy that we mean to do things in a businesslike way, we mean to do things that will achieve real economic and real environmental benefits at the least

economic cost.

**CHAIRMAN SHER:** I want to ask you a question, Mr. Barr, because your testimony was very clear and your point is very well made, but I just want to make sure that I understand. This should be done on a district by district basis is what you're saying?

**MR. BARR:** Yes.

**CHAIRMAN SHER:** And in preparing their plans, they should do this kind of ranking, know how much -- what the goal is, what they have to achieve, and draw the cut-off line.

**MR. BARR:** Right.

**CHAIRMAN SHER:** Now, for some industries, as you pointed out, like the oil industry, they're both above and below the line, and so they would quite rationally argue, "Make us do the things above the line because you're getting more for the dollar spent." On the other hand, there are some industries that are only below the line, and so what you're saying to them is, even though they may be contributing to the problem, they don't have to do anything.

**MR. BARR:** Well, they may not have to do it right away. Look at the cut-off line that was adopted in '82. The cut-off line has gone down later as control technology has come into existence, so some of the things that are below the line have since been done but they're clearly of lower priority. Some of the things below the line are things that should have been deferred while control technology was developed, and they were.

Some of the things, like -- look at pleasure boats. That's still probably going to be below the line in a lot of areas unless the Air Resources Board can come up with some control technology that works for them. So, yes, it can result in some things not being done or at least deferred for some period of time.

**CHAIRMAN SHER:** Well, what is reminiscent to me is the debate and discussion we had at the time the Act was being put through the Legislature. It wasn't really on the strategy so much as the measure of progress, and there was a certain large utility in Southern California, which I won't name, that had a suggestion. Instead of the 5 percent emission they had some other kind of suggestion that if it were implemented, some argued -- and I don't know whether this was accurate or not -- but some argued that it would mean they wouldn't have to do anything, and all these other industries would have to do a lot of things. And, you know, it was suggested that, obviously, people who were making the argument have an interest in promoting the control strategy that means they don't have to do anything even though it's admitted that their activities cause part of the problem. So, at that time, we didn't put what they wanted in, but we put in this development of the alternative indicator, which we've heard something about, and maybe they're right, but anyway, I think that's an issue you have to address when you look at this to find a way to make sure that everyone --

**MR. BARR:** We think everybody ought to be in the pool

and subject to this type of a ranking. Every single source that exists should be subject --

**CHAIRMAN SHER:** But do you get a free ride if you're below the line?

**MR. BARR:** Not free, just maybe a little later ticket. You go on a little later train, maybe.

**CHAIRMAN SHER:** Well, thank you for your testimony. Our next witness is Mr. Bordvick?

**MR. DUANE BORDVICK:** Yes. Thank you, Chairman Sher. Good afternoon, members of the committee. My name is Duane Bordvick and I'm Vice President of Environmental and External Affairs for Tusco Refining Company.

As Chairwoman Sharpless said earlier, and others have said, that last Friday, the Air Resources Board adopted the most stringent gasoline regulations in the world. My purpose today is not to address the stringency of the environmental regulations or to ask for any relaxation of the standards that were mandated to meet. In fact, my purpose is to ask for your help in assuring that the new stringent standards my industry must meet under the Act are achieved and are achieved on time. I will be addressing one specific issue mentioned earlier, environmental permitting.

The refining industry faces an unprecedented \$5- to \$6-billion of construction over the next four years to produce re-formulated gasoline and diesel fuels to meet California's Clean Air Act, Air Resources Board, and federal

requirements. Extensive environmental permitting is required before even construction of these new re-formulated fuel facilities can begin. There is a serious concern that permits will not be acquired in time to assure clean fuels can be produced by the deadlines. We are suggesting a temporary change to implementation of only one permitting program to California's Environmental Quality Act (CEQA). This change helps assure compliance is achieved on time while recognizing that these projects are mandated and recognizing the net environmental benefits of these projects. I believe this is a win, win proposal. The state, and in particular, the Air Resources Board, would have greater assurance of compliance with the regulations. The public would receive the environmental benefits on time and the industry will have greater assurance that a complying fuel can be produced in time to meet the law and the public demand.

Fuel re-formulation, under the Act and under the Air Resources Board regulations, means that major changes must be made in how gasoline and diesel fuels are made. The fuel components or characteristics that contribute most to air pollution are eliminated or reduced to very low levels. These changes in fuel specifications begin as early as January 1, 1992, 37 days from now. To accomplish these physical and chemical changes in fuels the petroleum industry must undergo major construction at the refineries, including both modifications to existing processing facilities and the construction of whole new facilities. This is

the \$5- \$6-billion on investment.

Even though these massive refinery investments and construction projects are mandated, will result in cleaner fuels, and will have major environmental benefits to the state, the projects are still subject to full environmental permitting. California, I think I'm safe to say, has the most elaborate and sophisticated permitting system in the world and for good reason. And even though our permitting agencies are the best in the world, the extent of the review means that permitting of projects can take, and do take, years. Every refinery in the state will need numerous permits for major projects all at the same time. Even today, a single major permit for one refinery can take up to two to three years. My experience tells me that when you factor in the time necessary for design, permitting, and construction, and considering that every refinery needs to go through this process, that some clean fuel facilities, maybe all, will not be ready in time to meet the deadlines.

What we would like to suggest as a solution to this catch-22 is a temporary change in how CEQA is implemented to shorten the very lengthy process, but only for clean fuel projects. We believe there is a need to distinguish in the permitting process between discretionary expansion projects and projects undertaken to solely comply with regulatory mandates. Our proposed amendment is written such that all air, water, toxics, waste, or other permits must still be acquired, and all

regulations must be met. There will be no environmental compromise in constructing new facilities. The proposal simply modifies the full CEQA process that is often the most time-consuming and fraught with potentials for delays. The provision only applies to projects that are exclusively for clean fuel production. If a project also results in a refinery expansion, then the streamlining does not apply and cannot be used. As a further safeguard, a summary environmental review will still be required to make sure there is no unusual aspect to the project which was not anticipated and which may still warrant a broader review under CEQA.

Finally, the proposed amendment would remain in effect only until 1996 when the final clean fuel requirements take effect.

I'd be happy to answer any questions.

**CHAIRMAN SHER:** My initial reaction is favorable. I think what you say is something we ought to be addressing, and that we ought to be able to work out where you're not considering alternatives to the project, this is a project that, in effect, is mandated by a state agency, and so I think that this is one of the things clearly that we do want to address.

**MR. BORDVICK:** Good. Thank you.

**CHAIRMAN SHER:** Thank you. Our final witness is Mr. Alan Uke. This is a sponsored witness, I would say, as several members of our committee brought him to our attention to be on the

industry panel, and I see you have some visual aids. I would remind you though that we've already kept the committee 20 minutes beyond when we were going to break, and so I would hope that we could hear your testimony in 10 minutes so that we can . . . That's not going to help. Why don't you just tell us in words what you want to tell us? Well, you know what it says, so just tell us.

MR. ALAN UKE: It makes it a little bit hard. I'm here today as actually a response to a company policy where we don't complain about things unless we have an alternative solution, so I have to complain a little bit here and then tell you what I would do differently. I have researched it fairly thoroughly, so I think these recommendations might have some merit.

I have an alternative plan for controlling automotive smog legislation that's fair, cost-effective and easy to implement, and can do more to affect the problem than the measures we're now taking.

Dumping the burden of cleaning up automotive pollution solely on local districts, in my opinion, is neither fair nor practical. We all helped to create the problem. We must all contribute to the solution. Yet the only means available to counties and local air pollution control districts are traffic control measures such as ride-sharing, mass transits, and reducing driving through regulating specific activities.

Now, smog has also been increasing in San Diego over the

years to the point where it's now a health hazard, but I believe that the proposals mandating ride-sharing to work are inappropriate as a smog control method -- maybe for traffic control -- for several reasons. My microcosm of 100 employees, I'll tell you some of them.

First of all, people that are being affected by that are mainly the middle- and lower-income people, and a lot of these people can't comply with it because they're working parents, and they have to take their kids to school. They have a whole carload of them to take to special activities, and day care, and this and that. Then they've got to come back and pick them up during the day, so there's nothing they're going to do that's going to allow them to cooperate with the ride-sharing program or mass transit.

Also, a lot of people work odd hours in our plant, and furthermore, a lot of these people live in areas where there's nobody they can ride-share with.

Another problem is there's going to be whole level of bureaucracy enforcement with the mandatory ride-share programs, because this will be a great temptation to cheat, and so you're going to have a major force to control it. And I don't believe this plan leads to further reductions in air pollution, which is really what we need, we need a major reduction in our air pollution control levels.

These concerns bothered me as a private citizen and businessman. My company makes products which we ship all over the

nation, all over the world, and this current law adversely affects my business and employees. I have over 100 commuters, and it started me thinking about a different method of controlling the problem. Now my plan, I believe, is fairer because it controls the cars, not the people. It affects all citizens, not just people who must drive to work. Now, I make consumer products so I know that for any piece of legislation to have a chance of success, it must first be acceptable to the public, so I went and spoke before a whole bunch of different groups and parties. I spoke to local county supervisors, the Air Pollution Control District, the Sierra Club, (inaudible) Federation, the Chamber of Commerce, college students' groups, even grassroots anti-growth movements. I finally also went to Washington and saw the head of the Environmental Protection Agency department on Mobile Sources, Mr. Richard Wilson, and he told me that I could quote him, and said, "It was a neat idea, and it was the only workable market-based plan he's ever seen. I also met with Congressional-Senate Oversight Committees for the environment, and they liked the plan.

**CHAIRMAN SHER:** So all those people liked it. I'm waiting with baited breath.

**MR. UKE:** All right. Now if my proposal becomes law, it will control pollution for motor vehicles for the next 50 years. Now here's the proposal.

**CHAIRMAN SHER:** You've got to turn it over. It's

supposed to be reversed. Something there about electric cars,  
Mike?

MR. UKE: No. It's got everything. Here's the proposal that I have. Fees for big polluters would be imposed on vehicles based on annual emissions. The cars would be assigned a pollution index. Now that's what this thing is right here. This is a future sticker that you'd see on cars that they made in 1995 or later. (Sound in and out, partially inaudible) miles per gas, but also -- emitting miles per gallon, but also give you a pollution index which would be the percentage of the federal requirements for that car actually computed, so if your car is this car model is past the pollution of federal regulations, you'd actually know it because it would be on the sticker, and with this information for each traffic model would be maintained by the state, so they would have records of what specific amount of pollution your vehicle was built to.

Now what would happen is that each year you would take the odometer reading of your car, at the time you had to renew your license, and you would send that in, and what would happen is the state would then know how many miles you drove every year, and they would multiply that times the pollution index which would then give the estimated amount of pollution that that car produced. Each county then or each air pollution control district would provide tables to the state which would have a fee table, depending on how severe the air pollution is in that district,

which would have -- and what that would do is that would tell you how much in the way of fees you had to pay, if you did have to pay any fees at all. An example right here is you come up with say 20,000 units and what would happen then is you get a modern car say made after 1980, you could drive 20,000 miles without paying fees. If you had a car that had an index of .5, you could drive 40,000 miles without paying fees, if you had an older car -- and the issue is right now older cars because they produce over half of our pollution -- they would have a higher index fee, which means that those cars could not be driven very far anymore in areas that had these kind of indexes without creating fees for the people.

Now what would happen is that the existing cars would be given a pollution index based on the year they were built, and compliance of the pollution index and the odometer reading would be verified during the smog check. If the car does not meet the pollution index rating but still meets the federal ceiling regulations, it would be re-tested by a multiplier penalty index. Major trips outside of the smog areas would be deducted from annual mileage totals by submitting evidence such as gas receipts. Locally running trucks and buses would pay fees based on separate tables. Money generated by the fees would go into a fund for helping low-income people trade up to post-1975 cars. In the future, the funds would help trade up post-1980 cars, and so on. It's a long-term plan so the funds from this would go as rebates

to people when they trade up to newer cars.

Remember, the cars made before 1975 cause 10 to 30 times the pollution of a modern car, so the first thing we have to do with any plan is to retire these old cars, and it's about a \$500 gap. It's about \$300 per pre-1975 car that's running. It's usually about \$800 for a car made between 1975 and 1980 so the low-income people have about a \$500 gap they have to cross. By the way, when I talked to the low-income and minority and black groups about it, they didn't complain because it really wasn't a tax. What was happening to them is they just have to buy a newer car. They owned the car; if the government would help them a little bit with the money to get into a newer car, they are satisfied because these newer cars would have better gas mileage and lower maintenance costs.

Now, this program has many advantages. It encompasses all drivers and all activities, which is the only way real results can be achieved, not just commuters going to work or whatever, this gets everybody. People will become aware of their individual contribution to the air pollution problem. Many people will voluntarily cooperate. Gas mileage has become more than an economic concern. Pollution index and annual mileage will also become social issues because, right now, when people buy gas for their cars they don't feel good anymore about driving a car that gets only 15 miles per gallon, even though it's really insignificant as far as what they actually pay for gasoline. This

would be the same thing about owning a car for a low pollution index.

As an engineer and a company president, I know that car manufacturers must allocate construction costs of an automobile to satisfy many requirements. The pollution amount of a specific model cannot be seen by the consumer and figures are not available to the public. A conscientious manufacturer is presently rewarded by selling fewer cars if he builds a pollution control system that exceeds the regulations. The public will simply prefer the car which puts their money into better paint, gas, mileage, or more room.

Now one side-effect of this program is auto manufacturers will want to make available optional index-lowering packages such as electrically heated catalytic converters, which some of you know will reduce the pollution about 40 percent on a car and costs a couple of hundred dollars, and it could be ordered by people in the city who want the low pollution indexes just like you order air conditioning on a car. Cars powered by alternative fuel sources would be sought out by the public because of the low pollution indexes, and also the electric cars because they would have a zero index so you could drive them infinitely. Ride-sharing and use of mass transit will increase because people will want to save their driving for pleasure or when it's really necessary. Efforts at annual pollution reduction can be accomplished by simply changing the fee schedules, so all a county

has to do every year to get your next 5 percent is just reduce the free number of pollution units you have and/or also change the cost for the overage. And the cars that cause large amounts of pollution will be driven less, retired, or moved out of the cities, and lower pollution cars will be purchased or migrate to the cities. So this whole deal will herd all those old cars, which cause the majority of the problem right now, out of the cities, and it will cause some of those 1975 and later cars that are in the country to come into the cities to replace them.

**CHAIRMAN SHER:** This system you're suggesting only applies to miles driven in the cities?

**MR. UKE:** No. In fact, anyone registering a car in that area. Like you're in Los Angeles basin, you...

**CHAIRMAN SHER:** So if you're driving out in the rural areas, you still pay a fee but it's going to be much less. Is that --

**MR. UKE:** No, if you're looking at a rural area, you're going to have a difference in the tables there. Your table there could be 100,000 free pollution units, or whatever you want to do. What this is designed to do is each air pollution control basin depending on what --

**CHAIRMAN SHER:** You wouldn't worry about a car being registered in Butte County, then being driven in San Francisco?

**MR. UKE:** Well, how I suggest you control that is that you would not only have the registration basis but you also have

the insurance basis, so the point is the insurance companies know where the cars reside.

**CHAIRMAN SHER:** A certain amount of enforcement is going to be required here.

**MR. UKE:** Well, nothing like the enforcement you're going to have with mandatory ride-sharing programs. Okay, also that this program can be inexpensive to implement by using the existing agencies, namely, the Department of Motor Vehicles and the Department of Consumer Affairs who does the smog checks.

**CHAIRMAN SHER:** You may have picked the wrong department, given my constituents' reaction to that department but anyway we can work on that part of it.

**MR. UKE:** And with this system we're creating a long-term framework that encompasses all vehicular pollution in a program, and so what happens is that since all cars are going to be part of a pollution index program, then the thing is it would, going into the future, be the mileage times your index so you can control it by each person. We did the same thing in San Diego when we had a water problem. Everyone's allotted so much water, after which if they were large consumers of water, they paid fees. What I'm suggesting we do here is we allot air pollution in the same manner.

**CHAIRMAN SHER:** It has a lot of attractive features. Did you talk in your travels around the country to the big three auto makers?

**MR. UKE:** Actually, I was set up to talk to the Automotive Manufacturers Association, Richard Wilson set me up so I'm supposed to talk to them. They're going to be one of the people that will be the least -- well, they're going to be at least affected by this.

**CHAIRMAN SHER:** They want to build the big cars, where they make the big profits and where they compete better, I think they think with their foreign competition --

**MR. UKE:** Okay, well, I can answer -- there's two things. First of all, I met first with the Car Dealers Association, and what they told me is that they have a lot of problems right now with the regulations you have which control the amount of electric car and low-emission vehicles, because there's no reason that anyone would necessarily want to buy these things. What's going to happen is they're going to make these cars and then the car dealers say, "We're not going to order them, because we don't think anyone's going to want them," and so they're going to basically sit there, so they're going to lose money when they try to sell these cars to get them into the public. Or you're going to have to regulate people to buy these cars, but how are you going to pick which people you're going to regulate to buy these cars? And so what happens is, the dealers like this because they said that if they put a lower index on the car, it's another reason to compete, and as long as the systems that make the cars low in pollution are easy to maintain by their service shops, they

have no problem with it, and they're not going to be stuck with all these cars that no one's going to want to buy, low index or electric. There's demand for those vehicles.

**CHAIRMAN SHER:** I think you've got hold of something here that makes a lot of sense. I think there are certain problems between where we are now and --

**MR. UKE:** That's why you're here.

**CHAIRMAN SHER:** One of the problems I would call your attention to was Senator Gary Hart's legislation, drive klutz? Are you familiar with that? It's quite different, but it was designed to make the people who bought the bigger, more polluting cars, the ones that used more energy to pay more. It was revved into neutral and those who bought -- the conserving ones -- which is really the underlying basis of your plan here, that they would get the break, and the state wouldn't get anymore money. It would get the same amount of money, but it would be an incentive for people to get the smaller, better, more efficient cars.

**MR. UKE:** This is similar in that, but --

**CHAIRMAN SHER:** But then it got vetoed, and that's the end of the story,

**MR. UKE:** But that has a thing where you take the big cars in place of the small cars. The basis of this thing is that people are going to try to avoid paying any fees, and so if you drive a low pollution car, even for a lot of miles, you're not going to pay any fees and if you drive a car right now that has

high pollution but you don't drive very much, you're not going to pay any fees. So most people are going to try to get to avoid paying any fees.

**CHAIRMAN SHER:** And you think without the emphasis on ride-sharing or using public transportation, that would happen inevitably anyway? and that would help the gridlock problem?

**MR. UKE:** What I'm saying is that this does not interfere with that. If anything, it encourages people to drive less, you know, but the whole point is that what you're doing right now is you're getting the working people who are going back and forth; you're trying to get groups. Now in San Diego, you talk about the future, you want to reduce air pollution 50 percent. Well, I'm hearing numbers like 7 to 12 percent to reduce air pollution using traffic management systems to go into work, and the things is, all these people who don't work or they don't work for companies that are a certain size or whatever they can't comply with -- because they have children or whatever, they're going to be left out -- so you're only regulating a small percentage of the population. This gets everybody, and that's why all groups I've talked to like the planning because it fits with democracy. The point is that everyone creates the problem, everyone has to live within it, by their own means and if their means is to drive less or their means is to buy a lower pollution car or their means is to share rides, they can deal with it in their own ways instead of the government deciding how to do that

for them, and I don't think the state has the tax dollars or I don't think the people want to put up with that kind of regulation anymore. Just tell them what results you want and let them deal with it.

**CHAIRMAN SHER:** Right. Well, I appreciate your taking the time to come here. Thank you very much. It's a very innovative idea.

I guess we're now ready to take a break for lunch. Let's be back at 2:00 sharp, shall we say, 2:00 sharp, and we're going to start at that point.

(BREAK)

**CHAIRMAN SHER:** (taping began after he started speaking.) ...going to present the Bay Area perspective, and our four witnesses, I see, are approaching the microphone and I would urge you, like the others, to not repeat, but to tell us what you need to have us hear, and Steve, are you going to lead off?

MR. STEVE HEMINGER: Sure.

**CHAIRMAN SHER:** Steve Heminger from the Bay Area Council.

**MR. HEMINGER:** Thank you, Mr. Chairman, and thank you for the opportunity to testify today on the implementation of the California Clean Air Act, and we on this panel especially appreciate your willingness to hear from us, the folks back home in the San Francisco Bay Area.

I'll focus my brief remarks on the issue of the

non-attainment categories in the Act and in many respects I'll be amplifying on earlier testimony from Cindy Tuck from CCEEB so I'll be very brief.

In a way, the title of my testimony could be taken from the headline of an April 1st editorial in the San Jose Mercury News entitled, "We're no L.A." Let me explain that. As you know, the California Clean Air Act contains three non-attainment categories geared to various deadlines by year. Areas of the state that can attain standards by 1994 designated as moderate, areas that can attain the standards by '97 are designated as serious, and areas that cannot attain the standards until after '97 or cannot demonstrate any attainment date at all, are designated as severe. Because of the stringency of the state ozone standard and the added stringency of the Air Resources' Board criteria for attaining that standard, no major urban area in the state is able to predict attainment of the ozone standard by 1997. In fact, to my knowledge no major urban area is able to demonstrate any attainment in the foreseeable future. As a result, every major urban area in the state has been designated as a severe, non-attainment area, ranging from the Bay Area with only 14 days over the ozone standard in 1990 to the South Coast which exceeded the state standard on 185 days last year. The chart attached to my testimony provides a graphic illustration of the breadth of air basins that fall into the severe, non-attainment category. I think you have the testimony, Mr. Chairman. On the

chart it indicates the ozone standard violations by air basin in 1990. The Bay Area is highlighted, 14 violation days, a high of .13 parts per million. The South Coast at the bottom at 185 days and a high of .33 parts per million. Everything from the Bay Area on down is a severe, non-attainment area according to the California Clean Air Act.

Now, to return to the point about "We're no L.A." Admittedly, residents of the San Francisco Bay Area bridle at comparisons of our region to Los Angeles on any score, but to be told that levels of air pollution in the Bay Area and greater L.A. somehow require an equivalent regulatory response is to strain credibility. As the Mercury News editorial stated, "Anyone with eyes, nose and throat knows that Bay Area air is vastly cleaner than Los Angeles air." Of course, we recognize that it was never the intent of the author or sponsors of the California Clean Air Act to equate air quality in the Bay Area with air quality in Los Angeles or with air quality in San Diego, or Sacramento for that matter. Yet the structure of the three non-attainment categories of the Act has had precisely that regulatory effect. Accordingly, we believe that amendment of the non-attainment categories is warranted.

One option would be to conform the 1988 state law with the federal Clean Air Act amendments of 1990. Federal law has five non-attainment categories for ozone. Under the federal scheme, the Bay Area is a moderate non-attainment area and Los

Angeles is extreme -- three categories removed and in a class by itself. By way of further example, Santa Barbara also falls in the moderate, federal category, Sacramento is serious, and San Diego is severe. Another option would be to define the three categories in state law according to design values as the federal categories are also defined, rather than expect a date of attainment. The design value is the starting point for air quality planning purposes. For example, the Bay Area's design value under state law is .15 parts per million for ozone, which is the highest level recorded in the past three years. The advantage of this approach is that the design value is a much better indicator of actual levels of pollution than the expected attainment date, especially an attainment date of 1997 that no metropolitan area can meet.

The crux of our concern is that the state non-attainment categories together with their attendant requirements should be proportionate to the different levels of pollution experienced by the various air basins throughout California. We think that non-attainment categories can be figured in such a way, best serve the Act, the interests of broad, public support for cleaner air, and the facts in troposphere.

I'd like to conclude, if I could, Mr. Chairman, by referring to the background paper that was attached to the agenda. I'd like to clarify, if I could, one sentence on the last page of that background paper, and I'll read it you. It says, "These same

area groups, including some who are represented here, state that the California Clean Air Act classification scheme should be conformed to the federal scheme for classifying air districts and that the classification should be based upon design values of a given area using federal criteria rather than on state ambient air standards."

Two clarifications I'd like to make: the first, as I've testified, I think that conforming the categories to the federal scheme is one option; another option would be to keep the same number of categories but define them according to design value rather than attainment date. The other point I'd like to clarify is that the language in the background paper seems to indicate that by using the federal design value to calculate the categories, we would somehow be shifting away from state ambient air quality standards and, in fact, the issue of design value really doesn't have much to do with the standard itself, not the end product we're trying to reach but where we start from. And as I indicated in my testimony, the design value is a rough approximation of where we are starting from in air quality planning. The federal design values are linked to federal attainment criteria, so since the feds allow us to exceed three times over a three-year period, the federal design value is the fourth highest value over that period. Since the state attainment criteria does not allow you to exceed, essentially the state designed value is just the highest value over that same three year

period.

Thus, we propose defining the categories if you do it according to design value with the federal values. If, however, the state attainment criteria were more reasonable, it might be appropriate to define categories according to the state-designed value as opposed to the federal value.

And with that clarification, I'll conclude my testimony.

**CHAIRMAN SHER:** Thank you very much. Dr. English, you're next? Mr. Frizzelle?

**ASSEMBLYMAN FRIZZELLE:** I'm concerned about the values as well, assigned by the state and the feds. It seems to be that various areas of the state have different air circulation, different potential for achievement, and different inherent problems. What would you think about a geographical designation?

**MR. HEMINGER:** Well, that is more or less what we propose, and I think it was more or less the intent of the author and the sponsors of the Act. I think you heard earlier testimony that it was the belief of many involved in the process that Los Angeles would be the only severe non-attainment area, just as it's the only extreme non-attainment area under the federal law.

The fact is, however, that the way the categories are defined according to when you can attain the standard, and the fact that the year that was picked as the breaking point, which was 1997, that structure means that every major urban area in the state is lumped into the same category, because none of those

areas can attain the state standard.

**ASSEMBLYMAN FRIZZELLE:** Well, they're lumped according to ozone layers, and various gases in the atmosphere, and so forth, rather than the cause of it, and it seems to me that the potential for attainment is less severe in any other area than Los Angeles. You have the ability to attain a level that's entirely different in Northern California, in the Bay Area, than you have in a valley and then you have in an area circumscribed by mountains as Los Angeles is. And even within the Los Angeles basin, the potential for changing or for varying from Orange county even to Los Angeles is great, and it seems to me that we leave out a lot of factors when we seek to attain only on the basis of gases in the air. We start from somewhere and that point ought to take into account the geography and natural incremental differences along with it.

**MR. HEMINGER:** And if I could make a final point.

**CHAIRMAN SHER:** I'm going to make the final point.

(laughter)

**MR. HEMINGER:** Oh, okay.

**CHAIRMAN SHER:** But you go ahead and make your semi-final point. (laughter)

**MR. HEMINGER:** The next to final point.

**ASSEMBLYMAN FRIZZELLE:** Well, it can be changed you know; nothing we put in writing can't be altered. (laughter)

**MR. HEMINGER:** That even with the Bay Area's very

favorable geography, our air district has estimated that even a 75 percent reduction in all emissions would not attain the state ozone standard as it's currently defined according to attainment criteria, so I think that indicates the extent of the chore ahead of us, even a region like the Bay Area that is starting off so much better than everybody else and has so much more favorable geography.

**ASSEMBLYMAN FRIZZELLE:** Thank you.

**CHAIRMAN SHER:** Let me make my point, if I may, which is prompted partly by Mr. Heminger, one of his statements, and partly by your question or observation. It's not the law, both before and after the Clean Air Act, the laws were not designed in terms of trying to put districts through hoops based on the geographic peculiarities of the district. It starts out with an assumption that certain concentrations of pollutions in the air are unhealthy and the Air Resources Board set these standards before there was any Clean Air Act - I mean, they would be there whether the Legislature had adopted --

**ASSEMBLYMAN FRIZZELLE:** But they're based on assumptions that --

**CHAIRMAN SHER:** Well, you may disagree with the assumption of how healthy the air is to breathe --

**ASSEMBLYMAN FRIZZELLE:** But we build on that.

**CHAIRMAN SHER:** -- and you might want to change the standard, but it wouldn't make any difference whether it's in the

Bay Area or the South Coast district. Whatever you come up with is going to be your conclusion about what the standard will be. The federal law does the same thing, it has a federal standard. So, that's the starting point. Now, on these classifications, I might say, you're right up to a point there -- we put the three classifications -- but the authors of the bill, and the people who worked on the bill and who ultimately supported the bill, did not have any predisposition about how many of these districts should end up in the severe, the serious, or the moderate category. The underlying assumption of the law is that it depends on how long it will take a district to get into compliance with the standard, and that would determine which category.

Now, sure, we all knew the Los Angeles basin was the worst, and it was likely, we thought, that it would fall within the severe category at least for certain pollutants, but there was no intention that other districts should fall in one of the categories or not. That was determined by the district itself when it sat down to put together its plan, its own determination about when it would come in compliance with the standards. And you know yourself that the Bay Area staff and the members of the district board thought on ozone that they could come into compliance before 1997 and would not be in the severe category, and indeed they worked for a long time using one of these so-called alternative indicators. They had a modeling, a computer modeling that was going to show that, and they worked on that for

a long time and they were unable to demonstrate it, and finally they abandoned the model, and they then went to the percentage emission reductions, and they concluded that for ozone, they couldn't make it by 1997, and then that triggered the severe --

**ASSEMBLYMAN FRIZZELLE:** Well, Mr. Chairman --

**CHAIRMAN SHER:** -- nobody had any designs that they should be in one category or another. That's simply the basic structure of the Act.

**ASSEMBLYMAN FRIZZELLE:** I understand that, but the people who wrote the Act to begin with didn't know either.

**CHAIRMAN SHER:** That's right, absolutely.

**ASSEMBLYMAN FRIZZELLE:** And I think, as we go along and more observations occur, we ought to be flexible enough to think in terms of the Act itself, what it demands, and what its assumptions are.

**CHAIRMAN SHER:** I guess we know now that there are more of these districts that have determined they will not be in compliance with these ambient air standards by 1997 and, therefore, they fall in the severe category and that triggers certain kinds of controls that they must then implement in order to move toward compliance, and now that we know that, if that suggests something ought to be done to give them more time, that's something we obviously can look at.

**ASSEMBLYMAN FRIZZELLE:** All of us want to clean up the air, as all of want to clean up the water, but the fact is, some

places take longer and some are going to have to have different scales of judgment applied to them because of what state they are in originally.

**CHAIRMAN SHER:** Well, that, of course, is what the law recognizes. Those who are going to take longer have to do more along the way. That's in effect --

**ASSEMBLYMAN FRIZZELLE:** But they don't necessarily have to do it faster, at the expense of everything else including the economy.

**CHAIRMAN SHER:** No, but all the Act says is, if you're not going to make it by 1997, then there are some additional strategies that you should employ, but it doesn't say you have to do it by any particular date after that. You have to employ the strategies though. Anyway, I was just arguing with the point you were saying, that we had some intention about how many were going to fall into which category . . . we didn't know, frankly.

**MR. HEMINGER:** And what I was doing was repeating, frankly, what others had told me who were involved in that process. I would certainly agree that the important thing is not what the expectation was then, but what the reality is now, and that is severe.

**CHAIRMAN SHER:** All right. Thank you for your testimony. Dr. English, you're next.

**DR. TOM ENGLISH:** Good afternoon, Mr. Chairman and members of the committee. My name is Dr. Tom English. I'm

Director of Environmental Programs for the Santa Clara County Manufacturing Group, and I figured out how to make this View-graph projector work better.

What I'd like to do is to basically tell you about some of the things we're doing, our manufacturing group companies, and show you how we're trying to support the Clean Air Act. What we've done in the way of reducing air pollutants is shown on this graph here. We have decreased our toxic air emissions between 1989 and 1990 by 43 percent, so our companies are indeed working very hard, and in some cases, I think we're leading the nation in terms of toxic reductions.

This afternoon I would like to talk about three points involving the Clean Air Act. One is the point of the designation of the non-attainment criteria, the second point is the basic idea of the criteria for attainment, and the third point is the indicators used to track progress towards attainment.

We've heard an awful lot about Los Angeles and the Bay Area. I'd like to make a colorful comparison here. What we see here is a set of isopleths showing the number of days that the L.A. area exceeds the federal standard. This red area here is about the size of the Bay Area, and it exceeds the federal standard 150 days a year. The orange area is better. It exceeds the federal standard 100 days a year, and finally, the yellow area, which is many times the size of the Bay Area, exceeds the federal standard 50 days a year. If we were to put a map of the

Bay Area on this screen, what we would see is one X over Livermore with a 1 next to it, so I submit there is no reasonable comparison between the two areas in terms of air quality.

We support the right of the state of California to have its own standard for ozone. Back in the early, days when people were starting to set air quality standards, they believed in the so-called hockey stick approximation, where this is the health effect and this is the concentration of the air pollutant. The thought was there would be some level at which there would be no health effect, some background effect, that background effect would be constant and then there would be a gradual increase in the health effect. It looks like a hockey stick at the (inaudible). What we saw in that -- we did an awful lot of data -- I ran the study in Los Angeles studying about 40,000 people to determine the health effects of ozone -- is that the data doesn't work this way. There's considerable scatter to the data, there's considerable uncertainty, so there is no simple threshold we can use, so we're forced to pick a number that appears to be reasonable to us, and then take that number and put an adequate margin of safety on top of that. So it's very reasonable for the state of California to differ with the federal government in terms of its methodology for doing this, and we support that difference.

We do not understand, however, the reason for having different attainment criteria once a standard is set. We believe that the federal standard of four excesses in three years, on a

per monitoring station basis, is certainly adequate. There is no basis in terms of health, analysis of health, for the current California non-attainment criteria. I asked that during the health effect workshop hearings and they said we don't really have any, so if there's no real basis for it that's been examined in terms of the cost-effectiveness of it, why are we different than the feds? Why needlessly complicate our lives?

In terms of indicators, the California Clean Air Act wisely indicated that other indicators should be used in addition to emissions. Emissions is obviously the one you would try to use first, because we think we know something about it, but again, if you attend the emission inventory hearings of the California Air Resources Board, what you find out is that, last year, the estimate of the uncertainties in the emissions was 30 percent. I attended it last week, this year, and the emissions are now 50 percent to 100 percent. In some categories, the emissions may become 200 percent, so really, these emissions aren't as good a tracking scheme as we thought they were. There's a far better way to keep track of things in addition to emissions and that is to use the measurements.

When we measure the ozone in the air, we do an excellent job of measuring it. Our accuracy is the order of plus or minus 5 percent which is wonderful compared to these emissions. Why not do something like track the percentage areas in non-attainment? Use that as an indicator. Or if you want to get

to the real bottom line of the whole thing, why not simply track population exposure? We track a number of people that are breathing air above the standard for a certain amount of time. Certainly the bigger air monitoring districts can do this sort of thing with ease.

So, I'd strongly recommend that we change the law not only to suggest self-indicators that the Air Board come up with, but pick some during processes such as this, and then mandate that those indicators be allowed.

Thank you very much for your attention. I'll be happy to answer any questions.

**CHAIRMAN SHER:** Thank you, Dr. English. That was a very clear presentation. I don't have a question. Mr. Gotch, you -- okay. Another representative of the manufacturing groups, Mr. Carl Guardino.

**MR. CARL GUARDINO:** Assemblyman Sher, I would like to thank you and the committee for conducting today's hearing. My name is Carl Guardino and I'm the Transportation Director for the Santa Clara County Manufacturing Group. In the interest of time, I will concentrate my remarks on two issue areas: the calculation of average vehicle ridership, and the definition of every feasible measure, and I'd like to point out that the Manufacturing Group strongly supports the comments made earlier by Mr. Heminger of the Bay Area Council and respectfully urges the committee to address the issue of non-attainment categories.

First, the calculation of average vehicle ridership or AVR. The Act states that areas which have been designated as severe must attain an AVR of 1.5 occupants per vehicle, by 1999, during peak hours. The responsibility for reaching these standards rests, for the most part, on employer-based trip reduction programs. While these programs are worthwhile and must and shall continue -- and I might add most of our member companies started those back since the early '80s -- we have to realize their limitations. Let me elaborate.

In the Bay Area, commute trips only account for 25 percent of all vehicle trips, which make up 33 percent of vehicle miles traveled and 27 percent of the resulting emissions, according to the Bay Area Air Quality Management District. Furthermore, according to the Metropolitan Transportation Commission, even in the morning peak period, commute trips only account for 60 percent of the cars on the road. A full 40 percent are non-work trips.

In Santa Clara County, according to MTC, the current AVR is a very dismal 1.111. MTC's projections for Santa Clara County, taking into account ride-share programs and current funding projections for future transit availability, place the county's AVR in the year 2000, a year after the 1.5 AVR is to be met, at 1.117.

Obviously, we need to provide more options if we are to meet the very worthy yet very challenging goal of 1-1/2 occupants

per vehicle. As a transportation professional, I quite often hear people urged to take rail transit. Unfortunately, it's very difficult to wait at the station if the next train won't arrive for 10 years. What we can do in the meantime, however, is allow strategies which will not only reduce the length of trips, but which can eliminate trips altogether. Currently, the California Air Resources Board is interpreting the Act to read that only trip reduction strategies, and not trip elimination strategies, should be included in the calculation of AVR. A trip elimination strategy is a commute alternative which completely eliminates a vehicle trip. Examples include, but should not be limited to, telecommuting, teleconferencing, compressed work weeks, biking or walking to work.

There are several benefits to the inclusion of trip elimination strategies in calculating AVR. These benefits include completely eliminating the most polluting portion of the trip, namely the cold starts. They are ideal for transit poor regions, such as most parts of the Bay Area, which do not currently allow motorists any choices other than employer-based ride-share programs. They also deal with other compelling state and regional problems such as traffic congestion. They allow businesses to do what they have traditionally done best, namely to take a goal and find creative and innovative ways to meet it, and they allow Californians and their employers flexibility in helping to attain the Clean Air Act's AVR goals.

With these key reasons in mind, the Manufacturing Group strongly encourages the committee to amend the Act to specifically include trip elimination strategies in the calculation of AVR goals. We have a great deal of work ahead of us, and the AVR goals included in the Act will be a tremendous challenge to reach. The inclusion of trip elimination strategies will not only help reach the numerical goals of the Act, but much more importantly, they will also help us to come closer to achieving the air quality goals of the Act. And I was very encouraged to hear Ms. Sharpless mention in her testimony this morning a recognition of including trip elimination strategies.

The second issue I wish to address briefly is the definition of "every feasible measure." Actually my concern is the lack of a definition. In early conversations with CARB, the phrase was being interpreted to mean "any measure that has been tried at any time, anywhere else." With all due respect, this broad-based definition is of grave concern. What may have been feasible to consider in Los Angeles, for example, with 185 violations of the state's standard for ozone, in 1990 alone, may very well not be feasible or necessary in the Bay Area, with 14 violations for that same year.

The Manufacturing Group would like to recommend that "feasible" be more adequately defined and suggests that the definition already contained in the state's CEQA law be used. In Section 21061.1 of the Public Resources Code CEQA law defines

"feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors." In its statewide guidelines for CEQA, the Office of Planning and Research has added a single word "legal," between social and technological. Either of these two definitions would help planners, the public, and concerned parties have a stronger grasp of what is expected. It may also help to avoid unnecessary law suits between parties which may have different expectations of what feasible may or should mean.

Mr. Sher and committee, I want to thank you again for not only your time and interest today but for your long-term efforts in playing a leadership role on this important issue. The Santa Clara Manufacturing Group stands willing to assist in any way it can to work with you in identifying concerns and working toward solutions to help achieve progress towards attaining the goals of the Clean Air Act.

Thank you.

**CHAIRMAN SHER:** Thank you for your testimony. I just wish to say, in comment, that this committee, of course, has jurisdiction over the California Environmental Quality Acts, and we know the definition to which you refer, and some people would argue, and have argued I might say, that the definition in terms of "capable of being accomplished in a successful manner within a reasonable period of time," that that can be read a lot of

different ways too, and if that were the definition and the ARB and others were taking action on it, I think we'd hear a suggestion that we ought to change the definition in the California Environmental Quality Act in a different area of last -- or this year, we had a definition problem with a bill that I carried, namely "recyclable," and we had a generalized kind of definition and groups thought "that's too vague." Even, indeed, the Governor when he signed the bill said, "Go back and try to make that more definite." We came back, and we tried to put some more objective benchmarks on it. By the time we went through the pain and agony of considering that, with many long meetings, industry people were begging us to stay with the original definition, because they couldn't stand those objective benchmarks. They felt they couldn't move them. So, it's never easy to come up with a definition that has precise objective benchmarks, and I would suggest that the CEQA one has some fluidity in it too, just as the one in the Clean Air Act, but it's something we need to look at; and I thank you for your testimony.

Our next witness is Mr. Dennis Sullivan for Pacific Gas & Electric.

MR. DENNIS SULLIVAN: Thank you. PG&E appreciates the opportunity to present our views on the California Clean Air Act. I believe I've handed out a written statement. I hope you have a copy of it. I'm going to paraphrase that over the next 7 minutes.

CHAIRMAN SHER: Okay. Good.

**MR. SULLIVAN:** PG&E is a recognized leader in clean electric technologies; and after hearing some of the testimony previously, I also want to point out that we're also a recognized leader in clean fuels for transportation. I'm going to limit my comments to electric technologies today.

My comments are only going to focus on one issue and that is that PG&E wants to ensure that the Act's objective, for attaining California's ambient air quality standards for ozone as expeditiously as possible, will also allow us to pursue some longer term objectives that not only will reduce NOX but will also result in lower levels of NOX emissions and at the same time have additional benefits in terms of lower CO<sub>2</sub> emissions, higher fuel efficiency, and a more reliable system for our customers.

We're in a bit of an unusual business compared to a lot of businesses, and that is in terms of the fact the electric supply industry doesn't have an inventory. We don't produce electricity and store it on a shelf for later delivery to our customers. We have to produce, instantaneously, the electricity that our customers demand and as much as they demand. There's a nice quote in the written statement from the New York Times that says this very eloquently, but our point is that the fossil units that we have play a key role in allowing us to respond instantaneously to our customers demands.

We do support a clean, healthy environment and we plan

to be making best available retrofit control technology retrofits to our larger and our cleaner units, our newer units, during the 1990s, to help us maintain those units in a state that we can continue to use them. As a result of making these retrofits to our larger and our newer units, we'll produce about an 80 percent reduction in NOX levels from our current levels. I really want to emphasize that. These are the units that we use the most to meet our customers' demands.

Today, I want to address the flexibility that we would like to have for our older and our smaller units. These are units that we call on very little, but we do call upon them in times of peak demand. We want to have the option, for these older units that are nearing the end of their useful lives, to replace these units or repower them with high-efficiency technologies. We feel that the Act should encourage that type of replacement and/or repowering of these units, rather than maintaining older units and just retrofitting with best available control technology.

The new technologies that I'm speaking of are under development by both utility industry and the QF, and the independent power industry, and we feel there are some very exciting options that are under development currently. Environmentally attractive options, however, they take a little bit longer to implement. They do have greater benefits than maintaining the current units. These are things such as renewable resources, wind and solar resources, that I think everybody

realizes has zero emissions, and high efficiency fossil resources such as fuel cells that are under development. These fuel cells are about 60 percent more efficient than what we currently use, and they have, because of the technology used, they emit virtually zero NLX.

Another option is repowering. In a repowered unit, we go in and replace the existing combustion mechanisms with new machinery that is of higher efficiency and also contains state of the art NOX control. As a result of repowering, we reduce system NOX emissions and CO<sub>2</sub> emissions below what we would otherwise do. So we're looking for the option to replace these older smaller units with a combination of repowered units and advance technology. This will come from utility additions, from Q additions, IPP additions. However, the logistics of carrying through such an ambitious program would require that our schedule stretch beyond the year 2000.

We've held discussions with the California Air Resources Board, some local air agencies, the CEC, and the CPUC, and based on these discussions, we believe that these regulators share our desire to minimize the long-term cost of these reductions. We would like to continue to work with these parties and also with the staff of this Assembly committee to see whether any changes would be needed in the California Clean Air Act to allow us to carry out such a long-term goal of retrofitting, repowering, and replacement. As a result, as I mentioned earlier, we reduce NOX

levels below what we would be able to do otherwise. We also have additional benefits in terms of CO<sub>2</sub> reductions, of greater fuel efficiency, a more cost-effective system. In doing so, I think we would achieve a goal that I think we all share and that is for cleaner, cost-effective, and more reliable sources of electricity to our customers.

Thank you.

**CHAIRMAN SHER:** Thank you very much for your testimony. Mr. Phelan, from the Bay Area League of Industrial Associations, who wrote us a letter and said -- I like this, Mr. Phelan, so I have to quote it, if I can find it -- "You generally support the 1991 Clean Air Act adopted by the Bay Area District Board." Is that accurate?

**MR. DANIEL PHELAN:** That's correct, Mr. Sher.

**CHAIRMAN SHER:** Well, good. That's a good starting point.

**MR. PHELAN:** Thank you for the opportunity to testify. I won't say we've saved the best for last, because I normally am more comfortable appearing before the district board or the local boards in the Bay Area, but I appreciate your having me here. My testimony is going to be short, very short, and I've coordinated with other members of the committee. I agree with Mr. Bishop's remarks today. I wasn't allowed to participate in the Act itself with you people, but shortly after that got on to the working group that was appointed by ARB with Mr. Bishop. So I've

carefully followed through on the criteria aspects of this, and then I've heard the other remarks myself. My testimony, unlike Bishop's, will be strictly from a Bay Area point of view, but why you say, then how does it affect the state? It does affect the state, because, as it's been pointed out earlier, the Bay Area's out in front, and if anybody's going to make the goal for criteria it would be the Bay Area.

BALIA's position is that zero in the three criteria -- that's the acronym, as Ms. Sharpless spoke about it -- established by the Air Resources Board, makes it almost impossible to meet the standard in the Bay Area in the foreseeable future. Now, it's real easy to say that in general terms, like you wisely said, but what about quantifying it or coming up with hard numbers on it? I'd looked and worked on this, and unlike Dr. English, I don't have the courage to handle the View-graph, so I'm going to ask you to look at the attachment to my statement, which is a Table of Hard Data Based on Measured Numbers, and the key there is that if the Bay area is going to reach the criteria, it will have to reduce 649 hours. Now you've heard other numbers -- 13 days, 23 days, or whatever -- well, those days are really indicators. That's the good news, but with the way the ARB has defined it, which is spelled out in the notes, and you're very familiar with, you have to reach every hour. Now, Ms. Sharpless and the ARB, as we've heard often, says, well, there's these other rare events. Well, remember, they're 1 in 7. So if you will look over on the

right hand side, you'll see a 95, 96, and 97, all of the zeros that have to be in there. So putting a 1 in there doesn't really cut the ice. So if you look at this, it's to give you a graphic presentation that you have 4 years in order to get the zeros. By the beginning of '95 the Bay Area has to be down to zero, that's why the Bay Area plan didn't come out and say it would make attainment in '97, like many people spoke and said that it should.

Now I've had the opportunity to update this just before I came up here and I have the numbers for '91, and I think they're kind of interesting. If you look at the total, which is the total hours above the state ozone standard, it's 105. In other words, where it was 102 in '90 it is now 105. So the total remains the same. If you look at Fremont, Fremont went up. Fremont went up to 15 hours. That's sort of the bad news. The good news is Bethel Island went down from 18 to 7. The others essentially remained the same. To show you also how the numbers are deceptive, the district days went from 14 to 23. So if you look at hours, it looks like it stayed about the same, but this indicator of days went up. Now I don't want to confuse you with all of these numbers except to say that they are hard numbers, they are realistic numbers, they're basic data that was measured by the district. You look back in 1982 there, we had a good year there, 191. Then it jumps up and down. I have some charts but I don't want to bore you with those, but they go up and down. So these are the hard numbers and the reason why the district could

not come up and say that it can meet it in '97.

We've been working with the ARB staff since '89 to establish this criteria. While the board has been quite responsive in general, the staff has not produced any real alternative to help in this problem. This problem has been around and has been presented to them for a couple of years, and that's why I come back to my statement as I already said, we supported the plan. We supported the plan because we think the district did everything that this could in the framework you've heard today. Now, we think that it's the Air Resources Board that is in need to amend its regulations to avoid a planning process without end. That really is what we perceive looking at these numbers and the whole context you've seen today. Now, this isn't just an industry plea, because we believe that if you don't do this, as this air pollution control reaches out to everyone, that unless some changes are made you're going to lose the support for the effort.

That is all I have to say today and appreciate the opportunity to comment and am willing to work with you and the Air Resources Board in any way we can.

**CHAIRMAN SHER:** Thank you, Mr. Phelan, thanks very much for coming.

Thanks to all of you for your testimony. That completes the Bay Area perspective, and now we turn to the next panel, which are the environmental and public health groups, and you know who you are, and we invite you to come forward at this point.

**ASSEMBLYMAN GOTCH:** Mr. Chairman, while they are coming forward if I could offer a comment. I'm going to have to leave the hearing for a few minutes for a meeting, but I'll be listening in my office. I want to come back, but I want to offer a couple of observations on what I've seen today, if I might, in lieu of an opening statement, which I didn't add, Mr. Chairman.

While I think those who testified today were very reasonable, the witnesses in their commentary, I don't think that we should be fooled into thinking that there isn't an undercurrent out there of forces of opposition who have as their objective to weaken the California Clean Air Act, and if this plan needs fine-tuning, which is what we hear from Chairwoman Sharpless today, then I want to suggest to you, and issue the challenge to all of you, that we ought to be working together for the benefit of business and for the benefit of the millions of Californians who have to breathe the nation's dirtiest air. The polarization that might take place is not going to benefit any of us and I'll tell you, I've haven't been up here very long, it's been less than a year, but it's clear to me that the handwriting is on the wall and 1992 is going to be a very difficult year for the California Clean Air Act.

So I would say to those of you who are at the witness table today, and those of you who are in the audience, that our focus really shouldn't be so narrow that in fighting a rear guard skirmish that we end up losing the entire war and in doing so that

we lose the Clean Air Act and all that Mr. Sher and others have worked towards. So, I'm going to be here a while. I intend to be an active participant in this debate over the next few months and the next year.

I hope to be back before you all conclude, but I did want to offer those observations on what I witnessed here today. Thank you.

**CHAIRMAN SHER:** Thanks, Mike. I know everybody's busy, and we hope that some other members will get back too, but I should say we're recording this hearing, and whether or not there are a lot members here at any given time, your testimony is important to us, and I, like Mike, think that will be legislative activity around the California Clean Air Act, and so it's important to me and the rest of the committee to hear the viewpoints of all persons on this question, important question. So welcome, and I think the first witness on this panel is Veronica Kun.

**MS. VERONICA KUN:** Yes. My name is Veronica Kun, and I'm with the Los Angeles Office of the Natural Resources Defense Council, and it's an honor for us to be invited here today to discuss the future of the California Clean Air Act. As you know, NRDC supported the Act and considers it to be a model for effective and strong control of environmental pollutants and a model which very effectively addresses the complex environmental and public health problems of the state. We're grateful for the

committee's foresight and the chairman's leadership in making this legislation a motive force for the state's Clean Air Act -- clean air effort. It's been three years since the Act's adoption and a great deal of insight and experience has been gained about its strengths, as well as about the areas in which it can be improved.

We in the environmental committee, therefore, welcome the opportunity to discuss future directions for the Act and present our recommendations about the ways it might be strengthened.

First, it should be made clear that NRDC considers the Act and the principles on which it was established to be fundamentally sound. There remains a strong popular consensus as well as solid policy justifications for continuing along the path prescribed by the legislation. While it may now be appropriate to consider some refinement, a major restructuring of the Act or its principle implementation strategies is neither necessary nor appropriate. If anything, elements of the Clean Air Act program need to be enhanced and augmented rather than undermined by weakening amendments.

The Chairman requested responses to a number of issues concerning Clean Air Act implementation, and I'd like to begin by addressing one on which NRDC has worked a great deal over the past two years, and that's the area of transportation and indirect source review.

The Act prescribed ambitious targets for emission

reductions from vehicles, but unfortunately, it provides insufficient tools for obtaining these reductions. A great deal of confusion exists about institutional responsibility, appropriate use of legislated authorities, and what the successful methods for reducing vehicle emissions might be. Any objective evaluation of regional efforts to control emissions from current transportation and indirect sources will find them with the notable exception of ARB's new vehicle and fuel standards almost completely deficient. NRDC completed such an evaluation of the transportation provisions of the South Coast Plan which we'd like to insert into the record today, along with our testimony.

In light of the manifold failures of the ongoing efforts, it is seductive to consider abandoning difficult transportation and indirect source measures in favor of vehicle technology-based solutions. Unfortunately, suggestions that air quality standards can be achieved solely through technological improvements is wishful thinking. First in areas like the South Coast, emissions from motor vehicles will need to be approximately 20 percent of what they are today in order for the region to meet health based standards. This will have to be accomplished in the face of an expected 30 percent increase in population and 65 percent growth in vehicle miles traveled. No responsible analyst either at ARB, the air district, SCAG, or within industry itself, have demonstrated that this can be accomplished solely through vehicle improvements, at least within the lifetimes of the

children who are alive today. In addition, since November of last year, federal law has required transportation initiatives similar to those prescribed in the California Clean Air Act. California law now simply augments and enhances the provisions of the national Act. Eliminating the state provisions will, therefore, fail to remove the obligation to undertake transportation measures. Very little will have been accomplished at the expense of relinquishing state leadership in these efforts and the ability to structure programs to meet the particular needs of the state.

Additionally, the committee has been presented with suggestions to relax the indirect source provisions of the Act in favor of reliance on federal conformity elements. The federal conformity provisions are intended to ensure that new transportation infrastructure investments are evaluated against the state implementation plan. The federal law does not address indirect sources at all. It is difficult to see how federal conformity could in any way be used to control, let alone account for, emissions from indirect sources. The committee should, therefore, reject this suggestion out of hand and consider it a diversionary tactic to draw attention away from the acute and difficult problem of controlling large, regionally significant land uses.

Now setting aside the road blocks and diversionary strategies, which a number of interest groups have erected against meaningful implementation of the transportation provisions, NRDC

concur that a restructuring of the current program may be necessary to provide for clean air attainment. Although we haven't yet prepared a detailed program, some key elements of a rational solution are apparent. The two issues which have to be grappled with in any rational restructuring are first the question of program goals and content, and second the issue of institutional responsibility and authority for implementation.

Within the category of program goals and content, one of the key problems is that the legislation as it exists today provides no guidelines for developing a transportation plan which is internally consistent and logically effective. Current programs are confused, they offer undifferentiated menus of transportation control measures, and they're ineffective in directing the efforts to the most cost-effective and most efficient solutions. We suggest, instead, that legislation allow for regrouping of potential transportation measures which regions might use, and this regrouping ought to be constructed so that transportation measures with similar objectives are grouped as one single measure.

First, let me describe these measures with different objectives. First, there are measures which discourage the use of single-occupant vehicles and reduce trips and BMT. These include the ride-sharing programs, congestion charges, and parking restrictions. A second group of measures is designed to provide the infrastructure improvements which make viable alternatives to

single-occupant vehicles. These are transit, park and ride lots, and HOB facilities. The third are measures which are designed to reduce the need to travel. This consists primarily of land use initiatives, such as increased densities, transit-orientated, and mixed-use developments, and urban growth boundaries, and fourth, there are measures which improve the performance of vehicles. These are rapid and accelerated and aggressive introductions of low-emission and zero-emission vehicles.

Once these groups are established, then it would seem reasonable that regions would then be allowed a great deal of flexibility for attainment of goals within each of these groups, and that specific standards be established for progress in each of these groups. In order to do that, we recommend that two new types of authorities be granted to responsible agencies. First, the ability to impose congestion charges and emission fees for mobile sources; and second, the ability to condition the distribution of state transportation funds to local jurisdictions on the basis of their compliance with regional transportation plans.

So instead of weakening and diluting the abilities of responsible agencies to implement meaningful and rational transportation measures, new elements and new tools ought to be given to these agencies, which instead of trying to operate with one hand tied behind their back, we now release that hand and ability, and allow them to use the whole gamut of regulatory and

market-based tools that might be available to them. In the second issue, which could use legislative redefinition, is the whole issue of institutional responsibility and authority. Confusion and controversy concerning institutional responsibility for implementation of the Act's transportation and indirect source provisions has, more than any other single issue, handicapped the effort to make progress on transportation programs.

In the South Coast, the division of responsibilities between SCAG, the agency which developed the transportation and growth management element of the plans, and the district, which has the ultimate responsibility for attaining air quality standards, is completely unworkable. This problem is greatly aggravated by SCAG's lack of authority and the district's reluctance to exercise its own indirect source authorities in the absence of a functional transportation program. At the very least, this committee should consider an institutional arrangement in which responsibility and authority for developing and implementing the transportation and indirect source portions of the plan are vested in a single agency.

Now, independent of the question of whether that responsibility ultimately resides with the district, with SCAG, or some new regional entity, clear emission budgets for all mobile sources should be prescribed, and goals for each of the four functional transportation categories should be developed. The designated agency should then be directly responsible for the

fulfillment of this portion of the regional air plan and should be subject to sanctions under state law, including the provision for legal challenge by citizens to agency actions.

My colleagues from the environmental community will discuss the other two issues that we've been asked to address, mainly, the air quality standards and permitting requirements. You can also find NRDC's comments on these two issues in our submitted testimony.

**CHAIRMAN SHER:** Thank you very much. Thanks for your testimony. Sierra Club? Is that -- no. This is --

**MR. TOM SOTO:** We're going to do a little switch. We have have a 3:30 flight.

**CHAIRMAN SHER:** Oh, okay. Oh, all right, surely.

**MR. SOTO:** I'm going to make this real quick! My name is Tom Soto. I'm president of the Coalition for Clean Air, and I think you, Mr. Chair, for giving us this opportunity to speak on the implementation. I'm just going to hit every point that I got in the letter that my office received.

When considering the revising health standards to the federal limits, it's not surprising that businesses have asked for a relaxation of health standards because of their concern with the quarterly bottom line. However, it's important to note that these are health standards, and health standards should be our primary concern, not quarterly profits. What dollar value do we place on lung tissue atrophied after long term exposure to polluted air?

What value do we put on our children's ability to grow and develop to their full potential, and this doesn't even mention the fact that in our own South Coast Basin, which was mentioned this morning poor air quality cost our state's economy some \$9 billion a year. In addition, a recent study from Loma Linda University found that measurable increases in the cancer rate of a steady group of 7,000 non-smokers and non-drinkers correlated to ambient ozone limits of .10 parts per million. Current state air quality standards, which are designed to protect against acute respiratory effects, were not even intended to offer protection against cancer incidents; but this new evidence indicates that the current state standard of .09 provides some measure of protection from these observed carcinogenic effects. However, increasing the standards of the federal limit of .12 would remove that protection.

In another study by Dr. Roger Deittles, of UCLA, found that measurable decrease in respiratory function occurred during childhood in study groups in Long Beach and Glendora. A previous study by Dr. Russell Sherwin, of USC, reports oceans of inflammation in 54 percent of the cases studied in the Los Angeles area. He also concluded that there was a definite link between elevated ozone levels and respiratory distress, and that on average, children's lungs have a 15 to 20 percent less lung capacity than children raised in other parts of the country. We remind the committee that the California Department of Health Services advised the California Air Resources Board that the .09

standard was not adequate to protect public health with a margin of safety at the time of the original Clean Air Act deliberations. This would (inadible) for making the standards even tighter than .09, not looser. With respect to indirect source review authority, do federal conformity provisions effectively substitute for AQMD ISR authority? No. The guidelines developed so far by local planning agencies are inadequate from an air quality standpoint. In fact, local planning agencies are historically loath to find lack of conformity in large projects within their jurisdiction and tax base. For example, the massive Porter Ranch Project in Los Angeles was approved by SCAG with only cursory considerations of massive traffic and resulting air quality impacts . . . despite the projects modeling studies which predicted new exceedence of ambient air quality standards as a result of the development! The South Coast Region's penchant for building additional mixed-flow freeway capacity is another example of the planning agency's difficulty in being sensitive to air quality concerns.

Air districts have clear expertise in evaluating air quality impacts and need to have a strengthened role in the conformity process. Federal law should be considered a minimum starting point for conformity in non-attainment areas. California must take a leadership role in further strengthening its current indirect source review.

Limiting AQMD authority to merely commenting on CEQA

documents. CEQA's primary function is to provide a mechanism to inform the public about potential impacts of a development, identify mitigation measures, and to provide a mechanism for public input. Any private citizen has a right to offer CEQA comments. As the primary agency charged with enforcing air quality standards, an air district's role extends beyond merely commenting on a project. The existing statute clearly prevents the district from usurping any local land use authority, be it explicit prohibition. However, the air districts must retain permitting authority over all sources of emission within the district in order to discharge their primary duty of meeting and enforcing ambient air quality standards. Rather, the problem should be seen in the reverse.

Presently, the primary road block to attaining ambient air quality standards is the district's lack of adequate ISR authority, and both a report by the American Lung Association and a 1990 study by SCAG, prepared for the South Coast AQMD, local governments were found to be the sector with the worst implementation rate of the indirect source controls. In fact, during deliberation of the 1989 South Coast AQMD, the district's modeling determined that the expensive and unpopular Tier 3 measures were only required due to projections of unchecked future growth and resulting indirect source emissions.

Why should the Clean Air Act focus on reducing VMT and increasing average vehicle, rather than technological, solutions?

The question has some merit due to today's technological breakthroughs in cleaner vehicles and alternative fuels, but there is clearly a partial technological fix out there that we must pursue. However, total reliance in technological solution ignores California's history in unchecked population growth.

Do we agree that air regs place an unreasonable regulatory burden on businesses in the state? Yes; however, unequal measures must be set for unequal situations. The Los Angeles air basin is still and will continue to be considered a severe violator of ambient air standards, bringing the super bowl of smog into attainment isn't going to be easy, and it isn't going to be free. The question should be whether or not these regs are too burdensome. The question should be if they are, then what can we do as environmentalists and corporate and political leaders to mitigate the economic impacts of such burdens. There's no question that the small business community is being impacted, small business which is the backbone of the California economy. The AQMD is making unique efforts to address this sector's concerns. However, only \$1 million per year is allocated to the small business section of the AQMD to address this community's concern . . . . simply not enough for the enormity of the situation. With respect to enforcement issues, we urge that to ensure more enforcement that we encourage a more independent and autonomous variance hearing board with our South Coast Air Quality Management District, and that they be allowed to have their own legal

counsel, independent of district staff.

With that, I hope that you could excuse me.

**CHAIRMAN SHER:** We will. Hope you catch your plane.

Thank you for answering our questions.

**UNIDENTIFIED PERSON:** Don't forget your briefcase.

**CHAIRMAN SHER:** I take it our next witness is going to be Gladys Meade.

**MS. GLADYS MEADE:** Yes, thank you, Mr. Chairman.

**CHAIRMAN SHER:** Welcome.

**MS. MEADE:** Good to see you twice in the same week so to speak.

**CHAIRMAN SHER:** Right. It's always a pleasure.

**MS. MEADE:** It's Gladys Meade, American Lung Association of California. While Tom was addressing some of the results that we all heard at the two-day Health Effects of Air Pollution Conference, I was going to address a little bit more in terms of the process involved.

The often repeated conclusion of both the panelists and the presenters at that two-day Health Effects of Air Pollution Conference in Los Angeles, on Thursday and Friday, was the greater health protection provided by the state standards as compared to the federal standards for all pollutants. The reason for that is that the state standards are reviewed more frequently. Thus, they are able to consider the most recent health effects research results. Reinforcing this point is the recent litigation

initiated by the American Lung Association seeking the review of the federal ozone standards. EPA has reports from its own medical advisory committees over the last eight years detailing the need to examine not only the existing short term standard for ozone, but to consider perhaps the health impacts of lower level, longer-term exposure. We anticipate that the litigation initiated by the Lung Association will come to a successful conclusion, thereby forcing EPA to examine the ozone standard. However, in the meanwhile, we do have the benefits of our state standard which, again, is more health protective.

Addressing the issue of the air quality standards in terms of "let's change them because we can't meet them," I would suggest that we all remember, as you do I know, Mr. Chairman, that ambient air quality standards are set strictly on health considerations. They have not been set in either federal or state law to lessen regulatory difficulties in adopting control measures. The American Lung Association recommends most strongly that any amendments proposed to the California Clean Air Act not include a retreat from this concept of health-based standards reflecting the best medical knowledge and judgment.

If you wish to examine a little further the state process for review and recommendations on the state standards, you might want to consider statutory mention of the Air Quality Advisory Committee, which was set up in late 1972 by the Air Resources Board, to work with the Department of Health Services in

evaluating and recommending to the Air Resources Board the levels for the ambient air quality standards. This air quality advisory committee has evolved over the years -- perhaps from 1972. It was a simpler time, and there was no statutory mention of this group nor was there a budget provided. This could be considered now. The job is certainly more complex for the air quality advisory committee. There are more health effects studies to review, more known about them, and I would suggest it to you as a possible area.

Changing to another subject that has been much mentioned in terms of the modeling and the air quality indicators. Is it possible to look, instruct, or mandate that the ARB do something more than they have done in terms of evaluating the air quality indicators? Well, as one of the ones who as you know worked for two years on AB 2595, and modeling with a considerable part of the discussion, and certainly at that time we had a greater optimism. This was, of course, 1986 and 1987. We had a greater optimism in the near-term improvements, so that there would be greater confidence in modeling results. Unfortunately, that optimism has not been fulfilled.

But, meanwhile, there have been the statewide coordinated group meetings hosted by the Air Resources Board as we tried to find our way through some of the modeling problems. In fact, one of the tasks of that group, most recently, has been to plan a conference agenda for early Spring -- and I believe it's to

be held at Cal Tech -- to look at the whole issue of modeling and where are we, where are we going, what more needs to be done. Certainly, at this point, we cannot substitute modeling that has a very low confidence level -- I think Dr. English certainly indicated low confidence because of the emission inventory being so out of whack, if you will -- we cannot substitute modeling as an air quality indicator, and as the bottom line for our early discussions on the Sher Act was that emission reduction does guarantee that we'll get some pollution out of the skies, and so I think we're going to have to stick with that for a while.

The giant strides made in motor vehicle and fuel by the Air Resources Board is certainly to be applauded. It continues the fine tradition of the Air Resources Board in really pushing very, very hard for many years just on motor vehicles, and now more recently, on fuels. I feel very proud of them that they were able to go through a couple of days of hearings recently following that conference in Los Angeles and come out with a very good result I believe.

But now it's time, perhaps, for the stationary sources to also make giant strides, and consumer products another area. Now, the consumer products I would mention to you for possible consideration. We put into the California Clean Air Act a responsibility that could be exercised at the district level on consumer products. I think we're now a little more sophisticated about it, and we might want to re-examine that paragraph and see

if some very definite state regulation or at least state guidelines should not be substituted or at least as a companion to what district responsibility might be.

Then, finally, I'd like to address the Bay Area problem, because I think this is why we're all here today. You heard from the representative, the air pollution control offices of other districts who did not detail to you their extreme difficulty with the California Clean Air Act. On the contrary, they told you that they found it flexible, they were able to work within its guidelines, the ARB itself, in terms of its ability to also be flexible, satisfied what needs they had. In fact, the presentation from the Monterey Air Pollution Control Officer I found so wonderful, I'm considering moving to Pacific Grove. It sounds like a good place to be. But in any case, the Bay Area problem is essentially 23 days, or Mr. Phelan had hours of violation, if you will, of the ozone standard. Now if I lived in the Bay Area and I found that they were only 23 days of that ozone standard being exceeded, instead of mounting a campaign to change the law, change the health standard, wouldn't it be better to devote the time and attention to attainment of the standard? You're so close compared to the rest of the state! I just cannot understand why this is not the attitude of those wonderful people in the Bay Area. In any case, I may be facetious in pointing out what I would do if I lived in the Bay Area. Since I do not, I can only suggest that they could look at the transport problem, they

could look at the population estimates for increase in the Bay Area, and even if it's only 22 days now, I think that there are other forces at work that might make it increase, and they do have to somehow plan to meet the standard.

There was a philosopher, whose name I could not remember as I sat here in the hearing room, who found comparisons odious,, and I think I find the comparison of the Bay Area with the South Coast Area certainly odious. Let the Bay Area stand alone, attain that standard as soon as they can, if it cannot be by 1997, accept it. Shall we try 2000? How about 2003? The South Coast District is not making it by 1997, but at least they have given us a date to hope for. I would suggest the Bay Area might do the same.

One final word for Pacific Gas & Electric. I certainly think they deserve our thanks for working on electric vehicles and pushing for clean cars, clean fuels. In terms of their relief from the requirement in the California Clean Air Act which Bill Gott mentioned, I think is the best available retrofit control technology. If they really want relief from that, I would suggest they contact their counterparts at Southern California Edison, and the Bay Area district might contact the South Coast Air Quality Management District. South Coast adopted a rule, 1135, for utility boilers that will allow for the repowering, it will allow for a number of things, but also requires NOX control, and I think that it's within the existing limits of the California Clean Air Act if that rule was adopted, and I think it could be duplicated

in the Bay Area.

Thank you, Mr. Chairman.

**CHAIRMAN SHER:** I see the representative of PG&E shaking his head back there. So -- but anyway, we don't want to get into that kind of debate, and you shouldn't say too harsh things about the Bay Area -- you have to remember that I do come from the Bay Area, and that these are all good, well-intentioned people, and as the San Jose Mercury has put it, "We're no L.A."

Okay, next witness please.

**MR. JOHN HOLZCLAW:** Committee Chair Sher, members, and staff here. I'm John Holzclaw from the Sierra Club. I want to thank you for holding this hearing today. I have testimony before you, so I'll just paraphrase it.

**CHAIRMAN SHER:** Very colorful title. Didn't go unnoticed. Are you going to state that?

**MR. HOLZCLAW:** What? oh, "and would they also gut the California Clean Air Act?"

**CHAIRMAN SHER:** Yeah, question mark. I'm . . . go ahead.

**MR. HOLZCLAW:** We should not be looking at reducing automobile emissions -- I'm going to address primarily automobile emissions -- alone from all of the other problems that reducing vehicle miles traveled will help us with. That includes energy consumption, air and water pollution both, the lose of natural lands through suburban growth, and these are all associated with

each other. We need to consider those together. So we shouldn't be considering just an emission standard and think that we're going to, in any way, solve the other problems which include congestion.

We consume three-quarters of our petroleum in California with the automobile. We produce the majority of our pollution with our automobiles. Yet, we in California and throughout the country have been putting eight times as much money into building highways as into improving transit systems. Fortunately, the new federal Surface Transportation Act will allow us to spend highway funds or road funds for transit at the option of the California Transportation Commission and the local metropolitan planning organizations, MPOs. We need to provide a mechanism to encourage them to spend that money for transit systems instead of building more freeway lanes. They will have the flexibility. They need to use it. That can help us a lot. We have argued, the environmental groups have argued, over and over again, that in-fill development mixed use in-fill development, especially around transit stations, can save us a lot of driving, that it's a sort of painless way of making areas more convenient so that people don't have to drive as much. So that they have options. They have transit options. They have pedestrian options.

Some people disagree with that. There was an analysis by Phillips and Genaisda(?) comparing a run-of-the-mill, middle-class apartment house on Nob Hill in San Francisco with a

top-of-the-line suburban development in Davis, California using Davis's high energy standards for housing. An appendix I have in there shows the comparison of the two. The San Francisco apartment dwellers drove 1/4 as much. They used 40 times less land so they saved a lot more land from suburban sprawl. They used 15 times less roadway, 50 times less lumber, 5 times less utility pipe, and much less water and fuel than the suburban homes.

NRDC did a study for the California Energy Commission in which we looked at density and transit and how much people drove in the Bay Area. We found that because transit allows, in-fill allows, denser development allows mixed-use developments or markets, restaurants, located close to homes, jobs to be located close to homes so that the trips were shorter. That areas well served by transit could, for every mile that a person rode on transit, they did not drive eight miles compared to suburban sprawl development where you have to drive everywhere. Even for a recently developing area with a good transit system like Walnut Creek, on the BART system, in 13 years there was enough in-fill development, enough mixed-use in that area that for every mile that a person rode on transit there, they didn't drive four miles. There's a real benefit of building good transit systems, especially rail, and allowing that kind of dense mixed-use development to occur around those stations. New York City for instance, residents drive 1/4 the national average. I also found

that every time density doubled in the Bay Area, people drove 30 percent less per capita. So density increases can really be beneficial.

Going to the questions that you were asked in your letter, one of the questions was about whether or not federal Clean Air Act conformity requirements could replace indirect source review. For one thing, we do not have adequate conformity requirements. We're very concerned about what will come out. They do apply only to federal projects, federally funded projects, and only in federal non-attainment areas. They do not include all the areas. In the past, performance of the Metropolitan Planning Organizations does not leave us with great conviction or encouragement that they will do the kind of conformity requirements that are necessary, the analysis that's necessary to make the conformity requirements work. For instance, in their modeling of growth in the Bay Area, they project growth that is sprawl growth, because the assumption is going into the model that the land available for residential development is land that is primarily outside of the already developed area, it is low density, and they project it to grow at low density, they use as a part of the modeling system highway systems, which they anticipate growing to serve that low density area. So, the projections are a lot of sprawl growth and long trip lengths. So when they do the transit projection, they have transit systems which don't serve that sprawl area; but the assumptions for where the growth goes is

the same, and the trips are the same, but the transit systems will not serve that area. We would like to see a requirement for each of the MPOs to project at least one scenario that is all of the growth occurs as mixed-use, in-fill development around transit stations, and all the of transportation expansion is in transit systems, so that the MPOs, the local planning groups, the cities and counties, will have before them one option that really shows what you can accomplish with in-fill growth and good transit systems.

We have not yet seen how the air districts will use indirect source review. We would urge, though, that because indirect source review is primarily targeted towards stopping projects that would cause too much pollution, that the districts also be given some tools for encouraging in-fill development, for encouraging the kind of projects that would reduce the amount of driving people do.

The transportation control measures that have been criticized because of their expense will really not -- when you add them all together, if you were to implement all of them -- they would not equal the amount of subsidies we are now putting into subsidizing people to drive. Those subsidies include the cost of building roads and repairing roads, the, what we call, "free parking," the cost of doing wars, maintaining wars in the Middle East to protect the supply line, all of those kinds of costs, which exceed \$3 a gallon, at least, in subsidies to motor

vehicle use.

So we would suggest, in addition to what has been suggested further, and also I want to bring your attention to an article in today's Chronicle that shows that building housing, apartment houses, near transit systems has proven in the Bay Area to be not only good for VMT, good for air quality, but is also good for the builders. They can charge more money for those, and they're beginning to build more of them. There was an article in yesterday's paper that pointed out that Californians have been moving to nearby states because of air pollution problems, congestion problems, things like that that we can, by addressing those problems, make California more competitive.

**CHAIRMAN SHER:** Mr. Holzclaw, I'm going to relieve you from your assignment of going through the rest of our questions, because we have your written answers, and we are falling behind and we have another witness from the Sierra Club, so thank you for your testimony and thank you for coming.

**MR. HOLZCLAW:** Thank you.

**CHAIRMAN SHER:** Our next witness is --

**MR. DENNY LARSON:** Mr. White would like to testify at the end.

**CHAIRMAN SHER:** Okay he's going to be the cleanup hitter. Is that right?

**MR. LARSON:** He'll be the cleanup man.

**MR. LARSON:** My name is Denny Larson. I'm the campaign

director with Citizens For A Better Environment. I want to thank you for inviting us here today to testify and this opportunity to talk about some of the key issues for implementing California's Clean Air Act. As you may be aware CBE has had a long history of watchdogging the enforcement of clean air laws in the major metropolitan areas of California. Lawsuits that we've been involved in to force the enforcement of clean air laws in Los Angeles and in the Bay Area have proven that even regulatory agencies are often unwilling to follow the law to protect public health. We understand why businesses and bureaucrats now want to gut the Clean Air Act before it begins.

**CHAIRMAN SHER:** Well, you know, I really think that's an overstatement, because I haven't heard that here today frankly.

**MR. LARSON:** That's true. We were wondering why things were so calm.

**CHAIRMAN SHER:** Well, this is the hearing; we've heard those best shots, and we're making a record of the points that have been raised and frankly, I think that's an overstatement of certainly what we've heard today.

**MR. LARSON:** I'll accept that on what we've heard today, Mr. Sher. However, having been involved personally in both clean air plans in Los Angeles and in the Bay Area, we've heard quite a different story from the same people here today --

**CHAIRMAN SHER:** Well, we're going to work with what they've told us today.

**MR. LARSON:** Very good. Okay. But, we're opposed to changing the rules, going back to the federal standard and taking away authority from air districts, because too much burden will be placed on business and the automobile. It's obvious that special interests who profit from some of these problems will not give that up easily, and that people who are in the position of power don't want to give that up easily either; however, the people of California, especially the increasing number of young and elderly citizens, asthmatics, and people who suffer from respiratory and heart conditions, need the leaders of California's Assembly and this committee to stand up for the people who are not here today and show some political backbone to uphold the California Clean Air Act as it was passed and signed into law. We don't believe there's any turning back now, because the truth is the overwhelming majority of ordinary citizens support the Act, its standards, and the cost to us, fully and effectively implementing it as soon as possible.

To address the state air standards unreasonable burden on industry and the automobile, I'd just like to say that, again, in watchdogging the development of clean air plans of both the South Coast and Bay Area districts, there's been plenty of compromise already, and far too reasonable an amount of burden on some requirements on industry and the automobile. Requirements have been routinely changed to mere recommendations. Deadlines have been moved so far into the future that many read the year

2000+. We fear that by the time we finish with rule-making, things will look even worse.

The federal standard. We agree with the American Lung Association and applaud their lawsuit. We feel that it's clearly illegal and will be successfully challenged by their lawsuit, because it does not reflect current scientific research on the permanent health effects of even short term exposure to ozone levels well below the .12 standard. Indeed, most recent studies suggest that perhaps the California clean air standard may need to be lowered to fully protect public health. California again has lead the way with its California Clean Air Act, and we can't throw in the towel before we start, because Californians must have cleaner air for our economy to prosper, but also, because the rest of the nation has become accustomed to looking to us to lead the way. They're depending on us.

I just want to read a brief statement that was read into the record of the California Clean Air Plan in the Bay Area, by Dr. Roger Beard who served on their hearing board for a number of years and whose been practicing medicine and studying air pollution for 50 years, and that's "The California Clean Air Act standards are not trivial pronouncements from a nameless functionary of the California Air Resources Board. They're carefully considered, criteria that are enacted by the Board only after thorough study by the health department and board staffs and whose recommendations have been reviewed by a panel of medical

experts, often including those from out of state. The recommendations are the subjects of public hearings in which representatives of industry and commerce regularly participate and these standards are designed to protect public health without excessive margins of safety (inaudible). It is proper for the people in business and industry to guard against excessive regulation, and their representatives appear as advocates, but they should not misrepresent air quality standards. The California air quality standards are not too stringent, nor were they designed as political bargaining chips.

The last thing I wanted to address was to further the claims of the unreasonable burdens on industry and developers are the latest in their long history of cost overestimating tactics. Just last week, Joel Schwartz, the Coalition for Clean Air, documented the latest example of this as they estimated that phasing lead out from gasoline would cost over \$7 billion a year to that industry. As Mr. Schwartz documented, the costs were only about \$500 million a year which is quite a decrease from the overestimation claim. Also to point out, repeatedly, that surveys of the public prove that they support paying more money out of their pocket to achieve clean air. So the threats of passing along those costs to the public are indeed empty.

In closing, much has been made of Los Angeles and the Bay Area being lumped into the same category, which will allegedly cause draconian measures that are not appropriate to be adopted

in the Bay Area. Of course, we must be aware that there is a good deal of transport from the region so that the 23 violations that we logged this year, which is a significant increase over the past year, is not being addressed. The reason that we deserve the kind of regulations that may be adopted in Los Angeles is that we deserve to have zero violations in the Bay Area, and as Ms. Meade pointed out, we have a real shot at doing that, and we deserve that as soon as possible. Twenty-three days is not acceptable; we need to get down to zero and do it as soon as we can. I would agree also with comments by Mr. Soto that we need to look at how we can assist small business, which is the backbone of California economy, how they can be assisted in meeting these goals.

Thank you very much.

**CHAIRMAN SHER:** Thank you for your testimony. I didn't mean to become argumentative with you, and I want to assure you that I'm not going to throw in the towel on the California Clean Air Act, but at the same time, I think that this is an important opportunity to see where we are and to hear legitimate concerns, and if we can respond to those without undermining the key principles of the Act, then we ought to do that too. Okay, thank you. Next Witness.

**MR. MICHAEL CAMERON:** Mr. Chairman my name is Michael Cameron. I'm here with the Environmental Defense Fund. I've not had an opportunity before to address this committee, and I'm pleased to be here today.

CHAIRMAN SHER: Glad to have you.

MR. CAMERON: Your invitation to today's hearing used the words "key issues" associated with the California Clean Air Act.

CHAIRMAN SHER: You don't have to feel compelled to answer all those specific questions that my very able consultant included in these letters, but, comment on those that you would.

MR. CAMERON: Well actually, there are three points, very quickly, and I will make my comments brief.

As far as EDF is concerned, the key issues are first, air pollution is a problem requiring bold solutions, and I think that Tom and Gladys and others have already given some scientific justification to that to the extent it was needed. In a simpler format, maybe saying that in Southern California 13 million people drive 8 million cars, 240 million miles a day suggests that you don't need models or meteorologists or even monitoring to believe that there's an air pollution problem. That's point number one.

The second point is that the California Clean Air Act, this committee, the Air Resources Board, and the local districts have been, and must continue to be, a potent force in the fight for clean air.

The third point is that future progress in air pollution in California will require some changes to the California Clean Air Act. I will spend 5 minutes discussing one principle change which I think is deserving of priority attention, and its been

discussed in various ways today, and that is transportation. With regard to air pollution, the numbers are very familiar, the rate of growth of vehicle miles of travel is twice the rate of the growth of the population. In the South Coast, it's estimated that VMT must be reduced by 25 percent in order for federal standards to be achieved. That's an enormous change, and of course, automobiles contributing 50 percent of the ozone problem, 90 percent of the CO. As an air pollution problem, transportation is enormous. Transportation problems other than air pollution are also ominous: the congestion problem, the land use problem, the affordable housing problem, and simple access to social services on the part of residents of California are critical transportation problems. The only thing that's not clear is exactly what the solution to the state's transportation problems is. We don't know what policies, we don't know exactly what modes, we don't know what system of governments, and I think anyone who suggests they do know has not taken a hard enough look.

With regard to air quality, it's very clear that this state's environmental agencies have to be principle participants in the transportation solution. To be a principle participants in solving the transportation problem, three things must happen. They must have expanded resources, I believe. That's point number one. Number two is, I believe, that the definition of the air quality transportation problem needs to be expanded. The ARB and the air districts need to be empowered to think creatively about

the larger transportation problems that we have in this country, about the dependence on the single-occupant vehicle. Third, I think the ARB and the AQMDs need to think about transportation problems as systems and as structural problems. The nature of the problem is larger than can be addressed only with employer ride-share programs, only with transit, and comprehensive solutions are required. The scale of the transportation problem requires that the ARB and the AQMDs and the California Energy Commission as well, to increase the attention that they pay to the transportation problem relative to the other compelling issues.

The solutions which they search for, for transportation which are designed to aid air quality, must also be thought of in terms of how they affect other transportation problems. I think it's an acceptable assertion that transportation policies which are designed to relieve air pollution, but which, for example, inhibit mobility, face an enormous uphill climb in reaching their objective compared to policies which aid the air and also relieve some of the other problems.

I'll close my comments, because I know you've had a long day, and I think I'm repeating some of the things that have been said, but let me just say again, that I think that this, the California Clean Air Act, this committee, and the implementing agencies deserve wide recognition for their effectiveness. There are, unfortunately, too few examples in the world of environmental programs that have been as successful as this one.

I think, actually, sort of turning the coin a little bit, I'd like to say that with regard to the business climate and the competitiveness of the California business climate, the clear and reasoned opinion of Economists magazine, just last week, suggests that California businesses are well positioned to enter the 21st century if only because the greening of American business is farthest ahead here. To that extend, the California Clean Air Act deserves recognition for improving the business climate in California.

Despite all of the kudos that this committee has earned, and this Act has earned, I do believe that the transportation problem is one that we have not yet fully -- we do not fully appreciate its scale, and it's going to require creative solutions and broader thinking than we are currently applying.

Thank you.

**CHAIRMAN SHER:** Thank you for your testimony. Our cleanup and environmental witness, John White.

**MR. V. JOHN WHITE:** Thank you, Mr. Chairman. My name is John White and I'm here today representing the Sierra Club of California. A lot of the points that I was going to make have already been made, that's why I wanted to go last instead of writing my testimony in advance. I would like to emphasize a point that Michael just made and to suggest another article for your consideration and that is, in the Scientific American, an article by Michael Porter, from the Harvard Business School, talks

about America's green strategy and suggests that one of the ways that we have fallen behind Germany and Japan is in lacking some of the same stringent environmental standards that they have. I think that may well be less true for California, but it makes a very compelling case that, from the standpoint of our economic well-being and from the standpoint of jobs and technology development, that cleaning up the air and cleaning up the water may be exactly what's indicated for our long-term productivity.

**CHAIRMAN SHER:** Mr. Porter has written some other very interesting articles about Eastern Europe, particularly, about the countries who have had very weak environmental laws and what's happened in those countries. His thesis, I think, is that has been damaging, not helpful, but damaging to their competitive position.

**MR. CAMERON:** I think there's no question about that, and having just come back from that part of the world, you see more German and Japanese companies over there with some of their marketing than some of our companies. I think there's a great business opportunity in the world for some of these technologies that will be developed in California. I think that, particularly when you look at the nature of the recession and the causes of the recession, to attack environmental laws as a solution is, one, probably not going to do any good in the short term, and second, may well weaken us long term for our ability to compete worldwide. It's not one of the questions on your list, but I thought it was a

point worth emphasizing.

I'd also like to stress another point that Michael raised, and also Veronica Kun, that the comprehensive approach to transportation emissions may well be necessary. One of the things I think we hear when we see a lot of emphasis on transportation control measures and indirect source and other items is individual control measures. Maybe we ought to look at them altogether and see how they work together and what kind of synergies we can create. I understand why they employers in the Bay Area are reluctant to bear the singular burden of their employees' transportation habits. On the other hand, it is a surrogate for a failure in other areas, and so, perhaps one of the things that can come out of this frustration with the specific strategies and tactics -- we don't seem to be disagreeing with the goal of reducing single-occupancy vehicle trips and increasing reliance on multi-modes of transportation -- it may be that the singular control measures, being the only thing we now have, are themselves a difficult burden for people to actually implement. That shouldn't mean we should quit, it should mean we should work harder and find some innovative approaches that, perhaps, would rely on some market and pricing mechanisms -- popular as those are likely to be in the political process -- nevertheless, I think, fundamentally, transportation reform is at the heart of why these are such difficult control strategies.

I'd also like to take a moment to comment on the remarks

of Mr. Barr from Pillsbury, Madison & Sutro. I don't know quite who he was speaking on behalf of -- usually it's the oil industry -- but he made a point about the model of excellence of the 1982 Bay Area air quality plan as a great contrast to what would be required in the California Clean Air Act. I think there's some other parts of the story that need to be pointed out. First of all, that plan projected attainment for 1987, and here we are today arguing whether they can even make it by '97.

Secondly those control strategies up there didn't include any oxides of nitrogen control strategies. In fact, that plan's biggest weakness was its failure to recognize that NOX is a very important precursor to ozone. In fact, the modeling that was done this year for the Bay Area plan suggested that this reactive organic gas-only strategy would, in fact, not work even under the model that used to be used.

Thirdly, they took excessive INM credits that turned out to be double what was achieved in the real world, and double what was recommended by the state. And lastly, this plan ended up in court with the federal judge assuming jurisdiction for both MTC and the Bay Area district. So I think this is not the way we need to go. There are some lessons to be learned from what failures existed previously, and I think the Clean Air Act does, in fact, have and encouraged ranking on the basis of cost-effectiveness in terms of dollars per ton, but it implicitly recognizes that all the pollutants that make ozones are to be controlled and not just

the ones that are the most convenient.

Lastly, I think that the committee might give some attention to the pollution control financing authorities' mission and responsibilities with respect to the area of small business. They have a very large fund of money, that was set aside many years ago from large businesses, to provide assistance to small businesses, and those funds have been sitting relatively idle, and there is some work being done in the South Coast to try to put those moneys to use, but I think it's very important to recognize that the credit crunch is one of the reasons that we have this problem with small business. The banks are not lending for almost any reason, in some cases, and I think one of the areas that this state needs to address is the area of capital assistance, financing assistance for small business because it may well be the case that availability of financing is a real problem.

Last, you had a question about indirect source review. I think one of the important lessons that we've learned so far is that the local level is very fertile ground for innovation in this area. We have, in the case of Sacramento County, the general plan update that involves a significant amount of emphasis from air quality. I think that the statewide groups that have been lobbying this issue from the standpoint of the builders are much more reactionary about this issue than their counterparts at the local level, where oftentimes, there are being some very innovative solutions worked out. I think indirect source is

something that if we can leave it alone for a while and recognize we don't want to see any new permitting ways, but we do want to see some integration occur between the general plans of the local governments and the air quality plans, and I think they can probably work it out. So with those remarks, I --

**CHAIRMAN SHER:** That's a very good lead into our last grouping of witnesses, which is entitled, Local and Regional Government Agencies Perspectives. I want to thank all of you who came to testify. We appreciate your testimony. It helps us do our work. So, we'll invite Mr. Rusty Selix, Ken Schreiber, Dwight Stenbakken, and Willian Hein, if you're all here. A particular welcome to the planning director from my city, Mr. Schreiber. Nice to see you here. You going to go in the order that...?

**UNIDENTIFIED PERSON:** We're not a coordinated panel.

**CHAIRMAN SHER:** You're not a coordinated panel. Well, you know, that's always been my experience with local government. There are so many of you, but generally speaking, each of you does an outstanding job. Again, I want to emphasis particularly in view of the lateness of the hour, and I'm the only one you're here talking to. Don't feel compelled, if my very able staff member sent you the letter with all the questions, you don't have to answer all of those questions in detail, but tell us particularly the message that you want us to get from your organization.

Mr. Selix.

**MR. RUSTY SELIX:** Thank you, Mr. Chairman. Rusty Selix,

representing the California Association of Councils of Governments, often known as CALCOG, and that generally includes among its members the federally designated metropolitan planning organizations, or MPOs, which have been referred to through your hearings as a basis of a conformity process. What I'd like to mainly focus on is that their role, as it effects air quality, is a lot broader than that and make sure that there is a full understanding of exactly what they do and exactly how some of those rules might be carried out to meet the objectives of the California Clean Air Act.

First of all, under federal law, these agencies generally are either the lead agency or a co-lead agency with an air district for preparing federal plans. They have a number of specific responsibilities including estimates for vehicle emissions that are based on other estimates that they must do for congestion and population. These are clearly assigned to these agencies under federal law. Their relationships with air districts varies tremendously throughout the state, both in law and in practice, and a lot of that also has to do with the boundaries for these planning agencies being based largely on contiguous, transportation-connected metropolitan areas as opposed to a topographic boundary of an air basin which may or may not be similar.

The way we generally would like to approach all of these issues, though, is from a comprehensive standpoint, looking at

overall growth management issues in which we see a need mainly for greater efficiency, greater efficiency in four areas: an efficiency in how our regional governmental decisions are made, how our use of land is made, how our use of roadways is made, and how we use the money we spend, both governmental and private money, and we recognize how inefficient we are as a society in all those areas. When it comes to air quality though, our role is basically in the transportation and land use area and development of the TCMs, transportation control measures, which includes the indirect source -- so-called sources of air pollution meaning shopping centers, etc. -- to the extent that these are included.

Now, the important thing from our perspective is that these transportation control measures are absolutely necessary, even if there was no air pollution problem in this state. In fact, as a general rule, our agencies -- and it varies from place to place -- find that there aren't very many transportation control measures that are sufficiently cost-effective, based on their air quality value alone, to justify them, but the primary value is what they do to improve the efficiency of the transportation system, and they provide what in many ways is almost an incidental air quality benefit, and that's largely because of them generally only impact commute-period trips which represent the peak and the system capacity for the transportation system but may only be a small portion of the overall vehicle trips, and thus, their value from an air quality standpoint is

likely to be considerably less than their value from a transportation systems capacity.

So our responsibilities under federal law include transportation planning as well as air quality planning. Under transportation planning, we think there is an approach that may well solve an awful lot of the transportation needs under the air quality law in California. Let me just outline this process for you because I think it's misconstrued by a number of witnesses today, because they focused only on one part of it: the conformity finding. They've also misconstrued that portion of it. Let me explain. First, we are responsible for preparing a regional transportation plan under federal law, and we don't see anything in the new Surface Transportation Act that's going to change that significantly. It also will require that these transportation plans include transportation control measures that will meet the federal clean air plans for the federal/state implementation plan. This would also require that the conformity with the state implementation plan must be performed by the metropolitan planning organization as part of its approval of any -- any, not just federally funded, but any plan or project. It doesn't matter whether what it has to approve is federally funded. As long as it is MPO, as long as it receives federal funds, anything that it has to approve has to have the finding of conformity with the transportation control measures. This is something that a number of people mis-describe --

CHAIRMAN SHER: Isn't that the point? Are you talking about a council of governments or like --

MR. SELIX: Right.

CHAIRMAN SHER: What approval do they have over a shopping center in particular?

MR. SELIX: Well, I'm going to get to that.

CHAIRMAN SHER: Well, there are a lot of gaps there.

MR. SELIX: Well, no there aren't -- the gaps don't exist when you combine this with the California Congestion Management Planning Law because they have to approve the congestion management plans and find that they are consistent with the regional transportation plan. If the regional transportation plan has to include these transportation control measures --

CHAIRMAN SHER: So you're telling me that if they approve a plan and then subsequently a project is approved by city "X," that they think is inconsistent with the plan, they would go to court and seek an injunction or something?

MR. SELIX: Let me explain how -- the approval process is one thing and the enforcement process is a little different and let me explain that one --

CHAIRMAN SHER: Well, but I mean, my experience has been of course in the Bay Area with ABAG, and they have never had enforcement, its been strictly a planning --

MR. SELIX: That's correct. They are the planning agencies, and their method of enforcement, in terms of

self-directed is not going to be the main enforcement measure. I am not suggesting that the way it's going to be enforced is that ABAG or SCAG or MTC or any of them is going to take somebody to court. That's not their role. Their role is to make sure that first, the regional transportation plan has to have the required transportation control measures; second, the congestion management plans prepared by the cities and counties have to have whatever measures it takes to make sure that they are consistent with the regional transportation plan. Those measures also have to be consistent with the city's general plans and that's where you get the control on the shopping centers. In other words, if in doing the regional transportation plan under federal law, you find that you have a transportation control measure that includes some controls on shopping centers, and you find that and make that part of your federal transportation plan, then when you look at the congestion management plans that come before you on a county by county basis, you can't approve those congestion management plans unless they include those same controls on the shopping centers. Those congestion management plans and individual city and county general plans must also be consistent with one another so that if there are controls on the shopping center that are in place, you must also then find them in the land use controls of the cities and counties.

Now the lawsuit, if it comes, is most likely a third party lawsuit challenging a city or county decision to approve a

shopping center that doesn't include the measures, but there may be other controls as well, because one of the requirements is that not only do you put these transportation control measures in your regional transportation plan, but in order to have all federal funds available, not just transportation funds, you risk the loss of any federal funds, and you also risk the loss, now, of the state funds that are tied to the congestion management plans if you do not expeditiously implement these transportation control measures. So it's not simply enough for the regional planning agency to do its planning job somehow they have to make sure that these measures are being implemented. Perhaps from an enforcement standpoint, they lack the power necessary, and from an enforcement standpoint, there may be a need for additional things to be done by other agencies, but from a planning standpoint, the process that's being done to prepare these congestion management plans and regional transportation plans under federal law are required to be "continuing, cooperative, and comprehensive." As a result, you get everybody to the table in the development of these, and they're developed in a coordinated manner, and this is required under federal law. It's also suggested that this type of process and its more direct ability to impact how transportation dollars are spent, gives you a better ability to implement pricing and market-based solutions, which everyone is asking for, although it's recognized that for the most part these require further legislation than now exists. It also suggests that through using

this process, we're more likely to develop transportation control measures that are part of an overall transportation system as opposed to those that might be developed by an air district, which may be more likely to rely upon employer-based or development-based solutions, because it has a much easier way of enforcing those than it can to enforce other types of transportation control measures that rely upon actions of other government agencies.

In any event, kind of summarizing all of this, you then come to the question of what is indirect source review and how does it fit in. Indirect source review is a procedure. It's not an end in and of itself. It's simply a method that might be used to achieve particular transportation control measures. In our view, clearly, under the congestion management planning law and under the regional transportation planning process, it's on the table. It could be considered, and it's simply one of many options to be looked at as to what is the process that local government and regional agencies are going to use to make sure their transportation control measures work. It's not one that is mandated in that process; in fact, it's not mandated under the California Clean Air Act, and we simply would view it as one of the tools to be considered.

What all this suggests, though, is that there is a great need to make sure that what's done under the California Clean Air Act, and under the Federal Clean Air Act, and under the Federal

Surface Transportation Act, and under the State Transportation Planning Laws, be done in a coordinated and cooperative manner. Clearly, we need to make sure that all growth projects are also consistent. We've seen air districts make projections for growth in an area which are very different than the projections that are made by our agencies.

All of this can be accomplished through memoranda of understanding and agreements between all the effected agencies. There is no requirement under **any** law, state or federal, to be amended to create the cooperative process necessary, although undoubtedly, to the extent to which we don't create that process, and we tend to do things in an inefficient and uncoordinated manner, undoubtedly there will be those who will push change in one direction or another from all sides of the equation, but from our standpoint, the need is to find a way to do it together, and it's possible under all the existing laws.

Questions that we have are: we think that to a large degree, the air districts, because they began with a 1988 law, and before the lawsuit against the metropolitan transportation commission, the passage of the Federal Clean Air Act in 1990, and the enactment of the congestion management planning laws, that they may have proceeded without awareness of the fact that there are a whole other body of laws that might be used to accomplish the same objectives they were seeking to accomplish. We suggest that it should be evaluated by all involved in the air quality

planning to see to what extent these other laws can be utilized to accomplish these objectives. One way might be to look at what evolves out of these plans, which are being done this year, and for air districts who are required under the California Clean Air Act to adopt the plans, to simply adopt without any changes what has developed through these regional transportation plans and congestion management plans and make these be the same transportation control measures that would then add whatever enforcement powers the air districts have to the enforcement powers that exist elsewhere.

There's also questions as to whether if the air districts choose to operate without this coordination. Is it going to result in increased resistance by cities and counties and private agencies to the resistance that might be there anyway by working through a coordinated transportation program? In other words, does a transportation program give you a more efficient and better way of doing this in a way that might minimize the resistance you get locally? Just a possibility.

Finally, we need to work on conflict resolution at all levels and involving all of the effected parties, to the extent that we fail to meet our goals. In other words, if we fail to meet our goals conflict resolution needs to include ARB, CALTRANS, regional transportation planning agencies, air districts, cities, counties, all those that have a piece to play in the part. Hopefully, we can solve this through a comprehensive growth

management approach.

Finally, just as an aside that's more of a personal observation, one of the other great inefficiencies we find in all this, and it's another subject that's under the jurisdiction of this committee, is under the Environmental Quality Act. The Environmental Quality Act allows you to use a previous EIR for a new EIR. What it doesn't seem to allow is to reference that we have regulatory program that doesn't eliminate all environmental impacts for projects, but eliminates all those in certain subject areas. We should be able to find that the Congestion Management Planning Law, the Clean Air Act, and all the planning that's being done, and all the mitigation measures and transportation control measures that are required as part of that, should fully address and fully mitigate, to the extent that we practically can, all air quality and transportation-related environmental issues, so that we don't need to address these on individual projects under the Environmental Quality Act. This isn't going to change the substantive law in any way, but it might save a tremendous amount of money and reduce by perhaps as much as two-thirds the amount of money and paper being spent on environmental impact reports.

Thank you.

**CHAIRMAN SHER:** Thank you. Okay, who's next?

**MR. KEN SCHREIBER:** Good afternoon. My name is Ken Schreiber. For the record, I'm Director of Planning and Community Environment for the City of Palo Alto, and I have submitted

written material that I'm certainly not going to read. I'm going to summarize a few highlights on that written material.

**CHAIRMAN SHER:** We thank you for that.

**MR. SCHREIBER:** First, it's important to know that my comments reflect Bay Area conditions. My comments reflect the staff perspective of one agency in the Bay Area that has responsibility for a little less than one percent of the Bay Area's population. So we're down in the trenches, perhaps, in terms of implementation, and we are not a particularly large agency.

The City Council in the beginning of this year identified regional issues and regional concerns as its number one priority and that led to an allocation of some staff resources to look at regional issues. One of the things we became interested in was the draft, 1991 Clean Air Plan, for the Bay Area, and that has led to the research and comments that I'm going to make today.

One other pre-comment, and that is that my comments are staff comments. These are not comments that have been reviewed or approved by the City Council. However, the City Council has adopted a motion, in July of this year, relating to the Clean Air Plan that I think is quite relevant. The Council reiterated its continuing strong support for the goal to the California Clean Air Act, expressed its concern about the consequences of the draft plan's conclusion that there was no practical strategy for meeting the state ozone standard, and unanimously agreed that, therefore,

the City Council urged the air district to adopt a policy of working with legislators and Air Resources Board staff to promptly consider amendments to the state's attainment criteria standards and amendments to the California Clean Air Act. That was adopted unanimously 9-0 by the Council.

In terms of some of the specific questions, very briefly, our reading of federal law regarding the indirect source review issue is that it certainly does not appear to be as clearly worded as one would like. Our conclusion is that California is best served by relying on state-initiated ISR regulations, rather than shifting the focus to the federal Act.

Second, we agree that the California law is moving regional air districts toward a greater regional growth management role, and infringement on local land use authority is a logical outcome of the law. Further, some infringement on local authority is understandable and it is appropriate. The clarification of roles, in terms of state, regional, and local agencies needs to be addressed, in both amendments to the Act and in forthcoming discussion of regional growth management legislation. We recommend that state guidance be given to strongly encourage air districts to delegate land use-related functions to local and sub-regional agencies, but we also note that there are a variety of very significant problems from the perspective of the local agency. Most local agencies do not have the staff expertise or resources to effectively analyze and address air quality issues.

Most local agencies -- and in this I may say, perhaps all of my colleagues that I know of who have ever expressed an opinion on this, have very little confidence in current air quality modeling efforts.

The basic practice for an EIR preparation at local agencies is you hire a consultant, the consultant does the model, staff doesn't understand what goes into the model or comes out of the model, plug the model into the EIR even if it doesn't a whole lot of sense, because that's just the name of the game, and you go on to worry about more important things. That's where most agencies find themselves most of the time. Again, very little confidence in modeling.

**CHAIRMAN SHER:** I'm sympathetic to that, you know, having served on the City Council that you represent. One suggestion we've heard is that the air district, in pursuing its role in this indirect source, could adopt some kind of guidelines that are designed to reduce vehicle miles traveled from projects approved in cities. Would you know how to respond to those on a project by project basis? I mean, you'd be required to build those into your general plan and then to reflect them in terms of providing public transportation access or telling large scale ones about what kinds of optional or alternative measures they might have to take to discourage one person, one car coming. Those are the kinds of things you could handle, couldn't you?

**MR. SCHREIBER:** Yes, and the material I've submitted

addresses that, that can be a process where you can have regional guidelines, you have air quality planning requirements, and I might add, part of that needs to be performance monitoring of local agencies by either state and/or regional agencies. That is not enough to simply adopt something into a comprehensive plan or a general plan at the local level but you need some type of performance monitoring and that may well relate back --

**CHAIRMAN SHER:** Just to make sure they're doing it? You're worried about your neighboring cities, of course --

**MR. SCHREIBER:** Of course. Palo Alto is going to apply those regulations very strictly. The reality is that I think we've seen a lot of planning issues that unless there is some type of performance monitoring, and some type of consequence for not following what the appropriate authorities want to have accomplished, that things tend to slide and not be accomplished.

I might also add that -- two other problems -- is that there's very little independent data to evaluate projects and plans. That is very frustrating at the local level because, again, you are put at the requirement of consultants usually and models that don't generate a lot of confidence. So if you're going to shift independent source review down to the local level, there needs to be some type of training program for staff, some type of more sophisticated and refined modeling effort that local staffs understand and can explain to applicants who are going to get hit with certain requirements, why this is going on, rather

than simply saying, "Somebody's requiring it." That's not a very good answer and it doesn't tend to help the governmental process.

A couple of other --

**CHAIRMAN SHER:** Let me just ask you, Ken, what do you think about the BCDC model, where the local government doesn't look at these area-wide values or considerations, there's another agency that does and it's up to the -- I'm not suggesting this because I know there's very strong resistance to this subsequent permit that has to be required -- but certainly that's not a problem for the local government, is it, where you get the approval of the local government but then you still have another hurdle to jump?

**MR. SCHREIBER:** The problem is which developments would receive an additional permit.

**CHAIRMAN SHER:** Well, it would be defined -- which ones would have to, it wouldn't be everyone. It wouldn't be every single family residence obviously, but there would be certain kinds -- and that would be up to whoever was going to put this program together, then it would be defined in terms of, I suppose, vehicle miles generated potential, or something like that.

**MR. SCHREIBER:** I'm afraid of the outcome of that, and I think the BCDC process works very well for developments around Bay. The problem with that for the entire Bay Area is that in order to have a manageable permitting process, the regional agency will need to focus on very large developments, and the reality is

that the majority of developments will never go into that process and if the majority of the developments do go into the process, the permanent process will probably become so difficult that it will not be acceptable. I think setting some type of regional standards and mitigation expectations and then following up may be a more effective way of trying to attack that issue.

Also to pare from the comments, the Palo Alto City Council is firmly on record supporting a regional growth management agency and process for the Bay Area, and I think much of what we're talking about in terms of indirect source review, as well as many of the transportation issues, can be more appropriately addressed through a regional growth management process rather than a single agency permit process.

**CHAIRMAN SHER:** This is the Bay Vision 20/20?

**MR. SCHREIBER:** Bay Vision 20/20, or its offspring as they keep coming.

**CHAIRMAN SHER:** Which would combine the air districts, MTC, and the regional ABAG in one --

**MR. SCHREIBER:** Correct.

**CHAIRMAN SHER:** -- agency, and the City of Palo Alto is on record in supporting that, is that right?

**MR. SCHREIBER:** Yes, very strongly.

A few other comments regarding other changes to the law, and as I said, this last year we have devoted some energy to looking at these issues. Independently, I found myself agreeing

with many of the comments of Steve Edminger and the Santa Clara Valley Manufacturing Group in terms of attainment standards, classification criteria. We have concluded as a staff that there is much to be gained by amending the California law to incorporate the federal classification criteria and federal definitions of classifications. Retention of the differences really means, from our standpoint, at least continuation of confusion, but we also think it involves use of a less reasonable database than is found in the federal law.

Second, we've concluded that the gap between federal and state ozone and carbon monoxide standards to become an attainment goal rather than an attainment requirement. With California's more severe ozone standards, the likelihood of litigation related to the inability to meet the standard and the meaning of "feasible" and "expeditious" is reasonably high. We tried to come up with a better definition and threw in the towel on that one -- including going back to CEQA. In any event, we expect the litigation is likely, and we certainly have some experience in the Bay Area in terms of courts taking over major, regional decision-making.

**CHAIRMAN SHER:** Amendment under the federal law, I might say.

**MR. SCHREIBER:** Under the federal. But we are very concerned about under state law also. Then there's the California Clean Air Act to establish the gap between federal and state

standards as a goal, rather than a standard, may reduce the possibility of divisive and successful litigation.

**CHAIRMAN SHER:** Don't bet on it.

**MR. SCHREIBER:** It may not, but our conclusion is that retention of unattainable targets as requirements is not good public policy.

Third, and this is a conclusion that certainly would not have been evident at the beginning of the year, our conclusion is that the vehicle trip and vehicle miles traveled reduction standards, in the California law, are inconsistent with commute behavior, changing commute patterns, and changes in non-commute trips. Contrary to conventional wisdom, the distance and length of the average commute trip is decreasing. It is decreasing in the Bay Area. It is decreasing in Los Angeles. It is decreasing in San Diego. It may be decreasing in Sacramento, but I don't have any data for Sacramento.

**CHAIRMAN SHER:** That's not what the Chairwoman of the Air Resources Board told us early this morning.

**MR. SCHREIBER:** I have attached to my submittal a recent article from the American Planning Association Journal regarding 20 major metropolitan areas around the country and data on their commute time. I've also attached data from the draft Bay Area Clean Air plan regarding the agency's predictions.

**CHAIRMAN SHER:** You would like, I think, Mr. Uke's proposal about the pollution index, that everybody would pay based

on the vehicle mile traveled, whether they are commuting or not. That must have appealed to you.

**MR. SCHREIBER:** Market-based pricing appeals to me. I'm not sure that falls into the category, but market-based pricing definitely does, because the problem that we see is that the commute distance and lengths, even though we have anecdotal evidence of people commuting from Modesto to Palo Alto, is a very, very small number. For the average person to commute length and distance is not the time of commute and the distance of the commute is not increasing. It is, in fact, decreasing.

**CHAIRMAN SHER:** You admit, though, that in the Bay Area there is grid-lock at times on the freeways during the commute hours?

**MR. SCHREIBER:** We will admit that and we also admit -- would also suggest that there is not a clear coalition between congestion and the length of the commute. The gentleman from the Sacramento air district, making the comment this morning about going to the Bay Area and experiencing congestion, says nothing about the length of the commute. There certainly is congestion -- that is related to far more people working per square mile or whatever measurement than say 15 or 20 years ago -- it relates to a large number of non-commute-related trips out on the roads at the same time.

**CHAIRMAN SHER:** Well, the conclusion would be then to have a tremendous disincentive on trips during those hours for

people who don't have to be on the roads then, is that right?

**MR. SCHREIBER:** And is you wish to pursue that, then I think legislation to introduce congestion pricing and much higher fees to initiate fees for road maintenance --

**CHAIRMAN SHER:** We may not need legislation. I think these congestion management agencies are going to have to come up with these strategies, find a way to do it, or else they're not going to get the money from the gas tax for local roads.

**MR. SCHREIBER:** That may happen, but I don't think I'm going to hold my breath until it does. What is effectively happening is that we have a dispersal of jobs out into the urban and suburban areas. We have job and household location, relocation decisions that are shortening commute trips.

An additional conclusion, I think, is that if additional air quality improvements can be achieved by strategies that focus on faster removal of older cars from the road, cleaner new cars and cleaner burning fuels, then we wonder why focus a major part of the California Act's political and probably financial implementation effort on slowing the rate of increase in VMT and trips and increasing AVR. VMT and AVR congestion reduction objectives are appropriate policy considerations in the allocation of transportation funds and future growth management legislation; however, we conclude that over-emphasis in the California law serves to divert energy and resources from the central target of reducing air emissions. The California Act should be amended to

either remove or reduce emphasis on VMT and AVR.

Fourth and last, the state should more effectively influence people to use less polluting vehicles. A recent state Senate Office of Research study concluded that 12 percent of California's cars create 75 percent of the auto-related pollution and 7 percent of those cars create 50 percent of the pollution.

The City of Palo Alto staff have been perplexed at the low level of interest at the regional state level in voluntary buy-back programs patterned after the successful South Coast UniCal Program. Older cars are staying on the road longer and longer, and we need coordinated efforts to get these cars off the road, or, have them pay their fair share for the pollution that they are generating. In addition to using mitigation funds for voluntary buy-backs, the state should use financial mechanisms to discourage the use of higher polluting vehicles and encourage use of new lower polluting vehicles. Some of the mechanisms could include modifying annual vehicle registration system fees to tie the fee to the level of pollution, modifying the sales tax to give an advantage to cleaner vehicles, and establishing a pollution surcharge based on the level of pollution created by the car and the annual miles driven. We think the California Clean Air Act should be amended to incorporate a series of coordinated actions to discourage continued use of older cars and encourage further reductions in air pollution emissions from new vehicles.

Thank you very much for this opportunity; and if there

are any other questions, I'd be pleased to respond.

**CHAIRMAN SHER:** Thanks, Mr. Schreiber. It's always a pleasure to see you. It's nice seeing you up here in Sacramento. Our next witness is Dwight Stenbakken, from the League of California Cities.

**MR. DWIGHT STENBAKKEN:** Yes, Dwight Stenbakken with the League of Cities. First of all we have a little problem. The clients that I represent, city governments throughout California, have little problems with -- at all -- if any with the goals and standards of the California Clean Air Act, and as a matter of fact, we have not much of a quarrel with most of the programs that are being operated by the air districts under the Act: clean fuels, direct sources, other things, and even indirect sources. The program itself is something we don't have a quarrel with.

Where our quarrel tends to be with the air Act is with a governance question, as to who's going to do it, and who's going to be in charge of indirect source regulations, and that is the area that tends to at least infringe upon the questions of land use and transportation and coordinating all those questions. So it's primarily a governance question. It's really not a question with the goals and even the programs.

**CHAIRMAN SHER:** May I just break in and ask you where does your concern come from? Is it in the Act, the plans that are being proposed by the air districts, or is it some kind of theoretical concern based upon what might happen?

**MR. STENBAKKEN:** Well, I think it's a little bit of both. Some of it is, I guess, as much speculation as anything. One of the concerns that we have has been the creation of single purpose agencies who sit side by side and don't have to talk to one another who are nonetheless dealing with programs --

**CHAIRMAN SHER:** But if we're focusing on the Clean Air Act and the authority that it give and the mandates that it puts on the local air districts, we have now a record of how they're responding to that authority and that responsibility in the form of the plans that they are submitting under the Act to the state agency. You know, the Bay Area one we've just seen, and there are others that have been prepared. Is there something in those plans that looks like these single purpose districts are usurping the traditional powers of local government?

**MR. STENBAKKEN:** No. I think it probably is more perception than reality at this point. The solution that we talked about, and one of the reasons why we talked about and supported SB 358 when it was in front of your committee, was that it tried to get at this question of the indirect source, albeit that it took one particular approach to that process. I think -- we were not the sponsors of the bill, had we been, I would like to have had the bill written in such a way that it would have put the indirect source question on hold for a couple of years until such a point at which we resolved this growth management issue and these greater regional institutions which, hopefully, will try to

integrate transportation, air, open space, and whatever else we decide that we're going to put under that growth management agency.

**CHAIRMAN SHER:** I would suggest to you that it has been put on hold, at least in the plans that I'm familiar with, because anything that might look like an aggressive approach to these indirect sources is in phase two, phase three, you know, so that there isn't anything imminent that suggests that the single purpose air quality districts are even getting their foot in the door of the traditional powers of local government, the land use powers, and indeed, as you know, the statute says that they shall not exercise that authority.

**MR. STENBAKKEN:** Correct, but that's the point of debate, and it may be more a point of perception.

**CHAIRMAN SHER:** It seems to me there's a specter out there that people react to; it's a perception thing, and there may have been some ideas that were floated in one or two districts that -- I know that to be the fact -- that led to the introduction of that legislation you suggest. It's really -- those were quickly withdrawn, and if you look at the plans themselves that are being presented to the Air Resources Board they don't reflect it, and so I think you're unduly worried, and it is on hold, and there will be plenty of time for these growth management ideas that are going to be discussed next year in the Legislature to go forward, if they go forward, but I wouldn't hold my breath on any

of that either.

**MR. STENBAKKEN:** Okay. Well, we do have a Governor who seems as though he wants to do something in that area, and that's usually been the stimulus in other states where something has been adopted so. You may be correct, but whatever, if we're going to solve the indirect source regulation, I think it ought to be, if we have the time, as you indicate we probably do, then I think that's something that should be considered.

One other governance issue that relates to the air districts, then I'll stop, and that is the question of the APCDs, and I want to respond to a couple of points that were made this morning, I think by Mr. Covell, and then also the representative from the Monterey Bay Area district. It will not be enough to simply allow us to enact the TCMs that the air district outlines, and it will not be enough to have meetings around the area with the city officials, and then the APCD does what it's going to do. We have been directed this year to introduce legislation that would put city membership on the APCDs. I think that's consistent with the districts, the larger districts, and I think that's the way the APCD should operate, and that will be something that we'll try to pursue this legislative session.

With that, I conclude.

**CHAIRMAN SHER:** Thank you very much for your testimony. The final witness on this panel is Mr. William Hein, from the MTC. If you'll excuse me just a minute, I'll be right back; but you

carry on. Okay?

MR. WILLIAM HEIN: You've heard MTC spoken about a lot today but I'll be brief. Really, the purpose of my testimony is to try to give you a summary of the results of the collaborative effort we've had in the Bay Area, and as Rusty pointed out, the need for collaborate efforts. We do have a collaborative effort. We have a memorandum of understanding between MTC, our air district, and ABAG. The process has been productive. Sometimes it gets touchy, but we generally work very well together. We believe that that process is resulted in a better understanding, at least from out point of view at MTC, in the relationship of transportation and air quality. What I'd like to share with you, just briefly, is a couple of the things that we have found out.

First of all, most legislation, the '88 Act and the Federal Clean Air Act, started on the premise that transportation was a growing and uncontrolled source of air pollution. Quite clearly, transportation emissions are a major source of air pollution and need to be addressed. However, in fact, they are a rapidly declining source or share of air pollution and a chart in a report which I've given to you shows that road emissions are reducing by nearly two-thirds by the year 2000, and our own analysis shows that there will be a further major decrease by the year 2010, despite the continuing growth in population of the Bay region. On-road emissions are declining as a percentage of the overall emissions in the Bay Area from 33 percent in 1987 to 14

percent in the year 2000. That percent may seem lower than what you've heard before and the reason is it also includes background emissions, natural emissions.

These reductions don't take into account ARB actions, recent actions on emissions or reformulated gasoline, nor do they include any of the transportation control measures that we've developed as a part of the California Clean Air Plan. These reductions, I think, demonstrate that your actions in the past, and the actions of the ARB, have been very significant in addressing transportation emissions. The legislation, as you know, provided a fairly unique role in the Bay region for MTC to work with our air district in developing the Clean Air Plan. In short, the air district was directed to give MTC a target. MTC was to prepare a plan to reach that target, and then that plan was to be included in the California Clean Air Plan. In June of '89, the district told us to reduce emissions from mobile sources by 33 percent, equivalent to 33 percent of the existing traffic. At that time, based on very preliminary information, we thought that was going to be sufficient for the region to achieve the California standards. We did not know as we now know that based on current analysis it's unclear that the state standards can be met in the Bay region. It's unclear that they can be met even if you eliminated all sources of motor vehicle emissions. In order to hit that 33 percent was our first baptism in fire for our commission, because that's a tough target.

(Inaudible) the Commission adopted a strategy, a three part strategy: one, you would look at what was reasonably available in accordance with the Clean Air Act; secondly, you would look at mobility options; and thirdly, you would look at a contingency measure of pricing strategies. The Commission stresses mobility options because they're not punitive and they do provide for additional transportation capacity within the region. However, mobility options also require additional resources to fund the transit necessary to provide them.

The results of the reasonably available measures, and of the mobility options, are, however, fairly modest. We estimate, and this estimate has been confirmed by the air district and other places where similar estimates have been done, that the reasonable available measures might reduce automobile emissions by 3 to 5 percent. It might change your assumptions a little bit, get slightly different numbers, but they're going to be in that ball park.

If we increased our transit by roughly a third in the bay region, at a cost of something about \$550 million addition annually, we could reduce emission mobile source emissions by another roughly 6 percent.

In order to attain, then, the 33 percent the Commission adopted some contingency measures. The contingency measures would entail the implementation of so-called market-based pricing strategies, in order to temper the demand in driving at critical

times and places. And deferral of that strategy to contingency was simply a recognition by the Commission to political and public aversion to pricing, even though it is viewed by many as a very strong and theoretical way of eliminating transportation, or reducing or tempering auto use. Initially we were requested by the ARB to include parking charges as part of our plan. Having been sent around the region promoting parking charges, I can tell you that we are not a very popular proposal. The ARB believed, at that time, that their districts had the authority to implement parking charges. As you know, we met -- Assemblyman Sher came down we had a meeting of our delegation; it wasn't very popular with our delegation either. Therefore, we've relegated it back to a contingency measure, and subsequently, the Legislative Council issued an opinion that the air district does not have the authority to implement parking charges. So, in fact, parking charges, pricing and parking charges, have been put, as some of the environmental community says, off, but they are into this contingency issue.

You heard before that because we can't demonstrate that we can achieve the state standards, we have to do the same thing that Los Angeles does. From a transportation point of view that means we have to pursue all the measures that are reasonably available. We are, in effect, being told that if it's done anywhere it must be done here. And based on testimony at our public hearings, in a very fuzzy and subjective nature of the word

"reasonable," we believe it's going to continued to be very contentious and, likely, litigious.

The California law also says we have to achieve a peak-period vehicle occupancy of 1.5 in 1999. Our region has invested heavily in transit in the past and, because of that, we have an vehicle occupancy of roughly 1.39 now. We project that it will drop to about 1.38 by the year 2000. The only way, the only way we will be able to achieve a 1.5 peak-period vehicle occupancy will be with the market-based pricing strategy, and neither MTC nor the Air District has the authority to implement this. Thus, for our region to meet this requirement of the law, the Legislature will have to authority such a strategy.

I have a section in here dealing with conformity, but I think I'll skip it, unless you really want to get back to it. We have considerable experience as a result of our Federal Court case in the pursuit of conformity for transportation projects which is all that the Federal Government requires.

I would like to conclude, basically as I began: Number one, we are making considerable progress in improving air quality in our region; I am optimistic that we will meet the federal standards by 1996, which is our required date; however, there is no apparent strategy for meeting the state standards; emissions from transportation sources are being dramatically reduced, largely by actions of technology and actions such as the ARB recently took with regard to reformulated gasoline, which will

have a greater impact in all the control measures than we are even considering.

The so-called reasonably available transportation control measures will have only a small impact on vehicle emissions and, frankly, a negligible impact on overall air quality. Remember, mobile source emissions account for roughly 14 percent of overall air emissions, and if you take a small impact percentage of a small percentage, you're getting a smaller percentage. Pricing strategies can theoretically result in an significant reduction in auto trips and travel, but our experience is that there public and legislative support is probably going to be problematical for such strategies. I would agree with Ken's closing remarks. I do think it may be, perhaps, time to step back and reconsider some of the kinds of transportation strategies that can be effective.

I'd be happy to answer any questions.

**CHAIRMAN SHER:** Sir, I missed the bulk of your testimony, but I have your written statement here, and I can read it. I know MTC in the Bay Area had an important role in recommending the transportation that became part of the plan of the Bay Area district, and will continue to be involved I'm sure in the implementation.

Thank you.

Okay, well we come to the last panel and these are -- I don't want to call them miscellaneous witnesses, but there's no

connecting link among the witnesses. These are folks who said they wanted to very briefly address the committee, and there are two of us still here. I see Amy Glad for the California Building Industry Association. We'll start with you. Jerry Haleva representing California Renewable Fuel Council, and there were a couple of others, but you are it right? Okay. And then we have a couple of people from the Independent Oil Marketers' Association.

Amy?

MS. AMY GLAD: My name is Amy Glad; I'm representing the California Building Industry Association. Because of the late hour, I will confine my remarks to the questions presented in your November 12th letter. I would like to point out that I have submitted a package of information which includes a more detailed statement, along with a policy statement adopted by our board last month.

The first question proposed in your letter concerns a proposed general development conformity process similar to other provisions in the Federal Clean Air Act. Given the fact that it is extremely difficult, if not impossible, to estimate emission reductions from land use controls, the role of an air district in reviewing land use should be to provide advice and guidance, so local governments can work with developers to design projects taking into consideration air quality goals.

It is absolutely inappropriate for two regional agencies to claim the authority to review the air quality impact with

specific land use proposals as is happening in the South Coast District at SCAG. If design modification suggestions are implemented through conformity-type regional agency review, a necessary component is that participation by local governments be voluntary. Appropriate guidance from an air district in this area would include guidelines that address well-designed sidewalks and pedestrian paths, well-designed bike routes and parking, and site design to insure convenient transit circulation. This guidance should come as early in the process as possible and it should not become another project approval hurdle.

Our reasoning for this approach involves the fact that indirect source emissions, are emissions generated by vehicle use, not new development. Over the past decade, increase in vehicle use is measured by vehicle miles traveled which generally out-paced population growth. Recent statistics from the Bay Area and Southern California show that vehicle miles traveled increases have been almost 300 percent higher than population increases. Quite clearly, it is not population growth resulting from residential development, but rather it is changing the individual use of vehicles that is the heart of the dramatic increases in total trips. The solution lies with focusing on how to change individual driving behavior, project by project. Permanent requirements by air districts will not impact this behavior.

As you have heard today, air quality requirements do not exist in a vacuum. The doctrine of local control of planning and

development decisions have been the basis of state law for decades; in addition the Legislature recently enacted new requirements for the development, by local agencies, of congestion management plans. This mix of laws is being pursued by a wide range of agencies. In recognition of these existing requirements cooperation between air district and local governments is imperative. The land use landing process needs to be simplified, not complicated. Rather than new air district permit requirements, a productive solution must integrate air pollution concerns within currently existing planning requirements.

Second, your letter asked if we agreed that air districts may usurp local government and land use authority. In passing the state law, we were pleased to see the Legislature's sensitivity to the maintenance of local land use control. Our view that air districts should not usurp land use authority is further supported by amendments made in the 1990 Federal Clean Air Act. Unfortunately, we feel that independent guidance from the Air Resources Board has undermined the clear intent of the Legislature.

First, since these guidance documents are not considered regulations, they have completely escaped independent review by the Office of Administrative Law. This guidance, however, is well-known to be the measure against which the ARB will review air district plans. In their ability to wheel such great latitude, the ARB has ingeniously accomplished two objectives which we feel

are not intended by the Legislature: first, they have expanded what is considered an indirect source beyond prior accepted USEPA regulations by including single-family home development; second, the ARB has invented the concept of local air district concurrent jurisdiction over local land use decisions with complete disregard to the plain language of the Act. By encouraging local air districts to pursue these expansions of the law, the ARB is causing a disproportionate amount of time, effort, and other resources by both the public and private sector to be wasted.

And, Mr. Chairman, opposite to what you said previously, I would like to point your attention to one of the submissions in my packet which states summary of selected indirect source control measures. We think that the plans contain permit controls right now and they are also considered near-term measures. If you will look in the example from the Sacramento Metropolitan Air District, at the table that I have provided, they have listed under near term measures, a land use entitlement permit as one of their indirect source land use measures. Although the details are not fleshed out in the plan, the air district has boldly asserted separate use authority. Even more distressing about this overt grab of local land use control is the fact that no emissions reductions are attributed to this permit requirement or several other of the near-term land use type measures.

Concerning your request for concrete and specific suggestions as to how the law might be modified, I would turn your

attention to our detailed policy statement on indirect source review. In this policy statement, we have identified an integrated package of pollution control measures which we feel will more directly address mobile source reductions, which are the crux of the indirect source issue. We feel the emphasis for control of individual vehicle use should be focused in three main areas: incentive based transportation control measures to reduce individual travel demand, improving the state's inspection and maintenance program, and air district indirect source review through cooperative consultation in local land use planning decisions.

The main concern driving these solutions is trying to identify measures which are effective in reducing emissions. In the area of indirect source review, although I stated earlier that the law seems clear, because of the unfortunate ARB guidance, we think it's necessary now for the Legislature to clarify the role that it expects local governments and air districts to play in land use decisions. We think that in the area of land use, air districts were meant to provide appropriate guidance to local jurisdictions which are the ultimate decision-makers.

And before closing, I'm compelled to address remarks that were made earlier by Abra Bennett concerning the BIA's willingness to be involved in discussions as to how best to implement indirect source regulations. The Monterey Bay District, in fact, specifically did not invite the BIA representative to

participate in the citizens' committee, although our Northern California chapter represents the area. Because our representative did not reside in one of the Monterey Bay counties, she was not allowed to participate on the committee. So while building interests may be represented, they are not part of our association.

Secondly, Ms. Bennett's staff heads a statewide effort called the Transportation Air Quality Review Group. Even though this group allows citizen groups to attend, I was told by the Monterey staff that CBIA was specifically barred from these meetings, so rather than seeking input from a variety of sources, the Monterey District has directly rebuffed BIA participation.

In closing, CBIA recognizes that California has a very real air quality problem. The air quality issue is too important to spend our scarce resources pursuing ineffective strategies that only add layers of new bureaucracy and further drive up the cost of housing in California. Air districts will be more effective in exercising indirect source control programs when pursued cooperatively with cities and counties.

I'd be happy to answer any questions.

**CHAIRMAN SHER:** Well, I have a question about the Sacramento plan that you referred to. I find it now. You know, the mandates under the Act are to reduce air quality benefits, and this seems like kind of a throwaway thing here because they say there won't be any air quality benefits from those strategies, so

I'm not exactly clear what this does. It's not under the Clean Air Act. They seem to be suggesting it might be a good idea to do something like this, but it isn't going to help air quality.

**MS. GLAD:** That's exactly our concern. Why do they include it in their plan if there are no emissions reductions?

**CHAIRMAN SHER:** All I can say is that it's kind of irrelevant to the -- the plan is supposed to lay out your plan for achieving the mandates of the statute, and so, you know, this is not part of their plan to achieve the mandates presumably, because they say that it won't have any air quality benefit.

**MS. GLAD:** Except it is included in their plan, and they are starting regulatory proceedings to adopt it as a rule.

**CHAIRMAN SHER:** But all I'm saying is if they're doing that, it may not be under the California Clean Air Act, which is an Act to produce clean air as the name implies. Thank you. But I'm interested in it. I hadn't seen that before.

Mr. Haleva?

**MR. JERRY HALEVA:** Mr. Chairman, Mr. Gotch, thank you for the opportunity to be here this afternoon. I applaud the patience of the committee members and staff and appreciate the opportunity to represent the California Renewable Fuels Council and the Renewable Fuels Association which are associations of ethanol producers and distributors here in California, and nationally by the Renewable Fuels Association.

We are here to support, very strongly, the Clean Air Act

and its implementation, vigorous implementation here in California. But we have a very serious concern with a narrow issue and that's the wintertime oxygenated fuel program, which is going to be the subject of a rule-making on December 12th and 13th, by the Air Board.

Our concern is that the proposal that the board staff had recommended deviates significantly from the federal Clean Air Act, and that it would result in a tremendous increase in the carbon monoxide pollution occurring here in California, which was the main goal of the Clean Air Act here in California and nationally. And our concern is that by capping the oxygen at 2 percent instead of the nationally accept 3.5 percent that you're basically going to eliminate the availability if ethanol blends in California for a five-month period of time. You may remember, Mr. Chairman that SB 1166, which was just passed by the Legislature, Senator Frank Hill carried the legislation dealing with re-vapor pressure exemptions for ethanol. This committee was going to hear the bill but, absent opposition from any source, you chose to let the bill move forward, and, in fact, we worked very hard with the Air Board staff to come up with language for that legislation that said that ethanol will have to meet the same standards of other reformulated fuels, especially as it relates to NOX emissions if it's going to be allowed in the marketplace. We have no problem with that whatsoever, and in the reg-neg(?) process in Washington, it was very clear to us that if ethanol was going to be viable as

an alternative fuel, we were going to need to make adjustments in ethanol's NOX impact by 1995, when the renewable fuels portion of phase 2 came on line.

But what we had no anticipation of -- and what the industry was completely, I think, taken by surprise on -- was this wintertime '92 proposal which would effectively take ethanol out of the marketplace here in California for a five-month period because of economics of requiring a 10 percent blend for independent producers and marketers of ethanol. It would simply not be available in the marketplace, and as as you know, Mr. Chairman, ethanol is the only truly renewable fuel available to us here in the United States and in California. This would be the only other oxygenate available to add to fuels of NPDE which is a derivative of methane and imported into this country, not produced locally.

So, our concern is very simple. The board has not taken action yet on the staff's recommendation. We have shared with them our concern that the data on which the recommendations have been based is insufficient, and in some cases, inaccurate. We have met with board members and staff to alert them to this. We're sharing the data with them. We are hopeful that prior to the meeting on the 12th and the 13th that the staff and the board membership will take into consideration how adverse the impact would be. If we don't have the oxygen available that ethanol provides, we could see an increase of 750 tons a day of carbon

monoxide in the environment here in California, and that's clearly not the goal of the Clean Air Act. So, we're hopeful, we want to alert you and the members of the committee to a concern we have that we've shared with them. We are hopeful that they will correct problems and take that cap off and really comply with the federal program which is a no cap on the oxygenate available to fuels.

**CHAIRMAN SHER:** Well, several high level staff from the Air Resources Board are still in the audience. I expect they heard you, and they probably heard you before. I'm not sure if there's anything under the Clean Air Act that affects this issue, but we're glad that you --

**MR. HALEVA:** It's a provision of the Clean Air Act under which they're acting, Mr. Chairman, and we're, again, hoping that they will comply with that fully because it's important, but thank you for the opportunity.

**CHAIRMAN SHER:** All right, thank you.

Mr. Rinehart? Let's see, we have two. Mr. Dwelle?

**MR. WALT DWELLE:** Yes, there are two of us here today. Mr. Rinehart is with me, but I'll be giving the only testimony. We'll both be available for questions.

Thank you for the opportunity to address this committee on the pending implementation of the California Clean Air Act even it is as a miscellaneous witness. (laughter) My name is Walter Dwelle. I'm the managing --.

**CHAIRMAN SHER:** No disrespect intended.

**MR. DWELLE:** I understand. I am the managing partner of Nella Oil Company which is headquartered in Auburn, California. Nella is a retailer of petroleum products and convenience food products with 24 stores throughout Central and Northern California. The Board of Directors of California Independent Oil Marketers Association, or CIOMA, has asked me and its legal counsel, Rusty Rinehart, to address this committee on the impact of some provisions of the California Clean Air Act on my company and on all CIOMA members. I'm a member of the CIOMA board and the chairman of its Fuel Supplier Committee.

CIOMA is a trade association comprised of approximately 410 independently owned and operated wholesale and retail distributorships of petroleum products. CIOMA members tend to concentrate in the rural areas of the state where the major oil companies do not have a strong interest, and we serve virtually all the petroleum needs of farm, commercial, and industrial companies in those areas.

The most troubling aspect of the proposed regulations involves the treatment of new stationary sources. We understand that each air basin would be designated as having moderate, serious, or severe air pollution. All but one of my stations, and those of most other CIOMA members, are located within the serious or severe air basins. As such, the permitting programs in those areas would seriously restrict and, in many cases, eliminate our

ability to construct any new facilities or even modify our existing ones as we attempt to adapt to a changing market. In order for us to make such a change, credits would have to be purchased from a district's community bank or from someone in the marketplace. If such credits are available at all, initial indications are that they will be so expensive as to render most projects unfeasible. We feel that these requirements are fundamentally unfair to small businesses, such as ours, for the following reasons.

First, all CIOMA members have been required to install and use the best available control technology for Phase 1 and Phase 2 vapor recovery since 1975. The rest of the economy is only beginning to bear the costs which we have been absorbing for many years. This technology recovers in excess of 95 percent of all hydrocarbon emissions at terminals and service stations. The current proposal seems to ignore the tremendous progress already made by our industry. My company alone has invested over \$600,000 to implement these requirements, and this investment has generated absolutely no return on investments. We've also spent more than twice that much replacing underground storage tanks and product lines and cleaning up contaminated soil in response to other environmental regulations, again, at no ROI, unless you measure the return by our ability to avoid being put out of business.

Secondly, our new and remodeled facilities do not generate new air pollution. Since the total volume of motor fuel

sold will not be affected by these new facilities, they will only displace business from older, outdated, and less environmentally efficient facilities. If new facilities are restricted from locating in the area of new population growth, consumers will have to drive further to get to the older facilities. In fact, these regulations will probably encourage older and less environmentally efficient facilities to stay in business, because they will take on a new value as a scarce commodity.

Third, in many districts, the implementation of a community or credit banking system may produce the unintended effect of creating an unfair competitive advantage for the major oil companies. This is because there are not enough emission credits in existing district banks to address the needs of the market. This has already caused credits to be offered for as much as \$4-5,000 per pound, and that number will undoubtedly escalate as the demand for credits increases as the economy attempts to grow in the years ahead. This will give major oil companies a tremendous advantage over independent businesses, simply because they will be the only ones who can afford these credits. The rural markets, where most CIOMA members' companies concentrate their business, will suffer the greatest consequences as many of their gasoline outlets and bulk distributorships go out of business due to the high environmental costs. Many smaller communities have already lost their only gasoline facilities, and residents of those communities must drive to neighboring towns to

fill up.

While CIOMA is in full support of the intent of the California Clean Air Act in ensuring the health and welfare of the people of this state, we suggest consideration of one or more of the following ideas:

One, the exclusion of service stations and other fueling facilities from new and modified source review has resulted in such facilities being growth responsive industries.

Two, establishment of tiered standards for those small businesses or industries emitting effective pollutants or their precursors similar in theory to those standards adopted by ARB for the level of aromatic hydrocarbons in diesel produced at California refineries.

Three, enhanced recognition by the districts of the advancements implemented by affected industries, most notably the petroleum industry, in adopting and implementing the best available control technology. Four, endorsement of the proposed amendments to the California Clean Air Act, put forth by the California Council for Environmental and Economic Balance. And, finally, with the current negative business climate existing in California today, a recognition and endorsement that any regulatory program in the state must adequately and rationally address the impact it will have on the affected industries with particular emphasis on California's smaller businesses.

Thank you for the opportunity to address these concerns

today, and Mr. Rinehart and I will be happy to answer any questions.

**CHAIRMAN SHER:** Thank you. Your testimony was so clear that we don't have any questions. "We" being the royal we here, since I'm the only one present. But thank you both for your testimony. I appreciate it; it was helpful. I understand that Mr. Ed Yates in the audience wishes to -- yes, we'd like to have those. Mr. Yates did you want to address me at this point? I'd be glad to hear from you briefly.

**MR. ED YATES:** Very briefly. I am Ed Yates with the California League of Food Processors. I appreciate the length of the day, and I will be as precise as possible. I have a handout which dramatizes our central interest in any modification of the California Clean Air Act of '88. What this illustrates is the topic that's been discussed much today. The perspective I bring is food processors, basically operating in an area which hasn't been discussed much today and that's the San Joaquin Valley. This chart that I have passed to you is a comparison of where food processors stand. (inaudible) houses alone going into the San Joaquin Valley. If you take that line and you move it back to '88, you can see that we're already way behind the eight-ball when it comes to addressing what we view as the real problem in the San Joaquin Valley, and that's the unmitigated growth in emissions as a result of indirect stationary sources, and our perspective is one of fairness and equity. We believe and have recommended to

the San Joaquin Valley Unified Air Pollution Control District that one, all cities and counties be brought under a permit system for allowances for increase of emissions. Number two, that all those cities and counties be subjected to the same sorts of sanctions that industry has to face and that is retrofit, mitigating increases of new emissions, and any modification of an existing indirect stationary source ought to meet the same hurdle as we do.

And in finishing up, let me point to the significance of this. In a cooperative study done jointly by the League, the Air Resources Board, PG&E, the California Energy Commission, and Sunsweet Dryers, we discovered that an existing burner in a dehydrator equates to 10 houses worth of emissions. Now we're looking at retrofit technology at 20 times the cost of the existing burner which will reduce it by a factor of 10. We're talking about 500ths of a pound a day of NOX, and we in industry are looking at having to go to point .005, a factor of 10 at a cost of times 20 and nothing is being done with the indirect stationary sources.

In closing, I'll use an analogy. In the garden of the San Joaquin Valley there's a rogue elephant called indirect stationary sources. If you don't address that rogue elephant with legislation, you will be giving it a fertility drug. On the other hand, we in the food processing industry are like a mouse. We're part of a population of industrial sources that's less than half a percent of all of the inventory in the valley. You've already

sterilized us. We cannot increase emissions. In fact, we have to do 10 percent less, and if you do anything without belaboring all the other issues, please make it clear legislatively that districts, particularly in the San Joaquin Valley, have the clear authority to make indirect stationary sources jump over the same hurdles and through the same hoops that we do.

Thank you.

**CHAIRMAN SHER:** Thank you. The representative of the rogue elephant is still here, so you should go introduce yourself. Is there anyone else who hasn't had a chance to testify? I think you all showed a tremendous stamina for staying here to the end, as do I. It's been a long day, but a productive one. I've gained a lot of insights on where we are in the implementation of the Clean Air Act. We've got a lot to go over, and I think it's fair to say that in 1992, when the Legislature comes back into session, this will be a topic of great interest and we're likely to see legislation coming from various directions. Certainly I'm pledged to try to do what I can to make the act work better, but at the same time, without sacrificing the key principles on which it's based, and I'm grateful to all of you who came today to testify and to those of you who are still here.

On that, meeting is adjourned.

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